

Dear ECO Consultation Team,

Thanks for the opportunity to contribute to the development of the ECO Guidance for Suppliers via the consultation and recent workshop at Ofgem.

Overall we are concerned that Ofgem are:

- A) misreading the ECO order in a way which is unfavourable for district heating (e.g. excluding cost as a reason for not insulating a property and applying the same insulation rules to properties already on district heating vs. properties being connected to district heating for the first time)
- B) setting an unrealistically high bar for when it is feasible to insulate properties and not taking proper account of previously insulated properties
- C) creating an unnecessary burden on projects to demonstrate that insulation is not feasible – there are many cases where it isn't and landlords are motivated to insulate where possible

At the consultation event it appeared that Ofgem's remoteness from projects means there is a lack of understanding of some of the real problems facing implementation of projects. This seemed to extend to a lack of appreciation of the business case for projects through to planning and other consent issues. I would like to invite a few members of your team to spend a couple of hours with me in September to understand the complexity of some real projects in SW1 which I am hoping to bring forward in ECO2.0.

1. New zero primary measures: minimum insulation level to support a secondary measure

Cavity wall insulation

1a) do you agree that insulation of a cavity wall must be installed to at least 50% of the total exterior facing wall area of the premises in order to support a secondary measure?

Yes

1b) please give reasons for your answer (including any alternative suggestions for an acceptable minimum threshold).

Consistent with guidance relating to other measures

Roof-space insulation

1c) do you agree that roof-space insulation must be installed to at least 50% of the total roof-space area of the premises in order to support a secondary measure?

Yes

1d) please give reasons for your answer (including any alternative suggestions for an acceptable minimum threshold).

Consistent with guidance relating to other measures

2. Connections to a district heating system: pre-conditions for the premises under CERO and CSCO

2a) do you agree with the reasons we are proposing for judging why any of the roof-space or exterior-facing wall area cannot be insulated?

No

While it is probably possible to insulate any building, Ofgem need to understand that there are finite resources available to insulate buildings and there are many barriers that reasonably prevent works from going ahead including:

- technical (e.g. ewi may be constrained by width of external walkways)
- legal (e.g. the consent chain in a leasehold building can be challenging and involve multiple leaseholders as well as freeholder and occupants [if different from the leaseholders])
- social reasons (energy works cause disruption and it is unreasonable to impose this on some vulnerable occupants); and
- economic (feasibility work by Westminster city council shows that subsidies in the region of £400/tco2 are required to allow works to meet the golden rule in small, gas heated properties – with current subsidies running at ~£25/tco2, paybacks can be >100yrs).

While Ofgem's proposed reasons for not proceeding with insulation touch on the barriers above, they do not seem to fully reflect the difficulty of securing planning and other consents to insulate homes and ignore economic barriers which are perhaps the most significant.

We consider it is essential to consider economic viability of works when assessing whether a property can be insulated or not.

Indeed, it should be the primary issue. there is no point investigating consent issues if we will be asking occupants to volunteer a contribution of, say, £5k over and above the maximum amount suggested by the 'golden rule'.

it is arguably impossible to ignore economic considerations as the barriers are all intertwined anyway. E.g. Ofgem identify lack of an access hatch as a technical barrier to insulating a roof space, however, this is easily overcome if money is no object (if a £400 cost of an access hatch is a suitable reason not to insulate a loft, why is a £10,000 access cost for ewi not relevant?).

Furthermore it seems that the exclusion of economic reasons is down to Ofgem's interpretation of the wording of the eco order. The order itself does not specifically say that economic reasons are an insufficient reason for not insulating a property. it simply allows that properties do not have to be insulated where premises 'cannot be insulated'. it is our view that if nobody can reasonably be expected to pay for the cost of insulation, the premises cannot be insulated.

Various people may be willing to increase their financial contribution to a project, however, it is unreasonable to expect them to do so for various reasons. for example:

- Funders (such as energy companies under eco) could volunteer more funding to make insulation viable. However, eco funders cannot be expected to apply funding over and above the market rate. Other changes to eco have been designed to reduce the market rate.
- The building owner could pay but should not be expected to contribute levels where there is no economic benefit (e.g. there is no benefit if costs [net of any funding] exceed >15yr simple payback [which is the test applied in building regulations]). Even then, the building owner should not be expected to contribute unless there is a mechanism to recover costs from the occupant (e.g. they are an owner/occupier or lease agreements allow for this).
- The occupant could pay but should not be expected to contribute levels where there is no economic benefit (e.g. >15yr simple payback is the test applied in building regulations). this should allow borrowing e.g. via a green deal payment plan to be affordable.

One could also drill down to the reason why someone may not choose to give funding to an energy project; doing so would typically mean diverting finite resources from other projects. for example, a landlord with a constrained budget may have an option to fund either energy works or essential maintenance/refurbishment works to comply with h&s legislation. it is entirely reasonable to forego the energy project in this situation but is this a purely economic decision or a social one?

Ofgem's attention is drawn to the ongoing consultation on the implementation of minimum energy standards in the private rented sector which touches on many of the reasons why works may not be possible including third party consents and upfront costs to the landlord. Ofgem should also note that the measures under consideration to achieve the minimum standards for private rented accommodation are generally much lower capital cost than wall insulation (and yet the consultation is proposing that a payback will be required before the measures become mandatory).

In summary, Ofgem should accept economic reasons for works not going ahead.

Aside from economic arguments, WCC consider that Ofgem have generally identified the key reasons why insulation may not go ahead, however, there does not seem to be a full understanding of some of the issues. Some further information is provided below on consent barriers.

Considering roof spaces, there are reasons why roof spaces may be restricted by planning legislation (listed buildings have both internal and external restrictions). similarly there may be issues with bats or other protected wildlife that prevents access and insulation of roof spaces.

For ewi Ofgem suggest swi might not be installed because:

'it would be unlawful to install e.g. planning laws prohibit the installation of ewi' – planning laws do not prohibit the installation of ewi per se, they require applications for permission which may be approved or denied.

We would recommend a pragmatic approach to gathering evidence that planning/environmental legislation prevents works from going ahead.

for simplicity, we consider that buildings with heritage status should be assumed as unsuitable for ewi in their entirety.

for other buildings a letter from the planning authority stating that works are unlikely to be given planning consent should be sufficient. Ofgem may wish to consider producing standard/template letters.

another potential reason for not going ahead with insulation proposed by Ofgem is that *'the occupier (or landlord where applicable) refuses to consent for reasonable grounds (other than money)'*. wcc has also discussed the exclusion of financial reasons above. if anything, consent from building owners/occupiers is the issue most fundamentally linked to money.

Some further background is provided on consent issues.

it is not only the occupier and landlord that need to consent. Often there is a superior landlord and a freeholder who must also consent.

the consent chain will depend on tenure, leases, property rights and the cost and nature of the works and is complicated in flat properties.

Freeholders will typically only be able to recharge lessees for the cost of maintaining a building (leases are typically silent on improvements). So a freeholder can recover their costs of maintaining a building from lessees but cannot recover the cost of improving a building.

if there is no provision in the lease covering improvements, the lease can be altered but this requires >75% of lessees to be in agreement and <10% to be opposed. there is a substantial overhead involved in embarking on this process (and, if there is little hope of success, it is likely to be a waste of resources to even try).

even if improvements can be delivered at zero capital cost in a block without improvement clauses, the freeholder will still be liable for any maintenance costs arising from the improvement and so it may be reasonable for a freeholder to refuse consent based on future maintenance liabilities (and/or the cost/effort/likelihood of changing leases so that the liability was shared with lessees).

this seems like one of the 'non_economic' reasons that ofgem may accept for a freeholder refusing consent for works, however, one could argue that refusing consent on grounds of future maintenance costs/cost of changing leases is ultimately an 'economic' argument.

even if leases do include clauses governing the capital and maintenance cost of improvements (many local authority leases under the right to buy will include these leases), it is only typically possible for the freeholder to recover reasonable costs.

even with improvement clauses, freeholders cannot typically enforce an improvement which encroaches on the lessee's demise and so ewi is difficult without consent (the demise may also include balconies which could make ewi difficult).

leases also often reserve property e.g. windows or heating systems which may belong to the lessee and so restrict a freeholder's rights to make changes. A freeholder's inability to

change windows without consent may limit the viability of installing ewi (e.g. installation with existing windows may be thought to cause technical issues with cold bridging, damp and mould).

Again, a freeholder with improvement clauses may look at the benefit of the proposed project vs. complexity/likelihood of securing consent from enough lessees to make the project worthwhile and decide it is a waste of time to even try.

The freeholder/lessee relationship works both ways. Lessees cannot typically make improvements without the freeholder's consent. a freeholder may be concerned about future maintenance implications to the building fabric arising from iwi being applied to a single apartment and so could reasonably refuse such works.

for similar reasons, a freeholder could refuse iwi works to only a fraction of an elevation (e.g. a front elevation may include a living room and a kitchen – iwi in the kitchen could be deemed unviable due to the need to move fixtures. iwi in the living room alone could be considered technically unattractive due to cold bridging/technical issues.

Technical issues will also apply e.g. external walkways/internal corridors/stairways may become too narrow following ewi/iwi to comply with fire regulations.

We consider your proposals around the need to move boilers/washing machines being a good reason to refuse works to be logical (but so would be the need to move kitchen/bathroom fixtures), however, it is unclear what level of disruption is reasonable to cause an objection?

Wcc would recommend that Ofgem accepts that a freeholder is well placed to decide on whether:

- a project is financially viable
- a project presents unacceptable long-term maintenance issues
- necessary consents from lessees are likely to be forthcoming

2b) are there any other scenarios where the exterior-facing wall area of a premises being connected to a dhs cannot be insulated?

See above

2c) how can suppliers demonstrate for compliance purposes that the exterior-facing wall area cannot be insulated?

There are many complex reasons which could cause the external wall not to be insulated.

We would argue that it is probably the norm that ewi cannot be applied to gas-heated homes in the current funding environment.

a declaration signed by the freeholder would seem to be the simplest approach stating that the viability of ewi was considered and ticking the main barrier (finance/consent(freeholder/lessee/tenant or planning)/technical).

If planning is cited as the main reason, some evidence of the heritage status of the building should be provided or, if there is no heritage status, correspondence with the planning authority should be provided demonstrating that planning consent is unlikely.

if finance is cited, some evidence of the payback of the project to occupants should be cited with a threshold of >15yrs being a suitable reason for not proceeding.

Technical issues could be covered by a surveyors report

The evidence required around consent issues will vary depending on the nature of the property (including any lease/tenancy agreements) and works. for example, it is considered unreasonable to expect a freeholder to seek to introduce improvements in large blocks (>10 flats) where leases do not have improvement clauses unless the works are fully funded.

See also comments in response to q4 on the evidence requirements for previously insulated buildings.

2d) are there any other scenarios where the roof-space area of a premises being connected to a dhs cannot be insulated?

See above – planning (interior of listed buildings is also affected), bats.

2e) how can suppliers demonstrate for compliance purposes that the roof-space area cannot be insulated?

As above, a declaration signed by the freeholder with minimal supporting evidence would seem to be the simplest approach with additional information as necessary.

See also comments in response to q4 on the evidence requirements for previously insulated buildings.

2f) are there any additional factors that can affect the decision on whether or not to insulate a premises?

Cost/see above

For premises, not including those within a multi-storey building which is not located on the top floor

2g) do you agree that, where the roof-space area or total exterior-facing wall area of the premises are insulated to less than 100% but more than a specified minimum level, a dhs connection should be eligible where the remaining area cannot be insulated?

No

the requirement to provide reasons for failing to insulate 100% of the wall is not very pragmatic

Ofgem/DECC should recognise that insulating properties is actually extremely challenging (especially given changes to eco which have reduced the market rate available for carbon).

It is more challenging to make a business case for some property types (e.g. high rise gas heated properties) than others (low rise electrically heated).

There are also substantial barriers arising from the leasehold system which make it difficult to insulate leasehold buildings (especially those with more than a handful of lessees).

Furthermore, Ofgem/DECC should acknowledge that many landlords (especially social landlords) are motivated to insulate properties where possible.

It seems likely that private landlords/freeholders will shortly become obliged to give greater weight to energy issues including proposals that will require landlords/freeholders to consent to works where it is reasonable to do so.

aside from the general difficulty of insulating properties and motivations of landlords/freeholders, in any case it is difficult to insulate 100% of the wall. For example, a block of flats with cavity wall construction will typically have the following features that prevent 100% of the external area being insulated:

- ring beam floors, lintels and other structural elements penetrate the cavity
- it is not uncommon for some structures to have solid wall components (e.g. a panel beneath a window or a flank wall adjoining a stair)

There are similar issues meaning it is also difficult to insulate 100% of a roof.

as well as taking a more pragmatic approach to the level of evidence required to satisfy Ofgem that insulation cannot be installed, we would recommend a more pragmatic figure for the preconditioned minimum percentage areas of walls/roofs that should be insulated before further supporting evidence is required (e.g. 50%).

2h) do you agree that this minimum level should be set at 50%?

Yes

3. Compliance with building regulations: installation of a measure

3a) do you agree with our proposal to require evidence that the installation of a measure complies with building regulations? please give reasons for your answer.

No comment

3b) if this requirement was introduced, how could compliance be demonstrated?

No comment

3c) are you aware of any other means of evidencing compliance with building regulations other than those listed (for either the installation or the product and system, or both)? if so, please provide details.

No comment

3d) do you think we should introduce this requirement from the date version 1.2 of the guidance takes effect or for the next eco obligation period (2015-2017)? Please give reasons for your answer.

No comment

4. General comments on our guidance (version 1.2)

4a) please provide any further comments on the changes to our draft guidance document (version 1.2).

The comments below relate primarily to eligibility criteria around minimum insulation of buildings connecting to district heating.

the wording of the order requires premises connecting to a district heating to have wall or roof insulation (unless it can be shown that it is not possible to insulate the premises). while we agree with Ofgem's wide interpretation of 'connection to a district heating system' within the guidance generally, we would argue that, in this case, the intent of the legislation is to ensure that any homes being connected to district heating *for the first time* should be insulated. Homes connected to existing district heating which is being improved by virtue of a change in heating technology should not have this requirement applied in the same way.

Further guidance is required on what constitutes top floor premises e.g. tiered buildings will have several flats with roofs (not just those on the uppermost floor – the eco order (and so the guidance) seems to only refer to those on the uppermost floor) and

If flats with exposed roofs that are not on the top floor are to be considered, further guidance will be needed e.g. some of the ceiling of a flat may be exposed and some may not. Does the unexposed portion count as insulated?

The consultation includes proposals on the proportion of walls/roofs of premises that needs to be insulated. However, there are no proposals over how to treat buildings that have been insulated historically vs. buildings which are being insulated alongside the district heating works. further consultation is required on this.

when considering buildings that have been insulated previously (there may be a need to apply a time limit to this e.g. prior to the commencement of eco1.2) , the proportion of the building that was insulated will have been determined by what was sensible at the time given the prevailing business case, regulations and technologies.

where it was possible to insulate some or all of a building, the standard of insulation applied to the various projects will have been determined by:

- the year of installation
- technical restrictions (e.g. cavity width)

The existing supplier guidance (v1.1a) is relevant here (especially para 6.9 and also para 4.41). It includes some requirements for u-values of pre-existing insulation in CSCO and guidance on when pre-existing insulation affects the case for insulating a building.

While para 6.9 is transposed into the draft v1.2 of the supplier guidance, para 4.41 has been rewritten as paragraph 4.58. However the redrafting omits a key aspect of the current

para 4.41 which states “we also consider reasonable grounds [for not installing 100% of a measure] to include where a measure has already been partially installed”

WCC reads this to mean that if a property has already been partially insulated, reasonable grounds exist for not insulating the property further.

our reasoning for this is that if it was judged impractical to insulate part of a property in a previous scheme (e.g. due to a large funding gap, the heritage status of a building, lessee consent issues, etc.), the same reasoning is likely to apply.

Ofgem should note that in these cases there will not be a detailed audit trail as to why some parts of a building have not been insulated and should accept a lower standard of evidence (e.g. a simple letter from the freeholder)

In summary, wcc are concerned that Ofgem are

- D) misreading the eco order in a way which is unfavourable for district heating (e.g. excluding cost as a reason for not insulating a property and applying the same insulation rules to properties already on district heating vs. properties being connected to district heating for the first time)
- E) setting an unrealistically high bar for when it is feasible to insulate properties and not taking proper account of previously insulated properties
- F) creating an unnecessary burden on projects to demonstrate that insulation is not feasible – it generally isn’t and landlords are motivated to insulate where possible

Yours faithfully,

Tim

Tim Starley-Grainger
Energy Strategy Officer
020 7641 8474
tgrainger@westminster.gov.uk