

A war of attrition

Roundtable A year after its launch, Sarah Jackman asks members of the BBP's working group on green leases how the green lease toolkit has affected practice

Question: The green lease toolkit was published a year ago. Has it worked in practice?

KB: There have been successes and failures; certainly considerable difficulties. The driver for green leases, and particularly the toolkit, is to raise awareness and to provide a building block for engagement between owners and occupiers.

DS: As a landlord, the toolkit is very useful. It helps us to engage with our lawyers, our property management companies and our tenants. Our lawyers can draft defined provisions in the lease. These are not just our ideas; property companies and law firms have agreed to them.

BC: PLC sees the value of these documents as providing a standard around which market practice can coalesce.

SC: Tenant take-up is greater among public sector tenants. Those local authorities to which we've introduced the initiative have signed up to memoranda of understanding (MoU). Most tenants will use the MoU route, rather than the green lease.

We need to overcome barriers, such as the adversarial relationship between owners and occupiers

The fact that the toolkit was introduced in April 2009, when the market conditions were depressed, didn't help in the commercial sector. We're finding it difficult to persuade tenants and non-Better Buildings Partnership (BBP) landlords; where deals are time-critical, this isn't the top priority. Hopefully, with market changes and the CRC in force, the incentive will be greater.

DS: The downturn hasn't proved totally negative. Some landlords and tenants think the toolkit is about spending money this year on doing something. It isn't. It involves measuring and managing buildings more effectively to save money, and then perhaps looking at options to spend money to save even more. We want to work with our tenants, especially during the downturn, so as to retain those we have and attract others. Tenants need to understand that, by together running the building more efficiently, we will both save money. It's an issue of timing, complexity and lack of understanding.

KB: Some organisations shy away from raising green leases or MoUs with potential occupiers for fear of driving them away.

But both parties can save money by doing things jointly. We still need to overcome significant barriers, such as breaking down the adversarial relationship between owners and occupiers.

MK: Take-up has been disappointing nationally. A straw poll of heads of office agency in our regional network found that some had never seen the toolkit. This may not be indicative of that entire local market, but it's a strong indicator.

We must get letting agents on side and better inform them about the philosophy, aims and implementation of the toolkit and what the negotiations might involve. They have to understand that it isn't about landlords taking control and receiving benefits, while costs flow to the tenant.

KB: If you go back five years and talk to any letting agent about BREEAM, it would say: "I don't want to clutter up my particulars with this sustainability nonsense." Now they say: "Can you give me details that I can put into particulars on its sustainability credentials." The next

step is to convince agents that this will, as with BREEAM, save energy and money.

MK: The better agents are doing just that. It's good practice in terms of environmental opportunities and cost reduction. If agents can be shown that it will offer their tenant clients opportunities, I think they'll grasp the concept.

DS: That's when landlords will begin to use it. At the moment, my feeling is that BBP members are using it and occupiers generally don't want it. If it became a selling point for attracting tenants into buildings, every landlord would want it.

Question: Are parties beginning to look at green leases again now the market is picking up and the priority isn't solely to survive the downturn?

KB: One difficulty is in allocating resources to this initiative when performance is the key driver. People are asking how it will benefit them. That is the real issue, particularly when resources are tight and people are facing redundancy.

MK: Sustainability, whether from the occupier's or landlord's perspective,

should be about reducing risks and costs and not about adding costs in the hope of adding value. Immediate cash savings of the sort that can be made by knocking a few pence off the rent may not materialise but, none the less, there will be long-term benefits.

KB: That's the approach to take. It may sound obvious, but agents should advise owners to allocate resources to this. In a difficult market, it represents a compelling package, a way of reducing risk and improving the tenant retention rate because of the possibility of reducing service charges. But it's still not quite there.

Question: There are some excellent examples of green leasing at the upper end of the market; is one of the key battles trying to gain traction at the lower end?

SC: One issue is that tenants that are more likely to have a strong CSR policy are the Marks & Spencers of this world. On the whole, they can control the energy consumption in their buildings and don't need to interact with the landlord to do so. We are therefore necessarily focusing on tenants in multi-occupied buildings that can't control their energy consumption without their landlord's intervention.

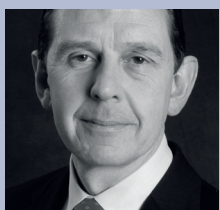
DS: The toolkit is most relevant to multi-tenanted buildings, where the landlord shares control. However, those buildings, and especially offices, are occupied by corporate occupiers with CSR policies that would like to be greener. They want their landlords to help them, and it can be very frustrating if they're unable to obtain data from the landlord.

KB: A recent example concerned a multi-tenanted office building, where the occupier had rejected the general co-operation clause, including the ability to install check meters. The occupier perceived itself as being a high-energy user and preferred the energy to be split on a square metre basis because it felt that it would be better off. How do you overcome these types of issues?

BC: You almost need a "myth-buster".

KB: One of our major high street retailers was interested in monthly rents. Hermes's position is that monthly rents are fine as long as the tenant agrees to green lease clauses. The retailer said: "Well in that case we'll forget monthly rents." If you look at this occupier's website and click under its CSR policy, it says: "We will work to

THE PANEL



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actively reduce the impact of our business on the natural environment.”

BC: It's about connecting these elements. What would happen if the lawyer in that example went onto a company's website and ran off a copy of its CSR policy and e-mailed it to the other side? Making the connection between those responsible for CSR policy and those negotiating leases would change the latter's perspective.

MK: There's a disjoint between property decision-making and corporate policy decision-making.

BC: One of the main issues is retail, because it's the biggest overall group that isn't signing up to green leases or MoUs. But retailers have policies on improving their environmental performance or reducing their carbon footprints.

KB: Retailing has so many stakeholders and although CSR and sustainability policies on retailers' websites are great, the message doesn't seem to be filtering down.

MK: There's willingness but a lack of knowledge on what to do. When you take organisations through the individual clauses of the toolkit, it becomes clear. What also helps is for the shop manager to have a demonstration of existing projects.

Question: What effect will CRC have on the market and what will encourage parties to think about green leases?

DS: It gives landlords of multi-tenanted buildings, where typically they purchase the energy, an incentive to reduce energy consumption and carbon emissions because those emissions are theirs and will determine their league table position.

BC: The toolkit might help a number of landlords, given the lack of consensus on CRC clauses. The debate is continuing (see p99). Sensibly, if we can't agree on CRC clauses we can agree on saving energy because that reduces costs and CRC exposure. I hope that in a year, a far higher number of green leases or MoUs will exist.

DS: That ties in with the resourcing issue. From a landlord's perspective, it's hard to build a business case for spending time on green leases. Any money saving will often be for the tenant; although that helps us to

retain or attract tenants, it's difficult to obtain data in support of it.

KB: Many organisations don't understand CRC and how it will affect them. It's an opportunity to use an MoU and agree a non-legally binding document that enables parties to save energy in their building.

SC: Tenants are worried about CRC in case the cost gets passed on. Until CRC, you could say that there was no hidden agenda for the landlord. Will tenants now be suspicious when landlords want to start measuring data and put in meters? Are they in fact lining up a way of passing down CRC costs to tenants?

MK: They are, but I don't think that's inappropriate. It's at the heart of the polluter pays principle.

KB: The feedback from the BPF-sponsored workshop and consultation on CRC (see p96) showed that a significant number of occupiers agree to cost sharing as long as it is "fair and reasonable".

BC: The problem is that until the CRC clauses get tested, you won't know what fair and reasonable is. The beauty of the MoU is that because you're working together, you can agree what the term means. People have greater control because it's a consensual approach.

MK: A year down the line, we will see a change. CRC might have kick-started it, in terms of the number of green leases being put into place. I hope that will lead to a broader consensus of what green is, away from carbon and into water and waste and all the other things that are appropriate.

Question: Are the toolkit's standard clauses being incorporated into leases?

SC: When I do see green lease clauses, they are often identifiable by reference to the toolkit. There may be slight tweaks, but the toolkit clauses were meant to be used that way, almost as a no-brainer. They're not controversial; they're light green. If we went darker, it would be difficult to have that standard drafting.

BC: When we drafted them, we incorporated footnotes saying that if you are more ambitious, here's what you might think about. As the industry develops, the

more ambitious version may be referred to, but we started off with light green clauses to encourage a standard.

KB: Clauses are generally non-contentious, but cost apportionment is a concern to tenants. The toolkit deliberately doesn't touch on this issue as other lease provisions normally cover this point.

Question: What are your priorities for the toolkit over the next 12 months?

KB: Continuing to overcome the historic adversarial problem. We won't have cracked it in 12 months, but it's a war of attrition. The key is to change the perception from burden to benefit. If that occurs, we will have made real progress.

SC: To see a greater take-up. A key thing is education, particularly among agents, which weren't represented in our group. We also want to be able to demonstrate cost-savings and promote successes.

MK: Educating colleagues and the surveying community – not just letting agents. In 12 months, I'd like to have helped a number of clients – particularly occupiers – to see the benefits of entering into green lease clauses with landlords. I hope for a change in government demands for green lease clauses. If that doesn't happen, we could be waiting for another 12 months. I'd also like to collaborate with groups such as Real Service, to make service charge arrangements more transparent in terms of a green schedule on costs, which the toolkit suggests is best practice.

DS: To date, efforts have focused on incorporating these clauses into a lease or signing an MoU and ticking boxes in it. Benefits will accrue in the implementation phase, including creating building management committees and environmental management plans that detail topics – energy, water, waste etc – and identify how to measure, manage and improve these. The BBP plans to develop a template environmental management plan that can be tailored to each building.

BC: It's about turning this from a burden to an opportunity. PLC will contribute by demystifying the law and putting new market practices into a practical framework.