



LEASING POLICY

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1. Introduction

- 1.1 Calway Housing Association will always offer the most secure form of tenure for our tenants, which in most cases will be a Scottish Secure Tenancy (SST). However, there will be certain occasions when an SST will not be appropriate and a lease may therefore be required, e.g. where the property is not for residential use, the period of use is temporary and/or the intended residents will vary from time to time. This policy clearly defines the circumstances under which Calway Housing Association will lease properties and the type of organisations to which we will lease.
- 1.2 Delegated authority is given to staff to enter into leasing arrangements in line with this policy, but any proposal to lease that does not meet the terms of this policy must be approved by the Management Committee.

2. Legal Framework

- 2.1 The disposal of land or other assets was initially covered by Section 9 Consent under the Housing Act 1985, which was updated by Section 66 Consent under the Housing (Scotland) Act 2001 and more recently by Section 107 of the Housing (Scotland) Act 2010, (The Act). This requires social landlords to seek consent from the Scottish Housing Regulator (SHR), to dispose of land or to dispose of any other assets by granting security over them (referred to as disposals), unless the disposal is one that does not require SHR consent. (See Appendix 2)
- 2.2 The SHR's approach to exercising these powers is set out in the Framework for the Regulation of Social Housing in Scotland, which was published in February 2012. Some types of disposal do not require consent, e.g. leases to tenants under an (SST), while other types of disposal do need consent, e.g. leases to another organisation.
- 2.3 The SHR gives General Consent to certain disposals, while other disposals need Specific Consent for particular purposes, as set out in the Framework noted at 2.2:-

'Leasing – both residential and non-residential - to non-profit making (and in specific instances, profit making) bodies subject to conditions' are covered by General Consent.
- 2.4 This General Consent applies to any disposal on or after 1 April 2012 and supersedes the General Consent dated 24 March 2005 (SHR 14). An extract of the Schedule of the General Consent and the conditions attached are detailed in Appendix 2.

3. Aims and Objectives

- 3.1 Our aim is to meet our obligations in regard to security of tenure and supporting tenants in mainstream, self-contained housing, while also recognising the benefits to the wider community and need to support local authorities in providing homeless accommodation.
- 3.2 To achieve this, we will make a number of properties available to organisations with the appropriate skills and expertise to support people in their own homes, e.g. as staff sleepover or office accommodation, or to give temporary or permanent support.

- 3.3 Examples of community benefit may include the lease of an accessible base from which people within the community can get information and advice. This could include advice, e.g. on welfare rights, disability rights or other support issues.
- 3.4 A residential or non-residential property may also be leased to allow staff from a project to deliver a service to the community. This base could be used as a drop-in centre, a training venue, or could provide residential accommodation for staff while on duty (e.g. when providing support to residents in dispersed flats in the area).
- 3.5 The Association will ensure that the granting of disposal by way of a lease for residential or non-residential purposes does not affect the quiet enjoyment of its residential tenants.

4. Criteria & Methodology

- 4.1 The proposed granting or termination of any lease will be reported to the Operations Sub Committee and all decisions minuted accordingly. Where leasing is found to be an appropriate option the Management Committee delegates authority to the Property Services Manager to sign agreements on its behalf.
- 4.2 The Association will follow good practice and adopt appropriate model leases where these are available, e.g. the Scottish Federation of Housing Associations (SFHA) Model Lease, Occupancy Agreement and Protocol, will generally be used.
- 4.3 Where a property is being considered for lease on a commercial basis, there is no model lease available. In these circumstances the Association would take legal advice when drawing up an appropriate agreement and would ensure that any potential risks are managed and income is sufficient to cover all costs including major repairs, before entering into such a lease.
- 4.4 The Association appreciates that in some situations, the support provider may find it difficult to plan for the longer term if the project's existence can only be guaranteed for a short-term lease period of one or three years (as recommended in the model lease). Leases may therefore be entered into for longer than three years where the project is unlikely to alter in the foreseeable future, or may be for one year initially and renewed thereafter on a yearly basis, where considered appropriate and agreed by all parties.
- 4.5 The Association will ensure that there are regular reviews of how well a lease is operating and will ensure that there are break clauses within the lease agreement, to allow the parties to terminate the lease more easily, where they believe it is no longer the most appropriate arrangement.
- 4.6 The Association will record any disposals via leasing agreements that are made under the General Consent in its Register of Disposals and will maintain an audit trail and supporting papers, which will be readily available for verification by the SHR, should this be required.
- 4.7 This policy will relate to leasing agreements that fall under the General Consent only. Where Specific Consent is required, e.g. disposals by way of lease of social housing dwellings to support new funding initiatives, legal advice will be sought to ensure that all regulatory requirements are met and there is a strong business case for such disposal.

5. Meeting the Needs of our Client Groups

5.1 To meet our policy objectives, we will only lease a residential property to another organisation rather than issuing an SST to an individual tenant, where we can demonstrate good reason for doing so.

5.2 Leasing to another body is likely to be most appropriate where the accommodation is:-

- i) specialist accommodation that needs to be managed by a support provider
- ii) short term accommodation for specific groups, e.g. Asylum Seekers
- iii) short term accommodation for a tenant of another housing organisation, e.g. where their property has been rendered uninhabitable perhaps due to fire or flood and temporary (decant) accommodation is needed.
- iv) to be used by a local authority for a specific client group, e.g. as temporary accommodation for homeless households
- v) for staff sleepover or office accommodation necessary to provide support to individuals in dispersed accommodation within the area
- vi) commercial property being leased on a commercial basis
- vii) being leased to an organisation for community benefit, e.g. as an advice centre

5.3 The Association currently leases properties to a number of organisations where it is deemed appropriate due to the client group being housed and/or the nature of the support being provided. Details are noted below:-

- i) Turning Point
- ii) Quarriers

The majority of leases to the above organisations are for sleepover/office accommodation for staff providing support to dispersed tenants throughout the area. Tenants have SST's and protocols are in place with the support providers (where appropriate). However, there may be occasions where a lease is provided to a support provider, rather than an SST to the tenant, but only where there is a requirement that the funding of the support is dependent on the provider having responsibility for the provision of the accommodation.

- iii) Serco (or other provider as appointed by the Home Office)
- iv) Glasgow City Council (GCC) Asylum Team
- v) Glasgow City Council (GCC) Hamish Allen Centre

Serco and GCC (Asylum Team) support asylum seekers. The accommodation is offered by the support provider on a temporary basis, with the intention that the occupants will move on, once they have been granted leave to remain and are able to manage without continuous support, or have been refused leave to remain in the UK and are no longer entitled to any public funds or support.

Where appropriate, the Association may offer the occupants an SST for their current accommodation or for alternative accommodation within our stock.

GCC (Hamish Allen Centre) provide temporary accommodation to various homeless applicants on an ongoing basis. Occupancy agreements are provided by the support providers for furnished accommodation, until the occupants are able to move on, at which point they may or may be offered SST's, where appropriate.

- 5.4 The Association will make every effort to safeguard our properties and the people living in them. In determining the suitability of a lessee, we will consider the organisation's track record including its financial position (consideration of financial viability would be relaxed in the case of local authorities).
- 5.5 Where any organisation not listed at 5.3, wants to lease property from the Association, the Property Services Manager will present a report to the Operations Sub Committee, making recommendations as to their suitability.

6. Managing Equalities

- 6.1 Calway Housing Association will ensure fair and open access to our housing and be responsive to people's individual support needs. Where lessees are given responsibility for allocating the Association's properties to clients with specific support needs, the Association will ensure appropriate selection and assessment criteria that is in line with agreed Protocol.
- 6.2 The Association also undertakes to ensure that equal access to appropriate property types and locations across the range of our stock is given to lessees. Properties made available for leasing should not be confined to one particular area or to less desirable stock, but should be suitable and appropriate to meet the needs of specific client groups.
- 6.3 Property leased for community benefit must fall within the Association's wider action strategy and/or be deemed property that has been classed as difficult to let.

7. Audit Trail

- 7.1 We will maintain a clear audit trail showing that we have:-
 - i) Examined all other available options in deciding that leasing is the most appropriate arrangement.
 - ii) Ensured that where relevant, the lessee has granted the most secure form of tenure compatible with the purpose of the housing.
 - iii) Managed risks, covered costs and taken steps to ensure sustainability where it is a commercial lease.

iv) Demonstrated good reasons for departing from the terms of any model agreements, are noted below, including where the:-

- lease is for longer than three years
- appropriate SFHA Model lease is not used
- model is used but some clauses are omitted or amended
- appropriate model occupancy or tenancy agreement is not used.

8. Performance and Review

- 8.1 We will review the management of leased properties regularly by holding liaison meetings with the lessee at least every six months or as appropriate to the project.
- 8.2 This Policy will be reviewed every three years, or earlier should the need arise to reflect changing circumstances or changes in legislation or good practice standards.

General Guide to Leases, Tenancy and Occupancy Agreements

1. Calvay Housing Association will seek legal advice (where appropriate), where they propose to enter into a new type of let to ensure that they are maximising the rights of the tenant or occupant. The following gives some general examples of the options for residential property leased for residential purposes. These examples do not cover every situation and where the Association is faced with a new type of project, we will assess the most appropriate arrangements for each set of circumstances, bearing in mind the key principles and regulatory expectations relating to leasing.
2. The Model Lease is used by housing associations in leasing properties to partner agencies (e.g. specialist organisations or local authorities) for use as specialist supported accommodation provided on either a short or long term basis, or for use as office and/or sleepover accommodation for staff providing support to service users.
3. Leases may also be used where the property is supported accommodation in which housing and specialist support and/or care provision are inextricably linked, and where it is entirely logical for the same organisation to manage the housing and support/care as one overall service (e.g. a Women's Aid refuge or a registered care project).
4. For individual lets (in mainstream housing) to people with support/care needs, a protocol between the association and the support/care provider will generally be more appropriate. In these situations, a normal landlord/tenant relationship is envisaged, (i.e. an SST), with the protocol stipulating how the two bodies will liaise with each other over matters relating to the tenant, and how void costs will be covered where the support provider has nomination rights to the property or properties in question.
5. Where property cannot be classed as a separate dwelling, or is leased short term to the local authority, or voluntary organisation providing accommodation for single people needing support, the model occupancy agreement should be used.
6. In its liaison role with the partner agency, the Association will have input into the nature of the occupancy/tenancy agreements but not normally into the nature of the housing support or care provided by the agency, as this will be the subject of contracts with the local authority, and the association will not be a party to those contracts.
7. It is not the intention of the Model Lease to prescribe an inflexible contract. Common sense variations to many of the clauses can be agreed by the parties providing they do not contravene any legal requirements or the requirements of the SHR and also providing that they do not adversely impact on the welfare of tenants/occupants.
8. We must also recognise that under the Care Commission regime, some properties may be registered as care homes and therefore subject to statutory regulation through that route, whilst other types of provision may be registered with the Care Commission as housing support or home care and regulated under the relevant statutory standards.

Procedures/Conditions for Using General Consent for Leasing

1. An Extract is given below from the SHR's Consent to Disposals of Land or Assets Guidance (April 2012), as it relates to Leases and shows when SHR consent is required.

<u>Type of Disposal</u>	<u>Consent Required</u>	<u>General Consent</u>	<u>Specific Consent</u>
Sales to Tenants with Statutory Right To Buy		No	
Leases to Tenants under Scottish Secured Tenancy or what would be SST but for Schedule 1 of the 2001 Act		No	
Leases to Tenants under a Short SST		No	
Leases under assured tenancy agreements or assured agricultural occupancies		No	
Leases under what would be an assured tenancy but for any of paragraphs 3 to 8 and 12 of Schedule 4 of the Housing (Scotland) 1988 Act		No	
Occupancy Agreement		No	
Leasing – both residential and non-residential – to non-profit making (and in specific instances, profit making) bodies subject to conditions	Yes	Yes covered by general consent	Not required
Leasing to another organisation, profit making or otherwise, which does not fall under the General Consent	Yes	No	Yes, apply for specific consent
Disposal by way of lease to another organisation, whether profit making or otherwise, which does not fall under the General Consent (for example to support new funding initiatives)			

2. Conditions applying to disposals by way of lease:-

- a) The RSL can show good reason for leasing a dwelling-house to another organisation rather than issuing a Scottish Secure Tenancy to an individual tenant.
- b) The RSL will not lease residential properties to a profit-making organisation except where they are a with profit organisation providing a care, support or accommodation service to Scottish or UK Ministers, a Scottish local authority or any other public body or officeholder in Scotland and the UK.
- c) The rent covers all the RSL's costs in providing the accommodation and administering the lease (including a provision for major repairs), unless the RSL's wider action strategy allows for a reduced rent to not-for-profit organisations where there is a community benefit.
- d) There is an appropriate legal agreement between the lessee and any of its staff members who are to reside in the property, which would enable the RSL to recover possession of the property if the lease were terminated.
- e) Where the lessee is a local authority, the lease is part of an agreed plan for supporting people in their community.

- f) Where the property is leased for community benefit, it falls within the RSL's wider action strategy and/or is property that has been difficult to let.
- g) Ensure the property is managed in accordance with the SHR's Regulatory standards of Governance and Financial Management

The terms of the lease:

- h) accord with this guidance on consent to disposals of land or assets
- i) ensure that ultimate control of the land or property remains with the RSL.
- j) ensure that the RSL can monitor the management of the property.

The Association is satisfied that the:

- k) lessee has the ability, record or character appropriate to the management of the property and that no undue risk is being incurred for the residents or the RSL.
- l) lessee has, or can generate, the financial resources needed to manage the accommodation in line with the terms of the lease.

3. Certification

- a) The Property Services Manager will complete a written certification (Record of General Consent – see Appendix 3) to certify that the above-noted conditions have been met.
- b) The signature on the Record of General Consent form should be witnessed.
- c) A record of the disposal must be made in the Association's Register of Disposals and will be available for inspection by the SHR at all times for regulation purposes. All forms and supporting papers should also be easily accessible for inspection purposes.

Record of General Consent under Section 107 of the Housing (Scotland) Act 2010 *(which updates Section 66 of the 2001 Act)*

To be used for all disposals that are covered under General Consent.

Please fill in the table below. The form must be signed by a member of the governing body or member of staff acting under proper delegated authority (where the terms of the delegated authority are set out in a minute, policy or scheme of delegated authority). The signature on the form should be witnessed by a governing body member or senior staff member. If a member of staff is also a governing body member, they should sign or witness the form in their capacity as a staff member rather than as a governing body member.

Section 1 – Details of disposal under General Consent

1. Full address of property/description of land being disposed of (or attach schedule):	2. Category of disposal (for example, a lease or share in a shared ownership property)
3. Name of person/organisation to whom disposal is made:	4. Price or any other consideration obtained:
5. Land Register or Register of Sasines number if appropriate:	

Section 2 – Certification

I, the undersigned, certify that this General Consent applies to any disposal on or after 1 April 2012 and supersedes the General Consent dated 24 March 2005 (SHR 14). I also certify that the relevant of that consent are met in relation to the disposal.

Signature of governing body member/staff with delegated authority	
Name of governing body member/staff member (block capitals)	
Designation	
Date	

Witnessed by:

Signature of witness	
Name of witness (block capitals)	
Designation	
Date	

