

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

23 March 2023

Dear Mr Brophy

Inspector's Response to the Council's Letter of 20 February 2023

1. Thank you for your letter of 20 February 2023 and the attached Appendix of email correspondence between the Council and officers at the Department for Levelling Up, Housing and Communities (DLUHC).
2. In my letters dated 10 November 2022 and 22 December 2022, I set out my concerns about Policy DM30a: Sustainable Design and Construction. I have previously confirmed the following:
 - The Council's setting of energy efficiency standards at steps 2 and 3¹ of Policy DM30a: Sustainable Design and Construction would not currently be consistent with relevant national policies for England.
 - The Government's response to the Future Homes Standard consultation (January 2021) confirms that the new planning reforms will clarify the longer-term role of local planning authorities in determining local energy efficiency standards. This clarification has not yet occurred.
 - 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

¹ Step 2 being a 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.

requirements of Building Regulations. The same Act also confirms that those policies included in development plan documents must not be inconsistent with relevant national policies for England.

- The Written Ministerial Statement – Planning Update dated 25 March 2015 (HCWS488) (WMS) discusses commencement of amendments to the Planning and Energy Act 2008 in the Deregulation Bill and states that until the amendment is commenced, local planning authorities would be expected 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 equivalent². This remains an extant expression of national policy.
 - Section 43 of the Deregulation Act 2015 provides the capability to disapply the power to set energy efficiency standards in England in relation to the construction or adaptation of buildings to provide dwellings or the carrying out of any work on dwellings, but this provision has never been brought into force.
 - Planning Practice Guidance³ refers to the Planning and Energy Act 2008, the Deregulation Act 2015, and the WMS and states that such policies should not be used to set conditions on planning permissions with requirements above the equivalent of the energy requirement of Level 4 of the Code for Sustainable Homes (approximately 20% above the then Building Regulations across the build mix).
 - Part L of Building Regulations was updated in 2021 to achieve a 31% reduction in carbon emissions for new dwellings. Current Building Regulations, which took effect on 15 June 2022, therefore exceed Level 4 of the Code for Sustainable Homes.
 - No evidence has been provided on the principle of setting higher energy efficiency standards which alters the overriding concerns set out in my letters of 10 November 2022 and 22 December 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.
3. In the letter of 20 February 2023, the Council has directed me to both the Inspector’s Report on the Examination of the Local Plan (Core Strategy and Placemaking Plan) Partial Update for Bath and North East Somerset Council and the Inspector’s Report on the Cornwall Council Climate Emergency DPD. Further to these reports, the Council has also provided me with emails from officers at DLUHC. While I note the Council’s concerns about the lack of consistency of

² Reference to Level 4 of the Code for Sustainable Homes.

³ Paragraph 6-012-20190315

approach on this matter, neither the Inspector's Reports nor the emails from officers at DLUHC alter my view that Policy DM30a as presently drafted would fail to accord with the WMS and the Planning and Energy Act 2008.

4. Unless there is a material change in circumstances, I will not be accepting any further comments on this matter. Consequently, I would be grateful if the Council could provide the Main Modification requested to Policy DM30a and any other consequential Main Modifications to associated areas of the Plans.
5. I appreciate that the Council will be deeply disappointed by the contents of this letter and will want to consider their position. I would be grateful for a response by 17 April 2023. If any further time is required, I would be grateful if the Council could contact me via the Programme Officer to confirm a suitable date.

Yours sincerely

Joanna Gilbert

INSPECTOR