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Commercial Property Leases Stunt Carbon Reduction Drive

Traditional commercial property leases prevent businesses meeting government set carbon reduction targets because they actively work against sustainability measures, reports a leading independent building and property consultancy.

According to Tuffin Ferraby Taylor (TFT), who advise some of the UK's biggest commercial property owners, investors and occupiers, the standard FRI (Full Repairing & Insuring) lease is feudal, archaic and restrains both the landlord and tenant from carrying out improvements on buildings to make them more sustainable.

The firm also believes that the UK needs to follow the lead set by Australia and Canada in modifying the old English lease format to a green alternative, in order for businesses to stand any chance of meeting the 2020 target of reducing carbon emissions from existing building stock.

Matthew Lown, TFT's Sustainability Partner, says: "Leases have changed very little over the last century and we are now in a situation where they have become outdated by the need to address global warming. This is something that has been recognised overseas and the UK must follow suit. A standard lease generally removes a landlord's right to carry out major improvements on a building whilst at the same time punishes a tenant who takes the initiative."

In a standard lease the presence of a yielding up clause means that a tenant is obliged to leave the property as they took it, which means they must remove any alterations made during their occupation, at their own expense. Lown states that a 'green lease' includes the mechanism to allow a landlord or tenant to make any agreed sustainable improvements by removing the barriers and achieving financial incentives for both parties. He says: "The biggest incentive for tenants to become more sustainable is to save money on energy bills, but major changes such as installing alternative energy sources are unlikely to start paying for themselves during a lease term. The nature of business and property occupation today means that it is unlikely that a tenant will be in place for long enough to make all their money back, so the lease needs to acknowledge this by sharing the financial burden with the landlord, who will benefit from added value to the property in both resale and rent increases for future tenants."

With new eco-technology being constantly developed, it is impossible to predict what will be available in even five to ten years' time. "A lease needs to take this in to consideration and enable parties to adapt to future developments," says Lown.

Removing conflict

Traditional leases tend to breed conflict, with landlords having the power to refuse to allow tenants to make any alterations to a building. The Disability Discrimination Act 2005 included a clause that stops landlords having the power to refuse a tenant's application to make improvements to increase accessibility to a building in line with the regulations, but this arrangement still results in a conflict situation. A green lease facilitates collaboration, enabling an amicable and pragmatic approach to meeting sustainable regulations such as the government's Carbon Reduction Commitment scheme.

As for existing leases, once it has been signed, the wording of a lease is set for the duration of the term. However, there is nothing to prevent the landlord and tenant removing the shackles by drawing up side agreements to address sustainability opportunities.

Detailed audits and feasibility reviews of buildings prior to a green lease being drafted will help highlight areas in which a property can be made more sustainable and allow for environmental issues to be embedded in the long term management plan for a building.

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Notes for editor

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With over 30 years in the property business, in both the private and public sector, TFT has unrivalled expertise, experience and enthusiasm in providing appropriate services for all types of property and on projects of all sizes. Our partners are considered experts in their field, held in high regard by colleagues and competitors alike and are **available to provide expert comment to the media** on a variety of property issues.

Established in 1973 the practice has grown to be one of the largest independent practices of its kind in the UK. TFT has 120 partners and staff operating from a network of regional offices in Birmingham, Bristol, Cardiff, Kingston-upon-Thames and London.