

**19 September 2017**

**Policy, Projects & Resources Committee**

**Less Than Best Consideration Policy Amendment**

**Report of:** John Chance – Finance Director (Section 151 Officer)

**Wards Affected:** All wards

**This report is:** Public

**1. Executive Summary**

- 1.1 This report considers an amendment to the Less Than Best Consideration Policy, agreed at Committee on 27 March 2015, to make the requirement to keep a lease outside the Landlord and Tenant Act 1954 discretionary.

**2. Recommendation**

- 2.1 That point 4.8 of Appendix B of the Less Than Best Consideration Policy is amended to give delegated Authority to the Chief Executive or Section 151 Officer in conjunction with the head of Legal Services to determine whether a new lease granted under this mentioned policy is inside or outside the Landlord and Tenant Act 1954. See details in Appendix A.

**3. Introduction and Background**

- 3.1 The Asset Management Strategy 2014/15 was approved by the Asset & Enterprise Committee on the 15 July 2014. Following on from the adoption of this strategy a less than best consideration policy was approved at Committee in March 2015. This was to ensure compliance with statutory requirements to achieve best value and also to ensure transparency and fairness in dealing with community groups See Appendix A for the details of the Less than Best Consideration Policy. Please note clause 4.8 of Appendix C.

**4. Issue, Options and Analysis of Options**

- 4.1 At its meeting on 27<sup>th</sup> March 2015 the Councils Asset and Enterprise Committee adopted a 'Disposals at Less than Best Consideration' policy.

- 4.2 This is a disposal at less than best consideration and in order to comply with Council policy and sections 123(1) and (2) of the Local Government Act 1972 it is necessary to undertake an assessment of the extent to which the organisations activities contribute towards achieving the Council's aims and objectives. In undertaking the assessment it is also necessary to:
- Include a copy of the organisation's constitution and three years of accounts.
  - Set out the extent to which the organisation is proactive in seeking to share and make available the assets to other community and voluntary sector uses on a not for profit basis
  - Confirmation that the organisation will submit its activities and accounts on an annual basis or when required by the Council.
- 4.3 There is a requirement to incorporate discretion in determining if a lease within these criteria is inside or outside the Landlord and Tenant Act 1954 to ensure flexibility in dealing with a wide variety of cases.
- 4.4 The original policy can be found at Appendix A with Appendix B the acquisitions policy and Appendix C the disposals policy.
- 4.5 The suggested new wording of clause 4.8 (Appendix B, which is referred to as Appendix 'C' in the original report) is:

**All leases will include provisions to exclude any security of tenure rights at the discretion of the Chief Executive or the Section 151 Officer.**

## **5. Reasons for Recommendation**

- 5.1 To allow flexibility in dealing with Less Than Best Consideration leases.

## **6. Consultation**

- 6.1 No formal consultation has been undertaken.

## **7. References to Corporate Plan**

- 7.1 Value for Money: policies that invest in key services to create opportunity for all, provide better value for Brentwood's taxpayers and enhance the Borough's infrastructure whilst modernising and transforming Brentwood

Borough Council. We will re-prioritise and focus our resources and be innovative in our approach.

- 7.2 Our Borough: Policies which promote our environment, support sustainable growth, and safeguard our high quality environment including heritage and countryside. We will provide responsive, accessible and forward thinking services for vulnerable residents, supporting people back into work and providing good quality housing making Brentwood our residents' Borough of Choice.

## **8. Implications**

### **Financial Implications**

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- 8.1 Where a lease is granted inside the Landlord and Tenant Act 1954 the Council will only be able to take back a property under certain instances, the most common of which are for the Council's own use or for redevelopment.
- 8.2 If the lease is taken back at the end of the term, compensation is payable (one or two times the Rateable Value) to the tenant if the lease is inside the Landlord and Tenant.
- 8.3 If a lease is outside the Landlord and Tenant Act 1954 the tenant does not have any automatic renewal rights and a property can be taken back without specific grounds needing to be proved or compensation being paid.

### **Legal Implications**

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Legal implications regarding relevant legislation are contained within the body of this report. Legal Services are available to provide ongoing advice and assistance to officers regarding the application of the law to fact-specific matters as they arise.

**Other Implications** (where significant) – i.e. Health and Safety, Asset Management, Equality and Diversity, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

None

## **9. Background Papers**

9.1 See Appendix A

## **10. Appendices to this report**

Appendix A - Less than best consideration Policy. Including Appendix C point 4.8.

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