

IN THE MATTERS OF THE PLANNING AND COMPULSORY PURCHASE ACT 2004 AND THE PLANNING AND ENERGY ACT 2008

Re: Ability of local planning authorities to mandate higher building fabric standards than current and proposed Building Regulations on new developments, prior to the adoption of formal local plan policy

OPEN ADVICE

INTRODUCTION

1. I am asked to advise Essex County Council (“**the County Council**”) and the Essex Climate Action Commission (“**ECAC**”) on the ability of local planning authorities (“**LPAs**”) to mandate higher building fabric standards for new development which exceed those in Part L of the Building Regulations 2023 (“**Building Regulations**”),¹ prior to the adoption of local plan policies making such provision. Such standards include higher energy efficiency requirements than those required in Building Regulations.
2. In particular I am invited to consider:
 - a. whether anything in existing national legislation or policy provides a sufficiently robust legal justification for LPAs seeking to mandate such standards;
 - b. what weight might be attributable to non-statutory local policy statements, draft policies, or supplementary planning documents (“**SPDs**”);
 - c. whether existing design policies in local plans could be used by LPAs to require development to be net zero if design guidance were to set out that net zero-compatible fabric performance standards are an essential component of good design.

¹ Conservation of fuel and power: Approved Document L, March 2014, updated February 2023, <https://www.gov.uk/government/publications/conservation-of-fuel-and-power-approved-document-l>.

3. For the reasons set out in detail below:
 - 3.1 While there is no single, explicit, “hook” within national legislation or policy on which LPAs can rely when seeking to mandate higher building fabric standards than Building Regulations, a number of things taken together form a strong foundation for doing so, including section 19 of the Planning and Compulsory Purchase Act 2004, the National Planning Policy Framework 2024 (“**NPPF 2024**”) paragraphs 161-164, 166 and footnote 61 (which include explicit reference to the objectives and provisions of the Climate Change Act 2008) and paragraph 1 of the Climate Change Planning Practice Guidance;
 - 3.2 In any event, climate change mitigation and adaptation are mandatory material considerations in planning decision-making, and not only at the plan-making stage. This was the position in case law and has been brought into national policy in paragraph 163 of the NPPF 2024. Therefore, LPAs must consider the climate impacts of their planning decisions, although they are not legally required to ascribe any particular weight to them. This supports Essex LPAs updating their Local Information Lists to require information relevant to climate change to be submitted with planning applications. It also supports Essex LPAs acting to address climate change as a mandatory material consideration in policy;
 - 3.3 Draft development plan policies may be given weight in planning decision-making, provided the decision maker has regard to all three limbs of the test in paragraph 48 of the National Planning Policy Framework (“**NPPF**”) 2023: the more advanced the emerging plan’s preparation, the greater the weight that may be given; the less significant the unresolved objections, the greater the weight that may be given; the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given;
 - 3.4 Nothing in recent government policy or recent case law prevents LPAs from including policies requiring fabric standards and local energy efficiency greater than Building Regulations in either their DPDs or in SPDs, so long as there is a robust evidence base for such policies;

- 3.5 Climate change, and policies concerning fabric standards and local energy efficiency, can be included in SPDs. In light of the case law on what should properly be considered to be development plan documents (“**DPDs**”) rather than SPDs, there is scope for the use of SPDs giving strong encouragement for higher fabric standards in various specific circumstances. There would need to be a clear link with existing local plan policies or, if the plan is very out of date, then clear evidence that any emerging policy made as an SPD were not intended to subvert the development plan process. SPDs should avoid introducing new mandatory planning considerations (unless the mandatory parts effectively relate to a design guide or code). I give advice on wording that has been found to be lawful when used in SPDs.
- 3.6 SPDS that consist of design guides and design codes with an environmental emphasis can lawfully impose requirements relevant to the determination of planning applications. On design guides, the inclusion of net zero carbon development guides within the Essex Design Guide is a robust approach and could be used to ratchet up requirements for high fabric standards. Fifty per-cent of the LPAs in Essex require regard to be had to this Guide in their local plans, so updating it would have immediate effect. On design codes, which can be development-specific or area-wide, there is a lot of opportunity, following the principles of the National Model Design Code, for such codes to be prescriptive about fabric standards and energy efficiency requirements, while still allowing sufficient flexibility to be widely applicable across areas or districts. An example is provided by the Uttlesford District Council Area-Wide Design Code, which imposes robust energy hierarchy requirements and gives strong guidance on space heating. The County Council could produce a model design code to support the adoption by Essex LPAs of such design codes.
- 3.7 ECAC and the County Council can play an important leadership and facilitation role regarding the adoption by LPAs in Essex of zero carbon development policies in their local plans, in particular by supporting LPAs to develop a robust evidence base on viability and technical feasibility. The County Council has developed a model net zero carbon development policy, which is robustly supported by evidence and can thus be adopted by Essex LPAs.

REASONS

4. This opinion has the following structure:

BACKGROUND.....	5
Statutory Obligation to Reach Net Zero by 2050.....	5
Progress Towards the Net Zero Obligation and the Impact of Buildings.....	6
DISCUSSION	9
Legislative and Policy Basis for Local Plan Policies.....	9
The Climate Change and Sustainability Hooks	9
The NPPF, Climate Change and Energy Efficiency Policies	13
The 2023 WMS.....	15
Climate Change as a Material Consideration.....	17
Case Law Confirming Climate Change as an Obviously Material Planning Consideration....	18
The Essex Model Net Zero Carbon Homes and Buildings Policy	23
Draft Policies as a Material Consideration	24
Utilising Supplementary Planning Documents.....	26
Introduction.....	26
Limits on SPDs and Successful Legal Challenges	27
Adopted SPDs Linked to the Climate Emergency.....	32
The Colchester City Council Climate Change SPD.....	33
The Potential for Essex LPAs to Adopt SPDs.....	35
SPD to address out-of-date local plan	37
SPD to provide more detail where minima set in policy	39
Utilising Design Guides and/or Codes	42
The Essex Design Guide.....	43
Design Codes.....	44
Leadership from the County Council.....	49
CONCLUSION.....	50
APPENDIX 1 - Summary of Essex LPA Policies Relevant to Climate and Energy Efficiency and Design Policies as at December 2024.....	51

BACKGROUND

Statutory Obligation to Reach Net Zero by 2050

5. Section 1(1) of the Climate Change Act 2008 (“**CCA 2008**”), as amended by the Climate Change Act 2008 (2050 Target Amendment) Order 2019, imposes a statutory obligation to ensure that the net carbon account for the year 2050 is at least 100% lower than the 1990 baseline. The United Kingdom has also committed, via its Nationally Determined Contributions (“**NDC**”) under the Paris Agreement, to reduce emissions in 2030 by 68% compared to 1990 levels and in 2035 by 81% compared to 1990 levels.
6. Under sections 4 and 9 of the CCA 2008, the Secretary of State must set regular carbon budgets for each succeeding five-year period, taking into account advice from the Climate Change Committee (“**CCC**”), and ensure that the net UK carbon account for each budgetary period does not exceed the carbon budget.
7. There are currently three relevant carbon budgets:
 - a. The Fourth Carbon Budget, for the period 2023-2027, is set at 1,950 million tonnes carbon dioxide equivalent (“**MtCO_{2e}**”) and requires an average of a 51% reduction in emissions compared with 1990 levels.² It was set so as to be on track for the previous target of an 80% reduction in greenhouse gas emissions by 2050.
 - b. The Fifth Carbon Budget (2028-2032), set on the same basis, is 1,725 MtCO_{2e}, which requires an average of a 57% reduction.

² CO₂ equivalent emission is a common scale for comparing emissions of different greenhouse gasses, though it does not imply equivalence of the corresponding climate change responses. It is defined in Intergovernmental Panel on Climate Change (“**IPCC**”) 2018 *Special Report on Global Warming of 1.5°C* Annex 1: Glossary page 546 https://www.ipcc.ch/site/assets/uploads/sites/2/2022/06/SR15_AnnexI.pdf. The IPCC’s reports are produced through the participation of scientists from the 195 member countries, and the accompanying Summary for Policymakers is approved line-by-line by a meeting of representatives from all 195 member countries (which also adopts the longer report section by section), they are considered to reflect the international scientific consensus. The reports also use confidence levels to describe the quality of evidence and scientific agreement.

- c. The Sixth Carbon Budget (2033-2037) is aligned with net zero and sets a target of 965 MtCO_{2e}, which would equate to a 78% reduction in emissions by 2035, relative to the 1990 baseline.³
8. The Sixth Carbon Budget has clear implications for the Fourth and Fifth Carbon Budgets, which were set in line with the previous ‘at least 80% reduction’ target for 2050 rather than the revised ‘at least 100%’ target now found in Section 1 of the CCA 2008. The CCC has advised that the Fifth Carbon Budget will need to be significantly outperformed to stay on track to meet the Sixth Carbon Budget and the 2050 Net Zero target.⁴ This is reflected in the NDC targets for 2030 and 2035.
9. There is also a difference between the Sixth Carbon Budget target and the NDC target for 2035, but the CCC has advised that the two are in fact broadly aligned, taking into account revisions to the UK emissions inventory relative to the inventory used in setting the Sixth Carbon Budget level in 2021 and the fact that the Sixth Carbon Budget includes international aviation and shipping emissions, but these are excluded from the NDC.⁵

Progress Towards the Net Zero Obligation and the Impact of Buildings

10. The UK presently does not have a lawful plan under the CCA 2008 setting out the policies and proposals required to meet the carbon budgets. On 30 March 2023, the Government published its revised strategy to deliver its Net Zero obligations, after the previous Net Zero Strategy was held in July 2022 not to be lawful.⁶ A suite of 50 documents were published, including 19 policy documents. The most important of the policy documents is the Carbon Budget Delivery Plan (“**CBDP**”),⁷ which was presented to Parliament pursuant to the section 14 of the CCA 2008.

³ CCC, *The Sixth Carbon Budget – The UK’s path to Net Zero*, December 2020, <https://www.theccc.org.uk/publication/sixth-carbon-budget/>.

⁴ Ibid, pgs 24 and 430-433.

⁵ CCC Letter: Advice on the UK’s 2035 Nationally Determined Contribution (26 October 2024) <https://www.theccc.org.uk/wp-content/uploads/2024/10/Letter-Advice-on-the-UKs-2035-Nationally-Determined-Contribution-NDC.pdf>.

⁶ *R (Friends of the Earth Ltd) v Secretary of State for the Business, Energy and Industrial Strategy* [2022] EWHC 1841 (Admin); [2023] 1 WLR 225, per Holgate J.

⁷ <https://www.gov.uk/government/publications/carbon-budget-delivery-plan>.

11. On 3 May 2024, Sheldon J upheld the challenge in *R (Friends of the Earth) v SSESNZ* [2024] EWHC 995 (Admin), [2024] PTSR 1293 (“**the CBDP judgment**”), finding the CBDP is unlawful and in breach of sections 13 and 14 of the CCA 2008. He held the Secretary of State took an erroneous or unreasonable approach to risk assessment. The Secretary of State had irrationally assumed that all the planned policies and proposals in the CBDP would be delivered in full and that it was reasonable to expect that level of ambition, having regard to delivery risk and the wider context (§§119-125), despite the true factual position being that not all of the proposals and policies would be delivered in full (§§63-64 and 126). The Secretary of State had not been provided with sufficient information as to the obviously material consideration of risk to the individual policies and proposals in the CBDP (§132). Furthermore, the Secretary of State had failed properly to consider the requirement in the CCA 2008 that “*the proposals and policies, taken as a whole, must be such as to contribute to sustainable development*”. Sheldon J held at §146 that “*sustainable development*” was an “*uncontroversial concept*”, defined in *R (Spurrier) v Secretary of State for Transport* [2019] EWHC 1070 (Admin) at §635 “meeting the needs of the present without compromising the ability of future generations to meet their own needs.” A lawful set of policies and proposals must be produced by May 2025.
12. On 29 October 2024, it was announced that the Government had conceded another legal challenge to the lawfulness of the CBDP, on the basis that the abandonment of various policies in September 2023 failed to meet its obligations under section 13 of the CCA 2008 and that the information available to it was insufficient to conclude that its plan, including a 10% shortfall in quantified emissions savings, would enable the carbon budgets to be met.⁸
13. The most recent CCC Progress Report to Parliament (July 2024)⁹ recorded that the UK is not on track to hit its first net-zero aligned target – the 2030 NDC – despite emissions reductions in 2023. The CCC’s assessment was that credible plans cover

⁸ <https://www.leighday.co.uk/news/news/2024-news/government-concedes-abandonment-of-green-policies-was-unlawful-following-legal-challenges-by-chris-packham/>.

⁹ CCC, *Progress in reducing emissions 2024 Report to Parliament*, July 2024, <https://www.theccc.org.uk/publication/progress-in-reducing-emissions-2024-report-to-parliament/#publication-downloads>.

only a third of the emissions reductions required to achieve the 2030 target and only a quarter of those needed to meet the Sixth Carbon Budget.¹⁰ In particular, the CCC found that missing or incomplete policies included those on energy efficiency in buildings.¹¹

14. Emissions reductions from buildings (from a 2008 baseline) are smaller than the CCC has predicted.¹² The CCC specifically highlighted that the “*spatial planning system continues to cause issues for delivering Net Zero*”.¹³ While the CCC praised some improved clarity in the December 2023 National Planning Policy Framework (“**NPPF**”), on the weight local planning authorities should give to energy efficiency and low-carbon heating in existing buildings and on low-carbon energy infrastructure, it raised concerns over the 2023 Written Ministerial Statement on local energy efficiency standards (see §36ff below), which it said would be “*likely to cause further confusion and delays around adopting local NetZero policies, which is a setback.*”¹⁴

15. The CCC emphasised the need for rapid action:

“Outside the electricity supply sector, the average annual rate of reduction over the previous seven years was only 6.3 MtCO_{2e}/year (1.6%). This will need to more than double to 14.3 MtCO_{2e}/year (4.6%) over the next seven years if the UK is to meet its 2030 target. This will require substantial increases in the rates of reduction in most sectors outside of electricity supply. ... In industry and buildings, trends over the previous seven years were not sufficient and the recent reductions were mostly not the result of sustained decarbonisation action. These trends will need to speed up, enabled by programmes to roll out low-carbon technologies.”¹⁵

¹⁰ Ibid, pg 70.

¹¹ Ibid, pg 71.

¹² Ibid, pg 36.

¹³ Ibid, pg 81.

¹⁴ Ibid, pg 81.

¹⁵ <https://www.theccc.org.uk/publication/progress-in-reducing-emissions-2024-report-to-parliament/#publication-downloads>

DISCUSSION

Legislative and Policy Basis for Local Plan Policies

16. As things presently stand in planning law and policy, there is no single explicit “hook” on which LPAs can rely when seeking to put in place policies that mandate higher building fabric standards than Building Regulations. However, it is implicit in paragraphs 161-164 and 166 of the NPPF 2024 that authorities have the power to put in place local policies that guide the expectations on new developments to minimise energy consumption. Furthermore, given the link between such policies and addressing climate change and sustainability, there are a number of legislative provisions and national policies which, taken together form a strong foundation for such local policies.

The Climate Change and Sustainability Hooks

17. It is indisputable that climate change is a mandatory material consideration at the plan-making stage. Its materiality is confirmed by section 19(1A) of the PCPA 2004, which provides that “*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*”.
18. Paragraph 7 of the NPPF 2024 links the purpose of the planning system (including planning policy) to sustainable development, summarised at “*a very high level*” as “*meeting the needs of the present without compromising the ability of future generations to meet their own needs*” (see also the case law at §10 above). Paragraph 7 of the NPPF also refers directly to the “*members of the United Nations – including the United Kingdom – hav[ing] agreed to pursue the 17 Global Goals for Sustainable Development in the period to 2030.*” These include goals related to climate change. Accordingly, at a high level, policies that mandate higher building fabric standards or energy efficiency standards are supported by the NPPF.
19. The NPPF 2024 also recognises that the duties under the CCA 2008 are relevant to planning for climate change. Paragraph 162 has been a stable feature of the NPPF

since 2012¹⁶ and provides that plans should “*take a proactive approach to mitigating and adapting to climate change*” (emphasis added). Footnote 61 makes clear this must be “*in line with the objectives and provisions of the Climate Change Act 2008*”.¹⁷ Policies “*should support appropriate measures to ensure the future resilience of communities and infrastructure to climate change impacts*”. Energy efficiency policies clearly fall within the proactive approach to mitigation and making communities and infrastructure more resilient to climate change.

20. Paragraph 164 provides that:

“New development should be planned for in ways that:

- a) avoid increased vulnerability to the range of impacts arising from climate change. When new development is brought forward in areas which are vulnerable, care should be taken to ensure that risks can be managed through suitable adaptation measures, including through incorporating green infrastructure and sustainable drainage solutions; and*
- b) can help to reduce greenhouse gas emissions, such as through its location, orientation and design. Any local requirements for the sustainability of buildings in plans should reflect the Government’s policy for national technical standards.”*¹⁸ (emphasis added).

21. This is arguably even more strongly stated in the National Planning Policy Guidance (“PPG”) on Climate Change,¹⁹ which provides:

¹⁶ Paragraph 158 of the December 2023 NPPF, which was unchanged from the September 2023, July 2021, February 2019 and March 2012 versions of the NPPF (in which it was paragraph 153). Two amendments were made in December 2024: (1) drought was been added to the list of matters which must explicitly be taken into account; and (2) Importantly, the link is made between health and climate change by requiring policies to support “appropriate measures to ensure future health and resilience of communities...to climate change” (added words underlined).

¹⁷ This is also reflected in the paragraph 1 of the Planning Practice Guidance: Climate Change (ID 6-001-20140306) <https://www.gov.uk/guidance/climate-change>. The PPG on Climate Change is addressed further at §§21-23 and 53 below.

¹⁸ As already set out in my previous Advice, setting local energy performance requirements which exceed the national baseline in the Building Regulations does not bring local plan policies into conflict with national planning policy.

¹⁹ Some parts of the PPG have not been updated since they were promulgated in 2014, meaning that they refer to the previous 80% reduction target in the CCA 2008. Those paragraphs should be read to refer to the net zero obligation.

“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.” (Ref ID: 6-001-20140306)

22. The High Court clarified in *Mead Realisations Ltd v SSLUHC* [2024] PTSR 1093, [2024] EWHC 279 (Admin) (“**Mead Realisations**”) at §§51-71 that the PPG has the same force as the NPPF and Written Ministerial Statements (“**WMSs**”).
23. During the 2022 consultation on amendment of the NPPF, the then Department for Levelling-Up, Housing and Communities indicated that the direction of travel of future reform recognises that planning “*can make an important contribution to...the vitally important task of mitigating and adapting to climate change*”.²⁰ The consultation also recognised the importance of work by LPAs who are frontrunners by innovating and leading the way in addressing climate change through planning.²¹
24. This chimes with the advice of the CCC. Alongside the Sixth Carbon Budget advice, the CCC released a new supplementary report looking at the role of local authorities in delivering net zero.²² This set out that the more than half of the emissions cuts needed to achieve the Sixth Carbon Budget depend on decisions

²⁰ Consultation, Levelling Up and Regeneration Bill: reforms to national planning policy (22 December 2022), <https://www.gov.uk/government/consultations/levelling-up-and-regeneration-bill-reforms-to-national-planning-policy>. The consultation document indicated that future reform would explore how planning measures can do more to measure and reduce emissions in the built environment (Chapter 2 §5), including delivering significant reductions in operational carbon emissions from the built environment (Chapter 7 §12), but that has not materialised.

²¹ Ibid, Chapter 7 §4.

²² “*Local Authorities and the Sixth Carbon Budget*” (December 2020) <https://www.theccc.org.uk/publication/local-authorities-and-the-sixth-carbon-budget/>.

made at a local and individual level and that planning powers are part of the key levers available to local authorities to assist with the delivery of net zero.²³

25. The CCC recognised that the onus is on local authorities to work out their own course, based on the various policies and communications from government. While the CCC made clear that it would be optimal for the government to play a co-ordinating role, it also emphasised that local authorities, including LPAs, can no longer sit back and wait for this to materialise. The decisions taken now by LPAs will remain in place during the 2020s and beyond, so regional and local co-operation is crucial to facilitate LPAs taking the actions needed to transform whole places towards Net Zero. The CCC is explicit:

“Where local authorities are putting in place ambitious and well-evidenced plans and are delivering low and net zero carbon developments and transport services, they should be allowed to go ahead of national standards.”

26. In July 2024, a further consultation on updating the NPPF was launched (“**the July 2024 consultation**”). Although this did not propose substantive changes to Chapter 14 on climate change, the Government did solicit views on “*deliverable ways*” in which national planning policy could do more to address climate change mitigation and adaptation. A large number of substantive responses were received, which included “*support for local plans to adopt more ambitious climate targets, including higher energy efficiency standards than in the building regulations*”.²⁴

27. As a result, the Government made immediate changes to the NPPF, adding “*a specific new paragraph to make clear that climate change is an important consideration in decision-making as well as plan-making.*” The Government’s

²³ It is notable, however, that the CCC was concerned that LPAs’ ‘competing’ planning obligations in the NPPF militated against the introduction of policies requiring the delivery of low-carbon and energy efficient developments (pg 10).

²⁴ <https://www.gov.uk/government/consultations/proposed-reforms-to-the-national-planning-policy-framework-and-other-changes-to-the-planning-system/outcome/government-response-to-the-proposed-reforms-to-the-national-planning-policy-framework-and-other-changes-to-the-planning-system-consultation>

response to the consultation also referred to the intention to bring forward future standards which would “*set our new homes and buildings on a path that moves away from relying on volatile fossil fuels and ensures they are fit for a net zero future.*”

28. New paragraph 163 provides:

“The need to mitigate and adapt to climate change should also be considered in preparing and assessing planning applications, taking into account the full range of potential climate change impacts.”

29. As set out below at §§45-52, this builds on the position which has been clarified in case law: that climate change is a mandatory material consideration in decision-taking. That being the case, LPAs must have the power to put in place policies to help to guide such decision-making.

The NPPF, Climate Change and Energy Efficiency Policies

30. Paragraph 161 of the NPPF 2024 now explicitly refers to the transition “*to net zero by 2050*” – the first time the NPPF has done so. It requires the “*planning system*” – ie both plan making and decision-taking – to “*support*” that transition, and adds to the requirements of which “*full account*” need to be taken, now referring to “*all climate impacts*” and adding overheating, water scarcity and storm risk to the existing flood risk and coastal change. This bolsters the basis for local plans to take full account of, and provide for, energy efficiency measures and high fabric standards.

31. Paragraph 166 of the NPPF 2024 indicates that the energy consumption of new development ought to be taken into consideration at the decision-taking stage. It provides that:

*“In determining planning applications, **local planning authorities should expect new development** to:*

a) comply with any development plan policies on local requirements for decentralised energy supply unless it can be demonstrated by the

applicant, having regard to the type of development involved and its design, that this is not feasible or viable; and

*b) take account of landform, layout, building orientation, massing and landscaping **to minimise energy consumption.*** (emphasis added).

32. It is arguably implicit in paragraph 166(b) that authorities have the power to put in place local policies to guide the expectation that new developments will minimise energy consumption. These policies could impose higher building fabric or energy efficiency standards than Building Regulations standards.
33. As a result of the 2022 NPPF reforms, the NPPF 2023 included paragraph 164, which requires LPA, in determining planning applications, “*to give significant weight to the need to support energy efficiency and low carbon heating improvements to existing buildings, both domestic and non-domestic*”. It is notable that in the consultation response on the draft version of this policy, the support for the policy was overwhelming,²⁵ In its response to the consultation and its explanation for updating the NPPF 2023, the Government also linked this policy directly to its commitment to climate change mitigation and adaptation.
34. Former paragraph 164 was amended in December 2024 by removing the qualifier “*In determining planning applications*”, meaning that the requirement to give significant weight to the need to support energy efficiency and low carbon heating improvements to existing buildings in paragraph 167 of the NPPF 2024 is directly relevant to both plan making and decision taking. Accordingly, this supports planning policies that support energy efficiency in, and low carbon heating improvements to, existing buildings.
35. Paragraph 163 of the NPPF 2024 requires the need to mitigate and adapt to climate change to be considered “*in preparing and assessing planning applications,*

²⁵ A total of 1,084 respondents answered yes/no/indifferent to this question. Of those, 878 (81%) agreed with the proposal, 57 (5%) did not agree and 149 (14%) were indifferent: see <https://www.gov.uk/government/consultations/levelling-up-and-regeneration-bill-reforms-to-national-planning-policy/outcome/government-response-to-the-levelling-up-and-regeneration-bill-reforms-to-national-planning-policy-consultation>.

taking into account the full range of potential climate change impacts.” The use of the phrase “*preparing and assessing*” makes clear that, in the first instance, those bringing forward planning applications are required to provide information and evidence concerning the climate impacts of the proposed development and measures taken to adapt to climate change. This is considered further below, but reference to “*the full range of potential climate impacts*” means that such information and evidence would include energy efficiency measures, such as space heating demand, energy use intensity and renewable energy generation. The paragraph 163 obligation then shifts to local planning authorities to take this information into account in their decision-making, against the background of the need to support the transition to net zero by 2050 and to shape places in ways that contribute to radical reductions in greenhouse gas emissions (paragraph 161).

The 2023 WMS

36. As those instructing me are well aware, some confusion has been caused in this area by the making by the previous government of the Written Ministerial Statement titled “Planning – Local Energy Efficiency Standards Update” (13 December 2023) (“**the 2023 WMS**”) and the judgment in *R (Rights Community Action) v SSLUHC* [2024] EWHC 1693 (Admin) (“**the RCA judgment**”), which rejected the contention that the 2023 WMS unlawfully reduced LPAs’ powers to bring forward policies requiring energy efficiency standards higher than those required by Building Regulations.²⁶ This is the subject of a separate updated version of advice I provided to the County Council and ECAC on Energy Policy and Building Regulations.²⁷
37. In short, neither section 1(2) of the Planning and Energy Act 2008 (“**PEA 2008**”) nor the 2023 WMS prevents local planning authorities from bringing forward policies requiring higher fabric standards than Building Regulations which, for example, focus on achieving absolute energy use targets, banning the use of gas boilers in new buildings, and utilising predictive energy modelling to ensure that

²⁶ On 12 November 2024, the Court of Appeal granted permission to appeal this decision.

²⁷ Available at <https://www.essexdesignguide.co.uk/climate-change/essex-net-zero-evidence/essex-open-legal-advice-energy-policy-and-building-regulations/>.

buildings meet Net Zero Carbon standards in operation. Nor do they prevent Inspectors from finding such policies to be sound.

38. The PEA 2008 confirms one way in which local planning authorities' pre-existing powers could be exercised. The PEA 2008 does not, however, foreclose other legislative routes by which different or more ambitious powers might be given to local planning authorities, which are supported by the more general power flowing from the duty in section 19(1A) of the PCPA.
39. The 2023 WMS does not prevent local plan policies requiring higher fabric standards than Building Regulations from being brought forward by local planning authorities or being found to be sound in examination. The *RCA* judgment rejected the contention that the 2023 WMS emasculated or was incompatible with the powers in section 19 of the PCPA. It is certainly correct that the 2023 WMS does not constrain or delimit the extent of the duty in section 19(1A).
40. As a matter of general principle, WMSs do not displace the primacy given to statutory duties placed on LPAs and that the weight to be given to conflict or compliance with a WMS "*is a matter of judgment for the decision-maker, a decision with which the court may only intervene on public law grounds*": *Mead Realisations* at §§59-60. WMSs are material considerations and decision-makers (including Examining Inspectors assessing local plans) may give material considerations little or no weight, provided they do so rationally: *Tesco Stores Ltd v SSE* [1995] 1 WLR 759 (HL) at 780F-H.
41. So long as there is a robust evidence base – a reasoned and robustly costed rationale – both DPDs and SPDs can require higher fabric and/or energy efficiency standards than those set in Building Regulations. On DPDs, it is open to examining inspectors, in the exercise of their planning judgment, to determine that such policies are consistent with national policy on climate change mitigation and the net zero obligation, and, to the extent that there would be deviation from the 2023 WMS, that can be justified on the evidence and does not prevent overall consistency of the proposed local plan with national policy (particularly as

national policy can pull in different directions). The same approach can be taken by LPAs in relation to SPDs.

Climate Change as a Material Consideration

42. Section 38(6) of the Planning and Compulsory Purchase Act (“PCPA”) 2004 provides that *“If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”*
43. The range of considerations which are capable of being material is very wide, and it is normally a matter for the decision-maker to determine whether and to what extent to take a potentially relevant factor into account: *In re Findlay* [1985] AC 318 at 323. However, some material considerations are made mandatory either by statute or because they are *“so obviously material”* that a failure to have regard to them would render the decision unlawful: *In re Findlay* at 334; *R (Samuel Smith Old Brewery (Tadcaster) & Others) v North Yorkshire County Council* [2020] UKSC 3, [2020] PTSR 221 at §§31–32). In *R (Friends of the Earth) v Heathrow Airport Ltd* [2020] UKSC 52; [2021] PTSR 190, the Supreme Court confirmed that the test for whether a consideration is so *“obviously material”* is whether a failure to give direct consideration to it would not accord with the intention of the legislation and would be irrational (§§118–119).
44. As is well known, *Tesco Stores v Secretary of State for the Environment* [1995] 1 WLR 759 drew a distinction between the concepts of materiality and weight. Lord Hoffman held (at 780 F–G) that *“the question of whether something is a material consideration ... is a question of law”*, while the weight attached to a material consideration is a question of *“planning judgment, which is entirely a matter for the planning authority”*. Provided the LPA *“has regard to all material considerations, it is at liberty (provided that it does not lapse into Wednesbury unreasonableness) to give them whatever weight the planning authority thinks”* fit.

Case Law Confirming Climate Change as an Obviously Material Planning Consideration

45. A clear line of case law now strongly suggests that climate change mitigation and adaptation are mandatory material considerations at the decision taking stage because they are so obviously material to the grant of planning permission for housing (in particular for large developments) that a failure to give direct consideration to the climate change impacts would not accord with the intention of the legislation and national policy set out above and would be irrational.
46. The UK Supreme Court in *R (Finch) v Surrey County Council* [2024] PTSR 988 (“**Finch**”) at §141 recorded that, in adopting the Paris Agreement on 12 December 2015, “most of the nations of the world have acknowledged that climate change represents ‘an urgent and potentially irreversible threat to human societies and the planet’ (Preamble to the decision to adopt the agreement) and have agreed on the goal of ‘holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels’: article 2(1)(a).”
47. The Courts in the UK have recognised the “very great importance” and “significance” of climate change, “with its consequences for human and other life on this planet”: *R (BAAN) v SSLUHC* [2023] EWHC 171 (Admin) at §§1 and 258. The Divisional Court has accepted that the impact of global heating is “potentially catastrophic”: *R (Spurrier) v Secretary of State for Transport* [2020] PTSR 240 at §560. The Court of Appeal has recognised that the “issue of climate change is a matter of profound national and international importance of great concern to the public—and, indeed, to the Government of the United Kingdom”: *R (Plan B Earth) v Secretary of State for Transport* [2020] PTSR 1446 at §277. The High Court has recognised that there is a climate emergency: *Marks & Spencer Plc v SSLUHC* [2024] JPL 1114 at §121.
48. In *R (McLennan) v Medway Council* [2019] PTSR 2025, the High Court was called upon to decide whether the overshadowing of domestic solar panels by a neighbouring extension was such an obviously material consideration that an LPA

was obliged to take it into account when deciding whether to grant permission for the extension. Mr Justice Lane held that:

“36. What emerges from section 19(1A) and the NPPF is that **mitigation of climate change is a legitimate planning consideration. The fact that both section 19 and the NPPF speak in broad terms (as they plainly must) cannot mean their message vanishes at the very point where consideration has to be given to a specific proposal.** Such an approach would render the provisions a dead letter. [...]

37. There is, therefore, unanswerable force in Mr Green's submission that, particularly given what is now said at national level about climate change in relation to new development, the first defendant is not entitled to reject as immaterial, in planning terms, the effect that another development proposal may have upon a renewable energy system, such as the claimant's solar panels. That, however, is the stance of the first defendant. It is a stance which, I find, no reasonable authority could take. It is, in short, irrational.” (emphasis added).

49. Mr Justice Lane held that “*given what is now said at national level about climate change*” it would be irrational for the authority not to have regard to the impact of the proposed development on a renewable energy system. In light of the fact that the established test for whether something is an obviously material consideration is whether failure to have regard to it would be irrational, this would seem to establish climate impacts as an obviously material consideration in planning decision-taking at a local level.

50. This is the way in which the decision has been understood and applied. In *R(Hewitt) v Oldham MBC* [2020] EWHC 3405 (Admin), all three parties (the local group, the LPA and the developer) accepted that “*the mitigation of climate change is a material planning consideration in the determination of planning applications, by virtue of [148], [153] and [154] of the NPPF: see e.g. R (McLennan) v Medway Council [2019] EWHC 1738 (Admin), [22].*”: §§94, 149-150 and 183. Knowles J accepted the proposition without comment, in language which implies that it may be taken as a settled proposition of law. Taken together with Lane J's comments

on irrationality, this suggests that the judgment in *McClennan* may now be taken as authority for the proposition that climate change is a mandatory material consideration in planning decision-taking.

51. This is corroborated by *R (Frack Free Balcombe Residents Association) v SSLUHC* [2023] EWHC 2548 (Admin) at §65, where Mrs Justice Lieven held that climate change “*is likely to be a material consideration in every planning decision given the policy context as well as the much wider issues*”.
52. Paragraph 163 of the NPPF 2024 now gives explicit national policy backing to the obvious materiality to decision-making of mitigating and adapting to climate change, “*taking into account **the full range of potential climate impacts***” (emphasis added). It also emphasises the need for this to be considered in “*preparing and assessing planning applications*”. The upshot of this formulation is that, for the majority of planning applications (and certainly for major applications) a whole-life carbon assessment may be needed, providing information and evidence about both operational carbon emissions (those concerning the energy needed to heat, cool and/or power a project) and embodied carbon emissions (those arising from the production of the materials that will be used throughout its lifecycle and those produced in any demolition and construction). Certainly, an Energy Statement or similar is required.
53. In light of this line of case law and paragraphs 163 of the NPPF 2024, and given the PPG makes clear that addressing climate change is “*one of the **core land use planning principles***”²⁸ which is expected to underpin decision-taking, it would be prudent for Essex LPA officers to be considering the climate change impacts of proposed development, as failing to take into account a mandatory material consideration is an error of law, laying a decision open to legal challenge. Given that the obvious materiality of the issue arises from national legislation and planning policy, it does not require local plan policies to be in place in order for the issue to be considered and to be part of the reasoning for either granting or refusing planning permission.

²⁸ Reference ID: 6-001-20140306, emphasis added.

54. It would also be prudent for Essex LPAs to update their Local Information Lists²⁹ to require an Energy Statement or similar to be submitted with planning applications. This would assist applicants for planning permission to provide the information necessary for the LPA to determine the climate change benefits or disbenefits of the proposal, in order for that to be taken into account when addressing climate change as a material planning consideration.
55. When considering climate change impact as a mandatory material consideration, Essex LPAs could justify refusal of development which otherwise complies with an adopted local plan on the basis that it would not be compliant with paragraphs 161 and 163 of the NPPF 2024, not in line with a net zero trajectory and therefore would not adequately contribute to the mitigation of and adaptation to climate change, so long as:
- a. Account is taken of information in a clear and robust evidence base on the net zero trajectory. In my view, the work that ECAC and the County Council has done and has had commissioned,³⁰ taken together with the scientific consensus on climate change,³¹ provides that evidence, which must then be applied in the context of the specific local authority and the specific application;
 - b. Account is taken of the increasing seriousness of climate change, including the extent to which the United Kingdom is on course to meet its climate targets, and the most immediate GHG emission reduction targets: 68% by 2030 and 81% by 2035, compared to 1990 levels – this is clearly relevant to the weight to be given to climate change in the planning balance;

²⁹ Guidance makes clear that LPAs can include information on a local list which is “reasonable having regard, in particular, to the nature and scale of the proposed development; and about a matter which it is reasonable to think will be a material consideration in the determination of the application.” <https://www.gov.uk/guidance/making-an-application#Local-information-requirements>

³⁰ <https://www.essexdesignguide.co.uk/climate-change/essex-net-zero-evidence/>.

³¹ This consensus is represented by the output of the IPCC (see fn 2 above on the process and the line-by-line agreement of the SPM and section-by-section agreement of longer reports) and other UN bodies which work alongside the IPCC, such as the [World Meteorological Organisation](#) and the [UN Environment Programme](#). For the UK, it also includes the output of the Climate Change Committee, the [Met Office](#) and the [UK Climate Risk](#) repository.

- c. Account is taken of information about the impact of the proposed development on climate change, which the development must be given an opportunity to provide and on which the public must have an opportunity to comment. This includes impacts on mitigating climate change (ie the GHG emissions expected to be produced by the development, including embodied emissions and any upstream and downstream GHG emissions causally linked to the development³²) and on adapting to climate change (ie through sustainable drainage and green infrastructure and measures addressing overheating, water scarcity, storm and flood risks and coastal erosion); and
 - d. Clear reasons are given for the decision, by reference to the evidence.
56. It is a matter of planning judgment for the decision-maker how much weight to give to material considerations and the decision-maker can take into account the seriousness of the climate crisis when apportioning weight to material considerations. Decision-makers in local authorities which have made declarations of climate emergency may also take that into account in any reasons for refusal given on climate change grounds, including when apportioning weight in the planning balance. There is support for such an approach in various appeal decisions.³³
57. Care must be taken to ensure that any decision is supported by evidence that the proposed development as a whole would result in unacceptable effects on climate change and that a lawful balancing exercise had been carried out.³⁴

³² *Finch* at §§65-71. Note that while *Finch* concerned climate impacts of development under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, the reasoning on what amounts in law to an effect of a proposed development is equally relevant to considerations that are obviously material to the grant or refusal of planning permission.

³³ See, for example, the Bodham wind turbine appeal APP/Y2620/W/15/3134132 at §§86-89. It should be noted that by far the majority of references to the materiality of a declaration of a climate emergency have arisen in the context of renewable energy schemes, although there is an example of a substantive “One Planet Development” policy, part of Cornwall Council’s Climate Emergency Development Plan Document, being applied successfully in APP/D0840/C/21/3279221 against an enforcement notice and justifying grant of temporary planning permission for a wooden clad chalet and wooden outbuildings in the open countryside.

³⁴ On 19 January 2024, full costs were awarded against Gloucestershire County Council in appeal [APP/T1600/W/23/3324695 Land at Bow Farm, Bow Lane, Ripple](#), which concerned a refusal against

58. It will also be relevant to the planning balance:
- a. Whether the LPA lacks a five-year housing land supply, triggering the tilted balance under paragraph 11 of the NPPF 2024.
 - b. Whether the proposed development offers other significant benefits, such as the delivery of a high level of affordable housing, space and accessibility standards in excess of the Building Regulations minimum, a high level of biodiversity net gain, or the provision of community facilities.

The Essex Model Net Zero Carbon Homes and Buildings Policy

59. In November 2023, the County Council published the “Planning Policy Position for Net Zero Carbon Homes and Buildings in Greater Essex” (“**the Net Zero Model Policy**”), which provides two model policies relevant to the climate change impact of development: Policy NZ1 on Net Zero Carbon Development (in Operation) and Policy NZ2 on Net Zero Carbon Development (Embodied Carbon).³⁵
60. The Net Zero Model Policy is the culmination of collaborative work between the County Council and officers from all the Essex LPAs³⁶ to establish a robust evidence base to support a consistent, clearly defined net zero carbon planning policy for new homes and buildings across Essex. It has, in my view, a very robust evidence base, iterated and added to over the past few years:

officer recommendation of planning permission for extraction of sand and gravel with restoration using site derived and imported inert material to wetlands, nature conservation and agriculture. There were two reasons for refusal: one based on climate impact, and the other based on risk of harm to the local economy because of dust and noise generating activities. Neither was found to be able to be substantiated. The first reason for refusal stated that the proposal would be contrary to Gloucestershire County Council’s declaration of climate emergency and then paragraph 152 of the NPPF. It is unfortunate such an early attempt by an LPA to rely on the declaration of a climate emergency occurred in circumstances where it appears the LPA was searching around for reasons to refuse, without officer assistance or supporting evidence. On usual principles, an unevicenced reason for refusal is highly vulnerable to successful (and costly) appeal. That is what happened in this instance.

³⁵ <https://www.essexdesignguide.co.uk/media/2954/net-zero-carbon-planning-policy-for-greater-essex-november-2023.pdf>. The Net Zero Model Policy is in the process of being updated, partly to incorporate an Essex-specific embodied carbon policy as policy NZ2.

³⁶ The work was funded by the County Council (responding to the work of the ECAC) and led by the Climate and Planning Unit within the County Council, but was steered by the Climate Planning Policy Support Group, comprised of officers from planning policy and/or climate teams from all the LPAs in Greater Essex.

- a. Net Zero Carbon Viability and Toolkit Study (Report of Findings) (Three Dragons, Qoda and Ward Williams Associates, August 2022);³⁷
- b. Essex Net Zero Policy Study (Reports 1 and 2) (Introba, Etude, Currie & Brown, July 2023);³⁸
- c. Essex Embodied Carbon Policy Study– technical evidence base (Levitt Bernstein, Etude, Introba, Hawkins/Brown, Currie & Brown, June 2024);³⁹
- d. ‘Essex Net Zero Specifications’ – Specification Guidance (Introba, Currie & Brown, Etude, Levitt Bernstein July 2024).⁴⁰

61. The Essex Net Zero Policy Study includes costs that can be used in local plan viability assessments, thus proving the basis for a consistent approach across Essex towards evaluating the costs of net zero policy and also providing helpful viability information relevant to the determination of planning applications (which can be augmented by information specific to the LPA and the particular development proposal under consideration). Both the model policy and the evidence base could also be used by those drafting and bringing forward neighbourhood plans.

Draft Policies as a Material Consideration

62. Draft policies in local development plans and/or separate DPDs⁴¹ can also operate as material considerations, though the weight to be given to them is dependent on a range of factors. Paragraph 49 of the NPPF 2024 provides that:

“Local planning authorities may give weight to relevant policies in emerging plans according to:

³⁷ <https://www.essexdesignguide.co.uk/climate-change/essex-net-zero-evidence/net-zero-carbon-viability-and-toolkit-study/>.

³⁸ <https://www.essexdesignguide.co.uk/climate-change/essex-net-zero-policy-study/>.

³⁹ <https://www.essexdesignguide.co.uk/media/2981/essex-embodied-carbon-policy-study-technical-evidence-june-2024.pdf>.

⁴⁰ <https://www.essexdesignguide.co.uk/climate-change/essex-net-zero-specification/>.

⁴¹ See, for example, APP/D0840/C/21/3279221, in which the considerable weight was given to the Cornwall Climate Emergency Development Plan Document, which was about to be adopted, and policy AL1 of the emerging DPD was determinative of the appeal.

- a) *the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);*
- b) *the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and*
- c) *the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)."*

63. In Woodcock Holdings Ltd v Secretary of State for Communities and Local Government [2015] EWHC 1173 (Admin); [2015] JPL 1151, which concerned the interpretation of paragraph 216 of the NPPF 2012, the predecessor of the current paragraph 49, Holgate J clarified that all three of the criteria set out under the paragraph must be taken into consideration in each case. The policy operates as a whole, rather than a staged test or a list of alternatives. He held that:

"In my judgment, the policy in paragraph 216 of the NPPF should be read as a whole. It is not a policy which simply makes the trite point that decision-makers may give weight to relevant policies in emerging plans. Rather it is a policy that they may do so "according to" the three criteria or factors which follow. The policy clearly stipulates that the three criteria are relevant in each case." [141].

64. Nevertheless, provided that a decision maker considers all three limbs of the test under paragraph 49 of the NPPF, they are entitled to afford "considerable weight" to emerging policies: Nottingham CC and Broxtowe BC v Secretary of State for the Environment, Transport and the Regions [1999] PLCR 340 at 350. There is therefore a strong incentive for LPAs keen to mandate higher energy performance standards than the national baseline to begin the process of developing local planning policies to this effect as soon as possible. The timeline for the examination and adoption of such policies is likely to be long, but they will be in a position to accord draft policies at least some weight before they are formally adopted. They can increase the amount of weight such policies attract by carrying

out early and thorough consultation to address and minimise objections, and building a comprehensive evidence base to demonstrate that the draft policies accord with the provisions of the NPPF.

Utilising Supplementary Planning Documents

Introduction

65. The process for producing and adopting an SPD is set out in Part 5 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (“**the Planning Regulations**”). It includes public consultation requirements but, unlike DPDs, SPDs are not subject to examination.

66. Paragraph 8 of the Planning Practice Guidance on plan-making (“**PPG**”) provides further guidance on the role of SPDs:

“Supplementary planning documents (SPDs) should build upon and provide more detailed advice or guidance on policies in an adopted local plan. As they do not form part of the development plan, they cannot introduce new planning policies into the development plan. They are however a material consideration in decision-making. They should not add unnecessarily to the financial burdens on development.

[...]

In exceptional circumstances a Strategic Environmental Assessment may be required when producing a Supplementary Planning Document.”

67. The weight that can properly be attached to an SPD is not set out anywhere in national planning policy. Prior to 2004, the now-superseded ‘Planning Policy Guidance Note 12 – Development Plans’ indicated at §3.16 that what was then referred to as supplementary planning guidance would be given “significant weight” by the Secretary of State in decisions which came before him, provided that it accorded with national policy and was prepared with proper public consultation. Although no national policy statement now indicates as much, the extent of the public consultation which took place during an SPD’s production and its consistency with national and local planning policies are still likely to be

relevant factors in determining how much weight to accord it. The age of the SPD is also likely to be relevant.

68. Any authority seeking to utilise this route to mandate net zero carbon development should have regard to a line of case law on the interpretation of regulation 5 of the Planning Regulations 2012, which highlights the legal risk inherent in attempting to adopt, either as a non-statutory document or an SPD, any document which should properly be characterised as a DPD and be subject to independent examination and strategic environmental assessment.

Limits on SPDs and Successful Legal Challenges

69. Regulation 5 of the Planning Regulations 2012 provides that:

“(1) For the purposes of section 17(7)(za) of the Act the documents which are to be prepared as local development documents are—

(a) any document prepared by a local planning authority individually or in cooperation with one or more other local planning authorities, which contains statements regarding one or more of the following—

(i) the development and use of land which the local planning authority wish to encourage during any specified period;

(ii) the allocation of sites for a particular type of development or use;

(iii) any environmental, social, design and economic objectives which are relevant to the attainment of the development and use of land mentioned in paragraph (i); and

(iv) development management and site allocation policies, which are intended to guide the determination of applications for planning permission.”

70. A number of judges have commented upon the complexity and poorly-drafted wording of regulation 5. In *R (Skipton Properties) v Craven District Council* [2017] EWHC 534 (Admin); [2017] JPL 825 (“**Skipton**”), Mr Justice Jay called for legislative amendment to fix the “anomalies” that pop up “like the heads of Hydra” [§94]. The result is a split in judicial approaches:

- a. In *R (RWE Npower Renewables Ltd) v Milton Keynes BC* [2013] EWHC 751 (Admin) ("**RWE**"), John Howell KC, sitting as a Deputy Judge, sought to construe regulation 5(1)(a)(iv) sufficiently narrowly to avoid complete overlap between that sub-provision and the rest of regulation 5(1)(a), which he observed would mean that the other subparagraphs were otiose or that there could never be a supplementary planning document [§74]. He held a local authority was entitled to adopt a Wind Energy SPD as an SPD because it did not provide a new statement regarding the development of land which the local authority wished to encourage, as it effectively repeated what was in the wind energy policies (not the supporting text) of the local plan and, while there was some novelty in the precise requirements, it was not enough to warrant it being a DPD [see §§66-77].
- b. This approach was expressly disagreed with by Mr Justice Jay in *Skipton* and Mr Justice Gilbart in *William Davis Ltd v Charnwood Borough Council* [2017] EWHC 3006 (Admin); [2018] JPL 549 ("**William Davis**"). They held that the real question arising in (iv) is whether the document in question contains development management policies which guide or regulate applications for planning permission—unlike in (i), there is no need to find any encouragement; the provision is neutral: *Skipton* at §93(5) and *William Davis* at §§59-60.
- c. The approach taken by Mr Justice Jay was not explicitly disagreed with by Mr Justice Ouseley in *R (McCarthy and Stone Ltd) v Mayor of London* [2018] EWHC1202 (Admin) ("**McCarthy and Stone**"), which dealt with the statutory planning powers in section 334 of the Greater London Authority Act 1999 ("**1999 Act**") and the lawfulness of Supplementary Planning Guidance issued by the Mayor of London encouraging affordable housing provision. However, Mr Justice Ouseley drew out principles common across the 1999 Act and the Regulations, and disagreed with the bright line approach between planning policy and supplementary planning guidance, finding that there was "nothing wrong with one planning authority taking the view that, for it, an issue requires the force of section 38(6) of the 2004 Act to be applied, and so its policy is promulgated as a development plan

policy, while another authority or its successor, could decide that precisely the same point was best left for guidance”.

71. All four decisions agree that the allocation of any particular document to the correct legal category of DPD or SPD raises a question of law rather than of planning judgment, although Mr Justice Ouseley emphasised the need to consider the room left for the court to respect the plan-maker’s judgment on what is to receive the weight of the development plan and what is apt for inclusion in a different type of planning document.
72. Importantly, Mr Justice Ouseley drew on the wider analysis of both the High Court [2001] EWHC Admin 870, [2002] 2 P&CR 35 and the Court of Appeal [2002] EWCA Civ 1116 , [2003] JPL 45 in *R (J Pye (Oxford) Ltd v Oxford City Council* (“**Pye**”) to hold that the obligation to produce policies in a new development plan does not preclude their production in what was then referred to as supplementary planning guidance (“**SPG**”) before the production of a revised plan, so long as there is no attempt to circumvent the statutory development plan process: *McCarthy and Stone* §§35-42. He held in particular that an LPA can be justified in producing an SPG in advance of the local plan process, given the timescales involved in the latter (§35), and that such an SPG could lawfully be in some conflict with the development plan where, for example, the latter were out of date or the review of the plan were delayed for proper reasons, and that the plan-led system could accommodate expressions of policy in conflict with the development plan, although the weight to be given to such an SPG would need to take into account the conflict (§§41-42). So long as there were not unlawful failure to start the local plan review process and the SPG were not a device to avoid scrutiny and independent examination, that approach would be acceptable (§36).
73. The Court of Appeal in *Pye* also confirmed that an SPG which encourage, in certain circumstances, the provision of a greater percentage of affordable housing than that provided for in the local plan was not unlawful for conflicting with the development plan, as the relevant local plan policy simply provided for a minimum level of affordable housing which would “generally” be sought on “all suitable

sites” (§29). The local plan policy was sufficiently flexible to be interpreted as permitting a greater percentage than the minimum to be sought in specific circumstances.

74. Turning to the Planning Regulations 2012, *RWE*, *Skipton* and *William Davis* all consider the meaning of regulation 5 held that it is not concerned with documents containing statements that merely repeat the policies already contained in the adopted local plan or in another local development document by way of background or for the sake of clarity. What is relevant is what in substance is new in the document. If the document at issue contains statements which fall within any of (i), (ii) or (iv) of regulation 5(1)(a), it is a DPD (although there is disagreement about the breadth of (iv)). This is so even if it contains statements which, taken individually, would constitute it an SPD.
75. In *RWE*, John Howell KC rejected a challenge to the lawfulness of an SPD which contained “emerging policy” that planning permission would be granted for certain proposals to development wind turbines and prescribed various distances from residential properties, pathways and bridleways which would be relevant to that determination. The SPD did not provide that planning permission would be refused if the conditions were not met. Although the SPD imposed more detailed distance criteria than those in the development plan, it contained objectives relevant to the attainment of development of land that the local authority wished to encourage and it was an SPD falling within regulation 5(1)(a)(iii), not a DPD (§§79-81). Nevertheless, the SPD was unlawful because the detailed distance criteria it imposed were in conflict with the adopted development plan, in breach of regulation 8(3) of the Planning Regulations 2012 (§§148-151), which provides: “Any policies contained in a supplementary planning document must not conflict with the adopted development plan.”
76. In *Skipton*, Mr Justice Jay held at §92 that a document adopted by the local authority, entitled ‘Negotiating Affordable Housing Contributions August 2016’, contained “statements in the nature of policies which pertain to the development and use of land which the Defendant wishes to encourage”; that it was in substance

a DPD, and that it should have been subject to consultation and independent examination.

77. He further held at §94 that a document can only properly be understood as being an SPD under regulation 5(1)(a)(iii) if it supplements an existing development plan policy or policies. If no relevant policy exists, an SPD can have no force, since it “cannot logically supplement a black hole” [§91].
78. In *William Davis*, Mr Justice Gilbert held that a document setting out the LPA’s expectations on tenure mix was not, as claimed by the authority, an SPD but rather a DPD. Its purpose was not only to set environmental, social, economic, or design objectives, in line with regulation 5(1)(a)(iii), but rather to govern the development of land (regulation 5(1)(a)(i)), potentially influence site allocation (regulation 5(1)(a)(ii)) and guide decisions on planning applications (reg. 5(1)(a)(iv)). He further held that “*Jay J was right in Skipton at [90] to hold that the fact of a policy’s overlap with sub-paragraph (iii) did not negate the effect of it falling within (i) or (iv).*” [§44].
79. The upshot of this is that there is both tension and legal risk surrounding SPDs, with regulation 5 causing difficulties for any policy documents that seek to contain statements regarding the development and use of land which a local planning authority wishes to encourage and requirements relevant to the grant of planning permission (other than design guides, which are addressed below and appear to be treated as falling within regulation 5(1)(a)(iii)). In particular, an SPD which sought to require the grant or refusal of planning permission in certain circumstances would likely be unlawful, although (in light of *RWE* and *McCarthy and Stone*), it is arguable that:
- a. An SPD can contain pretty strong encouragement to grant planning permission, applying detailed criteria different from (though aligned with) those in the relevant DPD policy;
 - b. That can include encouraging, in specific circumstances, more than is required in development plan policies which set general minima; and

- c. An SPD can implement, as guidance, an “emerging policy”, to be given weight before the development plan process has progressed, so long as there is no intention, through the SPD, to circumvent the development plan process.
80. The pragmatic approach appears to be that, if the policies themselves are in the local plan and the SPD simply seeks to work out the details of existing policies (as in the case of development briefs, for example) they may continue to be regarded as lawful SPDs.
81. Applying these principles to the present circumstances, it would be prudent for Essex LPAs to avoid imposing strict requirements for development to achieve particular fabric efficiency standards through an SPD and to avoid explicitly stating that developments which did not meet the recommended standard should be refused. However, there is some scope for the use of SPDs to achieve higher fabric standards and energy efficiency, as set out from §91 below.

Adopted SPDs Linked to the Climate Emergency

82. There are examples of local authorities outside of Essex having adopted climate emergency SPDs:
- a. Crawley Planning and Climate Change SPD (October 2016);⁴²
 - b. Waverley Borough Council Climate Change and Sustainability SPD (October 2022);⁴³
 - c. Cheltenham Climate Change SPD (October 2022, which takes a design guide-type approach);⁴⁴
 - d. Plymouth and South West Devon Climate Emergency Planning Statement (November 2022);⁴⁵

⁴² <https://crawley.gov.uk/planning/planning-policy/local-plan/supplementary-planning-documents/planning-and-climate-change>

⁴³ <https://www.waverley.gov.uk/Services/Planning-and-building/Planning-strategies-and-policies/SPDs-SPGs-and-other-guidance/Climate-Change-and-Sustainability-SPD>

⁴⁴ https://www.cheltenham.gov.uk/info/46/planning_policy/1037/supplementary_planning_documents/2

⁴⁵ <https://www.plymouth.gov.uk/climate-emergency-planning-statement>

- e. Rossendale Borough Council Climate Change SPD (December 2022);⁴⁶
 - f. Hammersmith & Fulham Climate Change SPD (October 2023);⁴⁷
 - g. Woking Borough Council Climate Change SPD (November 2023, replacing a 2013 SPD);⁴⁸
 - h. Spelthorne Borough Council Climate Change SPD (April 2024);⁴⁹
 - i. New Forest District Council Planning for Climate Change SPD (April 2024);⁵⁰
Runnymede Borough Council Energy and Climate Change Mitigation SPD (October 2024);⁵¹ and
 - j. Guildford Borough Council Climate Change, Sustainable Design, Construction and Energy SPD (October 2024).⁵²
83. One Essex LPA has also adopted an SPD: Colchester City Council’s Climate Change SPD (December 2023), addressed in the next section.⁵³ These SPDs take a wide variety of approaches, but generally require relevant information to be provided with different types of planning applications (including energy efficiency and building fabric information), which can then be used to assess compliance with local plan policies, as elucidated in the SPD.

The Colchester City Council Climate Change SPD

84. One of the Essex LPAs has taken a different approach in putting in place an SPD dealing with fabric standards and energy efficiency which does not impose mandatory requirements, but does give strong and “ambitious” guidance on what

⁴⁶ https://www.rossendale.gov.uk/downloads/file/17881/climate_change_spd.pdf

⁴⁷ <https://www.waverley.gov.uk/Services/Planning-and-building/Planning-strategies-and-policies/SPDs-SPGs-and-other-guidance/Climate-Change-and-Sustainability-SPD>

⁴⁸ <https://www.woking2027.info/supplementary/climatechangespd>

⁴⁹ <https://democracy.spelthorne.gov.uk/documents/s62368/Appendix 1 Spelthorne Climate Change SPD.pdf>

⁵⁰ https://newforest.gov.uk/media/3951/Climate-Change-SPD-Adopted-April-2024/pdf/Climate_Change_SPD_Adopted_April_2024.pdf?m=1715870825027

⁵¹ <https://www.runnymede.gov.uk/downloads/file/2469/energy-climate-change-mitigation-spd-adopted>

⁵² <https://democracy.guildford.gov.uk/documents/s34557/Item 07 1 - Climate Change Sust Design Const Energy SPD - App 1.pdf>

⁵³ <https://cbccrmdata.blob.core.windows.net/noteattachment/CBC-Climate-change-spd-Climate-Change-SPD-Climate%20Change%20SPD.pdf>

development would be supported: Colchester City Council’s Climate Change SPD (December 2023), which addresses both the climate and ecological crises.⁵⁴

85. The way was paved for this in the Colchester Local Plan 2017-2033 (adopted July 2022), which referred to the City Council’s declaration of a climate emergency in 2019; that it was committed to a significant programme of environmental stewardship and stated: “*A Climate Challenge and Sustainability Strategy and a Carbon Management Plan will support the Climate Emergency Action Plan and will set out detailed specific carbon reduction projects.*” (§5.8). The City Council put in place a Climate Emergency Action Plan, which includes a variety of themes and actions, including “*Sustainable planning, economy and energy efficient homes*”.⁵⁵ The City Council has SPDs on [climate change](#), [active travel](#)⁵⁶ and [biodiversity](#).⁵⁷
86. The Climate Change SPD (December 2023)⁵⁸ is stated to be a material consideration in planning decisions and “*aims to clearly set out the principles the Council expects to ensure that development proposals respond to the climate emergency by delivering sustainable buildings, which are highly energy efficient, include renewable energy and combine green infrastructure*” (pg 7). It addresses design (recommending passive design); renewable and low carbon energy and new zero carbon buildings (recommending the LETI standards). It signposts the Net Zero Carbon Toolkit,⁵⁹ commissioned by West Oxfordshire, Cotswold and Forest of Dean District Councils; the Essex Solar Design Guide (2022);⁶⁰ the Good Homes Alliance tool on identifying and mitigating overheating risks;⁶¹ the LETI Key Performance Indicators and Climate Emergency Design Guide.⁶²

⁵⁴ <https://cbccrmdata.blob.core.windows.net/noteattachment/CBC-Climate-change-spd-Climate-Change-SPD-Climate%20Change%20SPD.pdf>

⁵⁵ <https://www.colchester.gov.uk/sustainability/our-climate-emergency-action-plan-summary-and-projects/>

⁵⁶ <https://cbccrmdata.blob.core.windows.net/noteattachment/CBC-Active-Travel-SPD-Active-Travel-SPD-Active%20Travel%20SPD%20Final%20December%202023.pdf>

⁵⁷ <https://cbccrmdata.blob.core.windows.net/noteattachment/CBC-planning-guidance-document-Colchester-City-Council%E2%80%99s-Biodiversity-SPD-Biodiversity%20SPD%20Final.pdf>

⁵⁸ Consulted on for four weeks: <https://www.colchester.gov.uk/climate-change-spd/>

⁵⁹ <https://www.cotswold.gov.uk/media/05couqdd/net-zero-carbon-toolkit.pdf>

⁶⁰ <https://www.essexdesignguide.co.uk/media/2565/20220474-essex-solar-design-guide-rev-b.pdf>

⁶¹ <https://goodhomes.org.uk/overheating-in-new-homes>

⁶² https://www.leti.uk/_files/ugd/252d09_3b0f2acf2bb24c019f5ed9173fc5d9f4.pdf

87. The Climate Change SPD also addresses directly the Future Homes and Buildings Standard, its restriction to regulated energy only and why minimising emissions from all energy use not just regulated emissions, is necessary to address climate change and stay on track to meet the UK 2050 Net Zero target (pg 10).
88. Chapter 6 of the Climate Change SPD provides: *“The Council encourages all new buildings to be built to net zero carbon standards as defined by LETI and should seek to achieve LETI’s Key Performance Indicators (KPIs).”* (pg 25). The SPD gives detailed guidance on how that should be achieved, including the predictive energy modelling tools that should be used and how the measuring and reporting of upfront embodied carbon emissions should be undertaken.
89. As far as I can tell, the Climate Change SPD has not featured in any appeals against refusal by the Colchester of planning permission.

The Potential for Essex LPAs to Adopt SPDs

90. In short, my view is that requirements to meet higher fabric and energy efficiency standards than Buildings Regulations will more speedily and robustly be achieved by Essex LPAs requiring compliance with the Essex Design Guide. It is clear however, as set out in §82 above, that a number of LPAs have chosen to put in place climate change SPDs, as a response to the climate emergency, meaning that there is some facility in the route and it is worthwhile considering. This section summarises the opportunities for Essex LPAs to consider the use of such an SPD.
91. There is wide variation across the Essex LPAs, both in the age of development plans and in the way in which those plans address climate change, energy efficiency and fabric standards. Annex 1 sets out, in tabular form, the relevant current local plan policies and any emerging policies for each of the Essex LPAs. This shows that there is some scope for the use of SPDs to achieve higher fabric standards, but with the caveats drawn out above, in particular:
 - a. There are opportunities to adopt an SPD giving strong encouragement for higher fabric standards in various specific circumstances;

- b. There would need to be a clear link with existing local plan policies or, if the plan is very out of date, then clear evidence that any emerging policy made as an SPD were not intended to subvert the development plan process;
 - c. Beyond this, new mandatory obligations (outside of repeating those in the development plan), must be avoided, unless the mandatory parts effectively relate to a design guide or design code.
92. In light of the case law, if authorities were to seek to adopt an SPD, there is some language which can assist in minimising the legal risk of challenge:
- a. The SPD should state that it is “guidance to ensure that existing policy is as effective as possible” and “it does not and cannot introduce new policy” – the Colchester City Council Climate Change SPD states: “*Whilst the Council cannot set new policies through this SPD, the SPD sets out what the Council would support from development proposals and how applicants can successfully integrate a best-practice approach towards the climate emergency in their development proposals.*” (pg 14);
 - b. The SPD can refer to and rely on the work of the ECAC and the evidence base produced by the Commission and by the County Council – the Colchester City Council Climate Change SPD does so (pg 10);
 - c. If the SPD is being introduced despite a fairly recently adopted local plan, because the policies in that plan were written some time ago (given the length of the local plan adoption processes) and things have moved on in terms of the urgency with which climate change, this can be set out explicitly in the SPD, as can the fact that it is being put in place alongside any local plan review to support the development plan process –the Colchester City Council Climate Change SPD picks up some of these points (pgs 10 and 14);
 - d. If the SPD is being introduced in light of an out-of-date local plan and to provide and immediate stop-gap while a new plan is progressing, this should be made clear and the SPD should state that its introduction is intended to support the development plan process, which is progressing;
 - e. If the SPD is being introduced in light of evidence that a policy or policies are not achieving the goals that they are intended to achieve, the SPD could state

this and that it is being put in place to incentivise the achievement of the relevant policy outcomes.

SPD to address out-of-date local plan

93. This would be an excellent option for:

- a. **Castle Point Borough Council.** The local plan is out of date; the saved policies include an energy efficiency policy which could operate as a hook for an SPD. The new local plan process is at the issues and options stage (which asked a very open question asked about a net zero standard for new homes); however, I note the Regulation 19 stage is anticipated to take place from January – March 2025. It may nevertheless be reasonable to have an SPD, so long as it would not undermine the local plan process. The SPD could draw on the evidence base compiled by the County Council;
- b. **Southend on Sea City Council,** which also has an out of date set of development plan documents that include several policies that would operate as a hook for the SPD, including DM2 on Low Carbon Development and Efficient Use of Resources. The new local plan is going into the preferred approach consultation in 2025, so it would be reasonable to have an SPD, which could draw on the evidence base compiled by the County Council.
- c. **Thurrock Council,** which has an out of date set of development plan documents, but within which are truly forward-thinking policies on mitigating and adapting to climate change, including CSTP25 – Addressing Climate Change on Mitigation, which requires new development “*to adhere to local, regional and national targets for reducing carbon emissions*” and set emissions reductions targets for domestic operational emissions by 2015 and 2020; Policy PMD12 – Sustainable Buildings imposed criteria for new development to meet, linked to the “Code for Sustainable Homes” level 4 rating, and requires submission of an Energy and Water Statement, showing how the proposed development would “minimise energy consumption”, among other things. This lends itself to an updating SPD, as the Regulation 19 stage of the new local plan is only due to take place in

January-March 2026. I address the general Design and Sustainability SPD below.

The SPD could be put in place with the clear indication that it is filling the gap while the new local plan progresses, and will not hinder that process.

94. For similar reasons and in a similar way, it could be an option for **Rochford District Council**, which also has an out of date local plan. The age of the plan likely explains why policy ENV9 of the Core Strategy provides: “From 2016 developments will be expected to meet the zero carbon target.” The reasoned justification to Policy DM1 in the Development Management Plan also refers to the need for implementation of appropriate measures to reduce the consumption of energy and mitigate impact, including in generating greenhouse gas emissions. Given the local plan review has been ongoing since 2016 and remains at preferred options consultation stage, it would be reasonable to have an SPD, which could draw on the evidence base compiled by the County Council. However, I note that Policy DM1 of the Development Management Plan requires proposals to have regard to the Essex Design Guide for Residential and Mixed-Use Areas – that should be interpreted to refer to the current parts of the Design Guide relevant to Residential Development, which includes the Climate Change Sections. The District Council could therefore act now to require applications to show how they have taken account of the Essex Design Guide provisions.
95. Similarly, an SPD could be an option for **Maldon District Council**: the local plan was adopted in 2017 and the LPD Review 2021+ has undertaken an Issues and Options consultation asking general questions about requiring all new development to be net zero. Accordingly an SPD could either plug the gap, and/or could rely on the following policy hooks:
- a. Policy SP1 on Sustainable Development requires limiting greenhouse gas emissions “*through the efficient use of energy*”;
 - b. Policy D2 on Climate Change & Environmental Impact of New Development requires all development to “*minimise its impact on the environment*” through minimising all possible forms of pollution; contributing towards “*making more efficient use or re-use of existing resources and reducing the*

lifecycle impact of materials used in construction”; seeking to “*maximise the use of building materials from sustainable sources and apply sustainable construction methods where appropriate*”; and requiring non-residential development to achieve a minimum of BREEAM ‘Very Good’ rating.

I note, however, that there are also strong design policies and a Local Design Guide SPD which in places refers to the Essex Design Guide (the Local Plan states regard should be had to the Essex Design Guide in the explanatory text to Policy D1). It may be swifter and more robust simply to update the Design Guide, which contains a section on “Future Proofing” that focuses on mitigating the effects of climate change and reducing energy consumption, with a more detailed approach to energy efficiency and fabric standards requiring minima above Building Regulations and/or more specific reference to the Essex Design Guide.

96. Unfortunately, I do not think it would be an option for **Basildon Borough Council**, as the saved local plan does not contain any policies which could act as a hook for an energy efficiency or fabric standards SPG. Basildon is taking positive steps, having recently consulted on a full Regulation 18 draft local plan which includes both a net zero policy (modelled quite closely on the County Council model policy) and an embodied carbon policy.

SPD to provide more detail where minima set in policy

97. This would be a good option for **Tendring District Council**, where the reasoned justification supporting the Policy PPL 10 on Renewable Energy Generation and Energy Efficiency Measures explicitly makes provision for an SPD to assist with its implementation, “*given the importance of tackling climate change and promoting renewable energy and energy efficiency measures and the rapid speed in which technology is evolving and improving*” (§7.9.5). Policy PPL 10 is in general terms and provides that planning permission will “*only be granted where the applicant can demonstrate that all reasonable renewable energy and energy efficiency measures have been fully considered and, where viable and appropriate, incorporated into the design, layout and construction*”. Although Policy SPL3 provides a minimum of compliance with “*Building Regulations prevailing at the time*”, this is a minimum and is qualified by the need to comply with the policies

and requirements of the plan. No SPD has been put in place, so one could rapidly be produced, drawing on the evidence base compiled by the County Council.

98. This would be an option for **Braintree District Council**, where the climate change policy LPP71 provides a good hook and the energy generation and energy efficiency policy LPP72 encourages at least 19% improvement in energy performance over Building Regulations. An SPD could give strong guidance that something above the minimum is preferable in specific circumstances and could give detailed guidance, for example, on the level of space heating demand to be targeted.
99. It would also be an option for **Brentwood Borough Council**, where Strategic Policy BE01: Carbon Reduction and Renewable Energy requires residential development to achieve energy performance standards which are “*at least*” 10% above Building Regulations and Policy BE03: Establishing low carbon and renewable energy infrastructure network gives general support to low carbon homes which demonstrate sustainable use of resources and high energy efficiency levels.
100. The same is true for **Chelmsford City Council**. The Strategic Policy S2 concerning climate change would provide a good hook for a climate SPD giving strong encouragement for development that “*reduces greenhouse gas emissions*” in specified ways, recognising that both policies DM25 on Design and Place Shaping Principles in Major Developments and Policy DM25 on Sustainable Buildings give some further minima. In my view, these policies provide some more detail as to what is required for major development and for all new buildings to incorporate sustainable design features and reduce energy consumption and carbon dioxide emissions.⁶³ Care would need to be taken to avoid the City Council being seen to undermine the emerging local plan process, on which there has been a second

⁶³ In my view, the wording of DM24 and DM25 do not narrow the purview of SP2 to only the specified measures in those policies; in particular DM25’s list of water efficiency for new dwellings and requiring all new non-residential buildings with a floor area in excess of 500sqm shall achieve a minimum BREEAM rating (or its successor) of ‘Very Good’.

consultation on a detailed Preferred Options draft. It might be preferable to focus on the design guide approach, addressed below.

101. **Harlow District Council's** Policy PL3 on Sustainable Design, Construction and Energy Usage imposes a general expectation to deliver high standards of sustainable design and efficient energy usage, with the reasoned justification encouraging at least 19% above Building Regulations. This could be expanded upon in a Climate Change SPD, but Harlow appears to prefer the design guide approach, having adopted a Design Guide Addendum SPD in December 2021 that addresses both operational energy efficiency and embodied carbon (§§5.6-5.11). The Design Guide is quite high level and could either be updated to encourage more detailed energy efficiency measures and higher fabric standards, or could be supplemented by a design code.

102. As mentioned above, **Thurrock Council** has a Design Strategy SPD which requires the design and layout of buildings to identify "*opportunities to minimize the consumption of energy to heat, cool, ventilate and light buildings and spaces*" and "*opportunities for sustainable energy generation.*" However, no specific requirements are imposed, nor is reference made to the Essex Design Guide. The Design Strategy SPD could be amended to impose requirements above Building Standards and/or refer to the Essex Design Guide, but given the strength of the underlying Core Strategy policies, it is open to the Council to put in place a new, climate change specific SPD, to update the minima in policy CSTP25 and cross-referring to saved policy BE11 on energy efficiency, which links the requirement to "*take into account the need for energy efficiency in the built form of new developments*" to avoiding the use of fossil fuels and meeting the needs of the present generation without prejudicing those of future generations.

103. Other Essex LPAs, such as **Epping Forest District Council**, would be better advised to focus on securing energy efficiency through design guides or design codes. **Uttlesford District Council** took this approach through the adoption of the District-Wide Design Code, which is addressed further at §120 below. It does not go as far as the County Council's model net zero policy, but does require all new

developments to “*evidence their resilience to future environmental conditions*” and to use sustainable heating solutions “*in line with current Building Regulations requirements*”. It strongly encourages residential and non-residential buildings to “*achieve primary energy demand targets (15 kWh/sqm/per year) except for bungalows (22 kWh/sqm/per year)*”. It also imposes strong information provision requirements requiring that all proposals “*must outline the carbon footprint of their proposed construction strategy and the steps taken to minimise impact*” and “*must demonstrate how their design positively responds to the seven themes of the Uttlesford Climate Emergency strategy*”, with whole life carbon assessments and energy statements being required.

Utilising Design Guides and/or Codes

104. Section 12 of the NPPF sets out national planning policy on achieving well designed places. Paragraph 129 deals with the preparation of local design guidance and provides that:

*“Design guides and codes can be prepared at an area-wide, neighbourhood or site-specific scale, and **to carry weight in decision-making should be produced either as part of a plan or as supplementary planning documents.** [...] [A]ll guides and codes should be based on effective community engagement and reflect local aspirations for the development of their area, taking into account the guidance contained in the National Design Guide and the National Model Design Code.”* (emphasis added)

105. Paragraph 134 deals with design at the decision-taking stage and provides that:

“Development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes. Conversely, significant weight should be given to:

- a) development which reflects local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes; and/or*

b) outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings.”

106. This paragraph offers two useful points of principle: first that local design guides and codes are capable of being material considerations, albeit that weight should only be attributed to them if they are formally adopted as part of a DPD or an SPD, and second that designs which promote high levels of sustainability should be given significant weight.
107. On the DPD vs SPD issue, where a local plan policy refers in general to a design guide or code, that appears to open up the way for a lawful, detailed, design guide SPD, falling under regulation 5(1)(a)(iii) of the Planning Regulations, which is then applied as a development management policy via the local plan policy. In those circumstances, the use of a design guide has less legal risk than the adoption of a different type of SPD, so long as there is a design guide policy hook in the relevant local plan. I note that such a hook could be included in the Model Net Zero Policy.

The Essex Design Guide

108. The Essex Design Guide (“**the Guide**”) was introduced by the County Council in 1973 and most recently updated in 2018. The current version takes the form of a series of web pages, although not everything on the website is a formal part of the Guide.⁶⁴ The site includes a page on climate change, which points to areas of the Guide which currently address the issue.⁶⁵
109. Eight of the fourteen LPAs in Essex require decision makers to have regard to at least some aspects of the Guide, either by including it within the text of design policies themselves, or within the explanatory text, or within a defined list of SPDs which are material considerations.⁶⁶ Although one of these references is to specific

⁶⁴ Essex Design Guide 2018, <https://www.essexdesignguide.co.uk/>

⁶⁵ Essex Design Guide: Climate Change, <https://www.essexdesignguide.co.uk/climate-change/>.

⁶⁶ Braintree, Brentwood, Chelmsford, Colchester, Harlow, Maldon, Rochford and Tendring.

portions of the Guide (services and access in Harlow), it remains the case that the Guide in its entirety is treated as material consideration in the local planning frameworks of half of the LPAs in Essex.

110. This is a robust approach. The County Council and ECAC can further unilaterally update the Design Guide, which has immediate effect across more than half of the LPAs in the county. This could be in line with the further emerging principles and standards, for example those set out in the recently launched UK Net Zero Carbon Buildings Standard.⁶⁷
111. There is no difficulty in law or in principle with the Essex LPAs having planning policies that refer to, and require mandatory compliance with, documents which are updated. Local plan policies are designed to be in place over long periods, so they are capable of recognising that other policies or obligations to which they cross-refer may be updated or amended during the life of the planning policy. The policy can refer to “The Essex Design Guide” generically, which would allow the LPA to apply the version in place at the time the application is made. If the policy refers to a particular version of the Design Guidance, for example by reference to a specific year, then the policy should be interpreted flexibly and pragmatically to mean the most up to date version of the guide.

Design Codes

112. Paragraph 133 of the NPPF 2024 provides that LPAs should prepare design guides or codes, consistent with the principles set out in the National Design Guide and National Model Design Code, in order to “*provide maximum clarity about design expectations at an early stage*”. A design code need not cover every type of development in every part of the area, nor every aspect of design – it can thus be led by a specific issue, such a sustainability and the environmental performance of development, allowing that to be the generator of urban character.

⁶⁷ <https://www.nzcbuildings.co.uk/>.

113. The difference between a design guide and a design code is that the latter should be prescriptive and provide a clear set of requirements with which design can clearly conform or not conform. The design code should stipulate a set of design requirements for a geographic area, such as a neighbourhood or a district, and should be specific and measurable: design code requirements should be sufficiently specific to allow a “yes/no” assessment of compliance. The following observations have been made about the language required for formulating a successful design code:⁶⁸

- a. Design codes can be expressed as statements using “must”, “should” or “may”. Statements that centre on “must consider” or “should consider” are not design codes – they identify considerations but do not set the design requirements that these codes require.
- b. Design codes should focus on what is essential for the good design under consideration: ie, what a development proposal “must’ do, although they can also identify what “should” happen.
- c. A “should” phraseology does not make a requirement optional, it is just not essential in every case (which can be particularly relevant where an area is large or diverse).⁶⁹

114. The National Model Design Code has been in place since 2021. It sets out design considerations which LPAs will be expected to take into account when developing local design codes “*and when determining planning applications*” (Part 1 §8).⁷⁰ It recognises in Part 1 at §9:

“Creating more beautiful places requires a greener approach, with more energy efficient buildings, integrating with the natural environment and contributing positively to the net zero carbon target by 2050.”

⁶⁸ <https://www.theplanner.co.uk/2024/01/22/area-based-design-codes-what-are-they-and-how-can-they-work>.

⁶⁹ Arguably a slightly different approach is taken in the Uttlesford Area-Wide Design Code (see §120 below), which reserves the use of “*must*” for the obligations of the Code and uses “*should*” for Guidance which applicants are “*strongly encouraged to follow*”. This may amount to an obligation to explain why the encouragement has not been followed, particularly linked with the strong information provision requirements in the “Compliance and Process” sections of the Design Code. https://www.uttlesford.gov.uk/media/13170/District-wide-Design-Code-Appendix-A-Uttlesford-Places/pdf/UDC_Design_Code_Appendix_A_2.pdf?m=1721754920637 at pg 13.

⁷⁰ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/957205/National_Model_Design_Code.pdf

115. The Resources section in Part 1 acknowledges at §66(i) that LPAs can set policies for higher energy efficiency standards in their area or for specific development sites. Part 2 then provides:

“R.1.i Energy hierarchy

200. The Energy Hierarchy is a classification of energy options, prioritised to assist progress towards a more sustainable energy system. Design codes can include a local energy hierarchy based on energy efficiency standards, renewable energy sources and renewable energy networks, following a ‘fabric first’ approach.

R.1.ii Energy efficiency

201. Local authorities can set policies for higher energy efficiency standards for their area or in relation to specific development sites in local plans or design codes that are adopted in local plans. The materials, construction and orientation of buildings dictate their energy efficiency. There are multiple ways of reducing energy waste. In developing policies, consideration should be given to improving energy efficiency, which may address the selection of materials for thermal and solar performance, retrofitting existing buildings, design and orientation construction techniques and assessing whole life costs. These requirements need to be integrated with other design code considerations and the detail design of inter-related requirements resolved at project level.”

116. The National Model Design Code also makes public consultation integral to each step in the production of LPA design codes.
117. A number of National Model Design Code Pilot Case Studies and Pathfinder projects have been run,⁷¹ including the Becontree Design Code and Retrofit Guide, focused on sustainability and carbon reduction across the Becontree Estate in Barking and Dagenham.⁷² Those have identified difficulties with the design code

⁷¹ <https://www.local.gov.uk/pas/topics/design-codes/national-model-design-code-pilot-case-studies>.

⁷² https://media.publicpractice.org.uk/documents/240312_Becontree_Estate_-_Be_First.pdf;
<https://www.publicpractice.org.uk/magazine-article/magazine-be-first-case-study-2024-community->

process, in particular, some confusion around the requirement for coding plans and classification of areas according to “area types”. The Design Council has released a “Roadmap to Design Codes”, which guide coding teams through the design coding process.⁷³

118. Consultation on proposed reforms to the NPPF had indicated a potential switch in the focus of LPA design codes onto less authority-wide scale towards more localised design codes and masterplans. This has not transpired.⁷⁴ Paragraph 138 of the NPPF 2024 in fact further embeds the National Model Design Code, providing that it is the “*primary basis for the preparation and use of local design codes*”.
119. Design codes are intended to become a crucial part of all development plans, with the Levelling-up and Regeneration Act 2023 inserting a new section 15F into the PCPA 2004, requiring LPAs to “*ensure that, for every part of their area, the development plan includes requirements with respect to design that relate to development, or development of a particular description, which the authority consider should be met for planning permission for the development to be granted.*” This provision has yet to be brought into force, but, on 24 November 2024, the Minister for Housing and Planning made a WMS committing to updating the National Model Design Code and to improving the design and quality of the homes and neighbourhoods being built.⁷⁵
120. Essex LPAs are already involved in the Design Code process. Uttlesford District Council was involved in the Pathfinder Programme⁷⁶ and has released a District-Wide Design Code (July 2024). Section 2.10 on Resources has a clear climate focus

[led-vision](#). The latter describes the community engagement undertaken and the resulting development of a Residents Charter which informed every aspect of the code.

⁷³ <https://www.designcouncil.org.uk/our-work/projects-partnerships/design-codes#/reality-check>.

⁷⁴ The Government’s response to the consultation simply welcomes the feedback and stated that it will “*keep under review the provisions contained in the Levelling Up and Regeneration Act 2023 on authority wide design codes and national policy and guidance on design in relation to how the use of localised design codes and other design tools, including masterplans and design guides, can be embedded as part of the plan-making process.*” It states the feedback from the consultation will be “*used to inform future decisions.*”

⁷⁵ <https://questions-statements.parliament.uk/written-statements/detail/2024-11-12/hcws209>.

⁷⁶ https://issuu.com/designcouncil/docs/design_code_pathfinder_programme_-_conversations_a/8.

and good general mandatory requirements linked to the energy hierarchy (R1C). It is fairly strong in imposing space heating requirements, although these are included in Guidance (which applicants are “*strongly encouraged to follow*”), rather than being mandatory. However, the District Council would be justified in taking a robust approach to this guidance and require that it be complied with unless applicants can give a cogent explanation for why it could not be followed in the specific context of a particular development proposal. There is a basis for doing so in the Compliance and Process section, with RCP2 requiring the Design and Access Statement and accompanying statements to “*demonstrate they have complied with the code and guidance from the Resources chapter*”, explaining how the proposals “*have positively addressed the code’s...sustainable design principles to ensure new places, spaces and buildings ... limit resource use, including water and energy consumption.*”

121. The Uttlesford Design Code also provides a good example of how the provisions of the Essex Design Guide can be made mandatory through cross-reference in a local design code,⁷⁷ or, indeed, how minima in the Essex Design Guide can be required to be surpassed.⁷⁸
122. Braintree District Council is in the early stages of producing a Design Code for the district,⁷⁹ having conducted a short high-level consultation in November and December 2024. At present, it appears that the intention is for the Design Code to replace use of the Essex Design Guide, although that may change during the process of creating the Code: for example, the Code could cross-reference the Essex Design Guide, allowing adoption of the Essex Design Guide’s approach to energy efficiency.
123. Finally in relation to the Essex Authorities, is notable that Epping Forest District Council’s Local Plan Part 1 specifically includes energy efficiency and climate

⁷⁷ See for example P1.17G (on public art) and the repeated reference to the Essex Design Guide’s technical requirements for various types of street (pgs 58-64).

⁷⁸ See M2.12C “*corner radii must be tighter than those currently set out in the Essex Design Guide for Street Type E*”.

⁷⁹ <https://www.braintree.gov.uk/planning-building-control/design-code>.

change mitigation and adaptation within its design policies (Policy DM9 in particular) and specifically requires Design Codes to be produced and agreed with the Council to support the implementation of Strategic Masterplans for the proposed Garden Communities and relevant allocated sites.

124. In light of the above, and learning from the work done by Uttlesford District Council and any experience of applying its Design Code, the County Council could work with the Essex LPAs to facilitate the creation and adoption of local design codes focused on energy efficiency and higher building fabric, which could lawfully be adopted as SPDs while being prescriptive. The topic lends itself well to the specificity required by design codes, and to the most effective way in which such codes communicate: a combination of simple diagrams/ illustrations and text. Such design codes could be development-specific or area-wide. There is a lot of opportunity, following the principles of the National Model Design Code, for such codes to be prescriptive about fabric standards and energy efficiency requirements, while still allowing sufficient flexibility to be widely applicable across areas or districts. The County Council could produce a model design code to support the adoption by Essex LPAs of such design codes.

Leadership from the County Council

125. ECAC and the County Council can play an important leadership and facilitation role regarding the adoption by Essex LPAs (and, indeed, other LPAs) of zero carbon development policies in their local plans, in particular by supporting LPAs to develop a robust evidence base on viability and technical feasibility, building on the already detailed and robust evidence base produced and published to support the Model Net Zero Policy. Also crucial is the work by ECAC, the County Council and the Essex Developers' Group⁸⁰ to produce case studies for exemplar fossil fuel free developments; to develop the supply chain and support small and medium sized developers to address climate change and prepare for the requirements of zero carbon homes.

⁸⁰ <https://www.housingessex.org/essex-developers-group/>.

126. As set out in §§5-15 and 24-25 above, urgent action is now required, including by LPAs in relation to planning policy, in order for the obligations to reduce emissions **in 2030 by 68%** compared to 1990 levels and **in 2035 by 81%** compared to 1990 levels. Regional and local co-ordination is crucial to this. The County Council has developed a model net zero carbon development policy, which is robustly supported by evidence and can thus be adopted by Essex LPAs as a mandatory requirement within their local plans – indeed, such a step is arguably required given the duty on Essex LPAs under section 19(1A) of the PCPA 2004 to ensure that their local plans include policies designed to secure that the development and use of land in their area contribute to the mitigation of, and adaptation to, climate change.

CONCLUSION

127. A summary of my advice is given in §3 above. Please do not hesitate to contact me if anything requires clarification, or if I can be of further assistance.

31 December 2024

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APPENDIX 1

Summary of Essex LPA Policies Relevant to Climate and Energy Efficiency and Design Policies as at December 2024

District Council	Currently Adopted Development Plan	Relevant Climate and Energy Efficiency Policies in Adopted Plan	Relevant Design Policies in Adopted Plan and Relevant Guidance	Emerging Local Plan - Climate Change and Design Policies
Basildon Borough Council	Basildon District Local Plan Saved Policies 2007 (Secretary of State direction re Local dev Scheme made in December 2024)	None.	<p>Policy: Policy BAS BE12: New residential development will be refused if it causes material harm to the character of the surrounding area.</p> <p>Guidance: Only exists for the Billericay Conservation Area – SPD published in 2015. This does not mention anything about energy performance standards. Its focus is squarely on aesthetic considerations.</p>	Local Plan Review underway, consultation on issues and options held in 2023, a Regulation 18: Draft Local Plan consultation being held 18 November 2024 to 12 January 2025. Draft Plan includes the Essex net zero policies – in Operation and Embodied Carbon.
Braintree District Council	Current adopted Braintree district dev plan is made up of a number of documents incl Local Plan 2033 (25 July 2022); various neighbourhood plans & Masterplans Strategic section shared with	<p>Policy LPP 71 Climate Change – provides a good hook for an SPD because it explicitly states that the Council will adopt strategies to mitigate and adapt to climate change and that applicants have to demonstrate measures to lower carbon emissions.</p> <p>LPP 72 Energy generation and Energy Efficiency – already encourages at least 19% improvement in energy performance over Building Regs; all</p>	<p>Policy SP 7: Place Shaping Principles: “All new development must meet high standards of urban and architectural design. Development frameworks, masterplans, design codes, and other design guidance documents will be prepared in consultation with stakeholders where they are needed to support this objective. All new development should reflect the following place shaping principles, where applicable: [...]</p>	<p>Local Plan Review in early stages (community ideas sought by 16 October 2024; Regulation 18 Issues and Options Consultation Jan/Feb 2025)</p> <p>Opportunity for a more ambitious policy to be included, using the Essex CC evidence base</p>

	Colchester and Tendring adopted February 2021	phrased around encouragement, so an SPD could give strong guidance that something above the minimum is preferable in specific circumstances	<p>- Include measures to promote environmental sustainability including addressing energy and water efficiency, and provision of appropriate water and wastewater and flood mitigation measures including the use of open space to provide flora and fauna rich sustainable drainage solutions; [...]."</p> <p>Guidance: No local design guide. The supplementary planning documents webpage on the LPA site links to the 2005 version of the Essex Design Guide. Immediate action: This could be updated so that the Essex Design Guide is included in the list of relevant Guidance and link it explicitly to compliance with SP 7.</p>	
Brentwood Borough Council	Local Plan 2016-2033 (Adopted March 2022)	<p>STRATEGIC POLICY BE01: Carbon Reduction and Renewable Energy requires residential development to achieve energy performance standards which are "at least" 10% above Building Regulations.</p> <p>Policy BE03: Establishing low carbon and renewable energy infrastructure network "Innovative approaches to the installation and/or construction of energy generation facilities <u>or low carbon homes which demonstrate sustainable use of resources and high energy efficiency</u></p>	<p>Strategic Policy: E14: Creating Successful Places:</p> <ol style="list-style-type: none"> 1. Proposals will be required to meet high design standards and deliver safe, inclusive, attractive and accessible places. Proposals should: <ol style="list-style-type: none"> a. provide a comprehensive design approach that delivers a high quality, safe, attractive, inclusive, durable and healthy places in which to live and work; b. make efficient use of land and infrastructure; 	<p>Local Plan Review in early stages. Call for sites 18 Dec 2023 – 4 March 2024; SLAA process ongoing. Reg 18 Draft Plan consultation 2025 (dates tbc).</p> <p>Opportunity for an ambitious policy to be included, using the Essex CC evidence base</p>

		levels will be supported.” (emphasis added)	<p>c. deliver sustainable buildings, places and spaces that can adapt to changing social technological, economic, environmental and climate conditions;</p> <p>Guidance: Brentwood Town Centre Design Guide SPD (2019) refers to the Essex Design Guide as providing “useful information and best practice guidance”. It also states:</p> <p>“This design guide should be used to help inform the design of any emerging planning applications for development in Brentwood Town Centre. All applications will be expected to follow this guidance. [...]”</p> <ul style="list-style-type: none"> • Best practice design, implementation of energy efficiency and sustainability in built development is encouraged.” 	
Castle Point Borough Council	Saved policies from the Castle Point Local Plan (adopted November 1998 and saved until September 2007)	Policy EC6 - Energy efficiency “Proposals for new development are expected to have regard to energy conservation in their siting, orientation, layout and design.”	<p>Policy: EC2 - Design “A high standard of design in relation to new buildings and extensions and alterations to existing buildings will be expected throughout the borough. [...]”</p> <p>Policy H17- Housing Development – Design and layout: “In assessing the design aspects of proposals for housing development, the local planning authority will have</p>	Preparing new Local Plan. From 17 July – 16 September 2024 the Council had a formal regulation 18 public consultation on the Issues and Options Consultation Document and associated documents. The Regulation 19 stage is anticipated to take

			<p>regard to its adopted design guidelines as contained in Appendices 4 and 12 of this plan.”</p> <p>Appendix 12 was saved, but is very out of date and has been supplemented by the Residential Design Guide SPD (November 2012), which explicitly addresses energy efficiency but caveats that there is a balance to be reached between optimum energy efficiency and residential amenity and urban design considerations.</p> <p>“RDG9 – Energy & Water Efficiency & Renewable Energy</p> <p>The design of all development should incorporate measures for achieving high levels of energy and water efficiency. Development is expected to demonstrate how its design, siting and layout has maximised the opportunities for solar gain, daylight penetration ... and where appropriate, how its construction has followed nationally agreed principles for sustainable dwellings. The design and siting of energy and water efficiency measures and renewable energy systems must not result in prominent, dominant, alien or incongruous features which detract from the visual appearance of the dwelling or the public realm.”</p>	<p>place from January – March 2025.</p> <p>The Issues and Options consultation emphasised the need for energy efficiency linked to climate action; referred to the ECC Climate Action Plan and consulted on: “Q82. What are your views on building new homes to a net zero standard in advance of national policy time frames?”</p>
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<p>Chelmsford City Council</p>	<p>Local Plan 2013-2036 (Adopted 2020)</p>	<p>STRATEGIC POLICY S2 Addressing Climate Change and Flood Risk encourages measures new development that “move[s] to a lower carbon future”, which:</p> <ul style="list-style-type: none"> • Reduces greenhouse gas emissions • Promotes the efficient use of natural resources such as water [...] • Provides opportunities for renewable and low carbon energy technologies and schemes • Provides opportunities for decentralised energy and heating systems • Encourages design and construction techniques which contribute to climate change mitigation and adaptation ” <p>Policy DM24 Design and Place Shaping Principles in Major Developments: "All new major development should reflect the following principles: [...] Encourage site design and individual building design that minimises energy consumption and provides resilience to a changing climate".</p> <p>Policy DM25 Sustainable Buildings imposes and expectation that “all new dwellings and non-residential buildings to incorporate sustainable</p>	<p>Policy DM24 Design and Place Shaping Principles in Major Developments includes the following: “All new major developments should reflect the following principles: ... Encourage site design and individual building design that minimises energy consumption and provides resilience to a changing climate”.</p> <p>Guidance: DM24 Reasoned justification §9.10 “The Council will encourage developers to have regard to the design principles set out in the Essex Design Guide.” No other local guidance is in place, the Council’s website refers back to the National Design Guide.</p>	<p>Local Plan Review in progress, with the second stage of Preferred Options having been consulted on May -June 2024, which included “Policy DM31: Net Zero Carbon Development (In Operation)”. The Local Plan Preferred Options Feedback Report indicates both strong support and push back for the net zero policy and some push-back from some developers on energy efficiency standards going beyond building regulations.</p> <p>Regulation 19 Draft Plan consultation to take place January to February 2025</p>
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		<p>design features to reduce carbon dioxide and nitrogen dioxide emissions, and the use of natural resources, as follows where relevant. All new dwellings shall meet the Building Regulations optional requirement for water efficiency of 110 litres/person/day.</p> <p>...</p> <p>All new non-residential buildings with a floor area in excess of 500sqm shall achieve a minimum BREEAM rating (or its successor) of 'Very Good'."</p>		
<p>Colchester City Council</p>	<p>Colchester Local Plan 2017-2033 (Adopted July 2022)</p>	<p>The Local Plan refers to the City Council's declaration of a climate emergency in 2019 and states: "A Climate Challenge and Sustainability Strategy and a Carbon Management Plan will support the Climate Emergency Action Plan and will set out detailed specific carbon reduction projects." (§5.8).</p> <p>It contains a section on Climate Change Policy and Policy CC1, which "encourage[es]" a number of measures and "support[s] energy efficiency improvements to existing buildings in the Borough where appropriate"</p> <p>This has provided the basis for SPDs on climate change, active travel and biodiversity.</p>	<p>Policy: Strong language in Policy DM15: Design and Amenity:</p> <p>"All development, including new build, extensions and alterations, must be designed to a high standard, positively respond to its context, achieve good standards of amenity, and demonstrate social, economic and environmental sustainability. Great weight will be given to outstanding or innovative designs which help raise the standard of design more generally in the area. Poor design will be refused including that which fails to take the opportunity for good design or improving the local area.</p> <p>The Local Planning Authority will use and/or promote a range of planning processes and tools to help achieve</p>	<p>Local Plan Review in progress.</p> <p>Issues and options topic based consultations held throughout 2024. Consultation on net zero carbon homes held 16 April 2024 to 30 May 2024, Colchester proposed using the Greater Essex policies and the consultation question asked:</p> <p>"Is the Planning Policy Position for Net Zero Carbon Homes and Buildings in Greater Essex suitable and appropriate to include in the Colchester Local Plan Review?"</p>

			<p>high quality design. Ultimately, development proposals must demonstrate that they, and any ancillary activities associated with them, will: [...]</p> <p>(viii) Minimise energy consumption/ emissions and promote sustainable drainage, particularly with regard to transport, landform, layout, building orientation, massing, tree planting and landscaping;"</p> <p>Guidance: A Shopfront Design Guide and a Sustainable Drainage Systems Design Guide are in place. The Local Plan refers to the Essex Design Guide only in relation to “urban, village and arcadian case studies” (§7.78) and standards for amenity space provision for new residential development (§7.99).</p>	A Regulation 18 Draft Plan consultation will take place in Q1 2025.
Epping Forest District Council	Local Plan 2011-2033 (Adopted March 2023)	A general objective for the local plan, under “Air Quality, Climate Change and Flood Risk” is “to require development to meet high standards of energy efficiency and utilise renewable energy” (Part 1 pg 27) However, this appears to be achieved through design policies rather than the specific low carbon policy (“low carbon” is not defined).	<p>Policy: Part 1 Policy DM9 High Quality Design:</p> <p>“A. All new development must achieve a high quality of design and contribute to the distinctive character and amenity of the local area. The Council will require all development proposals to be design-led and:... (iii)incorporate sustainable design and construction principles that integrate adaptation and mitigation measures to address</p>	Only due 2028

		<p>The reasoned justification for Policy DM20 Low Carbon and Renewable Energy states it gives “support [to] appropriate low carbon and renewable technologies to assist in delivering more energy efficient development in support of local and national carbon reduction ambitions. The Council’s approach is to support low carbon and renewable technologies as part of a package of measures to assist in delivering more energy efficient development.” (§4.142) It appears to be focused on energy generation through renewable energy (see §4.136).</p> <p>DM20(A) provides: “The incorporation of low carbon and renewable energy measures in new and existing development will be encouraged with regard to both standalone installations and micro renewables integrated into development.”</p> <p>(C) provides “The use of combined heat and power (CHP),and/or combined cooling, heat and power (CCHP) and district heating will be encouraged.”</p>	<p>climate change;(iv)are planned to minimise vulnerability to climate change impacts and which will not exacerbate vulnerability in other areas”</p> <p>Part 1 also flags, for Garden Communities in Harlow and Gilston, Policy SP3(C)(xviii): “Integrate a sustainable approach to design and construction that secures net gains in biodiversity and the highest standards of energy efficiency and innovation in technology</p> <p>Guidance: Harlow and Gilston Garden Town Design Guide (November 2018).</p>	
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<p>Harlow District Council</p>	<p>Harlow Local Development Plan 2020-2033 (December 2020)</p>	<p>Policy PL3: Sustainable Design, Construction and Energy Usage “New development will be expected to deliver high standards of sustainable design and construction and efficient energy usage, taking account of predicted changes to heating and cooling requirements as a result of climate change.”</p> <p>The reasoned justification explains at §13.18-19: “The Building Regulations set out the minimum requirements for the conservation of fuel and power. Development will be encouraged to exceed the minimum standards required by Building Regulations. Where exceeded, the amount by which the minimum standards should be exceeded is preferably at least 19%. The Council supports development that follows the principles of sustainable construction, and encourages developers to deliver schemes which adopt a fabric-first approach to development and meet the performance and quality set by appropriate standards, such as Passivhaus, Home Quality Mark (HQM) and BREEAM UK New Construction 2018.</p> <p>Development proposals must demonstrate how the reduction of</p>	<p>Policy: PL1 Design Principles for Development “A high standard of urban and architectural design is expected for all development. Development must meet the following criteria:</p> <p>(a) it is supported by a design rationale based on an understanding and analysis of local context and character, taking into consideration the adopted Harlow Design Guide Supplementary Planning Document (SPD), the Harlow and Gilston Garden Town Vision and Design Guide, the services and access chapter of the Essex Design Guide, and relevant national guidance; 'Sustainable design, construction and energy usage'.</p> <p>Guidance: Harlow Design Guide SPD, with an Addendum adopted in 2021 that includes a section on climate change. They also have a sustainability guidance and checklist document that developers can use when preparing applications.</p>	<p>Local Plan Review commenced. Issues and Options consultation to be held 2025.</p>
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		energy consumption and carbon dioxide emissions is being considered. The wellbeing of building occupants must also be addressed within the design and layout, by minimising risks of overheating and providing adequate daylight and ventilation.”		
Maldon District Council	Maldon District Local Development Plan (LDP) 2014-2029 (Adopted July 2017)	<p>Policy S1 Sustainable Development: “Enable and adapt to the effects of climate change by limiting greenhouse gas emissions through the efficient use of energy and use of renewable alternatives, coastal management, and mitigating against flooding”</p> <p>Policy D2: Climate Change and Environmental Impact of New Development requires all development to “minimise its impact on the environment” through minimising all possible forms of pollution; contributing towards “making more efficient use or re-use of existing resources and reducing the lifecycle impact of materials used in construction”; seeking to “maximise the use of building materials from sustainable sources and apply sustainable construction methods where appropriate”; and requiring non-residential development to</p>	<p>Policy: Joint section on 'Design and Climate Change'.</p> <p>Policy D1: Design Quality and the Built Environment – “All development must: 1) Respect and enhance the character and local context and make a positive contribution in terms of:- [...] g) Energy and resource efficiency. [...]</p> <p>In addition, all developments must also demonstrate that they have regard to the design principles set out in the emerging ‘Maldon District Design Guide SPD’ and any other relevant local development documents.” The explanatory text to Policy D1 states that regard should be had to Essex Design Guide.</p> <p>Guidance: Has the Maldon District Design Guide SPD which contains a section on “Future Proofing” that focuses on mitigating the effects of</p>	LDP Review 2021+ has commenced. A call for sites was undertaken in 2022 and an Issues and Options consultation was undertaken in 2023. This asked whether the Council should plan for all new development to be net zero carbon upon adoption of the plan or from a specific future date.

		achieve a minimum of BREEAM 'Very Good' rating	climate change and reducing energy consumption. However, it has no guidance on the achievement of any particular level of energy efficiency, let alone a level which exceeds Building Regulations.	
Rochford District Council	Core Strategy (adopted December 2011) Development Management Plan (adopted 16 December 2014)	<p>Policy ENV9 in the Core Strategy "From 2016 developments will be expected to meet the zero carbon target."</p> <p>Policy ENV10 requires BREEAM 'Very Good' for non-residential buildings as a minimum, unless such requirements would render a particular development economically unviable.</p> <p>The reasoned justification to Policy DM1 states: "The Council are concerned about the potential impact of climate change and will therefore expect developers to implement appropriate initiatives to mitigate the impact of new developments. The design and construction of buildings can directly affect the environment in terms of energy use and the generation of greenhouse gases, and the subsequent impact on climate change through global warming. This will also affect the consumption of non-renewable natural materials. The implementation of appropriate measures to reduce the consumption</p>	<p>Policy DM1 includes list of design features that proposals must consider. Does not include energy efficiency standards, but does include the following within the wording of the actual policy rather than just the explanatory text: "Proposals should have regard to the detailed advice and guidance on the design and layout of new developments as set out in Supplementary Planning Document 2 – Housing Design, as well as to guidance in the Essex Design Guide for Residential and Mixed-Use Areas."</p> <p>Guidance: SPD2: Housing Design, from 2007. Contains nothing about energy efficiency.</p>	<p>Local Plan review in progress including a consultation in 2021 on Climate Change and Resilient Environments Topic Paper.</p> <p>A Regulation 18 consultation is scheduled for 2025.</p>

		<p>of energy and natural resources will help achieve the wider objective of securing more sustainable forms of development within the District.” However the policy itself does not address these issues.</p>		
<p>Southend on Sea Borough Council</p>	<p>DPD 1 Core Strategy (adopted December 2007)</p> <p>DPD 2 Development Management Document (adopted July 2015)</p>	<p>Core Strategy KP2 requires all new development to continue to environmental regeneration in a sustainable way through, inter alia, “a reduction in the use of resources, including the use of renewable and recycled resources” with at least 10% on-site renewables and “avoidance or appropriate mitigation of actual and potential pollution impacts of development”, which would include pollution from greenhouse gas emissions.</p> <p>CP4 The Environment and Urban Renaissance requires development proposals to contribute to the creation of a sustainable urban environment, by “ensuring design solutions that maximise the use of sustainable and renewable resources in the construction of development and resource and energy conservation (including water) in developments”</p> <p>Policy DM2 Low Carbon Development and Efficient Use of Resources requires that “all</p>	<p>Policy DM1 – Design Quality</p> <p>“1. The Council will support good quality, innovative design that contributes positively to the creation of successful places. All developments should draw reference from the design principles set out in the Design and Townscape Guide SPD, where applicable, and where a Design and Access Statement is required demonstrate how this guidance has been addressed to achieve high quality, sustainable design [...]”</p> <p>Guidance: Design and Townscape Guide, published 2006 and updated 2009. Section 8 is about sustainable design: “We will therefore be requiring that all new homes be built to a minimum of Code for Sustainable Homes Level 3 with a view to moving towards Code Level 4 over the next few years. This supports the Governments aspiration for the Thames Gateway to lead the way as an Eco-Region (as set out in the EcoRegion Prospectus) and is in line</p>	<p>Local Plan review ongoing since 2019; preferred approach consultation 2025</p>

		development proposals should contribute to minimising energy demand and carbon dioxide emissions in accordance with the energy hierarchy and address ... Applying passive and energy efficient design measures; ... move towards zero carbon by 2016 for all residential developments; or achieving a BREEAM 'very good' rating"	with Core Strategy Policies KP2 and CP4. The Code Level achieved is a material consideration in any planning application. An explanation of how the Code Level will be reached should be included within the planning application supporting documentation."	
Tendring District Council	Tendring District Local Plan 2013-2033 and Beyond Section 1 (adopted January 2021 - prepared joint strategic portion with Braintree and Colchester); Section 2 (adopted January 2022)	Policy SPL3: Sustainable Design: "Part B: Practical Requirements New development (including changes of use) must meet practical requirements. The following criteria must be met... d. the applicant/developer can demonstrate how the proposal will minimise the production of greenhouse gases and impact on climate change as per the Building Regulations prevailing at the time and policies and requirements in this plan ... All new development (including changes of use), should incorporate climate change adaptation measures and technology from the outset including reduction of emissions, renewable and low carbon energy production, passive design, and through green infrastructure techniques, where appropriate."	Policy: Strategic portion has the same section 7 as Braintree and Colchester. In local portion Policy SPL3 is long and mostly focused on aesthetics and the practicalities of getting the site built out. However, it does contain the following: "All new development (including changes of use), should incorporate climate change adaptation measures and technology from the outset including reduction of emissions, renewable and low carbon energy production, passive design, and through green infrastructure techniques, where appropriate." Guidance: No local design guide and no reference to other design guides in text of policy on design itself. But there is a reference to the Essex Design Guide in housing layout policy and policy for a particular strategic site	Local Plan Review begun in December 2023. 'Call for Sites' held and an Issues and Options consultation is scheduled Q1 2025

		<p>Policy PPL 10 Renewable Energy Generation and Energy Efficiency Measures includes “Planning permission will only be granted where the applicant can demonstrate that all reasonable renewable energy and energy efficiency measures have been fully considered and, where viable and appropriate, incorporated into the design, layout and construction. The Council will consider the use of planning conditions to ensure the measures are delivered.”</p> <p>Reasoned justification §7.9.5 provides: “Given the importance of tackling climate change and promoting renewable energy and energy efficiency measures and the rapid speed in which technology is evolving and improving, the Council may provide further guidance in the form of a Supplementary Planning Document (SPD) to assist in the implementation of Policy PPL10, which can be updated as necessary to future changes in approach.”</p>	<p>and the Council’s SPD website states it has “<i>endorsed</i>” the Design Guide so can give weight to it during consideration of planning applications..</p>	
Thurrock Council	Thurrock Core Strategy and Policies for Management of Development	Really forward-thinking policies on climate change (for the time of adoption). CSTP25 – Addressing Climate Change on Mitigation: “The Council will require new and existing	Policy: CSTP22: “The Council will promote high quality design in Thurrock and will progress opportunities to improve the quality of the environment throughout the	Ongoing New Local Plan process, which has been complicated by the need to consider the interrelationship with the Lower Thames

	<p>(adopted December 2011 and amended January 2015) and saved policies in the Borough Local Plan (adopted September 1997).</p>	<p>development and associated activities to adhere to local, regional and national targets for reducing carbon emissions." Policy 2(II) set emissions reductions targets for domestic operational emissions by 2015 and 2020.</p> <p>PMD12 – Sustainable Buildings imposed criteria for new development to meet, linked to the "Code for Sustainable Homes" level 4 rating, "except in respect of any of the Code's requirements that have been officially superseded by mandatory national standards." Proposals for development are required to submit an Energy and Water Statement, showing how the proposed development would "minimise energy consumption", among other things. It anticipated requirements being set out in a Design and Standards DPD, but instead a Design Guide SPD was put in place.</p> <p>Saved policy BE11 Energy Efficiency "In considering development proposals, the Council will take into account the need for energy efficiency in the built form of new developments. This will include matters such as hard and soft landscaping, orientation of buildings, and the layout and design of developments." Paragraph 3.4.27 links</p>	<p>Borough and particularly in the Regeneration Areas and Key Strategic Employment Hubs. [...] VII. Development must embrace the use of high-quality design including sustainable, renewable resources of energy and low-emissions technology, and enhance Green Infrastructure. VIII. The Council will require that developments address the particular sensitivities and capacity of the places within which they occur, including how adverse impacts are mitigated. Pre-application discussions with developers will be encouraged to help achieve the above and to ensure that the criteria set out in Policy PMD2 Design and Layout and other related policies are met. The Council will provide further guidance on Thurrock's design principles in the Design and Sustainability SPD. "</p> <p>Guidance: Thurrock Design Guide Design Strategy SPD addresses "Building in Sustainability", requiring the design and layout of buildings to identify "opportunities to minimize the consumption of energy to heat, cool, ventilate and light buildings and spaces" and "opportunities for sustainable energy generation."</p>	<p>Crossing DCO process. The Regulation 18 initial Proposals Consultation has been carried out and the Regulation 19 stage is planned for January-March 2026.</p>
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		<p>this to avoiding the use of fossil fuels and meeting the needs of the present generation without prejudicing those of future generations.</p>	<p>However, no specific requirements are imposed, nor is reference made to the Essex Design Guide.</p>	
<p>Uttlesford District Council</p>	<p>Uttlesford Local Plan 2005 (adopted January 2005)</p>	<p>No specific climate change policies in the 2005 plan; energy referred to in the design policy GEN2.</p>	<p>Policy: Policy GEN2 – Design: “Development will not be permitted unless its design meets all the following criteria and has regard to adopted Supplementary Design Guidance and Supplementary Planning Documents.</p> <ul style="list-style-type: none"> a) ... b) It safeguards important environmental features in its setting, enabling their retention and helping to reduce the visual impact of new buildings or structures where appropriate; c) It provides an environment, which meets the reasonable needs of all potential users. d) ... e) It helps to minimise water and energy consumption; f) It has regard to guidance on layout and design adopted as supplementary planning guidance to the development plan. g) It helps to reduce waste production and encourages recycling and reuse. h) It minimises the environmental impact on neighbouring properties by appropriate mitigating measures.” 	<p>Emerging local plan under development, Local Plan 2021-2041 submitted to the Secretary of State for independent examination on 18 December 2024. It is supported by detailed Climate Change evidence and proposes Core Policy 1 on Climate Change, which cross refers to Core Policy 22 on Net Zero Operational Carbon Development (based on the Country Council’s model policy) and other specific polices, including on overheating; water supply and embodied carbon.</p>

			<p>Guidance: District-wide Design Code (adopted July 2024), section 2.10 Resources requires a “fabric-first” approach, by following the energy hierarchy (R1C) and maximizing resilience (R1G). R1.9G provides “All residential and non-residential buildings should achieve primary energy demand targets (15 kWh/sqm/per year) except for bungalows (22 kWh/sqm/per year).” R1G also give guidance on positioning to maximise solar gain, requiring renewable energy to be designed-in from the outset. R1.19G requires “Buildings with larger roofs (over 200sqm) will be expected to provide solar arrays.” R1.4C states “All new homes should use sustainable heating technology in line with current Building Regulations requirements, such as heat pumps or connection to a district heat network.”</p> <p>There are strong information provision requirements: R2.1C requires: “All proposals must outline the carbon footprint of their proposed construction strategy and the steps taken to minimise impact.” and RCP1 requires “Proposals must demonstrate how their design positively responds to the seven themes of the Uttlesford</p>	
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			Climate Emergency strategy; Resources, energy conservation, transport, planning, council assets and operation, natural environment and adapting to climate change.” Both a whole life carbon assessment and an energy statement are required.	
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