



Cabinet
7th December 2020

**Report from the Strategic Director
of Regeneration & Environment**

Commercial Property Rent

Wards Affected:	All
Key or Non-Key Decision:	Key Decision
Open or Part/Fully Exempt:	Part Exempt – Appendix 2 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:	Two: Appendix 1: Voluntary code Appendix 2: Arrears summary (<i>This document contains exempt information</i>)
Background Papers:	None
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1.0 Purpose of the Report

- 1.1 The Corona Virus Act 2020 (“CA2020”) came into force on 26th March 2020. It provides a moratorium on forfeiture of commercial leases for non-payment of rent until the end of 2020 (extended twice since June 2020). The Act also prevents the Council, until at least the end of 2020 from using commercial rent arrears recovery, unless we are owed 276 days or more of unpaid rent (this will go up to 366 days on the 25 December 2020). Rent under the moratorium includes any amount payable under the lease such as service charges, insurance payments, utilities, etc.

- 1.2 On 18th May 2020, the Chief Executive, under her emergency delegated powers, agreed to defer commercial tenants' rental payments up to 25th September 2020, with individual cases being decided under the delegated authority of the Finance Director and the Strategic Director of Regeneration and Environment.
- 1.3 Members to note that the moratorium has undermined our ability to put in place formal deferral and repayment agreements with commercial tenants, who either are paying their rent in full or are not paying at all. Non-payment of rent has had a significant impact on our rent collection rate since April 2020, as shown in confidential appendix 2.
- 1.4 Members to note that in June 2020 the Government published a voluntary code ("Code") for commercial property relationships during the Covid-19 pandemic. The key principles of the code are 1) Transparency and Collaboration 2) A Unified Approach 3) Government Support and 4) Acting Reasonably and Responsibly. The Code is shown in appendix 1.
- 1.5 The risk of doing nothing is that commercial tenants' arrears will continue to accrue and will increase bad debt. A recovery in the commercial property sector ("sector") from this low point is likely to be protracted. Once the sector moves away from a period of balanced demand and supply, it tends to take a relatively long time to re-adjust. Social, economic and technological forces will eventually move the sector from the old price-quantity equilibrium to new conditions of demand and supply. When making decisions on each case, the Council will need to balance the need to improve short-term cash flow against longer-term return on investment. The process set out in paragraph 2 will provide the *agility*, which is key to coping with the current volatility within the commercial property sector.

2.0 Recommendations for Cabinet

- 2.1 This report recommends that Members agree:
- 2.2 To formalise the application process for full or partial rent deferrals or rent negotiation through an online form. The online form will ensure that tenants provide the necessary evidence to support their application and will allow us to verify the claim and assess the liquidity and solvency of the business i.e. identify those tenants who are experiencing cash flow issues now but who will likely be in a better position to meet their rental costs in the future. The government is clear that where businesses can pay their rent, they should do so.
- 2.3 That a panel consisting of officers from Property, Finance and Debt Collection departments review each case and make recommendations to the Finance Director and the Strategic Director of Regeneration and Environment in accordance with the broad criteria below:
- Temporary illiquidity of the tenant is a direct consequence of the pandemic.
 - The business is considered to be a micro business or SME.

- The premises has been closed due to the pandemic, it cannot trade or has suffered a significant reduction in trade.
- Evidence of illiquidity in the form of cash flow statement, statement of means or financial accounts.
- Where the tenant is letting multiple premises from various landlords, the Council acts consistently with those other landlords.
- There is a good prospect of the tenant's business recovering.

2.4 That delegated authority is granted to the Finance Director, in consultation with the Strategic Director of Regeneration and Environment, to make full or partial rent deferral and rent negotiation decisions (in exceptional cases this may include lease re-gearing) on commercial tenancies to effect the most appropriate commercial property solution on a case-by-case basis.

2.5 Where businesses have arrears and do not engage in the process for applications for rent deferrals, or do not conform to the agreement made as part of that process, that the Council use the full legal powers to recover rent now and in the future. This would include:

- i. Use commercial rent arrears recovery, where allowed by statute (for example, where Brent is owed 276 days or more of unpaid rent);
- ii. Adding interest where tenants have not agreed rent deferrals with the Council (this is generally a standard lease provision);
- iii. Threat of forfeiture of the lease once the moratorium on forfeiture of commercial leases for non-payment of rent is lifted.

2.6 These provide an incentive for tenants to either pay their rent or formally agree an arrangement with the Council.

3.0 Detail

3.1 Out of the commercial tenants in arrears, 25% of them owe about 80% of the total rental income due. Therefore, the focus in relation to rent collection efforts will be on these debtors as a priority.

3.2 The unpaid rent that has become due since the start of the pandemic in the U.K. is significant, but not the largest part of the total debt owed. The table in confidential appendix 2 shows an analysis of unpaid rent following the start of the pandemic.

3.3 The moratorium on forfeiture has made it more difficult to collect historic rent as well as the rent that has become due during the pandemic.

3.4 The more commercial tenant arrears continue to grow, the less likely it is that they will be collectible when the moratorium is over. In order to maximise total rent collection over the coming years, it is proposed that the Director of Finance,

in consultation with the Strategic Director of Regeneration and Environment, make commercial property solution decisions on a case-by-case basis.

4.0 Financial Implications

- 4.1 The total commercial rent outstanding is shown in confidential appendix 2.
- 4.2 In order to incentivise commercial tenants to engage with the process for agreeing rent deferrals or lease re-gears with the Council (rather than just not paying their rent), the report recommends using the full legal powers available to recover rent now and in the future for tenants that do not engage with the process (para 2.5). This includes adding interest charges if such conditions are provided for within the leases.

5.0 Legal Implications

5.1 The Code

- 5.2 The Ministry of Housing, Communities and Local Government produced the Code (appendix 1) in order to help landlords and tenants consider and seek to agree how best to navigate the landlord and tenant relationship in respect of commercial tenancies during the pandemic when usual business operations are wholly or partially constrained as a result of the pandemic. It is designed to apply to all commercial leases held by businesses which have been seriously negatively impacted by the COVID-19 crisis. It does not change the underlying legal relationship or lease contracts between landlord and tenant or any guarantor.
- 5.3 Though the Code is voluntary the recommendations in it are regarded by the several organisations who have endorsed it as best practice in light of the pandemic. The Council should consider which of the recommendations described in the Code it can adopt and implement them accordingly.
- 5.4 The Code will apply until 24 June 2021.
- 5.5 Paragraph 9.9(a) of Part 3 of the Constitution gives the Director of Finance delegated authority and responsibility for the administration of the Council's financial affairs. The Director of Finance's responsibility in this regard includes responsibility to operate and advise on an effective system of internal control and to provide an effective internal audit service. The recommendations detailed in paragraph 2 of this report which are concerned with financial administration are within the scope of the Director of Finance's delegated powers.
- 5.6 The Landlord and Tenant Act 1954, LCTA 1995 and other landlord and tenant legislation mentioned in this report needs to be read in conjunction with the CA2020 and the best practice recommendations in the Code (whilst not legally binding) should all be considered before commencing any action to forfeit a commercial tenancy or recover unpaid monies due under a commercial lease.

6.0 Equality Implications

6.1 None identified.

7.0 Any Other Implications (HR, Property, Environmental Sustainability - where necessary)

7.1 None identified.

8.0 Proposed Consultation with Ward Members and Stakeholders

8.1 N/A

Report sign off:

Alan Lunt

Strategic Director of Regeneration and
Environment