

Place Overview Committee

10 November 2022

Member Questions and Responses

From: Councillor Julian Dean

Question and Response regarding Minimum Energy Efficiency Standards in non-domestic buildings, including the council's own assets:

From April next year it will be unlawful to continue to let commercial premises that have an EPC rating below E (with some exceptions). Looking ahead, the government plans for commercial EPC ratings of B from 2030. Ensuring compliance will benefit SMEs in Shropshire facing high energy bills, as well as help to begin to reduce the county's carbon footprint.

Can assurance be given that the council's own property portfolio, whether leased out or leased in, has been checked and will comply with these regulations as a minimum (There are 300+ freehold properties leased out and around 150 properties leased in*)?

We can give assurance that the Council's own property portfolio, whether leased out or leased in is in the process of being checked and certainly no action will be taken to contravene the new legislation when it is introduced next year."

What work is being done to ensure the county's commercial landlords will be in compliance by 1st April?

The Council will be unable to ensure the county's commercial landlords will be compliant by 1 April 2023. The Council has had to consider its work on minimum energy efficiency standards (MEES) alongside other equally important priorities aimed at protecting both local residents and businesses. We are currently focussing on the MEES for domestic private rented accommodation as a result of specific funding that the Council successfully bid for from the Department for Business, Energy & Industrial Strategy (BEIS). This has enabled the Council to employ three additional officers until the end of May 2023 to specifically undertake this type of MEES enforcement work. No external funding has been made available in respect of undertaking work on the MEES for commercial (non-domestic) private rented properties and there is currently no indication that this position will change. This has meant the MEES work that has been and will continue to be undertaken on commercial properties is currently limited to a commitment to provide reactive advice to those landlords/property businesses who seek advice from the Council and to deal with any breaches that are reported in accordance with the Better Regulation and Enforcement Policy. Depending on the circumstances of any reported breaches, a decision may still be made to take no further action.

What measures will the council take to enforce the statutory penalties that apply should lettings be non-compliant after 1st April?

In the event that the outcome of an investigation into a MEES non-compliance of a commercial rented property leads to the conclusion that a financial penalty is a

proportionate and appropriate sanction, given the circumstances of the case, the Council has the necessary delegated authorities in place to enforce the relevant statutory financial penalties. However, the imposition of any financial penalty would be, in the majority of cases, a 'last resort' in line with the Council's Better Regulation and Enforcement Policy. In addition, in order to minimise the risk of legal challenge and to provide a robust position to defend any such challenges, the Council would want to consult on and implement a supplementary policy setting out further details on how the financial penalties are determined. This has already been completed for domestic private rented accommodation to support the BEIS funded work referred to above; however, it has yet to be undertaken for private rented commercial properties. For this reason, the Council will currently only consider enforcement action on a commercial property where it is directly reported that it does not satisfy the MEES and there is a very clear and significant detrimental impact to the health of the occupants, the environment and/or the cost of heating the commercial property and that intervention by the Council is the only option available to reduce or prevent this detrimental impact. In any such case, we would use the relevant elements of the Council's Private Rented Sector Housing Enforcement Policy (published July 2022) as an interim guide to direct the use of financial penalties and to determine the level at which they may be set. Actually imposing a financial penalty would not be without risk as the Private Rented Sector Housing Enforcement Policy does not cover the MEES of commercial rented properties and the Council would ultimately be relying directly on the relevant provisions in the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 ('the 2015 Regulations') and on the guidance for landlords and enforcement authorities on the minimum level of energy efficiency required to let non-domestic property under the 2015 Regulations, which was issued by BEIS in February 2017.

Will the council use it's right to publish details of breaches of the regulations?

Where the Council has undertaken an investigation and collated sufficient evidence in relation to a commercial property to prove that it does not meet the MEES and this has then been considered against the good regulation principles set out in the Council's Better Regulation and Enforcement Policy, the Council may publish details of breaches (this is referred to as the 'publication penalty') in accordance with the provisions set out in the 2015 Regulations. Each case will and must be determined on its own merits and it would be inappropriate to state that the publication penalty would be used in every case; however, the Council can confirm that proper consideration will be given to the use of the publication penalty where it is considered proportionate and appropriate to do so, e.g. where it is likely to lead to a positive change that will rectify non-compliant behaviour. It should be noted that the publication penalty can only be used in a case where a financial penalty has already been imposed and not successfully appealed.

* <https://shropshire.gov.uk/open-data/datasets/land-and-building-assets/>