

Local Plan Climate Change and Nature Recovery Chapter: Update on Progress

Committee: Finance and Assets Committee

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1.0 ISSUE

1.1. To consider the latest Government announcements on plan making and climate change, and consequently determine how to progress preparation of a Climate Change and Nature Recovery Chapter of a future Local Plan.

2.0 RECOMMENDATION(S)

2.1. Members are requested to:

- i) Agree to delay consultation on a draft Climate Change and Nature Recovery Chapter of a future Local Plan until greater clarity emerges on Government expectations for climate policies intended to be included in such a chapter; and
- ii) Reaffirm the intention to progress drafting of such a chapter in line with that agreed at the November 2023 Committee meeting, subject to (a) the outcome of any clarity arising from Recommendation i); and (b) the addition of water as a substantive additional theme for inclusion in the chapter.

3.0 BACKGROUND/OPTIONS

3.1. On 23 November 2023, this Committee approved a skeleton outline for a new Local Plan chapter entitled 'Climate Change and Nature Recovery'.

3.2. The Committee also requested that a worked-up draft Chapter be brought back to this Committee for the purpose of agreeing it for public consultation.

3.3. However, post the 23 November 2023 meeting, significant Government announcements have been made which requires a reconsideration of how we should proceed. A brief summary of these matters are as follows:

Written Ministerial Statement (WMS) "Planning – Local Energy Efficiency Standards Update" - 13 December 2023

3.4. Before highlighting the content of this WMS, it is worth remembering that a WMS, once made, is deemed as being 'national policy' in the same way that the National Planning Policy Framework (NPPF) is. However, unlike the NPPF, WMSs are often published without previous warning, so can land in local planning authorities as somewhat a surprise, yet something which must be immediately adhered to. This was the case for this particular WMS, which was released on the same day

as the *Future Homes and Buildings Standards 2023 Consultation* (see second announcement below for details of this).

- 3.5. The WMS explains that it supersedes part of an earlier 2015 WMS, which itself had established energy efficiency requirements and standards for Local Plans, albeit that WMS was widely regarded as being out of date already (though technically a WMS has no end date unless it is officially withdrawn).
- 3.6. This new December 2023 WMS places some very clear expectations on what a local planning authority can do in a Local Plan on the matter of policies relating to climate change and energy efficiency standards, and some very clear expectations on what Planning Inspectors must do when independently examining such Local Plans prior to their adoption.
- 3.7. First, the WMS states that *“the Government does not expect plan-makers to set local energy efficiency standards for buildings that go beyond current or planned buildings regulations.”*
- 3.8. Second, should a local planning authority still attempt to set such standards, then:
“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:
 - *That development remains viable, and the impact on housing supply and affordability is considered in accordance with the National Planning Policy Framework.*
 - *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).”*
- 3.9. Third, should a local planning authority pass all of the above, then:
“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.”
- 3.10. A reasonable interpretation or practical summary of the above is, therefore, perhaps as follows: Government does not want East Cambridgeshire District Council to set planning policies on energy efficiency and on-site renewable energy in the way this Committee expressed its desire to do so in November; but if this Council wants to persist with preparing and hopefully adopting such policies, then the scope for those policies is now very narrow; and thereafter, the policies, if adopted, should be used ‘flexibly’.
- 3.11. Members need to reflect on the above. Taken at face value, there is now considerable risk that any planning policy seeking an uplift to energy efficiency standards or seeking on-site renewables (such as solar panels on roofs) would not pass independent examination (i.e. it would be found ‘unsound’). In addition, even

if it did pass examination, it would have to be applied ‘flexibly’, and there is considerable risk that developers will simply claim ‘supply chain issues’ meaning the policy would effectively become null and void.

- 3.12. However, on the other hand, we are aware of a significant possibility of a legal challenge to the WMS, on the basis that it goes beyond the 2008 Planning Act (which itself explicitly says a Local Plan can go beyond building regulations).
- 3.13. In short, there is considerable uncertainty as to what a Local Plan can now do; or could attempt to do; or how Inspectors will react to proposals. And we must bear in mind that preparing such policies will come at a financial cost, both officer time and specialist consultants evidence support.

Future Homes and Future Buildings Consultation

- 3.14. Also on 13 December 2023, the Government launched *The Future Homes and Buildings Standards: 2023 consultation*. This lengthy document aimed primarily at the Building Control industry, ‘sets out our plans for achieving the Future Homes Standard and Future Buildings Standard. It sets out technical proposals for changes to the Building Regulations’ in relation to the energy efficiency and carbon emissions of new homes and non-domestic buildings.
- 3.15. The consultation closed on 6 March 2024, so of course it is unknown exactly what changes to Building Regulations will come into effect as a consequence. The Government has committed to bringing the final standards into force “from 2025”.
- 3.16. Nevertheless, what is clear is that none of the options consulted upon in the document would extend current building regulations much further than they are today. Indeed, some of the options, if taken forward, will result in higher energy bills for home owners than the present Building Regulations they are to replace, and would not require, for example, solar panels on roofs.

Successful legal challenge against the Secretary of State

- 3.17. To add further uncertainty, on 20 February 2024 an important judgement was handed down by Mrs Justice Lieven in the High Court ([2024] EWHC 359 (Admin)). The case involved a legal challenge by a local campaign group in Oxfordshire against Planning Inspectors in Oxfordshire working on behalf of the Secretary of State. In simple terms, the Planning Inspectors said that West Oxfordshire District Council’s emerging Local Plan was ‘unsound’ because the high energy efficiency standards required by the Plan were not in accordance with national policy. The judge determined that the Inspectors ‘erred in law’ and allowed the challenge. In effect, this judgement seems to suggest that Local Plans are free to set high energy efficiency standards as matter of principle; but the judgement did not stipulate as to what or how far such policies should go.

Net outcome

- 3.18. Members need to balance their already agreed (November 2023) position which was to progress with preparing a progressive Local Plan chapter with high energy efficiency requirements in, with the uncertainty described above, together with the resource implications of continuing to progress despite the increased risks now apparent. Members could decide:

- (i) To press on as per November decision regardless of the above, accepting the risk and uncertainty; or
- (ii) Pause or slow down work (and costs) on preparatory work and consultation, until the picture becomes clearer what our reasonable options are; or
- (iii) Abandon progressing energy efficiency related proposals, at least for the time being (12 months), and reconsider at the point we commence preparation of a new Local Plan as a whole.

3.19. Option (ii) is recommended by officers.

3.20. However, the proposed Chapter is not intended to be one solely about climate change and energy efficiency measures. Members also agreed that the Chapter should include progressive policies relating to nature recovery. Officers see no reason to alter that position, and, indeed, it is pleasing to note that mandatory Biodiversity Net Gain has now commenced, and we are pleased to report that we have successfully, so far, put in place arrangements to deal with the wide-ranging new duties arising.

3.21. Separately, and considerably linked to the issue of climate change and nature recovery, is the matter of water. Cambridgeshire is perhaps uniquely at the forefront of this challenging infrastructure issue, with a severe supply issue starting to prevent growth happening (especially in the Cambridge area, but with reasonable prospects of this spreading further), combined with the ever-increasing threat of increased flooding due to a changing climate (warm, wet winters, with February 2024 being the wettest on record for our region, on top of an already wet winter) and sea level rises (we are on track for at least a 1m increase in the next 70 years, which could have severe consequences for the low-lying land of East Cambridgeshire).

3.22. Whilst tackling this issue will have to be wide ranging, the planning system can play a very important role, whether it be conserving/reducing water use in new built development, storing excess water (e.g. in reservoirs or domestic water butts) or putting in place flood prevention measures.

3.23. Officers have commenced dialogue with peers across Cambridgeshire and with the Environment Agency and Anglian Water/Cambridge Water, to try to establish a shared understanding and evidence base of the issues and the practical town planning solutions which need to be implemented. Part of this package includes attempting to establish template water related policies for our respective Local Plans, so we are all consistent in our approach.

3.24. Members are therefore recommended to agree that, as part of the emerging chapter, the issue of water is also given greater attention and prominence.

General Update on Local Plan preparation

3.25. As a reminder, the Government has, for the past four years, been putting in place a new legislative framework for plan-making. Primary legislation is now complete (The Levelling-Up and Regeneration Act 2023), but the secondary legislation (and supporting guidance) is not yet in place. It therefore remains uncertain when a local planning authority can commence a new style Local Plan, though at the earliest this will be late 2024. It will be for Full Council to decide when we should commence such a full Local Plan update.

4.0 ARGUMENTS/CONCLUSION(S)

- 4.1. Since November, there has been considerable uncertainty on the scope (if any) for Local Plan policies relating to climate change.
- 4.2. On the basis that the Council has not yet fully commenced a new Local Plan, and instead was only doing early preparatory work on a potential climate and nature recovery chapter, it is recommended that a slight pause or slow down in such preparatory work is agreed, until greater clarity becomes available. This does not prevent the Council from proposing such policies as and when we get to the formal start of preparing a new Local Plan.

5.0 FINANCIAL IMPLICATIONS / EQUALITY IMPACT STATEMENT / CARBON IMPACT ASSESSMENT

- 5.1. There are no financial implications.
- 5.2. Equality Impact Assessment (EIA) not required.
- 5.3. Carbon Impact Assessment (CIA) not required.

Background Documents:

Written Ministerial Statement: Planning - Local Energy Efficiency Standards Update
<https://questions-statements.parliament.uk/written-statements/detail/2023-12-13/hcws123>

The Future Homes and Buildings Standards: 2023 consultation
<https://www.gov.uk/government/consultations/the-future-homes-and-buildings-standards-2023-consultation/the-future-homes-and-buildings-standards-2023-consultation>

Levelling-Up and Regeneration Act
<https://www.legislation.gov.uk/ukpga/2023/55/enacted>