

Borough Council of
**King's Lynn &
West Norfolk**



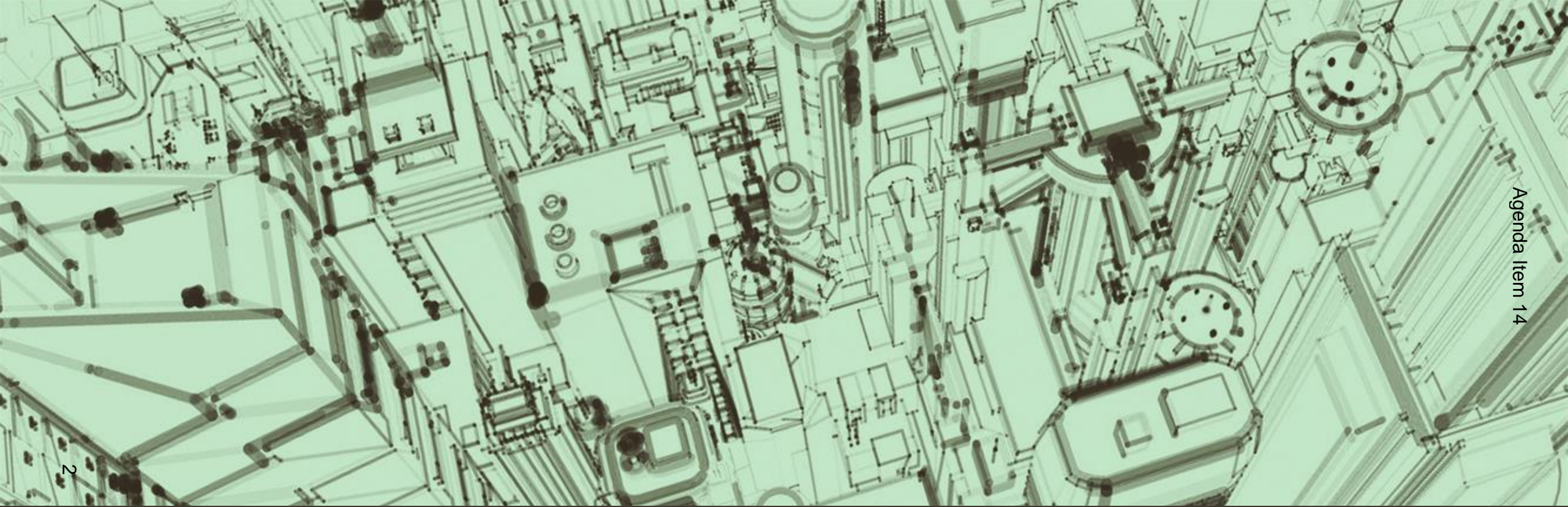
Corporate Performance Panel
Wednesday, 5th April, 2023 at 4.30 pm
**in the Council Chamber, Town Hall, Saturday Market
Place, King's Lynn PE30 5DQ**

**Reports marked to follow on the Agenda and/or Supplementary
Documents**

1. **Presentation on Rent Arrears - General - Part 1 - TO FOLLOW AND
PUBLISHED AS A SUPPLEMENT (Pages 2 - 14)**

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Performance Indicators for Property Services and Projects (General)



Background

This presentation intends to discuss and explain the processes, policies and reasoning on what is being done to tackle commercial rent arrears on the commercial estate.

Below is a summary of the Government intervention on the Council's ability to recover unpaid rent arrears:

- The Government introduced provisions, under section 82 of the Coronavirus Act 2020 (the “Act”), preventing landlords from enforcing rights of re-entry or forfeiture (by proceedings or by peaceable re-entry) against relevant business tenants for non-payment of rent during the relevant period.
- The moratorium on forfeiture effectively meant that landlords will not be able to bring a lease to an end where tenants fail to pay rent for the period between 26 March and 30 June 2021.
- On 16 June 2021 the Government announced its intention to extend this moratorium by a further 9 months until 25 March 2022.

Commercial Rent (Coronavirus) Act 2022

- The Commercial Rent (Coronavirus) Act 2022 (The Act) was brought into force on 25 March 2022 to provide for a means of resolving the matter of these accrued pandemic arrears.
- The Act introduced a binding arbitration process, with the goal to encourage parties to resolve these claims for rent arrears informally, failing which a reference to arbitration can be made as a last resort solution. Under The Act, a landlord cannot pursue their usual remedies for debt during the application period for arbitration, or whilst arbitration is in progress.
- The arbitration scheme was set to last for six months, and that six month period ended on 24 September 2022.
- In addition, under the Taking Control of Goods and Certification of Enforcement Agents (Amendment)(Coronavirus) Regulations 2020, the Government had restricted the use of Commercial Rent Arrears Recover (“CRAR”)[2] . The amended statutory provisions in relation to CRAR are such that the use of CRAR was be restricted until 25 March 2022.

Current Performance Indicators

- Percentage of rent achievable on Industrial Properties
- Percentage of rent achievable on Retail Properties
- Percentage of rent arrears on Industrial Properties
- Percentage of rent arrears on Retail Properties

Current Performance Indicators as at Q3 2022

Ref	Name	April	May	June	July	August	Sept Q2 figures reported to MT & CPP	Oct	Nov	Dec	Q3 2022/23 performance	2022/23 Target	Q3 2021/22 performance
2.1	% of rent achievable on industrial units	95.69%	95.86%	95.00%	96.58%	96.49%	96.11%	93.47%	94.99%	95.80%	95.80%	95.00%	94.69%
2.2	% of rent arrears on industrial units	14.50%	14.29%	11.91%	13.65%	13.69%	13.38%	15.54%	14.51%	13.73%	13.73%	10.00%	17.92%
2.3	% of rent achievable on retail/general units	97.93%	92.69%	92.69%	92.69%	92.69%	92.69%	92.69%	92.40%	92.40%	92.40%	95.00%	97.96%
2.4	% of rent arrears on retail/general units	29.46%	32.49%	35.25%	35.68%	35.88%	39.82%	33.19%	26.87%	27.54%	27.54%	25.00%	29.97%

Industrial Portfolio

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Retail Portfolio



Performance Indicators for Achievable Rents

The Performance indicators provided a snapshot in time of the performance of the Property Services team in maximising revenue income streams into the Council in order to provide its services.

6 Currently the target for achievable rents for industrial and retail is set at achieving 95% occupancy of our units.

The industrial portfolio consists of over 198 assets consisting of 382,712 Sq. Ft and at the time the Q3 366,638 Sq. Ft was occupied with 6 properties on the market. The target had therefore been exceeded at 95.80% or in other terms just 4.2% was unlet.

The retail portfolio consists of just 15 assets consisting of 21,929 Sq. Ft and at the time the Q3 20,334 Sq. Ft was occupied with 2 properties on the market. In essence, the 92.40% target represents just 2 properties which covers 7.6% of the retail portfolio.

Performance Indicators on Rent Arrears

For the arrears there is a 'snapshot' showing all rent outstanding at the end of each month for properties (which incorporates debts that have been ongoing) . This is then compared to the overall annual income to produce a percentage.

The targets for the industrial portfolio is 10% of the rental income as at 3Q this was above target at 13.73%. The industrial portfolio would if fully let provide an income of £1,894,755

The target for the retail portfolio is 25% of the rental income as at 3Q this was above target at 27.54%. The retail portfolio would if fully let provide an income of £348,701

The differential between the industrial and retail performance indicators is due to the number of properties and the differing effects of Covid within each sector.

Methods of Recovering Rent Arrears during the Moratorium

Recovery Action Stages

During the Government restrictions on recovering unpaid commercial rents which ended on 25 September 2022, the actions available to the Council for recovering debts was limited to:

- Issuing Invoices
- Reminders
- Contact and request for a meeting
- Arrangements
- Review of leases agreement can debt be recovered out of the rent deposit, sub-tenant or guarantor

Additional Methods Currently Employed

Recovery of debt transferred to enforcement agents to collect the rent or take control of goods. This does not apply to mixed use or residential premises and covers rent only.

Letter before action issued - demanding payment within a certain number of days.
Application for County Court Judgement.

Forfeiture by either peaceable re-entry or court application. Peaceable re-entry involves the landlord simply entering the property to take physical possession at a time when the tenant is unlikely to be present such as late at night or early morning. Dependent on terms of lease. Tenants have the right to claim relief from forfeiture

Other Methods Being Considered

- Serve a statutory demand if the debtor owes at least £750 (company) or £5,000 (individual) AND the debt is crystallised and undisputed. After service, the debtor has 21 days in which to pay. After that you can present a bankruptcy, County Court Judgment or winding-up petition to the court.
- Issue a letter under the Late Payment of Commercial Debts (Interest) Act 1998 (LPCD(I)A 1998) advising that the Council will claim interest for late payment and also to recover reasonable debt recovery costs

Conclusion

It is clear that Covid pandemic has had an effect on the rent arrears. The current philosophy in collecting arrears is that tenants are encouraged to pay their current ongoing rent liability and then either paying a lump sum or an additional payment to the arrears.

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Some of the arrangements made cover 2-3 years. The Property and Projects team and Finance are working hard with our tenants to ensure that not only do companies survive the effects of covid and the costs of living crisis but they are encouraged to pay their accounts on time.

It is inevitable that there are tenants that will not pay or co-operate with the team but thankfully these are in a minority.