

## ABERDEEN CITY COUNCIL

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COMMITTEE	Finance & Resources
DATE	28 September 2010
DIRECTOR	Gordon McIntosh
TITLE OF REPORT	Proposed Fee Structure – Landlord’s Consents etc.
REPORT NUMBER:	EPI/10/229

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### 1. PURPOSE OF REPORT

- 1.1 This report advises Members of a proposal to introduce charging for dealing with requests from tenants relating to subjects within the Council’s non-operational property portfolio and for the preparation of condition reports.

### 2. RECOMMENDATION(S)

- 2.1 It is recommended that the Committee:-
- a) approves the introduction of charging for dealing with tenants’ requests and the preparation of schedules as described within the report,
  - b) delegates powers to the Head of Asset Management and Operations to vary the charges periodically as deemed appropriate in line with operating costs etc. and for this to be incorporated into the Scheme of Delegation documents

### 3. FINANCIAL IMPLICATIONS

- 3.1 If approved the proposed charging could result in an additional income of up to £50,000 pa. There would be negligible risk and no State Aid implications.

### 4. SERVICE & COMMUNITY IMPACT

4.1 The vast majority of the subjects are non-operational and do not impinge on City Council core functions and the priorities within the SOA.

## 5. OTHER IMPLICATIONS

5.1 There are no significant implications

## 6. REPORT

6.1 The City Council's non-operational portfolio comprises a variety of property types, which are held on a variety of lease types. Typically ground leases are for a period of between 60 and 125 years. Building leases are generally for a period between 1 and 25 years. Business Centre leases are generally on a month to month basis.

6.2 During the course of these leases it is not uncommon for tenants to request the consent of the Council as landlord for various things. Such requests would typically be for assignments of the tenant's interest, the sub letting of the tenant's interest, or a part of it, or to make physical alterations to the premises. It is normal for these requests to be dealt with under delegated powers.

6.3 In the past these requests have generally been dealt with free of charge. In the light of the ongoing review of statutory functions within the priority based budgeting exercise the tasks associated with such requests are dealt with by staff who could be deployed on other activities and therefore the workload is additional to current requirements. It is therefore considered appropriate that a charge for completion of such tasks is introduced.

6.4 The Head of Legal and Democratic Services has advised that, regardless of any lack of provision in the leases, it is not unreasonable for the Council to try to recover costs of staff time associated with dealing with tenants' requests. If it transpires that the matter cannot be dealt with under delegated powers it is proposed that there should be an additional fee reflecting the time involved in preparing a Committee Report.

6.5 A table of charges is attached as Appendix 1.

6.6 It is emphasized that in most cases these are a minimum level of charge. In terms of staff time to deal with requests there is an analogy with a taxi meter, what should be a short job may become more complicated and if those complications are the result of action or inaction by the tenant there should be the scope to increase the charge accordingly.

6.7 It is difficult to quantify the numbers of such request and the income which would be generated. At the time of writing there are some 21 ongoing assignments of which 3 are of minor subjects. The cases may take some considerable time to conclude, though landlord's consent is occasionally almost an afterthought and there is pressure to release the request within

a very short period. Charging consent for the currently ongoing cases would yield an income of approximately £4,500. An annual income of between £10,000 and £20,000 might be anticipated from assignments and sub-leases. Charging for landlord's consent to alterations is likely to yield approximately £10,000 per annum.

- 6.8 The section deals with a number of subjects which could not be described commercial. This would include pigeon lofts, garages and sites for garages and small parcels ground adjacent to former railway lines now leased as extensions to gardens of adjacent houses. Rents on these subjects are typically less than £100 per annum. The level of charge described in this report would be disproportionate to the rents for these types of subject and the imposition of such charges would be unreasonable.
- 6.9 Any charges introduced would be in addition to those already charged by the Head of Legal and Democratic Services in respect of the Council's legal expenses for issuing such consents.
- 6.10 The management of leased subjects includes the preparation of schedules of condition and dilapidations. The former would normally be prepared at the commencement of the lease and at intervals during the lease. The latter would be prepared at the end of the lease and details works required of the outgoing tenant. In the past these have been prepared without charge to the tenant. This is not typical of the situation with privately owned leased premises. It is proposed that the charging of tenants for these schedules is also introduced. If this work is undertaken by the Council's external property contractor (currently Ryden) the tenant will be responsible for fully reimbursing this cost. These schedules can be the catalyst for considerable follow up work in terms of liaising with tenants to ensure that works are done satisfactorily.
- 6.11 Leases are currently silent on this issue. An obvious point is that these reports are not the result of requests from tenants. The advice from the Head of Legal Democratic Services is that while leases don't specify that the costs to prepare such reports can be charged, the leases also don't specify that they can't. It's her advice that if the level of charge is reasonable and clearly linked to the cost of staff time in dealing with the work, then tenants are unlikely to complain or challenge the legality of our charging system. On the other hand, if we set charges that are punitively high and bear no relationship to staff time, then there is much more scope for the charging system being legally challenged by tenants. In future, our commercial leases will make it clear that tenants will meet the landlord's reasonable cost in preparing such reports.

## 7. REPORT AUTHOR DETAILS

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## 8. BACKGROUND PAPERS

8.1 No background papers were used in preparing this report.

## Appendix A

<b>PROPOSED PROPERTY SERVICES CHARGES</b>		
<b>ITEM</b>	<b>DEFINITION</b>	<b>MINIMUM CHARGE EX VAT</b>
<b>Tenant request to purchase Landlord's interest</b>	Fee should the matter require to be referred to Committee for consideration after officer refusal.	£250
	Fees reimbursed if sale is concluded, however non refundable otherwise.	
<b>Landlord's consent under lease to :</b>		
<b>Assign</b>	For checking lease compliance, confirmation of covenant offered by prospective assignee and instructing Head of Legal and Democratic Services	£250
<b>Sub lease</b>	For checking lease compliance and granting approval	£150
<b>Alterations to the property</b>	Consideration of works and granting consent	
	Minor works	£150
	Major works	£500
	Retrospective Consent	£250
<b>Schedules of condition</b>	Business Centre subjects (internal only)	£400
	Smaller premises - shops, offices, small industrial	£750
	Larger premises - usually industrial or complicated by unauthorised works	£1400
<b>Schedules of dilapidation</b>	Business Centre subjects (internal only)	£300
	Smaller premises - shops, offices, small industrial	£550
	Larger premises - usually industrial or complicated by unauthorised works	£1100