

Lease and Rent Management Policy

Property and Facilities

September 2019



milton keynes council



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Introduction

This policy applies to the lease and rent management for commercial and non-residential property. It sets out procedures designed to be open, transparent and consistent.

Within this framework the policy will ensure that Milton Keynes Council achieves best consideration as set out in Section 123 of the Local Government Act 1972, act within the appropriate legal framework, and perform in a demonstrably fair and open manner.

The Council owns a large portfolio of property which is managed by the Property and Facilities team on behalf of key client departments e.g. the Leisure and Community Team. The majority of this land and property is used under formal agreements (leases, licenses, and annual periodic tenancies) by other third parties. Failure by either party to comply with the terms of the agreement may result in court action, therefore the Council will not enter into leases or licenses without appropriate due diligence checks.

The leases/licence agreements the Council enters into fall into three categories:

- (i) Agreement with a commercial or non-commercial interest or group for the purpose of supporting a council function or furthering a council interest, including revenue generation.
- (ii) Agreement for a property that the council holds to fulfil its strategic objectives or service needs.
- (iii) Agreement for purposes other than for those that satisfy a council function or further a council interest, provided they do not interfere with any other council functions, e.g. telecommunications facility, unused right of way, temporary occupation of a surplus property etc.

Vacant property available for lease will be advertised on the council website www.milton-keynes.gov.uk and in most cases, a commercial agent will also be appointed. Heads of Terms will be aligned with the principles of this policy, but may also contain additional or alternative obligations which will be site specific. Where the Heads of Terms differ from the Council's agreed standard terms, approval to enter into a lease must be granted by the Council's Strategic Property Board.

Estates Team

The Estates Team within Property and Facilities will lead on lease and licence agreements for commercial and corporate property transactions on behalf of Milton Keynes Council.

The team will:

- Ensure that any lease/licence agreement entered into meets service requirements and customers' expectations and needs;
- Work with service areas that have ongoing responsibilities for ensuring the appropriate management of the centres
- Monitor the local property market and relevant external influences so that lettings reflect the optimum value and increase revenue to the council;
- Hold an accurate and up to date record of all lease and licence agreements;
- Manage rentals and lease terminations in order to optimise the value of the estate;
- Actively pursue debtors for non-payment of rent, licence fee or other monies owing to the Council.

Selecting tenants

A number of factors are reviewed when selecting tenants; these include, but are not limited to:

- Ability to satisfy statutory best consideration requirements
- Economic impact
- Community engagement
- Job creation
- Commercial viability
- Operational risk
- Financial acceptability
- Ability to set up a community management committee

Where there are a number of potential tenants for a property, applicants may be required to submit an Expression of Interest which will be reviewed against the criteria listed above, plus any specific criteria relating to the property under consideration. Tenant selection will be based upon the recommendation of the commercial agent (where one has been appointed) or by a panel of officers.

Granting lease/licence process

- Estates will enter into negotiations with prospective tenants and service areas with the aim of reaching an agreed set of Heads of Terms and will instruct legal as appropriate
- All Heads of Terms will be forwarded to the Estates Lead for initial consideration and comment.
- Alterations to the property or any associated works must not be agreed or completed without the necessary statutory approval(s) in place (where applicable) and will require the Landlord's consent.¹
- Rent reviews will reflect the conditions set out within existing leases, unless exceptionally agreed otherwise.
- Where the annual passing rent is lower than £25,000, rent reviews will be calculated using an RPI or fixed uplift only.
- In exceptional circumstances, community or social value may be considered as a full or partial abatement of rent where the use of the property supports the Council's aims and objectives.
- New leases will reflect open market values and be supported with comparables for transparency purposes.
- Maintenance and insurance responsibilities will be made clear within agreements. Leases will be granted to new tenants on a fully repairing and insuring basis. Lessees and Licensees will be regularly kept informed of progress as agreements progress.
- Leases may not be assigned without the Landlord's consent.

¹ Landlord's consent does not replace any statutory consents, such as Planning, Listed Building, or Building Control which may be additionally required.

Typical Heads of Terms

Heads of Terms set out the main elements between both parties and are agreed prior to a lease being produced and entered into. In effect it is a record of the agreed points following negotiation between Landlord and Tenant. Milton Keynes Council standard Heads of Terms will include:

- Agreement type - lease or licence.
- Permitted use - including hours of operation if applicable.
- Term - how long the agreement runs for.
- Rent - assessed to reflect the open market value for the property based on comparable evidence of similar properties.
- Rent Review - usually set at a three or five year interval, assessed on the basis set out within the agreement.
- Maintenance - all new leases will be agreed on a full repairing basis with the tenant being responsible for all repairs; licences differ by their nature and will have reduced tenant responsibilities.
- Insurance - MKC will insure its buildings and recharges the tenant. Public liability insurance to a minimum indemnity level of £5 million will also usually be required.
- Business Tenancies - all new leases will be contracted out of the Landlord and Tenant Act 1954 where appropriate.
- End of Lease Procedures - including responsibility for dilapidations. All new agreements will spell out clearly what the expectations are upon both parties at the end of the term

Rent payment and arrears recovery

Under the terms of their agreements with the council, tenants and licensees are required to pay rent/a licence fee for their occupation and use of the council's property or land.

Generally payments will be required quarterly or monthly. The amount of rent and the payments cycle will be clearly set out within the agreement and non-payment of rent is therefore a breach of lease/licence.

The Council will make every effort to recover any monies owed. Non-payment of rent/licence fee is treated seriously and may result in legal action against the tenant/licensee.

The Estates Team monitor debtors with arrears of more than £1,000 or where payments have not been made for more than 30 days and may offer the tenant a suitable payment plan to recover the arrears. The current status of debtors is reported to the Strategic Property Board (SPB).

If payment is not forthcoming by an allotted deadline or a payment plan is not adhered to, the Council will consider legal action.

Governance

The authority for the granting and/or modifying leases, easements, licenses and wayleaves of, in or above buildings or land is the responsibility of the Director of Environment and Property which is then delegated to the Head of Property and Facilities and the Estates Lead.

In addition the Head of Property & Facilities and Estates Lead have delegated authority to vary the terms and conditions of, or negotiate the surrender of, leases and licenses; and to determine as landowner or landlord, applications for licenses, consents and permissions in respect of the council's buildings or land.

All Heads of Terms which are a variation to the standard will require approval from Strategic Property Board.

Officers will update the relevant cabinet and ward members in some cases may refer the proposed transaction to the relevant cabinet member for determination.

Property and Facilities

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www.milton-keynes.gov.uk/property-and-facilities