

## MEES Regulations

## MEES in the Real World: the Worked Examples

## Professional Conferences Autumn/Winter 2023

**Ben Strange MRICS**  
**Chartered Building Surveyor**  
**Director, Mobius Building Consultancy**

Any scenarios or potential disputes depicted are intended to be fictional

Commercial MEES is here to stay

How will this property be a B by 2030?

Pre June 2022 EPCs will now be different

Affects almost every commercial property

Impacts throughout leasehold lifecycle

**If the EPC was done before June 2022 it is very likely to now be different**

Pre June 2022



Coal  
Gas

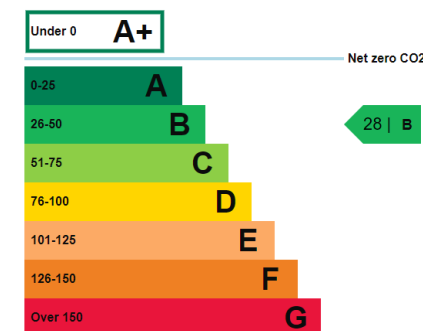
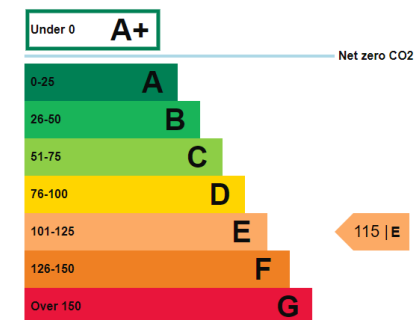
Post June 2022



Offshore Wind  
Solar  
Onshore Wind  
Nuclear



**73%**



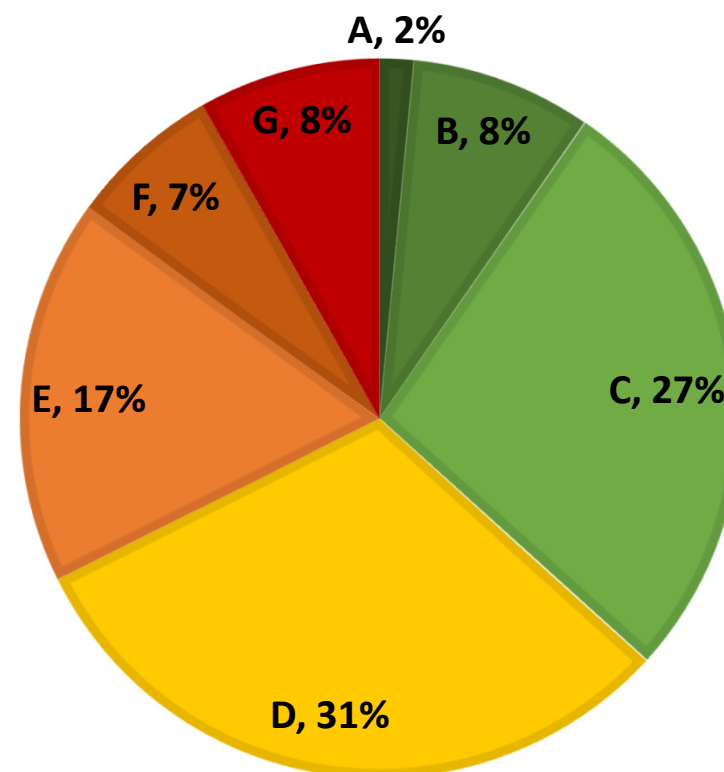
**Gas/Oil fuelled properties are now achieving worse results post June 2022**

## The worry for compliant properties

42% of A rated buildings  
45% of B rated buildings  
44% of C rated buildings  
39% of D rated buildings  
30% of E rated buildings

### Gas/oil fuelled

Shift in rating upon reassessment  
+  
Incremental minimum standard



## What can MEES affect?

How is this property going to be a 'B' rating by 2030?

Capital Values

Rental Values

Business Rates

Service Charge/PPM

Rent Reviews

Lease Negotiations

Licences to Alter

Dilapidations

TDD (pre-acq'n surveys)

Lease Surrenders

Sub-let/Assignments

Lease Renewals

Schedules of Condition

Break Clauses

Property Finance

Planning

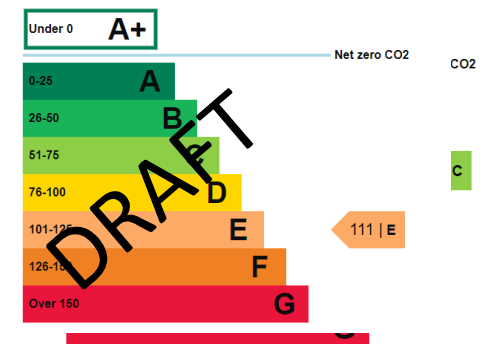
Renewables/ESG

### Pre June 2022 EPCs will now be different

- property mothballed during Covid
- currently C-rated property (2019 assessment)
- 4 pipe fan coil system
- break option Oct 2025.
- tenant draft EPC:

*"The existing EPC is inaccurate in today's assessment terms and in fact is an 'E' rating. This rating would render the property sub-standard as of 2027 and – if the lease is not broken – the landlord will be in breach and will be required to undertake improvements."*

1. agree early surrender and delete the draft EPC
2. Run to the break and lodge the E-rating



# ESG/renewables must be considered in conjunction with MEES



Renewables, e.g. PV, can have a very positive impact on EPCs (but not a given)  
MEES is an opportunity to monetise and justify investment on renewables



## Lease Negotiations - Tenant

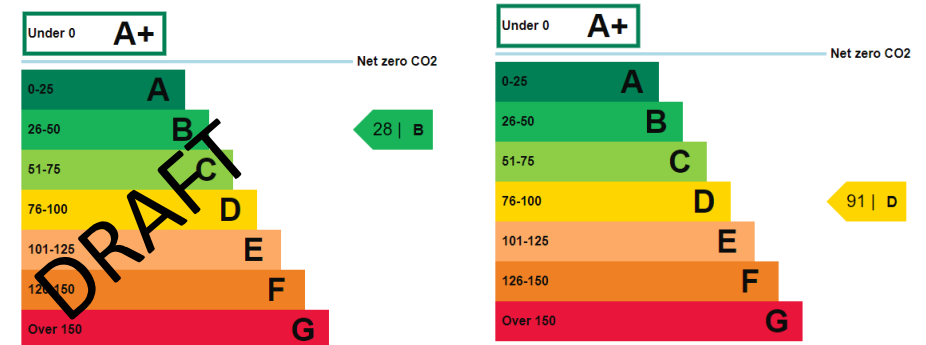
- 3,500 sq ft retail park unit - 'white box' form
- includes previous tenant HVAC/lighting
- £35,000 p.a. rent

Tenant strategy (strong covenant/well advised)

- Property will be non-compliant (2027)
- Our proposals will secure a B rating

The value (the alternative) – add'l rent free

- enforcement from 2027
- landlord capex to improve rating
- loss of rent/void costs



## Lease Negotiations - Landlord

### Establish the EPC of the property to be demised

Is the EPC reflective of the property/fit out?

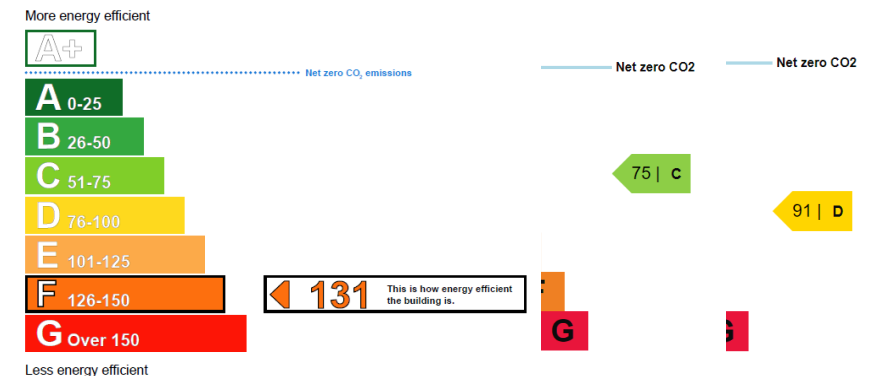
Is the EPC valid and accurate (post June 2022)?

How is the property to be defined in the lease?

Options:

1. Keep quiet – kick issue down the road
2. Address directly as landlord and demise a 'B'
3. Collaborate with prospective tenant(s)

**Pre-assessment is now critical**



### The Practical:

- 'how will this building be a 'B' by 2030?
- pre-assessment of any works.

### The Legal:

- what does the lease(s) say?
  - landlord covenant to comply with statute?
  - 'reasonable' modernisation?

### The outcomes:

- disputes
- worse EPC ratings



## Service Charge/PPM

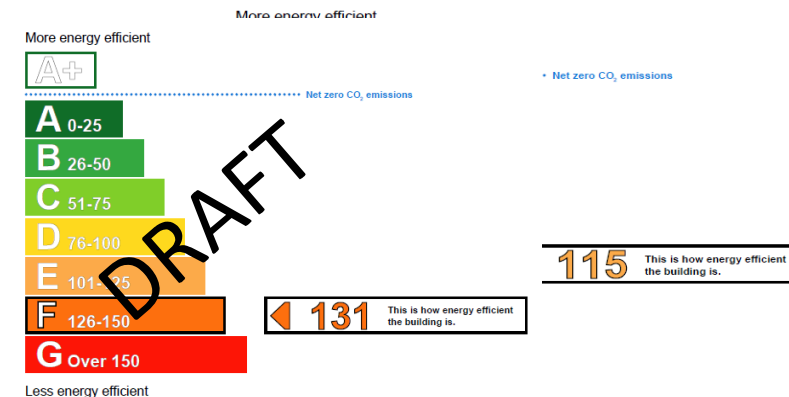
Landlord claim for replacement boilers:

- £3.5million
- landlord argues a recoverable repair

Tenants' counters:

1. The works were only considered to address MEES
2. There is no provision in the lease allowing recovery
3. The E rating was from 2017 – the outcome rating is F
4. The works are pointless and valueless

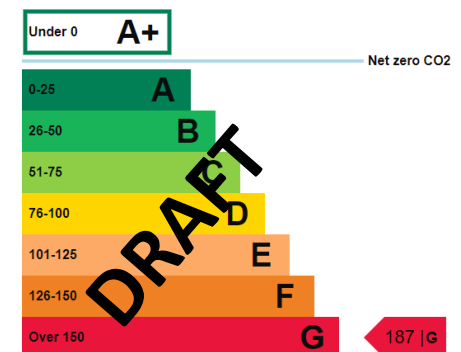
Critical – prior EPC assessment  
– prior negotiation with tenants





### Alienation by sub-let or assignment could be unlawful

- 16,000 sq ft office in Canary Wharf
- Tenant seeking to sub-let whole
- Lease granted in 2020 under a 2012 EPC
- new EPC required for sub-let
- sub-let cannot be executed lawfully
- key provision of the headlease impossible
- loss to the tenant equating to rent, s/c etc. that the proposed sub-tenant was agreeable to



## Alienation

### What happens next?

Quantum of loss:

16,000 sq ft overheads for 5 years

Say £8million at stake.

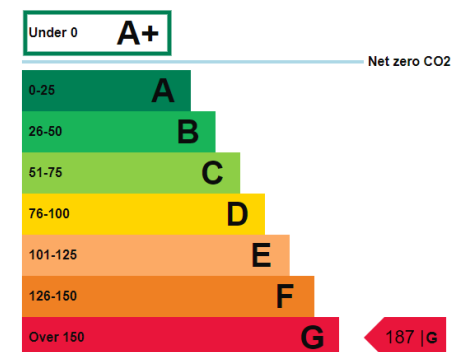
Tenant position:

*“The intention of the parties under the lease agreement was that the demised property should be able to be sublet during the course of the lease – only the failure of the landlord to comply with MEES has prevented that and the resultant damages amount to £8,000,000.”*

Landlord’s position:

*“1. it is only the sub-letting that would be unlawful – that isn’t our problem;  
2. The poor EPC can be traced to elements of tenant fit-out”*

### What if the tenant lodges the G rating anyway??



## Reasonable Refusal

### When can a landlord refuse a tenant EPC?

*"It would cause us to be in breach of MEES."*

*"That isn't our concern"*

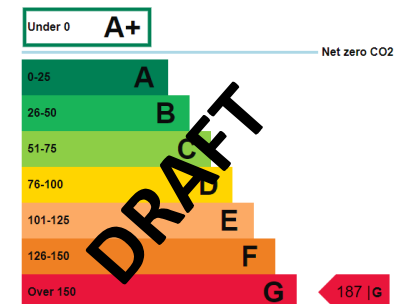
*"It isn't required under the EPB Regulations."*

*"It's required under our corporate ESG policy to undertake an annual EPC"*

*"You don't need to lodge the EPC – you could keep it in draft"*

*"The whole point of our ESG policy is to drive improvements"*

*"We reasonably refuse consent for you to undertake an EPC on the grounds that it would unnecessarily bring forward a requirement to improve the property"*



## Tenant lodged EPC

### What happens next?

Landlord now in breach:

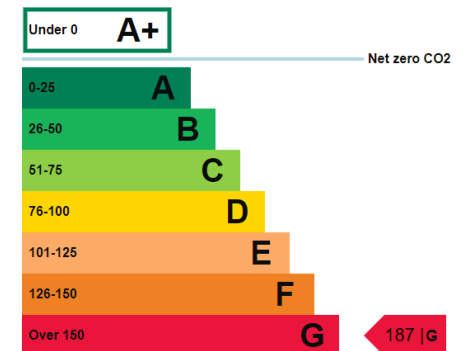
- £150,000 quarterly penalties;
- Landlord on the PRS register;
- Landlord requirement to upgrade.



*“The tenant is not to undertake an EPC Assessment unless they have prior agreement from the Landlord (such agreement not to be unreasonably withheld or delayed)”*

Tenant’s breach has resulted in:

- £450,000 aggregate penalties (so far);
- Reputational damage to the Landlord;
- Upgrade costs of £1.2million;
- Valuation issues causing increased cost of borrowing.





# Horror Stories

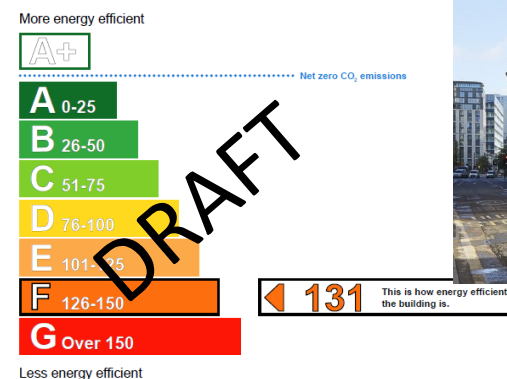
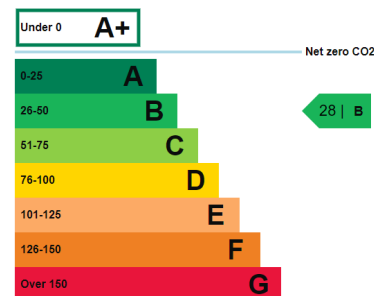
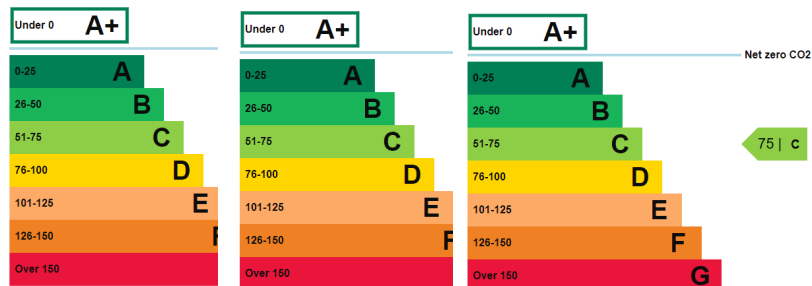


- Works done in 2022 based on 'EPC plus' report
- New super-efficient boilers replacing old
- Projected EPC outcome
- New carbon factors EPC
- Tenants aware:
  - Dilapidations/lease negotiations/surrender/rent review



# Rent Review

- Rent review June 2025 (2005 lease)
- Passing rent £50psf – uplift sought to £75psf
- Existing EPC (good fit out)
- “Rent Review Specification”
  - Gas fired 4-pipe Fan Coil system
  - ‘CAT 2 lighting’
- Tenant new draft EPC



*“The hypothetical RR building – per the specification in the lease – would demonstrably not be capable of lawful letting and therefore cannot evidence a rental increase”*

# Dilapidations

- Major tenant vacating
- Pre-Carbon Factors EPC
- 1.6million sq ft

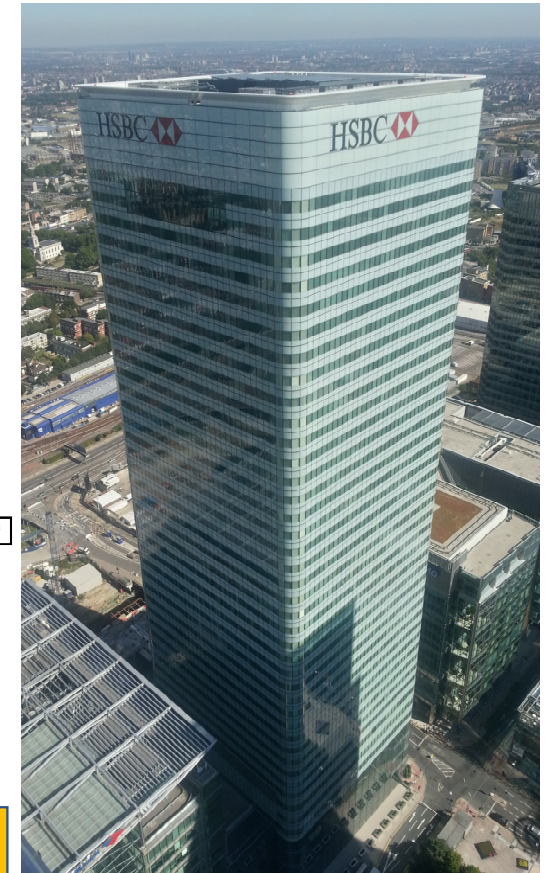
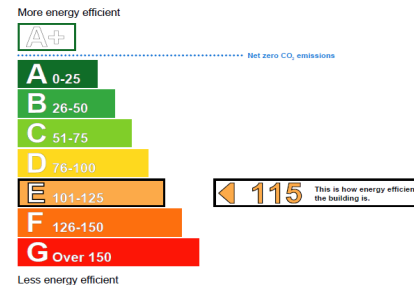
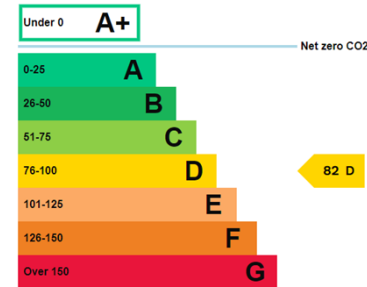
*How is this property going to be a 'B'?*

- Dilaps claim to return the demised premises in repair
- On the lease end date the demised premises EPC rating:

*"No landlord would undertake work to bring this building to the market as an 'E' rating – upgrades to a B would be a minimum"*

*"We have modelled the viable improvement options available and all of them have a fundamental impact upon the claim"*

*"The diminution valuation we have undertaken shows that the impact of the alleged elements of the claim are dwarfed by the impact of the poor EPC rating"*





# Dilapidations

Landlord protective measures:

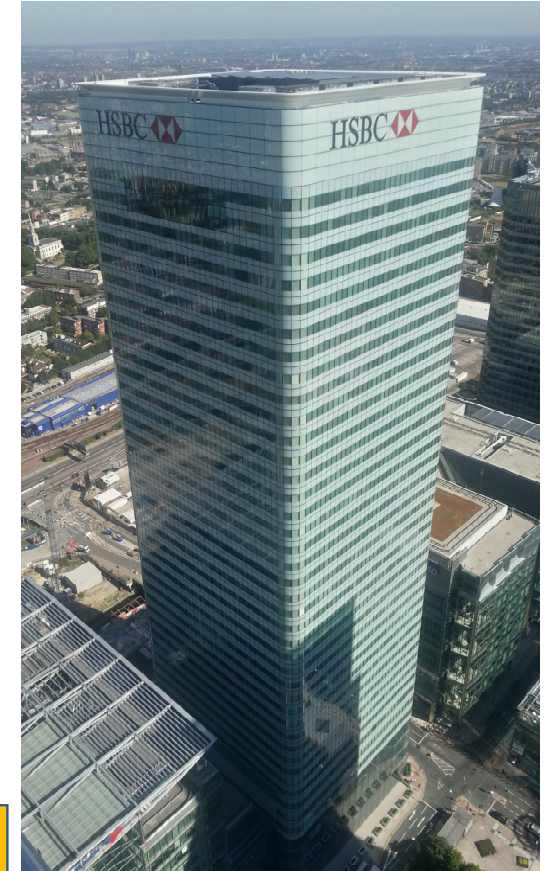
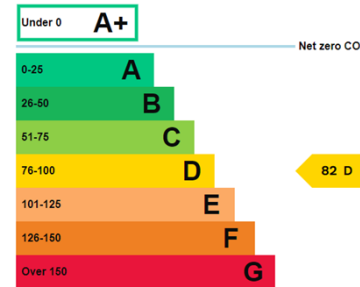
## *The importance of an EPC pre-assessment*

- Importance of understanding the interrelation between:
  - The contractual dilapidations claim;
  - The outcome EPC rating of those works;
  - The works required to achieve a B-rating.

*“We have intentionally served this claim early to allow for negotiation and liaison regarding lease end works”*

*“We have not sought replacement of the faulty light fittings as these will need to be improved to achieve our EPC goal on expiry”*

*“The resultant rating of the claimed works, plus our proposed improvement works to be carried out thereafter would be a B(46) and therefore no MEES-based s.18 defence will be applicable”*



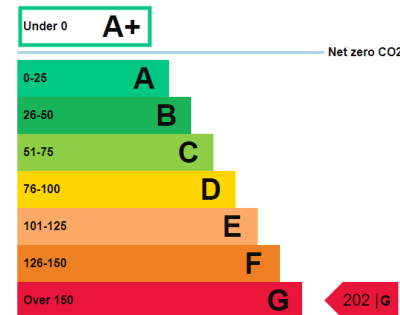
## Utility Bills claims against Landlords

Landlord lease covenant to comply with Acts.

- 2024, tenant ESG property audit
- 80,000 sq ft central London office
- Sub-standard G rating from 2015

Tenant's claim:

*"The landlord has been required to comply with the MEES Regulations, both under statute but also under the lease; they have not, and they are in breach of both. The impact upon us is direct and quantifiable"*



Utility bill analysis alongside detailed EPC assessment and improvement modelling identifies:

- *excess gas and electricity charges of £220,000 per annum versus just an E-rating.*
- *aggregate 'excess' cost since point of breach (letting in 2019) - £1.1million*

Establish current EPC rating (DRAFT!)

Prepare a position with tenants

Consideration of ANY works proposed

Plan for B by 2030

Questions?

Ben Strange MRICS  
Chartered Building Surveyor  
Director

[bstrange@mobiusbc.co.uk](mailto:bstrange@mobiusbc.co.uk)  
07792 568301

Mobius Building Consultancy

The Hop Exchange  
24 Southwark Street  
London SE1 1TY

[mobiusbc.co.uk](http://mobiusbc.co.uk)  
020 3355 1500