

Property Journal

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JUNE 2022 –
AUGUST 2022

RICS JOURNALS

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How can green leases help achieve net zero?

PROPERTY JOURNAL

First published 24 June 2022



As energy efficiency requirements for commercial buildings become more stringent, green leases may offer one way to help landlords and tenants collaborate in decarbonising their consumption

By Laurence Lacey

The UK has set a target to be net-zero carbon by 2050. However, as the government stated in its 2020 white paper [Powering our net zero future](#), 'simply setting the target is not enough – we need to achieve it'.

The white paper includes the prime minister's ten-point plan to meet that target. In terms of the landlord and tenant relationship in particular, it includes a requirement for landlords to make buildings more energy efficient. But it also covers zero-emission vehicles, green public transport, cycling and walking, which can affect the services landlords offer to attract tenants.

A landlord will also have important choices to make about the building's source of energy. Many tenants will be subject to their own carbon reduction and energy efficiency requirements as well, and achieving these is often a prerequisite for large-scale public-sector and other procurement processes. The importance of these measures cannot therefore be overstated.

The white paper confirms the government's intention that non-domestic property should achieve an energy performance certificate (EPC) rating of B by 2030, where this is cost effective. The minimum rating is currently E for new lettings, with a requirement that all lettings achieve this by April next year. The government proposes an interim target of a C rating by 2027.

Who is responsible for energy efficiency?

The [Minimum Energy Efficiency Standards](#) have proved problematic for landlords because they are enforced by making it unlawful to let a substandard property – with limited exceptions – but require no input from tenants. Placing the responsibility for the energy efficiency of buildings on landlords alone is unhelpful. Net-zero carbon will not be achieved without the involvement of all parties.

Green leases that permit beneficial alterations may be a means of improving environmental performance while attracting potential occupiers to the site

A green lease may therefore be a means of improving energy efficiency. But the question is whether it can do so without making landlords feel they still shoulder the burden where tenants object to such measures – which might include more efficient ventilation systems, retrofitted renewable energy installations, improved insulation, glazing or electric vehicle charging points – forming part of service charges.

The [Better Buildings Partnership Green Lease Toolkit](#) describes such a lease as ‘a standard form lease with additional clauses included [that] provide for the management and improvement of the environmental performance of a building by owner and occupiers’. To date, those obligations have generally been included on the basis that they are not binding; rather, they invite the parties to discuss what might be done.

This approach might help as a demonstration of the intent to cooperate and consult when it comes to some small steps such as lighting, increased cycle rack provision or measures to reduce water consumption, but meeting the government’s timetable will need more radical action. Lease renewals and new grants in the next few years will have to take account of the steep increase in the minimum energy rating.

The solution may lie in green leases that bring together a number of different but interrelated objectives, including the need for tenants and landlords alike to:

- reduce energy use and improve energy efficiency
- provide workspaces that are attractive to employees
- to have good environmental, social and governance (ESG) credentials.

With the built environment estimated to be responsible for around 40% of global carbon emissions, RICS is [championing sustainable practices](#) across the built and natural environment. We are also empowering professionals to embed sustainability considerations into the way they work and better measure environmental impacts.

Retail leases present distinct issues

In some sectors, such as retail, the average length of lease can deter investment by the landlord, as tenants may not be staying long enough to consider contributing to meeting costs. The high street is, however, changing as retail space shrinks and residential or mixed uses replace it.

Even where retail remains, shoppers are looking for a different experience. This gives landlords and tenants an opportunity to reconsider how the premises are used sustainably. For instance, many existing green leases require the parties to share information about energy use. Smart meters and similar technology now mean landlords can collect real-time data on use more easily, and new forms of lease can reflect this. Change is afoot and the opportunity to get ahead of the curve by addressing these issues and reflecting them in more progressive lease wording is more likely in the future to be a key part of a tenant's decision-making as to which premises it chooses.

With the higher minimum being required from 2027, tenants will also need to consider the impact of their shop fit-out on the EPC rating of a property. Lighting for instance can significantly increase energy use and, in popular locations where there is significant competition for space, tenants may find that they must demonstrate their commitment to ensuring a property remains efficient right at the outset, in order to secure their preferred premises.

Rising prices inspire action

In addition to public pressure for businesses to exhibit their green credentials, recent developments such as the sharp increases in energy costs may mean tenants take a more hands-on approach to energy efficiency.

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**What to expect when
procuring Passivhaus homes**

By Andrew Kubski MRICS

In its white paper, the government reiterates the need to move away from using fossil fuels and, as consumers, tenants will need to consider how to work with the landlord to manage that transition cost-effectively. This will require cooperation, including sharing the cost of measures that help reduce bills.

Out-of-town sites will need to respond to the transport requirements of the ten-point plan. Landlords can provide additional services such as charging points for electric vehicles, but tenants might also take advantage of government incentives to install these for their employees.

Traditionally, leases keep a tight rein on changes to the building. However, green leases that permit beneficial alterations may be a means of improving environmental performance while attracting potential occupiers to the site.

The government intends that the target for net zero will also be an opportunity to stimulate growth and jobs alike. Green leases now need to enable greater collaboration between landlords and tenants. This should be supported by covenants, rather than promises, to provide space for existing businesses as well as those that the government hopes will emerge in the course of meeting the net-zero goal.

There will only be more mandatory requirements over time, so engagement with these issues now is more important than ever.

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Middle East: fertile ground for green finance

PROPERTY JOURNAL

First published 19 August 2022



With clearer and more supportive legislation in the Middle East, the real-estate sector would be able to take advantage of the growing market for green finance

By Rosie Rich and Katarina
Uherova Hasbani

Green financing in the Middle East is [growing](#) at an exponential rate, with sustainability-linked debt issuance in the region reaching an all-time high of \$6.4bn in 2022.

Governments and financial institutions in the Middle East consider environmental, social and governance (ESG) metrics and sustainable development to be key criteria for investment. However, governments must develop more transparent frameworks and regulations to support the acceleration of private green financing in the real-estate sector.

The global ambition to mitigate climate change has increased demand for green investment opportunities, particularly in the real-estate market and built environment. Green financing has thus increased by a factor of more than 200 in the past decade, with [global issuance of green bonds](#) up from \$2.3bn in 2012 to \$511.5bn in 2021.

Leading investors such as BlackRock, Goldman Sachs and Blackstone have said that ESG considerations are going to be key to their investments in future. Demand for green financing and lending to improve buildings' ESG performance in real estate is high across the globe, but especially in the Middle East.

The growth in green finance in the region is being driven by several factors. Local governments understand the need to diversify into new, expanding pockets of future economic opportunity, such as those presented by sustainability and green initiatives. Likewise, investors in the region are seeking ways to diversify their portfolios into these areas. There is growing demand from clients, too, for ways to implement sustainable and green approaches across their physical assets, whether existing or planned.

For example, the Masdar Green real-estate investment trust is enabling development of [sustainable assets](#) by issuing green bonds to support the future expansion of Masdar City.

The Middle East could [unlock \\$2tr in green economic growth](#) across the Gulf Cooperation Council up to 2030. Moreover, [research](#) suggests that nearly all the key financing mechanisms and policy measures that promote and support climate-compatible development are being led by the United Arab Emirates (UAE).

Demand for green financing and lending to improve buildings' ESG performance in real estate is high across the globe, but especially in the Middle East

States must support green finance growth

Although the private sector has increased its involvement in green financing in recent years, governments must overcome a number of key challenges to support more sustainable real estate. As well as creating incentives, they could start by clarifying regulations that at present inhibit the development of green financial instruments.

The lack of harmonised sustainable finance rules is clearly an obstacle to development in this regard, as is the absence of guiding principles at an international level such as global climate finance definitions. International standards in this area could accelerate progress and support local governments to facilitate green financing in the Middle East and North Africa (MENA) region.

Governments in the region must together support financial institutions as they create new markets for sustainable products and services, which include:

- green deposits
- green mortgages
- green bonds and Shariah-compliant financial certificates, known as sukuk
- green loans
- green insurance to support possible future carbon-based financial and/or regulatory mechanisms.

At COP 26 in Glasgow last November, the UAE government's Sustainable Finance Working Group emphasised that, despite the unclear legislative context, work was under way on developing regulations relating to green finance in the country.

In this spirit, the Abu Dhabi Global Market issued a sustainable finance declaration, which envisages promoting and increasing the quality and depth of such finance in the Emirati capital to create a prosperous market as part of a global community of banks.

Governments
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financing in the
real-estate sector

Banks take lead in sustainable real estate

Governments can work with private organisations to accelerate and promote green financing in the real-estate sector. There are several examples of private organisations leading the way.

- In 2022, the UAE launched the first sustainable real-estate investment trust fund, which is being led by Masdar in partnership with Emirates National Bank of Dubai. This scheme aims to provide an opportunity to invest in a diverse portfolio of sustainable real-estate options, including existing properties in and future proposed properties within Masdar City, Abu Dhabi.
- Aldar Properties has partnered with HSBC to launch a sustainability-linked loan, which will be the first of its kind in the Middle East. The loan consists of 300m dirham (\$81.5m) over a five-year period, a facility that links interest margins to be paid by achieving sustainability targets with ESG initiatives covering energy and water intensity, waste recycling and worker welfare.
- First Abu Dhabi Bank (FAB) was the earliest in the Middle East to commit to \$10bn of loans and investments in sustainable projects over a ten-year period. FAB is one of the few financial institutions in the MENA region that issues green bonds, with a total of \$587m in the Middle East alone.
- A number of projects in Saudi Arabia are being supported by green finance from private investment organisations, including the development of the renewable energy pipeline, the Sudair solar power project and the construction of new hotels in the Red Sea region.

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ESG rises up the agenda in Hong Kong

By Tom Parker MRICS

Furthermore, the international Standard Chartered Bank provides green financing in the Middle East, and has invested \$40bn for sustainable project financing services, including:

- \$600m in green sukuk with MAF Sukuk Ltd
- \$2bn in revolving credit facilities with DP World, which was the first green loan in the Middle East
- \$561 million in financing with Shuaa Energy for a vast solar park in Dubai
- a structured \$600m sustainability-linked transition sukuk for Etihad Airways, which was the first of its kind in the region.

Real estate in the Middle East is in a transition that will see exponential growth in sustainable finance. With additional government support, sustainability will quickly become a permanent and significant fixture of financing in the region – a direction that will benefit the sector's entire value chain as well as its users.

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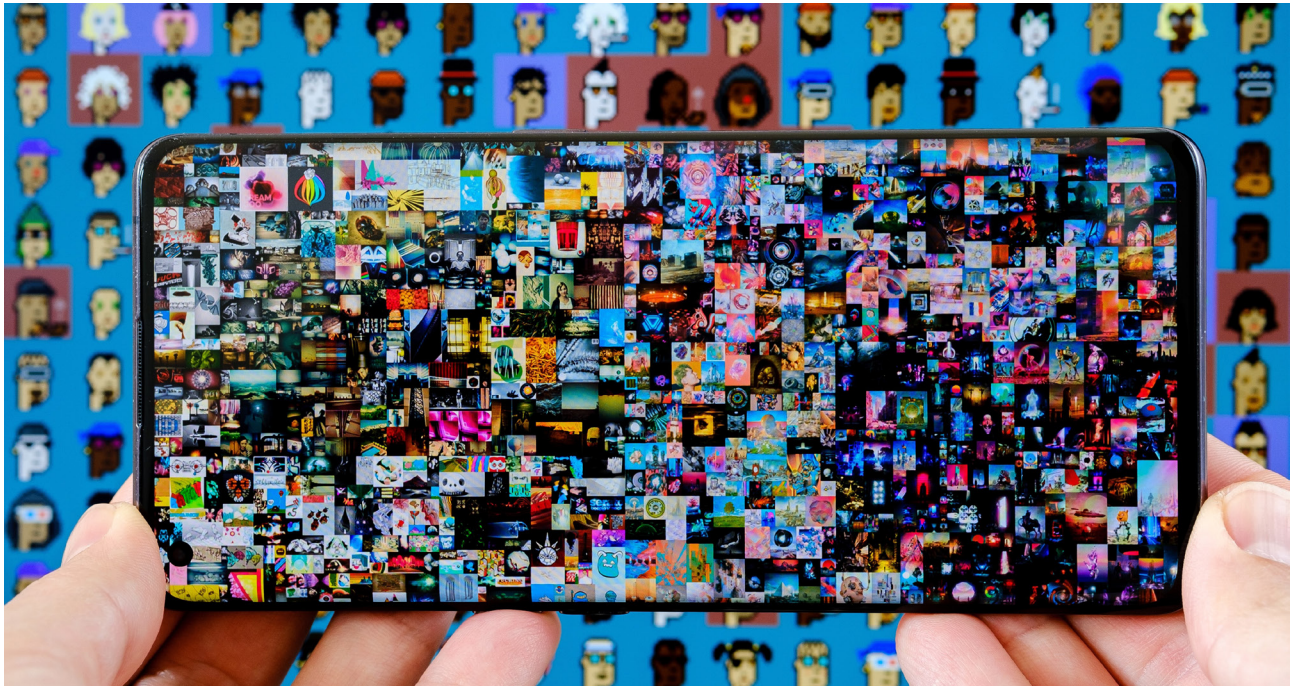
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Art market transformed by shifting boundaries

PROPERTY JOURNAL
First published 15 July 2022



A pandemic, the proliferation of the ultra wealthy and the rise of NFTs are reconfiguring the art market. What is the significance of these changes, and how do they affect valuers?

By Courtney Ahlstrom Christy

Historically slow to adapt, the art market is experiencing more online sales, blurred boundaries between galleries and auctions, a widening gap between the top and middle tiers of the market, and the pioneering frontier of crypto art.

Traditionally, the sector tended to be categorised into primary, secondary and wholesale markets. The primary market is where an item appears for the first time, such as at a gallery or directly for sale by the artist; the secondary where a previously owned piece appears for resale, such as at an auction house, another gallery, or by other forms of consignment; while the wholesale market is where a work is offered for sale to those who work in the trade, often at a significant discount.

Yet these traditional levels of the market may now be better termed spaces, as the means by which sellers and venues operate are increasingly overlapping. Economists are increasingly interested in where these transactions now occur, most notably in-person and digital transactions.

For instance, what does it cost to operate in these spheres? The seller may pay commission for an online listing to a third-party platform such as [Artsy](#). For an in-person sale at [Art Basel](#), meanwhile, the dealer has the booth fee and travel costs.

With the market experiencing so much transformation, sellers must adapt rapidly to stay viable, and often engage in multiple spaces simultaneously. This evolution affects the way that valuers analyse the market.

Lines between auctions and galleries blur

Unlike other assets, fine art's behaviour is not easily quantified. After all, its currency is not only monetary; it also confers prestige and has emotional associations. To own a work of art is to possess a powerful signifier of identity. This makes analysing the market a problematic endeavour.

In general, the art world is minimally regulated by national and international law

There is an additional challenge in that access to private sales data is rarely given to those outside the art world. Exclusive networks within the trade rely heavily on word of mouth to compare values and sale prices, let alone comprehend the surrounding terms and conditions. When it comes to auction sales, even supposedly public records are not necessarily reported correctly or vetted by a reliable source. Neither are they obliged to disclose behind-the-scenes guarantees.

In general, the art world is minimally regulated by national and international law, with no uniform requirements for documenting transactions. The parties involved and arrangements made for a particular sale often remain unknown, allowing ample opportunity for manipulation and crime. Since determination of price varies by seller, object and negotiation, due diligence tends to be the responsibility of the buyer, many of whom choose to trust reputation rather than independent investigation.

Because high-end art continues to increase in value as a capital asset, some countries have proposed legislation to allow more oversight. However, these policy proposals rarely become law, because [legislators view illicit art activity as negligible](#) when compared to wrongdoings in other sectors.

This obscurity becomes murkier still due to the confluence of sales strategies by dealers and auctioneers: they nurture long-term relationships with collectors by becoming a one-stop shop for all their art needs, offering advisory services and enabling the transport of acquisitions.

In addition, gallerists and auction houses alike engage in public and private sales. Conventionally, galleries were the ones who dealt in private sales, while auction houses devoted themselves to public lots. Yet for decades now they have been venturing on to each other's terrain.

These days, auction houses are involved in all parts of the market, giving third-party guarantees, conducting private sales, providing advice, and offering works that are appearing for sale for the first time.

Meanwhile, galleries borrow from the auction playbook by creating a sense of urgency to buy at time-sensitive events. Art fairs and pop-ups add a theatrical element that buyers crave as part of their collecting experience. Websites also offer virtual booths for dealers and auctioneers. Platforms such as [1stDibs](#) now have auction channels on their websites, allowing dealers to participate with fewer intermediaries.

Shifting network of relationships

Along with this hybridisation between auction and retail, consolidation is another trend. Many gallerists have joined forces, such as the [consortium LGDR](#) in New York. Auction houses are also partnering; UK-based Bonhams recently acquired [Skinner in Boston](#), and [Artnet and Chinese auction house Poly](#) are working together to put on a special sale this summer.

Despite consolidations of former competitors, a small number of top-tier auctioneers and dealers continue to dominate the market. At auction, the big three remain Sotheby's, Christie's and Phillips. Galleries have also seen the rise of the mega dealer, whose business comprises several international outposts where they represent living artists as well as broker secondary sales. [Larry Gagosian](#) perfectly embodies the idea of the mega dealer.

The big three and their consolidated competition all aim to leverage international networks and place specialists strategically in cities with major art markets. But they know they need each other to exist, creating cooperative yet competitive relationships.

The wealth spent
in the upper tier of
the art market is
at the expense of a
squeezed middle

A recent demonstration of this was [Gagosian's record-breaking bid](#) at Christie's for Andy Warhol's Shot Sage Blue Marilyn for \$195m. The price achieved made it the most expensive 20th-century artwork to sell at auction.

His winning bid was certainly a boon to Christie's, as the piece was the second most pricey artwork sold by the house. It also benefited Gagosian's status as the pre-eminent dealer in the world today, and there was significant [press coverage](#) of the purchase.

Blurring also happens in the form of crossovers with other markets – notably luxury goods, financial services, and blockchain technology. The financial sector has long wooed the art world and attempted to convert art into a more trackable asset that can be monitored as if it were a stock option. However, it may be that the emerging market for crypto art – discussed below – that finally enables the desired commodification.

Meanwhile, living artists have with the help of gallery representation collaborated with luxury goods manufacturers to attract buyers' attention. Louis Vuitton has set the trend for merging high-end fashion with blue-chip art, offering [exclusive handbags](#) designed by artists such as Yayoi Kusama and Jeff Koons.

Contemporary and crypto art focus interest

While cultural differences may affect purchases made by high-net-worth (HNW) individuals, they seem to agree on collecting a specific roll-call of contemporary artists.

The simplest reason for this is supply. Unlike the previously top-performing category of works by modern and impressionist artists, which are necessarily limited in number, contemporary art is abundant. With more buyers willing to spend significant money, a wider net must be cast. Sellers enjoy contemporary works because they can choose from a plethora of artists to promote and showcase simultaneously at auctions and galleries, therefore raising resale prices rapidly.

However, the intense promotion of a specific subset of contemporary artists, sometimes referred to as blue chip, has caused several problems. It can negatively affect living artists whose auction values exceed their gallery prices: their status can skyrocket from mid-career only to plummet within a few years when they are no longer a hot commodity.

It also reflects that the wealth spent in the upper tier of the art market is at the expense of a squeezed middle. Most of what might be considered historical art, created before 1900, tends to languish in comparison to astronomical prices commanded by their contemporary counterparts. The growing number of ultra-HNW individuals with a homogenous collecting style and the sudden arrival of crypto art exacerbate this polarisation.

Crypto art, best recognised in the form of non-fungible tokens (NFTs), is changing the rules. The watershed moment was the Christie's sale of [Everydays — The First 5000 Days by Beeple](#), which ushered in NFTs as a type of art media that won't be ignored. The sale of this work at auction helped legitimise NFTs in the art market; it also attracted a new set of potential buyers who are more closely associated with cryptocurrency and comfortable with speculative buying.

While the NFT category is more volatile and will take time to settle, it has prompted the art market to consider seriously what is on the horizon. Who will be the leaders of crypto art platforms? Will those more used to the traditional market make the leap? The champions will likely become digital ambassadors to the art world. In the meantime, top-tier auction houses and mega dealers contend to become titans in NFT sales.

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Researching fine art in the digital era

By Aubrey Catrone

How changes affect art valuations

It's no longer enough to describe a sale as taking place at retail or auction. Did the artwork list for different asking prices, according to the venue? Did an auctioned lot meet the hammer price due to a private guarantee? Context is critical when reviewing comparable sales.

In addition to being connoisseurs, professionals must stay abreast of technology – both as a medium for and as a mode of selling art. To do so, they can read reputable, market-specific news outlets, especially on topics of technology, finance and crypto art. They can also become involved in communities that discuss new media art, whether it be a LinkedIn group or a Clubhouse chatroom, or attend presentations by those involved in art-tech ventures.

The valuer's job is made tougher by the speed of change, combined with a lack of access to verifiable data. Transparency and regulation lag behind the shift from market levels to spaces, despite the increased financialisation of fine art. With reliable records scarce in an already tight-lipped community, discovering the factual circumstances behind sales is a difficulty that appraisers face daily.

The best strategy is to communicate specific findings and challenges encountered. The more explanation that is provided about the dynamics of a particular fine art category, the more resilient the valuation analysis will be.

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NI developers should prepare for new section 76

PROPERTY JOURNAL

First published 8 August 2022



More stringent affordable and social housing requirements are set to take effect in Northern Ireland next year – but housebuilders that are ready will be able to exploit significant demand

By Chris Bryson AssocRICS
and Drew Nesbitt

As Northern Ireland's housing market matures, new local development plans are being rolled out across its 11 council areas – leading to a substantial increase in the use of section 76 agreements under the [Planning Act \(Northern Ireland\) 2011](#). The policy is essentially Northern Ireland's version of section 106 agreements in England but is far less frequently used.

However, following the preparation of new local development plans across all 11 boroughs, housebuilders and developers in Northern Ireland will see a substantial increase in its use when it comes into full force next year.

Under the emerging Plan Strategy policies prepared by each council, housebuilders and developers will have to provide affordable and social housing once their proposals meet or exceed a certain threshold.

While the move is arguably positive for lower-income families, key workers and first-time buyers, it poses problems for housebuilders and developers, which will need to consider section 76 before moving ahead with new developments.

The new policy could have a significant impact on the housing market – potentially even increasing existing schemes and costs by up to 20%. Housebuilders and developers will therefore ask whether it's the homebuyers or they themselves that will have to foot the bill.

What the affordable housing targets mean

When the updated policy comes into full force next year, each council in Northern Ireland will set their own requirements and thresholds. However, it is predicted that they will operate in a similar way to Belfast City Council's Policy [HOU5: Affordable housing](#).

This states that any development with more than five units will need a planning agreement where 20% are social or affordable housing. The aim is to offer more opportunities to families, key workers, first-time buyers and those on lower incomes.

HOU5 guidelines also state that affordable housing must be provided as part of mixed-tenure development, integrated with general needs and not readily distinguished in terms of external design, materials or finishes.

Developers have several options for providing affordable housing, which will be agreed with the local authority. This can include shared ownership, renting to own, help-to-buy loans, affordable rent, and discount market sales. Importantly, developers must secure affordable and social housing by way of section 76 in advance if they are to obtain planning permission.

Where developers can demonstrate that it's not suitable or viable to meet the policy in full, the council will consider appropriate alternatives on a case-by-case basis.

Larger housebuilders may already be familiar with meeting similar guidelines and financial commitments to the council. The pressure will therefore be likely to fall on smaller and mid-size developers, which will feel the squeeze because they haven't previously had to consider factors such as affordable housing costs.

How current schemes are being affected

Although section 76 will not come into full effect until next year, some developers are experiencing pressure from local authorities to meet their requirements – especially in Belfast, where the council is already exercising it as a draft policy.

In fact, any housebuilder or developer of any residential scheme needs to be aware of the changes, so that it can be prepared for what these may entail. Those in the process of planning or submitting applications are likely to be assessed against the new affordable housing policy and have to meet section 76 requirements.

Having submitted their planning applications far in advance, some housebuilders are now having to reconsider these to comply with the new requirements. As a result, they can incur significant new costs – up to a six-figure increase in certain cases – prompting some to abandon their plans altogether.

The new policy could have a significant impact on the housing market – potentially even increasing existing schemes and costs by up to 20%

One ongoing example is the case of a developer that had to reduce the price of its social housing scheme due to the requirement to introduce a car club and free travel passes, which needed to be borne by the purchaser. These costs were introduced last minute and implemented through the planning agreement at a late stage.

The key message for housing professionals is to be aware of the changes and go back to the drawing board if necessary, so that they comply with the new requirements rather than experiencing delays or unpredicted fees.

Opportunity knocks for those prepared

By familiarising themselves with the policy and its implications, developers and housebuilders can ensure they meet the new criteria, factor in additional costs, and make the necessary plans.

Those developers and housebuilders that plan can take advantage of Northern Ireland's blossoming demand for housing, which is a result of more job opportunities and an influx of young, educated people who stayed home during the pandemic.

For instance, while in previous years graduates moved overseas, following pandemic-related restrictions there are now more remaining in Northern Ireland and settling in to the work-life balance it offers.

There are also now better career opportunities in Northern Ireland. Belfast in particular is gaining a global reputation as a cyber security hub, with the [Centre for Secure Information Technologies](#) now the largest cyber security centre in Europe.

The city is also a site of expansion for highly regarded global firms such as PwC. Furthermore, Belfast is due for significant investment from both of its major universities, which are revitalising the city with new student accommodation.

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Three changes to CPOs could unlock more housing

By Mike Kiely

Northern Ireland is a golden opportunity for housebuilders and developers – but only those who are prepared for section 76 can take full advantage of the growing housing demand.

Financial viability in planning

RICS provides key professional standards on planning, development and affordable housing.

Financial viability in planning: conduct and reporting

relates only to England, but will be of interest for practitioners in Northern Ireland as they start to grapple with the viability complexities of section 76 and affordable housing provision.

Additional RICS standards in this sector include:

- [Assessing viability in planning under the National Planning Policy Framework 2019 for England](#)
- [Land measurement for planning and development purposes](#)
- [Valuation of land for affordable housing](#)

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Related competencies include:

Development appraisals
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Preparing landlords for new Welsh legislation

PROPERTY JOURNAL

First published 25 July 2022



Implementation of the Renting Homes (Wales) Act 2016 has been put back until December to give residential landlords more time to ready themselves for the significant new obligations they face

By Rebecca Rees
and Bethan Gladwyn

Landlords and agents who own or manage residential property in Wales will be aware that housing law in the principality diverged from English legislation some years ago.

The divergence will become much more significant when the [Renting Homes \(Wales\) Act 2016](#) comes into force on 1 December. This follows a delay in implementation [announced](#) by minister Julie James in late May, in recognition of the significant preparation landlords have to make.

Act creates retrospective liabilities for landlords

Unlike the various Housing Acts (1980, 1985, 1988 and 1996), which only affected tenancies created after they came into force, the 2016 Act is retrospective. That is, with very few exceptions, all existing residential tenants and licensees in Wales will become 'occupation contract holders' on 1 December, and their contracts will be governed by the 2016 Act.

With somewhere approaching 500,000 residential tenancies in Wales, a significant proportion of the population will find their rights of tenure changing – largely in their favour. The 2016 Act will affect almost every aspect of residential property management, from creating the contract to bringing it to an end.

What also makes the act so significant is the effect of being unaware of its requirements, or overlooking the importance of observing its requirements strictly. Depending on exactly what they have overlooked or carried out incorrectly, landlords may find themselves unable to charge rent or regain possession of their property. They may also find that by overlooking a request for consent from a contract holder (for example) to add a new contract holder to the contract, or to make alterations to the property, they are deemed to have granted consent. They may also be ordered to pay compensation to contract holders if they have failed to provide the correct documents (in particular a statement of the terms of the contract) at the proper time. In short, landlords – or their agents – simply cannot afford to be unprepared.

Landlords will be obliged to give contract holders a correct and complete written statement of terms within 14 days of the contract holder going into occupation

Drawing up contracts and their terms

In referring to tenants and licensees as occupation contract holders, the act removes any distinction between a tenancy and licence. A contract may be a secure one, as will be the default for the social rented sector, and this will grant long-term security of tenure. Alternatively, a contract can be standard, which is the default for private sector landlords and is modelled on but by no means identical to an assured shorthold tenancy.

Landlords will be obliged to give contract holders a correct and complete written statement of terms within 14 days of the contract holder going into occupation (or within six months of 1 December for tenants and licensees who are already in situ). 'Correct' and 'complete' mean that it must accurately reflect the terms which are created by the 2016 Act and Regulations (unless modified by agreement, in which case they must also accurately reflect the modifications). In addition to the contract, the landlord must provide formal notification of their own address in prescribed form, as well as further formal notifications if they change address. A landlord who acquires a property with a contract holder in situ will need to serve formal notification of their address following acquisition.

For tenancies that are converting in December, landlords will have to prepare contracts carefully. These will need to set out accurately which terms of the tenancy survive the 2016 Act's implementation, and this will depend on assessing whether each term is inconsistent with its provisions. They will have six months from 1 December to provide the new contract.

Model contracts are available for use – they set out the terms which are prescribed by the 2016 Act and Regulations. It is unlikely that they can be used without amendment for existing occupiers (given the need to have something which 'fits' the existing agreement) but they can be used for new occupancies, and carry the assurance that the contract will be correct.

The 2016 Act is a wholesale, once-in-a-generation reform of residential landlord and tenant law in Wales

Deposit protection is also covered by the 2016 Act. While arrangements will be similar to the current provisions, landlords will need to ensure that the correct prescribed information is given (namely, information about where the deposit is protected and how the contract holder can access it at the end of the contract). Landlords will be unable to seek possession if they have not provided the contract and deposit information, or if the gas safety reports, electrical inspection condition report or energy performance certificate have not been given to the contract holder.

By and large, a standard contract will last for a minimum of 12 months. A landlord may not serve notice to end it within the first six months of occupation and, when they do serve it, it must be for a minimum of six months.

Under the 2016 Act, a landlord's repair obligation will be very similar to that which applies to current short-term lets (those under seven years). Section 92 requires landlords to keep the structure and exterior of their dwellings in repair and the service installations in dwellings in proper working order, much like the current obligation in section 11 of the [Landlord and Tenant Act 1985](#). However, a landlord will not be required to remedy a defect in design or construction, as is already the case under present legislation.

Legislation requires fitness for habitation

Section 91 of the 2016 Act creates a new requirement of fitness for human habitation, and while there are similarities to the English equivalent the legislation is not identical. Since 2019, there has been such a requirement in England (the [Homes \(Fitness for Habitation\) Act 2018](#) amended the *Landlord and Tenant Act 1985* for England only). However, the 2018 Act does not apply in Wales, where the current fitness obligation has only been enforceable if the rent is below £52 a year.

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Now, detailed [guidance](#) published by the Welsh government addresses the 29 hazards that will form part of an assessment of the property under the [Housing health and safety rating system](#) (HHSRS).

In determining whether a property is fit, attention must be paid to these hazards and anything else that might make the property unfit. For each of the 29, the guidance lists measures which may – but do not have to be – taken by a landlord to help ensure their property is fit.

The guidance clarifies that even if one of the hazards is present that does not necessarily make the entire property unfit. In each case a sensible assessment must be made of whether the dwelling is truly unfit as a result.

The example given in the guidance is a variation in floor surface. This may be considered a hazard under the HHSRS, but is highly unlikely on its own to result in a determination that the property is unfit.

The obligation will not require a landlord to undertake unreasonably expensive works either, and they must have been notified of the issue before being liable to do any work.

The regulations also create specific obligations, detailed in part 2 of the guidance, to install hardwired, interlinked smoke alarms on each storey of the property, and carbon monoxide alarms wherever there is a fuel-burning appliance. Landlords are also obliged to carry out electrical testing every five years.

Failure to comply with any one of those specific requirements will automatically render a property unfit. There will be a 12-month period of grace to provide smoke alarms and begin regular electrical testing for tenancies that are converting into occupation contracts under the 2016 Act. However, the grace period does not apply to any new tenancy after 1 December.

Landlords also need to be aware that the Regulations made under the 2016 Act provide that, if the contract holder reports a repair issue, then following an inspection the landlord must inform the contract holder in writing if work is required, if it is the landlord's responsibility and, if so, what work will be done and when. In fact, all documents and notices that are served under the 2016 Act must be in writing; this arguably applies to any correspondence related to works and inspections.

Contract holders' rights extended

The 2016 Act also covers a multitude of other issues. For instance, it creates rights for contract holders to seek consent to add a new, joint contract holder as a party, and to withdraw from a joint contract without ending it. Rights to succeed to the contract when the holder has died are also widened considerably. Therefore, landlords may well find themselves in a contractual relationship with someone entirely different to the person with whom they originally signed.

As the ministerial statement announcing that the implementation would be deferred to December acknowledges, the 2016 Act is a wholesale, once-in-a-generation reform of residential landlord and tenant law in Wales. Landlords and their agents must therefore start their preparations now if they have not done so already.

Rebecca Rees is a partner and head of property dispute resolution at [Hugh James](#)

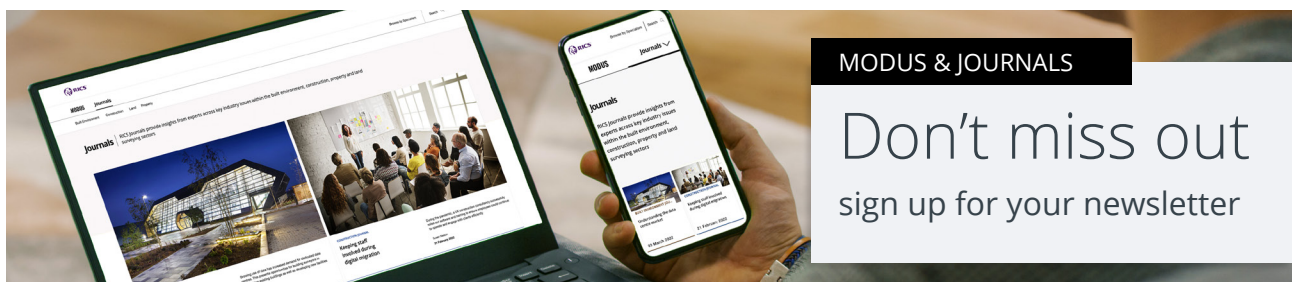
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