WEST OXFORDSHIRE DISTRICT COUNCIL

West Oxfordshire District Council

Examination of the remitted part of the Salt Cross Area Action Plan (AAP)

Response to Policy 2

Matters Issues and Questions

13 June 2025

ISSUE

Does the Plan set out an appropriate strategy to secure sustainable design and energy efficiency in new development and is it consistent with national policy.

General approach

1. Does policy 2 reflect the requirements of the Planning and Energy Act 2008?

Council's Response

1.1 Yes, Policy 2 reflects the requirements of the Planning and Energy Act 2008 ('the *2008 Act')*. It also reflects Section 1 of the Climate Change Act 2008, Section 19 (1A) of the Planning and Compulsory Purchase Act 2004 and relevant case law, as outlined below. It is important to highlight that the 2008 Act is not the sole power under which local planning authorities may bring forward policies such as Policy 2.

1.2 The overview below should be read in conjunction with the updated open legal advice attached at Appendix 1 - provided by Estelle Dehon KC to Essex County Council and the Essex Climate Action Commission in May 2025.

The Planning and Energy Act 2008

1.3 Section 1 (1) of the 2008 Act empowers a local planning authority in England to include in development plan documents, policies imposing reasonable requirements for, among other things, development in their area to comply with energy efficiency standards that exceed the energy requirements of building regulations (s.1(1)(c)). Section 1 (2) defines "energy efficiency standards" to include standards for the purpose of furthering energy efficiency that are set out or endorsed in national policies or guidance issued by the appropriate national authority.

1.4 Policy 2, as proposed to be modified, is based on the use of energy metrics and is purposefully ambitious, reflecting the Council and local community's net zero carbon aspirations for Salt Cross Garden Village.

1.5 The policy clearly and deliberately goes beyond both existing and planned building regulations as allowed for under Section 1 (1) of the 2008 Act.

1.6 The energy efficiency standards used in Policy 2 have been "endorsed" by the Ministry of Housing, Communities and Local Government via the National Model Design Code, through its endorsement of any energy efficiency standard which is recognised as part of an assessment of whole life energy costs or whole life-cycle carbon assessments.

1.7 The 2008 Act was considered in *R (Rights Community Action) v SSLUHC* [2025] PTSR 135, [2024] EWHC 1693 (Admin) ("the RCA judgment"). It is very instructive to note that the Secretary of State submitted to the Court, and Mrs Justice Lieven accepted at §55, that the 2008 Act is declaratory or confirmatory of local authorities' powers. This means that local authorities' powers to adopt local energy efficiency policies that go beyond building standards are not drawn solely from the 2008 Act (such that the 2008 Act contains the entire scope of local authorities' powers); this statute simply confirms pre-existing powers and articulates them in a specific way, to make clear that such powers exist.

1.8 Importantly, Section 1 (5) of the 2008 Act stipulates that policies included in development plan documents by virtue of subsection (1) must not be inconsistent with relevant national policies for England. Section 1(5) simply re-states the usual approach to the requirement of soundness in section 20(5)(b) 2004 ACT and paragraph 36(d) of the 2024 NPPF. Section 1 (7) explains that, in relation to policies included by virtue of subsection 1(c) relevant national policies are those relating to furthering energy efficiency.

1.9 The use of the phrase "relating to", rather than "concerning", indicates that the policy or guidance does not need solely to concern energy efficiency, but that at least part of the policy or guidance must have some relevance to energy efficiency. This is the understanding of "relating to" which most closely aligns with the Parliamentary intention of the 2008 Act: "building into the legislation the powers of local councils to make policies on local energy requirements for new developments [and making] a positive contribution to the clear need for local authorities to take action to tackle climate change locally".

1.10 The intention behind section 1(5) of the 2008 Act was to prevent inconsistency with affordable housing requirements and with the right of consumers to choose their energy supply. It does not transform "relevant national policies" into legal obligations which fetter the discretion of decision-makers and cannot lawfully be read as leading to a situation where conflict with one element of a policy (for example, conflict with a bullet point in the 2023 WMS, see below) wholly displaces LPA's powers to bring forward, and Examining Inspectors' powers to find sound, energy efficiency policies going beyond Building Regulations.

The Planning and Compulsory Purchase Act 2004 ("2004 Act")

1.11 Section 19(2)(a) of the 2004 Act provides that, in preparing a development plan document, the local planning authority "must have regard to … national policies and advice contained in guidance issued by the Secretary of State". This includes guidance in written ministerial statements.

1.12 Section 19(1A) of the 2004 Act, which was added by Planning Act 2008 and which has been in force since 6 April 2009, imposes a general requirement that development plan documents must, taken as a whole, "include policies designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change".

1.13 Section 20 requires the authority to submit every development plan document to the Secretary of State for independent examination by a person appointed by him. Section 20(5) provides that the purpose of an independent examination is to determine:

(a) whether it satisfies the requirements of sections 19 and 24(1), regulations under section 17(7) and any regulations under section 36 relating to the preparation of development plan documents;

(b) whether it is sound.

1.14 Accordingly, the obligation in section 19(1A) falls both on the LPAs bringing forward the plans and on the Inspectors examining them. Given the nature of this duty, against the background of the Climate Change Act 2008 net zero obligation, local authorities have the power to bring forward local plan policies which secure the mitigation of climate change needed to contribute to meeting the UK's Nationally Determined Contribution, the carbon budgets and the 2050 target.

1.15 Accordingly, LPAs can include in their draft local plans, and Inspectors can find sound, policies which go beyond current Building Regulations, including policies that incorporate a suite of energy-based metrics, addressing emissions from both regulated and unregulated energy sources, and focusing on achieving absolute energy use targets (using metrics not referred to in the 2023 WMS).

1.16 The lack of progress in reducing emissions from the built environment sector since the section 19(1A) duty came into force in 2009, and the need for significant and swift action, supported by the Climate Change Committee and the NPPF, all justify such policies and mean that they would, overall, be in compliance with national policy.

1.17 The obligation to "have regard" to national policy falls on both LPAs and Inspectors. It is well understood, as a statutory obligation to "have regard" to something arises in many different contexts and has been considered by the Courts on a number of occasions. It means that the guidance or policy must be considered when exercising the function or making the decision in question. That does not mean that it must be "followed" or "slavishly obeyed"; a decision-maker may depart from such guidance or policy if there is good reason to do so: *R (London Oratory School) v Schools Adjudicator* [2015] ELR 335 at §58 per Cobb J, cited in *R (Harris) v Environment Agency* [2022] PTSR 1751 at §80 per Johnson J.

1.18 It is key to give clear reasons for departure from the guidance or policy, but the statutory obligation to have regard to guidance or policy does not "bind public bodies more tightly to a duty of obedience to guidance to which by statute they are obliged (no more, no less) to have regard": *R (Khatun) v Newham LBC* [2005] QB 37 at §47, per Laws LJ.

Planning - Local Energy Efficiency Standards Update – 13 December 2023 ('The 2023 WMS')

1.19 The 2023 WMS states that:

'Any planning policies that propose local energy efficiency standards for buildings that go beyond current or planned buildings regulation should be rejected at examination if they do not have a well-reasoned and robustly costed rationale that ensures:

- *That development remains viable, and the impact on housing supply and affordability is considered in accordance with the National Planning Policy Framework.*
- *The additional requirement is expressed as a percentage uplift of a dwelling's Target Emissions Rate (TER) calculated using a specified version of the Standard Assessment Procedure (SAP).*

Where plan policies go beyond current or planned building regulations, those polices should be applied flexibly to decisions on planning applications and appeals where the applicant can demonstrate that meeting the higher standards is not technically feasible, in relation to the availability of appropriate local energy infrastructure (for example adequate existing and planned grid connections) and access to adequate supply chains.

To be sound, local plans must be consistent with national policy – enabling the delivery of sustainable development in accordance with the policies in the National Planning Policy Framework and other statements of national planning policy, including this one'.

1.20 Whether the Council's proposed approach is consistent with the provisions of the WMS (and indeed other aspects of national policy) is essentially a matter of planning judgement, exercised against the background of the correct understanding of the WMS.

1.21 It is important to emphasise that the WMS does not foreclose the possibility of setting higher standards, so long as the two bullet points are met. The reference in the second bullet point to the use of the SAP procedure has to some extent been overtaken by events. The 2023-2024 consultation "The Home Energy Model Making the Standard Assessment Procedure fit for a net zero future", part of the Future Homes Standard consultation, and thus part of the proposed future metrics which the 2023 WMS itself states LPAs can use, seeks to replace SAP with a new national energy calculation methodology. It appears, therefore, that the 2023 WMS itself justifies departure from the specification of SAP.

1.22 Although the 2023 WMS is expressed in trenchant language, it cannot be read as directing a specific outcome in a blanket fashion, without any possibility for justifiable local exceptions or rational departure from its apparent strictures: *R (West Berkshire DC) v SSCLG* [2016] 1 WLR 3923 at §30, per Laws and Treacy LLJ. The *RCA* judgment rejected the contention that the 2023 WMS attenuates or emasculates LPAs' statutory powers. It is certainly correct that the 2023 WMS does not constrain or delimit the extent of the duty in section 19(1A) of the 2004 Act.

1.23 Indeed, in evidence before the High Court, the Secretary of State explained that the 2023 WMS was aimed at "encouraging" a particular approach (emphasis added),[1] rather than 'compelling' or 'constraining'. The Minister and the Secretary of State were advised as follows:

> "We would still wish to allow local innovation and ambition where viable, particularly where the Future Homes Standard (FHS) is not in force, to not unlawfully prevent LPAs from using their powers, and to avoid being seen to conflict with government's commitment to ensure planning policy "contributes to climate change mitigation…as fully as possible".

[1] *RCA* judgment §13; see also §17 of the Secretary of State's Detailed Grounds of Defence (7 May 2024).

1.24 In the High Court, RCA contended that the result of the 2023 WMS would be that LPAs would be prevented from bringing forward energy efficiency policies based on the Low Energy Transformation Initiative ("LETI") metrics, focusing on the carbon efficiency of the homes themselves. The Secretary of State rejected the contention that the 2023 WMS sets a "default instruction" to Inspectors. Instead, the Secretary of State argued that "the policy is simply setting out guidance on what the Secretary of State considers to be reasonable – i.e. 'a reasoned and robustly costed rationale'." Lieven J did not accept RCA's evidence that the 2023 WMS would prevent local authorities from using LETI metrics, such as EUI, in their proposed policies.

1.25 As outlined above, Policy 2 is purposefully ambitious and very deliberately seeks to exceed current and planned building regulations. The updated evidence which has been submitted (ED9A – ED9C) robustly demonstrates that under the provisions of Policy 2, development at Salt Cross will remain viable and deliverable with no demonstrable, negative impact on housing supply and affordability.

1.26 Whilst it is fully acknowledged that the Council's proposed approach does not fully align with the 2023 WMS, in that it departs from the bullet point regarding the use of residential TER, Policy 2 is not a complete departure, given the overall flexibility of the WMS and the evidence and findings in the *RCA* judgment of what the 2023 WMS was intended to achieve, despite its trenchant language). The net zero carbon evidence which has been prepared in support of Policy 2 (ED9B) clearly demonstrates that thorough consideration has been given to the use of a TER based approach and importantly, that it would result in a distinctly sub-optimal solution.

1.27 The evidence also demonstrates that it is a more expensive solution with the TER based approach having a cost impact of +7% over baseline costs compared to +6.1% for the energy-metric based approach.

1.28 It is also important to consider the amount of weight to be afforded to the 2023 WMS. The Council acknowledges that 2023 WMS is a material consideration. The weight to be given to the 2023 WMS is a matter of planning judgment, as is the weight to be given to departure from the WMS.

1.29 The WMS must also be seen and read in the context of other relevant national policy and legislative considerations. Section 19(1A) is addressed above. Section 1 of the Climate Change Act 2008 imposes on the Secretary of State the duty to ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline. While the specific duty is on the Secretary of State, it is clear that delivery of that target requires action by local authorities – this is

reflected in the section 19(1A) duty in the 2004 Act and in the NPPF, which now specifically records the requirement of plan making (and decision-taking) to support the transition to net zero.

1.30 In this respect, it is important to note that energy efficiency policies address both climate mitigation and adaptation. The Council is aware of the recent Inspector's Report into the development plan document for another garden village community – the Tendring Colchester Borders Garden Community DPD. Here, at paragraph 78, the Inspector clearly acknowledges that whilst significant weight must be afforded to the 2023 WMS, it must be considered alongside the provisions of both the 2004 Act and the 2008 Planning and Energy Act.

1.31 It must also be considered in light of the case law on climate change. The Courts have:

- recognised that there is a climate emergency: *Marks & Spencer Plc v SSLUHC* [2024] EWHC 452 (Admin), [2024] JPL 1114 at §121 ("***Marks & Spencers***");
- described the "*very great importance*" and "*significance*" of climate change, "*with its consequences for human and other life on this planet*": *BAAN v SSLUHC* [2023] EWHC 171 (Admin), [2023] PTSR 853 at §§1 and 258;
- accepted that the impact of global heating is "*potentially catastrophic*": *R (Spurrier) v Secretary of State for Transport* [2019] EWHC 1070 (Admin), [2020] PTSR 240 at §560, per the Divisional Court; and
- recognised that the "*issue of climate change is a matter of profound national and international importance of great concern to the public—and, indeed, to the Government of the United Kingdom*": *R (Plan B Earth) v Secretary of State for Transport* [2020] EWCA Civ 214, [2020] PTSR 1446 at §277.

1.32 The Supreme Court in *R (Finch) v Surrey County Council* [2024] UKSC 20, [2024] PTSR 988 ("***Finch***") at §141 recorded that, in adopting the Paris Agreement on 12 December 2015, "*most of the nations of the world have acknowledged that climate change represents 'an urgent and potentially irreversible threat to human societies and the planet' (Preamble to the decision to adopt the agreement) and have agreed on the goal of 'holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels': article 2(1)(a).*"

2. The Plan proposes an energy metric based approach, a deviation from the December 2023 Written Ministerial Statement which requires that any additional requirement is expressed as a percentage uplift of a dwelling's Target Emissions Rate (TER) calculated using a specified version of the Standard Assessment Procedure (SAP). Is this justified by the evidence?

Council's Response

2.1 Yes, the approach taken is fully justified by the updated evidence which has been submitted (ED9A – ED9C).

2.2 ED9B – Policy 2 Net Zero Carbon Development Base has been prepared on behalf of the District Council by a consultant team of independent experts and is considered to be both robust and comprehensive.

2.3 At the Council's behest and in light of a certain amount of confusion which was caused by the 2023 WMS, the net zero carbon report considers two different scenarios, the first being based on the use of energy metrics and the second being based on Part L of the Building Regulations.

2.4 The report provides a comprehensive analysis of both scenarios using a range of relevant residential and non-residential typologies in order to understand both the technical feasibility and associated costs of each approach.

2.5 In the interests of avoiding repetition, the findings of the report are not repeated in detail here, but in broad terms, it concludes that whilst both scenarios are technically deliverable, the energy-metrics based approach has a number of clear advantages, helping to achieve 'net zero carbon' in operation, compared to the 'low carbon' outcome associated with the use of Part L of the Building Regulations.

2.6 The report includes a detailed cost evidence base which considers both the capital cost uplift associated with each scenario as well as the anticipated running costs. Cost analysis is provided for each of the residential and non-residential typologies modelled with the overall outcome being a weighted percentage uplift of +6.1% above baseline construction costs for the energy-metric 'net zero carbon' scenario and +7% for the Part L building regulations 'low carbon' scenario.

2.7 A mid-point uplift of +6.6% was then applied to the updated viability evidence (ED9A) accordingly.

Summary

2.8 The net zero carbon evidence submitted by the Council (ED9B) has been prepared by a reputable team of industry experts and adopts a balanced and comprehensive approach that purposefully and thoroughly, considers two different scenarios – one based on energy metrics and one based on Part L of the building regulations.

2.9 In recognition of the provisions of the December 2023 WMS and the need for robust evidence to support deviating from the first bullet point, a comparative approach is considered to have been the most appropriate and reasonable approach to take in the circumstances.

2.10 Since the inception of the draft AAP, there has been overwhelming community support for net zero carbon development at Salt Cross and the Council remains committed to achieving that goal.

2.11 The evidence which has been submitted demonstrates that it is achievable for Salt Cross from both a technical and cost perspective and is considered to fully and robustly justify a departure from one particular aspect of the December 2023 WMS regarding the use of target emission rates (TERs) and is fully consistent in all other respects.

3. Is the energy and cost modelling in the Net Zero Carbon Development Evidence Base (ED9B) for the zero carbon and low carbon scenarios robust in terms of its methodology and assumptions? What are the limitations?

Council's Response

3.1 Yes, it is a robust methodology based on established procedures and reasonable and proportionate assumptions.

3.2 Building typologies relevant to Salt Cross were modelled using predictive energy modelling software, showing that the energy targets can be met. The typologies are relevant to the anticipated scale and type of development, both in form, and in height and therefore provide a representative sample. In the case of the terrace house, a sub-optimal form (integrated garage, which increases the form factor, which causes heat losses) was chosen to test that it would be technically feasible to meet the policy with a wide range of housing designs.

3.3 The assumptions are also robust, based on specifications which have been built at similar scale to Salt Cross and backed up by built case studies showing the energy performance that can be (and has been) delivered in the UK with currently available skills and technology.

3.4 The number of typologies used and methodology adopted, are similar to other evidence bases – such that developed for the Essex County Council net zero policy position - used for the Tendring Colchester Borders Garden Community DPD, which was recently found sound.

3.5 The cost analysis was undertaken by Currie & Brown. Their work is based on over 20 years work on the costs of low carbon housing including work for the Climate Change Committee, MHCLG (including analysis of Part L2021 and Future Homes Standards), local and regional government house builders, housing associations and developers.

3.6 The cost analysis identifies the respective capital cost uplift of the two scenarios modelled (ranging from +6.1% to +7%). For the purposes of the subsequent viability assessment (ED9A) a mid-point uplift of +6.6% has been applied to the assumed baseline construction costs to help identify the impact on overall scheme viability.

3.7 The limitations of the evidence base are that it has not been possible to model every type of building that is likely to come forward at Salt Cross. A representative sample of anticipated typologies was selected and agreed in discussion with Council Officers and this is considered to be reasonable and consistent with the NPPF which recognises that plan policies should be underpinned by proportionate evidence (paragraph 32).

3.8 The net zero evidence base report (ED9B) explicitly recognises that some types of building are difficult to categorise because their energy use is largely driven by the business that will ultimately occupy it. The report suggests that user specific targets should be set for these typologies in discussion with the Council and this approach is reflected in the proposed modifications to Policy 2.

4. How representative of the development envisaged in the Garden Village are the different typologies tested in the modelling?

Council's Response

4.1 Detailed predictive energy modelling was undertaken for the following residential and non-residential typologies:

- Detached house (4-bed)
- Terraced house (3-bed)
- Mid-rise flats (5-storey)
- Office (3-storey, 4,000 sqm)
- School (3-4 stories, 6,000 sqm)

4.2 In relation to science and technology and retail uses, the evidence base (ED9B) acknowledges that energy demand is difficult to predict and will vary greatly depending on a number of factors including the end use/user.

4.3 For this reason, the report recommends that energy targets for such uses should be developed and agreed with the Council as part of any pre-application discussions for these typologies.

4.4 The Council considers this approach to be entirely reasonable and proportionate in terms of the evidence required at the plan-making stage.

4.5 Although energy modelling has not been undertaken for science and technology and retail uses, the cost modelling which has been undertaken does identify an anticipated cost uplift for these based on an appropriate specification of building fabric and heating, hot water, ventilation and lighting systems.

Summary

4.6 National policy emphasises the need for evidence at the plan-making stage to be 'adequate and proportionate'. The Council considers that the residential and non-residential development typologies which have been modelled in terms of energy performance and cost are appropriately representative of the form and nature of development expected to come forward at Salt Cross.

5. Are the build costs uplift of 6.1% for zero carbon and 7% for low carbon justified by the evidence? Is this robust particularly when set against Savills research (June 2023) (paragraph 5.110 of the Viability Appraisal Update ED9A) which suggests this is higher for net zero homes, in the region of 10-14%?

Council's Response

5.1 Yes. As outlined above, the net zero carbon evidence base (ED9B) includes energy and cost modelling of a range of different residential and non-residential typologies. Cost modelling has been undertaken for all of the typologies identified and has been carried out by Currie and Brown, whose experience and understanding is based on 20+ years' work on the costs of low carbon housing.

5.2 The assumptions made are clearly and visually set out in the report, with consideration of both the capital cost uplift and running costs of the two scenarios.

5.3 The report itself acknowledges that variations in built form are likely to influence real-world costs and adopts a reasonable and proportionate approach given that detailed information on building types at Salt Cross is not yet available.

5.4 Based on the cost modelling undertaken, the report identifies a weighed percentage uplift of +6.1% for the net zero carbon scenario and +7% for the Part L building regulations low carbon scenario.

5.5 The subsequent viability assessment (ED9A) adopts a mid-point of +6.6%.

5.6 As part of its consideration of the concept of an eco-home premium, the viability assessment (ED9A) refers at paragraph to an article published by Savills in June 2023 which identifies that homes designed to be net zero in operation face a potential cost increase of 10% - 14%.

5.7 Officers have reviewed the Savills article and whilst reference is made cost estimates from the Future Homes Hub and the Passivhaus Trust, it is not clear from this what the 10% - 14% estimate is based on and therefore we are unable to comment on its robustness.

5.8 In contrast, the Council has commissioned and submitted for examination, specific energy modelling and cost analysis for Salt Cross Garden Village which suggests that the costs are likely to be lower.

5.9 It is also relevant to note that the Savills article acknowledges in any case that costs are expected to reduce as technologies become more widely used and that construction of the first homes at Salt Cross is now unlikely to take place before 2030 based on previously agreed lead-in times and trajectories.

Sustainability appraisal

6. Overall, does the SA Addendum (ED9C) adequately assess the environmental, social and economic effects of Policy 2 in accordance with legal and national policy requirements?

Council's Response

6.1 The SA Addendum appraises Policy 2 using the same methodology that was applied in the SA of the wider AAP, detailed in full in the August 2020 SA Report (CD2) and the July 2022 SA Addendum (CD8). The SA of the AAP, including the appraisal of Policy 2 as set out in the SA Addendum [ED9C], has been carried out as an integrated SA and Strategic Environmental Assessment (SEA). In addition to complying with legal requirements, the approach that has been taken to the SA of the AAP is based on current best practice and the guidance on SA/SEA set out in the Government's online Planning Practice Guidance, which involves carrying out SA as an integral part of the plan-making process.

6.2 In line with the methodology for the wider SA process, the Policy 2 wording has been appraised against the 17 SA objectives in the SA framework for the Salt Cross Garden Village AAP (see Appendix A of ED9C), which cover a range of environmental, social and economic topics including those specified in the SEA Regulations. Symbols have been used to indicate the likely sustainability effects of the policy on each SA objective. This approach allows for the identification of likely significant effects (both positive and negative) in accordance with the SEA Regulations.

6.3 As detailed in the SA Addendum, the likely effects of Policy 2 remain unchanged from the effects reported in the August 2020 SA Report for the submitted AAP. While the policy wording has been subject to revisions, the SA is a relatively high-level assessment, and the overall purpose of the policy and key requirements remain unchanged. The threshold for a likely significant positive effect on SA objective 1: *Ensure everyone has the opportunity to live in a decent, sustainably constructed affordable home* and SA objective 10: *Address the causes of climate change by reducing greenhouse gas emissions and be prepared for its impacts* is reached by both versions of the policy. As effects cannot become 'more significant' under the scoring system used in the SA, the headline effects of the policy remain unchanged.

6.4 Consideration has been given to whether the likely cumulative effects of the AAP, as reported in the July 2022 SA Addendum for the Main Modifications, are changed by the amendments to Policy 2. As none of the effects of Policy 2 have changed from those reported previously, no changes to the cumulative effects of the AAP are considered likely.

6.5 Therefore, the SA Addendum does adequately assess the effects of Policy 2 in accordance with legal and national policy requirements.

Viability

7. Is the Viability Appraisal (ED9A) robust and justified in its methodology and assumptions?

Council's Response

7.1 Yes, AspinallVerdi's Viability Appraisal (ED9A) is robust and justified in both its methodology and assumptions.

7.2 AspinallVerdi's assessment follows the principles set out in national guidance, including the National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG) on viability, in line with the RICS professional standard Assessing Viability in Planning Under the NPPF 2019 for England (AV Salt Cross Garden Village – Area Action Plan Viability Appraisal Update, pp. 4-7).

7.3 The appraisal adopts the standard Residual Land Value (RLV) approach, which is appropriate for plan-making. It calculates land value by deducting all policy-compliant costs, including profit and infrastructure, from the Gross Development Value (GDV) (same, pp. 9-10).

7.4 The Benchmark Land Value (BLV) is based on the existing agricultural use value with a 10x premium, reflecting the strategic nature of Salt Cross (same, pp. 43-47). This approach is consistent with the EUV+ methodology required by PPG and as was accepted at the previous examination of the Salt Cross AAP in 2021 (same, pp. 46-47). Where there are complex schemes with bespoke land assembly and infrastructure / abnormal cost requirements, the Premium is very difficult to establish.

7.5 In reality the Premium is the difference between the policy compliant RLV and the EUV (assuming that the RLV is > EUV to provide some incentivisation). In this case the policy compliant RLV is £15,306,791 (Table 9.1 - Salt Cross AAP Updated Baseline Appraisal Summary). This increases to £43,682,201 included an eco-home premium (Table 9.2 - Salt Cross AAP Eco-Premium Inc. 50% AH Appraisal Summary). This includes (para 5.114) a 0.4% increase for 2 and 3-bed houses and a 12% adjustment for 4 and 5-bed houses, to reflect the premium value associated with eco-homes.

7.6 The Sales Value assumptions are clearly presented and underpinned by comparable market evidence, including data from recognised sources such as the Land Registry (same, pp.12-28). The applied eco-premium uplift is well justified, drawing on additional market evidence that reflects the evolving relationship between sustainability standards, development costs, and achievable sales values in the current UK market (same, pp. 28-31). This is particularly relevant to Salt Cross, given the specific requirements of Policy 2 and its influence on both Cost and Value assumptions.

7.7 Construction and infrastructure costs are based on an updated and independently prepared cost plan by Gardiner & Theobald, commissioned quantity surveyors specifically for this viability assessment (AV Salt Cross Garden Village – Area Action Plan Viability Appraisal Update, Appendix 4). Policy 2 (net zero carbon) costs have been separately identified and are informed by specialist studies undertaken by Etude et al. in collaboration with the Council (Etude et al. Policy 2 – Net Zero Carbon Development Evidence Base pp. 44 and 67). Build costs are benchmarked using BCIS data. Other costs, such as professional fees, contingency, marketing, and finance, are applied using standard industry rates (AV Salt Cross Garden Village – Area Action Plan Viability Appraisal Update, pp. 37-39).

7.8 Developer profit allowances are consistent with PPG, which identifies a return of 15% to 20% of GDV as appropriate for plan-making purposes. Accordingly, the appraisal applies a 20% return on open market housing and 6% on affordable housing across all scenarios (same, pp. 41-42). This is at the top end of the range for market housing and equates to £129,450,330 in the base case policy compliant scenario. We would argue that there is scope within this sum for policy compliance and land-owner payments. Affordable housing transfer values are based on the tenure mix set out in Policy 23 – Housing Mix of the Area Action Plan.

7.9 The appraisal also includes comprehensive sensitivity testing across affordable housing levels and value/cost inputs, ensuring it accounts for potential fluctuations in the market (same, pp. 55-57). This aligns with the mandatory requirements set out in the current edition of RICS' Financial viability in planning: conduct and reporting (RICS, 2019, p13).

7.10 Overall, these inputs are clearly sourced, transparent, and consistent with the standardised and evidence-led approach set out in the National guidance and standards.

8. What evidence is there to support the eco premium applied to sales values?

Council's Response

8.1 There is growing evidence that homes built with sustainable design and energy-efficient technologies tend to sell for more. This reflects both changing buyer preferences and the UK's broader shift towards net zero, with increasing regulatory pressure such as Building Regulations – Part L and the upcoming Future Homes Standard. While the Future Homes Standard isn't in place yet, it sets a clear expectation for new homes to be ready for a low-carbon future.

8.2 These regulations are gradually shaping the development process to embed technical innovation, sustainable design, and locational efficiency into schemes. Features like high-performance materials and green infrastructure, alongside passive design measures such as building orientation and natural ventilation, help reduce emissions and energy use. When developments are well located near public transport and local services, they offer greater convenience, reduce reliance on cars, and deliver long-term cost savings for buyers.

8.3 In their review of market related studies, AspinallVerdi draw on a growing body of research and analysis from respected institutions including RICS, Savills, Santander, Legal & General, and Halifax. This includes research supporting the view that schemes designed to be environmentally sustainable and future-ready can attract a premium in value (AV Salt Cross Garden Village – Area Action Plan Viability Appraisal Update, pp. 28-31).

8.4 For instance, Halifax (2021) found that homes with higher EPC ratings can be worth up to £40,000 more than similar properties with lower ratings. The study showed that upgrading a home's EPC rating from E to C increases its value by an average of £11,000. This conclusion was based on a combination of sales data and modelling using the Energy Performance of Buildings dataset and time-series regression techniques, supported by a YouGov survey of over 4,000 adults.

8.5 Further evidence from Santander UK (2022) reported that buyers are willing to pay an average premium of 9.4%, equivalent to £26,600, for energy-efficient homes, with estate agents estimating an even higher average premium of 15.5%.

8.6 Legal & General (2022) also found growing demand for low-carbon homes, with nearly 35% of buyers searching specifically for energy-efficient properties. Their research showed that younger buyers, particularly from Generation Z, are willing to pay up to 20% more for a sustainable home, while renters reported a willingness to pay an average premium of 13%.

8.7 RICS (2022) highlighted growing market evidence pointing to a green premium in residential property, referencing analysis by Rightmove that found improving a home's EPC rating by two bands could increase its value by an average of 12%. The article noted that energy efficiency is becoming an increasingly important factor in valuation and buyer decision-making.

8.8 And most recently, Savills (2023) conducted a detailed analysis on the cost and value implications of eco-homes. They found that while achieving Future Homes Standard requirements could raise construction costs by 4 – 8%, larger eco-homes (1,200 –2,000 sqft/ 112 –186 sqm) were achieving sale premiums of up to 12% in developments such as Elmsbrook in Bicester. However, smaller eco-homes (800 – 1,050 sqft/ 74 – 98 sqm) showed only an uplift of 0.4% over comparable new builds.

8.9 These findings are particularly relevant in the context of the Salt Cross Garden Village Area Action Plan, which sets a strong policy direction for delivering low-carbon homes. In support of this ambition, the Council has commissioned Etude et al. to provide detailed estimates of the additional construction costs associated with achieving net-zero-ready/ low-carbon homes. In this context, it is both reasonable and necessary to consider the value uplift associated with such homes, as reflected in multiple independent studies. It would not be equitable to apply higher build costs in viability testing without also recognising the associated market value benefits, particularly where robust evidence exists.

8.10 Taken together, this evidence base strongly supports the application of value uplifts for environmentally sustainable and future-ready homes. As such, AspinallVerdi have reflected this in their scenario testing, applying a 0.4% premium to 2- and 3-bed houses (with assumed sizes of 75 sqm and 95 sqm respectively) and a 12% premium to 4- and 5-bed houses (with assumed sizes of 135 sqm and 170 sqm respectively), in line with the most recent data and empirical studies available at the time of their assessment. The higher eco-premiums for larger house types reflect the fact that purchasers of more expensive (larger) houses are more able to capitalise the energy savings than people starting out on the housing ladder.

9. In terms of the proposed employment uses in the Garden Village, the viability assessment is based on the provision of serviced commercial land. Is this an appropriate approach to take? What effect would speculative and pre let schemes make to overall viability?

Council's Response

9.1 Yes, this is an appropriate approach at the plan-making stage. It is common practice at this stage to appraise the delivery of serviced commercial land, rather than assuming full build-out of employment floorspace. This reflects the likely delivery model, where the master developer or land promoter is expected to service and prepare plots for sale or lease, rather than directly delivering commercial buildings themselves.

9.2 This approach also helps to manage uncertainty. Assessing viability on the basis of serviced land avoids the excessive uncertainty associated with forecasting detailed end-use schemes, such as construction costs, fit-out, rental levels, yields, and take-up rates. By limiting the appraisal to the provision of serviced plots, the assessment remains proportionate and avoids layering speculative assumptions and unnecessary risk.

9.3 Importantly, plan-level viability testing is intended to assess whether the cumulative impact of policy requirements, such as affordable housing and infrastructure contributions, is broadly viable across the development. Using serviced land values for employment areas supports a simplified, yet realistic, approach to testing these policy burdens.

9.4 Speculative and pre let schemes are more relevant at the decision-making or delivery stage, where a greater degree of certainty exists around occupier demand and scheme specifics. In some cases, such schemes may deliver higher values and therefore improve viability; however, they can also involve greater upfront investment and risk.

9.5 For example, at this stage is it not known: (1) what the mix of uses is likely to be on the commercial land in terms of office, industrial, logistics, laboratory space etc – these uses all have different specification, costs and value assumptions; (2) pre-let v speculative development has different value and risk profile in terms of knowing the end user; rent; void and tenant incentives etc. in advance – we don't know at this plan-making stage how much space would be pre-let or spec; (3) procurement – pre-let development is more likely to be delivered on a 'design and build' basis where there is a known end-user and known specification requirement – in a D&B scenario there are various profit points including design fees; contractors profit and developers profit; (4) covenant strength – regardless of whether a commercial unit is anticipated to be pre-let or speculative, the

potential tenant is not known at this stage – therefore is it not possible to confirm the investment yield which is a product of location; building specification and lease covenant. A building let to, for example, Amazon or Pfizer will have a much keener yield than a building let to a local haulier or start-up company.

9.6 Incorporating pre let schemes at plan making stage would require a range of assumptions that may not hold across the whole area – it is unrealistic to forecast the specific circumstances of the commercial land at this stage. To overcome these uncertainties and refine the approach as the project progresses, a detailed masterplan would need to be in place. This would help establish clearer assumptions around land use distribution, infrastructure phasing, and the delivery route for employment development.

10. The Viability Appraisal assumes an overall net to gross ratio of 31.6%. Is this appropriate to achieve viability and ensure the delivery of housing?

Council's Response

10.1 Yes, the assumed net to gross ratio of 31.6% is appropriate for viability testing and reflects the scale and nature of the proposed development.

10.2 This figure accounts for the full range of land uses and infrastructure required to support a strategic site, including open space, roads, drainage, schools, and other community facilities and not just the residential parcels. For large sites such as Salt Cross, it is common for the net developable area to form a relatively smaller proportion of the gross red line boundary due to these significant infrastructure, landscaping and place-making requirements.

10.3 While a 31.6% ratio may appear conservative and low, it is based upon the illustrative masterplan framework. Using a cautious and realistic assumption ensures that the appraisal doesn't overstate housing capacity or underestimate infrastructure costs, both of which would risk undermining the credibility of the viability findings. This low ratio should also be reflected in the BLV where the total BLV value (£59,840,000) equates to £341,371 per acre net and £110,000 per acre gross.

Item	*Area (ha)*	*Area (acre)*	*Net to gross Ratio*	£59,840,000
Gross land area	*224*	*544*	*100.00%*	£110,000
Net Commercial area	*20*	*49.4*	*9.08%*	
Net Residential area	*50.8*	*126*	*23.16%*	£474,921
Sub-Total Net areas	*70.8*	*175.4*	*32.24%*	£341,163
Commercial (non-developable areas)	*20*	*49.4*	*9.08%*	
Other areas (infrastructure, POS etc)	*133.2*	*319.2*	*58.68%*	
Total check	*224*	*544*	*100.00%*	

10.4 Ultimately, the role of the plan-level viability assessment is to determine whether the proposed policy requirements, when tested against realistic assumptions about land use and infrastructure, are viable in principle. A lower net to gross ratio reflects a commitment to delivering a well-planned, infrastructure-led scheme, and helps ensure that the housing delivery is not only viable but also supported by the necessary place-making and community infrastructure.

10.5 As the masterplan is refined and further technical work progresses, the net to gross ratio can be revisited and adjusted if appropriate. Improving the net to gross development ratio at the delivery stage would improve the viability position. But for the purposes of current testing, 31.6% is a reasonable and proportionate assumption.

11. The assessment concludes that the development is unviable with an eco premium and policy compliant 50% affordable housing, though viability improves with a lower affordable housing contribution. How significant in terms of overall viability are the additional costs of achieving a net zero development? Are other factors such as increases in construction and infrastructure costs having a greater impact on viability? What effect does this have on housing delivery and affordability?

Council's Response

11.1 The additional costs associated with achieving net zero standards do add pressure to scheme viability. In AspinallVerdi's latest assessment, these costs have been incorporated based on estimates provided by Etude et al. As set out in the 'Policy 2 – Net Zero Carbon Development Evidence Base', a 'midpoint' 6.6% uplift has been applied to the base build cost assumptions to reflect the additional requirements of delivering low/zero-carbon homes. This uplift has been applied consistently across both houses and flats to reflect the modified requirements of Policy 2 in the Salt Cross Area Action Plan.

11.2 However, while the costs of delivering low-carbon/net zero-carbon development contribute to the overall cost profile, they are not the sole or most significant driver of viability in the base appraisal. The fact that the scheme remains unviable even when a premium is applied (to reflect potential value uplift from eco-homes) demonstrates that other factors are exerting a greater impact on viability.

11.3 Two key aspects are land value and profit. At AspinallVerdi's report para 9.13 it is noted that at 50% affordable housing + the eco-premium the Residual Land Value (RLV) [£43,682,201], it is still lower than the BLV of £59,840,000 by nearly £16,000,000, leaving the project marginally unviable - albeit £43 million is not an insignificant sum.

11.4 Furthermore, a deficit of £16m on the perceived land value represents only a -2% reduction of the overall profit from £137.8m to £121.8m (blended 15% on GDV) and therefore there is scope for some negotiation (between the landowner and developer).

11.5 In practice, broader construction cost inflation and infrastructure obligations have had a more substantial influence on viability rather than the low-carbon/net zero-carbon requirements alone. Rising labour and material costs, as well as increased contractor pricing, have pushed base build costs higher across the industry. For example, between AspinallVerdi's previous assessment in January 2021 and the most recent update in October 2024, base build costs (BCIS) increased by approximately 33.0% for houses (rising from £1,072 to £1,426 per sqm) and 33.7% for flats (from £1,194 to £1,597 per sqm).

11.6 In addition, infrastructure costs, which are often fixed early in the planning process, place a substantial upfront burden on schemes and leave limited flexibility to absorb new policy requirements. Although infrastructure and S106 costs have reduced slightly between 2021 and 2024 (from £229.76 million in 2021 to £221.38 million in 2024, according to G&T Cost Assumptions), this change is largely the result of cost reprofiling and refinements in delivery scope, not a reduction in policy/delivery ambition.

11.7 The 2021 G&T cost plan included a standalone zero-carbon allowance of £20.2 million, which has been extracted from the 2024 cost plan and is now captured under Policy 2 Costs. When the zero-carbon allowance is removed from both assessments to allow a like-for-like comparison, the core infrastructure and S106 costs will increase from £209.56 million in 2021 to £221.38 million in 2024, an uplift of approximately £11.82 million.

11.8 The table below summarises the key differences between the 2021 base appraisal and the 2024 base appraisal (50% affordable housing scenario). It shows that construction costs have increased as a proportion of GDV, rising from 31.30% to 37.89%. Infrastructure costs have also increased in absolute terms but remained broadly consistent as a share of GDV, ranging between 28% and 30%. As a result, the overall development cost has risen from 90.65% of GDV in 2021 to 97.05% in 2024.

Item	2021 @ 50% AH	% of GDV	2024 Base @ 50% AH	% of GDV
Total GDV	£707,557,037	100%	£778,680,023	100%
Residential Construction Costs	£221,482,512	31.30%	£295,016,794	37.89%
Policy 2 Costs	£20,200,245	2.85%	£19,471,108	2.50%
G&T Infrastructure and Community Facilities (ex. Zero- carbon costs)	£209,559,599	29.61%	£221,376,367	28.43%
Sub-Total Development Costs (ex. Land and Profit)	£521,410,542	73.69%	£626,297,060	80.43%
Total Development Cost	£641,402,940	90.65%	£755,747,390	97.05%

11.9 The table below illustrates how key development cost categories compare to total GDV this time across three Eco-Premium scenarios, which test viability under varying affordable housing targets of 50%, 45%, and 40%. Each cost item is presented both in absolute terms (£) and as a percentage of GDV, allowing a clear view of how cost pressures scale relative to expected revenue.

Item	***Eco @ 50% AH***	***% of GDV***	***Eco @ 45% AH***	***% of GDV***	***Eco @ 40% AH***	***% of GDV***
Total GDV	*£817,847,348*	*100%*	*£848,506,333*	*100%*	*£879,165,319*	*100%*
Residential Construction Costs	*£295,016,794*	*36.07%*	*£298,027,396*	*35.12%*	*£301,041,363*	*34.24%*
Policy 2 Costs	*£19,471,108*	*2.38%*	*£19,669,808*	*2.32%*	*£19,868,730*	*2.26%*
G&T Infrastructure and Community Facilities (ex. net-zero costs)	*£221,376,367*	*27.07%*	*£221,376,367*	*26.09%*	*£221,376,367*	*25.18%*
Sub-Total Development Costs (ex. Land and Profit)	*£628,400,158*	*76.84%*	*£634,314,728*	*74.76%*	*£640,239,451*	*72.82%*
Total Development Cost	*£766,276,942*	*93.70%*	*£782,483,334*	*92.22%*	*£798,877,391*	*90.86%*

11.10 As discussed earlier, construction cost inflation remains the most significant pressure on viability. This is clearly reflected in the table, where residential construction costs alone account for over 36% of GDV in the 50% affordable housing scenario, gradually declining to 34.2% at 40% AH due to a higher proportion of market units (which generate more revenue per sqm). These figures are above the 2021 level of 31.3%, confirming the ongoing inflationary trend.

11.11 Policy 2 (Net Zero) costs remain relatively stable across all scenarios, accounting for just over 2% of GDV, consistent with the earlier discussing that while these costs add pressure, they are not the primary driver of unviability. Similarly, infrastructure costs range between 25% and 27% of GDV, comparable to 2021 levels once the reprofiling of zero-carbon allowances is accounted for.

11.12 This comparative breakdown underscores the need to assess cost pressures holistically. While net zero obligations are important, they sit within a wider viability picture dominated by build cost inflation, infrastructure requirements, and evolving market dynamics. These combined pressures can have a direct impact on housing delivery and affordability, making it harder to bring forward viable schemes. To address these challenges, strategic developments like Salt Cross will need a clear masterplan and coordinated delivery strategy, supported by effective mechanisms for land equalisation and infrastructure coordination. Careful attention to phasing, governance, and funding will also be essential to avoid placing an unsustainable burden on the early stages of development.

Policy 2 – Net Zero Carbon Development

12. The first sentence of the policy requires that all development must achieve net zero operational carbon on site. Should the wording be more flexible recognising that this may not be achievable in all cases?

Council's Response

12.1 Policy 2 as proposed to be modified states that 'All development at Salt Cross must achieve net zero operational carbon on-site through ultra-low energy fabric, low carbon technologies and on-site renewable energy generation.'

12.2 This is a purposefully unequivocal statement, reflecting the Council's and local community's ambition to achieving net zero carbon development. This is the correct approach in relation to climate change, which supports high ambition approaches, given the seriousness of the climate crisis and the short time between now and the achievement of stretching obligatory targets in 2030 (reducing UK GHG emissions to 68% below 1990 levels) and 2035 (reducing emissions by 78%, including a 30% reduction in total energy demand in buildings by 2035 (compared to 2021 levels).

12.3 This approach is also sound in planning policy terms. Clear directive language in planning policy is beneficial to give developers (and hence the market) clear direction. There is no in-principle difficulty with clear directive language, where what is being required to be achieved – here net zero operational carbon on-site through ultra-low energy fabric, low carbon technologies and on-site renewable energy generation – reflects an evidence-based local objective, supported by evidence and viability testing.

12.4 The Council considers that the evidence prepared and submitted in support of Policy 2 as proposed to be modified, supports the case for such a clear policy requirement and would have concerns if this were to be watered down through the inclusion of a 'get-out' clause or similar.

12.5 That said, the Council recognises that this is a rapidly moving field and that its evidence (ED9B) has not been able to model all potential development typologies at Salt Cross because of uncertainty over some end users/uses (e.g. science and technology and retail).

12.6 The Council is also mindful that the December 2023 WMS states that where policies go beyond current or planned building regulations, that those policies should be applied flexibly to decisions on planning applications and appeals where the applicant can demonstrate that meeting the higher standards is not technically feasible, in relation to the availability of appropriate local energy infrastructure.

12.7 In light of the above, if the Inspector were minded to consider it necessary for the soundness of the policy to include a greater degree of flexibility, then the Council would be willing to consider an appropriate form of words. This could be along the lines of the requirements of the policy having to be met unless there are exceptionally clear and compelling reasons why this is not possible and that applicants should use best endeavours to achieve as many aspects of the policy as possible, prioritising for example, compliance with the stated space heating and energy use targets.

12.8 More generalised flexibility would not be sound, because it would not be in line with national policy on securing radical reductions in GHG emissions.

Building fabric

13. Are the space heating demand targets justified? Is the Policy effectively worded in stating a requirement that buildings must meet a space heat demand of <15-20 kWh/m2.yr? Should the 'less than' symbol be removed from the policy wording?

Council's Response

13.1 Yes, the use of space heat demand targets is justified.

Justification for introducing a SHD target

13.2 The Space heating metric (Space Heating Demand) is the amount of energy per m^2, over the course of an average year, which is needed to maintain a comfortable internal temperature.

13.3 This is generally accepted to be a much more helpful metric to understand building fabric efficiency, air permeability and ventilation efficiency than the building regulations % reduction from TER (target emissions rating, the building regulations compliance metric).

13.4 Fabric Energy Efficiency Standard (FEES) is also used as a metric in building regulations to encourage fabric efficiency but does not consider the impact of the design of the building (form) or the choice of ventilation system, two key factors in energy efficiency.

13.5 As a planning policy metric, SHD has a number of advantages compared to both TER and FEES:

- It is a simple metric that is easy to understand by the developer, design team and contractor.
- It specifically measures the performance of the building without the effects of technology such as PV, so prevents 'trading' a worse building performance for less permanent applied systems.
- It does not rely on 'system' conversion factors (such as carbon factors) which will change over time and may not be consistent.
- It includes the impact of the building form, a key factor in energy efficiency.
- At the design stage, predictive energy modelling is used to estimate the SHD, which helps inform the design team on how to reduce heat demand, thus giving the design team the ability to consider options to reduce the energy and carbon emissions of the building.

13.6 Conversely, issues with TER are that it:

- Only captures a portion of a building's carbon footprint and ignores energy use from appliances, cooking and equipment.
- Aggregates the influence of fabric and ventilation specifications as well as the heating system and PVs. Therefore, one parameter may compensate for another, e.g. poor energy efficiency can be compensated by a large PV array.
- Does not consider the impact of the design of the building (form), a key factor in energy efficiency.
- Is carbon-based: therefore the decarbonisation of the grid will dilute differences in energy efficiency performance.

Justification for the SHD target itself: technical feasibility

13.7 The Climate Change Committee has advised that, for the UK to meet its legally binding commitments to reduce carbon emissions, new build housing should be designed to achieve a space heat demand of less than 15-20 kWh/m2/year[2]. The Policy 2 – net zero carbon development evidence base developed by Etude, Levitt Bernstein, Introba and Currie & Brown (ED9B) shows that this is feasible with currently available materials and technology for the key residential typologies and for the principal non-residential typologies expected to come forward at Salt Cross.

13.8 Buildings relevant to Salt Cross were modelled using predictive energy modelling software, showing that the SHD targets can be met. The typologies are relevant to the anticipated scale of development, both in form, and in height and are therefore considered to provide a representative and proportionate sample. In the case of the terrace house, a sub-optimal form (integrated garage, which increases the form factor, which causes heat losses) was chosen to test that it would be technically feasible to meet the policy with a wide range of housing designs.

13.9 The evidence base report (ED9B) also showcases a wide range of case studies of buildings that have been built, that have the specifications that would meet the space heating targets.

13.10 A low space heat demand is critical to ensuring the quality of construction and low energy bills for occupiers and residents. It is also crucial in delivering the overall net zero emissions for the site by limiting the amount of renewable energy generation needed to that which can feasibly be accommodated on the site.

13.11 The proposed range of space heat demand is effectively an 'upper limit' with the technical evidence base demonstrating that, for some typologies, lower SHD is possible and should be reduced as far as possible. It is for this reason that the policy is expressed as 'less than' 15-20 kWh/m2/year to indicate that better performance is encouraged.

13.12 Although the Council does not consider it necessary, if the Inspector felt that the currently proposed wording is not sufficiently clear, Officers would be willing to consider an alternative approach which has the same effect for example, 'buildings must meet a space heating demand of no more than 15 – 20 kWh/m2.yr, with particular support for proposals that achieve better performance' – or words to similar effect.

[2] https://www.theccc.org.uk/wp-content/uploads/2019/02/UK-housing-Fit-for-the-future-CCC-2019.pdf

14. Is the policy sufficiently flexible to address circumstances where a development cannot achieve the required space heating demand?

Council's Response

14.1 Policy 2 as proposed to be modified is purposefully expressed as a range to provide an inherent degree of flexibility. As outlined in response to Question 13 above, the net zero carbon evidence base (ED9B) demonstrates that for some development typologies, lower SHD is achievable and as such, expresses the SHD effectively as an upper limit which is considered reasonable.

14.2 Achieving stringent SHD is a key aspect of driving improved build quality and reduced bills for residents. Given that the supporting evidence demonstrates an upper range of 15 – 20 kWh/m2.yr is achievable, as per our response to Question 12 above, the Council would be concerned about watering down this requirement to provide too much flexibility.

14.3 However, as also outlined above in relation to Question 12, if the Inspector were minded to consider it necessary to include a greater degree of flexibility within the policy, one option would be to introduce an overarching clause within the policy or supporting text to more clearly recognise that there may be exceptional circumstances where the prescribed standards of the policy cannot be met and the considerations that would then apply in such circumstances.

Overheating

15. The policy requires that at the outline planning application stage, mitigation should focus on orientation and massing. Is this justified in all cases such as where all matters are reserved except for access?

Council's Response

15.1 The proposed wording of Policy 2 is intended to reflect the fact that the level of detail known about a proposed development scheme at the outline planning stage is inevitably less than at the detailed planning stage – hence the suggested focus on broader issues of orientation and massing with more detailed consideration of overheating via Part O of the building regulations (residential) and CIBSE TM52 (non-residential) required at the detailed planning stage.

15.2 The Council considers this approach to be reasonable and appropriate.

15.3 Salt Cross Garden Village is the subject of a current outline planning application (20/01734/OUT) that is currently pending determination. The application has been submitted in outline, with all matters reserved except partial access from Lower Road, Cuckoo Lane and the A40 which are submitted in detail, with two remaining junctions across Cuckoo Lane remaining as outline.

15.4 Notwithstanding that the majority of matters have been reserved, the outline application is submitted by a raft of information including a large number of parameter plans for which approval is sought through the outline application. This includes parameter plans relating to land use, landscape, movement and access and building heights.

15.5 As set out in the applicant's supporting planning statement, this is based on the assumption that an outline planning permission would include conditions requiring Reserved Matters Applications (RMA) to be in accordance with those parameter plans (along with the development specification and framework (DSF), detailed access drawings and site-wide design code which have also been submitted for approval.

15.6 In light of the above, the Council considers the policy requirement for building orientation and massing to be addressed at the outline planning stage to be reasonable.

15.7 If the currently proposed wording is not considered to be sound, Officers would be willing to consider the inclusion of additional text along the lines of *'where relevant and applicable at the outline planning application stage, mitigation should focus on orientation and massing'* or words to similar effect.

16. Does the Policy duplicate requirements under the Building Regulations? For example, is it necessary and justified to require a demonstration of compliance with Part O at detailed planning stage?

Council's Response

16.1 Policy 2 as proposed to be modified states that at the detailed planning stage, compliance with Part O of the Building Regulations should be demonstrated in respect of residential development.

16.2 While building regulations and planning policies are separate, Officers consider that it is reasonable to refer to building regulation compliance issues within a planning policy, particularly for developments that have a significant impact on safety, sustainability, or amenity.

16.3 Notwithstanding this, Officers acknowledge that in the interests of further 'streamlining' the policy, it may be appropriate to exclude this from Policy 2, so long as it is referenced in the supporting text at paragraph 5.45.

Energy efficiency

17. Are the sector specific EUI targets justified?

Council's Response

17.1 Yes, the use of EUI targets and the sector specific targets are justified.

Justification for using an EUI target

17.2 The intent of the garden village is that the development is net zero carbon. The most commonly recognised definitions of net zero carbon (UK Net Zero Carbon Buildings Standard, LETI, RIBA, UKGBC), use an EUI limit to reduce energy consumption.

17.3 Energy Use Intensity (EUI) is the amount of total energy needed to run a building over a year (per sqm). The approach of setting an EUI limit is justified and effective because the EUI is a predictable, measurable and verifiable approach to ensuring new homes and buildings are designed to achieve the energy efficiency levels necessary to be net zero carbon in operation from the outset and to be able to technically achieve operational energy balance (where renewable energy generation matches demand over the course of a year).

17.4 It also leaves sufficient flexibility and design freedom to designers so they can achieve those standards in whatever way they consider most suitable given the local site-specific circumstances and unique purpose of each development.

17.5 It is a much more helpful metric to understand energy efficiency because:

- It is a simple metric that is easy to understand by the developer, design team, contractor, residents and those managing housing/building asset portfolios.
- It includes all energy uses.
- It can be used as a proxy for energy costs and can easily be translated into energy costs, a key consideration for the city council.
- Performance of the buildings can be checked in use - it can be directly derived from utility meters, or energy bills. This means that the outcomes of the policy can be monitored once the buildings are built and occupied.
- It does not rely on 'system' conversion factors (such as carbon factors) which will change over time and may not be consistent.

17.6 It includes the impact of the building form, a key factor in energy efficiency.

- At the design stage, predictive energy modelling is used to estimate the EUI which helps inform the design team on how to reduce energy use, thus giving the design team the ability to consider options to reduce the energy and carbon emissions of the building.

17.7 Using an EUI approach means focus on minimising energy use in the first place which is much better for residents, as well as reducing pressure on the electricity grid and mitigating climate change. It therefore can be used to deliver truly net zero carbon and energy homes and buildings which LPAs can be confident align with climate and energy targets.

17.8 It is important to note that there is no 'conflict' between the use of Energy Use Intensity (EUI) and Target Emission Rates (TER).

17.9 The latter is a building regulations metric, but the former underpins performance in the latter as well. They are being used by local authorities and developers across the Country and are supported by a range of industry guidance document, including the UK Net Zero Carbon Buildings Standard and RIBA.

17.10 It is also likely that EUI will become used in future Energy Performance Certificates (EPCs):

- Use of Energy Use Intensity in kWh/m^2.yr would be consistent with the recommendations of the Climate Change Committee for the reform of EPCs.
- In December 2024 the government released a consultation on reforms to the energy performance of buildings regime. Delivered energy (which is the same as EUI) was put forward as a potential metric in revised EPC's.

17.11 Further information is provided below that shows that energy metrics are used consistently as an alternative to % reduction TER:

- Adopted local plans that include space heating demand and energy metrics include Cornwall adopted climate emergency development plan 2023, Central Lincolnshire adopted local plan 2023, Bath & North East Somerset sustainable construction checklist SPD and the Tendering Colchester Borders Garden Community plan document (2025). These local plans have been found sound by planning inspectors.
- Around 30 local authorities are pursuing energy metrics in draft/ emerging local plans
- The Greater London Authority requires that EUI is reported in planning applications in London.

17.12 The following government departments are using an EUI limit as part of their briefs and guidance:

- Department of Education;
- Ministry of Justice;
- Government Property Agency; and
- A bespoke EUI target is developed depending on the use of the building in the NHS Net Zero Carbon Standard.

17.13 Industry alignment on energy metrics - The pilot version of the UK Net Zero Carbon buildings Standard was released in September 2024. It will be the UK's first cross-industry Net Zero Carbon Buildings Standard that brings together Net-Zero Carbon requirements for all major building types, based on a 1.5°C trajectory. The UK Net Zero Carbon Buildings Standard will enable industry to robustly prove their built assets are net zero carbon and in line with our nation's climate targets.

17.14 This voluntary Standard will be applicable to new buildings, retrofits and existing buildings. The Standard is a joint initiative between BBP, BRE, the Carbon Trust, CIBSE, IStructE, LETI, RIBA, RICS, and UKGBC, PIA, RIAS and ICE. EUI is the metric which is being used in the NZCBS, and thus is supported by the BBP, BRE, the Carbon Trust, CIBSE, IStructE, LETI, RIBA, RICS, and UKGBC, PIA, RIAS and ICE.

Justification for the EUI target itself: technical feasibility

17.15 The proposed EUI targets have been shown to be technically feasible by the Policy 2 – net zero carbon development evidence base developed by Etude, Levitt Bernstein, Introba and Currie & Brown (ED9B). Building typologies relevant to Salt Cross were modelled on predictive energy modelling software, showing that the EUI targets can be met. The typologies are relevant to the scale of development, both in form, and in height and therefore provide a representative and proportionate sample. In the case of the terrace house, a sub-optimal form (integrated garage, which increases the form factor, which causes heat losses) was chosen to test that it would be technically feasible to meet the policy wide a wide range of housing designs.

17.16 Buildings that are designed to meet the EUI targets and renewable energy requirements will have reduced energy bills of 9-39% for homes and upwards of 70% for non-residential compared to buildings that meet building regulations.

Justification for the EUI target itself: financial viability

17.17 The cost uplift of the specifications that meet the EUI limit have been calculated in the Policy 2 – net zero carbon development evidence base (ED9B). The cost analysis was undertaken by Currie & Brown, whose work is based on over 20 years' work on the costs of low carbon housing including work for the Climate Change Committee, MHCLG (including analysis of Part L2021 and Future Homes Standards), local and regional government house builders, housing associations and developers. The cost analysis undertaken has been reflected in the updated viability assessment (ED9A) which shows that development that meets the policy is viable.

18. Is there a conflict between the wording of the policy and the supporting text which suggests the EUI figures are recommended targets not requirements? In particular is it appropriate that development 'should achieve' the target rather than seek to achieve it? Overall is this part of the policy effectively worded?

Council's Response

18.1 Paragraph 5.46 of the supporting text to Policy 2 makes specific reference to the net zero carbon report (ED9B) stating that it identifies a number of Energy Use Intensity (EUI) target, before outlining what those recommended targets are.

18.2 Policy 2 as proposed to be modified, stipulates that 'all buildings should achieve the following sector specific energy use intensity (EUI) targets…'

18.3 Officers do not consider there to be any conflict or inconsistency between the two. The supporting text at paragraph 5.46 is simply intended to provide an overview of the recommendations contained in the net zero report (ED9B) whereas the wording of Policy 2 is intended to give effect to those recommended targets by stipulating that all buildings should achieve them.

18.4 The Council considers this approach to be reasonable.

18.5 Officers are concerned that amending the policy to 'seek to achieve' would effectively dilute it and reduce its effectiveness. If the Inspector were minded to consider any further main modifications to Policy 2, Officers would respectfully suggest that rather than diluting each aspect of the policy through more flexible wording, that an overarching clause be included in the policy – either at the beginning or end – to acknowledge that, in some instances, it may not be possible for all aspects of the policy to be fully complied with.

19. How does the policy address developments where the end user and therefore energy demand is unknown?

Council's Response

19.1 Whilst the draft Salt Cross AAP includes an illustrative framework plan and broad overview of anticipated uses at the garden village, inevitably, at the plan-making stage, it is not possible to know who the end user/occupant of all buildings will be.

19.2 The Net Zero Carbon evidence base (ED9B) includes detailed energy modelling of a number of anticipated uses including residential, offices and education. This is because the energy demand of such uses is well understood and unlikely to vary greatly.

19.3 However, in relation to other uses – in particular, science and technology and retail – the evidence base recognises that due to the wide range of potential end uses/users, it is much more difficult to predict energy use and therefore be able to set a limiting energy performance for these typologies.

19.4 The report suggests that in such instances, energy targets should be developed and agreed with the Council as part of any pre-application discussions relating to these typologies.

19.5 This is reflected in Policy 2 and the supporting text as proposed to be modified.

19.6 Paragraph 5.47 for example, acknowledges that given the difficulties of predicting energy use associated with certain uses such as research and development and retail, that specific targets should be developed through pre-application discussions.

19.7 This approach is also reflected in Policy 2, as proposed to be modified, which states that 'EUI targets for other uses (e.g. research labs, retail, community space, sports and leisure) will need to be discussed and agreed with the Council as part of any pre-application discussions, drawing on relevant sources including the Net Zero Carbon Buildings Standard'.

19.8 The Council considers this approach to be a reasonable and pragmatic one given the potential uncertainties surrounding such uses. It is also a proportionate approach to take at the plan-making stage with the primary purpose of the AAP being to provide an overarching policy framework to guide future development at Salt Cross, rather than prescriptively determining end users/uses which, in reality, will be determined by a broad range of factors which are outside of the control of planning.

20. Is the policy effective in explaining when a validated predictive energy modelling approach would be required?

Council's Response

20.1 The supporting text at paragraph 5.34 states that, *'Under the net zero carbon development scenario, all development at Salt Cross would be required to achieve net zero operational carbon on-site through the use of high-performance building fabric, efficient heating and hot water systems and on-site renewable energy generation. This scenario is based on the use of defined energy use intensity (EUI) targets and space heating demand indicators with predictive energy modelling required to demonstrate compliance'.*

20.2 The requirement for predictive energy modelling in relation to space heating demand is reflected in Policy 2, as proposed to be modified, which states that *'Buildings must meet a space heating demand of <15 – 20 kWh/m2.yr through ultra-low energy fabric, verified via predictive energy modelling at the detailed planning stage and monitored post-completion'.*

20.3 This sets a clear requirement for predictive energy modelling to be undertaken at the detailed planning stage and that this must then be monitored post-completion.

20.4 In relation to predictive energy modelling for use intensity (EUI), the modified policy states that a validated predictive energy modelling approach (e.g., PHPP, CIBSE TM54) must be agreed with the District Council and applied consistently across building types.

20.5 More generally, Policy 2, as proposed to be modified, also includes a requirement for an energy strategy to be submitted at the outline and detailed planning stages, re-confirmed pre-commencement and validated pre-occupation. This should include consideration of total energy demand, total renewable energy generation and the calculation methodology.

20.6 Having reviewed the above requirements, the Council acknowledges that Policy 2 (and also potentially the supporting text) could be made clearer in terms of when a validated predictive energy modelling approach would be required.

20.7 One approach would be to modify the text of the policy under the sub-heading 'energy efficiency' such that it reads as follows:

'For all building types, a predictive energy modelling approach (e.g. using Passive Haus Planning Package – PHPP or CIBSE TM45) must be agreed with the District Council and applied consistently across building types. This modelling should be carried out as part of the detailed planning submission, re-confirmed pre-commencement and confirmed pre-occupation, based on as-built information'.

20.8 Alternatively, it may be appropriate to amend the wording of the policy as proposed to be modified, where it refers to the overall requirement for an energy strategy to be submitted. This would help to ensure that the requirements in relation to predictive energy modelling are clear in respect of both space heating standards and energy use intensity (EUI).

Fossil fuels

21. The policy requires development to be fossil fuel free. No oil or natural gas should be used for space heating, hot water, or cooking. Is this part of the policy effectively worded? Is it necessary for reference to be made to 'cooking' in the policy? Should this be in the supporting text?

Council's Response

21.1 The Council considers that the proposed wording of the policy in relation to the use of fossil fuels is clear and purposefully unequivocal. Reference is made to cooking because, as set out in the net zero carbon evidence base (ED9B) cooking, along with the use of electrical appliances comprise unregulated energy which can account for a significant proportion of total energy use in some situations.

21.2 The evidence base supports an approach which addresses both regulated and unregulated energy – which cannot be achieved via compliance with Part L of the building regulations. This is the rationale for making specific reference to cooking in the policy.

21.3 That said, the Council acknowledges that this could potentially be addressed more effectively in the supporting text of the policy. Indeed, it was only in the interests of brevity that reference to cooking was deleted from paragraph 5.51 as proposed to be modified.

21.4 A simple option would be to re-instate the text or similar wording and for Policy 2 itself to state that the development must be fossil fuel free.

Zero operational carbon balance

22. The policy requires that 100% of the development energy demand must be met through on site renewable energy eg solar PV. It goes on to state that where this is not technically achievable, it should be maximised on plot. Is the policy and or the supporting text effective in setting out what is expected of a developer?

Council's Response

22.1 Paragraph 5.34 as proposed to be modified states that, *'Under the net zero carbon development scenario, all development at Salt Cross would be required to achieve net zero operational carbon on-site through the use of high performance building fabric, efficient heating and hot water systems and on-site renewable energy generation. This scenario is based on the use of defined energy use intensity (EUI) targets and space heating demand indicators with predictive energy modelling required to demonstrate compliance'*.

22.2 With specific regard to low and zero-carbon energy supply, paragraph 5.49 outlines that, *'In simple terms, to meet net operational zero carbon, the amount of energy required on-site should be balanced by installing on-site renewables to supply the equivalent amount of energy across the course of a year'*.

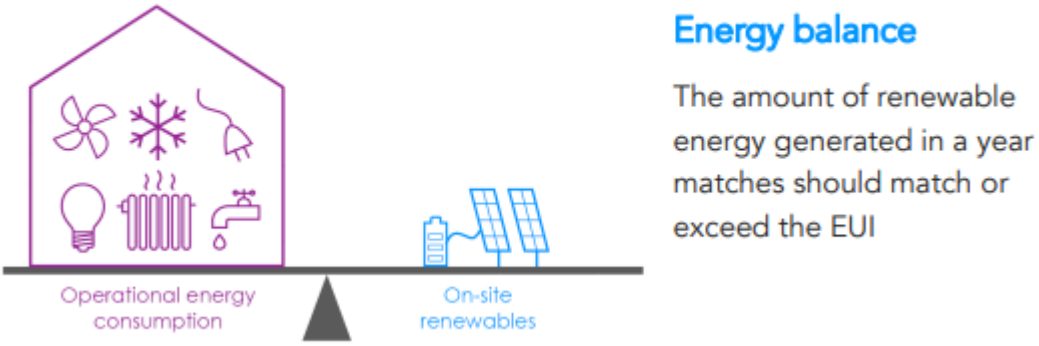
22.3 Paragraph 5.50, as proposed to be modified, goes onto explain that the net zero carbon report (ED9B) *'identifies the need for each building at Salt Cross to generate as much renewable energy as possible, the aim being to achieve a balance between predicted annual energy use and annual renewable energy generation. If this can't be achieved, then it must be achieved elsewhere on the site'*.

22.4 This approach is reflected in Policy 2 itself, as proposed to be modified, which states in specific relation to renewable energy use, that *'100% of the development's energy demand must be met through on-site renewable energy, such as solar PV. Where it can be shown that this is not technically feasible, it should be maximised on plot'*.

22.5 Policy 2 also requires the submission of an energy strategy detailing energy consumption and renewable energy generation.

22.6 Having reviewed the supporting text and wording of Policy 2 as proposed to be modified, the Council acknowledges that both the supporting text at paragraph 5.50 and the wording of Policy 2 could be clearer and more consistent in terms of what is expected of a developer.

22.7 The principal objective of the Council is to ensure that 100% of the energy required at Salt Cross is provided on site as shown in the energy balance diagram included in ED9B:



22.8 The report explains that in order for a building to be net zero, renewable energy must be generated to balance the annual energy use of the building. This balance should ideally happen within the site boundary, which typically means installing solar PVs on the roof of the development.

22.9 The report recognises that the amount of energy that can be generated will depend on a number of factors including the energy intensity of the building and building height/storeys.

22.10 For example, in relation to the mid-rise apartment typology, whilst 88% of the energy balance can be met on the roof, to balance the remaining energy consumption, solar PV would need to be provided elsewhere in the development.

22.11 The report also highlights the fact that whilst the carbon reductions are the same if solar PV is installed on a building or on the plot, the cost benefits to residents will only apply to solar PV installed on a building.

22.12 Given the above and for the sake of increased clarity, the Council acknowledges that both paragraph 5.50 and Policy 2, as proposed to be modified, could both be further amended as follows:

Paragraph 5.50

*'The net zero carbon report identifies the need for each building at Salt Cross to generate as much renewable energy as possible, the aim being to achieve a balance between predicted annual energy use and annual renewable energy generation. If this can't be achieved, then it must be achieved elsewhere**, either within the building plot, or across the wider*** ~~*on the*~~ *site'.*

Policy 2

'100% of the development's energy demand must be met through on-site renewable energy, such as solar PV. ***Developers will be expected to demonstrate through an Energy Strategy (see below) that all opportunities to maximise renewable energy generation on individual buildings have been identified.*** *Where it can be shown that this is not technically feasible, it should be maximised on plot* ***or across the wider site****.*

23. Paragraph 5.50 as proposed to be modified, states that each building should generate as much renewable energy as possible and where the energy balance between predicted annual energy use and annual renewable energy generation cannot be achieved, it should be achieved elsewhere on site. As drafted, the policy and supporting text appear ambiguous. Is it expected that the operational balance will be achieved on an individual plot or within the wider Village. How is it expected that this will be delivered? What if this cannot be achieved?

Council's Response

23.1 The intention is that the garden village, as a whole, will achieve an energy balance whereby operational energy consumption is provided for through on-site renewables.

23.2 The net zero carbon evidence base (ED9B) emphasises the importance of individual buildings maximising the opportunities for on-site renewables (e.g. solar PV) acknowledges that this will not always be possible e.g. due to building type/form - e.g. the mid-rise apartment typology which can only achieve 88% energy balance.

23.3 Similar issues apply to the office and school typologies due to competing uses for flat roofs, which reduce the amount of space available for solar PV.

23.4 In such circumstances, the expectation is that other opportunities to provide the necessary renewable energy generation within the wider building plot will be taken and if that is still insufficient, opportunities across the rest of the garden village site. Given the relatively low assumed net developable area, the Council considers that even if an energy balance for each building or building plot cannot be achieved, then it would still remain achievable for the site as a whole.

23.5 As outlined in response to Question 22 above, the Council agrees that the wording of both paragraph 5.50 and Policy 2, as proposed to be modified, could be further modified to provide greater clarity.

Embodied carbon

24. How will the policy be applied in respect to embodied carbon when the end user and internal specifications may be unknown. Is the policy effective and justified?

Council's Response

24.1 The policy requires that upfront embodied carbon calculations are carried out, with attempts to reduce embodied carbon to meet the upfront carbon limits in the UK Net Zero Carbon Buildings Standard. Upfront Carbon relates to lifecycle stages A1-A5 which includes the embodied carbon of raw material processing, transport and construction. It does not include maintenance, repair and replacement.

24.2 Therefore the assessment relates to materials that are procured and constructed by the developer. There are well-established methodologies for calculating this. For example, for development which is developed only to core and shell or CAT A, the assessment could be broken down into what is in the developer's control, and what will be procured later. In the assessment, reasonable assumptions for the items procured by others after the developer has completed their portion of the construction (Fit out) would be made, such that these materials can be included in the assessment.

24.3 The policy aims to reduce embodied carbon emissions of the buildings constructed in Salt Cross. The process of carrying out the embodied carbon assessment helps the design team to understand and reduce embodied carbon. It recognises that the timing of carbon emissions matters, because up front carbon emissions (which is what embodied emissions are) are more harmful than those which are delayed: up front emissions will be in the atmosphere longer, causing more warming, and delaying emissions creates opportunities to avert them.

24.4 Embodied emissions assessments, as part of whole lifecycle carbon assessments, are now found in a number of plans (see, for example, London Plan Policy SI 2; Merton Local Plan Policy CC2.5) Having such policies also helps the industry mature and improve on this topic. Thus, the policy will be effective at reducing embodied carbon.

24.5 Whilst embodied carbon limits are not explicitly introduced in the policy, applicants are asked to report against the embodied carbon limits in the UK Net Zero Carbon Buildings Standard and attempt, where possible, to reduce embodied carbon of the development to meet these embodied carbon limits, this further encourages embodied carbon reduction.

24.6 The policy is justified on a number of bases. Paragraph 161 of the NPPF, as amended in December 2024, requires the planning system, which includes plan making, to support the transition to net zero by 2050 and to help "to shape places in ways that contribute to radical reductions in greenhouse gas emissions". This reflects the acknowledgement by the Ministry of Housing, Communities and Local Government, in the consultation on the 2024 updates to the NPPF, that: "Climate change is one of the greatest challenges facing the world today, and the planning system can play a powerful role in helping to mitigate and adapt to its effects."

24.7 Paragraph 161, alongside the requirement in paragraph 162 for plan making to take a proactive approach to mitigating climate change, justifies the policy.

24.8 Paragraph 163 of the NPPF (also added in the December 2024 update), provides that "The need to mitigate and adapt to climate change should also be considered in preparing and assessing planning applications, taking into account the full range of potential climate change impacts." The use of the phrase "preparing and assessing" makes clear that, in the first instance, those bringing forward planning applications are required to provide information and evidence concerning the climate impacts of the proposed development and measures taken to adapt to climate change. Reference to "the full range of potential climate impacts" means that embodied carbon must be included, given that embodied carbon accounts for a significant proportion of the carbon emissions caused by construction projects. The fact that the end user and internal specifications are unknown do not break that causal chain, particularly as there are well established methodologies for undertaking whole lifecycle carbon assessments (see *Finch*).

24.9 Paragraph 163 informs the paragraph 164(b) requirement for new development to be planned for in ways that help to reduce greenhouse gas emissions through "design": a key element of whole lifecycle carbon assessment is that both embodied and operational carbon are considered early in the design process. In turn, these both inform the paragraph 162 obligation for plans to take a proactive approach to mitigating climate change, as they need to provide the planning policy framework for "the full range of potential climate change impacts", ie embodied carbon, to be addressed.

24.10 Paragraph 163 in fact builds on the position which has been clarified in case law: that climate change is a consideration in decision-taking which is so obviously material that failure to give it direct consideration would be irrational:

- *R(McLennan) v Medway Council* [2019] PTSR 2025, where Mr Justice Lane held that mitigation of climate change is a legitimate planning consideration and that "*given what is now said at national level about climate change*" it would be irrational for the authority not to have regard to the impact of the proposed development on a renewable energy system;
- *R(Hewitt) v Oldham MBC* [2020] EWHC 3405 (Admin), which referred to *McLennan* and all three parties (the local group, the LPA and the developer) accepted that the mitigation of climate change is a material planning consideration in the determination of planning applications, by virtue of paragraphs 148, 153 and 154 of the NPPF;
- *R (Frack Free Balcombe Residents Association) v SSLUHC* [2023] EWHC 2548 (Admin) at §65, where Mrs Justice Lieven held that climate change "*is likely to be a material consideration in every planning decision given the policy context as well as the much wider issues*".

24.11 This reinforces the importance of planning policy providing the requisite framework for consideration of all climate change impacts.

25. Is the policy effective and justified in requiring embodied carbon calculations to be carried out at outline and detailed planning stages with full lifecycle modelling encouraged?

Council's Response

25.1 Yes, the policy is effective and justified.

Applying the requirement at outline and detailed planning stages

25.2 Embodied carbon calculations can and are increasingly expected to be carried out at the outline planning application stage, particularly for major developments such as Salt Cross.

25.3 Outline applications include elements that relate to massing and scale of developments which can influence the embodied carbon, thus it is entirely justified that a proportionate assessment is undertaken at this stage.

25.4 Early estimates of embodied carbon can be made, allowing for the comparison of design options and the selection of materials with lower carbon footprints.

25.5 This can be achieved in a number of ways – for example, through an assessment of a representative sample of buildings and/or, as in the case of the Greater London Authority through the use of a Whole Life-Cycle Carbon (WLC) Assessment.

25.6 The GLA template[3], which guides applicants in terms of what information to submit at which stage of planning, suggests that at the outline planning application stage, default figures from the RICS Professional Statement: Whole Life Carbon Assessment for the Built Environment can be used, with more bespoke building assumptions to then be used at the detailed planning stage.

25.7 At the detailed planning stage, design decisions are made which affect the embodied carbon of a development, for example, the structural solution, the wall build up, the façade material type etc. – decisions which cannot be revisited later in the project.

25.8 If the embodied carbon assessment is going to have an impact at reducing the embodied carbon of the development, then it needs to be carried out prior to the detailed planning application.

Full Lifecycle Modelling

25.9 As outlined in response to Question 24 above, requirements for whole lifecycle carbon assessments, are now found in a number of plans and the Council considers such an approach to be fully effective and justified for Salt Cross.

25.10 The benefits are that embodied carbon associated with maintenance, repair and replacement, as well as end-of-life, are understood. If only an upfront assessment is carried out, then materials may be selected that have low embodied carbon, but need to be replaced frequently, which increases the embodied carbon of the lifecycle of the development.

25.11 The benefit of a lifecycle embodied carbon assessment is that it includes all of the lifecycle stages, so embodied carbon can be reduced over the whole lifecycle. Lifecycle embodied carbon modelling requires additional work pre-planning and the industry is in its infancy, so there are no relevant robust lifecycle embodied carbon benchmarks to compare against. It was therefore decided to make this element 'encouraged' and not mandated.

[3] https://www.london.gov.uk/publications/whole-life-cycle-carbon-assessments-guidance#:~:text=2.1%20The%20Mayor's%20net%20zero%2Dcarbon%20target&text=Attention%20now%20needs%20to%20turn,are%20included%20in%20Appendix%202.

Energy strategy monitoring and verification

26. Is it clear to developers, decision makers and the community what would be expected in terms of an energy strategy at outline, detailed planning and pre commencement stages and validated pre-occupation? What would be proportionate at each stage?

Council's Response

26.1 The requirements for the energy strategy are expressed in very simple terms in the policy; the total energy demand, the renewable generation and the method used to calculate those. Further detail is included in the relevant section of the policy, including acceptable calculation methodologies.

26.2 These 3 questions can all be answered at each stage as either intent or delivered. The level of supporting detail will vary at each stage and for each typology so that will be part of pre-application discussions. To schedule out every circumstance within the policy would potentially lead to greater confusion.

26.3 For example, for a detached house at outline stage, the required EUI is clear, whereas for a retail unit, the target EUI would be agreed at pre-app and confirmed in the energy strategy. At detailed planning stage, a residential developer may provide calculations of EUI based on agreed sample set, whereas a school would be able to provide a fully detailed predictive model.

26.4 For the purpose of having an easily comprehensible policy, it is felt to be better to make the detail required a matter to be agreed by officers under the overarching simple principle.

27. How will post occupation energy monitoring be achieved? How will this data be used, analysed and stored and by whom? How will it be shared among developers, designers and contractors? Is it appropriate and justified that this data is required annually for five years?

Council's Response

27.1 Officers anticipate that information regarding post-occupation energy monitoring would be submitted to the Council although the details of any such arrangements are yet to be determined.

27.2 It is understood that similar arrangements are in place in relation to the Greater London Authority (GLA) and upon adoption of the AAP, Officers propose to speak to the GLA to ascertain more information about how this can be achieved in practical terms.

27.3 In terms of analysing, reporting and sharing such information, the Council would look to report any non-confidential information as part of its Annual Monitoring Report (AMR) processes.

27.4 The five-year annual requirement is consistent with the approach taken at the GLA with their 'Be Seen' energy monitoring program requiring developers to monitor and report on the energy performance of major developments for at least 5-years after completion.

Schedule of proposed modifications

28. Document ED10 provides a schedule of proposed further main modifications and additional modifications. With the exception of MIN 1, 2 and 16, should the remaining additional modifications be classed as main modifications required for soundness? The heading in the third column of the table of additional modifications (page 8 of ED10) states 'Main Modifications'. Is this an error?

Council's Response

28.1 The approach taken in relation to document ED10 was to identify the proposed modifications to Policy 2 itself as 'main modifications' with all other proposed amendments to the supporting text (MIN1 – MIN21) intended to cover any necessary consequential updates to reflect the main modifications to Policy 2.

28.2 The Council considers this to be a reasonable approach to take as the proposed changes to the supporting text do not introduce new or different policy requirements to those set out in Policy 2 – they are simply intended to explain and articulate the rationale underpinning the policy and how it is intended to operate in practice.

28.3 The title heading in column 3 of the table on page 8 of ED10 is a typographical error and should instead read 'Minor Additional Modification'.

IN THE MATTER OF THE BUILDING REGULATIONS, PART L 2021 AND THE PLANNING AND ENERGY ACT 2008

Re: Ability of local planning authorities to set local plan policies that require development to achieve energy efficiency standards above Building Regulations

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FURTHER UPDATED OPEN ADVICE

INTRODUCTION AND SUMMARY

1. I am asked to advise Essex County Council ("**the Council**") and the Essex Climate Action Commission ("**ECAC**") on the ability of local planning authorities ("**LPAs**") to set local plan policies mandating energy efficiency standards for new buildings which exceed those in the Building Regulations, Part L. I initially advised in April 2023 and provided updated advice in early 2024. There have since been a number of developments, including a new iteration of the NPPF and new case law, which have prompted this further update. Going forward, this advice should be preferred to the previous iteration.

2. For the updated reasons set out in detail below:

   2.1 The Planning and Energy Act 2008 ("**PEA 2008**") confirms one way in which LPAs' pre-existing powers can be exercised to set higher targets for energy performance standards for development in their area than the national baseline. That statutory power has not been revoked and remains fully extant. It supports authorities bringing forward policies using energy efficiency standards set out or endorsed in national policies or guidance (such as those focused on reducing regulated carbon emissions and any energy efficiency standard recognised as part of an assessment of whole life energy costs or whole life-cycle carbon assessments) that go beyond current Building Regulations standards.

   2.2 The PEA 2008 is not the only power on which LPAs can rely, nor does it circumscribe other powers or foreclose other legislative routes by which

LPAs are obliged or empowered to act. Quite the opposite, as the debate at the time the PEA 2008 was put into place shows, it was always recognised that climate-related legislative amendments might result in provisions providing such powers.

2.3 There are other legislative routes by which LPAs have different or more ambitious powers, such as the general power flowing from the duty in section 19(1A) of the Planning and Compulsory Purchase Act 2004 ("**PCPA 2004**"), which requires that development plan documents must, taken as a whole, "*include policies designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change*".

2.4 This is reinforced by the requirements in the National Planning Policy Framework ("**NPPF**") that plans must take a proactive approach to mitigating and adapting to climate change and that plan making must support the transition to net zero by 2050, including through securing radical reductions in greenhouse gas emissions. It is notable that energy efficiency policies address both mitigation and adaptation, and are thus strongly supported.

2.5 There is no conflict between the PEA 2008 and section 19(1A) of the 2004 Act (indeed, it was anticipated they would work together), and where there are two different, overlapping ways of achieving a local authority's objective, it is open to the authority to choose the power on which it relies. Accordingly, LPAs can choose the power under which they bring forward local energy efficiency policies.

2.6 The Written Ministerial Statement titled "Planning – Local Energy Efficiency Standards Update" ("**the 2023 WMS**"), made on 13 December 2023, does not change that position. In light of the Court of Appeal's decision in *R (West Berkshire DC) v SSCLG* [2016] 1 WLR 3923, the 2023 WMS cannot lawfully seek to countermand or frustrate the effective operation of relevant statutory powers. The judgment in *R (Rights Community Action) v SSLUHC* [2025] PTSR 135 rejected the contention that the 2023 WMS emasculated or was incompatible with the powers in section 19 of the PCPA 2004. The 2023

WMS is simply one among many aspects of national policy to which LPAs and Examining Inspectors must have regard. It is a material consideration to which whatever weight is rationally justified can be given in the exercise of planning judgment.

2.7 Section 1(5) PEA 2008 cannot lawfully be read as changing that usual position or giving additional legislative force to national policies in the context of energy efficiency, such as the 2023 WMS.

2.8 So long as there is a robust evidence base – a reasoned and robustly costed rationale – it is open to Examining Inspectors, in the exercise of their planning judgment, to determine that policies using metrics and methods of calculation other than those specified in the 2023 WMS are sound. Such policies would be consistent with national policy on climate change mitigation, adaptation and the net zero obligation. To the extent that there would be deviation from one part of the 2023 WMS, that can be justified on the evidence and does not prevent overall consistency of the proposed local plan with national policy (particularly as national policy can pull in different directions).

2.9 With one exception, LPAs which have sought to include policies in their local plans mandating energy efficiency standards above the national baseline have been successful, and Inspectors have been satisfied that such policies will not have an unreasonable impact on the viability or deliverability of development. That remains the case after the 2023 WMS. The exception – the draft Area Action Plan for Salt Cross, found unsound in a report published on 1 March 2023 – was quashed by the High Court. There is therefore nothing in the Salt Cross decision which should dissuade an LPA from seeking to adopt net zero policies requiring higher new build fabric efficiency standards than Building Regulations which, for example, focus on achieving absolute energy use targets, banning the use of gas boilers in new buildings, and utilising predictive energy modelling to ensure that buildings meet Net Zero Carbon standards in operation, provided the LPA evidences such policies thoroughly and clearly indicates an awareness of the impact of the proposed policies on the viability of development.

REASONS

3. This opinion has the following structure:

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FACTUAL BACKGROUND

The Climate Crisis

4. In October 2018, the Intergovernmental Panel on Climate Change ("**IPCC**") reported in its *Special Report on Global Warming of 1.5°C* (the "**SR1.5 Report**"), that human activities had caused the Earth's surface to warm by more than 1°C since the industrial period of 1851-1900.[1] The SR1.5 Report made two further significant findings: (i) the climate impacts of 2°C of warming would be very much more serious than those of 1.5°C of warming; and (ii) there were then only 12 years in which to take action to prevent global temperature rise above 1.5°C.

5. On 9 August 2021 the IPCC published the contribution of Working Group I to the IPCC's Sixth Assessment Report, regarding the physical science basis of climate change. Its key findings of fact can be summarised as follows:[2]

   a. It is unequivocal that human influence has warmed the atmosphere, ocean and land. Widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred.

   b. The scale of recent changes across the climate system as a whole and the present state of many aspects of the climate system are unprecedented when compared to the globe's climate over many thousands of years.

   c. Human-induced climate change is already affecting many weather and climate extremes in every region across the globe; evidence of observed changes in extremes such as heatwaves, heavy precipitation, droughts, and tropical cyclones and, in particular, their attribution to human influence, has strengthened since the IPCC published its Fifth Assessment Report in 2013.

   d. Global warming of 1.5°C and 2°C will be exceeded during the 21st century unless deep reductions in CO_2 and other greenhouse gas emissions occur in the coming decades.

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1 IPCC 2018 *Special Report on Global Warming of 1.5°C*, Summary for Policymakers ("**SPM**") A1.

2 IPCC, 2021: SPM in *Climate Change 2021: The Physical Science Basis Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Cambridge University Press.

e. Limiting human-induced global warming to a specific level requires limiting cumulative CO_2 emissions, reaching at least Net Zero CO_2 emissions, along with strong reductions in other greenhouse gas emissions.[3] Strong, rapid and sustained reduction in CH_4 (methane) emissions would also limit the warming effect resulting from declining aerosol pollution and would improve air quality.

6. The IPCC estimates a remaining carbon budget of 500 gigatonnes of CO_2 ("**$GtCO_2$**") (from 2020) for a 50:50 chance of restricting warming to 1.5°C, i.e., a little over 420$GtCO_2$ from the start of 2022.[4] This new budget represents just over ten years' worth of global emissions at pre-pandemic (2019) levels (a level that 2021 broadly matched).

7. The Government's latest Climate Change Risk Assessment,[5] based on a series of reports by the Climate Change Committee ("**CCC**")[6] and an independent Technical Report,[7] and presented to Parliament pursuant to section 56 of the Climate Change Act 2008 ("**CCA 2008**"), set out that the effects of climate change are being felt now across the UK and identified future risks which threaten property and lives from impacts such as flooding; wildfires; drought; sea level rise; coastal erosion and heating. It also sets out that, even under low warming scenarios, the UK will be subject to a range of significant and costly impacts unless accelerated further action is taken now.[8] For eight of the risks identified, economic damage by 2050 under 2°C of warming could exceed £1 billion per annum.[9] It states:

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3 IPCC, 2018: Annex I: Glossary defines Net Zero CO_2 emissions as being achieved when global CO_2 emissions are balanced by CO_2 removals. Note that Net Zero CO_2 emissions and carbon neutrality have different meanings and can only be used interchangeably at a global scale. At a regional, national, local, or sectoral level, Net Zero requires the reduction of emissions to a level as close to zero as possible, while carbon neutrality can rely on offsetting elsewhere. See IPCC, 2022, Technical Summary ("**TS**") in *Climate Change 2022: Mitigation of Climate Change, Working Group III*, Box TS.6, fn. 19.

4 IPCC, 2021, Table SPM2 and paras D.1.3-D.1.8.

5 *UK Climate Change Risk Assessment 2022* (17 January 2022).

6 https://www.ukclimaterisk.org/publications/technical-report-ccra3-ia/.

7 *Technical report* (CCRA3-IA) (16 June 2021).

8 *UK Climate Change Risk Assessment 2022* pg 3.

9 Ibid, pg 4.

"*The evidence shows that we must do more to build climate change into any decisions that have long-term effects, such as new housing or infrastructure, to avoid often costly remedial action in the future.*"[10]

8. On 27 February 2022 the IPCC published the contribution of Working Group II to the IPCC's Sixth Assessment Report. Its key findings of fact are:

   a. The extent and magnitude of climate change impacts are larger than estimated in previous assessments;[11]

   b. Climate change has caused increased heat-related mortality; hot extremes including heatwaves have intensified in cities, where they have aggravated air pollution events and limited functioning of key infrastructure;[12]

   c. Continued and accelerating sea level rise will encroach on coastal settlements and infrastructure,[13] and, combined with storm surge and heavy rainfall, will increase compound flood risks;[14]

   d. There have been irreversible losses, for example through species extinction driven by climate change;[15]

   e. "*The cumulative scientific evidence is unequivocal: Climate change is a threat to human well-being and planetary health. Any further delay in concerted anticipatory global action on adaptation and mitigation will miss a brief and rapidly closing window of opportunity to secure a liveable and sustainable future for all.*"[16]

9. On 20 March 2023, the IPCC published its Synthesis Report, which draws together conclusions and recommendations from its detailed reports produced over the last six-year reporting cycle.[17] It emphasises that deep, rapid, sustained, and immediate reductions in greenhouse gas emissions are needed to avoid dangerous and irreversible consequences for human and natural systems.[18] A wide range of

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10 Ibid, pg 4 and pg 9.
11 IPCC, 2022, SPM in *Climate Change 2022, Impacts, Adaptation and Vulnerability, Working Group II contribution*, para SPM.B.1.2.
12 Ibid, SPM B.1.1 and SPM.B.1.5.
13 Ibid, SPM.B.3.1.
14 Ibid, SPM.B.5.1.
15 Ibid, SPM.B.1.2.
16 Ibid, SPM.D.5.3.
17 IPCC 2023 AR6 Synthesis Report.
18 Ibid, C.2.1 pg 27.

co-benefits would accompany rapid and sweeping emissions reductions, especially in terms of air quality and public health.[19] It sets out that substantial emissions and policy gaps presently exist, with implemented policies being on track for warming of 3.2°C, with a range of 2.2°C to 3.5°C.[20] Importantly, it emphasises that even the smallest increments of warming matter.[21] Every fraction of a degree will increase the severity and frequency of floods, droughts, storms, heatwaves, and other extreme weather events.

10. Buildings are the UK's second-highest emitting sector: as at 2022, the operational greenhouse gas emissions from energy needed to heat, cool and power buildings accounted for 17% of total emissions,[22] and as at 2023 the operational emissions from just residential buildings accounted for 12% of UK emissions.[23] To meet the UK's domestic climate commitments requires a 30% reduction in total energy demand in buildings by 2035 (compared to 2021 levels).[24]

Work in Essex to Address the Climate Crisis

11. ECAC is an independent body, set up by Essex County Council in May 2020. There are currently 30 commissioners, drawn from a range of public, private, and third sector organisations. In July 2021, ECAC published its report 'Net Zero: Making Essex Carbon Neutral', in which it set out a series of recommendations, which were adopted in full by the County Council. Among these was the recommendation that all new homes and commercial buildings granted planning permission in Essex should be zero carbon by 2025, and carbon positive by 2030.[25] These targets do not have statutory authority, but through leadership and information sharing, ECAC and the County Council, working with district council Chief Planners, are seeking to influence LPAs to adopt energy performance policies in their local plans, and developers to commit to higher standards of energy efficiency.

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19 Ibid, C.2.3 pg 27.
20 Ibid, figure 5 pg 23.
21 Ibid, B.2.2 pg 15 and figure 4 pg 18.
22 Climate Change Committee *Progress in reducing UK emissions 2023 Report to Parliament* pg 140.
23 Climate Change Committee *The Seventh Carbon Budget* pg 159.
24 Climate Change Committee *Progress in reducing UK emissions 2023 Report to Parliament* pg 143.
25 ECAC, 'Net Zero: Making Essex Carbon Neutral' pg 33.

12. The Essex Developers Group ("**EDG**") has signed up to a Developers Climate Action Charter in June 2022, in support of the ECAC targets.[26] The Charter has been adopted by the EDG as well as Homes England, the South East Local Enterprise Partnership and the Essex Planning Officers Association (representing the 15 local authorities of Essex).[27]

The Essex Model Net Zero Carbon Homes and Buildings Policy

13. In November 2023, the County Council published the "Planning Policy Position for Net Zero Carbon Homes and Buildings in Greater Essex" ("**the Net Zero Model Policy**"), which provides two model policies relevant to the climate change impact of development: Policy NZ1 on Net Zero Carbon Development (in Operation) and Policy NZ2 on Net Zero Carbon Development (Embodied Carbon).[28]

14. The Net Zero Model Policy is the culmination of collaborative work between the County Council and officers from all the Essex LPAs[29] to establish a robust evidence base to support a consistent, clearly defined net zero carbon planning policy for new homes and buildings across Essex. It has, in my view, a very robust evidence base, iterated and added to over the past few years:

    a. Net Zero Carbon Viability and Toolkit Study (Report of Findings) (Three Dragons, Qoda and Ward Williams Associates, August 2022);[30]
    b. Essex Net Zero Policy Study (Reports 1 and 2) (Introba, Etude, Currie & Brown, July 2023);[31]

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26 https://www.housingessex.org/topic/climate-action.
27 Essex Developers' Group Climate Action Charter.
28 https://www.essexdesignguide.co.uk/media/2954/net-zero-carbon-planning-policy-for-greater-essex-november-2023.pdf. The Net Zero Model Policy is in the process of being updated, partly to incorporate an Essex-specific embodied carbon policy as policy NZ2.
29 The work was funded by the County Council (responding to the work of the ECAC) and led by the Climate and Planning Unit within the County Council, but was steered by the Climate Planning Policy Support Group, comprised of officers from planning policy and/or climate teams from all the LPAs in Greater Essex.
30 https://www.essexdesignguide.co.uk/climate-change/essex-net-zero-evidence/net-zero-carbon-viability-and-toolkit-study/.
31 https://www.essexdesignguide.co.uk/climate-change/essex-net-zero-policy-study/.

c. Essex Embodied Carbon Policy Study– technical evidence base (Levitt Bernstein, Etude, Introba, Hawkins/Brown, Currie & Brown, June 2024);[32]

d. 'Essex Net Zero Specifications' – Specification Guidance (Introba, Currie & Brown, Etude, Levitt Bernstein July 2024).[33]

15. The Essex Net Zero Policy Study includes costs that can be used in local plan viability assessments, thus proving the basis for a consistent approach across Essex towards evaluating the costs of net zero policy and also providing helpful viability information relevant to the determination of planning applications (which can be augmented by information specific to the LPA and the particular development proposal under consideration). Both the model policy and the evidence base could also be used by those drafting and bringing forward neighbourhood plans.

LEGAL AND POLICY BACKGROUND

Climate Change Case Law

16. The UK Supreme Court in *R (Finch) v Surrey County Council* [2024] UKSC 20 at §141 recorded that, in adopting the Paris Agreement on 12 December 2015, "*most of the nations of the world have acknowledged that climate change represents 'an urgent and potentially irreversible threat to human societies and the planet' (Preamble to the decision to adopt the agreement) and have agreed on the goal of 'holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels': article 2(1)(a).*"

17. The Courts in the UK have recognised the "*very great importance*" and "*significance*" of climate change, "*with its consequences for human and other life on this planet*": *R (BAAN) v SSLUHC* [2023] EWHC 171 (Admin) at §§1 and 258. The

[32] https://www.essexdesignguide.co.uk/media/2981/essex-embodied-carbon-policy-study-technical-evidence-june-2024.pdf.

[33] https://www.essexdesignguide.co.uk/climate-change/essex-net-zero-specification/.

Divisional Court has accepted that the impact of global heating is "*potentially catastrophic*": *R (Spurrier) v Secretary of State for Transport* [2020] PTSR 240 at §560. The Court of Appeal has recognised that the "*issue of climate change is a matter of profound national and international importance of great concern to the public—and, indeed, to the Government of the United Kingdom*": *R (Plan B Earth) v Secretary of State for Transport* [2020] PTSR 1446 at §277.

18. In *R (Frack Free Balcombe Residents Association) v SSLUHC* [2023] EWHC 2548 (Admin) at §65, Lieven J held that climate change "*is likely to be a material consideration in every planning decision given the policy context as well as the much wider issues*".

Statutory Obligation to Reach Net Zero by 2050

19. The United Kingdom is subject to a statutory obligation to ensure that its net carbon account for the year 2050 is at least 100% lower than the 1990 baseline, pursuant to section 1(1) of the Climate Change Act 2008 ("**CCA 2008**"), as amended by the Climate Change Act 2008 (2050 Target Amendment) Order 2019. Under sections 4 and 9 of the CCA 2008, the Secretary of State must set regular carbon budgets for each succeeding five-year period, taking into account advice from the Climate Change Committee ("**CCC**"), and ensure that the net UK carbon account for each budgetary period does not exceed the carbon budget.

20. The duties of the CCC are set out in Part 2 of the CCA 2008 and include obligations to advise the Secretary of State on the setting of carbon budgets (section 34) and to make annual reports to Parliament on the progress that has been made towards meeting the carbon budgets and the 2050 Net Zero target (section 36).

21. The Fourth Carbon Budget, for the period 2023-2027, is set at 1,950 million tonnes carbon dioxide equivalent ("**$MtCO_2e$**") and requires an average of a 51% reduction in emissions compared with 1990 levels.[34] It was set so as to be on track for the previous target of an 80% reduction in greenhouse gas emissions by 2050. The

[34] CO_2 equivalent emission is a common scale for comparing emissions of different greenhouse gasses, though it does not imply equivalence of the corresponding climate change responses. It is defined in IPCC 2018, Annex 1: Glossary.

Fifth Carbon Budget (2028-32), set on the same basis, is 1,725 $MtCO_2e$, which requires an average of a 57% reduction.

22. The CCC published its Sixth Carbon Budget recommendation and report in December 2020. The Government accepted the recommendation and enshrined the budget in law by the Carbon Budget Order 2021. It sets a target of 965 $MtCO_2e$ for the period 2033–2037, which would equate to a 78% reduction in emissions by 2035, relative to the 1990 baseline.[35]

23. The adoption of the Sixth Carbon Budget has clear implications for the Fourth and Fifth Carbon Budgets, which were set in line with the previous 'at least 80% reduction' target for 2050 rather than the revised 'at least 100%' target now found in Section 1 of the CCA 2008. In its December 2020 report, the CCC calculated a difference of at least 28-68 $MtCO_2e$ a year in 2030 between the average emissions allowed by the Fifth Carbon Budget, and the CCC's "Balanced Pathway", which is a trajectory that if followed would allow the UK to meet the Sixth Carbon Budget and the 2050 Net Zero target.[36]

24. The CCC has advised that the Fifth Carbon Budget will need to be significantly outperformed to stay on track to meet the Sixth Carbon Budget and the 2050 Net Zero target.[37]

25. The CCC published its advice on the Seventh Carbon Budget on 26 February 2025. The recommended pathway to meet that budget focuses on 2040, recommending an 87% reduction of GHG emissions by then, compared to 1990 levels.[38] That is a reduction of three-quarters from current levels. Electrification is the key tool for achieving the reductions. Sectorally, the most work will need to be done by surface transport emissions and residential buildings emissions – much more of Carbon Budget 7 relies on progress being made on residential buildings than was previously the case.[39]

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35 CCC, *The Sixth Carbon Budget – The UK's path to Net Zero*, December 2020.
36 Ibid, pg 432.
37 Ibid, pgs 24 and 430-433.
38 Climate Change Committee *The Seventh Carbon Budget* pg 12.
39 Ibid, Figure 2, pg 12.

Climate Change and Planning Policy

26. The National Planning Policy Framework 2024 ("**NPPF**"), published in December 2024, recognises that the duties under the CCA 2008 are relevant to planning for climate change. Every iteration of the NPPF since it was first put in place in 2012 has included a footnote making clear that the policy requirement (now in paragraph 162) for plans to "*take **a proactive approach** to mitigating and adapting to climate change*" (emphasis added) must be "*in line with the objectives and provisions of the Climate Change Act 2008*".[40]

27. The NPPF 2024, for the first time, explicitly refers to the transition "*to net zero by 2050*" (paragraph 161). It requires the "*planning system*" – ie both plan making and decision-taking – to "*support*" that transition, and adds to the requirements of which "*full account*" need to be taken, now referring to "*all climate impacts*" and adding overheating, water scarcity and storm risk to the existing flood risk and coastal change. Paragraph 161 also requires that plan making should help "*to shape places in ways that contribute to **radical reductions in greenhouse gas emissions***" (emphasis added). Energy efficiency policies clearly fall within both the proactive approach to mitigation and making communities and infrastructure more resilient to climate change and the overall requirement for the plan making to support the transition to net zero and help to secure development that contributes to radical reductions in greenhouse gas emissions.

28. This reflects the acknowledgement by the Ministry of Housing, Communities and Local Government, in the consultation on the 2024 updates to the NPPF, that: "*Climate change is one of the greatest challenges facing the world today, and the planning system can play a powerful role in helping to mitigate and adapt to its effects.*"[41]

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[40] This is also reflected in the paragraph 1 of the Planning Practice Guidance: Climate Change (ID 6-001-20140306).

[41] Consultation, Proposed reforms to the National Planning Policy Framework and other changes to the planning system, Chpt 9 §17. In the 2023 consultation on the previous NPPF update , DHLUC stated that planning "*can make an important contribution to … the vitally important task of mitigating and adapting to climate change*". Consultation, Levelling Up and Regeneration Bill: reforms to national planning policy (22 December 2022), Chpt 2 §5.

29. Paragraph 166 of the NPPF 2024 indicates that the energy consumption of new development ought to be taken into consideration at the decision-taking stage. It provides that:

> *"In determining planning applications,* ***local planning authorities should expect new development*** *to:*
>
> *a) comply with any development plan policies on local requirements for decentralised energy supply unless it can be demonstrated by the applicant, having regard to the type of development involved and its design, that this is not feasible or viable; and*
>
> *b) take account of landform, layout, building orientation, massing and landscaping* ***to minimise energy consumption****."* (emphasis added).

30. It is arguably implicit in paragraph 166(b) that authorities have the power to put in place local policies to guide the expectation that new developments will minimise energy consumption.

31. Paragraph 163 of the NPPF 2024 requires the need to mitigate and adapt to climate change to be considered "*in preparing and assessing planning applications, taking into account the full range of potential climate change impacts*." The use of the phrase "*preparing and assessing*" makes clear that, in the first instance, those bringing forward planning applications are required to provide information and evidence concerning the climate impacts of the proposed development and measures taken to adapt to climate change. This is considered further below, but reference to "*the full range of potential climate impacts*" means that such information and evidence would include energy efficiency measures, such as space heating demand, energy use intensity and renewable energy generation. The paragraph 163 obligation then shifts to LPAs to take this information into account in their decision-making, against the background of the need to support the transition to net zero by 2050 and to shape places in ways that contribute to radical reductions in greenhouse gas emissions (paragraph 161).

32. Again, it is arguably implicit in paragraph 163 that authorities have the power to put in place local policies to guide the expectation that those bringing forward planning applications are required to provide information and evidence

concerning the full range of climate impacts of the proposed development and measures taken to adapt to climate change and to guide decision-makers as to how to take that information into account.

33. Paragraph 164(b) requires that new development be planned for in ways that "*help to reduce greenhouse gas emissions such as through its location, orientation and design. Any local requirements for the sustainability of buildings in plans* ***should reflect*** *the Government's policy for national technical standards.*" (emphasis added). The flexibility in the second sentence, given by the phrase "*should reflect*", enables account to be taken of LPAs powers to set local energy efficiency standards that go beyond minimum standards in Building Regulations and to use metrics supported by robust evidence, such as that in the Essex net zero evidence base (see §§13-15 above).

The Net Zero Strategy and the Carbon Budget Delivery Plan suite of documents

34. The UK presently does not have a lawful plan under the CCA 2008 setting out the policies and proposals required to meet the carbon budgets.

35. On 18 July 2022, the Net Zero Strategy for meeting the carbon budgets up to and including the Sixth Carbon Budget was found unlawful. In *R (Friends of the Earth Ltd) v Secretary of State for the Business, Energy and Industrial Strategy* [2023] 1 WLR 225; [2022] EWHC 1841 (Admin), Holgate J (as he then was) held the Secretary of State had not been briefed with sufficient information to enable him to be satisfied that the policies and proposals included in the Net Zero Strategy would allow the UK to meet the Sixth Carbon Budget (§§202–204, 211–217, 256–257). The Net Zero Strategy was required to be re-drafted by 31 March 2023.

36. On 30 March 2023, the Government published its revised strategy to deliver its Net Zero obligations.[42] Rather than a single Net Zero Strategy, a suite of 50 documents were published, including 19 policy documents. The most important

[42] https://www.gov.uk/government/publications/powering-up-britain.

of the policy documents is the Carbon Budget Delivery Plan,[43] which was presented to Parliament pursuant to the section 14 of the CCA 2008.

37. The Carbon Budget Delivery Plan set out 191 quantified measures across all sectors of the economy (table 5) and indicated that these policies would meet Carbon Budgets Four and Five, but would only provide 97% of the carbon savings required to meet the Sixth Carbon Budget (2033-2037), amounting to a shortfall of 32 million tonnes of CO_2e over the budget period (see Table 1 in particular). Table 6 of the Plan listed another 143 "*unquantified*" policies and proposals, where the impact has not been calculated, in some cases because they are at an "*early stage*" or because they are very high level. The Carbon Budget Delivery Plan also made it clear that it delivers only 92% of the emissions cuts needed to meet the UK's 2030 nationally determined contribution under the Paris Agreement, which is a commitment to reduce economy-wide greenhouse gas emissions by at least 68% by 2030, compared to 1990 levels.

38. This was subject to further legal challenge and, on 3 May 2024, Sheldon J upheld that challenge in *R (Friends of the Earth) v SSESNZ* [2024] EWHC 995 (Admin), [2024] PTSR 1293 ("**the *CBDP* judgment**"), finding the CBDP is unlawful and in breach of sections 13 and 14 of the CCA 2008. He held the Secretary of State took an erroneous or unreasonable approach to risk assessment. The Secretary of State had irrationally assumed that all the planned policies and proposals in the CBDP would be delivered in full and that it was reasonable to expect that level of ambition, having regard to delivery risk and the wider context (§§119-125), despite the true factual position being that not all of the proposals and policies would be delivered in full (§§63-64 and 126). The Secretary of State had not been provided with sufficient information as to the obviously material consideration of risk to the individual policies and proposals in the CBDP (§132).

39. Furthermore, the Secretary of State had failed properly to consider the requirement in the CCA 2008 that "*the proposals and policies, taken as a whole, must be such as to contribute to sustainable development*". Sheldon J held at §146

[43] https://www.gov.uk/government/publications/carbon-budget-delivery-plan.

that "*sustainable development*" was an "*uncontroversial concept*", defined in *R (Spurrier) v Secretary of State for Transport* [2019] EWHC 1070 (Admin) at §635 "meeting the needs of the present without compromising the ability of future generations to meet their own needs."

40. On 29 October 2024, it was announced that the Government had conceded another legal challenge to the lawfulness of the CBDP, on the basis that the abandonment of various policies in September 2023 failed to meet its obligations under section 13 of the CCA 2008 and that the information available to it was insufficient to conclude that its plan, including a 10% shortfall in quantified emissions savings, would enable the carbon budgets to be met.[44]

41. Following the *CBDP* judgement, the court ordered the government to produce an updated climate plan by 3 May 2025. In March 2025, the court granted the government's request to extend this deadline to 29 October 2025.

Progress towards the Net Zero obligation

42. In short, while the Government is on target to meet the non-Net Zero aligned Fourth and Fifth Carbon Budgets, it is not currently on track to meet any of its Net Zero aligned targets. This has been the case for a number of years.

43. In June 2022, the CCC found in its *Progress Report to Parliament* concerning the previous Net Zero Strategy that significant risks or policy gaps existed in relation to 38% of the emissions reductions required to meet the Sixth Carbon Budget.[45] This was particularly so in relation to land use and the energy efficiency of buildings.[46] The CCC also highlighted that, under the current Building Regulations, "*the UK continues to build new homes to standards which do not align with the Net Zero target.*"[47]

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44 https://www.leighday.co.uk/news/news/2024-news/government-concedes-abandonment-of-green-policies-was-unlawful-following-legal-challenges-by-chris-packham/.

45 CCC, Progress Report, June 2022, pg 22,.

46 Ibid, pg 14.

47 Ibid, pg 180.

44. In a letter to Chancellor Jeremy Hunt in November 2022, the CCC recommended that the Government consider bringing forward the date for the introduction of the Future Homes Standard from 2025.[48] This recommendation was not followed in the Carbon Budget Delivery Plan.[49] A similar recommendation made in the independent Net Zero Review, carried out by former energy minister Chris Skidmore MP,[50] was rejected.[51] The Government launched its consultation on the specification in December 2023 (see §60 below) and intended to legislate in 2024 ahead of implementation in 2025. In March 2023, the Government indicated that it would, as part of the consultation, "*explore what transitional arrangements are appropriate to make sure that as many homes as possible are built to the new standard as quickly as possible.*".[52]

45. On 28 June 2023, the CCC responded to the Carbon Budget Delivery Plan and the new suite of Net Zero Strategy documents in its *Progress Report to Parliament* ("**2023 Progress Report**").[53] This set out that, despite new detail from Government, the CCC's confidence in the UK meeting its 2030 NDC and the Sixth Carbon Budget had decreased. The CCC made the point that, excluding the power sector, emissions had only fallen by an average of 1% in the last eight years, but that rate of progress would need almost to quadruple in the next eight years for the UK to meet its 2030 NDC commitment. It concluded a doubling of progress on buildings is required, but that policy gaps remained, particularly for energy efficiency measures, which it reported are significantly off track.

46. Focusing on buildings, the 2023 Progress Report recorded that most indicators are off track and that the UK needed significant new policies and programmes to underpin the delivery or, inter alia, energy efficiency.[54] The CCC judged most of the policies in the CBDP and net zero suite of documents to achieve emission

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48 CCC, Letter: Reducing energy demand in buildings in response to the energy price crisis, November 2022.
49 Policy 97, pg 78.
50 Mission Zero: Independent Review of Net Zero, January 2023.
51 Responding to the Independent Review of Net Zero's Recommendations, March 2023.
52 Ibid, pg 54, response 108.
53 https://www.theccc.org.uk/publication/2023-progress-report-to-parliament/.
54 Ibid, pgs 140-141.

reductions from buildings "*to be either at significant risk or with insufficient plans*".[55]

47. The most recent CCC *Progress Report to Parliament*, provided in July 2024 ("**the 2024 Progress Report**")[56] recorded that the UK is not on track to hit its first net-zero aligned target – the 2030 NDC – despite emissions reductions in 2023. The CCC's assessment was that credible plans cover only a third of the emissions reductions required to achieve the 2030 target and only a quarter of those needed to meet the Sixth Carbon Budget.[57] In particular, the CCC found that missing or incomplete policies included those on energy efficiency in buildings.[58]

48. Emissions reductions from buildings (from a 2008 baseline) are smaller than the CCC has predicted.[59] The CCC specifically highlighted that the "*spatial planning system continues to cause issues for delivering Net Zero*".[60] While the CCC praised some improved clarity in the December 2023 NPPF on the weight LPAs should give to energy efficiency and low-carbon heating in existing buildings and on low-carbon energy infrastructure, it raised concerns over the 2023 Written Ministerial Statement on local energy efficiency standards (see §§59 and 91ff below), which it said would be "*likely to cause further confusion and delays around adopting local NetZero policies, which is a setback.*" [61]

49. The CCC emphasised the need for rapid action:

> "*Outside the electricity supply sector, the average annual rate of reduction over the previous seven years was only 6.3 $MtCO_2e$/year (1.6%). This will need to more than double to 14.3 $MtCO_2e$/year (4.6%) over the next seven years if the UK is to meet its 2030 target. This will require substantial increases in the rates of reduction in most sectors outside of electricity supply. ... In industry and buildings, trends over the previous seven years were not sufficient and the recent reductions were mostly not the result of*

55 Ibid, pg 151.
56 CCC, *Progress in reducing emissions 2024 Report to Parliament*, July 2024.
57 Ibid, pg 70.
58 Ibid, pg 71.
59 Ibid, pg 36.
60 Ibid, pg 81.
61 Ibid, pg 81.

sustained decarbonisation action. These trends will need to speed up, enabled by programmes to roll out low-carbon technologies."[62]

50. The Government is also not on track to meet its obligations to adapt to climate change. Sections 58 of the CCA 2008 places a duty on the Secretary of State to lay programmes before Parliament setting out the objectives of the Government in relation to adaptation to climate change and the proposals and policies for meeting those objectives, including time-scales and risks. The UK's Third National Adaptation Programme ("**NAP3**") was laid before Parliament on 17 July 2023. On 30 April 2025, the CCC published its Adaptation Progress Report to Parliament, the first to assess the extent to which NAP3 and its implementation are preparing the UK for climate change.[63] It finds, definitely, that the UK's preparations for climate change are inadequate and the NAP3 falls short of what is required to address the climate change the UK is experiencing today, let alone that coming in future.

Action by LPAs

51. National policy gaps, including on the energy efficiency of buildings, do not mean that LPAs are prevented from taking action now, or in advance of national policy. On the contrary: localised action is all the more important for keeping the UK on track to meet its 2030 NDC, the Sixth Carbon Budget and the 2050 Net Zero target. Local authorities, commercial developers and associated partners, and third sector organisations all have a role to play in delivering higher energy performance standards in new development.

52. This is bolstered by section 19(1A) of the 2004 Act, which requires that development plan documents must include policies designed to secure that development of land in the local authority's area "*contribute to the mitigation of, and adaptation to, climate change*". This, read with the NPPF provisions set out at §26ff above, means that both statute and national government policy require LPAs

[62] https://www.theccc.org.uk/publication/progress-in-reducing-emissions-2024-report-to-parliament/#publication-downloads

[63] CCC, *Progress in adapting to climate change 2025 report Parliament*, April 2025.

to bring forward carbon literate planning policies to secure compliance with the UK's climate obligations.

53. Furthermore, Section 38(6) of the 2004 Act provides that, "*if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise*." This makes local development plans a crucial avenue for promoting higher standards in new development and ensuring that homes built today will not require expensive retrofits in years to come.

54. On the consumer side, there is a growing market among buyers and renters for more sustainable homes and workplaces, and a potential 'green premium' to be enjoyed by developers who deliver high standards of energy efficiency:

    a. In March 2024, analysis by Think Three and Cambridge University, commissioned by Octopus Energy, found that highly energy efficient homes built to zero-bills standards – using technologies like solar panels, battery storage, and heat pumps – can command a substantial green premium. Homes with zero-bills could command sales price premiums of up to 13.2% on average, and as high as 20.2% for new builds. Values varied depending on the valuation of the properties and taking into account regional differences: the highest premiums were found in areas with high market values in the South West, South East and Eastern regions with premiums of 15.5%, 15.1% and 14.7% respectively.

    b. Analysis by Savills of average values of homes transacted between 2019 and 2021 shows that newer, cleaner, methods of energy do demand a higher price tag. Across England and Wales, homes with heat pumps fitted demand the highest premium compared with the regional average – with buyers paying on average 59% more for the offer of cleaner energy. This premium is most acute in the South East, with homes on average 84% more expensive. 59% of survey respondents said that they would be willing to

pay more for a home if at least 75% of a property's energy was powered by renewable sources.[64]

c. Research by Legal & General and YouGov among a UK representative sample of 2,405 adults open to buying or renting a new home, found that 62% saw investment in energy efficient homes as an attractive or very attractive option to address the cost of living crisis, that renters were willing to pay a 13% premium for a low carbon property, and buyers a 10.5% premium, rising to 20% for Gen Z future buyers (i.e. those born after 1997). The research also found a 34% uptick in online searched for eco-friendly homes.[65]

d. Polling carried out by Opinium and Santander of 2,000 UK representative adults, 175 estate agents, and 108 mortgage brokers found that 79% of potential buyers said that increased energy costs had made them think more about the importance of energy efficiency, that those who were willing to pay more for an energy efficient home put a 9.4% premium on the price of such a property and that estate agents reported buyers spending an average of 15.5% more on energy efficient properties. Santander concluded that this 'green premium' equated to an average of £26,600 over and above the average UK house price.[66]

e. Shakespeare Martineau found that 77% of 500 potential buyers surveyed would consider purchasing a green home, rising to 80% for first time buyers.[67]

f. On the commercial side, research by Knight Frank and BRE Group on 2,701 buildings found that Central London office space which had a BREEAM Outstanding certification commanded a 12.3% rental premium when controlling for other property characteristics.[68]

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64 Savills, "Buyers paying significantly more for homes with low-carbon technology, as energy prices rise", April 2022.
65 Legal & General/YouGov Research, July–August 2022.
66 Santander, Buying into the Green Homes Revolution, October 2022.
67 Shakespeare Martineau Green Homes Report.
68 Knight Frank, The Sustainability Series, September 2021.

55. Some developers, such as the members of the EDG who signed the Developers Climate Action Charter, have recognised this 'green premium' and voluntarily committed to higher standards for energy efficiency. Initiatives such as developers' charters are important statements of intent, even though they have no power legally to bind their signatories.

56. Finally, there is evidence of developers being attracted to areas where there is policy support for net zero development, such as the Octopus Energy and gs8 Carpenters Yard project in Thornwood, Epping, for 113 homes meeting energy efficiency building fabric standards and also addressing embodied carbon.[69]

2021 Updates to the Building Regulations

57. Approved Documents F (Ventilation) and L (Conservation of Fuel and Power), which provide guidance on how compliance with the Building Regulations can be achieved with respect to energy efficiency, were updated in 2021 with measures which came into effect in June 2022. A new Approved Document O (Overheating) was also published.

58. The new measures mandate that carbon emissions from new residential buildings must be 31% lower and those from new non-residential buildings 27% lower than the previous 2013 baseline. The updated guidance also includes a range of new energy efficiency standards and metrics in relation to components of the fabric and heating systems of new buildings to achieve the required overall emissions reductions.

The 2023 WMS and the Future Homes and Buildings Standard Consultations

59. On 13 December 2023, the 2023 WMS, titled "Planning – Local Energy Efficiency Standards Update", was made by Parliamentary Under Secretary of State (Housing and Communities), Baroness Penn, in the House of Lords (HLWS120) and then by Lee Rowley as Minister of State for Housing (HCWS123).[70] The 2023 WMS stated that the 2021 Part L amendments effectively rendered the sections of the 2015

[69] Sustainability Times (20 February 2025).
[70] https://questions-statements.parliament.uk/written-statements/detail/2023-12-13/hlws120 and https://questions-statements.parliament.uk/written-statements/detail/2023-12-13/hcws123

WMS dealing with this issue moot. The 2023 WMS explicitly supersedes the aspects of the 2015 WMS relating to energy efficiency.

60. Also on 13 December 2023, and referred to in the 2023 WMS, DLUHC launched two consultations:

a. The Future Homes and Buildings Standards: 2023 consultation on changes to Part 6, Part L (conservation of fuel and power) and Part F (ventilation) of the Building Regulations for dwellings and non-domestic buildings and seeking evidence on previous changes to Part O (overheating).[71] It is notable that the consultation contains a specific section on metrics which refers to Energy Use Intensity ("**EUI**"). The two options for metrics on which the consultation focuses are, however, the least ambitious of the various options which had been presented to the Government in the runup to the consultation, nor does the consultation include various requirements identified by the CCC as necessary in its *UK Housing: Fit for the Future?* report in February 2019.[72]

b. Home Energy Model: Future Homes Standard. This is the methodology which will be used to demonstrate that new dwellings comply with the future Homes Standard. It will replace the Standard Assessment Procedure ("**SAP**") version 10.2 for the energy rating of dwellings. The introduction of the Home Energy Model ("**HEM**") is significant, because it is not just an updated version of SAP, but a completely new modelling tool designed to allow more accurate calculation of energy use.

LEGAL POSITION ON ENERGY EFFICIENCY TARGETS BEYOND NATIONAL MINIMUM STANDARDS

61. Developments such as the 2023 WMS and the *RCA* judgment have caused LPAs concern as to the extent of their ability to bring forward local plan policies that set higher targets for energy performance standards for development in their area than the national baseline in Building Regulations.

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71 https://www.gov.uk/government/consultations/the-future-homes-and-buildings-standards-2023-consultation.

72 https://www.theccc.org.uk/wp-content/uploads/2019/02/UK-housing-Fit-for-the-future-CCC-2019.pdf For example, this recommended a space heat demand of 15-20 kWh/m2/yr (pg 14).

62. In short, despite these apparently confounding factors, LPAs remain under a strong statutory duty to ensure their development plan documents include policies designed to secure that development mitigates climate change impacts, amplified by the requirements in the NPPF that plans must take a proactive approach to mitigating and adapting to climate change and plan making must support the transition to net zero by 2050, including through securing radical reductions in greenhouse gas emissions. In light of this, and given a proper understanding both of the extent of the 2023 WMS and the ability of LPAs and Inspectors to depart from the WMS, LPAs can, with confidence, bring forward draft policies that set higher targets for energy performance standards for development in their area than the national baseline in Building Regulations, including policies that use metrics not specified in the 2023 WMS. Such policies would still, overall, be consistent with national policy.

The Planning and Compulsory Purchase Act 2004

63. Section 19(2)(a) of the PCPA 2004 provides that, in preparing a development plan document, the local planning authority "*must have regard to … national policies and advice contained in guidance issued by the Secretary of State*". This includes guidance in written ministerial statements.

64. Section 19(1A) of the PCPA 2004, which was added by Planning Act 2008 and which has been in force since 6 April 2009, imposes a general requirement that development plan documents must, taken as a whole, "*include policies designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change*".

65. Section 20 requires the authority to submit every development plan document to the Secretary of State for independent examination by a person appointed by him. Section 20(5) provides that the purpose of an independent examination is to determine:

> *"(a) whether it satisfies the requirements of sections 19 and 24(1), regulations under section 17(7) and any regulations under section 36 relating to the preparation of development plan documents;*
> *(b) whether it is sound*".

66. Accordingly, the obligation in section 19(1A) falls both on the LPAs bringing forward the plans and on the Inspectors examining them. Given the nature of this duty, against the background of the CCA 2008 net zero obligation, local authorities have the power to bring forward local plan policies which secure the mitigation of climate change needed to contribute to meeting the NDC, the carbon budgets and the 2050 target.

67. This gives a firm legislative footing for LPAs to include in their draft local plans, and Inspectors to find sound, policies which go beyond current Building Regulations, either by:

a. focusing on reducing carbon emissions from regulated energy sources[73] via a percentage reduction in emissions compared to the baseline set by Part L 2021 (using metrics referred to in the 2023 WMS, see §94 below); or
b. incorporating a suite of energy-based metrics, addressing emissions from both regulated and unregulated energy sources, and focusing on achieving absolute energy use targets (using metrics not referred to in the 2023 WMS).

68. The lack of progress in reducing emissions from the built environment sector since the section 19(1A) duty came into force in 2009, and the need for significant and swift action, supported by the CCC (see §§43-50 above) and the NPPF (see §§26-32 above), all justify such policies and mean that they would, overall, be in compliance with national policy.

69. The obligation to "*have regard*" to national policy also falls on both LPAs and Inspectors. It is well understood, as a statutory obligation to "*have regard*" to something arises in many different contexts and has been considered by the Courts on a number of occasions. It means that the guidance or policy must be considered when exercising the function or making the decision in question. That does not mean that it must be "*followed*" or "*slavishly obeyed*"; a decision-maker

[73] "Regulated energy" is energy consumed by a building, associated with fixed installations for heating, hot water, cooling, ventilation, and lighting systems. "Unregulated energy" is energy consumed by a building that is outside of the scope of Building Regulations, e.g. energy associated with equipment such as fridges, washing machines, TVs, computers, lifts, and cooking. See the LETI Climate Emergency Design Guide pg 24 and the Essex Design Guide Planning Policy Position for Net Zero Carbon Development Homes and Buildings in Greater Essex pg 5.

may depart from such guidance or policy if there is good reason to do so: *R (London Oratory School) v Schools Adjudicator* [2015] ELR 335 at §58 per Cobb J, cited in *R (Harris) v Environment Agency* [2022] PTSR 1751 at §80 per Johnson J.

70. It is key to give clear reasons for departure from the guidance or policy, but the statutory obligation to have regard to guidance or policy does not "*bind public bodies more tightly to a duty of obedience to guidance to which by statute they are obliged (no more, no less) to have regard*": *R (Khatun) v Newham LBC* [2005] QB 37 at §47, per Laws LJ. This is addressed further at §§106-112 below in relation to the 2023 WMS.

Planning and Energy Act 2008

71. Section 1 of the PEA 2008 provides as relevant:

> "*(1) A local planning authority in England may in their development plan documents, corporate joint committee may in their strategic development plan, and a local planning authority in Wales may in their local development plan, include policies imposing reasonable requirements for—*
>
> *(a) a proportion of energy used in development in their area to be energy from renewable sources in the locality of the development;*
>
> *(b) a proportion of energy used in development in their area to be low carbon energy from sources in the locality of the development;*
>
> *(c) development in their area to comply with energy efficiency standards that exceed the energy requirements of building regulations.*
>
> *(2) In subsection (1)(c)—*
>
> *"energy efficiency standards" means standards for the purpose of furthering energy efficiency that are—*
>
> *(a) set out or referred to in regulations made by the appropriate national authority under or by virtue of any other enactment (including an enactment passed after the day on which this Act is passed), or*
>
> *(b) set out or endorsed in national policies or guidance issued by the appropriate national authority;*
>
> *"energy requirements", in relation to building regulations, means requirements of building regulations in respect of energy performance or conservation of fuel and power.*
>
> *(3) In subsection (2) "appropriate national authority" means—*
>
> *(a) the Secretary of State, in the case of a local planning authority in England;*

[…]

(4) The power conferred by subsection (1) has effect subject to subsections (5) to (7) and to—

(a) section 19 of the Planning and Compulsory Purchase Act 2004 (c. 5), in the case of a local planning authority in England; […]

(5) Policies included in development plan documents by virtue of subsection (1) must not be inconsistent with relevant national policies for England.

…

(7) Relevant national policies are—

(a) national policies relating to energy from renewable sources, in the case of policies included by virtue of subsection (1)(a);

(b) national policies relating to low carbon energy, in the case of policies included by virtue of subsection (1)(b);

(c) national policies relating to furthering energy efficiency, in the case of policies included by virtue of subsection (1)(c)."

72. The PEA 2008 was considered in *R (Rights Community Action) v SSLUHC* [2025] PTSR 135, [2024] EWHC 1693 (Admin) ("**the *RCA* judgment**"). It is very instructive to note that the Secretary of State submitted to the Court,[74] and Mrs Justice Lieven accepted at §55, that the PEA 2008 is declaratory or confirmatory of local authorities' powers. This means that local authorities' powers to adopt local energy efficiency policies that go beyond building standards are not drawn solely from the PEA 2008 (such that the PEA 2008 contains the entire scope of local authorities' powers); this statute simply confirms pre-existing powers and articulates them in a specific way, to make clear that such powers exist.

73. It is also important to note that the Court, the Secretary of State and the Claimant all considered that the provisions of the PEA 2008 were sufficiently unclear or ambiguous to justify reference to the Parliamentary material when the Bill that was to become the PEA 2008 was being debated (§65). The *RCA* judgment records that the material shows that the Private Members Bill ("**the Bill**") was introduced to provide a clear statutory framework for what had come to be known as the "Merton Rule", which was a policy adopted by some local authorities, including the

[74] See Detailed Grounds of Defence (7 May 2024) §25. *RCA* judgment at §10. The Secretary of State explained that the 2023 WMS and the Future Homes Standards consultation were approached as one package of measures.

London Borough of Merton, to require a percentage of energy in their areas to be sourced from renewable sources (§53).

74. Not mentioned in the judgment, however, is that the Bill had grown out of a previous such bill, promoted by Martin Maton MP, to address difficulties encountered by Cambridge City Council and inconsistencies in local plan decision making:

> "*History of the "Caton" Bill*
> *As latest figures show, CO2 emissions have risen consistently over the last four years. Energy efficiency is the simplest and most cost effective way to reduce carbon emissions.*
> *However the planning system does not make sufficient provisions for energy efficiency. Cambridge City Council was recently required to water down a planning policy requiring large developers to 'provide evidence of how they have minimized energy consumption, maximized energy efficiency and considered the feasibility of using CHP systems' as, to quote the government inspector, it was 'unreasonable to the extent that it imposes more onerous requirements than the Building Regulations'*."[75]

75. In response, the Association for the Conservation of Energy had supported a bill to clarify that local authorities could include in their local development plan policies energy efficiency standards higher than those required by Building Regulations, along with targets for generating energy from renewable and low carbon sources.[76] That private members bill had had cross-party support, but had not had Parliamentary time to pass. It was redesigned to include protection for the Merton Rule and taken up by Michael Fallon MP.[77]

76. The Bill was amended quite substantially in the single Committee Sitting that took place on 20 February 2008, where clause 1 was substantially overhauled, including the addition of what became sections 1(5) and (6).[78] Mr Fallon MP explained that the provision that new development policies must not be inconsistent with national policies was to prevent inconsistency with affordable

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75 House of Commons Library Research Paper 08/06 *Planning and Energy Bill* (21 January 2008), pg 11.
76 Ibid.
77 Ibid. The Merton Rule is set out in detail at pgs 15-16.
78 House of Commons Library Research Paper 08/14 *Planning and Energy Bill: Committee Stage Report* (30 April 2008), pg 12.

housing requirements and with the right of consumers to choose their energy supply.[79]

77. Indeed, section 1(5) PEA 2008, which provides that policies included in development plan documents by virtue of section 1(1) "*must not be inconsistent with relevant national policies for England*", simply re-states the usual approach to the requirement of soundness in section 20(5)(b) PCPA 2004 and paragraph 36(d) of the 2024 NPPF.

78. The Parliamentary material shows that the intention behind section 1(5) PEA 2008 was to prevent inconsistency with affordable housing requirements and with the right of consumers to choose their energy supply. It was not to transmute the "*relevant national policies*" into legal obligations which fetter the discretion of decision-makers or from which deviation in the normal way is impermissible. Section 1(5) does not displace the case law referred to in §§69-70 above or §110 below. The PEA 2008 cannot lawfully be read as leading to a situation where conflict with one element of a policy (for example, conflict with a bullet point in the 2023 WMS, see §94ff below) wholly displaces LPA's powers to bring forward, and Examining Inspectors' powers to find sound, energy efficiency policies going beyond Building Regulations.

79. The Housing Minister at the time of the committee stage of the Bill explained that the Government had initially opposed the Bill, but supported it because of the positives in clarifying the power in primary legislation: "*In particular, it will reassure local authorities that they can go further, faster than through building regulations and within a national framework. It will mean that there is no place to hide for local authorities who do not want to take up this agenda, a point that has been part of our recent discussions.*" [80]

80. The Minister at the time of the final debate on the Bill, Sadiq Khan MP, then Parliamentary Under-Secretary of State for Communities and Local Government,

[79] Ibid.
[80] Ibid pg 13.

repeated those comments.[81] Not mentioned in the *RCA* judgment, the Minister went on to say:

> "*The important thing is the power of local councils to make policies on local energy requirements for new developments. It demonstrates joined-up government between national Government and local government. It is important to give a sense of ownership so that residents feel that their local council is addressing their concern to have housing fit for the 21st century. I hope to see more and better working together between not only local MPs and local councils, but local government and national Government.*" [82]

81. The only clause of the Bill that was subject to amendment by the House of Lords was clause 1(2)(a), which was clarified when the Bill returned to the House of Commons as a technical amendment to avoid inadvertently and unintentionally giving the Secretary of State new powers to make regulations.[83] Section 1(2) PEA 2008 defines energy efficiency standards by reference to standards set out by the Secretary of State in regulations made under another enactment or "*set out or endorsed in national policies or guidance*" issued by the Secretary of State, and section 1(7) defines these are "*national policies relating to furthering energy efficiency*". In many ways, this is a light-touch provision, as all that is required for an energy efficiency standard to be open to be used is for it to be "*endorsed*" by the Secretary of State in any type of policy or guidance "*relating to*" furthering energy efficiency. While a specific standard or standards may be set out in the relevant policy or guidance, the standards may also be "*endorsed*" by reference to a methodology that uses those standards, as that would amount to approval or support for the use of those standards.[84]

82. As the Minister stated when the Bill was being debated, where the Secretary of State or the Welsh Ministers regulate to prescribe sustainability standards, "*the resulting sustainability standards in relation to energy efficiency* ***would be appropriate for local authorities to use*** *when setting energy efficiency standards*

[81] Hansard, 17 October 2008, column 1045.
[82] Hansard, 17 October 2008, column 1050-51.
[83] Hansard, 17 October 2008, column 1050-51.
[84] This, in my view, arises from a plain reading of the provision, otherwise the inclusion of the word "*endorsed*" alongside "*set out*" would be redundant.

in reliance on the Bill." (emphasis added).[85] It is notable that at no time during the Committee Stage or the debates was it suggested that LPA would be obliged only to use such standards. Rather, such standards would plainly be appropriate to use, but other standards could be used if they fall within section 1(2)(b).

83. Turning to section 1(7), the use of the phrase "*relating to*", rather than "*concerning*", indicates that the policy or guidance does not need solely to concern energy efficiency, but that at least part of the policy or guidance must have some relevance to energy efficiency. This is the understanding of "*relating to*" which most closely aligns with the Parliamentary intention[86] of the PEA 2008: "*building into the legislation the powers of local councils to make policies on local energy requirements for new developments [and making] a positive contribution to the clear need for local authorities to take action to tackle climate change locally*".[87]

84. Nevertheless, section 1(2) does limit the nature of the power clarified or declared by section 1 PEA 2008. That power is thus narrower than the power given by section 19(1A) PCPA 2004, as amended. There is no conflict between the statutory regimes (indeed, as set out above, it was anticipated they would work together), and where there are two different, overlapping ways of achieving a local authority's objective, it is open to the authority to choose the power on which it relies. [88] Accordingly, LPAs can choose the power under which they bring forward local energy efficiency policies.

Endorsement of Energy Efficiency Standards

85. The design of buildings is a key factor in energy efficiency. One of the ten characteristics of well-designed places, set out in Part 2 of National Design Guide,

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85 Hansard, 17 October 2008, column 1049-50.

86 The meaning of the phrase "*relating to*" or "*relates to*" in various pieces of legislation has been the subject of much discussion across the case law. The House of Lords in *In re Smalley* [1985] AC 622 at 642 accepted, by reference to other House of Lords and Court of Appeal authority, that the phrase may be given a broad or a narrow interpretation, and that resolution of any uncertainty should be guided by an interpretation that will secure the object of the legislation without creating results that unnecessarily cut across existing legal rights or otherwise creating harsh results.

87 Hansard, 17 October 2008, column 1046.

88 *Cusack v Harrow LBC* [2013] 1 WLR 2022 per Lord Carnwath at §§9-12 and 27-28; *R (Sharp) v North Essex Magistrates' Court* [2017] 1 WLR 3789 per Gross LJ at §§30-33.

is Efficient and Resilient Resources.[89] The opening paragraph of that section states:

> "*Well-designed places and buildings conserve natural resources including land, water, energy and materials. Their design responds to the impacts of climate change by being energy efficient and minimising carbon emissions to meet net zero by 2050. It identifies measures to achieve:*
>
> - *mitigation, primarily by reducing greenhouse gas emissions and minimising embodied energy; and*
> - *adaptation to anticipated events, such as rising temperatures and the increasing risk of flooding."* [90]

86. The Ministry of Housing, Communities and Local Government put in place the National Model Design Code[91] in order to "*provide detailed guidance on the production of design codes, guides and policies to promote successful design*".[92] It expands on the ten characteristics of good design set out in the National Design Guide. The Resources section focuses on standards, and provides: "*Standards relating to sustainability are important and can be incorporated into codes* ***or covered in other policy***". (emphasis added)[93] The first aspect is "***Energy efficiency standards****: Local authorities can set policies for higher energy efficiency standards for their area or specific development sites.*" (emphasis in original).[94] The National Model Design Guide does go on to endorse a number of standards, including, in relation to "***Energy Issues***" (emphasis in original), "*Whole life-cycle carbon*".[95]

87. The National Model Design Code Part 2 Guidance Notes reiterate this under "***R.1.ii Energy Efficiency***" (emphasis in original), referring again to the powers of local authorities to set policies for higher energy efficiency standards for their area in local plans and stating:

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89 National Design Guide (January 2021) Part 1 §37; Part 2 §135ff.
90 Ibid §135.
91 National Model Design Code Part 1 The Coding Process (January 2021) and Part 2 Guidance Notes (June 2021).
92 Part 1 §1.
93 Part 1 §66.
94 Part 1 §66(i), with a cross reference to R.1.ii in Part 2.
95 Part 1 §66(iv).

> "*There are multiple ways of reducing energy waste. In developing policies, consideration should be given to improving energy efficiency, which may address the selection of materials for thermal and solar performance, retrofitting existing buildings, design and orientation construction techniques* ***and assessing whole life costs****.*" (emphasis added)[96]

88. This further endorses energy efficiency standards related to the assessment of whole life costs. Accordingly, in my view, any energy efficiency standard which is recognised as part of an assessment of whole life energy costs or whole life-cycle carbon assessments has been endorsed by the appropriate national authority in a national policy relating to furthering energy efficiency, as required in sections 1(2)(b), 1(3)(a) and 1(7)(c) of the PEA 2008.

89. This is important in relation to the 2023 WMS (addressed in the next section), as I understand that the standard to which it refers – a "*dwelling's Target Emissions Rate (TER) calculated using a specified version of the Standard Assessment Procedure (SAP)*" – is not generally used for whole-life carbon assessment, because that standard does not focus on achieving absolute energy use targets and excludes emissions from unregulated energy sources. This means energy efficiency standards other than TER have been endorsed and can be used in the exercise of the section 1(1)(c) PEA 2008 power.

<u>Conclusion on the PEA 2008</u>

90. In conclusion, the PEA 2008 confirms beyond peradventure that LPAs can bring forward policies that go beyond current Building Regulations standards, and confirms one way in which LPAs' pre-existing powers can be exercised: it supports authorities bringing forward policies using energy efficiency standards set out or endorsed in national policies or guidance (such as those focused on reducing regulated carbon emissions and any energy efficiency standard recognised as part of an assessment of whole life energy costs or whole life-cycle carbon assessments) that go beyond current Building Regulations standards.

[96] Part 2 §201.

91. The PEA 2008 is not the only power on which LPAs can rely, nor does it circumscribe other powers or foreclose other legislative routes by which LPAs are obliged or empowered to act (such as those inserted into the PCPA 2004 by the Planning Act 2008). Quite the opposite, as the debate at the time the PEA 2008 was put into place shows, it was always recognised that climate-related legislative amendments might result in provisions providing such powers.[97] Section 1(5) PEA 2008 cannot lawfully be read as giving additional legislative force to national policies in the context of energy efficiency, or as disapplying the usual approach to the weight to be given to national policy as a material consideration and to departing from policy where it is rational so to do.

Why the 2023 WMS does not undermine local planning authorities' powers

92. There are two reasons that the 2023 WMS does not undermine LPAs' powers to bring forward, in their local plans, policies to set higher targets for energy performance standards for development in their area than the national baseline:

    a. <u>The flexibility in, and limits of, the 2023 WMS</u>. The WMS itself envisages a way this can be done, and it has been held by the High Court not to state the law incorrectly or undermine the purpose of sections 1 of the PEA 2008 and 19 of the PCPA 2004 and not to attenuate or emasculate LPAs' statutory powers; and

    b. <u>Limited departure from the 2023 WMS</u>: In any event, there are clear circumstances in which policies that use metrics other than those specified in the 2023 WMS, and/or do not require calculation by the method specified in the WMS can be justified and Inspectors can, in the exercise of their planning judgment, find these policies to be sound.

<u>The Flexibility in, and Limits of, the 2023 WMS</u>

93. The 2023 WMS addresses both plan-making and decision-taking. On plan-making, it states that, in the context of the improvement in standards already in force through the 2021 Part L uplift, alongside the standards due in 2025, "*the*

[97] Hansard, 17 October 2008, column 1045.

Government does not expect plan-makers to set local energy efficiency standards for buildings that go beyond current or planned buildings regulations".

94. The inclusion of "*planned buildings regulations*" means that local authorities can set local energy efficiency standards at the level of proposed future regulations. The Secretary of State confirmed that the reference to "*planned building regulations*" is "*a reference to the consultation draft of the [Future Homes Standard], as set out in the December consultation document, or as subsequently amended before any final adoption*."[98]

95. The 2023 WMS also gives guidance to local plan examiners that they should reject energy efficiency standards going beyond "*current or planned building regulation*", "*if they do not have a well-reasoned and robustly costed rationale that ensures:*

- *That development remains viable, and the impact on housing supply and affordability is considered in accordance with the National Planning Policy Framework.*
- *The additional requirement is expressed as a percentage uplift of a dwelling's Target Emissions Rate (TER) calculated using a specified version of the Standard Assessment Procedure (SAP).*"

96. It is important to note immediately that the 2023 WMS does not foreclose the possibility of setting higher standards, so long as the two bullet points are met.

97. Second, it is important to note that the reference in the second bullet point to the use of the SAP procedure has to some extent been overtaken by events. The 2023-2024 consultation "*The Home Energy Model Making the Standard Assessment Procedure fit for a net zero future*",[99] part of the Future Homes Standard consultation referred to in §93 above, and thus part of the proposed future metrics which the 2023 WMS itself states LPAs can use, seeks to replace SAP with a new

[98] *RCA* judgment at §10. The Secretary of State explained that the 2023 WMS and the Future Homes Standards consultation were approached as one package of measures.

[99] https://assets.publishing.service.gov.uk/media/65e1f99a2f2b3b001c7cd879/home-energy-model-consultation.pdf.

national energy calculation methodology. It appears, therefore, that the 2023 WMS itself justifies departure from the specification of SAP.

98. The 2023 WMS concludes by reminding decision-makers that the Secretary of State has powers of intervention in respect of local plans and planning decisions, and that the Secretary of State will "*closely monitor the implementation of the policy set out in the WMS*" and may use the intervention powers "*in line with the relevant criteria*" for intervening.

99. Although the 2023 WMS is expressed in trenchant language, it cannot be read as directing a specific outcome in a blanket fashion, without any possibility for justifiable local exceptions or rational departure from its apparent strictures: *R (West Berkshire DC) v SSCLG* [2016] 1 WLR 3923 at §30, per Laws and Treacy LLJ. The *RCA* judgment rejected the contention that the 2023 WMS attenuates or emasculates LPAs' statutory powers.[100] It is certainly correct that the 2023 WMS does not constrain or delimit the extent of the duty in section 19(1A) of the 2004 Act.

100. Indeed, in evidence before the High Court, the Secretary of State explained that the 2023 WMS was aimed at "***encouraging***" a particular approach (emphasis added),[101] rather than 'compelling' or 'constraining'. The Minister and the Secretary of State were advised as follows:

> "*We would still wish to allow local innovation and ambition where viable, particularly where the Future Homes Standard (FHS) is not in force, to not unlawfully prevent LPAs from using their powers, and to avoid being seen to conflict with government's commitment to ensure planning policy "contributes to climate change mitigation…as fully as possible"*.[102]

101. In the High Court, RCA contended that the result of the 2023 WMS would be that LPAs would be prevented from bringing forward energy efficiency policies based

[100] Ibid §72. The Judge held that the 2023 WMS does not unlawfully state the law or undermine the purpose of sections 1 of the PEA 2008 and 19 of the PCPA 2004 (§69).
[101] *RCA* judgment §13; see also §17 of the Secretary of State's Detailed Grounds of Defence (7 May 2024).
[102] *RCA* judgment §15.

on the Low Energy Transformation Initiative ("**LETI**") metrics, focusing on the carbon efficiency of the homes themselves.[103]

102. The Secretary of State rejected the contention that the 2023 WMS sets a "*default instruction*" to inspectors. Instead, the Secretary of State argued that "*the policy is simply setting out guidance on what the Secretary of State considers to be reasonable – i.e. '*a reasoned and robustly costed rationale*'.*"[104]

103. It is important to note that Lieven J did not accept RCA's evidence that the 2023 WMS would prevent local authorities from using LETI metrics, such as EUI, in their proposed policies. It may be that the Judge considered the 2023 WMS simply to be a policy under section 1(2) of the PEA 2008, in which the Secretary of State "*endorsed*" specific energy efficiency standards, given that in §69 she notes the similarity in purpose between section 1(2) of the PEA 2008 and the 2023 WMS.

104. It is also interesting to note that the Secretary of State did not explicitly argue,[105] nor did Lieven J suggest, that section 1(5) PEA 2008 meant that the 2023 WMS operates to cut down the extent of the primary power clarified in section 1(1) PEA 2008. That must be correct – as set out at §§77-78 above, section 1(5) PEA 2008 simply re-states the usual approach to the requirement of soundness and cannot operate to turn policy guidance into the equivalent of primary legislation.

105. I should, however, caution that the crucial final reasoning in the *RCA* judgment is a little rushed. However, in my view it would not be a fair or proper reading of the *RCA* judgment to treat it as a basis for arguing that the 2023 WMS makes policies with metrics other than those specified in the WMS difficult to justify. The judgment is at pains to emphasise that the 2023 WMS affords flexibility.

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[103] Ibid §12 and §59.

[104] Secretary of State's Detailed Grounds of Defence (7 May 2024) §71.

[105] The Secretary of State's argument in §§69-70 of the Detailed Grounds was that the 2023 WMS is consistent with section 1 of the PEA 2008 and that the Claimant did not "*pay due regard to subsection (2) or (5). Read fairly and as a whole, the 2023 WMS does not misdirect but simply provides national policy as to how the provision should operate*".

106. Accordingly, the 2023 WMS does not change the legislative powers available to LPAs to bring forward policies that go beyond Building Regulations, nor does it prevent such policies from being justified. Policies that comply with the two bullet points, and in particular express any "*additional requirement as a percentage uplift of a dwelling's Target Emissions Rate (TER)*", are justified so long as they are supported by "*a well-reasoned and robustly costed rationale*" (which simply echoes the usual requirements for evidence-based policy making). In light of the planned buildings regulations in *The Home Energy Model* element of the Future Homes Standard consultation, use of a method of calculation other than SAP is justified.

Limited Departure from the 2023 WMS

107. As set out above, LPAs would also be justified, in light of their primary legislative duty under section 19(1A) PAP 2004, to bring forward policies which do not use the TER metric. The metric has a number of limitations:

a. It may in fact be achieved with a poor level of energy efficiency, because the improvement of a building against the TER does not consider the impact of the design of the dwelling (i.e. the building form), which is a key factor in energy efficiency;

b. It does not address unregulated emissions, which can represent up to 50% of a building's operational emissions;

c. The TER also cannot be measured post-construction and 'in-use', which makes it unsuitable for use where authorities need to determine whether their policies actually deliver buildings that are more energy efficient.

108. Other metrics – space heating demand; Energy Use Intensity ("**EUI**") and renewable energy generation – have been found by multiple planning inspectors to be justified in order to achieve the energy efficiency levels necessary for particular local areas, and to be sound in light of the evidence base, taking into account housing delivery.[106] While policies expressed as a percentage uplift of TER may also have been chosen by LPAs and found to be sound, that does not mean

[106] See, for example, the Report on the Examination of the Central Lincolnshire Local Plan Review at §§169 and 177-184 re Policy S7; Bath & North East Somerset Inspector's Report on the Examination of the Local Plan (Core Strategy and Placemaking Plan) Partial Update at §89 re Policy SCR7; and Cornwall Climate Emergency DPD, Inspector's Report at §§162-163 and 168-169 re policy SEC1.

that the TER metric operates as an energy efficiency metric, or that it alone is suitable for all LPAs and to be used in all local energy efficiency policies.

109. If LPAs sought to bring forward policies going beyond Building Regulations, using standards other than TER and calculations other than via SAP, that would amount to a departure from one aspect of the 2023 WMS (note it would not, however, be a complete departure, given the overall flexibility of the WMS and the evidence and findings in the *RCA* judgment of what the 2023 WMS was intended to achieve, despite its trenchant language).

110. In those circumstances, Examining Inspectors faced with such policies are required as a matter of law to consider whether departure from the 2023 WMS is justified, given that such national policy must not be "*slavishly obeyed*" (see §69 above) and may be departed from where there is good reason to do so.

111. The Courts have emphasised that guidance from the Secretary of State, such as that in the 2023 WMS, "*does not amount to a legal rule*" : see, for example, *Keep Bourne End Green v Buckinghamshire CC & SSHCLG* [2020] EWHC 1984 (Admin) at §105. It is therefore important that the 2023 WMS is flexibly applied. Holgate J (as he then was) made clear "*that local decision-makers are free to rely on local or exceptional circumstances as to why a departure from that national guidance is considered to be justified*" (§105). Accordingly, local decision-makers are free to rely on local **or** exceptional circumstances to depart from the WMS (over and above their reliance on the statutory framework referred to above) – the "or" is important, as exceptionality is not required.

112. As a matter of general principle, WMSs do not displace the primacy given to statutory duties placed on LPAs and that the weight to be given to conflict or compliance with a WMS "*is a matter of judgment for the decision-maker, a decision with which the court may only intervene on public law grounds*": *Mead Realisations Ltd v SSLUHC* [2024] PTSR 1093, [2024] EWHC 279 (Admin) at §§59-60. WMSs such as the 2023 WMS are material considerations and decision-makers (including Examining Inspectors assessing local plans) may give material

considerations little or no weight, provided they do so rationally: *Tesco Stores Ltd v SSE* [1995] 1 WLR 759 (HL) at 780F–H.

113. Accordingly, so long as there is a robust evidence base – a reasoned and robustly costed rationale – it is open to Examining Inspectors, in the exercise of their planning judgment, to determine that policies using metrics and methods of calculation other than those specified in the 2023 WMS are consistent with national policy on climate change mitigation and the net zero obligation, and, to the extent that there would be deviation from the 2023 WMS, that can be justified on the evidence and does not prevent overall "*consistency*" of the proposed local plan with national policy.

Conclusion

114. The PEA 2008 confirms one way in which LPAs' pre-existing powers can be exercised to set higher targets for energy performance standards for development in their area than the national baseline. There are other legislative routes by which LPAs have different or more ambitious powers, such as the general power flowing from the duty in section 19(1A) of the PCPA 2004, that development plan documents must, taken as a whole, "*include policies designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change*".

115. This position has not been changed by the 2023 WMS. The correct position in law is that LPAs and Inspectors have to treat the trenchant language in which the 2023 WMS is written with circumspection. LPAs and planning inspectors cannot lawfully interpret the 2023 WMS in a way that removes or frustrates the effective operation of the power that LPAs still have, via sections 1-5 of the PEA 2008. Nor can it be read to remove or frustrate section 19(1A) of the 2004 Act. Nor can the 2023 WMS be treated as though it is a legal rule. This means that the 2023 WMS cannot be interpreted to prevent LPAs from putting forward, and planning inspectors from finding sound, policies which are justified and evidenced and which use metrics other than the TER metric and/or do not require calculation by SAP, such as the Essex net zero evidence base and model policy. Additionally, local

decision-makers are also free to rely on local or exceptional circumstances to depart from the 2023 WMS.

ENERGY EFFICIENCY POLICY CASE STUDIES

116. Nine case studies illustrate the fact that a range of LPAs — from densely populated urban centres such as London and Reading, to rural authorities like South Gloucestershire, Cornwall, Bath and North East Somerset, and the three local authority areas that comprise Central Lincolnshire — have successfully included energy efficiency and/or other emissions reduction requirements beyond those of the Building Regulations in development plan documents which have passed examination. Three of those case studies post-date the 2023 WMS.

117. These case studies are important in light of the well-established principle of consistency in planning decision-making. It is important and in the interests of developers, third parties and LPAs alike, because it serves to maintain public confidence in the operation of the development control system. Whilst it is open to the decision maker to depart from the reasoning in a previous decision, clear reasons for the departure should be given: *North Wiltshire DC v Secretary of State for the Environment* (1992) 65 P & CR 137 at 145.

118. In summary, while like cases do not have to be decided alike, a departure from a sufficiently similar decision requires a "clear explanation": *Hallam Land Management Ltd v Secretary of State for Communities and Local Government* [2019] JPL 63 at §74. As consistency in planning decision-making is important, there will be cases in which it would be unreasonable for the Secretary of State not to have regard to a relevant appeal decision bearing on the issues in the appeal he is considering: *DLA Delivery Limited v Baroness Cumberlege of Newick* [2018] JPL 1268 at §34.

Energy efficiency policies which passed examination (2019 – 2023)

119. **The London Plan 2021** and the **Reading Borough Local Plan 2019** both include policies for energy efficiency which are benchmarked against the Building

Regulations and exceed them by a fixed percentage for different types of development.

120. Policy SI 2 of the London Plan 2021 on 'Minimising greenhouse gas emissions' provides that:

> *"Major development should be net zero-carbon. [...] A minimum on-site reduction of at least 35 per cent beyond Building Regulations is required for major development. Residential development should achieve 10 per cent, and non-residential development should achieve 15 per cent through energy efficiency measures."*.[107]

121. These requirements were based on the Building Regulations 2013, but the policy provided for the threshold to be reviewed if the regulatory requirements were updated.[108] The threshold was updated via the GLA Energy Assessment Guidance, published June 2022, such that the targets under Policy S1 2 now relate to the baseline in the Building Regulations 2021.[109]

122. Policy H5 of the Reading Borough Local Plan on 'Standards for new housing' provides that:

> *"New build housing should be built to the following standards, unless it can be clearly demonstrated that this would render a development unviable […]*
> *c. All major new-build residential development should be designed to achieve zero carbon homes.*
> *d. All other new build housing will achieve at a minimum a 19% improvement in the dwelling emission rate over the target emission rate, as defined in the 2013 Building Regulations."* [110]

123. Policy PSP6 of the **South Gloucestershire Policies, Sites and Places Plan** ("**PSP**") (adopted November 2017) on 'Onsite renewable and low carbon energy' includes a mandatory emissions reduction target over and above Building Regulations standards, though no mandatory fabric efficiency requirement. It provides that all development proposals will:

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[107] London Plan 2021, pgs 342–343.
[108] London Plan, 2021, p. 342, fn. 152.
[109] GLA Energy Assessment Guidance, June 2022.
[110] Reading Borough Local Plan 2019, pg 82, with guidance at pg 84.

"1. be encouraged to minimise end-user energy requirements over and above those required by the current building regulations through energy reduction and efficiency measures, and in respect of residential for sale and speculative commercial development offer micro renewables as an optional extra, and
2. be expected to ensure the design and orientation of roofs will assist the potential siting and efficient operation of solar technology.
In addition, all major greenfield residential development will be required to reduce CO2 emissions further by at least 20% via the use of renewable and/or low carbon energy generation sources on or near the site providing this is practical and viable."[111]

124. Cornwall and Bath and North East Somerset collaborated to develop local planning policies which set quantified limits on space heating and total energy consumption (regulated and unregulated), rather than benchmarking against the Building Regulations. Both **Cornwall's Climate Emergency Development Plan Document** ("**DPD**") and **Bath and North East Somerset's Local Plan Partial Update** ("**LPPU**") include requirements that all new development have a space heating demand of no more than 30kWh/m2/yr and a total energy consumption of no more than 40kWh/m2/yr.[112] These policies also require residual energy requirements to be met from renewable sources. In their reports, the Inspectors referred to the PEA 2008 and the NPPF, and explained why they gave little weight to inconsistency with the then 2015 WMS.[113]

125. The **Central Lincolnshire Local Plan**, adopted in April 2023, contains Policy S7 requiring residential development to achieve a site average space heating demand of 15-20kWh/m2/yr and a site average total energy demand of 35 kWh/m2/yr, and Policy S8 requiring non-residential development to achieve space heating and total energy demands of 15-20kWh/m2/yr and 70 kWh/m2/yr respectively.[114] These policies also require residual energy consumption to be met via onsite

[111] South Gloucestershire Policies, Sites and Places Plan 2017, pg 19, with guidance at pgs 19–20.
[112] Bath and North East Somerset Local Plan Partial Update, December 2021, policy SCR6; Cornwall Climate Emergency DPD, February 2023, policy SEC1, pg 39.
[113] Report on the Examination of the Local Plan (Core Strategy and Placemaking Plan) Partial Update, 13 December 2021, §§80-86; Cornwall Climate Emergency DPD, February 2023. Report to Cornwall Council, 10 January 2023, §§165-169.
[114] Central Lincolnshire Local Plan, April 2023, pgs 30–34.

renewable energy sources. There are caveats for development in areas of especially low land value or on brownfield sites, which do not have to demonstrate full policy compliance but where the applicant must still submit an Energy Statement detailing the extent to which the relevant policy requirements have been complied with.

126. These policies are part of a wider suite of policies designed to mitigate and adapt to the effects of climate change, with the introductory text to Chapter 3 on Energy, Climate Change and Flooding stating at §3.1.14:

> *"The Central Lincolnshire Joint Strategic Planning Committee (CLJSPC) is rising to [the] challenge as set by parliament. No longer will planning decision makers in Central Lincolnshire merely 'encourage' development proposals to achieve certain standards, or only 'welcome' development that goes a little beyond certain building regulation basic minimums. Development in Central Lincolnshire must do, and can do, far better than that. We are legally obliged to do more. And, for future generations, we are morally obliged to do more."*

Energy efficiency policies which passed examination (2024 – 2025)

127. The **Tendring Colchester Borders Garden Community DPD**, found to be sound by the Examining Inspector on 31 March 2025, contains Policy 8: Sustainable Infrastructure, Part A of which concerns "*Net Zero Carbon*" and requires that all buildings be "*net zero in operation at occupation or, in exceptional circumstances, have an agreed strategy to achieve net zero within five years of occupation, and achieve net zero operational energy balance onsite across the Garden Community*". It requires proposals to:

> "*demonstrate how new homes will achieve:*
>
> - *Space heating demand less than 30kWh/m2/per annum.*
> - *Total energy consumption (energy use intensity) of less than 40kWh/m2/annum.*
> - *Onsite renewable generation to match or exceed the total energy consumption (energy use intensity).*"[115]

[115] Tendring Colchester Borders Garden Community DPD (consultation version, June 2023) read alongside the Inspector's Main Modifications (31 March 2025), pg 19. Note the modifications did not amend the

128. In his Report, the Inspector recognised that this approach was in contrast to the use of the single TER metric, but referred to the work done, and evidence produced in relation to, the Essex Net Zero Policy Study, as well as site specific viability testing. [116] The Inspector addressed the 2023 WMS at §§78-79:

> *"78. In reaching this decision I have had regard to the 2023 Written Ministerial Statement (WMS), published after submission of the DPD for examination. However, whilst the WMS is a material consideration of significant weight, the Councils must prepare development plan documents that, in accordance with Section 19(1A) of the 2004 Act, include policies which contribute to the mitigation of, and adaption to, climate change. Additionally, Section 1 of the Planning and Energy Act 2008 states that local planning authorities may in their development plans include policies imposing reasonable requirements for development in their area to comply with energy efficiency standards that exceed the energy requirements of building regulations.*
>
> *79. Consequently, in this particular case, I am satisfied that GC Policy 8 Part A is appropriate and justified. The policy provides the detail to a new garden community, which has been the aspiration of both Councils through the already adopted development plan, has been tested and demonstrated to be viable and is supported by a lead developer with shared aspirations to deliver an exemplar mixed-use development.*"

129. In my view, this is the correct approach. The 2023 WMS is a material consideration and, even if it is one to which considerable weight should be given, it is lawful to depart from a part of the 2023 WMS where it is reasonable to do so. It is open to Examining Inspectors to find sound, and in overall compliance with national policy, draft policies which do not refer to the TER metric or which refer to a different metric, so long as this is supported by robust viability evidence. Indeed,

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metrics used, but added some flexibility by allowing for exceptional circumstances to be taken into account.

[116] Report on the Tendring Colchester Borders Garden Community DPD (31 March 2025), §76 pg 19. There was also an agreed Statement of Common Ground with the lead development that that Garden Community shall meet the principles of Net Zero by cutting carbon emissions.

it would be unlawful for Examining Inspectors to apply the 2023 WMS inflexibly or to fail to consider whether departure from the TER bullet point where justified.

130. The **Lancaster Climate Emergency Review DPDs** (adopted 22 January 2025) provides, in policy DM30a, a stepped approach to carbon reduction and the energy efficiency of new homes through the setting of energy performance requirements: a minimum 31% reduction in carbon emissions against Part L of Building Regulations (2013) at adoption of the Plans; a further minimum 75% reduction against Part L of Building Regulations (2013) by January 2025 with reduced energy consumption achieved via a fabric first approach; and net zero carbon to be achieved by January 2028.[117]

131. Care needs to be taken in understanding the main modifications made to policy DM30a, where the Inspector recommended explicit reference be made to TER in order to achieve compliance with the 2023 WMS.[118] This was in the context of policies expressed using carbon metrics, so the Inspector did not need to consider energy metrics (EUI) or whether departure from the single bullet point in the 2023 WMS was justified in light of the LPA's viability evidence. The Inspector appears to have taken a risk averse approach in relation to the carbon metrics in policy DM30a. In my view, explicit reference to TER was not needed for the policy to be sound. Had policies using energy metrics been proposed, the Inspector would have needed to address her mind to whether departure from the single bullet point in the 2023 WMS was justified.

132. The **Merton Local Plan 2024 – 2037/38** (adopted 20 November 2024) includes a suite of policies addressing climate change.[119] Strategic Policy CC2.1 on "*Promoting Sustainable Design to Mitigate and Adapt to Climate Change*" requires, among other things, that all development "*Minimise greenhouse gas emissions and*

[117] Climate Emergency Review of the Lancaster District Strategic Policies & Land Allocation Development Plan Document 2020 – 2031 and the Development Management Development Plan Document 2020 – 2031 (22 January 2025).
[118] Report on the Examination of the Climate Emergency Review of the Lancaster District Strategic Policies & Land Allocation Development Plan Document 2020 – 2031 and the Development Management Development Plan Document 2020 – 2031 (2 December 2024) §54.
[119] Merton Local Plan 2024 – 2037/38 (20 November 2024) at pgs 30-64.

support the transition to a low carbon society by maximising energy efficiency, low carbon heat and local renewable energy generation".

133. Policy CC2.2 "*Minimising Greenhouse Gas Emission*" requires all development to "*seek to minimise greenhouse gas emissions on site*". It specifies that all development resulting in the creation of 1 or more dwellings or 500sqm of more non-residential GIA must both:

    a. demonstrate compliance with the Mayor's net-zero carbon target; and
    b. achieve minimum carbon reduction targets set out in a table, including 35% on-site total reduction in CO_2 for residential development of 10 or more dwellings.

134. Policy CC2.3 addresses "*Minimising Energy Use*" specifically, and requires "*all proposed development within the borough to demonstrate that they have made the fullest contribution to minimising energy use through energy efficiency on site*." It further requires all new build development resulting in the creation of 1 or more dwellings or 500sqm of more non-residential GIA to demonstrate compliance with a table of fabric efficiency targets based on regulated energy use (all new build residential and non-residential development to achieve a space heating demand of 15kWh/m^2/yr or less by 2025), and to disclose the anticipated EUI as design or pre-occupation stage for both regulated and unregulated energy use.

135. The reasoned justification at §§2.3.14 – 2.3.24 explains the inclusion of EUI in light of the limitations in methodologies that address only regulated emissions and the recognised gap between predicted and actual energy demand. It requires that all Major Developments monitor and report actual operational energy performance for at least five years post-occupancy in line with policy SI 2 in the London Plan 2021. It sets out modelled EUI benchmarks and explains at §2.3.23 that "*all new development to make all reasonable but commercially prudent endeavours to achieve these EUI and space heating demand benchmarks in demonstrating that it has made the fullest contribution to minimising energy use in accordance with Policy CC2.3.*"

136. The Examining Inspectors found the Local plan to be consistent with the 2023 WMS "*insofar as it is supported by a well-reasoned rationale for its approach*."[120] The Inspectors modified the way in which energy targets were expressed in order to reflect the GLA's Guidance on how the London Plan's targets are to be applied.[121]

The Salt Cross Decision

137. The draft Area Action Plan for Salt Cross, a proposed new garden village in West Oxfordshire, included a Net Zero policy which, among other requirements, would have capped space heating requirements for all new development at 15kWh/m2/yr and total energy use requirements for residential development at 35kWh/m2/yr. In a letter dated 26 May 2022, the Inspectors examining the Area Action Plan indicated their view that the policy was unsound and recommended significant modification of the policy.

138. The Inspectors' Report, published on 1 March 2023, set out the bases for their decision that the policy was unsound:

    a. It was inconsistent with the 2015 WMS and the PPG, which in their view still represented current national policy, notwithstanding "various Government consultations linked with the Future Homes Standard [which] have signalled potential ways forward".[122]

    b. The prescriptiveness of the policy was not justified on the basis of the evidence submitted, specifically the reliance on generic typologies in the viability appraisal.[123]

139. The lawfulness of the inspectors' decision was successfully challenged in *R (Rights: Community:Action Ltd) v SSLUHC* [2024] EWHC 359 (Admin). Lieven J held that the 2015 WMS had to be interpreted in accordance with the mischief that it was seeking to address, and with an "updating construction", ie a construction that

[120] Report to the Council of the London Borough of Merton (4 October 2024), §44.
[121] Ibid §48.
[122] Report on the Examination of the Salt Cross Garden Village Area Action Plan, 1 March 2023.
[123] Inspectors' Report, §§131–138.

allows for changes that have occurred since the policy was initially made. Accordingly, the inspectors should have taken into account that the proposed amendment to the PEA 2008 was not brought into force and that the restriction on setting conditions above Code Level 4 no longer applied, in light of amendments to the Building Regulations (see §75 of the judgment). So understood, the inspectors' interpretation of the WMS as preventing or restricting the ability of LPAs under sections 1-5 of the PEA 2008 to set a standard higher than Level 4 "was plainly wrong in light of subsequent events" (§76).

140. Lieven J held at §78 that the same analysis necessarily follows in respect of the PPG on Climate Change, which merely reflects the language of the 2015 WMS.

141. The Court thus held that the inspectors misinterpreted the WMS and the PPG and quashed their decision, on the basis that it was not highly likely the outcome of their determination on Policy 2 would have been the same absent their misinterpretation, which was relied on throughout the inspectors' reasoning (see §§91-95 of the judgment).

142. The examination into the Salt Cross Area Action Plan re-opened in April 2024. The proposed policy, which will be subject to examination in June and July 2025, requires buildings to meet a space heating demand of <15 – 20 kWh/m2.yr through ultra-low energy fabric, verified via predictive energy modelling at the detailed planning stage and monitored post-completion and specifies sector-specific EUI targets.[124]

CONCLUSION

143. In light of the above, LPAs should be confident in bringing forward, and Inspectors confident in finding sound, policies which set higher targets for energy performance standards for development than the national baseline in Building Regulations, including policies that use metrics not specified in the 2023 WMS. LPAs remain under the strong statutory duty in section 19(1A) of the PCPA 2004 to ensure their development plan documents include policies designed to secure

[124] ED9D Proposed Modifications To Policy 2 And Supporting Text (March 2025).

that development mitigates climate change impacts. This is amplified by the requirements in the NPPF that plans must take a proactive approach to mitigating and adapting to climate change and plan making must support the transition to net zero by 2050, including through securing radical reductions in greenhouse gas emissions.

144. The correct position in law is that LPAs and Inspectors have to treat the trenchant language in which the 2023 WMS is written with circumspection. The WMS itself envisages that policies setting requirements greater than Building Regulations can be adopted, so long as the two requirements in the WMS are met, and the High Court held that the WMS does not undermine the purpose of sections 1 of the PEA 2008 and 19 of the PCPA 2004 and does not attenuate LPAs' statutory powers.

145. In any event, there are clear circumstances in which policies that use metrics other than those specified in the 2023 WMS, and/or do not require calculation by the method specified in the WMS can be justified and Inspectors can, in the exercise of their planning judgment, find these policies to be sound. In light of other national policy requirements, particularly those in the updated 2024 NPPF, the CCC's clear advice on both mitigation and adaptation, and the ever worsening position in terms of the UK's compliance with its net zero aligned obligations, there is a strong basis for departing from the metric-specific bullet point in the 2023 WMS. This is an approach which has already been taken by the Examining Inspector in relation to the Tendring Colchester Borders Garden Community DPD.

146. A summary of my advice is given in §2 above. Please do not hesitate to contact me if anything requires clarification, or if I can be of further assistance.

6 May 2025

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