

# Encouraging Energy Efficiency – 10 Questions on the Green Deal

Hot on the heels of the CRC Energy Efficiency Scheme, commercial property owners will now have to get to up to speed with a new statutory mechanism aimed at improving energy efficiency in the existing UK building stock: The Green Deal. This briefing answers 10 questions about this mechanism.

## 1. What is the Green Deal and how will it be funded?

The Green Deal is a new form of financing product introduced under the Energy Act 2011. It is intended to help owners and occupiers secure upfront finance for the carrying out of energy efficiency improvements to properties. The costs of the improvements will be recouped from whoever is the electricity bill payer for the property from time to time under an instalment regime. Repayments (which would include an interest element) could last for example up to 20 years. Authorised providers will offer Green Deal finance packages (Green Deal Plans) and these are expected to be attractive compared to standard commercial financing arrangements given that the repayments are effectively secured on the property with consequently lower risks of default.

The Green Deal was originally targeted towards residential properties, but it could equally be used to finance energy efficiency improvements to commercial properties.

### Proposed qualifying Green Deal improvements

- Insulation
- Boilers
- Glazing and doors
- Lighting systems
- Solar panels and wind turbines

## 2. Is there any maximum limit to Green Deal financing available?

There is no maximum limit for finance, subject to the Green Deal package complying with the so-called "Golden Rule". The Golden Rule is that the Green Deal will only finance measures that will pay for themselves in energy savings (these measures will be identified in an authorised assessor's recommendations). A Green Deal Plan ought to be cost-neutral to the owner / occupier. However, the Government is not proposing to guarantee this and variables, such as assumptions as to future energy prices and the risk that improvements will not result in the expected energy savings, could result in net costs to the owner / occupier.

## 3. Do property owners have to take up the Green Deal?

Signing up to a Green Deal is voluntary but there is going to be a sting in the tail. The Government plans to implement provisions in the Energy Act 2011 to place restrictions on letting properties where the Energy Performance Rating of the property is below "E". This could prevent any new lettings and, depending on how this is implemented, it could also apply to:

- the continuation of existing lettings; and
- the grant of a long lease which is comparable to a sale.

It is clear that this could be a draconian power. It appears that this restriction will be effective from April 2018, but there is currently some uncertainty as to whether it could be brought in at an earlier date.

So far, little further information has been provided but the Government has suggested that the restriction could be avoided by signing up to a Green Deal package that is aimed at securing the property an "E" rating, even where ultimately, the property does not in fact reach that standard. There are concerns that in many cases, particularly for multi-let properties

(see below), consent to carry out the works will be difficult to obtain, and it seems likely that the Government will agree to an exemption from the restriction where consent is not forthcoming.

#### 4. What steps are involved in putting a Green Deal Plan in place?

In broad terms, either an owner or occupier could initiate a Green Deal Plan but the consent of both will generally be needed. Broadly, the steps are as follows:

- An independent assessment of measures that could be put in place to improve energy efficiency is carried out;
- A Green Deal Provider is approached to act as a service provider and to finance any measures to be installed;
- All necessary consents are obtained (see question 5 below);
- A Green Deal Plan (contract) is agreed – all or some of the recommended measures could be incorporated into the package;
- An accredited installer carries out the necessary improvement works;
- An Energy Performance Certificate (EPC) is created or the existing EPC updated to show the existence of the Green Deal Plan (see further below); and
- Repayments commence and these form a separate element of the electricity bill from time to time.

It is possible that one organisation may not only act as provider, but also offer independent assessment and installation services.

#### 5. Who will I have to get consent from?

Depending on whether the owner or occupier seeks to initiate a Green deal, various parties with an interest in the property may need to consent to a Green Deal Plan being put in place under the proposed regulations. For example:

- A freehold owner would need head tenant's and all other bill payers' consent.
- An occupier (as bill payer) would need the consent of the owner, head tenant and all other bill payers in the property.

Significantly, mortgagees, not in possession as at the date the Green Deal is made, do not have to give consent under the current proposals. Lenders' organisations have sought to change this since secured lenders could see themselves facing Green Deal repayments if they need to go into possession of the relevant property.

Where all the relevant consents have not been obtained, parties affected (e.g. bill payers who find themselves faced with repayments for Green Deal Plans they knew nothing about) will have rights to seek cancellation of the Green Deal Plan. The party who put the Green Deal Plan in place may then have to compensate the provider.

See also, question 8 in relation to lease issues.

#### 6. What happens to the Green Deal liability if I sell or rent my property?

As mentioned before, the repayments are secured on the electricity bill of the property so when there is a change in bill payer following a sale or letting, the bill payer becomes liable for the repayments.

On a sale of a property<sup>1</sup>, the seller would need to disclose the existence of the Green Deal Plan to the Buyer (through provision of the updated EPC). The same obligation would apply to the landlord granting a new lease or licence, but only where the tenant is to be directly responsible for the electricity bill.

The buyer / new tenant will then need to acknowledge formally that it will be bound on an ongoing basis by the Green Deal Plan.

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<sup>1</sup> Including the sale of a long lease

If the plan is not properly disclosed as above, this will cause problems to both parties:

- The buyer / new tenant is likely to be able to have the plan cancelled, but it may be necessary to have improvement measures removed to achieve this.
- The Green Deal Provider could seek compensation in these circumstances from the Seller / assignor / landlord.

## **7. Is it ever necessary to make an immediate repayment of the Green Deal Plan balance?**

Where a building is demolished (or the electricity supply is otherwise permanently disconnected), the Green Deal instalments would become immediately repayable. This might also be the case if certain changes of use are made to the property. This is restricted in the current proposals to where the number of dwellings or flats in a property is either increased or decreased.

## **8. Can the Green Deal be used for multi-let properties?**

In principle, a Green Deal Plan can be put in place for multi-let properties such as office blocks and shopping centres. However, there may well be practical and legal difficulties with doing so.

In many cases, lack of consent from the tenant is likely to cause a problem. Where tenants directly pay their own electricity bills (e.g. in a shopping centre), their consent will be required under the regulations to any Green Deal Plan in relation to the property.

Even if regulatory consent is not needed (e.g. an office block where the tenant is not a bill payer), many of the types of qualifying improvements envisaged (see box inset) will require tenants to vacate or will otherwise affect the use and enjoyment of their demise. A tenant will usually have the right to prevent such works under its lease (irrespective of whether it pays the bill directly).

The landlord may still be able to install works such as solar panels and wind turbines without consent but a Green Deal Plan with these works alone may not be worthwhile. Even if it is worthwhile, the landlord may not be able to recover the cost of Green Deal Plan repayments under the lease service charge or outgoings clause.

As a result, landlords of multi-let properties are likely to have to wait for void periods or wholesale refurbishment programmes to take advantage of the Green Deal.

## **9. As a landlord or tenant, do I need to do anything now in relation to the Green Deal?**

Landlords will need to consider their leases to check whether that they can recover the costs of any Green Deal Plan put in place. Otherwise, they could find that they sign up to a Green Deal, the tenant gets the benefit of reduced energy costs, and the landlord remains liable for the Green Deal repayments.

Landlords and tenants alike will need to consider whether they wish to restrict the ability to sign up to Green Deal Plans given the potential liabilities they will involve. In particular, landlords will be concerned that they will be liable for Green Deal payments for plans put in place by a tenant once the tenancy comes to an end.

Given the potential restriction on lettings mentioned in question 3, current and prospective landlords should think carefully about the possible future implications if the building has an EPC showing an "F" or "G" rating.

## **10. What are the next steps in implementing the Green Deal?**

The government is currently assessing responses to its recent consultation exercise. Work is ongoing in a number of areas including on how the consent and disclosure provisions will work. The intention is that the scheme will launch properly in October 2012.

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