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**REPORT TO: POLICY & RESOURCES COMMITTEE ON 3 SEPTEMBER 2019**

**SUBJECT: COMMUNITY ASSET TRANSFER: RENTAL SUPPORT**

**BY: CORPORATE DIRECTOR (CORPORATE SERVICES)**

**1. REASON FOR REPORT**

- 1.1 This report invites the Committee to consider the level of rental support awarded to community bodies occupying council property under legacy agreements and to agree arrangements for these to be reviewed.
- 1.2 This report is submitted to the Committee in terms of section III(B)(29) of the council's Scheme of Administration relating to asset management policies and practices and section III(B)(59) relating to the determination of community asset transfer requests.

**2. RECOMMENDATION**

**2.1 The Committee is invited to:**

- (i) note the extent of ongoing rental support provided to community bodies under the legacy agreements listed in Appendices 1 and 2;**
- (ii) instruct the Estates Manager to carry out reviews of the rents payable under these leases in accordance with the lease terms and corporate priorities and subject to the availability of sufficient staff resources;**
- (iii) agree that the existing rental support shall cease with effect from the relevant rent review dates, as implemented; and**
- (iv) agree to consider valid requests for a continuation of rental support from eligible community bodies affected by recommendation (iii) through the Community Asset Transfer (CAT) process as a policy exception.**

**3. BACKGROUND**

- 3.1 Part 5 of the Community Empowerment (Scotland) Act 2015, which came into force on 23 January 2017, brought the majority of concessionary lease arrangements within the scope of the Act's asset transfer provisions – the Act does not apply to property held under a Public Trust. Section 95 of the Act requires each authority to publish a report on asset transfer requests annually.

The statutory report covering the period up to 31 March 2019 was considered by this committee on 4 June 2019 (paragraph 8 of the draft Minute refers).

- 3.2 On 1 September 2015, this committee agreed that ongoing rental support provided to community bodies occupying council property be monitored by means of an annual report (paragraph 8 of the Minute refers). On 25 May 2016, the council agreed that all future requests from community bodies for leases at less than market value would be considered through the CAT process (paragraph 22 of the Minute refers). As concessions granted through the community asset transfer (CAT) process are included in the statutory annual report, this report only deals with legacy arrangements put in place before the changes agreed by this committee on 25 May 2016.
- 3.3 Historically, the council provided rental support to community bodies by means of entering into leases at nominal rents, typically at £1 per annum or some other nominal amount that in practice would not be collected. Leases of this type are listed in **Appendix I**. As each lease comes to an end the ongoing need for it will be reviewed with any request for a lease renewal at a concessionary rent being determined through the CAT process. This process may require the council to serve notices to quit on the affected tenants.
- 3.4 From 23 March 2005, the way concessionary rents were handled changed, with the rent payable under the lease being set at the then market value and a separate grant provided to offset that rent. Community bodies benefiting from this arrangement were required to re-apply every three years for the rental grant to be renewed. This system of triennial reviews was administratively cumbersome and the decision by this committee on 1 September 2015 replaced it with this annual report. Those arrangements subject to review in this way are listed in **Appendix 2**.
- 3.5 No reviews have been carried out of the rental support awarded under the rental grant scheme in the four years since the scheme was closed to new applicants. With one exception, which is detailed in **Appendix 2**, each lease contains a provision for the rent payable to be reviewed at regular intervals.
- 3.6 The rent review also provides an opportunity to review the level of rental support provided in the light of current circumstances. Carrying out these reviews in accordance with the lease terms would be in keeping with the principles of the rental grant scheme and would ensure that any ongoing support is reasonable and commensurate with the benefits provided.
- 3.7 The CAT scheme is designed to deal with requests for the transfer of rights that a community body does not already enjoy. Consequently, the scheme is not open to existing tenants who only wish to ask for a reduction in their rent. However, as the scheme addresses all the relevant issues, the council can as an exception choose to consider applications for a continuation of support awarded under the rental grant scheme.
- 3.8 If the recommendations contained in this report are approved then the affected tenants would be advised immediately in order to give them sufficient time to prepare a case for a continuation of the rental concession.

- 3.9 Any concessions granted as part of the arrangements for delivering a service on behalf of the council are reported separately and thus outwith the scope of this report. The short term rental concessions granted in respect of the town halls and community centres are also subject to separate arrangements so too are considered outwith the scope of this report.

#### **4. SUMMARY OF IMPLICATIONS**

##### **(a) Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))**

Leasing assets to the community at less than market value can support the 10 Year Plan (LOIP) aim of creating more resilient and sustainable communities with less need for universal services provided by the public sector. It can also be consistent with the Corporate Plan value of promoting community empowerment as a means of supporting communities to take on more responsibility.

The council's corporate priority of working towards a financially stable council should be taken into consideration when dealing with requests to lease an asset at less than market value.

##### **(b) Policy and Legal**

On 21 March 2017, this committee approved the following policy statement (paragraph 5 of the Minute refers).

*“Moray Council recognises the important role that the transfer of property assets can play in empowering communities and strengthening their resilience. Where appropriate, the council will use the transfer of assets to give more control to communities and local people, inspire them to find local solutions to community needs, and as a means of helping communities become more sustainable in the long term. In determining all asset transfer requests, the council will have regard to the guidance provided by the Scottish Government in relation to asset transfer requests made under Part 5 of the Community Empowerment (Scotland) Act 2015, whether or not such requests are made under the provisions contained in the Act.”*

Assets leased to the community at less than market value must comply with the Disposal of Land by Local Authorities (Scotland) Regulations 2010, which require the council to be satisfied that the proposed transfer is reasonable and that the disposal is likely to contribute to the promotion or improvement within Moray of any of the following purposes:

- a) Economic Development,
- b) Regeneration,
- c) Public Health,
- d) Social Wellbeing, or
- e) Environmental Wellbeing.

Reasonableness in this context is taken to imply that the requested discount is the minimum necessary to allow the project to proceed and that it is commensurate with the likely benefits of the project.

**(c) Financial Implications**

It is not possible in this report to quantify the total loss of rental income to the council from those arrangements listed in **Appendix 1** as current rental valuations are not available for each property. The annual loss of income from the agreements listed in **Appendix 2** amounts to £35,840. In many cases, the council benefits from the duty of keeping premises in good repair falling upon the tenant. Thus, services can be maintained at little or no cost to the public purse other than the rents foregone. The financial implications of continuing support following a review would be considered on a case by case basis and reported to this committee as each case is taken through the CAT process.

***Additional Expenditure Warning***

When the council approved the budget for 2019/20 on 26 February 2019, the 3-year indicative budget before the council showed savings required of £12.2 million in 2020/21 and £6.7 million in 2021/22. Although the final figures will vary, it is clear that the council will have to reduce its costs significantly across all services in future years. All financial decisions must be made in this context and only essential additional expenditure should be agreed. In making its determination, the committee should consider the following questions:

- Is there a statutory requirement to incur the expenditure?
- Are there any alternative actions available to avoid/reduce the cost?
- Are there alternative ways in which the service could be provided?
- What are the risks and consequences of not allocating the funding?
- Does the expenditure contribute to long terms financial stability?

If in the light of these factors the spend is considered essential, committees should how it could be accommodated within the service budget, including what other activity would have to cease or diminish with what impact and risk. Only following these considerations should a request be made to the council for additional budget allocation. If the recommendations in this report are approved, this would have the potential to reduce the general services savings target by more than £20,000 over the next 5 years.

While these figures may not be significant in isolation, the cumulative impact of all new pressures requires to be taken into account for future years. If the committee recommends additional budget to be allocated, this recommendation will be considered in the next quarterly budget monitoring report in the context of the current overall financial position of the council and, in particular, in the overall context of spend beyond affordable limits that impinges on the council's reserves policy position.

**(d) Risk Implications**

There are no risk implications arising directly from this report. For some community bodies currently in receipt of rental support there may be a risk of their activities ceasing or being severely restricted without ongoing support. This could show itself, for example, through an inability to fulfil the repairing obligations as set out in their lease. Such risks would be identified on a case by case basis during each review and taken into consideration when determining a request for support.

**(e) Staffing Implications**

Staff resources within the Estates section are currently working at full capacity and, as agreed with the Corporate Management Team, its workload is being prioritised in favour of higher value corporate priorities. This means that rent reviews for lower value properties (currently those with rental values of less than £1,000 per annum) are not being implemented. This situation is under continuous review and the merits of implementing the rent reviews and lease renewals referred to in this report must be assessed within this context. The properties concerned tend to have unique characteristics that make assessing rental values more staff intensive than usual.

**(f) Property**

The property implications are as detailed in this report. Any property implications arising from changes in the level of support provided would be identified on a case by case basis during each review.

**(g) Equalities/Socio Economic Impact**

There are no equalities issues arising from this report. Equality issues would be considered on a case by case basis as part of each review.

**(h) Consultations**

The members of the Asset Management Working Group's CAT Sub-Group\*, Acting Head of Housing and Property, Legal Services Manager, Property Resources Manager, Estates Manager, Principal Accountant (P. Connor), Committee Services Officer (Caroline Howie), and Equal Opportunities Officer have been consulted and comments incorporated in the report.

(\*Corporate Director (Corporate Services), Head of Development Services, Head of Financial Services, and Educational Resources Manager.)

**5. CONCLUSION**

**5.1 Although the council has established suitable arrangements for assessing new requests from community bodies for leases at concessionary rentals, there remains a legacy of agreements entered into prior to these coming into force. Some of these legacy agreements involved setting a nominal rent that will subsist until the end of the lease. Others can be reviewed at regular intervals.**

**5.2 The Committee is invited to consider recommendations for reviewing the rents payable and the level of support provided under these legacy agreements. If the recommendations are approved, any resulting changes would be dealt with through the CAT scheme in a consistent and equitable manner and brought back to this committee for determination.**

Author of Report: Andrew Gray, Asset Management Coordinator  
Background Papers: Held by author  
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