

 Brent	Chief Executive Emergency Powers
	Report from the Strategic Director of Regeneration and Environment
Rental Income: To approve deferral of rent and service Charge Payments from Council tenants adversely affected by Covid-19	

Wards Affected:	All
Key or Non-Key Decision:	Key
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Part Exempt - Appendix 1 is exempt as it contains the following category of exempt information as specified in Paragraph 3, Schedule 12A of the Local Government Act 1972, namely: "Information relating to the financial or business affairs of any particular person (including the authority holding that information)"
No. of Appendices:	One Appendix 1: List of 20 highest rents receivable from tenants of The Council's commercial property Appendix 2: Forecast Rental and Service Charge Income for Q1, Q2 and Q3
Background Papers:	None
Contact Officer(s):	Glenn Miller, Head of Property Tel: 0208 937 2050 Email: glen.miller@brent.gov.uk

1.0 Purpose of the Report

- 1.1 This report identifies the financial difficulties being experienced by The Council's commercial tenants due to the outbreak of Covid-19 and the impact that the social distancing measures recommended by Public Health England and imposed by Government, implemented to control its spread, is having upon their ability to pay rent.
- 1.2 It recommends that The Council offers, for a limited period, deferrals or partial deferrals of rent payable under the terms of the lease. Reference to rent includes rent service charges and insurance rent (Rent). The deferrals will only be offered to Commercial Tenants who are demonstrably suffering financial difficulties resulting from Covid 19 and the resultant measures imposed as a

consequence of this. (this excludes tenancies granted for a period of 6 months or less)

1.3 This report further outlines the potential financial impact that the deferral of Rent may have on the Council.

2.0 Recommendation(s)

That the Chief Executive agrees to:

- 2.1 Defer or partially defer rental payments for up to six months for Commercial Tenants.
- 2.2 Delegate authority to the Strategic Director of Regeneration and Environment in consultation with the Director of Finance to implement deferral or partial deferral of the Rent payable by individual Commercial Tenants for up to a period of six months from 25th March 2020 and ending on the 25th September 2020.
- 2.3 Delegate authority to the Strategic Director of Regeneration and Environment in consultation with the Director of Finance to assess whether a Commercial Tenant is eligible to receive a rent deferral beyond the date during which The Council are barred from taking action for repossession imposed by the CA 2020 of 30th June 2020.
- 2.4 Notes that a further report will be presented to Cabinet after September 2020 which will detail the financial impact of the deferred rent for the 6 month period

3.0 Detail

- 3.1 The current outbreak of Covid-19 and the subsequent social distancing measures put in place to combat its spread have placed a large number of businesses that rent space from the Council in serious financial difficulties.
- 3.2 A number of businesses such as retail, hospitality, leisure operators and nurseries have closed in compliance with Government guidelines and others have closed or scaled back due to reduced customer numbers.
- 3.3 Many of the Council's tenants have contacted Officers advising that in the current circumstances they will not be able to pay their rents and service charges and have enquired whether the Council will be able to assist them by waiving payments of Rent for a limited period.
- 3.4 The Corona Virus Act 2020 (CA2020) has placed a moratorium on Landlords taking steps to forfeit a lease on grounds of non-payment of rent and other sums falling due under the terms of the lease and where forfeiture proceedings have commenced before 26th March 2020 then any date for possession cannot be before the end of the 30th June 2020.
- 3.5 Where proceedings in the High Court or the County Court had already begun before CA 2020 came into force, the court must not order possession to be given before 30 June 2020. If the court has already made such an order, the tenant may apply to vary it so that it takes effect after 30 June 2020.

- 3.6 The Chancellor has set out a package of temporary, measures to support public services, people and businesses through this period of disruption caused by Covid-19.
- 3.7 Whilst this report recommends deferral of payments for the period of 6 months it is important to note that the Commercial Tenants remain liable for rent. However, it is likely that some tenants will not be able to pay subsequently and The Council may be faced with writing off some or all of the rents owing
- 3.8 It is intended that deferrals are only granted to tenants who are demonstrably experiencing financial difficulties resulting from Covid 19 and associated measures imposed as a consequence of this.

4.0 Alternative Options Considered

- 4.1 Offering blanket referrals of rent. This was felt to be unnecessarily onerous to Council income as not all Commercial Tenants are being detrimentally affected.
- 4.2 Offering to waive rents. This was not recommended, as it did not give The Council the opportunity to assess the ongoing situation before writing off the income.

5.0 Financial Implications

- 5.1 At present the decision being undertaken is to defer the payments. If all deferred payments were eventually made, there would not be a cost associated with this decision and it would purely be a timing issue.
- 5.2 However, in practice there is likely to be significant bad debt with businesses remaining unable to pay after re-opening, or businesses ceasing to operate and not re-opening.
- 5.3 The Corona Virus Act 2020 prevents us from pursuing repossession for any existing bad debt, which may increase the risk of bad debts not being recovered. The impact of this is currently unknown.
- 5.4 Appendix 2 shows the income forecast for the first 3 quarters of 2022/21. The worst-case scenario before a further decision is sought is thought to be rent deferrals for 70% of the forecast income for Q1 and Q2. This would be approximately £1m of income being deferred.
- 5.5 Further impact will be detailed upon in future reports when the number of deferral requests are known. The Council will also be in a better position to assess the financial impact of likely bad debts.

6.0 Legal Implications

- 6.1 Under the CA 2020 any right of forfeiture of a business tenancy for non-payment of rent is suspended until 30th June 2020 pursuant to section 82(1) of the CA 2020. This section provides that rights of re-entry or forfeiture under a tenancy to which Part II of the Landlord and Tenant Act 1954 applies may not be enforced where the breach is non-payment of rent either by proceedings or by peaceable re-entry until 30th June 2020

- 6.2 Section 82(2) states that no conduct by or on behalf of the Landlord other than by giving an express waiver in writing is to be regarded as waiving a right of re-entry or forfeiture under a relevant business tenancy, for non-payment of rent.
- 6.3 The CA 2020 provides for the extension of the prohibition on enforcement for non-payment of rent beyond the 30th June 2020 by way of statutory instrument. As we are agreeing to extend the prohibition on enforcement for a longer period than the period initially provided by the CA 2020 (the Longer Period) it is important that the Tenant is aware that in relation to the Longer Period that the Council is not waiving its right of re-entry or forfeiture.

7.0 Equality Implications

- 7.1 The public sector equality duty requires public bodies to pay due regard to the need to
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;
 - advance equality of opportunity between people who share a protected characteristic and those who do not;
 - foster good relations between people who share a protected characteristic and those who do not
- 7.2 The Equality Act 2010 and the Public Sector Equality Duty (outlined above) cover the following nine protected characteristics: age, disability, marriage and civil partnership, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation.
- 7.3 There are not thought to be any direct equalities implications arising from the report at this stage.

8.0 Consultation with Ward Members and Stakeholders

- 8.1 In view of the need to urgently consider the contents of this report ward members have not been consulted, however the portfolio lead for Regeneration and Environment and Leader of the Council have been consulted.

9.0 Human Resources (if appropriate)

- 9.1 None

Report sign off:

Amar Dave

**Strategic Director of Regeneration
and environment**