



Overcoming barriers to energy upgrades in multi-owned properties: the role of leases

(1) lessons from the WICKED retail project

(2) residential issues

20 January 2016, Unlocking the energy efficiency potential in the rental and multifamily sectors, Brussels

Professor Susan Bright, New College, Oxford and Julia Patrick, Oxford

WICKED: EPSRC funded project - Investigating energy management in retail buildings

WORKING with Infrastructure Creation of Knowledge and Energy strategy Development

A 'wicked' problem (Rittel and Weber, 1973) is:

- Complex and interdependent
- Difficult to solve (may be difficult to recognize)
- Addressing one aspect of a wicked problem may reveal (or create) other problems

Energy use is a WICKED problem:

- The retail sector is diverse and complex.
- One size will *not* fit all.



WICKED: a multi-level, interdisciplinary approach

Top-Down Analytics of the Data Rich

- Big data
- Maths & computing
- Turning numbers into knowledge

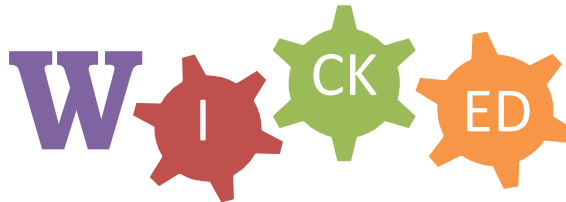
Learning from the Middle-Out

- People
- Organizations
- Staffing
- Leases

Bottom-Up: Enriching the 'Data Poor'

- High resolution (1 sec v 30 minute)
- Cheap & easy monitoring

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wicked/

WICKED findings: the split incentive

- Financial
- Barriers to energy efficiency improvements
 - Landlord's (no) right to do works to the shop unit
 - Disrupting trade
 - Retailer focus on sales, not energy costs
 - Landlords unable to forward fund improvements
 - Long pay-backs
 - Evidencing benefit
 - Distrust
 - Complex technical and accountancy arrangements
- Lease as barrier?

WICKED findings: landlord-tenant cooperation on energy efficiency

- Outside the lease
- Through the service charge
- Informal, voluntary agreements
- Driven by trust and common interests
- Requires commitment, resources and clear benefits

WICKED findings: what is happening with 'green' leases?

Which green clauses are being used?

- General, non-binding, aspirational commitments
- Tenant alterations not to worsen environmental performance
- Landlord upgrades: access only
- **Cost recovery for energy upgrades is rarely found**

WICKED findings: Who is driving the use of green leases and why?

- Mainly large landlords in the prime market
- More common in office than retail
- Drivers:
 - Corporate Social Responsibility/ Public Relations
 - Investor interest and industry benchmarking: GRESB, BREEAM
 - Regulatory compliance and cost
 - Better Buildings Partnership
 - In some cases: framework for cooperation

WICKED findings: Who is resisting the use of green leases and why?

Retailers are particularly resistant

Reasons include:

- Lack of awareness and understanding
- Fear of increased costs
- Other pressures and priorities: location, location, location
- Distrust and historically adversarial relationship
- Inflexibility of lease
- Desire for control

WICKED findings: what use are green clauses?

- ‘in the cupboard’ vs ‘on the ground’
- Lease is ‘binary’, landlord-tenant relationship ‘battleground’.
- In *some* cases green clauses provide a framework for (or reflection of?) dialogue and collaboration
- Prevention of *worsening* of environmental performance

WICKED findings: the role of regulation

- Minimum energy efficiency standards – ‘MEES’
 - Review of property portfolios
 - Improvements vs off-loading?
 - More improvements or more divisions?

Future proofing flats: overcoming
legal barriers to energy
improvements in private flats
(apartments)

Project Partners



City of Westminster



The Problem

In England:

1 in 5 homes are flats

Flats less likely to have key
EE measures

Older flats in converted
houses perform worst



- Technical Challenges
- No Funding to do the Work
- Legal and Consent Barriers

Systems of Property Law

Governance of Flats: Different Models of Ownership

Traditional Freehold/Leasehold Structure	Freeholder: Owns common parts and reversions	Leaseholder: lease of 99, 125 or 999 years
'Dualistic' system (Lujanen)	Joint ownership of common parts (through legal entity)	Apartment -owner
Unitary system (Lujanen)	Co-ownership of whole	Exclusive rights to use apartment

Systems of Property Law

Legal Form: Title complexity

Freeholds

Long leases – not necessarily the same wording, length

Mortgages

Rental tenancies

Commercial and retail units

Systems of Property Law

Governance of Flats: The Split-Incentive Problem

	Ownership of common parts	Ownership of (interior of) flat/value	Comfort and energy savings	Paying for upgrade	Decision - Making Authority
Traditional Freehold/ Leasehold Structure	Freeholder	Leaseholder	Occupier (leaseholder or renter)	Freeholder	Freeholder

THE major problem

Legal Form: Inability to make improvements

'Repair and maintenance' does not include improvements:

- No power to upgrade
- No ability to recover costs through service charges

Systems of Property Law

**Consent barriers: 100%
usually needed**

Logistics: contacting people

Absentee owners – finding
them

Not interested

Different experiences,
commitments, long term plans,
and pockets

Work to date

- Interdisciplinary workshop: March 2015: report with planned next steps
- Meeting of legal experts: September 2015: discussion of possible legal reform
- All party roundtable at House of Commons discussing proposed legislation: December 2015

Planned future work

Developing proposed legal reforms	Research project
Duty on building owner to undertake EE survey of whole building	Data gathering: to identify scale of EE problem in flats/apartments
Right for unit owners to improve EE of building	Applied focus on vulnerability: the problems for older people, health issues, fuel poverty: case studies
Changing leases to permit EE measures and cost recover	Property theory: reimagining ownership
(Flat) allow EE work internal to unit	

Possible European Project?

Focus on Legal and Consent Barriers

Decision-Making Structures in Different Countries

Extending repair and maintenance to allow improvements

How to build Consensus