

DATA LABEL: PUBLIC



PARTNERSHIP AND RESOURCES POLICY DEVELOPMENT AND SCRUTINY PANEL

REVIEW OF COMMUNITY BENEFIT LEASES IN COUNCIL PROPERTIES

REPORT BY HEAD OF FINANCE AND PROPERTY SERVICES

A. PURPOSE OF REPORT

The purpose of this report is, as instructed by Council on 24 November 2020, to advise the Panel of existing arrangements for the use of community benefit leases in council properties, and to provide an update on the review undertaken by officers.

B. RECOMMENDATION

It is recommended that the Panel notes the information in the report concerning community benefit leases and the council's Tenanted Non-Residential Property (TNRP) portfolio and other property portfolios, including the advantages and disadvantages to the council and affected third sector organisations of any potential changes and the relevant legal, equalities and revenue considerations which apply.

C. SUMMARY OF IMPLICATIONS

I	Council Values	Making best use of our resources. Being honest, open and accountable.
II	Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	S74 (2) of the Local Government (Scotland) Act 1973, Disposal of Land by Local Authorities (Scotland) Regulations 2010, Community Empowerment (Scotland) Act 2015.
III	Implications for Scheme of Delegations to Officers	None.
IV	Impact on performance and performance Indicators	Any proposals to approve the use of community benefit leases in TNRP properties would significantly and adversely impact on revenue income currently received from commercial rents. This in turn would impact on associated performance indicators for revenue income from the TNRP portfolio.
V	Relevance to Single Outcome Agreement	<ul style="list-style-type: none">• We make the most efficient and effective use of resources by minimising our impact on the built and natural environment.

- Our economy is diverse and dynamic, and West Lothian is an attractive place for doing business.

VI Resources - (Financial, Staffing and Property)	Any proposals to approve the use of community benefit leases in TNRP properties would significantly and adversely impact on revenue income currently received from commercial rents.
VII Consideration at PDSP	The report is being presented to PDSP in accordance with the decision of Council on 24 November 2020.
VIII Other consultations	The Chief Solicitor and the Governance Manager have been consulted on the content of this report.

D. TERMS OF REPORT

D1. Background

Council at its meeting on 24 November 2020 agreed that officers should undertake a review of the use of community benefit leases across the council's estate and consider options for policy and process improvement opportunities that would improve transparency, property utilisation and governance.

Officers were asked to identify any benefits and disadvantages both to the council and to local Third Sector organisations from any proposed changes and to identify any legal and revenue considerations associated with any proposed amendments to the current approach.

The results of that exercise were to be reported to the Panel. A copy of the minute recording the decision is attached in Appendix 1.

D2. Current position

The council has an extensive operational and commercial property portfolio comprising a wide range of assets. Community groups, voluntary organisations and charities regularly approach the council requesting the use of property at concessionary rents.

The management of all property assets is governed by legal requirements. Section 74(2) of the Local Government (Scotland) Act 1973 requires a local authority disposing of an interest in land or buildings to obtain the best consideration reasonably obtainable. This is generally interpreted as being the monetary market value of the asset. The Act allowed disposal at less than the best consideration subject to the Scottish Ministers consent being obtained

The Disposal of Land by Local Authorities (Scotland) Regulations 2010 removed the requirement for reference to Scottish Ministers, allowing local authorities to make such decisions themselves. In the context of the Regulations, disposal may be by way of either sale or lease.

The Scottish Government issued general guidance to assist councils in considering the use of the Regulations, which states that councils should have appropriate arrangements in place. The guidance reiterates the statutory duty to secure Best Value, including the assessment of the full financial consequences of decisions.

In response to the requirements of the Regulations and in recognition of the aims of the Community Empowerment (Scotland) Act 2015, which seeks to support and enable community-led projects, Council Executive at its meeting on 30 June 2015 granted the Head of Finance and Property Services delegated powers to agree community benefit leases of up to ten years to voluntary and other third sector organisations specifically for the use of council-owned sports facilities, clubhouses, allotments and community gardens.

Community benefit leases allow the full market rent to be discounted or waived in full in lieu of the measured non-financial benefits that the tenant's use of the subjects would bring to the community.

Properties forming part of the council's TNRP portfolio were explicitly and deliberately excluded from the scope of that exercise since the purpose of these assets is to support the local economy and employment, which also generates revenue income via commercial rents that supports core service delivery across the council.

The council has granted community benefit leases to a wide range of community organisations and all non-operational sports facilities (31 properties), clubhouses (14 properties), allotments (1 site) and community gardens (3 sites) are now let on this basis. In each case, the market rent has been waived in full in lieu of the established non-financial benefits arising from the tenant's use of the property.

In addition, officers have also secured specific approvals from the Council Executive for the temporary occupancy of a commercial retail unit in Bathgate town centre and for the lease of an area of protected woodland at Tailend to third sector organisations under the provisions of community benefit leases. In both cases, officers considered there to be mitigating circumstances whereby the granting of a community benefit lease was in the council's best interests.

D3. Existing approach: TNRP portfolio

The TNRP portfolio comprises retail, office, industrial and ground-lease assets. Its primary purpose is to support the West Lothian economy by delivering fit for purpose commercial business space. In delivering the economic objectives, the portfolio also provides vital revenue income in the region of £4.50million per annum that supports the delivery of core council services.

The council's approved policy is that TNRP properties must be let at full market value. That policy was established by the former Strategic Services Committee in August 1996 and was further approved by Council Executive in May 2008.

A number of properties held in the council's TNRP portfolio are currently leased to Third Sector organisations. Consistent with all other TNRP leases and in accordance with approved council policy, these properties are let on commercial terms, with full market rents payable by the tenants.

The council currently holds in excess of 720 commercial property assets within its TNRP portfolio. Of that number, 25 properties are leased to voluntary or other Third Sector organisations. Details of those properties, the current tenant and the passing annual property charges due under the respective leases are set out in Appendix 2.

Under existing arrangements, where a Third Sector organisation is a TNRP tenant and where that organisation separately applies for and is granted an annual funding award from a council voluntary organisations budget, any property costs (e.g. rent and/or service charge) payable to the council as landlord under the lease are deducted at source from that award.

The benefits of this approach are that neither the council nor the tenant use time and resources pursuing or processing invoices and, importantly, there is full transparency as to the level of financial support being provided by the council, whilst satisfying the statutory requirements of Best Value and the other legal requirements set out in section D2 above.

Historically, voluntary and third sector organisations may have benefitted from “peppercorn” rents at £1 per annum, however tenants are now required to make payment of full commercial rent for premises occupied by them. Those organisations affected by this change, had their grant funding increased to take account of the requirement to make payment at a commercial rate, ensuring that their net grant payment was protected. As a result, the organisations are not adversely affected by the requirement to pay commercial rents. This same principle applies to any service charge or building insurance payments that are due to be paid by the tenant under the lease. Conversely, it should be noted that if an organisation ceases to lease a council property, then any elements of their award currently included to cover property costs would be removed from their award.

Of the 25 TNRP properties leased to Third Sector organisations, ten properties are currently let to organisations who have their property costs met in full by the council as part of a wider annual funding award from the annual voluntary organisations budget. Details of those properties, the current tenant and the passing annual property charges due under the respective leases are set out in Appendix 3. The Third Sector tenants who occupy the other fifteen TNRP properties meet their annual property costs from alternative funding sources including, in some instances, funding provided by other council services.

D4. Existing approach: Operational properties

In addition to the TNRP portfolio, the council owns and operates over 240 operational buildings and a wide portfolio of open space land assets. These are classified as operational assets since they are used directly by the council for service delivery. These assets can be summarised as follows:

- Corporate buildings (partnership centres and other office buildings, social care properties and depots)
- The school estate (nursery, primary, secondary and ASN schools)
- Community buildings (community centres, village halls and sports pavilions)
- Open space assets (country parks, pitches and other public open space areas).

Due to the operational nature of our corporate buildings and the school estate, there has been no requirement or demand from the Third Sector for community benefit leases in these properties. Where community groups seek to use these facilities (e.g. sports halls in schools or general-purpose space in partnership centres), it is typically on an ad-hoc basis and their needs are met via hourly lets, with an hourly room-hire fee payable.

Community centres and village halls are leased by the council to community-led management associations, who operate the properties on a day-to-day basis. Under those leases, the council is responsible for meeting all property costs, including repairs and maintenance, statutory compliance and utility costs. The management associations retain all income generated from lets. Typically, these are historic “peppercorn” leases where the passing rent is £1 per annum.

Peppercorn leases are no longer fully compatible with the legal requirements set out in section D2 above and officers are seeking to modernise these leases. This could include the introduction of community benefit leases across the community buildings estate.

Similarly, as approved by Council as part of the revenue budget, officers are promoting community asset transfer and encouraging community groups to consider leasing operational sports pavilions, using community benefit leases as the means for doing so.

Officers have worked with community groups to deliver a number of projects across the public open space estate. These include community gardens, allotments and artwork/memorial sites. Community benefit leases have been used to facilitate these projects and further projects will be delivered via community benefit leases in 2021/22 as a result of recent community funding awards from the Town Centre Fund for 2020/21.

D5. Review of Existing Arrangements: TNRP portfolio

As part of this review, officers have considered the implications of widening the scope of community benefit leases to include properties held in the TNRP portfolio. The perceived advantages and disadvantages to Third Sector organisations, the council and to the wider local economy are as follows.

The clear advantage to Third Sector organisations of community benefit leases potentially being available across the TNRP portfolio is that they could effectively lease council-owned business premises at nil cost, assuming they were able to adequately demonstrate community benefit.

If, however, all existing Third Sector tenants of the TNRP portfolio demonstrated community benefit and were granted new community benefit leases, projected rent lost from TNRP revenue income would total £286,177 per annum, plus service charge recovery of £56,149 per annum and buildings insurance premiums recovery of £6,690, giving a combined recurring impact of £349,016 on the TNRP portfolio revenue budget in 2021/22. A detailed breakdown of these figures is provided at Appendix 2.

Since community benefit leases are not available from private sector landlords, it is anticipated that Third Sector organisations, naturally drawn by the prospect of securing commercial property at nil cost, would instinctively gravitate towards council-owned properties when seeking premises.

It is envisaged that the TNRP portfolio would over time inevitably contain a far higher percentage of Third Sector tenants and the resulting impact on the TNRP portfolio revenue budget would be significantly greater than £349,016 per annum in future years. This in turn would reduce the amount of revenue funding generated and result in a budget pressure that would require savings to be identified.

The TNRP portfolio plays an important role in supporting the local economy by providing a wide range of flexible business space. If, going forward, businesses were required to compete for that space with an increasing number of Third Sector organisations, this could adversely affect new start-up businesses and/or those businesses looking to expand, locate and employ in West Lothian.

There may be competing interests in a property between a Third Sector organisation and a commercial business or indeed another community group. In those circumstances, officers or ultimately elected members would be required to decide who the property should be leased to, and why.

Whilst voluntary and third sector organisations are a distinct group of tenants who may be seen as having unique challenges, commercial businesses also face real challenges, particularly during the ongoing Covid19 pandemic. The council must consider the basis upon which it would provide unique support to one sector to the prejudice of other tenants, or indeed other voluntary organisations who lease from and pay rent to private landlords. This may also be seen as being anti-competitive.

State aid is any advantage granted by public authorities through state resources on a selective basis to any organisations that could potentially distort competition. The council would have to consider whether the granting of community benefit leases across the TNRP portfolio might be contrary to any existing or new State Aid rules.

D6. Review of Existing Arrangements: Operational Properties

Due to the operational nature of the properties involved, there is considered to be minimal opportunity or demand for the use of community benefit leases in our corporate buildings or across the school estate. Where groups require the use of facilities within these buildings, suitable letting arrangements exist to accommodate that.

Existing arrangements for the lease of community centres and village halls to community-led management associations are no longer fully compatible with the legal requirements set out in section D2 of this report. Officers consider that an opportunity, and indeed an obligation, exists for those leases to be modernised. On that basis, it is proposed that introducing community benefit leases across the community buildings estate is explored.

The advantage of this is to ensure the council's leasing arrangements are fully consistent with current legal requirements, whilst allowing the management associations to continue occupying buildings without the need to pay a market rent.

In order to maximise utilisation and encourage greater partnership working in our community buildings, officers will work with the Third Sector to explore opportunities for co-location and the sharing of community facilities. The pooling of resources through partnership working ensures community assets are used to their full potential, which in turn delivers the best possible outcomes for our communities.

Officers consider that an opportunity exists for community groups to have greater autonomy and control of community sports facilities, in particular those sports pavilions that are currently classified as operational. Officers will continue to promote community asset transfer and encourage community groups to consider leasing pavilions, using community benefit leases as the means for doing so.

Community benefit leases have been used to support and facilitate community groups in the delivery a number of projects across the public open space estate, including community gardens, allotments and artwork/memorial sites. Further open space projects will be delivered in 2021/22 as a result of recent funding awards from the Town Centre Fund for 2020/21 and community benefit leases will continue to play a key role in those projects.

D7. Legal considerations

The council has a legal obligation to comply with the requirements of Section 74(2) of the Local Government (Scotland) Act 1973 and the Disposal of Land by Local Authorities (Scotland) Regulations 2010, and in doing so to at all times to ensure Best Value in the sale or lease of its property assets.

Having regard to each of the matters set out in section D5 above, the council's Chief Solicitor considers it unlikely that the council could adopt a blanket approach the granting of community benefit leases across the TNRP portfolio to voluntary and other third sector organisations. The Chief Solicitor considers it would be necessary to ensure that all issues were fully considered in relation to each organisation to establish whether and to what extent relief could legitimately be provided.

In terms of the council's operational properties, the historic agreements that currently govern the lease of community centres and village halls to management associations are no longer fully consistent with the requirements of the Disposal of Land by Local Authorities (Scotland) Regulations 2010 since they operate on a peppercorn rent (£1 per annum) basis.

E. CONCLUSION

Officers have undertaken a review of the use of community benefit leases across the council's full property estate. The benefits and disadvantages both to the council and to local Third Sector organisations from any proposed changes have been identified, along with any legal and revenue considerations associated with potential amendments to the current approach.

The primary purpose of the TNRP portfolio is to support the local economy through the supply of business space. For the reasons set out in section D5 above, it is the clear view of officers that making the TNRP portfolio available to Third Sector organisations on community benefit leases would significantly and adversely impact the local economy and would result in a financial pressure for the council. The Chief Solicitor has also identified concerns over any potential blanket approach, with reference to the council's stated legal requirements on Best Value, anti-competition considerations and potential State Aid implications. In light of the foregoing, no change is proposed to the council's existing policy of prohibiting community benefit leases in the TNRP portfolio.

Having considered the council's operational buildings and open space assets, and with reference to the number and type of projects that our communities have thus far sought to deliver, there is significant evidence that existing processes and governance arrangements are robust, transparent and effective and that the current

Scheme of Delegation provides sufficient delegated powers to enable the council to support and facilitate the delivery of the vast majority of community-led projects via the community benefit lease model.

In exceptional circumstances, where a proposed project does fall outside the scope of existing delegated powers, or where officers consider it to be in the council's best interests to grant a community benefit lease for a particular property, then the option exists for officers to seek specific approval to proceed from the Council Executive.

Officers have identified a need to modernise existing arrangements for the lease of community centres and village halls to community-led management associations. Community benefit leases present an opportunity to ensure the council is fully compliant with current legislative requirements, whilst enabling the management associations to continue leasing these properties at nil rent (with the full market rent being off-set in lieu of non-financial community benefits).

Officers will seek to maximise utilisation and encourage greater partnership working in our community buildings by working with the Third Sector to explore opportunities for co-location and the sharing of community facilities. Officers will also continue to promote the benefits of community asset transfer and encourage community groups to consider leasing community buildings, using community benefit leases as the means for doing so.

Where community groups are awarded Town Centre Fund funds, or similar funding awards in future years, officers will support the delivery of community projects, using community benefits leases as the means for doing so.

F. BACKGROUND REFERENCES

- Section 74(2) of the Local Government (Scotland) Act 1973
- Disposal of Land by Local Authorities (Scotland) Regulations 2010
- Community Empowerment (Scotland) Act 2015 – Part 5
- Strategic Services Committee - August 1996
- Council Executive - May 2008 – Policy and practices of estate management
- Council Executive – 30 June 2015 – Modernising leases at less than market value

Appendices/Attachments:

Appendix 1 - Extract from Minute of Council meeting on 24 November 2020

Appendix 2 - TNRP Properties leased to Third Sector organisations

Appendix 3 - TNRP Properties where cost are deducted at source

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Donald Forrest, Head of Finance and Property Services

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**APPENDIX 1: Extract of Minute of Meeting – West Lothian Council 24/11/2020
(Item 25)**

Council commends the tremendous contribution of West Lothian Third Sector and community organisations throughout the COVID-19 pandemic.

Council recognises there are hundreds of Third Sector organisations in West Lothian and that only a small proportion of these - 19 - currently let 24 Council TNRP (Tenanted Non-Residential Properties) properties. 8 of the 19 have rental charges deducted at source once the award is made, having been included and accounted for in grant awards from the Council. The vast majority of Third Sector organisations lease private property.

Council notes that the council policy approved at Council Executive in 2008 states that TNRP properties must be let at full market value and that there is currently no scope within the existing policy to remove rental charges for local voluntary organisations

Council further notes that a meeting of the Council Executive on 30th June 2015 excluded TNRP properties from community benefit leases which are applicable to sports facilities, clubhouses, allotments and community gardens.

Council recognises the new funding process agreed for Voluntary Organisations and that current grant recipients are not guaranteed awards in the future, given the playing field has now been levelled to allow hundreds more organisations the opportunity to apply for funding in accordance with agreed priorities.

Council therefore instructs officers to bring a report to a future meeting of the Policy & Resources PDSP:

- to review the policy of Community Benefit leases across the council's estate and to consider all options for policy and process improvement opportunities and changes to improve transparency, property utilisation and governance;
- to identify benefits and any disadvantages to local Third Sector organisations from any proposed changes;
- to identify benefits and any disadvantages to the council property portfolios (including the TNRP) from any proposed changes;
- to identify legal considerations associated with any proposed amendments to the current approach or emerging proposals;
- to identify revenue consequences both positive and negative of any proposed changes and where negative to identify options to mitigate these where possible.
- to conduct an Integrated Impact Assessment on any proposed options for change.

Council accepts that should there be any revenue consequences associated with changes which relate to approved budgets then these will require consideration.

Appendix 2: TNRP Properties Leased to Third Sector organisations

No.	Voluntary Organisation	Property Address	2020/21 Annual Rental (£)	2020/21 Service Charge (£)	2020/21 Building Insurance (£)	Total Property Charges: 2020/21 (£)
1	Family and Community Development West Lothian	Unit 1 Kirkhill Business Units, Park Court, Broxburn	3,000.00	-	-	3,000.00
2	Family and Community Development West Lothian	Unit 8 Kirkhill Business Units, Park Court, Broxburn	2,280.00	-	-	2,280.00
3	Citizens Advice Bureau	Unit 1, Almondbank Centre, Shiel Walk, Livingston	14,600.00	6,907.77	-	21,507.77
4	WL Drug and Alcohol Service	Unit 2, Almondbank Centre, Shiel Walk, Livingston	15,975.00	6,987.80	-	22,962.80
5	The Daisy Drop In Centre	Unit 3, Almondbank Centre, Shiel Walk, Livingston	7,200.00	3,150.07	-	10,350.07
6	Citizens Advice Bureau	Unit 5, Almondbank Centre, Shiel Walk, Livingston	1,575.00	670.08	-	2,245.08
7	Livingston Credit Union	Unit 6, Almondbank Centre, Shiel Walk, Livingston	2,430.00	1,061.82	-	3,491.82
8	Open Door Accommodation Project	Unit 7, Almondbank Centre, Shiel Walk, Livingston	7,560.00	3,306.82	-	10,866.82
9	Citizens Advice Bureau	Unit 11, Almondbank Centre, Shiel Walk, Livingston	1,575.00	670.08	-	2,245.08
10	Linlithgow Young Peoples Project	29 The Vennel, Linlithgow	15,000.00	-	-	15,000.00
11	Regal Community Theatre	North Bridge Street, Bathgate	58,500.00	9,588.00	5,761.86	73,849.86
12	Linlithgow Heritage Trust	Tam Dalyell House, High Street, Linlithgow	25,819.00	17,980.95	-	43,799.95
13	Handicabs Lothian	Unit 17A Inchmuir Road, Whitehill Industrial Estate, Bathgate	5,700.00	-	-	5,700.00
14	Whitburn Community Development Trust	61 West Main Street, Whitburn	7,000.00	-	-	7,000.00
15	Family and Community Development West Lothian Limited	Land at Lower Bathville, Armadale	6,800.00	-	-	6,800.00

Appendix 2 (continued): TNRP Properties Leased to Third Sector organisations

No.	Voluntary Organisation	Property Address	2020/21 Annual Rental (£)	2020/21 Service Charge (£)	2020/21 Building Insurance (£)	Total Property Charges: 2020/21 (£)
16	Ladywell Neighbourhood Network	28 Heatherbank, Livingston	4,650.00	-	41.96	4,691.96
17	Craigshill Good Neighbour Network	Former Almondbank Library, Livingston	20,000.00	-	347.08	20,347.08
18	St. Michael's Day Centre	New Linlithgow Partnership Centre, Linlithgow	10,000.00	-	-	10,000.00
19	Carers of West Lothian	Sycamore House, Livingston	31,200.00	-	539.22	31,739.22
20	West Lothian Woman's Aid	92 Ivanhoe Rise, Livingston	1,383.00	-	-	1,383.00
21	The Larder	Café at Strathbrock Partnership Centre, Broxburn	8,000.00	-	-	8,000.00
22	Boghall café	Bog Hall Drop In	600.00	-	-	600.00
23	West Lothian Foodbank	Unit 5 Heron Square Deans	21,600.00	4,080.00	-	25,680.00
24	West Lothian Foodbank	Unit 4 Heron Square Deans	10,980.00	-	-	10,980.00
25	Linlithgow Link	Room at Tam Dalyell House, Linlithgow	2,750	1,746	-	4,496
TOTALS (£):			286,177	56,149.39	6,690.12	349,016.51

Appendix 3: TNRP properties where costs are deducted at source

No.	Voluntary Organisation	Property Address	2020/21 Annual Rental (£)	2020/21 Service Charge (£)	2020/21 Building Insurance (£)	Total Property Charges 2020/21 (£)
1	Citizens Advice Bureau	Unit 1, Almondbank Centre, Shiel Walk, Livingston	14,600.00	6,907.77	-	21,507.77
2	Citizens Advice Bureau	Unit 5, Almondbank Centre, Shiel Walk, Livingston	1,575.00	670.08	-	2,245.08
3	Citizens Advice Bureau	Unit 11, Almondbank Centre, Shiel Walk, Livingston	1,575.00	670.08	-	2,245.08
4	Craigshill Good Neighbour Network	Former Almondbank Library, Livingston	20,000.00	-	347.08	20,347.08
5	Family and Community Development West Lothian	Land at Lower Bathville, Armadale	6,800.00	-	-	6,800.00
6	Handicabs Lothian	Unit 17A Inchmuir Road, Whitehill Industrial Estate, Bathgate	5,700.00	-	122.20	5,822.20
7	Ladywell Neighbourhood Network	28 Heatherbank, Livingston	4,650.00	-	41.96	4,691.96
8	Linlithgow Heritage Trust	Tam Dalyell House, High Street, Linlithgow	25,819.00	17,980.95	-	43,799.95
9	The Daisy Drop In Centre	Unit 3, Almondbank Centre, Shiel Walk, Livingston	7,200.00	3,150.07	-	10,350.07
10	Whitburn Community Development Trust	61 West Main Street, Whitburn	7,000.00	-	152.09	7,152.09
TOTALS:			94,919.00	29,378.95	663.33	124,961.28