



## The seeds of change have been sown; but will all commercial leases actually “go green” – and, if so, when?

As the drive to decarbonise the built environment grows, landlords and tenants should be aware of the impact this is having on commercial leases. Green leases have been on the agenda for several years and are becoming more common although not yet considered completely “market standard”. However, as businesses (on both the landlord and tenant side) strive to engage more with ESG, are we about to see a sea change in the commercial leasing market? Green leases can come in many different forms (ranging from “light green” to “dark green” depending on how onerous the obligations are) and the recently re-issued Green Lease Toolkit from the BBP is a good reference point. In this article, we will explore the types of obligations and the factors which landlords and occupiers alike should think about when negotiating green terms for new leases as well as the potential impact for investors and lenders.

### 1. What is a green lease?

- > A green lease is simply a lease which contains obligations on the landlord and/or the tenant relating to energy efficiency and the environmental performance of a building.
- > There are no statutory requirements in England and Wales which require “green” clauses to be included in leases; whether any are included will often depend on the parties’ own sustainability agendas.
- > It is important, therefore, to understand that the term “green lease” does not have a fixed or standard meaning. Where green clauses are included in leases, the nature and extent of obligations imposed is determined by various factors, including: (i) the type and age of the premises; (ii) the length of the lease term; (iii) how green the premises are; and (iv) the needs and objectives of the parties to the lease and their bargaining strength.
- > Green provisions may cover data sharing, obligations relating to resource and waste reduction, targets and benchmarks, ongoing monitoring (including of environmental policies and energy efficiency audits), use of sustainable materials in any works and achievement/maintenance of asset ratings. More detail and examples are shown within the box on this page.
- > There are various ongoing industry attempts to create standard form language for green provisions to aid negotiations. On 29 January 2024, the Better Buildings Partnership (“BBP”) published their updated Green Lease Toolkit (which had last been issued in 2013) containing recommendations and model lease clauses. The Chancery Lane Project has also produced some sample clauses, and institutional landlords and asset managers are similarly developing their own standard form language and precedents.
- > Whilst there is not yet a market standard position, players in the market should be aware that the industry standard form of Certificate of Title (produced by the City of London Law Society) was updated in 2023 to include, amongst other things, new statements that a lease includes: (i) data sharing provisions; and (ii) provisions requiring the tenant not to carry out any alterations which adversely affect the EPC rating. The form of Certificate of Title is used by lenders and investors alike when lending against or acquiring property and is designed to reflect the typical position – so where a particular lease does not reflect that position, a disclosure will need to be made by the certifying solicitors, which could raise concerns. These new statements are indicative that the market may start to take a more cautious approach where leases do not contain such provisions.

### The many shades of green...

- > Green lease obligations are often categorised depending on how onerous they are ranging from the less impactful “light green” (which typically require limited commitment and financial expenditure) to the more stringent “dark green” (which are more often used, or at least proposed, in leases of brand new or refurbished buildings).
- > **Light green** clauses – are often “good faith” type provisions and generally considered to be “soft” obligations which are easier to negotiate and agree than their darker green relations. Examples include:
  - (i) data sharing obligations;
  - (ii) the provision of a sustainability forum in which the landlord and tenants at a building discuss and agree targets/strategies for reducing energy/water consumption/improving energy efficiency within the building – often only to the extent “reasonably practicable”; and
  - (iii) cooperation with regards to environmental and social impact.
- > **Dark green** clauses – are stricter in nature and are most useful where the landlord wants to ensure that the occupier will not do anything to the premises which adversely affects the energy efficiency systems which are in place, thereby reducing the value of its investment. Examples include:
  - (i) ensuring that any alterations meet a particular EPC rating;
  - (ii) mandating the use of sustainable materials when carrying out any alterations, fit out and repair works;
  - (iii) contributing to the cost of the installation of environmental technologies (such as solar and photovoltaic panels, or other renewable energy sources) via the service charge; and
  - (iv) compliance with a specified waste policy (including when it comes to reinstatement on lease expiry).



## 2. The benefits of going green

- > First and foremost, the inclusion of green obligations in leases is likely to help both landlords and tenants meet their sustainability targets and fulfil net zero strategies. As Environmental, Social, Governance (“ESG”) goals reshape business priorities, the green reputation of businesses is increasingly important and corporate social responsibility and related reporting are a board level issue. At a time when sustainability continues to rise up the global political agenda, green leases should also be a way to help the property industry as a whole contribute towards decarbonisation targets.
- > Compliance with certain sustainability legislation and targets has already started to impact contractual arrangements, including leases, where investors must position themselves to comply with an evolving regulatory landscape (such as the Minimum Energy Efficiency Standards (“MEES”), which we have [written about previously](#)). Having green lease provisions and a focus on energy efficiency is helpful for landlords, in particular those owning poorer performing buildings with low EPC ratings, where the consequences of MEES mean their premises could become unlettable. In addition research has shown that there is a “green premium” for rents as well as higher demand for energy efficient buildings.
- > Many tenant occupiers and investors want to be perceived as sustainable businesses and will therefore prefer to occupy or own sustainable premises. Landlords can capitalise on this increasing demand for sustainable properties by including green provisions as standard in their usual form of lease – but must be live to the fact that green leases will not always be universally acceptable.
- > Tenants of an energy efficient building where the landlord is also under green lease obligations should get the benefit of lower utility bills for their premises and also potentially lower service charge costs for the common parts. It is therefore becoming more common for tenants to focus on what landlords need to commit to, and push towards landlords taking on more responsibility.
- > A collaborative approach with tenants works best to implement measures to achieve energy reduction and ensure buildings are

managed and occupied in a highly efficient manner. Obligations in the lease are only the first step, and how the premises and building management systems are actually run by the landlord and its managing agents will have the most impact in practice.

## 3. So what are the challenges and when might we see more green leases...?

- > **Cost:** while both landlords and tenants appreciate the advantages of environmentally efficient premises, the financial responsibility associated with any upgrades required is the main point of contention. Why? As shorter lease lengths become the norm, tenants are often unwilling to agree to take on any significant financial commitments beyond the standard occupancy costs, because they are unlikely to reap the full benefits during their short lease term. There are also internal costs associated with gathering data for example, and not all tenants will have the relevant expertise or ability to pull this information together.
- > **Confidentiality:** there is a nervousness amongst tenants regarding sharing data, particularly on how premises are being occupied. Without this data however, landlords are not able to help their tenants or come up with ways to make premises more energy efficient. New smart meters are making a huge difference with half hourly readings giving real time data. Landlords can reassure tenants that data will not be published externally and just used by landlords or reported on without specific identifying features.
- > **Restrictions on use:** tenants do not want to be restricted in how they use premises for their business. Clauses restricting alterations or user will be more contentious.
- > **Lease renewals:** there are starting to be court decisions requiring green lease terms to be included in leases renewed under the Landlord and Tenant Act 1954. The Act allows for modernisation and updating of the form of lease when it is renewed but, so far, the courts have not interpreted this to allow landlords to include many green lease provisions. Only limited additional clauses which could “be justified on the grounds of essential fairness” were ruled as acceptable in a 2023 county court decision.

- > **Rent review:** landlords will need to remember during lease negotiations that tenant obligations which are considered far reaching or onerous can have a negative impact at rent review. Similarly as the market for green leases develops and they become more standard, then if there are no obligations on the landlord this could also lead to lower rents at later reviews.
- > **Enforcement:** what can either party do if the other is in breach of its green lease obligations? Generally these obligations are not so material that they would lead to either side taking court action for damages or specific performance, or for a landlord to initiate forfeiture of the lease. This does raise questions over the effectiveness of these obligations.
- > As a result, green leases are not yet market-standard. Landlords do usually include green provisions in first drafts, but they are often struck out by tenants’ solicitors. Rarely will this be a deal-breaker as things stand, as landlords tend to prioritise the key commercial issues and simply completing the deal. Parties now often compromise on agreeing to the inclusion of “light green” clauses which give the parties a platform to build from. Also helpful is the greater communication in landlords’ and tenants’ businesses between their internal ESG officers and the commercial/leasing teams and lawyers negotiating the terms. When all stakeholders understand the benefits of the provisions and that the deal can still be done quickly, then there can usually be a willingness on all sides to agree some green lease provisions.





#### 4. Seeds of change...?

- > So, seeds were sown many years ago for green leases but, whilst shoots have been sprouting, we are only just starting to see more widespread growth. For now, commercial hesitation persists (mainly due to cost implications and the onerous nature of certain of these provisions) which often leads to green provisions being removed from leases entirely or only very limited provisions being agreed. However, the trend towards green leases is expected to continue, underpinned by the growing focus on ESG sustainable practices and the possibility of further regulation on the horizon. As the ESG agenda continues to take hold, this topic is one to watch.
- > The contents of this article relate to the position in England and Wales only; for further detail on ESG matters across Europe, and in particular how other jurisdictions are approaching green leases, please refer to our [Pan European ESG Guide](#).
- > If you would like to discuss any of the issues in this note in more detail, please do not hesitate to reach out to your usual Linklaters contact.

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