

Swaffham Bulbeck Neighbourhood Plan Examination

Introduction

On 13 September 2022, the Examiner asked two questions of clarification. Those questions, and a joint response to them by East Cambridgeshire District Council and Swaffham Bulbeck Parish Council, are provided below.

Question 1

Policy SWB2 says that views "including [those] shown on Map 9" are to be protected. Does that mean that there are, or could be, others which aren't identified?

Response

It is accepted that the bullet point from which the question arises is a long sentence, and has the potential to cause confusion to future decision makers as a result. It is suggested, therefore, that some adjustments to the bullet are made, to ensure greater clarity and consequently make the policy more effective. It is suggested the amendments are as follows:

- as part of this requirement, development proposals shall respect and not **significantly** adversely impact locally valued communal views (views enjoyed from public spaces) in the village centre towards Swaffham Bulbeck's distinctive features. **The locally valued communal views for the purpose of this policy are defined as: (a) the ten views identified in Map 9; and (b) any communal view of a heritage asset.** ~~(including heritage assets and views from within the settlement out to open countryside) including the key features of the locally valued communal views shown on Map 9.~~

Question 2

Policy SWB12 includes a proposal to prevent the use of oil or bottled gas. This is clearly not a material consideration in development management terms, and I am doubtful whether it is even covered under the Building Regulations (although that is not my field). It would therefore seem unenforceable - do the Councils have any comment?

Response

The two councils disagree that the proposal in the policy to prevent the use of oil or bottled gas is 'clearly not a material consideration in development management terms'.

In our view, it clearly **is** a material consideration.

This response necessitates a degree of detailed background, to justify the two councils position.

At Appendix A, we set out a summary of both the national policy and legal provisions under which the preparation of a development plan (including, where appropriate, a neighbourhood plan) must comply.

Bringing all of the above 'national policy' commentary together, it can be seen that:

1. Targeting 'radical reductions' in carbon emissions is both lawful and specifically supported by the NPPF.
2. Plans need to take a 'proactive approach' to mitigating and adapting to climate change 'in line' with the objectives and provisions of the Climate Change Act 2008 (the Climate Act). This means that plans must be in line with the required 80% carbon reduction by 2035 and net zero by 2050.
3. Carbon reduction requirements in the development plan therefore have twin statutory anchors in both planning law and in relation to the Climate Act whose carbon budgets are adopted as secondary legislation.
4. The Planning and Energy Act 2008 (the Energy Act) provides special powers in the development plan to make requirements in relation to renewable and low carbon energy and building performance.
5. There is no national policy which *restricts* energy efficiency and low carbon standards above building regulations; indeed, it is the opposite.

Returning to the policy itself, it seeks to prevent the use of a building to be heated through oil or bottled gas, this form of fuel obviously being a fossil fuel. This 'ban' is entirely in line with government's 'Future Homes Standard' which, by 2025, includes as follows:

"We intend to set the performance standard of the Future Homes Standard at a level which means that new homes will not be built with fossil fuel heating, such as a natural gas boiler"¹

Thus, whilst the Future Homes Standard (and the 'ban' on gas/oil from 2025) is a building regulations matter, the policy and legislative context of Appendix A demonstrates the role the development plan has on this matter, including the legal ability to go beyond building regulations.

To put it all simply, the Neighbourhood Plan is, in effect, only seeking to bring forward the 'ban' from 2025 to the point of adoption of the plan; and doing so is entirely consistent with national policy and legislation.

The policy requirement can easily be controlled through the development management system: it can simply condition that such homes are not connected. The developer will need to comply with energy efficiency standards in the building regulations in any event, and, in applying the planning consent, do so without the provision of oil or gas. The planning consent and the building regulations regime work in tandem.

In reality, all of this may well be academic in any event. The Part L Building Regulations uplift of 2022 means that, in areas not on the gas mains (and arguably, even those on the gas mains), it will be near-on impossible to achieve June 2022 building regulation requirements with the use of oil, and quite possibly gas (even if gas was available). Developers are highly likely not to install oil or gas in any event, because to meet even current building regulation standards with oil would require a technically highly advanced energy efficient home to compensate for the use of oil. In practice, for viability reasons, the developer will simply go down the electric only option. From 2025, it will be the developers only option.

¹ See page 4 of:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/956094/Government_response_to_Future_Homes_Standard_consultation.pdf

Pulling all of this together, it is the councils collective view that removing such a clause from the plan because there is no policy or legal framework to either (a) include it as a matter of principle, or (b) implement it through development management, would highly likely be a legally flawed position, as demonstrated by the evidence in this response.

If there was any concern that such a policy position was in someway 'unique' then the Examiner can be reassured that several plans nationally are similarly imposing such a 'ban' on gas and oil in advance of building regulations ban in 2025. See the submitted Central Lincolnshire Local Plan, policy S6, for example.²

The two councils are therefore firmly of the position that the clause should be retained in the policy, and both councils believe there is widespread legal and policy justification for its retention.

² https://www.n-kesteven.gov.uk/_resources/assets/attachment/full/0/133665.pdf

Appendix A

The following section summarises the most relevant national policy positions. Where considered helpful, emphasis is added in **bold underline**.

National Planning Policy Framework:

Paragraph 152 – *The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk 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**.*

Paragraph 154 – *New development should be planned for in ways that:...b) can **help to reduce greenhouse gas emissions**, such as through its location, orientation and design. Any local requirements for the sustainability of buildings should reflect the Government’s policy for national technical standards.*

Paragraph 155 – *To help increase the use and supply of renewable and low carbon energy and heat, **plans should**:... c) 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**.*

Planning Practice Guidance:

Why is it important for planning to consider climate change?

*In addition to **supporting the delivery of appropriately sited green energy**, effective spatial planning is an important part of a successful response to climate change as it can influence the emission of greenhouse gases. In doing so, local planning authorities should ensure that protecting the local environment is properly considered alongside the broader issues of protecting the global environment. Planning can also help increase resilience to climate change impact through the location, mix and design of development.*

***Addressing climate change is one of the core land use planning principles** which the National Planning Policy Framework expects to **underpin** both **plan-making** and decision-taking. To be found sound, Local Plans will need to reflect this principle and enable the delivery of sustainable development in accordance with the policies in the National Planning Policy Framework. These include the requirements for local authorities to **adopt proactive strategies to mitigate and adapt to climate change in line with the provisions and objectives of the Climate Change Act 2008**, and co-operate to deliver strategic priorities which include climate change.*

*In addition to the statutory requirement to take the Framework into account in the preparation of Local Plans, **there is a statutory duty on local planning authorities to include policies in their Local Plan designed to tackle climate change** and its impacts. This complements the sustainable development duty on plan-makers and the expectation that neighbourhood plans will contribute to the achievement of sustainable development. The National Planning Policy Framework emphasises that **responding to climate change is central** to the economic, social and environmental dimensions of sustainable development.*

Paragraph: 001 Reference ID: 6-001-20140306

What climate change legislation should planners be aware of?

Section 19(1A) of the Planning and Compulsory Purchase Act 2004 **requires** local planning authorities to include in their Local Plans “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”. This will be a consideration when a Local Plan is examined.

The Climate Change Act 2008 establishes a **legally binding target** to reduce the UK’s greenhouse gas emissions by at least 80% in 2050 from 1990 levels. To drive progress and set the UK on a pathway towards this target, the Act introduced a system of carbon budgets including a target that the annual equivalent of the carbon budget for the period including 2020 is at least 34% lower than 1990.

The Climate Change Act 2008 also requires the government:

- to assess regularly the risks to the UK of the current and predicted impact of climate change;
- to set out its climate change adaptation objectives; and
- to set out its proposals and policies for meeting these objectives.

These requirements are fulfilled by the UK climate change risk assessment and the National adaptation programme report respectively, which may provide helpful information for plan-making.

Paragraph: 002 Reference ID: 6-002-20140306

How can the challenges of climate change be addressed through the Local Plan?

There are **many opportunities** to integrate climate change mitigation and adaptation objectives into the Local Plan. Sustainability appraisal can be used to help shape appropriate strategies in line with the statutory duty on climate change and ambition in the Climate Change Act 2008.

Examples of mitigating climate change by reducing emissions:

- Reducing the need to travel and providing for sustainable transport
- Providing opportunities for renewable and low carbon energy technologies
- Providing opportunities for decentralised energy and heating
- Promoting low carbon design approaches to reduce energy consumption in buildings, such as passive solar design

Examples of adapting to a changing climate:

- Considering future climate risks when allocating development sites to ensure risks are understood over the development’s lifetime
- Considering the impact of and promoting design responses to flood risk and coastal change for the lifetime of the development
- Considering availability of water and water infrastructure for the lifetime of the development and design responses to promote water efficiency and protect water quality
- Promoting adaptation approaches in design policies for developments and the public realm

Engaging with appropriate partners, including utility providers, communities, health authorities, regulators and emergency planners, statutory environmental bodies, Local Nature Partnerships, Local Resilience Forums, and climate change partnerships will help to identify relevant local approaches.

Paragraph: 003 Reference ID: 6-003-20140612

National Design Guide:

The National Design Guide forms part of the Government's collection of planning practice guidance and was formally published in January 2021 and sets out the framework for how well-designed places that are beautiful, healthy, greener, enduring and successful can be achieved in practice.

The guide is broken down into 10 characteristics with subheadings for specific pieces of guidance. Under the 'Resources' characteristic, the first topic is R1 *Follow the energy hierarchy*. Paragraphs 138-142 state:

138 Well-designed places and buildings follow the energy hierarchy of:

- ***reducing the need for energy*** through passive measures including form, orientation and fabric;
- ***using energy efficient mechanical and electrical systems***, including heat pumps, heat recovery and LED lights; and
- ***maximising renewable energy*** especially through decentralised sources, including on-site generation and community-led initiatives.

*139 They **maximise the contributions of natural resources** such as sun, ground, wind, and vegetation.*

*140 They **make use of potential for renewable energy** infrastructures at **neighbourhood and building** level. These include photovoltaic arrays, heat pumps and district heating systems, to reduce demand for nonsustainable energy sources. IT advances and app-based solutions allow users to take ownership or to manage these systems so as to use them most efficiently.*

*141 They follow the principles of **whole life carbon assessment** and the circular economy, reducing embodied carbon and waste and maximising reuse and recycling.*

*142 **Good developments minimise the cost of running buildings** and are **easy and affordable for occupants** to use and manage.*

Legislation:

Planning and Compulsory Purchase Act 2004:

Section 182 of the Planning Act 2008 inserted section 19 (1A) in the Planning and Compulsory Purchase Act 2004:

182 Development plan documents: climate change policies

In section 19 of PCPA 2004 (preparation of local development documents) after subsection (1) insert—

*“(1A) 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.**”*

Planning and Energy Act 2008:

Section 1 of the Planning and Energy Act 2008 makes provision for local planning authorities to impose reasonable requirements for complying with energy efficiency standards that exceed the requirements of the building regulations.

1 *Energy policies*

*(1) A local planning authority in England **may in their development plan documents**, [F1a [F2 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.

Climate Change Act 2008:

The Climate Change Act does not make specific provisions for plan-making but it sets the national net zero goal by 2050 in law.

Net Zero Strategy: Building Back Greener

In paragraphs 24 and 25 on page 50 it makes it clear that there are goals for the government to deliver (amongst other things) *“Better insulated homes will reduce energy consumption and lower bills, alongside health benefits”* and *“Opportunities to tackle mitigation and adaptation together, and bring wider benefits.”* It also directly states that *“We know central government cannot and should not deliver these benefits by acting alone. We want to work in partnership with people and communities across the country. To do so, we will **empower local leaders to kickstart their own net zero initiatives**, taking responsibility for improving their areas and shaping their own futures.”*

In paragraph 10 of chapter 4 on page 263 it goes onto state that “We [central government] want to continue to **empower our local leaders to take the actions** which will lead to the biggest gains in emissions reduction, including the potential opportunities in building back greener and meeting our ambitions to level up the country.”

Paragraph 31 not only reaffirms the government’s existing position that ‘reducing carbon emissions should be considered in planning matters, but that its own Framework is in need of an update to match its wider (legal and policy) commitments:

‘National planning policies already recognise the importance of sustainable development and make clear that reducing carbon emissions should be considered in planning and decision making. The National Model Design Code provides tools and guidance for local planning authorities to help ensure developments respond to the impacts of climate change, are energy efficient, embed circular economy principles, and reduce carbon emissions. The government is considering how the planning system can further support our commitment to reaching net zero. We will make sure that the reformed planning system supports our efforts to combat climate change and help bring greenhouse gas emissions to net zero by 2050. For example, as part of our programme of planning reform we intend to review the National Planning Policy Framework to make sure it contributes to climate change mitigation and adaptation as fully as possible.’