

VACANT COMMERCIAL PROPERTY – INFORMATION PACK

1. Property Viewings

A viewing of the vacant property should be arranged by contacting the Economic Development section of Angus Council. A council officer will visit the property with the interested party, allow internal and external access and provide any other information relevant to the occupancy of the property. There will be no unaccompanied inspections prior to the conclusion of a formal lease.

2. Completion of Application Form

If the applicant is satisfied as to the condition of the property and suitability for the intended use they must complete the Application for Commercial Property Form (the Application Form) and return within 10 working days.

The Application Form must be completed in full and for all applications it will be necessary to provide additional information to support the application. The type of supporting information will vary depending on the entity to be party to the formal lease.

The Economic Development section of Angus Council can provide assistance with the completion of the Application Form but it is the applicant's responsibility to ensure that the Application Form and supporting information are correct and best represent the applicant. It is therefore strongly recommended that the applicant seeks appropriate independent professional legal advice, if necessary.

3. Business Support

New and existing businesses are encouraged to investigate and take advice and assistance from Angus Council's Business Angus Team :- (www.businessangus.com)

and from Business Gateway Tayside:-

(www.bgateway.com).

They can give advice to help business start-up and growth and can also help an applicant identify available grant aid and other financial assistance.

4. Review of Application Form

The Economic Development section will review the application and all supporting information.

If there is a single applicant for the property and the application is satisfactory, Economic Development will inform the applicant that their application is being progressed and they should expect to receive a draft Heads of Terms within 5 working days.

If there are multiple interests in a property, the Economic Development section of the Council will set a closing date for applications. Each interested party will be informed that there are other potential applicants and will be invited to submit their completed Application Forms in writing by the closing date. The Economic Development team will select a successful applicant based on their Application Form and supporting information. Contributing factors in this decision will include the number of jobs that will be created or safeguarded, the rent to be paid, the suitability of the unit for the applicant's business, the strength of the submitted business plan, references, etc.

Applicants may also be subject to a credit history check. All applicants will be informed of the decision within 5 working days of the closing date.

All offers will be assessed on the same basis:-

- Economic Benefit/Link to Key Sectors
- Rent
- Length of lease
- Entry Date
- Jobs sustained
- Jobs created
- Conditions
- Risk

5. Heads of Terms

The Council will issue Heads of Terms to the successful applicant. The Heads of Terms will summarise the main commercial and legal terms, which will be the basis of the final lease between the applicant (the Tenant) and the Council (the Landlord). The Heads of Terms will be agreed by both parties before an offer of lease is issued by the Council's Legal department.

Please note that in certain cases the Council may require committee approval before a formal offer of lease can be issued.

6. References

The Council will require appropriate references for the Applicant prior to the issue of a formal offer of lease. A bank reference will be required for applicants requesting a property with a yearly rental over £10,000, and the Council will formally request this directly from the Applicant's bank. The bank will be asked to confirm the Applicant's ability to meet the proposed financial commitments. The Applicant must pay any bank fee for this reference.

The Council may also require the following:

- Trade references
- Existing landlord reference

- Personal guarantee

These should be returned to The Council within 10 working days of any request for the additional information.

7. Lease Conclusion and Handover

An Offer of Lease will be issued by the Council's legal team to the successful applicant or their solicitor/professional advisor.

The lease will define the terms and conditions of occupation and the obligations on both Landlord and Tenant. **A lease is a formal, legal contract and all potential Tenants are strongly advised to seek independent legal advice before concluding the lease.**

The Tenant will be liable for the Council's legal and registration dues in connection with the lease. The legal fees depend on the size of the unit and can be provided on request, however will be included in the Heads of Terms. The registration dues are currently £22.

The formal lease will have a Photographic Record of Condition as an attachment. The Photographic Record of Condition will be agreed prior to the date of entry and will record the condition of the property at handover. It will be referred to at the end of the lease when the property is to be returned to the Council in no worse state than at the date of entry.

Once the Offer of Lease has been signed it should be returned to the Council's Legal team along with the following:

- Three full months' advance rent, legal fees and registration paid direct to council bank account, details will be provided
- Completed direct debit form

The Economic Development section will then arrange the handover of keys.

The new Tenant will also be issued, when appropriate, with:

- Electrical inspection and testing certification as per BS7671
- Energy Performance Certificate (EPC)
- Gas safety certificate (if applicable)
- Legionella risk assessment as per the Legionella ACOP L8 (if applicable)

Asbestos survey report (if applicable)

The Council will take gas and electricity meter readings. It is the responsibility of the Tenant to arrange all utilities to the property including gas, water, telephones, alarms, business rates and refuse collection.

The concluded lease may be subject to Land and Buildings Transaction tax (LBTT). There are criteria that may qualify the new lease for such transaction tax but the most common is where the lease is for 7 years or more and the

rent is £1,000 a year or more. In cases where LBTT will apply the tenant must complete the Land and Buildings Transaction Tax (LBTT) return and send it to Revenue Scotland within 30 days of the “effective date”. The tenant must pay any tax due and complete further tax returns every 3 years. There are penalties for submitting late returns or paying tax late. Revenue Scotland’s website has further information and guidance (www.revenue.scot). The tenant’s own solicitor will be able to prepare the returns.

8. Tenant Responsibilities After Handover

The lease governs the terms of occupation and the obligations on both landlord (the Council) and Tenant. The Tenant should be fully aware of and understand all lease terms and conditions prior to concluding the lease. If questions arise during the term of the lease regarding obligations of either party to the lease then the lease should be referred to for answers. The Lease will also include a Responsibilities Database as an attachment. This will summarise the responsibilities incumbent on both parties under the lease. An example of a typical Responsibilities Database has been included with this Information Sheet.

The following is a list of standard lease responsibilities:

a. Safety Tests

At the date of entry the Council will provide the Tenant with relevant testing certificates for gas, electricity and legionella (where applicable). After handover the Tenant will be obliged to provide new testing certificates usually within one month of the date of entry (where applicable). If fitting out works are to be completed in the property, the testing should be provided within one month of the date of the completion of the works, or within three months of the date of entry, whichever is later. This is to ensure that any alterations made are safe.

The frequency of all subsequent testing will be shown in the Responsibilities Database, which will be issued with the lease for signing. It will be the Tenant’s responsibility to be aware of any changes in testing requirements and to ensure that all future testing is in accordance with prevailing regulations.

b. Rent and Other Charges

Tenants are required to pay rent and any other charges timeously and in accordance with the terms of the Lease. The lease will define if the rent and any other charge are to be paid monthly, quarterly, half yearly or yearly in advance. The tenant will be asked to complete a direct debit form for the payment of all rent and other charges due under the lease.

The Council should be contacted immediately if there are any problems with payment of rent or other charges. Assistance may be available. Non-payment can result in legal action against the Tenant to recover the sum due and may constitute grounds for early termination of the lease by the Landlord.

The lease will also provide for the application of penalty interest on unpaid rent and other charges.

c. Rates

The tenant must pay all general and water rates for the premises.

d. Repairs and Maintenance

The majority of Council leases are wind and watertight. There will be a Responsibilities Database attached to each lease and this will summarise the scope of Landlord and Tenant repair and maintenance obligations.

Tenants should be aware of the repairing and maintaining obligations detailed in their lease. For certain property types the Council undertakes heating, maintenance and repair at the tenant's expense.

During normal working hours, if the Tenant requires general advice regarding a repair they should contact Economic Development. The Tenant will also be provided with a full list of contact details for making contact outside office hours.

The lease will typically allow the landlord to enter the property to carry out essential repair and maintenance due to non fulfilment of such obligations by the Tenant. In such cases the Council will recover the cost of repair and maintenance from the Tenant.

e. Permitted Use

The permitted use of the Property will be detailed in the Lease. The Tenant should contact the Council as Landlord if they wish to use the property for an alternative use or purpose. If the Landlord consents to a change of use or purpose then it will be the Tenant's responsibility to obtain any consents or planning permission that may be required. Consent by the Council as Landlord does not affect the decision of the Council as planning and building control authority to refuse consent or attach conditions to any consent given.

Tenants are obliged to carry out their activities in a manner that will not cause nuisance or give grounds for grievance. The Council should be informed if a Tenant has a complaint about a neighbouring Council tenant.

It is the Tenant's responsibility to ensure that the leased property is appropriately protected and secure if it is vacant and unused for any length of time. This includes ensuring that it is heated sufficiently to avoid damage from frost.

f. Alterations and Improvements

If a tenant wants to make alterations to the unit (install partition walls, etc), written consent must be sought from the Landlord, prior to the works being carried out. All works must be carried out by registered and competent tradesmen. If necessary, it is the responsibility of the tenant to obtain planning permission/building warrants. Consent by the Council as Landlord does not prevent the Council as planning and building control authority from refusing consent or attaching conditions to any consents given.

Please note that the Council may require tenants at their own cost to reinstate the premises to their original condition at the end of the lease. A formal decision on what reinstatement works are required will be given at the end of the lease.

g. Building and Contents Insurance

The Council will be responsible for insuring the building and the lease will determine if and when the premium is to be collected from the tenant in addition to the rent.

Tenants are responsible for insuring their own contents in the unit. They are also responsible for any third party insurances, public liability insurance, etc.

Angus Council will accept no responsibility for or liability for any loss or damage for tenant's or visitor's belongings.

9. Lease Termination

The lease will define the termination date of the lease. If the Tenant wishes to end the lease at the termination date then timeous notice should be give to the Council in accordance with the terms of the lease. Failure to give such notice is likely to result in the lease continuing for a further year (tacit relocation).

Early termination, prior to the termination date, must be agreed with the Council as Landlord and will require a formal amendment to the lease. Early termination, if mutually agreed, may trigger a payment to reflect the Council's reasonable loss of income and additional legal and admin costs as a result of early termination.

The lease will also include any Tenant rights to assign or sublease the Property and the necessary process.

In advance of the end of the lease, the Council will inspect the property and prepare a schedule of dilapidation work to be carried out at the Tenant's expense. The photographic record prepared at the date of entry and attached to the lease will be referred to to determine the extent of the works to be carried out. Unless otherwise agreed with the Council as Landlord, the Tenant will be required to remove all tenant fit-out and debris, and ensure that the unit is left clean and tidy.

In the event that the Tenant does not carry out the dilapidation works, Angus Council will arrange to carry out all necessary works and will re-charge you as appropriate. An additional payment for loss of income to the landlord may also be incurred.

At the end of the lease, the outgoing Tenant will be asked to provide up to date safety certificates, to make sure that the unit is left in a safe condition.