

Bolsover District Council

Executive

4th December 2017

Minimum Energy Efficiency Standards (Non Domestic)

Report of the Leader

This report is public

Purpose of the Report

- To outline the impact of the Energy Efficiency (Private Rented Sector) (England and Wales) Regulations 2015 (Referred to as MEES) on the Council's commercial assets and address the corporate plan priority 'Assess the potential revenue impact and develop an action plan to address issues arising from the implementation of the Minimum Energy Standards on commercial properties by April 2018.'

1 Report Details

- 1.1 The Energy Efficiency (Private Rented Sector) (England and Wales) Regulations 2015 will make it unlawful from April 2018 to undertake new lets residential or commercial properties with an Energy Performance Certificate (EPC) rating of 'F' or 'G' (i.e. the lowest 2 grades of energy efficiency).
- 1.2 The requirements of the legislation are, in summary:
 - The minimum energy efficiency standard (MEES) is set at an EPC rating of 'E'. Anything below an E rating would be unlawful to let (Subject to exemptions)
 - From 1st April 2018, the regulations will be enforced upon the granting of a new lease and the renewal of existing leases. Landlords will be required to ensure compliance before the lease is granted. In special circumstances, landlords will be given an extension of six months from the date of the grant of the lease to comply with the regulations.
 - From 1st April 2023, MEES will be extended to cover all leases, including where a lease is already in place.
 - All non-domestic property types are in scope of the regulations, except for those that do not require an EPC under current regulations, such as listed buildings.
 - MEES does not apply to lettings of 6 months or less, or to lettings of 99 years or more.
 - The regulations apply to sub-lettings and assignments.

- 1.3 Over the past 12 months Officers have reviewed the relevant legislation, attended conferences and seminars on the subject, sought professional advice from Compliance 365 and consulted with DCLG, the department responsible for the enforcement of the regulation.
- 1.4 To fall within the MEES legislation, the asset must first sit within the 'Energy Performance of Buildings (England and Wales) Regulations 2012' (EPC Legislation). DCLG advise that it is for the landlord to determine whether they consider their buildings are exempt from requiring an EPC on the basis of the exemptions in the legislation.

There are a number of exemptions in the legislation (See appendix A for full list) where an EPC may not be required and subsequently fall outside the MEES legislation. This report only focuses on two exemptions that directly Impact on the Councils commercial stock:

- (1) Buildings officially protected as part of a designated environment or because of their special architectural or historical merit, in so far as compliance with certain minimum energy performance requirements would unacceptably alter their character or appearance.

This exception is most relevant for **Pleasley Vale Mills** and our interpretation of the regulation is that in order to meet the test for exemption as outlined above the two key points to address are:

Key Point 1 - The building is officially protected as part of a designated environment or because of their special architectural or historical merit:

Pleasley Vale Mills are protected under the designated Conservation Area as detailed in 'Pleasley Park and Vale Conservation Area Character Appraisal and Management Plan'

The site is considered to be "of high heritage importance" by the Heritage Lottery Fund, as stated in the HLF Application feedback (September 2014). The key heritage attributes to the area are the archaeology, industrial heritage and the setting, more specifically three mills in a valley surrounded by ancient woodland, SSSI's and listed properties.

Key Point 2 - Compliance with certain minimum energy performance requirements would unacceptably alter their character or appearance:

Determining the extent of the works required to the mills to ensure compliance to an energy performance rating of E on an Energy Performance Certificate (EPC) is unclear until an EPC has been undertaken for all units. BDC have obtained a quote for undertaking an EPC assessment for each unit in order to understand the number of F & G rated units across the site, in addition to the proposed works to ensure compliance. The quote (**Compliance 365 email - 5 July 2016**) is for £10,650, which is deemed a prohibitive cost simply to demonstrate the works that are required.

Based upon the existing knowledge of EPC's, the facility (including age, no gas services to site, single glazed sash windows, etc) and the experience of Facility Management professionals within the Council, it is felt that to fully ensure compliance to an energy performance rating of E on an Energy Performance Certificate (EPC), some external works (New windows, photo voltaic panels, external wall insulation, etc) would likely be required. Whether this would 'unacceptably alter their character or appearance' would need to be determined by Bolsover District Council's Conservation Officer following a Conservation Area Consent submission.

In conclusion, based upon all of the above, we have concluded that Pleasley Vale Mills is exempt under the Energy Performance of Buildings (England and Wales) Regulations 2012 and therefore, is exempt from the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015.

(2) Industrial sites, workshops and non-residential agricultural buildings with low energy demand

The DCLG report title 'Improving the energy efficiency of our buildings – a guide to energy performance certificates for the construction, sale and let- of non-dwellings' defines a building as a *“roofed construction having walls, for which energy is used to condition the indoor climate; a building may refer to the building as a whole or parts thereof that have been designed or altered to use separately”*.

Low energy demand buildings are defined as *“buildings, or parts of buildings, designed to be used separately, whose purpose is to accommodate industrial activities in spaces where the air is not conditioned. Activities that are covered include foundries, forging and other hot processes, chemical process, food and drinks packaging, heavy engineering and storage and warehousing where, in each case, the air in the space is not fully heated or cooled. Whilst not fully heated or cooled these cases may have some local conditioning appliances such as a plaque or air heaters or air conditioners to serve people at work stations or refuges dispersed amongst and not separated from the industrial activities”*.

This exception is most relevant for former depot sites and ad hoc industrial premises across the district. An assessment of the Councils stock against the above has led to exemptions summarised in the table below.

1.5 In additions to exemptions and particularly relevant to business centres, if the building has a common heating system, then the landlord has a choice:

1. To prepare (or make available) an EPC for the whole building; or
2. To prepare (or make available) an EPC for a part designed or altered to be used separately being offered for sale or let.

For public buildings such as The Arc, Display Energy Certificates (DEC), must be displayed. If the building is sold or let (or let in part), it will also require an EPC.

1.6 Executive can see from the above that EPC and MEES legislation is a complex area and relies upon the landlord interpreting the legislation in order to assist

decision making and demonstrate compliance. The table below hopes to simplify the impact on the Councils stock, in particular highlighting exemptions and assets which need to be improved in energy performance terms:

Asset	EPC / DEC required	Reason	EPC Rating	Compliant? - Yes (Green) To be confirmed (Amber) No (Red)
The Arc	EPC required – space available for letting	EPC is required for building, as the unit would share the same heating system as the rest of the building	2 nd Floor (Let) – C	
	DEC required – public building exceeding 1000m2		Main building (Let) – B	
			DEC - C	
The Arc - Construction Block	EPC	Building on own heating, exceeds 50m ² and let out to tenant.	Rating D	
The Tangent	EPC	EPC is required for building, as the units would share the same heating system throughout the building.	Rating A	
Pleasley Vale Business Park	Exempt	Buildings officially protected as part of a designated environment or because of its special architectural or historical merit.	N/A	
39A Hilltop Bolsover	Exempt	Industrial building, low energy demand.	N/A	
8A Cavendish Walk Bolsover	EPC	Retail Premises	Rating G	
10 Oxcroft Lane (Oxcroft House)	EPC	Office Accommodation	Rating D	
3 Mansfield Road, Bramley Vale	EPC	Retail Premises	Rating C	
5 Mansfield Road, Bramley Vale	EPC	Retail Premises	Rating D	
9 Church Street, Clowne	EPC	Vet Practice	Rating C	
Former Market Store, Clowne	Exempt	Industrial building, low energy demand.	N/A	
2 Station Road (Business Centre), Clowne	EPC	Multi Occupancy Business Centre		
2A Station Road, Clowne	EPC	Office Accommodation	Rating E	
47 Rectory Road Clowne	EPC	Retail Premises		
207A Main Street	EPC	Retail Premises	Rating C	
207B Main Street	EPC	Retail Premises	Rating C	
3 – 4 Vernon Street, Shirebrook	EPC	Office Accommodation and Industrial	Rating C	
7A Rotherham Road, New Houghton	EPC	Office Accommodation	Rating E	
Oxcroft Depot (Office & Store)	EPC	Office Accommodation	Rating E	
Oxcroft Depot (Mower Store & Office)	EPC	Office Accommodation	Rating D	
Oxcroft Depot (Vehicle Workshop)	Exempt	Industrial building, low energy demand.	N/A	
3 Cotton Street, Bolsover	EPC	Office Accommodation	Rating E	
Former Contact Centre, South Normanton	EPC	Office Accommodation	Rating D	

- 1.7 As a combination of exemptions and EPC assessments across all of the Council's commercial assets only two of the properties don't currently comply to the legislation:

2 Station Road, Clowne – This building is let on a long lease to Clowne Enterprise, a social enterprise which funds business support activities in the community through letting the office units a 'Station Road Business Centre'. No EPC has been undertaken as at the time of letting the premises to Clowne Enterprise (2008), EPC legislation wasn't in place.

47 Rectory Road, Clowne – This property is let to Clowne & District Garden Holders Association as an office and shop. At the time of the tenancy agreement (1995). EPC legislation wasn't in place.

- 1.8 Both of the above properties are long standing tenancy agreements which will not be impacted by the MEES legislation in April 2018. However, both of these properties will require an EPC to be undertaken and a rating higher than an F achieved by 1st April 2023 when MEES will be extended to cover all leases, including where a lease is already in place.

It should be noted that both the above properties, particularly 2 Station Road, are properties which should not be difficult or expensive to obtain an F rating or above. In addition, neither building delivers significant revenue to the Council (£240 per annum from both), therefore, if an EPC rating above F is unviable or unachievable the overall impact would be a loss of income of £240 per annum.

- 1.9 The Corporate Plan priority is to 'Assess the potential revenue impact and develop an action plan to address issues arising from the implementation of the Minimum Energy Standards on commercial properties by April 2018.' It is hoped that this report provides Executive with the information required to satisfy the target and the comfort that the Council is well placed, prior to the implementation of MEES and the potential financial risk from the introduction of MEES is negligible.

2 Conclusions and Reasons for Recommendation

- 2.1 The Corporate Plan priority is to 'Assess the potential revenue impact and develop an action plan to address issues arising from the implementation of the Minimum Energy Standards on commercial properties by April 2018.' It is hoped that this report provides Executive with the information required to satisfy the target and the comfort that the Council is well placed, prior to the implementation of MEES and the potential financial risk from the introduction of MEES is negligible.

- 2.2 Based upon Officers reviewing the relevant legislation, attended conferences and seminars on the subject, seeking professional advice from Compliance 365 and consulting with DCLG, the exemptions explained in the report are Officer interpretation. DGLG state that it is for the landlord to make reasonable assumptions in determining any exemptions however, as the legislation is enforced and case law is established, the exemptions may need to be reviewed again.

3 Consultation and Equality Impact

- 3.1 DGLG acknowledge that “*the Regulations and the accompanying guidance copy out specific wording from the Directive, which we believe has introduced some confusion.*” The Council have consulted directly with DGLC to clarify the exemptions and better understand the implementation and future enforcement.
- 3.2 There are no Equality Impact issues arising from this report.

4 Alternative Options and Reasons for Rejection

- 4.1 Executive could fail to agree with the interpretation of the legislation, particularly the application of exemptions. Officers would take into consideration such an objection and reassess the revenue impact accordingly.
- 4.2 Executive could take a zero risk approach to exemptions and insist that all properties let have an EPC rating of A to E, thus ensuring compliance. On assets such as Pleasley Vale Mills, this approach will be extremely costly and some interventions would carry significant planning risk.

5 Implications

5.1 Finance and Risk Implications

- 5.1.1 Based upon the interpretation of the legislation to date the financial risk to the Council is very low, if not negligible. However, as the legislation is enforced (By Environmental Health/Trading Standards) and case law is established, the interpretation and exemptions may need to be reviewed accordingly, which may in turn increase the financial risk to the Council.

5.2 Legal Implications including Data Protection

- 5.2.1 There are no immediate legal implications arising from this report.

5.3 Human Resources Implications

- 5.3.1 There are no HR implications arising from this report.

6 Recommendations

- 6.1 That Executive acknowledge the report and agree this satisfies the corporate priority accordingly

7 Decision Information

<p>Is the decision a Key Decision? A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds:</p> <p><i>BDC: Revenue - £75,000</i> <i>Capital - £150,000</i> <input type="checkbox"/></p> <p><i>NEDDC: Revenue - £100,000</i> <input type="checkbox"/> <i>Capital - £250,000</i> <input type="checkbox"/></p> <p><input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i></p>	No
<p>Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)</p>	No
<p>District Wards Affected</p>	All
<p>Links to Corporate Plan priorities or Policy Framework</p>	Assess the potential revenue impact and develop an action plan to address issues arising from the implementation of the Minimum Energy Standards on commercial properties by April 2018.

8 Document Information

Appendix No	Title
Appendix A Appendix B	Full list of EPC Legislation Exemptions DCLG Correspondence
<p>Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)</p>	
<p>Energy Efficiency (Private Rented Sector) (England and Wales) Regulations 2015 Energy Performance of Buildings (England and Wales) Regulations 2012</p>	
Report Author	Contact Number
Commercial Property & Developments Manager	2210

Report Reference –

Appendix A - Full list of EPC Legislation Exemptions:

- (a) buildings officially protected as part of a designated environment or because of their special architectural or historical merit, in so far as compliance with certain minimum energy performance requirements would unacceptably alter their character or appearance;
- (b) buildings used as places of worship and for religious activities;
- (c) temporary buildings with a time of use of two years or less;
- (d) industrial sites, workshops and non-residential agricultural buildings with low energy demand;
- (e) non-residential agricultural buildings which are in use by a sector covered by a national sectoral agreement on energy performance;
- (f) residential buildings which are used or intended to be used—
 - (i) for less than four months of the year, or
 - (ii) for a limited annual time of use and with an expected energy consumption of less than 25% of what would be the result of all-year use; and
- (g) stand-alone buildings with a total useful floor area of less than 50m².

Appendix B – DCLG Correspondence



Department for
Communities and
Local Government

*Department for Communities and Local
Government*
Eland House - London

Matt Broughton
Bolsover District Council
(By email)

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www.gov.uk/dclg

Our Ref: 3309257
Your Ref:

Date: **12 May 2017**

Dear Sir/Madam,

Thank you for your email of 3 April 2017 to BEIS, about non-domestic private rented property minimum standards. I have been asked to reply as EPCs fall within my policy area.

As discussed over the phone, requirements for energy performance certificates derive from the Energy Performance of Buildings Directive. This was transposed into UK law in the Energy Performance of Buildings Regulations which came into force in January 2013. EPCs have to be made available when buildings are sold or let. They are used to demonstrate that new buildings meet building regulations and ensure that consumers are aware of the efficiency of properties they are buying or renting.

However, the Regulations and the accompanying guidance copy out specific wording from the Directive, which we believe has introduced some confusion. This is because the historic/listed building exemption provision in the Directive itself cross refers to wording intended for use in exempting such buildings from certain minimum energy efficiency requirements. We appreciate the need for clarity on this point, not least because of the requirements for minimum energy efficiency standards for the private rented sector. We are therefore looking into this to consider what may need to be done to clarify the position.

As I said over the phone, it is for you to decide whether you consider your buildings are exempt from requiring an EPC on the basis that any recommendation would adversely impact the historic character of the buildings. I'd recommend taking your own legal advice on this point to help you reach a decision.

Regards
Phil Philippou