

# 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

By email

20 February 2023

Dear Ms Gilbert,

1. Thank you for your letter dated 22<sup>nd</sup> December 2022 titled, '*Inspector's response to the Council's letter of 2 December 2022*'.
2. The council understands from paragraph 8 of your letter that you are of the view that the 2015 Written Ministerial Statement (WMS) remains an extant expression of national policy which should be accorded full weight and that accordingly Policy DM30a, which sets out the Council's proposed approach to setting energy efficiency standards would therefore "*fail to accord with the WMS and Planning and Energy Act 2008*". As you are aware, the Council's view is that whilst the guidance may be extant nonetheless the weight to be afforded to it is diminished by the fact that: (1) it has not been reviewed for a number of years; (2) it is not expressed in such terms in either NPPF or PPG; (3) other local authorities have advanced local plans with local energy efficiency standards which have been concluded to be sound.
3. Circumstances at other local authorities have progressed since my letter of 2<sup>nd</sup> December 2022. May I draw your attention to the final Inspectors' Reports sent to Bath & North East Somerset (Bathnes) (dated 13<sup>th</sup> December 2022) regarding the now adopted Development Plan<sup>1</sup>, and Cornwall (dated 10<sup>th</sup> January 2023). Both Inspectors have endorsed policies which set out energy efficiency standards for new dwellings which exceed the 2021 Building Regulations and the former Code for Sustainable Homes Level 4 referred to in the WMS.
4. Paragraph 85 of the Bathnes Inspector's Report states [my emphasis] that "***the relevance of the WMS 2015 to assessing the soundness of the Policy has been reduced significantly, along with the relevant parts of the PPG on Climate Change, given national policy on climate change. The NPPF is clear that mitigating and adapting to climate change, including moving to a low carbon economy, is one of the key elements of sustainable development, and that the planning system should support the transition to a low carbon future in a changing climate. Whilst NPPF154b sets out that any local requirements for the sustainability of buildings should reflect the Government's policy for national technical standards, for the reasons set out, that whilst I give the WMS 2015 some weight, any inconsistency with it, given that it has been overtaken by events, does not lead me to conclude that Policy SCR6 is unsound, nor inconsistent with relevant national policies***".

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<sup>1</sup> Adopted 19<sup>th</sup> January 2023 [Development Plan | Bath and North East Somerset Council \(bathnes.gov.uk\)](https://www.bathnes.gov.uk/development-plan)

5. Consistent with this approach is the wording in the Inspector's Report for Cornwall Council's Climate Emergency DPD<sup>2</sup> (Inspector's Report dated 10<sup>th</sup> January 2023), wherein the Inspector examining the DPD concludes at Paragraph 166 of his report [my emphasis] that *"Provisions to allow Councils to go beyond the minimum energy efficiency requirements of the Building Regulations are part of the Planning and Energy Act 2008. The WMS of 25 March 2015 says that in terms of energy performance, Councils can set and apply policies which require compliance with energy performance standards beyond the requirements of the Building Regulations until the Deregulation Bill gives effect to amendments to the Planning and Energy Act 2008. These provisions form part of the Deregulation Act 2015, but they have yet to be enacted. Further, the Government has confirmed that the Planning and Energy Act 2008 will not be amended. **The result of all this is that Councils are able to set local energy efficiency standards for new homes, without falling foul of Government policy"**.*
6. This is a clear statement that Cornwall Council, like Bathnes, can set their own energy efficiency targets and still be consistent with national policy. Lancaster City Council considers Lancaster's position on the principle to be the same.
7. The Inspector for Cornwall's Climate Emergency DPD at paragraph 167 also goes on to state [my emphasis] that *"**The WMS of 25 March 2015 has clearly been overtaken by events. Nothing in it reflects Part L of the Building Regulations, the Future Homes Standard, or the Government's legally binding commitment to bring all greenhouse gas emissions to net zero by 2050. In assessing the Council's approach to sustainable energy and construction, the WMS of 25 March 2015 is of limited relevance. The Framework makes clear in paragraph 152 that the planning system should support the transition to a low carbon future in a changing climate. Whilst paragraph 154 b) of the Framework requires that any local requirements for the sustainability of buildings should reflect the Government's national technical standards, for the reasons set out, the WMS of 25 March 2015 has been superseded by subsequent events. While it remains extant, any inconsistency with its provisions does not mean that the approach the Council has taken lacks justification. In that sense, there is nothing in the Council's approach that raises issues of soundness"**.*
8. Policy SCR6 of the Bathnes Plan and Policy SEC1 of the Cornwall DPD require zero operational emissions (regulated and unregulated energy) and include specific minimum energy efficiency requirements, setting out minimum space heating demand of less than 30kWh/m2/annum and total energy use less than 40kWh/m2/annum.
9. Policy DM30a aims to achieve similar carbon reduction outcomes as Policy SCR6 of the Bathnes Plan and Policy SEC1 of the Cornwall Plan. Not only this, but Policy DM30a takes a less prescriptive, more flexible approach. Unlike Bathnes, Policy DM30a only relates to regulated energy use, and does not set specific mandatory energy efficiency requirements. It also, uses a stepped approach, rather than requiring zero carbon regulated and unregulated energy immediately on adoption, to give time for the development industry to adapt.
10. Lancaster City Council is therefore concerned that there is a lack of consistency between the approach taken in respect of Policy DM30a and Policy SCR6 of the Bathnes Plan and Policy SEC1 of the Cornwall DPD which have recently been found Sound (13<sup>th</sup> December 2022 & 10<sup>th</sup> January 2023 respectively).

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<sup>2</sup> [Cornwall Climate Emergency DPE Final Report](#)

11. As a consequence of these developments, I have asked the Department of Levelling Up, Housing and Communities (DLUHC) if the 25th March 2015 WMS should be treated as an up to date expression of Government policy. In their reply DLUHC have not confirmed that the WMS is 'up to date' guidance; Jerome Ma, Head of Climate Planning Policy Division, Planning Directorate, DLUHC advised on 13<sup>th</sup> February 2023 that [DLUHC] "is afraid at this stage, the most we can do is reiterate elements of [the] previous response" [the previous response from Jamie Atkinson of DLUHC is Appended].
12. Further, I asked if DLUHC could advise, that despite the 25th March 2015 WMS, plan-makers may continue to set energy efficiency standards at the local level which go beyond national Building Regulations standards if they wish. Jerome Ma advised that:
  - *Plan-makers may continue to set energy efficiency standards at the local level which go beyond national Building Regulations standards if they wish.*
  - *Local planning authorities have the power to set local energy efficiency standards through the Planning and Energy Act 2008.*
13. In short, DLUHC, have not confirmed that the WMS is 'up to date' guidance but have confirmed that Local Planning Authorities may adopt energy efficiency standards at the local level which go beyond national Building Regulations.
14. Lancaster City Council respectfully requests that you consider the implications of the additional plan progress reported elsewhere which occurred, just prior to, and just after, your letter of 22<sup>nd</sup> December 2022, and in particular, the content of the recent e-mails from Jerome Ma and Jamie Atkinson of DLUHC.

Yours sincerely

*Maurice Brophy*

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

## **APPENDIX 1**

**From:** Jamie Atkinson <[Jamie.Atkinson@levellingup.gov.uk](mailto:Jamie.Atkinson@levellingup.gov.uk)>

**Sent:** 30 January 2023 17:59

**To:** Brophy, Maurice <[MBrophy@lancaster.gov.uk](mailto:MBrophy@lancaster.gov.uk)>; Correspondence <[Correspondence@levellingup.gov.uk](mailto:Correspondence@levellingup.gov.uk)>

**Cc:** [contactus@communities.gsi.gov.uk](mailto:contactus@communities.gsi.gov.uk); [jonathan.mullard@beis.gov.uk](mailto:jonathan.mullard@beis.gov.uk); Orla Wheeler <[Orla.Wheeler@levellingup.gov.uk](mailto:Orla.Wheeler@levellingup.gov.uk)>; Gurdev Singh <[Gurdev.Singh@levellingup.gov.uk](mailto:Gurdev.Singh@levellingup.gov.uk)>; Jerome Ma <[Jerome.Ma1@levellingup.gov.uk](mailto:Jerome.Ma1@levellingup.gov.uk)>; Catherine Holton <[Catherine.Holton@levellingup.gov.uk](mailto:Catherine.Holton@levellingup.gov.uk)>; Ruby Thompson <[Ruby.Thompson@levellingup.gov.uk](mailto:Ruby.Thompson@levellingup.gov.uk)>

**Subject:** RE: Urgent request on status of the 25th March 2015 Written Ministerial Statement (WMS)

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Hi Maurice,

Apologies for the delay responding to you. I have discussed your query internally and have the below bullets in response and to clarify our position on the key policy question you raise in your email:

- The recent 2021 uplift to the Building Regulations will deliver a meaningful reduction in carbon emissions, while ensuring high-quality homes that are in line with our broader housing commitments.
- Plan-makers may continue to set energy efficiency standards at the local level which go beyond national Building Regulations standards if they wish.
- Local planning authorities have the power to set local energy efficiency standards through the Planning and Energy Act 2008.
- In January 2021, we clarified in the Future Homes Standard consultation response that in the immediate term we will not amend the Planning and Energy Act 2008, which means that local planning authorities still retain these powers.

I recognise you mentioned some of the above points in your email, but I thought important to reiterate key points.

Hope this is helpful to you, best wishes,

Jamie.

PS: I'm sure you will appreciate that we cannot comment on specific details of a local plan due to Secretary of State's quasi-judicial role in the planning system, I recognise you didn't ask us to comment on a specific part of a plan or emerging plan, but thought helpful to clarify that in my response and to explain why we did not comment on the plan you mentioned.

**From:** Brophy, Maurice <[MBrophy@lancaster.gov.uk](mailto:MBrophy@lancaster.gov.uk)>

**Sent:** 31 January 2023 09:31

**To:** Correspondence <[Correspondence@levellingup.gov.uk](mailto:Correspondence@levellingup.gov.uk)>; Jamie Atkinson <[Jamie.Atkinson@levellingup.gov.uk](mailto:Jamie.Atkinson@levellingup.gov.uk)>

**Cc:** Orla Wheeler <[Orla.Wheeler@levellingup.gov.uk](mailto:Orla.Wheeler@levellingup.gov.uk)>; Gurdev Singh <[Gurdev.Singh@levellingup.gov.uk](mailto:Gurdev.Singh@levellingup.gov.uk)>; Jerome Ma <[Jerome.Ma1@levellingup.gov.uk](mailto:Jerome.Ma1@levellingup.gov.uk)>; Catherine Holton <[Catherine.Holton@levellingup.gov.uk](mailto:Catherine.Holton@levellingup.gov.uk)>; Ruby Thompson <[Ruby.Thompson@levellingup.gov.uk](mailto:Ruby.Thompson@levellingup.gov.uk)>

**Subject:** Query on status of 25th March 2015 Written Ministerial Statement (WMS)

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Dear Jamie Atkinson,

I request clarification from DLUHC as to whether or not the 25th March 2015 Written Ministerial Statement (WMS) should be treated as an up to date expression of Government policy.

Specifically, can you advise if, despite the 25th March 2015 Written Ministerial Statement (WMS), plan-makers may continue to set energy efficiency standards at the local level which go beyond national Building Regulations standards if they wish.

Kind Regards,  
Maurice

**Maurice Brophy** MSc BSc(Hons) DipTP MRTPI CIHM  
Service Manager - Planning and Housing Strategy  
Planning and Place Service | Directorate of Economic Growth and Regeneration | Lancaster City Council

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**From:** Jerome Ma <[Jerome.Ma1@levellingup.gov.uk](mailto:Jerome.Ma1@levellingup.gov.uk)>

**Sent:** 13 February 2023 17:10

**To:** Brophy, Maurice <[MBrophy@lancaster.gov.uk](mailto:MBrophy@lancaster.gov.uk)>; Correspondence <[Correspondence@levellingup.gov.uk](mailto:Correspondence@levellingup.gov.uk)>; Jamie Atkinson <[Jamie.Atkinson@levellingup.gov.uk](mailto:Jamie.Atkinson@levellingup.gov.uk)>

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**Subject:** RE: Query on status of 25th March 2015 Written Ministerial Statement (WMS)

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Hi Maurice,

Thanks for your email and apologies for the delay in responding.

In answer to your questions, am afraid at this stage, the most we can do is reiterate elements of Jamie's previous response. In particular that

- Plan-makers may continue to set energy efficiency standards at the local level which go beyond national Building Regulations standards if they wish.
- Local planning authorities have the power to set local energy efficiency standards through the Planning and Energy Act 2008.

Happy also to have a chat if helpful.

Best wishes,

Jerome



Department for Levelling Up,  
Housing & Communities

**Jerome Ma**

Head of Climate | Planning Policy Division | Planning

Directorate

Department for Levelling Up, Housing and Communities

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