

Review

Built Environment Group



THE GREEN DEAL: IMPLICATIONS FOR THE PROPERTY INDUSTRY

AN OFFER YOU CANNOT REFUSE?

In the Coalition Government's Programme published in May 2010 the "Green Deal" was unveiled as the method by which home energy efficiency improvements would be paid for by savings from energy bills. There was a further promise "to take measures to improve energy efficiency in businesses and public sector buildings". Following the publication of the Energy Bill recently it is now clear that the Government intends to make the Green Deal available not only to provide energy efficiency improvements to residential buildings but also to commercial buildings. The implications of this somewhat surprising approach need to be carefully considered by the property industry.

Why is the Government introducing the Green Deal

The Green Deal is designed to address the challenge of reducing CO₂ emissions from the United Kingdom's building stock. 45% of the UK's total CO₂ emissions are consumed within buildings (or more accurately are consumed by people in buildings) – residential buildings account for 27% of the overall figure and commercial buildings account for 18% of the overall figure. Under the Climate Change Act 2008 the Government must achieve at least a 34% reduction in CO₂ emissions by 2020 against a 1990 baseline. To do this the Committee on Climate Change advises that annual 3% reductions in CO₂ emissions from our buildings need to be achieved. The Government is well aware that making our homes and workplaces more energy efficient is the proverbial low-hanging fruit on the path towards a low carbon economy. The Committee on Climate Change believes that there is scope for annual CO₂ emissions reductions of 4% in residential buildings primarily through insulation of lofts, cavity and solid walls, boiler replacement and increased deployment of energy efficient appliances. The Committee believes a similar level of CO₂ emission reductions can be achieved in the commercial sector through greater take up of readily available energy efficiency measures. However, there are a number of barriers to the implementation of such measures not least being the up front cost of such measures. The Green Deal, which will come into effect in 2012, aims to tackle and sweep away this barrier.

How does the Green Deal Work?

The Green Deal is in essence a financing mechanism which allows consumers to pay for energy efficiency improvements to their homes, community spaces and businesses through their energy bills. The upfront cost is not met by the consumer but rather by the Green Deal "provider". The role of the Green Deal provider is to offer a Green Deal "plan" to the consumer. The consumer obtains any necessary permissions and consents and then signs up to the Green Deal plan. The key features of a Green Deal plan are set out in Box 1.

Box 1 Key Features of Green Deal plan

- The expected financial savings must be equal to or greater than the costs attached to energy bill – the “Golden Rule” of the Green Deal.
- Before the measures are implemented an accredited Green Deal assessor must carry out an assessment of the Property.
- The recommended measures must be installed by an accredited Green Deal installer.
- For domestic premises the Green Deal provider must comply with the terms of the Consumer Credit Act and take account of the individual circumstances of the consumer.
- The energy supplier will collect the Green Deal charge from the consumer as part of the energy bill and pass the charge on to the Green Deal provider.
- The Green Deal charge will attach to the meter, rather than to the individual customer, and the Green Deal provider is not entitled to take a charge over the property of the consumer. However where a property is subject to a Green Deal plan the seller or prospective landlord must disclose the existence of the plan to any prospective buyer or tenant and must secure an acknowledgement from the buyer or tenant that the energy bill payer for the property is liable to make payments under the Green Deal plan.

To qualify for the Green Deal the expected savings in typical properties using a normal amount of energy must be equal to or greater than the cost of the proposed energy efficiency measures. The savings will not be guaranteed and the consumer will have the ultimate responsibility for reducing consumption after the Green Deal measures have been undertaken. The Government recognises that not every household will be able to save on their energy bills by taking up a Green Deal plan so there will be additional support for lower income and vulnerable households who may not consume sufficient energy to achieve the projected energy efficiency savings. In addition certain homes, which can only be made energy efficient through major measures and which would not otherwise qualify for the Green Deal, may be given additional support. These additional support measures will form part of a new Energy Company Obligation which will replace the CERT scheme which is due to expire in 2012.

Specific provisions for private rented property

The Green Deal will be available to landlords of domestic and commercial private rented premises. However, whilst the Government will initially allow such landlords the opportunity to take up the Green Deal voluntarily, it has clearly been decided that such landlords may well need a very firm hand to force them to make energy efficiency improvements. The Energy Bill accordingly empowers the Secretary of State to pass regulations in the future which will effectively compel landlords of domestic and commercial private rented premises to make energy efficiency improvements to their buildings. Before such regulations are passed, the Bill provides that the Secretary of State must conduct a review which will consider the need for action to be taken in relation to private rented property. The findings of the review must be published before 1 April 2014 and the earliest date on which the regulations could come into force is 1 April 2015. The Bill requires that the Secretary of State must following the review be satisfied that further measures will improve the energy efficiency of private rented properties and will not decrease the number of properties available for rent. It is these further powers of compulsion that may be imposed by the Secretary of State that will be of the utmost concern to landlords of private rented domestic and commercial premises and details of these future powers are set out in Box 2.

Box 2 – Future private rented property powers which may be introduced following a review to be published before 1 April 2014 and come into effect no earlier than 1 April 2015

- In the case of domestic private rented properties, the Secretary of State may impose requirements for landlords to comply with reasonable requests from tenants for energy efficiency improvements for which financial assistance is available under the Green Deal
- In the case of domestic private rented properties, the Secretary of State may empower local authorities to require landlords to implement energy efficiency improvements for which financial assistance is available under the Green Deal in order to bring properties up to a specified minimum level of energy performance as evidenced by an EPC. (The summary of the Bill states that the Government's intention is that domestic properties with an EPC rating of F or G would be targeted.)
- In the case of commercial private rented properties, the Secretary of State may impose obligations on landlords to make such energy efficiency improvements for which finance is available under the Green Deal as will bring their property up to a specified minimum level of energy performance as evidenced by an EPC and that the property may not be let until the landlord has complied with the obligation.

Commentary

The Green Deal is the clearest manifestation yet of the Coalition Government's determination to break the so-called "Circle of Inertia" that the Carbon Trust maintains is preventing the widespread take up of energy efficiency measures by owners and occupiers of domestic and commercial buildings. The Government's hope is that the role of Green Deal provider will have a broad appeal and will attract not only local builders and energy companies but also high street supermarkets and DIY stores. This will of course depend on whether the Green Deal finance mechanism can be made to work in a way that, on the one hand, protects the consumer and, on the other hand, offers an attractive return for the provider. If it can then the Green Deal may well end up generating the 250,000 jobs by the end of the decade that Chris Huhne, the Climate Secretary, has boldly predicted.

However, the extension of the Green Deal to commercial property was not widely trailed and is potentially problematic. First, there is likely to be some reluctance on the part of commercial property landlords to allow third parties to undertake energy efficiency improvements to their properties. Secondly, it is not clear what precise measures will be approved for deployment in commercial properties under the Green Deal and arguments may arise as to the suitability of specific measures for specific properties. Thirdly, there may be concerns about the fact that the Green Deal plan "assessors" may well be affiliated to Green Deal plan "providers" and their "objectivity" may be questionable. Fourthly, the pay-back periods that may be attached to Green Deal plans may be relatively long term and if they extend over periods of say 10 years or more the Green Deal repayments may adversely affect the lettable of the building. Fifthly, the best time to take advantage of a Green Deal might be when a building is vacant but it is not clear whether this will be possible if there is no occupier of the building to pay the Green Deal charges.

Accordingly, there may be less take up of the Green Deal amongst landlords of commercial buildings than the Government may wish and the Government will then be driven to introduce the proposed regulations that will prevent the letting of the building until the requisite measures have been taken. Whilst this may have the same end result as that intended by the Government it does raise the question whether the Green Deal is the right mechanism for the commercial property sector. Arguably the Green Deal should not be necessary for the commercial property industry where in many cases the owner or landlord should be able to finance the carrying out of energy efficiency improvements without the need for Government intervention. Some of the leading property companies, such as British Land, are already leading the way in this regard. Obviously where this is less likely to happen is at the lower end of the commercial property market where any potential investment in a building is difficult to justify and the building needs a major retro-fit. The Green Deal will not change the economics of those situations and perhaps a system of tax breaks and incentives (lower rates of VAT for example) for older properties, that might demand more radical measures than those on offer under the Green Deal, would be a more effective device than the Green Deal.

Nevertheless, what the Green Deal does demonstrate is that more regulation is undoubtedly heading in the direction of the property industry and landlords of the lowest EPC rated properties will, sooner or later, need to start thinking about how to improve the energy performance of their buildings – Green Deal or no Green Deal!

For more information on this topic please contact any of the following or your usual contact in Hammonds' Built Environment Group:

Christopher Brigstocke

Partner
Built Environment Group
T: +44 (0)20 7655 1178
E: christopher.brigstocke@hammonds.com

Karen French

Partner
Built Environment Group
T: +44 (0)113 284 7009
E: karen.french@hammonds.com

Liam Buckley

Partner
Built Environment Group
T: +44 (0)161 830 5017
E: liam.buckley@hammonds.com

Nick Green

Partner
Built Environment Group
T: +44 (0)121 222 3519
E: nick.green@hammonds.com

WWW.HAMMONDS.COM

If you do not wish to receive further legal updates or information about our products and services, please write to: Richard Green, Hammonds LLP, Freepost, 2 Park Lane, Leeds, LS3 2YY or email richard.green@hammonds.com.

These brief articles and summaries should not be applied to any particular set of facts without seeking legal advice. © Hammonds LLP 2010.

Hammonds LLP is a limited liability partnership registered in England and Wales with registered number OC 335584 and is regulated by the Solicitors Regulation Authority of England and Wales. A list of the members of Hammonds LLP and their professional qualifications is open to inspection at the registered office of Hammonds LLP, 7 Devonshire Square, London EC2M 4YH. Use of the word "Partner" by Hammonds LLP refers to a member of Hammonds LLP or an employee or consultant with equivalent standing and qualification.