

MAIDSTONE BOROUGH COUNCIL OCCUPATION OF COUNCIL PROVIDED BUSINESS PREMISES

Scope Of Document

This document outlines the purpose of 'Council Provided Business Premises' and covers:

- _ The Purpose of The Premises
- _ Limitation of The Premises
- _ The Criteria Required to Permit Occupation.
- _ The Legal Framework of the Landlord-Tenant Relationship
- _ Acceptable Criteria
- _ The Structure of the Lease
- _ The Structure of Occupation
- _ Options at Determination
- _ Second Generation Units

Purpose of The Premises

Maidstone Borough Council strives to encourage the starting of new businesses, and for those businesses to grow, flourish and stimulate employment. To assist new and fledgling businesses, Maidstone Borough Council provides a number of small B1 class units (light industrial/office) at economic rents to encourage business growth. The Council owns two units c. 500sqft each and seven units c.775sqft each, the portfolio has further increased, with the addition of new units at Equilibrium Park Wood, being: five units c.980sqft, two units c.1044sqft each and seven units c.1440sqft each.

Limitation of The Premises

The purpose of the units is, as outlined above, to encourage new business growth, it is not the function of these units to provide an indefinite period of occupation, and a control regime is contained in the Legal Agreement to manage any such outcome. The units are designed as new business/fledgling/growth units and their purpose is not to provide 'cheap rents' to trading companies or for companies to 'downsize' into. (but also refer to 'Second Generation Units' below)

Legal Framework

The occupation of commercial property is, in the main, governed by the mechanism of the Landlord and Tenant Act 1954 ptII (the Act) and case law. The Courts have decided in a number of cases what defines an occupation of premises for business purposes and whether such

occupation is exclusive or not. Any process that does not take into account the risks involved in ignoring the Act or subsequent case law exposes itself to high risk. Beneficial occupation of business premises will result in the occupier being granted rights of security unless it is agreed beforehand that such rights do not apply by contracting out under Section 38 of the Act.

Acceptable Criteria

For a business to be considered as eligible for Council Provided Business Premises it would need to satisfy the following criteria:

- _ Have been trading for less than 1 year
(but also refer to 'Second generation Units' below)
- _ Not be a subsidiary of a larger Company
- _ Not be a new start-up allied to a larger Company
- _ Not be the subject of a management buy-out or similar

The Lease

Any occupation of Council Provided Business Premises will be by way of a Lease 'outside the security of tenure provisions of the 1954 Act'. The term of the agreement would be for a maximum of five years commencing at an 'economic rent', there would also be an Estate and Service Charge element.

- _ Rental would commence at an 'economic level' and be 'stage-stepped' to a commercial level during the term of the Lease.
- _ A deposit held against tenant performance (not to be used for payment of rent) and equating to the value of three month's rent would be required. Refund subject to eighteen month's satisfactory occupation, or on receipt of notice to quit. Both subject to satisfactory condition of the premises.
- _ Estate and Service Charges would cover the cost of keeping the common parts in good order, routine and other maintenance, rates would also be included in the Service Charge. These would be set and fixed for the year, and based upon the previous year's 'actual'.
- _ Rent and Charges would be payable monthly in arrears and by direct debit only –no cash or cheques.
- _ The Tenant would benefit from a break clause, actionable upon one month's notice –effective on a rent due day.
- _ Other clauses would be based upon a 'standard' lease

Occupation and Use

The 14 new units are designed for light industrial/manufacturing uses. Other uses such as car/motorcycle repairs or valeting, catering provision (take-away or on-licence) car/motorcycle sales, immoral or pornographic use would not be permitted. Nor would hazardous occupations such as:

fuel storage and sales, chemical manufacturing, storage or sale of fertilizer, storage or sale of any weaponry, etc.

Options at Determination

Part of the purpose for the Council providing the units, is to encourage new business to grow and flourish. There is only a finite supply of these units creating a risk that once in, the Council could be reluctant because of PR, to move businesses out to make way for new fledgling businesses to occupy. The mechanism of the lease is a 5 year agreement, at the end of 5 years the Tenant must leave, unless new terms are agreed. The Council may not in a period of economic downturn or a 'bear market', wish to determine these tenancies and; in such circumstances, a further term may be offered, but the Council would reserve a right to increase the rent by a pre-determined annual percentage. In times of higher demand, this could be used as a mechanism to encourage vacation.

Second Generation Units

The latest development of 14 units to benefit the Council will contain a number of medium sized buildings, namely 7 units on approximately 1440sqft. These units are larger than what is generally perceived to be 'starter units' and these would be let on commercial terms to Small/Medium Enterprises, or to existing Council Business Tenants wishing to migrate to larger premises.

These units would be let on terms similar to the starter units but on commercial rents with no 'stage-step' reviews. Again the lease term would be for five years, but with no Tenant break, other terms and conditions would be as 'start-up' units.