Green leases are coming of age

Introduction

The growing adoption, of so-called 'green lease' clauses is seen as an integral means of driving sustainable behaviours, enabling data exchange and supporting the delivery of stated environmental, social and governance (ESG) ambitions and commitments. However, inevitably evolution in lease obligations requires careful navigation to achieve the desired outcome and support financial performance.

This article explores the adoption of green lease clauses, how they are influenced by legislation and the key implementation considerations.

Concept of green leases: Promoting ESG in lease agreements

Green leases are lease agreements that incorporate obligations specifically focused on sustainability. The purpose is perhaps self-evident - to legally bind a shared commitment between landlord and tenant to adopt and uphold specific and stated sustainable practices throughout the life of the lease.

The concept of green leases has been gaining traction for many years. Ten years ago, green leases predominantly focused on energy efficiency and waste reduction metrics. More recently, they have diversified to incorporate a much wider array of climate-related topics including data sharing, social impact and circular economy.

The UK-based Better Building Partnership (BBP) launched a responsible property management toolkit in June 2021, which proved a catalyst for embedding sustainability practices and has culminated in their subsequent introduction of a Green Lease Toolkit (in 2024) to further stimulate practical adoption. The online tool is an enabler, that outlines 10 areas which the BBP would expect to see covered in a lease to define it as 'green', with a dynamic approach as some variations are categorised as 'light', 'medium' and 'dark' green to accommodate users depending on their ESG maturity.

Figure 1, adopted from the BBP Green Lease Toolkit, illustrates how to incorporate 'recycling of waste', as an example, into a lease, with the considerations based on the tenant's ESG maturity level.

Figure 1. Adopted from the BBP Green Lease Toolkit[1]

Light green clause	Medium green clause	Dark green clause
Gearing up for your green lease journey	**Accelerating** your green lease journey	**Driving transformation** with your green lease journey
The landlord and tenant in respect of waste they produce must use reasonable endeavors to: a. Minimise the amount of waste which is sent to landfill; b. salvage as much waste as reasonably practicable; and c. provide or procure (as the landlord) an appropriate waste segregation system and (as the tenant) ensure that waste is segregated in accordance with the system.	Clauses identified in a - c including: d. Work together using the data captured and shared under clause [c] to reduce the amount of waste that is sent to landfill and increase the amount of waste that is salvaged; e. deal with waste in accordance with any waste policy in place; and f. provide or procure (as the landlord) an appropriate waste segregation system which maximises the amount of waste that can be salvaged and (as the tenant) ensure the waste is segregated in accordance with the waste segregation system.	a. The landlord and the tenant acknowledge their joint goal to achieve the waste salvage target. b. The landlord must at all times maintain a waste policy and must make a copy of the waste policy available to the tenant each time it is updated. c. The landlord and tenant in respect of waste they produce must use reasonable endeavors to: i. minimise the amount of waste sent to landfill; ii. salvage as much waste as reasonably practicable; iii. achieve the salvage target; iv. capture and promptly share with each other data relating to the amount of waste which is removed from the building, the amount of waste which is salvaged and the amount of waste which is sent to landfill; v. work together using the data captured and shared under clause c (iv) to reduce the amount of waste that is sent to landfill and increase the amount of waste that is salvaged; vi. deal with all waste in accordance with the waste policy; and vii. provide or procure (as the landlord) an appropriate waste segregation system which maximises the amount of waste that can be salvaged (which must as a minimum include the segregation of food waste, paper/cardboard glass and plastic) and (as the tenant} ensure that waste is segregated in accordance with the waste segregation system.

Market adoption

According to a report, globally, 34% of occupiers have already implemented green leases, while a further 40% plan to sign them by 2025. Investors, too, are acting, with 42% now having green lease clauses in place and an additional 37% looking to adopt them by 2025.

The Institute for Market Transformation (IMT) in the United States estimates that implementing green leases can help drive reductions in utility bills by up to 22%, or around 50 cents per square foot in US office buildings alone and if all leased office buildings had green leases, the US market could reap over US$3 billion in annual cost savings.[2]

Value impact

Whilst few stakeholders would question the laudable underlying intent and aspiration of green lease clauses, there is no escaping that any departure from conventional leasing norms and the imposition of additional obligations are typically seen as restrictive and onerous. In such cases it is normal to anticipate a negative impact on value, whether through discounted rental potential or heightened risk perception – as may be witnessed for example in the case of user or alienation restrictions. Arguably, the explosion in ESG-related legislation and regulation, coupled with the continued growth in reporting and disclosure obligations for all stakeholders, has enabled certain clauses to be viewed as 'enablers' and accordingly are overcoming this threat. Whether that be the UK's Minimum Energy Efficiency Standards regime, New York City's Local Law 97, Singapore's Carbon Pricing Act or the EU's Energy Performance of Buildings Directive, leases are evolving to at the very least accommodate such statutory obligations.

Implementation considerations for both landlord and tenant

In addition to aligning with ESG legislation, there are also many commercial considerations that need to be accounted for by both stakeholder groups, when considering the practicality of implementing green leases.

An important aspect is the availability and reliability of accurate data between the landlord and tenant. Due to the increased demand on emissions reporting, both parties must exchange utility data (such as energy, water, waste data) to ensure the utilities are monitored and measured. Therefore, enabling the evaluation of the building's ESG performance and alignment with the green lease. Sub-meters may need to be installed or data sharing pathways may need to be established.

The enforceability of green leases is becoming an increasingly important consideration. Stakeholders are seeking clarity on the legal enforceability of the clauses. The growing attention on enforceability reflects the need for clear and robust mechanisms to support the implementation and compliance of green leases.

Various court cases, including "Clipper Logistics Plc v Scottish Equitable Plc" in England, demonstrates how the courts approached the embedding of green lease terms during a renewal, and how to protect tenants against landlords who may attempt to offload sustainability liability.[3]

There is also a risk that green lease agreements may become viewed as onerous. A lease that typically contains more obligations may be perceived as burdensome, which, in turn could impact marketability and the attractiveness to potential tenants or investors. It is important to strike a balance to ensure the green lease clauses are within reason and aligned to industry standards. By demonstrating the benefits and value of sustainable practices, such as cost savings, improved environmental performance, and enhanced reputation, the marketability of green leases could be enhanced.

What's next for green leases?

Green lease clauses alone are not a panacea. As with any lease or contract negotiation, careful planning is required, and this is particularly critical in the adoption of green leases so that not just the positive ambitions are achieved but that they are done so in a way that also reinforces asset value resilience and financial performance.

How Deloitte are utilising green leasing in our occupied UK spaces

Elinor Huggett, Global Sustainability Leader – CoRe Real Estate

A challenge that we face as a global organisation is how to develop sustainability guidance that is both flexible enough to work across all our different geographies, and specific enough to drive meaningful change. This clearly involves constructively engaging with our landlords, particularly on topics relating to building performance. A key area of influence is our leasing agreements, but this is a complex and sometimes contentious area.

This is why we, Deloitte Global, have begun using the BBPs refreshed Green Lease Toolkit, as a framework and catalyst for sustainability conversations with our landlords. Our favourite things about the toolkit are:

- Flexibility: the inclusion of 'levels of green' and 'statements of intent' mean that although the legal drafting is designed for the United Kingdom, the intent can be applied globally.
- Clarity: the 10 'green lease essentials' should be included within any lease claiming to be green, but further topics are considered.
- Dynamism: the toolkit will be regularly updated to ensure it keeps pace with best practice and user needs.

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Endnotes

1. "Green lease toolkit". Better Buildings Partnership. 2024.

2. "Decarbonizing the Built Environment". JLL. June 2021.

3. "Green lease terms: Court's approach on 1954 Act renewal". Walker Morris. May 2022.