

# Do you need an EPC for a listed building?

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Property owners and occupiers will be well aware of the requirement to have an Energy Performance Certificate (EPC) for a property and the obligation to produce this upon certain leasing or sale transactions.

Most should now also be aware of the recently implemented Minimum Energy Efficiency Standards (MEES) which make it unlawful to grant new leases of properties with an F or G rating. From 2023 these standards will make subsisting lettings of F or G-rated commercial properties unlawful too (2020 for residential properties).

Despite the admirable environmental ambitions of the EPC and MEES regimes, a lot of people view these as an 'administrative burden' and breathe a sigh of relief when they see that a property is a listed building. This is because there is a widely held misapprehension within the industry that EPCs are not required for listed buildings and, if there is no valid current EPC, there is no obligation to comply with MEES.

In fact, this is not the case and the EPC regulations do not simply state that listed buildings are exempt from the requirement to obtain EPCs but rather they are exempt "insofar as compliance with certain minimum energy performance requirements would unacceptably alter their character or appearance". This is a subtle, but important, difference.

For example, if it was suggested that the old single-pane sash windows of a listed property be replaced with new double-glazed windows, then this is likely to "unacceptably alter" the character of a property where the façade and/or windows were the listed feature resulting in the property being exempt from the EPC requirements. However, if it was simply recommended that the internal lighting be replaced with more efficient LED lighting, then the façade would be unaffected and so in this circumstance the character and nature of the property would not be unacceptably altered and the property would not be exempt for EPC purposes.

In order to determine whether a particular property is exempt, a property owner will first need to work out (i) what the potential or recommended energy efficiency improvement works are for the property and (ii) whether implementing those recommendations would unacceptably alter the character or appearance of the property. It is likely that an EPC assessor will need to be instructed to evaluate this. In short, this is a bit of a chicken and egg situation – property owners essentially need to undertake an EPC survey to work out whether an EPC survey is required.

A property owner would also have to inspect the listing particulars of the property to ascertain what the unique listed characteristics are. There is ambiguity as to what constitutes "unacceptably altering" those listed features and who is the arbiter of that decision; is the property owner, the EPC surveyor, English Heritage or the local planning authority?

One approach may be to seek specialist advice on whether the energy efficiency improvements recommended by an EPC assessor would require listed building consent and, if so, whether such consent is likely to be refused. If no consent is needed, or if it is expected to be granted, then it seems an EPC would be needed.

Due to the conflicting views on this subject, many have called upon the government to provide further guidance on this issue. So far the Ministry of Housing, Communities and Local Government simply suggests that owners should contact their local authority's conservation officer if they're in any doubt about the exemption status of a particular property. However, transaction timescales dictate that this will not be feasible in most scenarios.

Until the government clarifies, it will often be simplest for property owners to go ahead and produce EPCs for listed buildings regardless – especially where the assessor advises that the rating will turn out well above the minimum E grade. After all, a difference of opinion between a buyer and a seller as to whether an EPC is actually required could lead to a costly delay on a transaction.

However, it is worth remembering that if there is no valid current EPC, then there is no obligation to comply with MEES. If an EPC is actually obtained and turns out to be grade F or G, then there may be difficulties in leasing the property. So where a property is believed to have poor energy efficiency but the landlord is confident no EPC is legally required, it may be best not to obtain one.

Finally it is worth noting that the maximum penalty for selling or leasing a property without an EPC, where one is required, is currently £5,000. The penalty for letting a grade F or G commercial property in breach of MEES is up to 20% of the rateable value of property, subject to a maximum of £150,000.

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