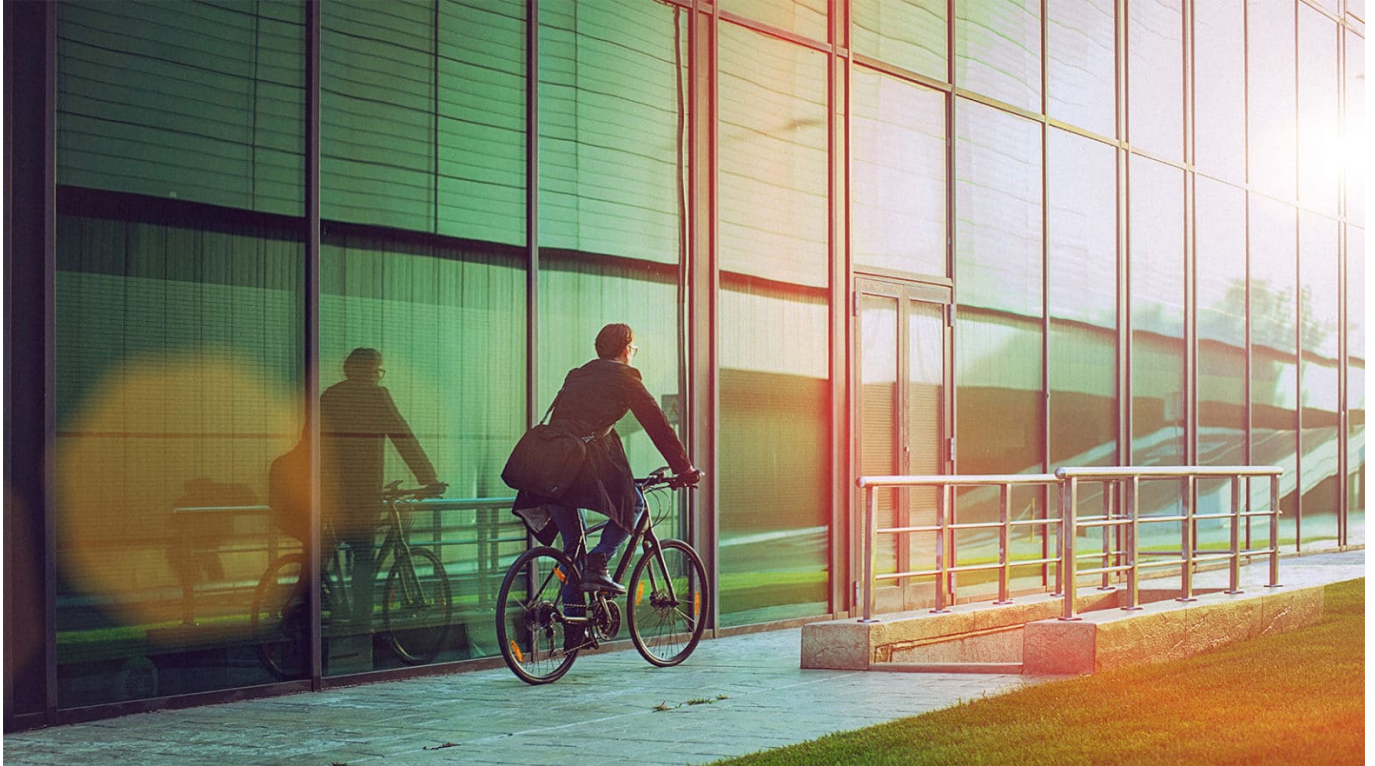


Expressions of intent are not enough to solve the climate crisis: green leases and binding obligations



The news cycle in the latter half of 2021 consisted of the two C's – COVID19 and COP26.

COP26 may have faded into the background whilst COVID headlines remain prevalent; but the climate crisis is a situation that the world continues to grapple with and all elements of societies are reconsidering their impact on people and the planet.

Old buildings, new standards

In terms of the real estate world, many corporate occupiers and institutional landlords are looking at their property assets and realising they have a big part to play in responding to the climate crisis and protecting their assets from climate risk. But the built environment, which makes up a large percentage of any institutional portfolio is just that – already built.

Are initiatives like green lease clauses and rising energy efficiency standards going to have a meaningful impact on existing and often outdated buildings?

Energy efficiencies and net zero targets are easier to achieve in new buildings. But what about in an existing building where, for example, a corporate occupier is looking for a short-term letting of say six years? In this commonly seen case, the incentive on either party to reduce the environmental impact on a short-term letting is questionable and it is unclear who will bear the costs.



How do we incentivise energy standards through leases?

The starting point is an acknowledgement from both parties that they wish to cooperate on the environmental performance of the building. We have seen many such statements in leases in recent years, at the very least, they acknowledge the environmental impact of the building and that its energy usage and operational carbon emissions should be minimised.

In recent years, we have seen many corporate occupiers asking for environmental statements in their leases due to pressure from their boards and shareholders. But is an acknowledgement that the property owner will “where possible” use an energy efficient supplier, for example, really going to cut it? This is an ‘expression of intent’ and one that some owners will not want to have as a binding obligation in the lease.

Acting as partners for environmental gains

The potential ‘watering down’ of any environmental commitment begins at the first stage of negotiations. This is particularly challenging in multi-let buildings. How can a landlord be beholden to all of their tenants’ different ‘green’ requirements? But yet what is clear, is that owners and occupiers are increasingly taking such clauses more seriously.

Many property owners are aware of their current obligations in relation to the minimum energy efficiency standards ([MEES Energy Efficiency \(Private Rented Property\)\(England and Wales\) Regulations 2015](#)) and the proposed countdown to even greater energy efficiency standards outlined in the [non-domestic Private Rented Sector consultation paper](#). In terms of improving the energy efficiency of buildings, these regulations fall very much on the shoulders of the owner.

What can we do to broaden the remit for occupiers to minimise their operational carbon emissions and contribute to the energy efficiency of buildings? The scope for change is limited where, for example, occupiers have an internal-only demise of part. Prohibitions on structural alterations mean that occupiers cannot carry out alterations that may help reduce carbon emissions. When occupying a whole building (with a full structural demise), there is more scope for occupiers to be able to carry out alterations that can limit their carbon emissions but landlord’s consent can still sometimes be required for such works.

So, meaningful partnerships are the key. Owners and occupiers need to share common objectives in relation to environmental performance. To carry out energy efficient improvements on older buildings, some element of structural work is often required which owners and occupiers must work on together to consent and conduct.

The future of the green lease

Current leases do contain general provisions with both parties agreeing to work together to improve environmental performance. We think such clauses will have to go further than ‘expressions of intent’ if any meaningful change is to happen.

Sharing of information, a willingness to cooperate and a firming up of intent will help. For example, many technologies have come to market to help owners and occupiers share data about the environmental performance of the building, service providers’ environmental credentials, heating and cooling information, lighting information, net zero initiatives, all of which need to be considered by both parties.

Green lease provisions and some landlord lenders with green lending covenants may also assist, but most of us who have been involved in negotiating green lease provisions know that they form a very small part of any lease. In the future, such provisions may have to take more of a centre-stage role. These intentions now need to be



binding legal obligations. Corporate social responsibility for one thing now demands it, MEES requires it and the planet needs it.

How we can help

If you are negotiating a lease with green requirements and need expert legal advice, please contact our [real estate](#) team.



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Partner