

Insights

EV CHARGING INFRASTRUCTURE – LANDLORD AND TENANT ISSUES

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In the second blog in our series looking at common questions we receive on the *roll out of EV infrastructure*, we focus on two queries we regularly see in the context of landlord and tenant relations.

QUESTION: WHAT CONSIDERATIONS SHOULD A LANDLORD OF A LARGE OUT OF TOWN RETAIL PARK HAVE AS REGARDS INSTALLING EV CHARGING POINTS IN THE CAR PARK FOR USE BY ITS TENANTS AND THEIR CUSTOMERS?

Which solution?

The first step here is to consider what sort of solution the landlord wants to deploy. Although there are a number of options available, we typically see landlords either:

- Leasing space to a charging point operator; or
- Entering into a commercial agreement with an operator for the roll out of charging points on its site.

Monetising the charging points

The landlord needs to consider how to monetise the charging points, which will likely determine the type of charging equipment it wishes to install.

For example, there are simple models for charging on a pay-per-use basis for any charge point, or more nuanced structures where there are higher power chargers (for example, 50KW) that incur a charge alongside low powered chargers that do not. Another option is to have free to use charging points with less kilowattage (for example, 5-7KW) and no high-speed alternative, the incentive here being to encourage a longer dwell time on site.

The cost of installation is high and we would not anticipate that a freeholder could put the capital expenditure of the installation (which might include bringing additional power to site, particularly in the case of ultra-high speed charging) through the *service charge* for the tenants to foot the bill.

However, the operating costs might be recoverable depending on the service charge provisions of the leases. Even where there is the opportunity to recover costs from tenants, a landlord would need to manage this carefully as the location of the charging points would likely favour some tenants more so than others.

Lease terms

Where the landlord has leased space to an operator, we would generally expect to see lease terms of 10-15 years with either fixed rent or turnover rent structuring.

Operators are generally looking for leases within the [*Landlord and Tenant Act 1954*](#) (1954 Act) but it is a point for negotiation and we have seen tenancies both inside and outside the 1954 Act. The operator would be granted rights to install, connect, operate and maintain the charging points.

Leases would include some degree of restriction for landlord redevelopment or requirements to relocate equipment or otherwise temporarily suspend the use of the EV facilities. The operator wants to ensure that it can recover its sunk costs and is therefore unlikely to agree to provisions relating to relocation within, say, two to three years of installation without expecting to be reimbursed by the landlord for its capital expenditure. Furthermore, operators have sought to include compensation provisions (attributable to revenue) where there is any operational down time. Therefore, the landlord should carefully consider the location of the spaces it intends to make available and manage the risk of a potential redevelopment or temporary suspension causing a problem later down the line.

Information sharing and monitoring?

The landlord should also consider what level of information sharing is required with the operator. Even if it does not intend to revenue share with the operator, it may want to gather information as to how the points are used, what the average dwell time is, whether non-electrical vehicles are parking in the spaces and whether the equipment is functioning. A landlord might want to understand (and retain some degree of control over) what operators are doing if, for example, vehicles are parking at high speed charging points and staying well beyond the full charge time or if charging points are out of use for prolonged periods.

Keeping at the forefront of technology

The landlord may also want to ensure that any equipment installed on-site is in keeping with technological advances (particularly if it is providing high-speed charging options) and does not lag behind the curve as power capacity gets bigger and bigger.

QUESTION: A TENANT ON A MULTI-LET INDUSTRIAL PARK ASKS FOR CONSENT TO INSTALL EV CHARGING POINTS FOR ITS FLEET OF DELIVERY VANS. IT CURRENTLY

HAS THE EXCLUSIVE RIGHT TO PARK OUTSIDE ITS UNIT, BUT THE SPACES ARE NOT DEMISED TO IT. HOW SHOULD THE LANDLORD DEAL WITH THIS REQUEST?

Initial considerations

The landlord may wish to consider whether it wants to carry out the works itself and extend rollout for the benefit of more tenants, which could be rentalised, or if it wants to be one step removed from the process.

Landlord takes control?

Taking control of the process would put the landlord in the driving seat in terms of deploying the charging points across the estate, managing the installation and any required upgrading of power supplies and any necessary routing of equipment across common parts of the estate.

This option also avoids complications at the end of the tenant's lease around reinstatement where the landlord might be faced with EV charging points being stripped out by the tenant or, if the parties agree that the landlord can retain the points, the landlord still having to contend with having no contractual relationship with a third party operator.

If the landlord intends to pursue a wider roll out, it should ensure that it has reserved rights in each of the tenant leases to make changes to the car park where the installation of the charging points might temporarily close the car park in the short term, or in the long term vary the number of spaces on offer to the tenants.

Tenant takes control?

Although landlords are generally seeking to retain control of the rollout of charging points on their sites, this is a very new industry with no set standard and so we anticipate that models will continue to evolve.

If therefore the landlord decides that the tenant may undertake these works itself, the best option would be to treat it as it would historically treat a request for a satellite or air-conditioning unit on the roof, as a *licence for alterations* outside of the demise. The advantages to this route are that the tenant will have primary responsibility for the works, the cost of installation and for any negotiation with a third party operator.

One point to note is that any additional grid connections required to facilitate the installation of the charging points by a tenant will likely mean that *wayleaves* between the landlord, tenant and the local distribution network operator will be needed.

Look out for the next blog in this series of key issues and common client queries arising from the roll out of EV charging infrastructure.

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