

Green Leases



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What is a Green Lease

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The Planning dimension

Background to energy efficiency and green leases (GLs)

Since the Climate Change Act 2008, energy efficiency has been increasingly on the up. Most, if not all, of the various corporate real estate and development sectors within the UK have felt this shift and the GL agenda reflects this trend.

Further relevant background matters include:

- The Government's 2009 Carbon Budget commitment to reduce carbon emissions to 34% of 1990 levels by 2020
- Buildings occupied by businesses and the public sector produce more than one third of the UK's total CO₂ emissions
- Buildings as a whole contribute just under half of the greenhouse gas emissions in the UK
- The Government target that all new buildings will be carbon neutral by 2016 and all other buildings by 2019
- The objectives contained in the National Planning Policy Framework regarding sustainable development

What is a GL?

Broadly, a GL is a lease, usually of commercial property, that expressly requires the landlord and/or the tenant to reduce the carbon footprint of the premises and/or introduce other energy efficiencies.

The broad idea

Where a landlord and tenant enter into a GL they will, usually, jointly be responsible for reducing the environmental impact of the premises and any use carried out upon it.

The precise division of responsibility will, however, be decided upon having regard to a number of factors including the commercial bargaining strength of the parties. Commentators are therefore citing terms such as collaboration, communication, education and

co-operation as keys to unlocking the success of such relationships.

More particularly, provisions dealing with service charges, alterations, reinstatement and remedies for breach may all be modified to include 'green' provisions. Other supplemental documents such as memoranda of understanding are also likely to be required to flesh out the skeleton clauses of the lease. Clauses in formal licence documentation (for example those permitting change of use or alterations) and agreements for lease may also be treated differently.

When might you encounter the need for a GL and/or related issues?

As alluded to above, the simple answer

is- in most commercial property/landlord and tenant scenarios, including:

- The grant of a new lease
- Upon the assignment of an existing lease
- When alteration/development is proposed
- Within the planning process

Current scepticism

It is fair to say that the GL 'ambition' has been and continues to be met with scepticism by landlords and tenants alike. Cost savings are being sought across all sectors, especially in light of present conditions and being green can add additional expense.

Arguably, however, there are also potential benefits to be unlocked, particularly given the current trend of energy supply costs increasing. The ambit of GLs can extend far beyond energy efficiency requirements and can also, for example, deal with water and waste management and using sustainable materials for repairs or alterations within a building.

Planning led?

In practice, until there is legislation or, perhaps more likely, until such time as energy efficiency measures become the market norm, the influence of the planning system is likely to play a key role in the adoption of the GL agenda.

Indeed, those involved in the development of mixed use schemes are already encountering this in the form of planning conditions and obligations within planning (section 106) agreements that require, for example, green lettings arrangements for newly constructed (commercial) units.

Our recent experience has also shown that planners' green requirements may extend to such matters as fit-out, and the methods and/or materials employed in them.

A specific 'green code'?

Helpfully, the BRE Environmental Assessment Method (often abbreviated as BREEAM – which is pronounced Brie-am by those in the know) is a voluntary measurement rating for green buildings established by the Building Research Establishment (BRE).

BREEAM is often used or referred to by planners when they impose green requirements and can be found at: <http://goo.gl/KSMwvb> (*link is case sensitive*)

The Better Buildings Partnership (BBP) is a collaboration of London's leading commercial property owners and allied organisations, supported by the Mayor of London and the Greater London Authority. BBP has produced a GL 'toolkit' which includes further background on GL principles, best practice and precedent drafting – these documents can be found via the following link: <http://bit.ly/Kh31Bn> (*link is case sensitive*)

Whilst the tools mentioned are extremely welcome, no two letting arrangements are the same. The precedent material, if it is being used as a starting point, will need to be carefully thought through to ensure that the clauses actually 'work' on a case by case basis and meet with the parties' requirements.

Ultimately, where a GL is proposed, consultants will need to ensure that the parties' intentions regarding energy efficiency are met within a framework that is clear and practical. For a smooth lease negotiation process it will be important that those intentions are agreed and set out within clear principles at heads of terms stage, otherwise lawyers will be faced with even more of a blank canvas on which they are required to paint the world/lease green.

Final thoughts

The GL is very much the new kid on the commercial part of the block. However, GLs won't just affect those involved in mainstream commercial property. For example, new housing led schemes often involve an element of commercial property.

However, unless the planning system intervenes, at present there seems little, if any, current market expectation that new commercial leases will be green ones. As such, and given that the planning system is likely to continue as the main driver for the green agenda, it is possible that non-core commercial property sectors, such as affordable housing providers, will find themselves, not for the first time, thrust into the role of pioneer in this area.

Some also take the view that the GL 'industry' is largely unnecessary, as a landlord will simply rely on existing market standard commercial lease provisions, particularly in relation to service charge recovery and regulations for the building, which are drafted widely enough to ensure that it could, if need be, ensure compliance with its green objectives (either now or in the future) in relation to its premises – note that this may not be sufficient for the planners however.

That's not to say that everyone is reluctant to try their hand at GLs – there are, as always, niche developers and other parties who are keen to try and find an acceptable way forward, on the basis that, like it or not, the overall green agenda, along with climate change, is here to stay.

Top 10 green movie stars (allegedly)

The Incredible Hulk
Slimer from the Ghostbusters film
Kermit the Frog
The Teenage Mutant Ninja Turtles
Yoda
The Wicked Witch of the West
Shrek
The Grinch

...little bits of law

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