

## **SALT CROSS EXAMINATION JUNE 2025**

### **RESPONSE TO INSPECTORS' QUESTIONS**

#### **ON BEHALF OF RIGHTS COMMUNITY ACTION LTD**

##### **Introduction**

1. These are the submissions of Rights Community Action Ltd ("RCA") in respect of the re-opened examination of Policy 2 of the Salt Cross Area Action Plan ("AAP").
2. RCA strongly supports the ambition of Policy 2 and considers that, if approved, Salt Cross will be a trailblazing zero carbon development to which other developments will aspire. Policy 2 rises to the challenge of the day and demonstrates that local authorities with community support and in partnership with housebuilders can deliver the homes Britain needs whilst at the same time meeting the national policy objective of achieving "radical reductions in greenhouse gas emissions" (NPPF para 161). Conversely, if the net zero ambitions of Salt Cross are again watered down, it will set a damaging precedent that will slow down the reduction in radical reductions in emissions that everyone agrees must be made as a matter of urgency if global climate breakdown is to be avoided.
3. RCA is a non-governmental organisation concerned with community planning, incorporated as a limited company with environmental and social objects (a social enterprise) in January 2019. RCA successfully challenged via judicial review the recommendations of the previous Salt Cross Examining Inspectors regarding the interpretation of the now-superseded 25 March 2015 Written Ministerial Statement ("Planning Update") which concerned the energy efficiency requirements that can be set by local authorities in their development plans (*R (Rights: Community: Action Ltd v SSLUHC* [2024] P.T.S.R. 817). RCA also judicially reviewed the subsequent 2023 Written Ministerial Statement Planning: Local Energy Efficiency Standards ("the 2023 WMS"). This later judicial review claim was dismissed in the High Court

([2025] P.T.S.R. 135), but permission to appeal was granted on the papers by the Court of Appeal. The appeal hearing will be held in the Court of Appeal on 24-25 June 2025.

4. RCA accordingly has a particular interest in and understanding of the key matters in this examination.

5. RCA addresses the following legal and policy questions posed by the Inspector:

1. Does policy 2 reflect the requirements of the Planning and Energy Act 2008 (“PEA 2008”)?

12. Net Zero Carbon Development. 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?

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

6. RCA approaches these questions on the basis that the 2023 WMS remains in force if and until it is quashed by the Court of Appeal or higher. Necessarily that also involves an assumption for the purposes of this examination that the 2023 WMS is lawful and, in particular, that it does not unlawfully cut across local authority powers in s.1 PEA 2008 (an assumption which, for the avoidance of doubt, RCA does not accept, and directly challenges in the Court of Appeal). RCA accordingly reserves the right to make further submissions if the WMS is quashed prior to the finalisation of the AAP.

### **1. Does policy 2 reflect the requirements of the PEA 2008?**

7. RCA’s position is that Policy 2 does meet the requirements of the PEA 2008. Its requirements are both reasonable and consistent with national policy.

## The PEA 2008

8. The PEA 2008 is a short piece of legislation. The introductory text notes that it is an act to “enable” local planning authorities to set requirements for energy use and energy efficiency in local plans. It provides in s.1 that “A local planning authority in England may in their development plan documents... 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.”
9. Section 1 further provides that “Policies included in development plan documents by virtue of subsection (1) must not be inconsistent with relevant national policies for England.”
10. Thus there are two key questions for the Inspector, namely whether the requirements are “reasonable” and whether they are consistent with relevant national policies for England. Policies include not just the 2023 WMS but also the NPPF (and indeed other national policies).

## The Climate Change Act 2008 (“CCA 2008”)

11. Section 1 of the CCA 2008 imposes a binding legal duty on the Secretary of State to achieve a given level of carbon reductions by 2025. In November 2016, the UK government ratified the Paris Agreement. On 27 June 2019, s.1 of the CCA 2008 was amended to impose the “net zero” requirement, by which the UK carbon account in 2050 now is to be at least 100% below the 1990 baseline.

12. On 24 June 2021 the government adopted the Sixth Carbon Budget that was intended to meet the net zero requirement.

Section 19(1A) of the Planning and Compulsory Purchase Act 2004 (“PCPA 2004”)

13. Section 19(1A) PCPA 2004 provides 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.”

The requirements of the 2023 WMS

14. The key requirements of the new 2023 WMS, with RCA’s commentary, are as follows:

- a) “The Government does not expect plan-makers to set local energy efficiency standards for buildings that go beyond current or planned buildings regulations.”

*RCA comment: This is framed as an expectation (in other words, a steer) as opposed to a hard-edged policy requirement. It follows that a policy which goes beyond current or planned building regulations is not necessarily “inconsistent” with this policy.*

- b) “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:...”

*RCA comment: This is an explicit acceptance in the 2023 WMS itself that local plan policies may be deemed sound which do go beyond current or planned building regulations.*

- c) “That development remains viable, and the impact on housing supply and affordability is considered in accordance with the National Planning Policy Framework...”

*RCA submission: This is largely a matter for the viability evidence, the substance of which RCA does not comment on. However:*

*-the Inspector’s assessment of viability at the plan-making stage must be carried out in the important context that the WMS requires all energy efficiency policies to be applied flexibly at the planning application stage in any event.*

*-In circumstances where, at the application stage, a developer can show that meeting the requirements in their entirety would render the development unviable, it will simply not have to meet those requirements.*

*-Accordingly, due to the safeguards that apply at the application stage, it is hard to see how any policy that is required to be applied flexibly can be said to make development unviable or reduce housing supply at the plan-making stage.*

- d) “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).”

*RCA comment: This sets out a preferred methodology for calculating the uplift on the Building Regulations, but it does not follow that an alternative methodology, supported by appropriate evidence, renders Policy 2 incompatible with national policy as a whole (which includes other national policies such as the NPPF: see further below).*

#### The requirements of the NPPF

15. Paragraph 8(c) of the NPPF provides that achieving sustainable development includes (emphasis added):

- a) “an environmental objective – to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.”
16. Paragraph 11(a) of the NPPF provides that sustainable development means, in the context of plan-making, all plans should promote a sustainable pattern of development that seeks to- “mitigate climate change (including by making effective use of land in urban areas) and adapt to its effects.”
17. Paragraph 20 of the NPPF provides that strategic policies should set out an overall strategy for the pattern, scale and design quality of places and make sufficient provision for “conservation and enhancement of the natural, built and historic environment, including landscapes and green infrastructure, and planning measures to address climate change mitigation and adaptation”.
18. Paragraph 22 of the NPPF provides that ““Where larger scale developments such as new settlements or significant extensions to existing villages and towns form part of the strategy for the area, policies should be set within a vision that looks further ahead (at least 30 years).”
19. Paragraph 161 of the NPPF provides that:
- “The planning system should support the transition to net zero by 2050 and take full account of all climate impacts including overheating, water scarcity, storm and flood risks and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.”
20. Paragraph 162 of the NPPF provides that “Plans should take a proactive approach to mitigating and adapting to climate change” (emphasis added).

21. Paragraph 164(b) of the NPPF provides that new development should be planned 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.”
22. Paragraph 165 of the NPPF provides that “To help increase the use and supply of renewable and low carbon energy and heat, plans should: “provide a positive strategy for energy from these sources, that maximises the potential for suitable development...” (emphasis added), “consider identifying suitable areas for renewable and low carbon energy sources, and supporting infrastructure, where this would help secure their development”, and “identify opportunities for development to draw its energy supply from decentralised, renewable or low carbon energy supply systems and for co- locating potential heat customers and suppliers.”
23. Paragraph 166(a) of the NPPF provides that “To help increase the use and supply of renewable and low carbon energy and heat, plans should: 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.”
24. Paragraph 167 of the NPPF provides that “Local planning authorities should also give significant weight to the need to support energy efficiency and low carbon heating improvements to existing buildings.”

The requirements of Planning Practice Guidance (“the PPG”)

25. The PPG provides:

“What are government’s national standards for a building’s sustainability and for zero carbon buildings?

The National Planning Policy Framework expects local planning authorities when setting any local requirement for a building’s sustainability to do so in a way consistent with the government’s zero carbon buildings policy and adopt

nationally described standards. Local requirements should form part of a Local Plan following engagement with appropriate partners, and will need to be based on robust and credible evidence and pay careful attention to viability. In this respect, planning authorities will need to take account of government decisions on the Housing Standards Review when considering a local requirement relating to new homes....

Paragraph: 009 Reference ID: 6-009-20150327 Revision date: 27 03 2015”

Are the requirements of Policy 2 reasonable?

26. The requirements in Policy 2 are reasonable.
27. “Reasonable” is a familiar term in policy and law. It does not set a high threshold. More than one approach can be reasonable. A policy which could be improved can nevertheless be reasonable. Conversely, only an approach that is not properly open to a local authority on the evidence can be considered unreasonable.
28. When assessing the reasonableness of Policy 2, the Inspector should bear in mind:
  - a) The pressing and existential urgency of climate change,
  - b) The Secretary of State’s legal requirement under the CCA 2008 to achieve net zero by 2050 (now just 25 years away)
  - c) The NPPF’s directives that the planning system should support the transition to net zero by 2050, that plans should take a proactive approach to mitigating and adapting to climate change, and that planning should “contribute to radical reductions in greenhouse gas emissions,”
  - d) The fact that, as it stands, Policy 2 will need to be applied flexibly at the application stage under the 2023 WMS, if it is later shown that a viable scheme could not meet those requirements.
29. In that context the ambitious requirements in Policy 2 are plainly reasonable. Even if they were, on the face of it, unduly onerous (which they are not), the 2023 WMS



requires that they be applied flexibly in any event. That cannot be described as an unreasonable barrier to development on any view.

Are the requirements of Policy 2 consistent with national policies?

30. The requirements in Policy 2 are consistent with national policies.
31. As the Inspector will be aware, planning policies pull in different directions. That is the nature of planning. Full compliance with one policy may lead to apparent or partial non-compliance with another. Section 1 of the PEA 2008 does not and cannot mean that every energy efficiency policy required by a local authority must obey every element in every national policy to the letter.
32. What is required is that the policy is not “inconsistent” with national policies. That assessment of consistency must be a holistic one. The question is compatibility with national policy as a whole. That involves an analysis of the broad trajectory of national policy and the application of planning judgement where there are tensions (as there unavoidably are).
33. The overall requirements of the NPPF could not be clearer. Local plans should contribute to “radical” reductions in GHG emissions. The requirement for radical reductions is a high one. It requires ambition to match. Any local requirements for the sustainability of buildings in plans should reflect (i.e. be consistent with) the Government’s policy for national technical standards.
34. As to the 2023 WMS, it is clear that:
  - a) While the government is sceptical about “the proliferation of multiple, local standards” it expressly accepts that, where justified, different standards can be set out in local plans,
  - b) There are currently already different local standards in different local plans, which are again acceptable so long as they are applied flexibly where these

requirements can be shown to be a barrier to viability. In any event, the purpose of a local plan is to set out locally appropriate requirements rather than simply repeat national policy. The requirements set out in Policy 2 are appropriate in this local context as the Council has shown.

- c) The government's preference is for additional requirements to be expressed as a percentage uplift of a dwelling's target emissions rate ("TER"), calculated using a specified version of the standard assessment procedure. However, this does not mean that any different standard involves an inherent inconsistency with the policy as a whole. *If* the WMS is lawful (contrary to RCA's legal challenge), then despite being expressed in imperative terms, the TER requirement must also have inherent flexibility in its application. See the Court of Appeal's judgment in *West Berkshire DC v SSCLG* [2016] 1 W.L.R. 3923, [21] (underlining added, italics in original):

"...a policy-maker is entitled to express his policy in unqualified terms. It would surely be idle, and most likely confusing, to require every policy statement to include a health warning in the shape of a reminder that the policy must be applied consistently with the rule against fettering discretion—or, in the planning context, consistently with section 38(6) of the 2004 Act or section 70(2) of the 1990 Act. A policy may include exceptions... But the law by no means demands that a public policy should incorporate exceptions as part of itself. The rule against fettering and the provisions of sections 38(6) and 70(2) are not, of course, part of any administrative policy. They are requirements which the law imposes upon the application of policy. It follows that the articulation of planning policy in unqualified or absolute terms is by no means repugnant to the proper operation of those provisions."

- d) Indeed, the Secretary of State's own defence to RCA's judicial review of the 2023 WMS is that although e.g. the TER requirement is expressed in unqualified

terms, this does not mean that it sets a rule that cannot be departed from: “*The 2023 WMS is simply that: a material consideration that the decision maker can consider and apply as he or she sees fit in the particular circumstances of a case*” (Secretary of State’s Summary Grounds of Defence in the High Court, para 27).

- e) If that is correct, then a different energy efficiency standard, if the Inspector otherwise considers that it is sufficiently justified with appropriate evidence, cannot be inherently inconsistent with the 2023 WMS: particularly when national policy is considered as a whole.
35. Overall, if the Inspector is satisfied that the requirements in Policy 2 are justified and sufficiently evidenced, then it is consistent with the 2023 WMS and the PPG that follows on from it.
36. Policy 2 is also necessarily consistent with the high ambition in the NPPF to radically reduce greenhouse gas emissions and the legal requirements in the CCA 2008 and s.19(1A) PCPA 2004.
37. The requirements of PEA 2008, which for the avoidance of doubt explicitly *enables* local authorities to go further than the Building Regulations, are accordingly met.

**12. Net Zero Carbon Development: 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?**

38. The wording of this policy does not need to be more flexible. That is because the 2023 WMS expressly provides that:

“Where plan policies go beyond current or planned building regulations, 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—for example adequate existing and planned grid connections—and access to adequate supply chains.”

39. This national policy requirement, to interpret the policy flexibly where needed, is a sufficient safeguard to deal with the Inspector’s concern. The requirements of Policy 2 will always be tempered by real-world constraints (as it would always be in any event under s.38(6) PCPA 2004, as those constraints are relevant material considerations).

**14. Building fabric- is the policy sufficiently flexible to address circumstances where a development cannot achieve the required space heating demand?**

40. See above in relation to Net Zero Carbon Development. National policy already provides that policies such as Policy 2 should be interpreted flexibly where it is not possible to comply with them. Additional flexibility is not required and would significantly and regrettably water down the net zero ambitions of the AAP.

**Conclusion**

41. In RCA’s submission, Policy 2 is reasonable and consistent with national policies in accordance with the requirements of PEA 2008. The flexibility of application imposed by the 2023 WMS means that additional flexibility does not need to be built into the policy itself. The laudable net zero ambition in Policy 2 should remain. If the Secretary of State is to have any hope of achieving net zero by 2050 as required by s.1 of the CCA 2008, local authorities must be allowed to put forward policies such as Policy 2, which will help build the homes Britain needs while at the same time contributing to a radical reduction in greenhouse gas emissions.

**ALEX SHATTOCK**

**Landmark**

**12.6.25**