

Cherwell District Council

Executive

2 December 2019

<p>Delegation of energy-efficiency enforcement powers from Oxfordshire County Council (OCC) to Cherwell District Council (CDC)</p>

Report of Chief Operating Officer

This report is public

Purpose of report

To seek approval to enforce legislation applicable to:

- a) Domestic Private Rented Energy Performance Certificates (EPCs)
- b) Commercial Minimum Energy Efficiency Standards (MEES)

following the delegation of powers under: *The Energy Performance of Buildings (England and Wales) Regulations 2012* and under *The Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015*, from Oxfordshire County Council

1.0 Recommendations

The Executive is recommended to:

- 1.1 Accept the delegation of powers to enable Cherwell District Council to carry out enforcement of Energy Performance Certificate (EPC) provisions under *The Energy Performance of Buildings (England and Wales) Regulations 2012*.
- 1.2 Accept the delegation of powers to enable Cherwell District Council to carry out the enforcement of the Minimum Energy Efficiency Standards (MEES) in commercial property under *The Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015*.
- 1.3 Authorise the Chief Operating Officer, acting in consultation with the Director Law and Governance and the Corporate Director Finance, to enter into all necessary and appropriate contracts and agreements to implement the delivery of the enforcement work on behalf of Oxfordshire County Council (OCC).
- 1.4 Delegate authority to the Chief Operating Officer to perform the enforcement duties of Oxfordshire County Council (OCC) set out in any such agreements referred to above.

2.0 Introduction

- 2.1 Oxfordshire County Council (in partnership with Oxford City Council) is engaged in a project funded by the Department of Business, Energy and Industrial Strategy (BEIS) looking at the operation and functionality of the two sets of regulations dealing with Energy Performance Certificates (EPCs) and Minimum Energy Efficiency Standards (MEES). A principle aim of that project is to develop practices and procedures which can be used to help both the project partners and other enforcing authorities improve energy efficiency standards in private rented domestic and commercial premises. One of the proposals arising from the project is to establish shared enforcement activity between the County Council and the City and district councils in order to simplify and streamline enforcement.
- 2.2 Oxfordshire County Council, at its Cabinet meeting on 19 November 2019, agreed to delegate certain enforcement powers falling to the County under the following regulations so that they can also be used by Cherwell District Council in its district:
- 1) *The Energy Performance of Buildings (England and Wales) Regulations 2012*, (in relation to EPCs)
 - 2) *The Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015*, (in relation to MEES in commercial properties¹.)
- The County Council's delegation was made under section 101 of the *Local Government Act 1972* and section 9EA *Local Government Act 2000* together with Regulation 5 of the *Local Authorities (Arrangements for the Discharge of Functions) Regulations 2012*.
- 2.3 The recommendations in this report are intended to allow Cherwell District Council to accept and take advantage of the delegation of powers to enhance the work being done to improve energy-efficiency standards of premises in the district and to reduce carbon emissions.
- 2.4 Acceptance of powers delegated by the County Council will not transfer the County's enforcement obligations under the regulations but, in so far as Cherwell District Council utilises those powers, it will be acting on behalf of the County Council and the latter will include that activity in the reports it is required to make to Government.

3.0 Report Details

3.1 Current Enforcement Regime

- 3.1.1 Since 1 April 2018 the *Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015* have imposed minimum energy efficiency standards (MEES) on both domestic private rented and commercial private rented properties. Properties subject to the regulations must have an EPC rating of at least band E, when any new or renewed rental agreement is made, unless a valid exemption has been registered on the Government's website or the property does not require an EPC².

¹ Cherwell District Council already has MEES enforcement powers in relation to domestic private rented property.

² These exemptions are set out in the regulations and include listed buildings, certain short-use premises, agricultural buildings and a number of other categories.

- 3.1.2 Whilst Oxfordshire County Council (OCC) through its Trading Standards Team is the authority responsible for the enforcement of the regulations in relation to EPCs, enforcement practice in Oxfordshire reflects the national picture in that other high service demands have meant this legislation is not currently given high priority and proactively enforced.
- 3.1.3 The MEES regulations make OCC (as 'weights and measures' authority) responsible for enforcement of the legislation in relation to non-domestic (i.e. commercial) rented premises, but both Cherwell District Council and Oxfordshire County Council are enforcing authorities in relation to minimum energy efficiency requirements in domestic private rented property.
- 3.1.4 Cherwell District Council is already enforcing MEES in relation to domestic property³. The Council also enforces the *Housing Act 2004* in the domestic private rented sector, which includes some aspects of energy-efficiency, and is responsible for a range of enforcement actions in the commercial sector⁴.

3.2 Future Enforcement Options

- 3.2.1 It is clear that the enforcement of energy-efficiency work is fragmented in counties such as Oxfordshire where two-tier authorities exist. One of the aims of the BEIS project being undertaken by OCC and Oxford City Council has therefore been to explore ways in which appropriate enforcement can be enhanced. That work has led to the proposal to extend enforcement capabilities through the delegations proposed in this report.
- 3.2.2 Enforcement of MEES in commercial privately rented property
The proposed delegation of powers under the *Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015* will allow Cherwell District Council to use these enforcement powers if it wishes to do so and will therefore enable it to address the adverse impacts of a cold environment on health within workplaces as well as help to reduce commercial carbon emissions.
- 3.2.3 Energy Performance Certificate (EPC) enforcement
- 3.2.3.1 The EPC regulations impose a range of responsibilities on OCC, but the proposed delegation of powers only relates to the enforcement of the requirements for:
- EPCs to be commissioned before premises are marketed for sale or rent
 - EPCs to be made available to prospective buyers and tenants
 - EPCs to be provided to owners within 5 days of newly constructed or modified buildings being completed.
- 3.2.3.2 Although the proposed delegation will allow the Council (as well as OCC) to enforce these provisions as circumstances develop and as resources allow, it is anticipated that enforcement of the requirement for landlords to obtain an EPC before letting a residential property (the first bullet-point above) will be of the most immediate assistance to the Council. The reason being, that even though the enforcement penalty in relation to domestic premises without the required EPC is capped at £200, EPCs are integral to the effective enforcement of minimum energy efficiency standards (MEES) because a property which does

³ The Council adopted a Policy in relation to this work at its meeting on 2 July 2018. See Background Paper.

⁴ Including health-and-safety, food-safety and licensing requirements.

not have an EPC falls outside the MEES enforcement regime⁵. As a result, landlords who do not obtain an EPC can avoid any MEES enforcement action and cannot be compelled to improve their unsatisfactory properties. The delegated ability to enforce EPC legislation will allow the Council to pursue such cases directly and ensure that MEES enforcement can be dealt with efficiently by removing the need for both Cherwell District Council and OCC to be involved.

3.2.4 Any future enforcement of these regulations by the Council will be carried out in accordance with the Council's enforcement policy.

4.0 Conclusion and Reasons for Recommendations

4.1 Accepting the delegation from OCC of the enforcement powers proposed in this report will allow the two councils to develop shared working arrangements that will improve enforcement of the legislation relating to Energy Performance Certificates (EPCs) and Minimum Energy Efficiency Standards (MEES) and add to our ability to improve conditions in privately rented dwellings and commercial buildings.

4.2 The Council will not be obliged to take on any particular enforcement responsibilities as a result of accepting the delegations but will be able to make use of those provisions it deems pertinent in light of its other responsibilities and resources as circumstances and opportunities arise. Any such activities will be subject to the contracts and agreements referred to in sections 1.3 and 7.2.1.

5.0 Consultation

None

6.0 Alternative Options and Reasons for Rejection

6.1 The following alternative options have been identified and rejected for the reasons set out below.

Option 1: Adopt none of the powers; – that would prevent the Council from sharing enforcement with OCC to improve either domestic rented or commercial rented premises and would forego the opportunity to enhance the Council's ability to enforce MEES provisions in private rented dwellings.

Option 2: Adopt only those powers relating to domestic premises; - that would prevent shared enforcement in relation to commercial rented premises but still facilitate the Council's enforcement of MEES in private rented dwellings.

Option 3: Adopt only those powers relating to commercial premises; - that course would exclude any enhancement of the Council's current enforcement powers in relation to residential premises.

⁵ Because the MEES offence specifically relates to the letting of a property with an EPC rating of F or G

7.0 Implications

Financial and Resource Implications

- 7.1 The Council has experience of enforcing legislation in both the domestic and commercial private rented sector but is not currently resourced to take on significant additional enforcement. However, the intention behind the proposed delegation of powers is not to transfer enforcing responsibilities and obligations, but to allow the Council the ability to enforce this legislation, or certain parts of it, as opportunities arise to raise standards and circumstances dictate.
- 7.2 For example, in relation to EPC requirements, the Council is most likely to take advantage of the ability to enforce requirements in relation to the private rented sector, and specifically in cases where it is currently prevented from enforcing minimum energy efficiency standard (MEES) because a property lacks the requisite EPC. Using delegated powers to enforce EPC regulations rather than having to pass such cases to OCC will add to Cherwell District Council's enforcement capabilities.
- 7.3 In both the EPC and MEES regulations there is the ability to serve financial penalties:
- EPC penalties in relation to dwellings are fixed at £200, whereas for commercial premises they can be as great as £5,000.
 - MEES penalties in connection with commercial premises are potentially considerably greater: The penalty for renting out a non-compliant property for a period of fewer than three months will be equivalent to 10% of the property's rateable value, subject to a minimum penalty of £5,000 and a maximum of £50,000. After three months, the penalty rises to 20% of the rateable value, with a minimum penalty of £10,000 and a maximum of £150,000.
 - (The maximum MEES penalty in connection with residential premises, which Cherwell District Council is already enforcing, is £5,000. The penalty structure is set out in the Council's MEES Policy which is included with this report as a Background Paper.)
- 7.4 The legislation allows the Council to retain the income from the financial penalties it secures in relation to the work it undertakes, and any necessary arrangements will be included in an agreement between the two councils (see section 7.2.1 below).
- 7.5 The Council will wish to consider both the resource implications and potential income from penalties it may impose in determining which enforcement powers it may wish to utilise. It is proposed that the Chief Operating Officer is delegated to perform the enforcement duties set out in this report and will therefore make these decisions (see section 1.4 above).

Comments checked by:

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Legal Implications

- 7.6 Oxfordshire County Council has delegated the enforcement powers subject to an agreed agency agreement being in place. The agreement will detail the operational aspects of this work to ensure the enforcement work is undertaken in an efficient and cost-effective manner; detailing processes, roles and timeframes. The

agreement will include review periods to enable amendments to be made if necessary.

- 7.7 Section 101 of the Local Government Act 1972 and Section 9EA of the Local Government Act 2000 permits the Oxfordshire County Council to delegate powers to Cherwell District Council to discharge certain functions, and this will be the authority relied upon in the agreement between the two councils.

Comments checked by:

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8.0 Decision Information

Key Decision

Financial Threshold Met: No

Community Impact Threshold Met: No

Wards Affected

All

Links to Corporate Plan and Policy Framework

- Thriving communities and Wellbeing
- Clean, Green and Safe

Lead Councillor

Councillor John Donaldson, Lead Member for Housing

Document Information

Appendix No	Title
	None
Background Papers	
2 July 2018 Executive report - MEES Policy – available at Executive Report	
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