

JUNE 09 THE GREEN LEASE TOOLKIT

Over recent years concerns about the environment have led to extensive reforms in the property sector. Environmental obligations have become a familiar feature of the planning process, with new developments having to satisfy conditions governing the use of renewable sources of energy, sustainability measures and occupiers' travel plans. Since 1st October 2008 all UK buildings, residential and commercial, must have an Energy Performance Certificate when they are sold or let, rating the building's energy efficiency and recommendations for improvement.

Now the landlord and tenant commercial property arena has been presented with the Green Lease Toolkit. The Toolkit was published in April 2009 by the Better Buildings Partnership, an organisation developed by the London Climate Change Agency. The BBP is a group of companies and organisations including the British Property Federation and the RICS. Over six months the members of the BBP will pilot the Toolkit. Non-member organisations are invited to do the same.

The idea is for landlords and tenants to use the Toolkit to achieve an improvement in the energy efficiency and reduce the carbon dioxide emissions of their buildings.

Many companies are already treating climate issues as a significant part of their corporate social responsibility.

Furthermore, the imminent introduction of the Carbon Reduction Commitment scheme to be brought in under the Climate Change Act 2008 means property owners and occupiers will be taking this subject seriously.

The need for flexibility

The Toolkit proposes a flexible approach: it is easy to see why it needs to. Older properties will be less energy-efficient than new ones. Multi-let buildings, where a landlord has retained control of the common parts and building systems, will need different arrangements from single-let units where the tenant runs, repairs and services the whole building. A tenant on a short lease will feel aggrieved if the landlord presents it with a draft lease requiring it to contribute large amounts to improve the energy efficiency of the building when it will only benefit in the short term.

Best Practice Recommendations

The Toolkit sets out some detailed "Best Practice Recommendations" that the parties should consider introducing to reduce the environmental impact of their building. The headings under which these fall are:

1. Energy

Covers promoting the sharing of data about energy use, and improvements to data collection by metering/sub-metering.

2. Energy efficiency

Suggestions include co-operation on reduction strategies and alterations/replacement of equipment.

3. Waste

It is recommended that parties share data on waste recycled and that sent to landfill.

4. Waste efficiency

An example is owners and occupiers co-operating on recycling targets and occupiers adopting sustainable procurement codes.

5. Water and Waste Water

The toolkit advises the sharing of data on water consumption and maintenance records on equipment as well as encouraging the use of rainwater harvesting.

6. **Building operations**

Consider the possibility of the establishment of a Building Management Committee with representatives of the owners, occupiers, managing agents and possibly suppliers and cleaners.

7. **Service Charge**

The possibility is suggested of adjusting service charges to favour low-consuming occupiers.

8. **Fit-out and refurbishment**

The parties should consider sustainability (in terms of sourcing, specification, performance, recycling) in fit-out works, alterations, repairs and replacements. It is suggested alterations should not be carried out without considering the effect of those alterations on the environmental performance of the building. A target BREEAM rating should be established before any major refurbishment programme.

9. **Re-instatement**

(One for landlords to swallow.) Owners ought to consider waiving their strict rights to require reinstatement by tenants where alterations have improved the energy efficiency of the building.

10. **Managing agents**

It is suggested that managing agents should be contractually required when appointed to implement the principles set out in Green Lease provisions or a memorandum of understanding subsequently added to the lease.

11. **Transport**

To minimise car usage, owners and occupiers should co-operate to provide space for bike storage racks, shower changing facilities for cyclists and encourage shuttle links to local transport hubs.

How will the Best Practice Recommendations be implemented?

There are two approaches, depending on whether parties have already entered a lease. Where parties are entering a new lease, they ought to consider including in the document those of the **Green Lease clauses** provided in the Toolkit that they agree are appropriate to their circumstances (possibly coupled with a memorandum of understanding).

Alternatively, the parties to an existing lease are invited to enter a **Memorandum of Understanding** in the form of the model provided. The Memorandum of Understanding is not intended to be legally binding but sets out the basis on which the parties wish to work together in good faith to reduce the environmental impact. The Toolkit declares that it makes no recommendations as to how the cost of physical changes is to be carried.

Comment

A newly constructed building may be the sort most likely to suit the modern lease provisions, as the planning and construction process will have incorporated sustainability of energy sources, travel plans and energy performance ratings for the building: the tenant will presumably be more easily persuaded to be bound by provisions that require it to preserve the status quo in its occupation, fitting-out and alteration of the building, and this has been our own experience.

For older buildings it seems likely that the recommendations most easily embraced will be those dealing with data sharing and co-operation on strategy for building management. The areas which will need to be dealt with sensitively are those with an immediate cost impact.

With energy efficiency coming ever more into focus, owners, occupiers, managing agents and

professionals may all benefit from considering at an early opportunity how they can co-operate to reduce the environmental impact of their building.

We would be pleased to discuss with you how we can help you consider these issues in the context of your own property, whether as owner or occupier.

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