

SOUTH HOLLAND DISTRICT COUNCIL

Report of: Executive Manager – Property & Development

To: Policy Development Panel

Author: Richard Hodgson – Executive Manager – Property & Development

Subject Review of Lettings Policy for SHDC's industrial units and proposed replacement Policy, brief update on the management of industrial units and update on replacement of the 2014-2019 Asset Management Strategy.

Purpose: To set out the basis of the proposed replacement of the 2005 Lettings Policy for SHDC's industrial units with a new Lettings Policy and provide Policy Development Panel with an update on these industrial units and the preparation of a replacement Asset Management Strategy 2014-2019 for the Council.

Recommendation(s):

The Policy Development Panel to :

- 1) Note that the Council's 2005 Lettings Policy for industrial units has been reviewed and consider the proposed replacement Lettings Policy details of which are set out in this report. This new policy is due to be considered by Cabinet at its meeting on 26th October.
- 2) Note and support the recommendation to Cabinet that the current officers delegation '*to grant industrial unit tenancies which meet the lettings criteria of general or light industrial use and make determinations, in accordance with the approved policy, in respect of: the level of rent deposit payable, any rent free period to be granted, and any discount to be granted for additional units*' is updated and simplified to read :

To grant industrial unit tenancies which meet the lettings criteria and make determinations, in accordance with the approved policy.
- 3) Note that the proposed timetable for the drafting of a full Asset Management Strategy to replace the Council's Asset Management Strategy 2014-2019 has now been impacted by the Covid 19 pandemic and until the position is clearer on the impact on assets use and utilisation the drafting and subsequent presentation of this draft Strategy is paused. Panel should note however that the core data collection process has commenced and will be completed by the end of October. An update this can be presented to PDP at its scheduled meeting in November, as required.
- 4) Note the steps taken to improve the tidiness of the commercial property estate and preparations made for the grant of new leases (on approval of the new Lettings Policy).

1.0 BACKGROUND

- 1.1 The Council owns and manages five industrial estates at various locations across the District totalling some 50 units, 49 of which are currently let and income producing. These are situated in the towns of Crowland (Pinnacle Close & Horseshoe Yard), Sutton Bridge (Railway Lane), Holbeach (Fleet Road) and Spalding (Benner Road)
- 1.2 The majority of the units are small (around 600sqft) with the exception of units on Pinnacle Close in Crowland which are larger (over 1,000sqft). Of the 50 industrial units the council owns and manages, 49 are presently let. The only vacant unit is at Railway Lane, Sutton Bridge but has a number of interested parties looking at leasing options.
- 1.3 The Council has budgeted a sum of £150k for capital works principally for re-roofing works and the clearance of land to the rear of the Long Sutton estate to prepare the ground to take storage containers. These containers can be provided and let by the council or let on a ground lease basis where tenants provide their own.. Some road repairs and landscaping improvements have also taken place on this estate.
- 1.4 At Horseshoe Yard Crowland, new LED lighting has been installed and boundary fence replacement is programmed. Door servicing has taken place at the Benner Road units and will be rolled out across other units. There has been a concerted effort across all the estates to tidy up, limit storage outside of units and improve trade refuse storage around units. Frontages of units have and will continue to be jet washed, additional grounds maintenance has been undertaken across the estate and regular engagement with tenants on ensuring lease compliance. Asset officers have actively engaged with tenants particularly those who are regularly in breach of the terms of their letting agreements. The council have granted six new leases on improved commercial terms (reflecting the new proposed precedent lease and new Letting Policy terms) and negotiations have begun with a number of other tenants regarding the grant of a new lease.
- 1.5 The Council has an adopted Asset Management Strategy dated 2014-2019. The Strategy sets out a vision for assets to be managed effectively including making sure that assets are fit for purpose, where appropriate generate sustained income and support economic and environmental regeneration of the district. Aims and objectives of the strategy for example include underpinning the capital programme from the disposal of surplus, optimising the value of the commercial assets for example through letting and providing assets that meet service need.
- 1.6 Since the Asset Management Strategy was adopted a number of things have happened including the adoption of a new Local Plan, the securing of substantial grant to support the delivery of projects like Section 5 of the South Western Relief Road (SWRR) and the Food Enterprise Zone (FEZ) in Holbeach. Assets have been acquired such as those required for the SWRR delivery, others will help improve the future wellbeing of citizens through specific interventions such as the acquisition of Moulton Park where there are plans to open the park to the public with a new innovative funding structure.
- 1.7 New housing has also been delivered by the council including construction of new homes for the council's wholly owned housing company – Welland Homes. New residential properties have also been acquired direct from developers many of which are now in the Housing Revenue Account (HRA) in some cases replacing properties sold under Right to Buy. Asset review work continues on finding optimum alternative uses for sites like the former depot site at Holbeach and the utilisation of other assets have been challenged for

example how the council uses the Priory Road offices. Here the council has reduced the amount of space it occupies and from this has come new lettings opportunities including to the Department of Work and Pensions and Lincolnshire County Council who have relocated their Registry Office. There are also plans to build a 40 bed extracare facility on land owned by the Council, the first extracare facility in the District.

- 1.8 A replacement Asset Management Strategy will capture all these initiatives and include an Implementation Plan setting out a programme of activities, identifying dependencies and a framework for how the Council will for example seek to deliver capital receipts, better utilise assets and improve sustainability. The strategy will need to be flexible enough to meet changing corporate objectives. The strategy will identify opportunities to drive income from existing commercial asset and identify new income sources and efficiencies ensuring that our assets make the optimum contribution to the Council's priorities and objectives. One way of doing that will be through the implementation of a new Lettings Policy, the main area covered later in this report.
- 1.9 Plans were in place to commence the drafting of the replacement Asset Management Strategy in Spring of 2020. Drafting of this document was initially held pending recruitment to the Strategic Property Manager post and as a result of the Property Services and Asset Manager and Assets Officer leaving the organisation. In the case of the 2 senior posts there have been a number of attempts to fill these posts without success. Another attempt to recruit to both posts has just closed again without success.
- 1.10 The Council is sourcing consultancy currently to cover these two senior assets posts. It is proposed that NPS (Peterborough) Limited, a joint venture between Peterborough City Council and the Norse Group will provide some capacity on estates management in the interim via a pre procured estates framework. One option considered in Spring this year was for NPS (Peterborough) Limited to be commissioned to write the replacement Asset Management Strategy however this was held with the onset of the Covid 19 pandemic.
- 1.11 The pandemic has made us look differently at how we utilise assets and will continue to do so for some months yet. The South Holland Centre and Ayscoughfee Museum for example remain closed to the public, parts of the leisure offer at the Castle site remain closed and if open operating in a different way to ensure Covid Compliance. At the height of the pandemic through late Spring/ early Summer months the cemetery was closed, children's play equipment out of use, changing facilities and pavilions closed and one way systems came into being in town centres. The Priory Road offices were closed to the public from 24th March to 7th September and open now on a scaled back basis.
- 1.12 Priority investment now in Priory Road has shifted to increasing ventilation and that picture is mirrored across certain other council assets. The pandemic has not only brought with it a level of uncertainty and a need to introduce new approaches to occupancy and adaptation it has meant investment priorities have had to change. The decision to progress with the building of up to 15,000sqft of new industrial units at Crease Drove in Crowland for example, to some extent depends on the anticipated market demand for these. It is difficult to ascertain levels of demand at this time with few commercial property lettings having taken place over the past 6months. The Council has planning consent but the tender process for a building contractor was paused in March when the pandemic struck.

1.13 Following a review of the management and letting of the Council's commercial portfolio a number of recommended changes to the 2005 Lettings Policy have been identified to enable more effective management of the industrial units. A new policy is proposed details of which are set out in this report.

2.0 Replacing the 2005 Lettings Policy :-

The current Lettings Policy, adopted in 2005, has a number of constraints which needed to be addressed to ensure that a policy reflects the Council's current corporate priorities and reflects modern commercial practices for letting commercial properties held for investment purposes. To not do so will continue to constrain officers letting commercial property on terms reflective of modern practices and have a detrimental impact on the value of the Council's commercial property assets and income derived from its commercial assets.

The Council's approved budget assumes through the granting of new leases on modern commercial terms that the income derived from these commercial assets will increase through the medium term. Allowing for more flexible shorter and longer term leases, the new policy provides for, will offer existing and prospective future tenants more flexibility to match lease terms with individual business needs. This is good for the Council and good for local businesses.

2.1 The new Policy represents a change of approach to letting our industrial estates, providing a policy which better aligns with current commercial practices and providing greater flexibility to negotiate across a wider range of lease terms. The main areas that will change with the new policy are :

- The existing 2005 policy states that all leases will be contracted in to Part II of the Landlord and Tenant Act 1954, thus offering security of tenure. The Act provides the tenant the automatic right to renew the lease even if the landlord does not wish them to do so. The proposal is that all new leases will be excluded from the provisions of Part II of the Landlord and Tenant Act 1954 hence tenants will no longer have an automatic right to renew their lease. This will ensure that at the end of the term the council can recover the asset or grant a new lease if it chooses to do so.
- The existing 2005 policy provides a primary focus on letting units to start-up businesses especially in the non-food related industries. Whilst the Council is supportive of start-up business it does not want a lettings policy that constrains it. The proposed new policy seeks to address this by not placing such constraints on new lettings. It will be more important than ever as we move through and beyond the Covid 19 pandemic that the council has policies that provide it with flexibility to let to a wider range of potential tenants on terms that are flexible and reflecting modern commercial practices. An example is the recovery of expenditure incurred on individual estates adopting the principles of a recovery via a service charge. The proposed new lettings policy will do this and from it will no doubt be a more solid relationship with tenants who will be paying for future repairs and maintenance on their units and across the estate on account. The council, as Landlord, in return will undertake the work, which may have been requested by tenants, in the knowledge that it can be paid for.
- The existing 2005 policy restricts the use of the units to a B1 (Light Industrial)/B2 (General Industrial)/B8 (Warehouse) use class as defined by the Town and Country (Use Classes) Order 1987. As market conditions change and as a response to Covid no doubt, flexibility to let units to a wide range of tenants will be key to being able to respond to market demand whilst maintaining budgeted income levels. The proposed

new lettings policy will do this, subject of course to the grant of planning consent, where necessary.

- The current 2005 policy states that a three year term is agreed on all new lettings. This is not modern practice. Commercial landlords must be able to negotiate with prospective tenants based on a range of terms which can flex to suit the market interest. Some tenants will require longer terms, others easy in and easy out terms and we should capture these and provide an estate which is dynamic and provides a range of opportunities for tenants. This may also include stepped rents, a method commonly adopted where tenants generally pay less in say year 1 but slightly above market rent in year 2 to compensate so over the term of the lease the same total amount of rent is paid its' just that it is received in a phased and stepped way. This will also allow the Council better opportunities than it currently has to adopt a strategic approach to managing its commercial property assets. A good example would be aligning the expiry of leases in one specific block or where existing tenants want short term grow on space. The proposed new lettings policy will do all of this.

2.2 Overall a more commercial focus is required for the lettings policy to ensure that the council is maximising their income potential as well as satisfying the needs of the market, the needs of the local businesses and responding quickly to changes in demand for these units in future years. There is a need for flexibility in the policy to ensure that the policy stays fit for purpose without the need for constant review. Constraining the policy too tightly would mean it couldn't easily respond to changing market conditions without a substantial rewrite.

2.3 Throughout the process of reviewing the policy a number of key principles were followed :

- The document needs to be simple and relatively high level so that it can be flexible / resilient to future changes.
- It should provide clear guidance for the Asset Management Team (and any other related teams) within the Council for the basis on how commercial property can be let and with it comes a new precedent lease to create more uniformity of terms upon which units are let.
- It will enable Asset officers to take account of a prospective tenant where it is clear they generate additional "social value" for example through promoting local jobs or charitable causes or skills enhancement. The proposed new policy will provide for circumstances whereby additional concessions could be made to a tenant if deemed appropriate be this additional rent free, capital contributions towards fit out, limiting repairing obligations and reduced rents.

2.4 The revised policy which is being recommended for approval, meets the requirements listed above. The key changes to the policy following review are as follows. A number of these are new and all reflect modern commercial practice when letting commercial property.

Implementation of a Service Charge -	Service charges are levied to cover the maintenance and repair of the common parts of the estate and the external parts of the units (but not exhaustively). For certain properties service charges may not be applicable in which case other provisions will be put in place for the recovery of expenditure for example through inclusive rents.
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Flexibility around Lease Term	Different tenants have differing requirements around length of lease. To respond to as many enquiries as possible it is necessary to have flexibility to enable shorter and longer term leases to be granted.
Flexibility around Use Class – Not restricting ourselves to the current B1/B2/B8 uses for industrial units	As market conditions change, so does the potential use of the council’s commercial portfolio. It is important that we are flexible in the types of business that we grant leases to. All changes of use will be subject to planning permission, and landlord’s written consent.
Following a more commercial approach in terms of repairing liability and statutory regulations	Ensuring that our leases are, where circumstances allow, on an effective Full Repairing and Insuring basis, with tenants taking on greater commitments around statutory compliance than existing leases provide.
Leases are contracted outside the provisions of Part II of the Landlord and Tenant Act 1954	This will ensure that at the end of the term the council, as Landlord, can recover the asset if it wishes do so. Alternatively the council can grant a new lease to the tenant on new terms.
The introduction of a new precedent lease for industrial units, thus providing a new standard form of agreement, reflecting modern commercial and legal practice.	The use of a precedent lease will enable the council to ensure that its commercial property assets are let using a modern standard commercial lease form, a form prospective tenants who have leased property previously will be familiar with. The new lease reflects the most recent legislative changes and commercial practice.
Yield Up - A schedule of dilapidations will be undertaken by the Council prior to the termination of the tenancy, outlining the items of disrepair the tenant is responsible for remedying.	This places the emphasis on the tenant to hand back the asset in a good condition. At present these costs are classed as void costs. The new Lettings Policy should stop this falling as a cost to the council.

3.0 Delegations

It is recommended that in addition to the approval of the Lettings Policy, officers delegation is amended as set out below:

Current Delegation	Recommended revised wording
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<p>Asset and Property Manager</p> <p>Technical Project Co-Ordinator</p>	<p>Industrial Units (mini factory units) – Tenancies</p>	<p>Cabinet</p>	<p>Grant industrial unit tenancies which meet the lettings criteria of general or light industrial use and make determinations, in accordance with the approved policy, in respect of: the level of rent deposit payable, any rent free period to be granted, and any discount to be granted for additional units</p>	<p><i>To grant industrial unit tenancies which meet the lettings criteria and make determinations, in accordance with the approved policy.</i></p>
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4.0 REPLACEMENT LETTING POLICY OPTIONS

- 4.1 To note the contents of this report and support the proposed basis for letting industrial units as set out in this report and the proposed amendment to the delegation – The new policy replacing the 2005 adopted policy will provide officers with a stronger and more flexible basis to manage the industrial units effectively, and maximise income potential. – **This Option is recommended**
- 4.2 To **do nothing** – The current policy is out dated, does not reflect current market terms and does not meet the strategic aims of the Council. It is recommended that the policy is renewed in order to effectively let and manage the council’s industrial units.
- 4.3 To seek a **rewrite of the draft Policy** referred to in this report and the report to be presented again to Panel – The new policy reflects modern commercial practices and has been drafted on this basis. A rewrite and reference back to Panel would mean a delay in it being implemented.

5.0 REASONS FOR RECOMMENDATION(S)

- 5.1 The policy is simple and relatively high level. Officer delegations to be updated to allow officers more flexibility for negotiating terms on behalf of the Council, on commercial terms that reflect current market practice
- 5.2 Due to the simplicity of the policy, it is resilient to future changes, therefore reduces the requirement for constant review.
- 5.3 The new precedent lease format which will be familiar to those who have leased property in the private sector.

6.0 EXPECTED BENEFITS OF THE REPLACEMENT LETTINGS POLICY

- 6.1 By agreeing to greater flexibility i.e. contracting out of the provisions of Part II of the Landlord and Tenant Act 1954, it will remove the tenant's right to automatically renew their lease. By doing so, an opportunity then arises, on expiry, for the Council to grant a new lease in line with new market conditions, as determined, at that time.
- 6.2 An new precedent lease, reflecting the terms of the Lettings Policy, ensures a commonality of approach when letting industrial units and up to date commercial practices and legal position.
- 6.3 The recommended replacement lettings policy will provide for greater flexibility for Officers to negotiate the best terms for that asset at that time, rather than through the existing policy which constrains such flexibility.
- 6.4 The introduction of a service charge will cover the maintenance and repair of the common parts of the estate and the external parts of the units (but not exhaustively). This will allow the council to recover costs for the upkeep of the buildings and common parts.
- 6.5 Clarifying and defining roles and responsibilities in terms of exit arrangements and tenants statutory obligations.

7.0 **IMPLICATIONS**

In preparing this report, the following implications have been considered. Crime & Disorder; Data Protection; Equality & Diversity/Human Rights; Health & Wellbeing; Risk Management; Safeguarding; Stakeholders/Consultation/Timescales; Transformation Programme; Other. Consideration to the below headings have been made.

7.1 **Constitutional & Legal**

The Council will let industrial units in accordance with sound legal principles and with standard forms of lease documents to provide consistency of approach across the estates.

7.2 **Corporate Priorities**

- 7.2.1 Providing a policy which allows officer's greater flexibility to negotiate and conclude terms on a more commercial basis will help ensure that the anticipated increase in income can be realised and tenant compliance can be better managed. In addition, common costs of operating estates will be shared between tenants rather than falling on the Council.
- 7.2.2 Granting officer's flexibility to negotiate and conclude terms on a more commercial basis provides prospective tenants and officers with greater flexibility and choice in order to tailor the offer to suit both the needs of the customer and the Council.

7.3 **Staffing**

No staffing implications associated with the approval of this Policy. A consistent approach and improved clarity of who is responsible for what aspects of the management of the estates should have a positive impact by allowing officers the flexibility to negotiate and conclude terms in line with the current market conditions and build stronger relationships with tenants .

7.4 Financial

Future budget setting will need to reflect the policy that Members adopt, particularly where it relates to the recovery of estate costs on individual assets for example grounds maintenance, repair and future investment in assets.

Background papers:-

None

Lead Contact Officer

Name and Post: Anita Goddard-Gill – Interim Assets and Property Services Manager
Telephone Number
Email: AnitaGoddard-Gill@sholland.gov.uk

Key Decision: N

Exempt Decision: N

This report refers to a ~~Mandatory Service~~ / Discretionary Service

Appendices attached to this report:

Appendix A 2005 Lettings Policy
Appendix B Proposed replacement Lettings Policy