

To: Cabinet
Date: 15 March 2023
Report of: Head of Corporate Property
Title of Report: Write-off of Commercial Tenant Rent Arrears

Summary and recommendations	
Purpose of report:	To approve the write-off of commercial rent arrears above the limit which officers can approve under the Scheme of Delegation
Key decision:	Yes
Cabinet Member:	Councillor Ed Turner, Cabinet Member for Finance and Asset Management
Corporate Priority:	Inclusive economy
Policy Framework:	Council Strategy 2020-24

Recommendations: That Cabinet resolves to:	
1.	Approve the write-off of arrears relating to Edinburgh Woollen Mill (141 High Street) as detailed in this report;
2.	Approve the write-off of arrears relating to Nosebag Restaurants Limited (6 St Michaels Street & 6-8 St Michaels Street) as detailed in this report; and
3.	Approve the write-off of arrears relating to the properties identified in the Exempt Appendix 1.

Appendices	
Appendix 1	Exempt Appendix 1 – not for publication
Appendix 2	Risk Assessment

Introduction and background

1. The council has a historic commercial property portfolio, which brings in much needed income to fund core services. As a major landlord in the city and the city centre, the portfolio allows the Council to provide a level of custodianship.
2. The pandemic had a significant impact on the Council's retail and food and beverage tenants, particularly the tenants located within the city centre. The

majority of the retail tenants were unable to trade from their premises during the Government imposed lockdowns over the periods 2020-21 and 2021-22.

3. The income from the property portfolio is important in terms of helping fund the delivery of core services. Whilst the Council works hard to support its tenants where it can, the Council needs to take a commercial approach to secure funds to support the public purse.
4. The Council has engaged with its tenants and provided some rent assistance, in specific circumstances, where tenants met set criteria. This support was particularly aimed towards supporting local, independent businesses who remained committed to the recovery of the city centre.
5. However, as a result of the pandemic, a number of tenants built up significant rent arrears. The Council was not able to take the normal actions Landlords can take to recover the rent arrears, such as the use of recovery agents, due to a Government moratorium preventing such action.
6. The Government moratorium was lifted in March 2022 and the usual options available to Landlords for pursuing rent arrears could then be actioned. However, the Commercial Rent (Coronavirus) Act 2022 (“the Act”) imposed restrictions relating to actions concerning ‘protected rent’ i.e. rent covering the period of the Government imposed lockdowns. The policy aim underpinning the Act was to preserve otherwise viable businesses and the jobs that they support. The Act introduced a binding arbitration process, with the goal to encourage parties to resolve the claims for rent arrears informally, failing which a reference to arbitration could be made as a last resort solution. The option to refer to arbitration ended on 23 September 2022.
7. Council officers took various actions to reach agreements in respect of the rent arrears which included negotiating agreements informally; issuing forfeiture proceedings which resulted in agreements being reached with some tenants; forfeiting by peaceable re-entry and then negotiating terms for a new lease; and reaching agreements where an application for the appointment of an arbitrator had been made by a tenant. This was in order to avoid the uncertainty of the outcome of resolving via arbitration. The Council has also drawn down on rent deposits, and agreed monthly rather than quarterly payments where appropriate.
8. A number of tenants went in to administration or liquidation leaving substantial arrears. It was not therefore possible to negotiate agreements with these tenants.
9. In the cases where agreements have been negotiated with tenants, the details of the agreements are set out in Exempt Appendix 1.
10. It is important to note that each arrears case has been looked at individually with an assessment of the particular circumstances of each tenant. Corporate property has fully engaged with the Finance team to ensure that the suggested outcome is optimal for the Council.
11. As a result of the agreements reached with tenants, or the tenants going in to administration or liquidation, there are a number of arrears cases which involve the Council writing off, in each case, rent in excess of £100,000.
12. In accordance with the Constitution all write-offs up to and including £100,000 can be written off by the Head of Finance but a write-off above £100,000 needs Cabinet approval.

Cases where the tenant has gone in to administration or liquidation

13. Edinburgh Woollen Mill (141 High Street) went into administration on 5 November 2020. The total write off of rent required is £272,708.33 plus VAT (£327,249.99 inclusive of VAT). A proof of debt form has been submitted to the administrator.
14. Nosebag Restaurants Limited (6 St Michaels Street & 6-8 St Michaels Street) was placed into voluntary liquidation on 10 May 2022 and the lease was disclaimed on 26 May 2022. The total write off of rent required £118,873.23 + VAT (£142,647.88 inclusive of VAT). A proof of debt form has been submitted to the liquidator.
15. Whilst there are significant rent arrears to write off in respect of these properties, Council Officers have been proactive in terms of making them income producing. No. 141 High Street has now been let and 6-8 St Michaels Street is on the market and an offer has been received.

Cases involving a lease re-structure or rent arrears agreement

16. Refer to Exempt Appendix 1 detailing the agreements reached.

Financial implications

17. There are no capital cost implications. On an overall basis the bad debt figures referred to in this report are catered for in the bad debt provision which totals £6.189M as at 31-3-2022. There are therefore no revenue implications.

Legal issues

18. The Commercial Rent (Coronavirus) Act 2022 provided a six month window in which a referral to the statutory arbitration scheme could be made, which ended on 23 September 2022. During this period landlords were prevented from using certain remedies in relation to protected rent debts such as starting a debt claim, exercising right of re-entry or presenting a winding up petition etc.
19. Rent due under a tenancy is “protected rent” if both of the following applied: (i) the tenancy was adversely affected by coronavirus; and (ii) the rent is attributable to a period of occupation by the tenant for, or for a period within, the “protected period” applying to the tenancy. “Protected Period” means the period beginning on 21 March 2020 and in the case of non-essential retail, ending on 12 April 2021. In the case of hotels, restaurants, bars, nightclubs, gyms, theatres, cinemas and large event venues, it ended on 18 July 2021.
20. In respect of those tenants in administration or liquidation there are no legal implications.
21. In respect of the lease re-structure cases new leases or deeds of variation in respect of the leases will need to be agreed to formalize the agreements. Where forfeiture proceedings have been issued, Legal will need to arrange completion of a formal settlement agreement.

Level of risk

22. Risk Register is attached as Appendix 2.

Equalities impact

An Equalities Impact Assessment is not required.

Carbon and Environmental Considerations

23. There are no Carbon and Environmental considerations in respect of the recommendations made in this report.

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Background Papers:
None.