

# **COVID-19 DECISION – LEADER AND CHIEF EXECUTIVE USING URGENCY POWERS**

**4 MAY 2020**

## **PENTAGON CENTRE TENANTS AND OTHER COMMERCIAL TENANTS – RENT DEFERRAL**

Portfolio holder: Councillor Adrian Gulvin, Portfolio Holder for Resources

Report from/Author: Perry Holmes, Chief Legal Officer

### **1. Budget and Policy Framework**

- 1.1 Matters relating to the rental of Council properties are a matter for Cabinet, whereas matters that relate to expenditure outside budgets approved by the Council, is a Council side matter.
- 1.2 The Leader has urgency powers to make decisions which would ordinarily be made by the Cabinet. These provisions are set out in the Constitution (paragraph 3.2 of Part 3 (Responsibility for Cabinet functions) of Chapter 3 (Responsibility for Functions) of the Constitution.
- 1.3 The Chairman of the Business Support Overview and Scrutiny Committee has agreed that the taking of these decisions are urgent and cannot be reasonably deferred until the next Cabinet meeting on 12 May 2020, in accordance with Section 11 (Cases of special urgency) of the Local Authorities (Executive Arrangements)(Meetings and Access to Information)(England) Regulations 2012 and Rule 17 (Special Urgency) of the Access to Information Rules (Part 2 of Chapter 4 in the Constitution). This is because it is imperative that the Council takes urgent action to support tenants of its commercial properties in response to the COVID-19 pandemic.
- 1.4 Additionally and in line with rule 15.11 of Chapter 4, Part 5 of the Constitution, call-in can be waived where any delay likely to be caused by the call-in process would seriously prejudice the Council's or the Public's interests. The Chairman of the Business Support Overview and Scrutiny Committee has agreed that the decisions proposed are reasonable in all the circumstances and to them being treated as a matter of urgency and to waive call-in.
- 1.5 Furthermore, it is proposed that the Chief Executive uses the urgency provisions as set out in paragraph 4.1 of the Employee Delegation

Scheme (including consultation with the Leader of the Council and the Leader of the Labour Group) to agree the budgetary impact of the action recommended in section 6 below. The use of these urgency provisions will be reported to Full Council on 16 July 2020 for information.

## 2. Issue

- 2.1 The Council owns the Pentagon Centre and a series of other commercial properties within its property portfolio. Requests have been made by tenants for relief from rent payments under lease arrangements.
- 2.2 Whilst the Government have instigated a number of fiscal measures to protect the economy through the Covid-19 pandemic, it has not specifically provided funding to the Council to deal with shortfalls in rental income.
- 2.3 Rather than forego rental income at the moment, officer advice is that an offer of a rent deferral should be made, to allow payment of rent due in the future, once the economic situation has improved.
- 2.4 This should only be offered if requested by tenants and after evidence of income reduction is provided and assurance of future trading viability.
- 2.5 The rent deferral should be offered for no more than the first two quarters of the financial year 2020/2021.

## 3. Decision Required

- 3.1 The Leader is asked to agree the principle set out in this paper and the Chief Executive on behalf of Council, is asked to agree the budgetary impact of this.

<b>Decision type</b>	<b>Risk rating</b>	<b>Can decision be taken under officers' delegated authority?</b>	<b>If not (or if decision is both executive/non-executive), an urgent decision is required</b>
<b>Executive functions</b>	H (PROP1 and RED1)	No	Y – policy impact
<b>Non-executive functions</b>	H (PROP1 and RED1)	No	Y – budgetary impact

#### **4. Options**

- 4.1 There are three options to consider when a tenant requests financial assistance. The Council could deny the request for any assistance (option 1). The Council could agree to forego rental income for a defined period (option 2). The Council could agree to delay the payment of current rent to a future date (option 3). The third option is the one Officers recommend.

#### **5. Finance, Legal and Risk Management Implications**

- 5.1 The legal implications of the proposed decisions are as follows. The terms of each agreement with a tenant will be set out in individual leases. These would need to be amended or the proposed delay in requiring payment, set out in a side letter to the lease.
- 5.2 The financial implications would depend on the specific sums due, but in essence will mean that rent due this quarter, may not be paid for one or two further quarters. The option recommended by Officers to delay receipt of payments would impact the Council's cash-flow in the short term, but as all sums currently due would be paid at a later date (with no interest charged) there would be minimal impact on the Council's revenue budget. However any decision to forego rental income for any period would result in a budget pressure. The Pentagon centre is budgeted to contribute £2.65m per annum. The full impact of reduced income to the Council and additional expenditure is being assessed by Finance officers and shared with Government.
- 5.3 Were any tenant that had been offered the deferral, subsequently to cease trading, there would also be a budget pressure.

#### **6. Final Decision**

- 6.1 The Leader is asked, using urgency powers, to delegate authority to the Chief Legal Officer in consultation with the Leader and the Portfolio Holder for Resources to agree the delaying of current rent of Pentagon Centre tenants as and when requested on a case by case basis. This agreement should follow professional advice from the Centre Management Team.
- 6.2 The Leader is asked, using urgency powers, to delegate authority to the Chief Legal Officer, in consultation with the Leader and the Portfolio Holder for Resources to agree the delaying of current rent of other commercial properties within the Council's property portfolio, on a case by case basis, after receipt of details of reduced income and future trading viability.
- 6.3 The Leader is asked to agree that recommendations 6.1 and 6.2 are considered urgent and therefore should not be subject to call in.

6.4 The Chief Executive is asked to agree, using urgency powers, to the potential budgetary impact of recommendations 6.1 and 6.2

**7. Suggested reasons for decision(s)**

7.1 To provide support to tenants of Council owned commercial properties in response to the COVID-19 pandemic.

..... (signed) .....(date)

Decision taker

..... (signed) .....(date)

Decision taker