

VCS Heads of Terms – June 2022

1 Introduction

This paper sets out the final principal Heads of Terms for the new model Voluntary and Community Sector (VCS) Lease. These terms are the framework that Camden Council (the Council) will adopt for leases with eligible VCS organisations.

The heads of terms (HOTs) below are based primarily on the original heads of terms which were agreed as part of the 2012 cabinet paper. The 2012 HOTs had been agreed as a result of lengthy discussions and negotiations and there was a desire to recognise and ensure the continuity of those principles into these terms. The changes in 2022 reflect this requirement, however, there is improved flexibility, for example, removing break clauses or offering a wider choice of lease length. The terms below are the framework and guiding principles, but it is recognised that the property and circumstances of each group are going to vary, and some terms will be adjusted to reflect this.

2 Main Provisions

The VCS lease is available to most not-for-profit organisations in the borough who are in buildings owned by the Council, have a turnover of less than £2m, and who are focused on delivering social value for local residents. National or international charities, for example, will be excluded.

A pre-requisite of signing a VCS lease is that occupiers are on a form of occupational agreement and paying the rent or licence fee due. Any occupier not on an agreement will be contacted by the Council to sign a Tenancy at Will (TAW) at a rate reflective of other VCS organisations in similar buildings/uses/locations who are paying a rent. The TAW will be in place whilst the new lease is drawn up and confirms the right of the group to occupy the building pending a formal lease. This is standard practice and a common use of Tenancies at Will. This also ensures that all groups are treated on an equitable basis and there is no financial advantage given to one group because their lease negotiations are taking longer.

If it is likely that a court will recognise a statutory tenancy has been established, then negotiations will start by LBC assuming this.

2.1 Length of Lease

Between 3 years and up to 20-year depending on the circumstances of the group and building. 20 years is the current maximum number of years which can be granted under delegated authority – anything more than 20 years requires a Cabinet decision. If groups require a longer lease, then in the first instance, they should discuss their case with the

Community Partnerships and VCS surveyor in the property team. It should be noted that leases cannot be extended without triggering a surrender and regrant.

The Council will provide lease plans and do its utmost to deduce title to each property. If the lease is over seven years, whilst the registration of the lease at Land Registry will be the tenant's responsibility, the Council will assist as necessary in answering any requisitions made by Land Registry.

2.2 Rent

The VCS rent will be calculated on the basis of the "market" rent for the property assuming a similar community type use (or relevant comparable), in a similar area in a similar condition.

Where an organisation qualifies for a VCS Rent Discount, a further 50% social value investment will be included at invoicing stage, reducing the stated rent by 50%. The lease will contain a Service Level Agreement attached as an appended Schedule to the lease (so it is binding), which will confirm that as long as social value threshold is met, the 50% social value investment discount will remain. However, if insufficient social value is generated, then the reserved rent will be charged from the next billable period, after sufficient time allowed by the policy for the tenant to demonstrate that they achieve the criteria for the discount.

A further requirement for the discount is that properties are kept in repair and are in a compliant condition and the organisation operates within the rules of its constitution or founding document. Further information on this is provided in a tenant's handbook, details of which follow below.

The market rent level is to be agreed between the two parties before being stated in the lease document and the Landlord will work transparently with the tenant on how the proposed rent has been arrived at. Please see section 6.1 regarding determination of future rent reviews.

The intention is that the discount is not applied to all charities in Council buildings, as charities can occupy buildings on a commercial lease paying market rent and are not compelled to take the VCS lease.

2.3 Early Termination by Tenant

Tenant's unconditional break option, subject to 6 months' notice. Where the tenant can clearly demonstrate that it is in serious financial difficulty, the notice period may be reduced to 3 months.

The tenant must meet its rental obligations up to the expiry of the appropriate break notice, whether 3 or 6 months.

2.4 Early Termination by Landlord

As standard, the Council's conditional break options, subject to a minimum of 12 months' notice, unless otherwise stated. Standard conditions of exercising the break option are one or more of the following:

1. The Council's intention to redevelop as part of the Council's Community Investment Programme or any subsequent capital asset programme (36 months' notice)
2. Provision of suitable alternative accommodation by the Council acting reasonably for the provision of the services the council wishes to support which are provided by the organisation (12 months).
3. The landlord's repairing liability exceeds the higher of either (i) £30,000 or (ii) the annual rent of the premises (before any discount); OR, such repairs are either (a) essential for health and safety purposes or for the structural integrity of the premises or building of which the demised premises are comprised OR (b) the repairs are required by the tenant (up to 6 months' notice where health and safety concern, 12 months otherwise).
4. Where the tenant uses the premises for a service commissioned by the Council such that the tenant has no other official or recognised commissions from other bodies, and the Council's commission is subsequently withdrawn or terminated (landlord may terminate on 6 months' notice)¹.
5. In the event the tenant is a registered charity, and its charitable status is removed (the landlord may terminate on 6 months' notice). The same provision for other organisations who may have registered status removed, e.g., CIC, CIO, CQC or Ofsted or other changes to the status of the occupier including safeguarding failings.
6. Where the tenant is eligible for, but not obtained, the social value discount, and the council has acted reasonably in advising the tenant of appropriate actions to take to be awarded the discount and allowed sufficient time to make changes, the landlord may terminate on 12 months' notice.
7. In the event that a break option is exercised under conditions 1 (landlord's intention to redevelop) or 2 (Landlord's repairing liability exceeding the above figures) or 3 (repairs), the Council will use all reasonable endeavours to re-provide the tenant with suitable alternative accommodation within the Council's own property portfolio to ensure continued service provision for residents where it is reasonable to do so.

In condition 3 the mechanism for assessing the repairing cost will be set out in sufficient detail when the Lease is drafted. It will be assessed by a qualified building surveyor and based on measured building rates as published in SPONS or similar recognised trade publications.

¹ Fully commissioned services will not receive the benefit of the social value discount as their rent should be covered by the commissioning service to ensure the true cost of that service is accounted for by the Council or in the case of a statutory service which is outsourced, rent is not paid at all because it's effectively a council service.

If the Council assesses in its sole discretion that a particular property does not in the foreseeable future present any development or CIP opportunities, then the Landlord's notice period under conditions 1 (landlord's intention to redevelop) and 2 (provision of suitable alternative accommodation) may be removed and the 'break' clause effectively set aside (see Removal of Break Clauses, below).

In addition, the Council will work with tenants and grant funders where the tenant has obtained funds for capital investment in the property. This may include a reversionary lease or a surrender and re-grant. Each case will be decided on its merits. However, in these circumstances, the Council will not bear any financial loss or liability if the tenant's bid is unsuccessful or the Council finds itself unable to reasonably agree the funder's requirements.

2.5 Removal of Break Clauses

An organisation may provide a case to justify the removal of the break clauses, for example, if they can demonstrate a need for external funding to carry out internal improvements and neither landlord nor tenant break clauses are acceptable to the funder. The Council will determine whether the removal of break clauses is acceptable under the particular circumstances of the building and the funder's requirements. The Council will work with the funder to ensure that in the event the VCS occupier is unable to continue in the building once the monies have been spent, that, acting reasonably on both sides, the provision of the service to which the funding was applied is continued.

Conversely, where break clauses have been removed, but the VCS tenant *no longer* adheres to the social value threshold criteria or they no longer qualify for the social value discount, during the period where there is a charge on the leasehold title by the funders or some other restriction on the use of the building, a legally binding side letter will set out how the funders and council will work together to decide the future use of the building, and, acting reasonably and at the funders' sole discretion, agree to terminate the lease, given limited resources and ensuring the availability of assets for other VCS groups. The Council will again work with the funders, assuming their grant is still 'live', to identify new VCS tenants.

If the funders do not wish to exercise their break clauses, then provisions will be included with in the lease (again, we emphasise that this is only applies in the circumstances that the social value threshold is no longer met), then the beneficial structural and major cost item repairing provisions will fall away and full repairing clauses and a full market rent will be triggered.

There may be circumstances where due to the investment required, charge/restrictions required by the funder, length of remaining existing lease term and other issues mean that a surrender and regrant is the better option. The lease will not have break clauses but will have provisions around taking back control of the asset if social value is no longer being provided and these will be incorporated in the lease and a side letter as appropriate and will reflect the points noted in the immediately preceding paragraphs.

2.6 Security of Tenure under the Landlord & Tenant Act 1954, Part 2

As standard, leases will be contracted outside the security of tenure provisions of the L&T Act 1954 and, therefore, will not be subject to automatic renewal or continuation on expiry of the term or the exercise of breaks.

3 Tenant's Covenants

3.1 Service Charge

The tenant will be required to contribute a fair portion of all expenses, including VAT where charged, of cleaning, lighting, repairing and maintaining any part of the building, estate or other larger property of which the demised premises form part, and any other works deemed necessary by the Landlord for any such property. The cost of fulfilling the landlord's external and structural repairing obligations in the lease will not be re-charged to the tenant through service charge apportionments or otherwise but the tenant will be expected to ensure the proper maintenance of items so that they do not deteriorate, subject to condition survey at beginning of lease.

The tenant will not contribute toward repairs, replacement or overhaul of high-cost plant and machinery belonging to the landlord but for the avoidance of doubt, they will still contribute to the ongoing maintenance of such equipment.

What constitutes "high-cost plant and machinery" will be assessed on individual bases after each property has been inspected; but is expected to include (although not limited to) lifts, air conditioning units, boilers and hot water systems, if any, with a net capital replacement cost, excluding labour, in excess of £5,000 (index-linked to the RPI and adjusted annually).

There will be a cap on the service charge payable by the tenant equivalent to up to £7.00psf (index linked to RPI and adjusted annually) multiplied by the gross internal area of the premises, which will exclude any outside / external space. The cap can be reduced if there are minimal services.

3.2 Repairs

The tenant will be responsible for internal repairs, including landlord's fixtures and fittings which may be outside of the tenant's demise, but excluding structural elements of the interior. If the premises are shop premises or a workshop, then the repairing obligation will extend to the non-structural elements of the shop-front or front of the unit respectively. The tenant will take on the premises in their condition at the time of completion of the lease subject to any condition survey and works which are to be undertaken (by the landlord or tenant via a rent-free period) save for improvement works which the tenant wishes to undertake which would not be rentalised.

The Council will also carry out a condition survey to determine the likely future external repairing liabilities and major cost items and will make a decision on a case by case basis as to whether the repairing benefits which the new VCS leases proposes can be incorporated. If the future repairing costs are prohibitively high, alternative arrangements or new premises will be sought by the Council, acting reasonably.

For clarity, the phrasing of the tenant's repairing obligation will be as similar to the following as practicable in the circumstances:

“Throughout the term to keep the interior of the demised premises (including the Landlord's fixtures and fittings but excluding the structure) the exterior and interior of all doors and windows (including frames) the glass in doors and windows and all fixtures and additions thereto in good and substantial repair maintenance and condition and to maintain renew and replace all sinks glass sash cords sanitary fittings keys washers to taps and ball valves (if any) as and when necessary without any alteration.”

For a new lease, at the tenant's request, a photographic schedule of condition relating only to the existing internal condition of the premises may be included in the Lease, which will limit the tenant's repairing obligations only to the condition at date of grant.

3.3 Use

The precise VCS use of the premises will be stated in the Lease. The premises will not be used for any other purpose without the landlord's prior consent. Where the premises are shared with a third party (see Para 3.5 below), subject to approval by the Council and planning consent, the use by the third party may be different from the main use but must either be ancillary or complementary to the main use or serve a different voluntary or community purpose for the benefit of Camden residents.

The precise use will be agreed with individual tenants as part of negotiations for the lease and in relation to paragraph 3.5 below.

3.4 Assignment

No Assignment will be permitted. If the tenant wishes to leave the premises, they may exercise their break as per 2.3. If the break has been removed due to requirements of funders, the Council will work with the tenant and funder to allow the tenant to leave and the funders' investment to remain for the uses it was originally proposed to support, so far as it is reasonable to do so. See 2.5 for details.

3.5 Subletting and Sharing of Premises

The tenant may be permitted to share occupation of the premises with a third party whose use of the premises will either be ancillary or complementary to the main user or will serve a different voluntary or community purpose for the benefit of Camden residents. Before these sharing arrangements are in place, the landlord will need to be notified and its approval sought. The landlord may also require the tenant to enter into a formal licence agreement with the third party. The area that may be shared must be less than 50% of the total area of the premises. Any discount provided to the head tenant should be passed

to VCS sub-licensees as long as the social value threshold is met, taking into account reasonable costs of management of the sub-licence.

As standard, no subletting (which means a formal sub-lease is entered into) will be permitted but at the Council's discretion, individual circumstances for sub-letting (where the premises lend themselves to being separated and there is a justified reason, and the area extends to no more than 25% of the total space) may be considered. Any permitted sub-leases must be contracted out of the 1954 Act.

The tenant may generate income through any permitted sharing arrangements by hiring out space, as long as the income is re-invested to support the tenant's primary service at the premises. Where the period of hire is less than a single day, the 50% rule will not apply.

The Council will consider arrangements where two or more VCS organisations enter into a lease as joint tenants and share the space, subject to eligibility

3.6 Legal Costs

The tenant will pay a fee of £750 towards the landlord's legal costs of preparing, negotiating and completing the Lease. This fee will be refunded on completion of the Lease. Additional costs may accrue if negotiations become complex or lengthy and these would not be refunded.

VAT will not be charged on this fee.

Consideration will be given to affordability on an individual basis.

3.7 Other costs

If any VAT or Stamp Duty Land Tax (SDLT) liabilities arise, these will be the responsibility of the tenant to pay. SDLT calculations can be undertaken here:

<https://www.tax.service.gov.uk/calculate-stamp-duty-land-tax/#/intro>

3.8 Reimbursement of Landlord's Building Insurance Premium

The tenant will reimburse the landlord for premiums paid on the premises for buildings insurance (see Para 4.2).

The landlord will provide the tenant with full details of buildings insurance policy on request including details of how to make a claim. The landlord will reimburse the tenants excess where the landlord agents, or their tenants are at fault.

4 Landlord Covenants

4.1 Repairs

The landlord will be responsible for keeping the exterior of the premises and the structure in reasonable repairing condition and the tenant will not be recharged for these costs.

The exact definition of the “exterior” will be set out in the Lease, although it will in principle be as follows: “the external walls of the building of which the demised premises form part, the roof, foundations, door and window frames of the building (but not the glass in doors and windows), the boundary walls and structures (if any).”

The landlord will be responsible for any costs relating to essential repairs to high cost plant and machinery and those items will be set out in a schedule attached to the lease, which will not be recoverable from the tenant under the service charge provision of Para. 3.2 on the proviso that the tenant has maintained a maintenance regime subject to the condition survey at the beginning of the lease.

The tenant will contribute to the ongoing annual cost of upkeep and maintenance of any plant and machinery service the demise.

4.2 Buildings Insurance

The landlord will be responsible for insuring the building against loss or damage due to “fire, aircraft, explosion, lightning, subsidence, riot, impact, flood, earthquake, theft, escape of water, accidental damage, storm, malicious damage and civil commotion and such other risks as the landlord may determine from time to time”.

The landlord will recharge insurance premiums to the tenant (Para 3.7).

5 Other Provisions

5.1 Rent Reviews

Rent reviews every 5 years. Rents can increase, decrease, or remain the same. Time not of the essence. However, the new rent will not be backdated further than six months prior to the rent review trigger notice. Rent increases based on annual RPI reviews will be potentially available should the tenant request.

The tenant will have the opportunity to negotiate rent on reviews with the landlord. If agreement is not reached, the matter may be referred to an independent expert by either party for determination.

5.2 Guarantor & Surety

The tenant will not be required to provide a guarantor or surety for the lease.

6 Other Matters

6.1 Tenant Handbook

A tenants handbook pack will be available to all tenants clearly setting out their roles and responsibilities in the properties, including full information on all H&S matters, as well as checklists for matters such as weekly fire alarm tests to maintaining the asbestos register. Full contact details for repairs, leaks and other management issues will be in the Handbook.

6.2 Transitional arrangements and Phasing

While individual organisations will be impacted differently by the rent changes, where there are likely to be increases (mainly for groups not paying any rent at the present time), the increase can be transitioned in stepped stages, allowing time for the organisation to adjust their approaches to income generation from grant funding, users, hiring, sharing and looking at reductions in outgoings. Other support will be available and tailored to the reasonable requests of the tenant. This could include reviewing a business plan, training in building management, advice on sub-licensing arrangements, etc.

In many cases, with the liability for external repairs being passed to the Council, the groups would also see a decrease in their outgoings. It should be remembered that as the overall aim is to retain income neutrality, some groups will inevitably pay more rent (particularly those not paying any rent at the present time) whilst others will see a reduction. This is to ensure transparency and consistency across the sector, so no one group is paying rent whilst others are not.

6.3 Service Level Agreement

A Service Level Agreement (SLA) is included as an appendix to the Heads of Terms and will be a schedule in the lease. This sets out the principal expectations for the tenant and the Council of recognising and evidencing social value linked to the premises and the acceptable deliver standards for tenants. The SLA will also include provisions about the requirement to keep premises safe and compliant and to demonstrate the awareness of the Charity and their Trustees of their legal obligations under the lease.

6.4 Timescale for Agreeing Terms and Completing Lease

The tenant will endeavour to agree in writing Heads of Terms for the individual lease as soon as practicably possible after receipt of the Heads of Terms. Both sides should use reasonable endeavours to get the lease agreed and completed as quickly as practicably possible thereafter. If the process becomes protracted due to unreasonable delay, the

landlord may offer commercial market terms, which would include paying full rent for the premises, or the property may be re-marketed or offered to another VCS organisation.