

Examination of the Climate Emergency Review of the Lancaster District Strategic Policies and Land Allocation Development Plan Document (DPD) and the Development Management DPD

Inspector: Joanna Gilbert MA (Hons) MTP MRTPI

Programme Officer: Carole Crookes

Mr Maurice Brophy
Service Manager – Planning and Housing Strategy
Lancaster City Council

By email

22 December 2022

Dear Mr Brophy

Inspector's Response to the Council's Letter of 2 December 2022

1. Thank you for your letter of 2 December 2022.
2. With regard to my letter of 10 November 2022 and my concerns about Policy DM30a: Sustainable Design and Construction, the Council has asked whether I have particular concerns about the Council setting its own local authority energy efficiency standards or about its specific three-step approach to delivering energy efficiency in Lancaster's administrative area.
3. The three-step approach within Policy DM30a is the Council's chosen route of delivering improved energy efficiency standards for new homes locally. However, with the exception of the first step of the approach which is consistent with the current Building Regulations in respect of the minimum 31% reduction in carbon emissions against Part L of Building Regulations (2013), the Council's setting of energy efficiency standards at steps 2 and 3¹ would not currently be consistent with relevant national policies for England.
4. The Council has directed me towards the document EXAM 10 of the Bath & North East Somerset Council: Local Plan Partial Update Examination: Policy SCR6: Note on the setting of local energy efficiency standards for new building development, which in turn refers to The Future Homes Standard: 2019 Consultation on changes to Part L (conservation of fuel and power) and Part F

¹ Step 2 being 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 step 3 being net zero carbon to be achieved by January 2028.

(ventilation) of the Building Regulations for new dwellings - Summary of responses received and Government response January 2021 and an email dated 22 June 2022 from the Head of Local Net Zero Engagement at the Department for Business, Energy and Industrial Strategy.

5. The Government's response to the Future Homes Standard (FHS) consultation acknowledges that all levels of Government have a role to play in meeting the net zero target and that local councils have been excellent advocates of the importance of taking action to tackle climate change. It also highlights the need to clarify local planning authorities' role in setting energy efficiency requirements for new homes that go beyond the minimum standards set through the Building Regulations. It confirms that the new planning reforms will clarify the longer-term role of local planning authorities in determining local energy efficiency standards. This clarification of the longer-term role of local planning authorities in determining local energy efficiency standards has not yet occurred.
6. Further to this, the Government's response to the FHS consultation states that "To provide some certainty in the immediate term, we will not amend the Planning and Energy Act 2008, which means that local authorities will retain powers to set local energy efficiency standards for new homes." While the Planning and Energy Act 2008 states that a local planning authority in England may include policies in their development plan documents imposing reasonable requirements for development in their area to comply with energy efficiency standards that exceed the energy requirements of Building Regulations, the same Act confirms that those policies included in development plan documents must not be inconsistent with relevant national policies for England.
7. The Written Ministerial Statement – Planning Update dated 25 March 2015 (HCWS488) (WMS) outlines that for "the specific issue of energy performance, local planning authorities will continue to be able to set and apply policies in their Local Plans which require compliance with energy performance standards that exceed the energy requirements of Building Regulations until commencement of amendments to the Planning and Energy Act 2008 in the Deregulation Bill. This is expected to happen alongside the introduction of zero carbon homes policy in late 2016. The Government has stated that, from then, the energy performance requirements in Building Regulations will be set at a level equivalent to the (outgoing) Code for Sustainable Homes Level 4. Until the amendment is commenced, we would expect local planning authorities to take this statement of the Government's intention into account in applying existing policies and not set conditions with requirements above a Code level 4 equivalent." The WMS remains an extant expression of national policy.
8. The Council has highlighted that other Inspectors have not raised concerns with regard to the principle of setting carbon, fabric first or energy efficiency standards in Local Plans in other locations and that there would be a number of co-benefits of the Council's proposed approach for future residents of new

homes. While I acknowledge these matters, I have not seen any evidence from the Council on the principle of setting higher energy efficiency standards which alters my overriding concerns set out above and in my earlier letter of 10 November 2022. Policy DM30a would fail to accord with the WMS and the Planning and Energy Act 2008. A Main Modification is required to address this.

9. With regard to viability of the energy efficiency standards proposed, I have considered what the Council has provided in its letter. While this has allayed my viability concerns, my concerns over consistency with national policy remain.
10. The Council has suggested the deletion of only the first step within Policy DM30a. While this would perhaps achieve greater clarity for the development industry given the overlap with current Building Regulations, it is steps 2 and 3 of the three-step approach which are of concern as they are not consistent with national policy. As the Council has noted, this would require significant re-writing of Policy DM30a and its supporting text. However, the Council may wish to encourage the fabric first approach and related use of the energy hierarchy when modifying the policy.
11. The Council has suggested that a further hearing session should be held on this matter. However, my matters, issues and questions covered the matter of Policy DM30a and its consistency with national policy. Furthermore, this matter was discussed at the relevant hearing session in October 2022. As such, I consider that it would not be necessary to have a further hearing session on this matter.
12. I also note your responses with regard to Policy DM33: Development and Flood Risk; Policy DM43: Green and Blue Infrastructure; Policy SP8: Protecting the Natural Environment; and Policy DM62: Vehicle Parking Provision and Electric Vehicle Charging Points. With regard to Policy DM34: Surface Water Run-Off and Sustainable Drainage, the sentence to be deleted is indeed the 6th sentence.
13. In addition to drafting the Main Modifications requested in this letter, I would be grateful if the Council could consider any commensurate changes required to the Plans' sustainability appraisal and habitats regulations assessment, as necessary.
14. I will provide feedback on the draft schedule of proposed Main Modifications via the Programme Officer, with the aim of the Council being able to publish them for public consultation in due course.

Yours sincerely

Joanna Gilbert

INSPECTOR