

Primary Authority Partnership

Warwickshire County Council Trading Standards

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Primary Authority Advice Reference WTS/PM/TPO/31

This Primary Authority Advice has been produced by Warwickshire County Council Trading Standards Service, in partnership with The Property Ombudsman and Propertymark, for use by member businesses as an aid to complying with the law. If you follow this advice correctly, your local Trading Standards Service should respect this and not ask you to comply with the law in a different way. If you are contacted by a local authority enforcement body, please inform them that you are a member of the scheme.

Advice requested:

When are listed properties exempt from the need for an Energy Performance Certificate on marketing for sale or rent?

Legislation considered:

Energy Performance of Buildings (England and Wales) Regulations 2012 ('EPB')

Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 ('EPPRP')*

Planning (Listed Buildings and Conservation Areas) Act 1990 ('LBCA')*

Town and Country Planning (General Permitted Development) Order 1995 ('GPD')*

*These pieces of legislation are not listed as 'Relevant Enactments' under the Regulatory Enforcement & Sanctions Act 2008, so all references to them should therefore be considered outside the ambit of Assured Advice.

Other Material considered:

A guide to energy performance certificates for the marketing, sale and let of dwellings: Improving the energy efficiency of our buildings (MHCLG December 2017)

Improving the energy efficiency of our buildings: Local Weights and Measures Authority guidance for the enforcement of the requirements of the Energy Performance of Buildings (England and Wales) Regulations 2012 (as amended) (MHCLG March 2016)

Consents and Regulations for Energy Improvements to Older Homes (<http://historicengland.org.uk/advice/your-home/saving-energy/consent-regulations>, as at 22/8/18)

Energy Performance Regulations (<http://historicengland.org.uk/advice/your-home/saving-energy/energy-performance-regulations/>, as at 6/11/19)

Energy Efficiency and Historic Buildings – Energy Performance Certificates (Historic England May 2015)

Assured Advice Issued:

Regulation 5 of the EPB exempts *'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'* from needing an EPC.

'Buildings officially protected as part of a designated environment or because of their special architectural or historical merit' are not defined in the EPB; however other pieces of legislation assist with this:

Section 1(5) LBCA stated that listed buildings are those which are 'for the time being included in a list compiled or approved by the Secretary of State'. All listed buildings in England and Wales may be found at www.historicengland.org.uk/listing

Section 69(1) LBCA defines a conservation area as an area *'of special architectural or historic interest to preserve or enhance'*. Historic England states that "Conservation areas exist to manage and protect the special architectural and historic interest of a place – in other words, the features that make it unique. Every local authority in England has at least one conservation area, and there are now over 10,000 in England". Conservation areas are generally designated by the Council as the local planning authority, but Historic England can designate conservation areas in London and the Secretary of State can designate a conservation area anywhere in England in exceptional circumstances.

There are restrictions on alterations which may be made to listed buildings and properties in a conservation area, which will cover making alterations such as inserting windows and installing solar panels. Some buildings may be able to accommodate significant changes, whilst others are sensitive to even slight internal or external alteration, and are likely to require permission before any work is carried out.

The exemption from the EPC requirements is not a blanket exemption, but applies only when the requirement to comply with the minimum energy performance requirements would ‘unacceptably alter’ the character or appearance of the property or area. This is therefore a somewhat subjective area.

The MHCLG (Dec 2017) state (on p6):

‘To comply with minimum energy performance requirements, many of the recommendations in an EPC report e.g. double glazing, new doors and windows, external wall insulation and external boiler flues would likely result in unacceptable alterations in the majority of historic buildings. These can include buildings protected as part of a designated environment or because of their special architectural or historical merit (e.g. listed buildings or buildings within a conservation area). In these cases an EPC would not be required.’

Some listed buildings, or buildings in conservation areas, are capable of having some alterations carried out, particularly internally, without unacceptably altering their character or appearance.

The MHCLG go on to say:

‘Building owners will need to take a view as to whether this will be the case for their buildings. If there is doubt as to whether works would unacceptably alter the character or appearance of a building, building owners may wish to seek the advice of their local authority’s conservation officer.’

In areas with County and Borough or District Councils, the conservation officer will be found at the Borough or District Council. However, some authorities may not have conservation officers. As an alternative we would suggest seeking the opinion of a surveyor, as per the requirement in EEP RP Reg 32.

The EEP RP state that landlords shall not let domestic or non-domestic properties unless they have an energy performance indicator of band E or better; however there is an exemption where: “*there are no relevant energy efficiency improvements that can be made to the property*”. If the property cannot be altered without affecting its character or appearance, or that of the surrounding area, then the landlord has the exemption.

In summary therefore:

Listed properties or those in conservation areas are (or may be) exempt from the need for an EPC on marketing for sale or rent where the works needed to bring them up to the minimum standard would unacceptably alter their character or appearance. Each building, and the work required, will need to be judged individually on a case-by-case basis. In doing this, regard should be paid to such things as:

- the views of local council conservation officers and planning officers;
- a surveyor’s report;

- the nature of the works needed to improve the energy performance;
- guidance issued by Historic England.

Date Advice is Effective from (issue date): 23 10 2018

Last Review Date: 13 01 21

Next Review Date: 12 01 22

Primary Authority: Warwickshire County Council Trading Standards Service

Co-ordinators: The Property Ombudsman and Propertymark

Supporting Regulator: Not applicable

For Publication on the Primary Authority Register: Yes

Geographic Applicability: This advice applies in England.

Scope: This advice is applicable to all member businesses.

How to obtain up to date copies of this advice: Current copies of this advice may be obtained via the member organisations' websites:

www.tpos.co.uk/members/assured-advice/assured-advice-information

and

www.propertymark.co.uk/working-in-the-industry/primary-authority-advice/.