

All shall be WELL when it comes to leases

Stephen Marks and Alan Fogarty address lease considerations when implementing the WELL standard

Property and wellness may seem like surprising bedfellows but the healthy building movement looks like it is here to stay.

The WELL Building Standard is probably the most globally recognised metric encapsulating how to incorporate health-driven standards. While there is some overlap with the green movement and the environment and sustainability agenda (think LEED and BREEAM), WELL is the first standard to deal exclusively with human health and buildings.

As the landscape changes, landlords and tenants need to be mindful of what questions should be covered at the due diligence stage, and then what additional obligations need to be imposed in leases. This is clearly new territory for all concerned.

Implementing WELL

At present, the framework for pre-contract enquiries is enshrined in the commercial property standard enquiries (CPSEs) endorsed by the British Property Federation (BPF) and the Public Law Company (PLC). Where a tenant has the intention of implementing the WELL Building Standard, these enquiries would fall considerably short in procuring the base level of information necessary. WELL has seven categories – air, light, water, comfort, fitness, nutrition and mind, and it is really the first four categories that are relevant and relate to the physical features of the building in question (metrics such as mind, fitness and nourishment are more a question of a company's policy once it takes occupation).

When looking at a WELL certification there is a compelling case for organising a more detailed specialist survey and inspection before the lease is signed. However, the CPSEs' only reference to "health" in relation to a building is on specific



1 Carter Lane, EC4

questions around asbestos, EPCs and a vague reference to the health and safety file. Certainly, supplementary enquiries should be raised of the landlord concerning air quality. These would cover heating, ventilation and air conditioning systems, as well as any air filtration systems. These are relevant, not only to the proposed space to be taken, but also in relation to the common parts in the remainder of the building. The landlord's protocols for cleaning, pesticide management and micro-mould control need to be understood. Questions need to be asked too on paints, sealants, adhesive and flooring, particularly after recent works. It is all about understanding the level of Volatile Organic Compounds (VOCs) in the air – which can be harmful to health if they are at high levels in the proposed demise or the common parts of the building with the ability to migrate into the area to be occupied.

Questions about water quality also need to be addressed at the pre-contract stage. A tenant should not itself have to fund the installation of additional water filters where there is an unusually high level

of nickel or other chemical in the water. Similarly, levels of sound installation may typically be poor and failure to have a dialogue with the landlord at an early stage may also lead to a tenant having to spend more money later. Finally, assessments may need to be undertaken in relation to light, to understand whether there are sufficient levels of daylight – while, at the other end of the spectrum, ensuring that there is not too much glare. The size and location of windows can be very relevant here.

Drafting the lease

Where enhanced due diligence and surveys reveal areas of concern for the tenant, these can be directly addressed in the lease. In the event of poor quality water, as well as recording who pays for any filters, a landlord should be placed under an obligation to maintain the requisite water quality entering the building. In relation to air quality of common areas, the landlord should be placed under an obligation to ensure a safe cleaning protocol and adequate pest control, and to maintain air conditioning ventilation systems to a high standard. There may even need to be an obligation on

THE HISTORY OF WELL

Delos – the world's first health-centric real estate development company – founded the WELL Building Standard in the USA, with certification introduced in 2014. This came after several years of detailed scientific and medical research, measuring all the main systems of the body against the various aspects and features of a building. WELL is administered by a separate body – the International Well Building Institute. Cundall was the first occupier to achieve a WELL certification for its premises in Europe at 1 Carter Lane, London EC4. As a result it now advises occupiers on this metric (there are now more than 25 properties registered for certification in the UK alone).

the landlord to test the air quality of the common parts and maintain it to a high level, in particular being cognisant of safeguarding the main entrance to the building. The tenant should seek a wider obligation on the part of the landlord not to do anything that would compromise the air quality of the tenant's area.

The other side of the coin is of course that the landlord may seek to recover the cost of dealing with certain standards relating to WELL in the common parts through the service charge. The landlord may similarly impose obligations on the tenant not to do anything which might contravene a WELL standard in the common areas or to in any way affect the air quality in the common parts.

As all landlords and tenants consider the implementation of the WELL Building Standard there is likely to be an increase in pre-contract enquiries, inspections and lease obligations. This area will evolve quickly.

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