

## Green Leases

Location and price are always going to be the key drivers in the decisions of property developers, investors and end users.

However energy efficiency and other sustainability features (eg water and waste management) are increasingly featuring in the decision making process of some businesses.

With the government's intention to make all new commercial buildings zero carbon by 2019, and the knock-on effect this will have on the market generally, this is a trend which we think is likely to continue gathering pace for some time to come.

### What are Green Leases?

One manifestation of the eco-trend is a growing demand for "Green Leases", particularly for single-let buildings.

At present some property suppliers are reluctant to incur costs improving the efficiency of a building when it is the occupiers who will reap the benefits through lower bills. Equally few tenants are willing to fund a capital improvement programme the full payback of which might only occur after their lease has come to an end.

Green Leases contain a framework of additional rights and responsibilities for landlords and tenants, designed to overcome these potential problems.

### What is the next step?

Now is therefore the time to consider whether your standard form draft leases should be upgraded to "Green Leases" so as to add value to your lease portfolio.

The market for Green Leases is still in its infancy and, as such, there is no established norm as to what a Green Lease should say. However the next page shows some examples of Green Lease provisions, with a focus on energy efficiency. A similar shopping list of provisions to choose from would apply in relation to other sustainability issues such as water and waste management.

Please call Neil Sagoo (020 7421 6411) or your usual contact if you would like to talk through the pros and cons of updating your standard form draft leases to green status and how you can ensure that your leases meet, in a realistic way, the requirements of those occupiers whose CSRs demand higher environmental standards from their premises.



### Other green issues on the horizon

Our Bulletin in May set out the principles of Energy Performance Certificates (EPCs). Although EPCs have only been with us for a few months the government is now consulting on ways in which to make EPCs more easily accessible.

The relevant consultation paper proposes allowing the Energy Saving Trust and the Carbon Trust access to the registers of EPCs to allow them to promote energy efficiency in residential and commercial properties.

More significantly the proposals also include allowing energy assessors, and potential buyers and tenants, to search the registers of EPCs by address, rather than by reference number, effectively making the register open to the public.

Some of our clients, particularly some investors, might prefer not to have EPCs for their buildings published. If you wish to respond to the consultation you'll find it at [communities.gov.uk/documents/planningandbuilding/pdf/862494.pdf](http://communities.gov.uk/documents/planningandbuilding/pdf/862494.pdf). The consultation closes on 1 September 2008.

**Possible energy efficiency features to consider for your “Green Leases”:**

I n f o r m a t i o n	Energy Data	The tenant should be obliged to provide energy usage information to the landlord and allow the landlord access to any relevant plant and equipment. This information can then be fed into the Tenant Handbook (see below).
	Energy Efficiency Targets	Targets, for the landlord and the tenant, can be linked to maintaining or improving a particular Energy Performance Certificate (EPC) or Display Energy Certificate (DEC) rating. More specific targets can be agreed by the parties during the lease term.
	Separate Metering	The landlord should be obliged to provide separate metering for the utility services which are covered by the energy efficiency targets.
	Reporting	Energy performance reports should be obtained regularly and could be published.
F i n a n c i a l	Incentives	There can be rent rebates if the landlord fails to deliver promised energy efficiency improvements (eg commensurate with any increased utility bills) or if the building's EPC/DEC rating falls below a particular standard.
	Service Charge	Landlords can reserve the right to adjust the environmental aspects of the service charge, eg to implement EPC/DEC recommendations or, in a multi-let building, to reflect each tenant's contribution to improving the building's energy efficiency.
	Rent Review	There should be an assumption as to what EPC/DEC rating the building will have on rent review and how efficiency improvements made by the tenant or the landlord should be disregarded or rentalised.
W o r k s	Alterations	Tenants should be prohibited from doing any works which would harm the energy efficiency performance of the building.
	Improvements and Dilapidations	If the tenant has carried out works to improve the energy efficiency of its premises then the landlord could consider waiving some dilapidation costs.  Similarly if the EPC/DEC rating is below a given standard at the end of the lease the landlord should be entitled to recover the costs of implementing the recommendations set out in the EPC/DEC advisory and recommendation reports.
	Reinstatement	The landlord could waive the requirement to reinstate in relation to tenant's improvements which improve the energy performance of its premises.
	Maintenance Contractors	The lease can require any maintenance contracts for the building to require the building services to perform in a way which helps meet the energy efficiency targets.
P r o c e d u r e s	Tenant Handbook	The landlord can periodically provide a tenant handbook/environmental policy document/energy management plan showing, for example, the current EPC/DEC rating, energy reduction targets, energy metering and monitoring data, an environmental policy, information on grants, loans and support schemes and the latest EPC/DEC advisory and recommendation reports.
	Building Management Committee	Regular meetings between landlord and tenant representatives should help ensure an effective communication of energy performance data and that specific reduction targets are agreed and then met.
	Dispute Resolution	A dispute resolution procedure and provisions for the development of a remedial action plan (where targets are not met) can be included.

\* Green Leases can also cover other sustainability issues (eg water and waste management)