

Guidance for UKWA members when considering the installation of solar systems

This note details some of the different scenarios and issues that occupiers of warehouses need to potentially consider before entering into a Power Purchase Agreement (“PPA”) with a generator (the company typically funding and arranging for the installation of the solar cells) and where a lease or sub-lease of the air space above the warehouse is also required.

The comments below relate predominantly to different potential lease arrangements, but we have highlighted the issues which need to be taken into consideration in the PPA where relevant. None of the guidance below relates to the suitability of premises for installations of this nature which will be assessed by any generator before any agreements are entered into.

Scenario 1

The occupier leases the entire building

- Where the lease is of the whole building, this includes the subsoil and crucially the airspace.
- Here the occupier will need to engage with the generator and likely grant a sublease to them. This will likely require landlord’s consent (unless it is quite a long lease, typically longer than what would be considered the norm for a 3PL occupancy for example).
- The occupier needs to consider how long is the lease the generator is asking for? Do they have sufficient length left on their own lease to grant a lease to a generator for the term they require to make the scheme financially viable?
- The occupier will need to check their own lease to ensure it allows the generator as a sub-tenant, the appropriate rights to connect into and use existing wires and cables, and quite possibly install new ones. This is so they can run the necessary ancillary equipment from the solar cells being installed, to the metering equipment.
- At the end of the term of the lease to the generator, both the generator and the occupier are likely to be jointly liable to reinstate the property, unless the documents provide otherwise. The parties will need to consider if this is what is intended.
- The occupier will need to check their own lease to see if they have the ability to grant to the generator the right to access the relevant part(s) of the building for the purpose of maintaining, repairing, and repairing (and possibly replacing) the equipment (cells and ancillary equipment) installed, as well as checking the meters.

Scenario 2

The occupiers property is specifically defined as ending at the upper side of the roof slab, tiling or other roof finishing.

- In this instance, the freeholder (or superior landlord) is the only party that can grant a lease directly to the generator. However the equipment will still be physically attached to the tenant’s property of course, so negotiations will need to be had as to how that practically will take effect.
- The same issues arise in this situation regarding rights to maintain, repair and renew equipment, as well as connecting into or installing new cabling from the solar cells to the meters as in scenario 1 above. However, if this is the way the occupiers property is defined then it is quite possible that the landlord will have reserved these rights in the lease, as the installation of solar cells, especially in new leases, may have been contemplated. If not, then it is possible the terms of the lease will need to be changed to permit this.
- Under a separate lease of the air-space (as opposed to a sub-lease) any liability to reinstate at the end of the term will rest with the generator, unless the documents provide otherwise.



Points for occupiers to consider

1. It is possible that a quasi-licence/PPA could be offered although given the length of term required for the generators to justify the business model it is likely a lease would be requested. Whether that is granted by the occupier or the landlord depends on the individual circumstances detailed above.
2. Does the occupier need landlord's consent to any sub-letting or possibly consent to a change of use depending on the size of the scheme to be installed? Is it a full repairing lease and how would any proposed solar PV affect this?
3. Does the occupier need to agree a schedule and methodology of works to ensure that operations at the building are not interrupted?
4. In the instance where the occupier leases the airspace, the plans for the proposed equipment will need to be checked to ensure that it doesn't go above and beyond the airspace. The height of the airspace is, under common law, "the height necessary for the ordinary use and enjoyment of a property". If what is proposed doesn't fit within that then the occupier can't grant a sublease in respect of that area.
5. Does the occupier want the ability to walk away and break the lease if the solar cells and ancillary equipment hasn't been installed and generating within a certain period of time?
6. Advice should be taken to ensure that the rights granted in the sublease situation to the generator don't exceed those which the occupier has a right to grant in their lease. Really a generator can only "piggyback" on the rights of the occupier in their lease so anything above that would again need to be specifically negotiated.
7. The occupier should take care not to grant the generator rights over the buildings' grid connection which could prejudice the tenant in the future.
8. The occupier should consider what happens if the use and supply of electricity from the solar cells is interrupted either due to damage or for reasons outside of the control of the occupier, or in the event that maintenance or repair works to the roof is required.
9. What is to happen if the PPA ends early? Will the generator insist on the sub-lease carrying on even if the PPA ends so the generator can continue to export power to the grid?
10. What happens if the occupier transfers its lease or ceases to occupy the property? The occupier should ensure that the PPA doesn't hinder its right to deal with the property in accordance with its lease but the generator will almost certainly require the tenant to procure that an incoming transferee becomes party to the PPA.
11. If the PPA and lease run their course what is to happen to the equipment? Who is to decommission it (if that is what the tenant wants) or does the occupier want the option for the equipment to remain?
12. If the PPA model is used, what happens to the equipment (solar cells and ancillary equipment) if the PPA ends? Is there provision for the occupier to purchase the equipment on the building?

Contact information



Matthew Williamson

Partner

matthew.williamson@weightmans.com

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