

DBULLETIN

Green leases: What they mean for landlords and tenants

Green leases which have been used for a considerable time in other jurisdictions - particularly Australia - are at last gathering some support in the UK.

The basic idea behind a green lease is that the landlord and the tenant co-operate with each other to reduce the carbon output of the premises that is the subject of the Lease, and try to promote other sustainability initiatives.

Green leases at present apply only to commercial premises and have at the heart not only environmental issues but also the desire of both landlord and tenant to run the building as economically as possible. Whilst green leases have been popular in Australia for some time and actively promoted by the Government, landlords and tenants in the UK have been relatively slow to embrace green leases. However, the CRC Energy Efficiency Scheme which came into force in April 2010 making the CRC applicable to larger organisations has given a boost to green leases. It is expected that, as the CRC applies to more and more commercial organisations, green leases will become more popular as people look for ways of reducing their CO₂ emissions.

However, there are other reasons why landlords and tenants may both wish to use green leases. Examples include:

- Compliance with Corporate Social Responsibility policies
- To future proof the building
- To achieve greater energy efficiency and comply with requirements of new and refurbished buildings
- Compliance with statutory requirements
- Compliance with the Government's public procurement requirements

Some of these objectives are self explanatory. An important driver that is becoming more

common is for companies to be required to report on environmental issues. Two recent developments are Section 417 of the Companies Act 2006 which requires "companies to include information about environmental matters in their annual business reviews where this is relevant to understanding the company's business", and the Climate Change Act 2008, which contains (in sections 83, 83 and 85) provisions by which the Government must make regulations by 6th April 2012, requiring mandatory corporate carbon reporting.

Energy Performance Certificates (EPCs) are now required whenever commercial premises are offered for sale or lease. These will also provide an impetus to greater energy efficiency generally.

In the absence of any specific Government requirements relating to green leases, private landlords such as Hermes and Land Securities have been promoting them, CRBE has published a guide to incorporating environmental best practice into commercial lease agreements, and the Better Buildings Partnership (BPP) has published its Green Lease Toolkit. The BPP has also published notes which recommend the use of a Memorandum of Understanding between landlords and tenants in relation to environmental matters rather than a specially drafted green lease.

In practice, a wide range of green leases are in use, with a variety of formats. Even without any formal documentation, it is common now for landlords and tenants to work together to reduce energy consumption and achieve other environmentally desirable aims, such as dealing better with waste recycling, cutting water use,

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and providing facilities which encourage green transport, such as bike racks and showers for cyclists.

The least formal type of documentation will be a simple Memorandum of Understanding which might be agreed and amended from time to time. A model form of Memorandum of Understanding is available online from the Better Buildings Partnership website (www.betterbuildingspartnership.co.uk/.../green-lease-toolkit). One of the first things to consider is to do with data sharing. If the aim of the parties is to reduce energy and consumption and waste generation, there must be some benchmark against which to measure the hoped for improvement in performance. The memorandum also deals with setting up a building management committee with representatives of the landlord, tenant and any managing agent involved with the building, to work together to improve the environmental performance of the building.

The schedule contains a number of initiatives to be undertaken in relation to energy, waste, water, energy audit, alterations and replacement, transport, cleaning etc. The same website also has draft green lease clauses to go in a new lease or a renewal under part 2 of the Landlord and Tenant Act 1954.

The model lease clauses cover material similar to that dealt with by the memorandum of understanding, but here the obligations are meant to endure for the term of the lease and the binding on the parties.

One obvious barrier to the uptake of green leases is the question of cost. Generally speaking it will be for the landlord to pay for improvements to a building, whereas the tenant will get the benefit

in terms of a more pleasant working environment and lower energy bills. The obvious solution is to adopt a fairly conservative approach and introduce only low cost initiatives. However a landlord may be persuaded to spend significant costs on upgrading the building if it is able to get vacant possession of at least part on the basis that the building will become more attractive to potential tenants. As higher energy efficiency standards are imposed in relation to new buildings, older buildings will become less attractive to tenants. Thus expenditure on green issues may be seen by landlords as future proofing the building and preserving its value.

The model Memorandum of Understanding and Memorandum of Lease were introduced in April 2009, and in June 2010 an article was published in Estates Gazette reporting on uptake. Not surprisingly, uptake was strongest amongst public sector tenants, with retailers being the most resistant to signing a green lease or Memorandum of Understanding. The Memorandum of Understanding was generally used rather than green lease clauses, and it was felt that the recession could have resulted in a reluctance of people to investigate green leases, even though considering green issues would probably result in savings at least to the tenant. The article reported that apart from a core group of landlords who actively promote green leases, many people in the property industry still did not know about green leases or how to create one.

As the CRC starts to bite, this will undoubtedly change.

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