**IN THE MATTER OF THE BUILDING REGULATIONS, PART L 2026 AND**
**IN THE MATTERS OF THE PLANNING AND ENERGY ACT 2008 AND THE PLANNING AND COMPULSORY PURCHASE ACT 2004**

**Re: Ability of local planning authorities to set local plan policies that require development to achieve energy efficiency standards above Building Regulations**

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**CONSOLIDATED RE-UPDATED OPEN ADVICE**

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## INTRODUCTION AND SUMMARY

1. I am asked to advise Essex Planning Officers Association ("**EPOA**") and others on the ability of local planning authorities ("**LPAs**") to set local plan policies mandating energy efficiency standards for new buildings which exceed those in the Building Regulations, Part L. This advice consolidates and updates my previous advice[1] on this question.

2. For the updated reasons set out in detail below:
   2.1 The Planning and Energy Act 2008 ("**PEA 2008**") confirms one way in which LPAs' pre-existing powers can be exercised to set higher targets for energy performance standards for development in their area than the national baseline. That statutory power remains fully extant and the Government has recently confirmed it does not intend to revoke that power. It supports authorities bringing forward policies using energy efficiency standards set out or endorsed in national policies or guidance (such as those focused on reducing regulated carbon emissions and any energy efficiency standard recognised as part of an assessment of whole life energy costs or whole life-cycle carbon assessments) that go beyond current Building Regulations standards.

[1] I initially advised in April 2023; provided updated advice in early 2024 and re-updated advice in May 2025. In October 2025, I also provided an addendum to this advice (and a second open advice). These previous advices are available here.

2.2 The PEA 2008 is not the only power on which LPAs can rely, nor does it circumscribe other powers or foreclose other legislative routes by which LPAs are obliged or empowered to act. Quite the opposite, as the debate at the time the PEA 2008 was put into place shows, it was always recognised that climate-related legislative amendments might result in provisions providing such powers.

2.3 There are other legislative routes by which LPAs have different or more ambitious powers, such as the general power flowing from the duty in section 19(1A) of the Planning and Compulsory Purchase Act 2004 ("**PCPA 2004**"), which requires 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*".

2.4 This is reinforced by the requirements in the August 2026 version of the National Planning Policy Framework ("**2026 NPPF**"), policy CC1, that development plans must take a proactive approach to mitigating climate change and supporting the transition to net zero, in accordance with the objectives and provisions of the Climate Change Act 2008, and must also take a proactive approach to adapting to climate change. The objective of CC1 (relevant to its interpretation) is to shape policies in ways that contribute to radical reductions in greenhouse gas emissions and adapt to the full range of current and potential impacts of climate change. It is notable that energy efficiency policies address <u>both</u> mitigation and adaptation, and are thus strongly supported.

2.5 Linked with this (and cross-referred to in the climate policies) are new design-focused policies in the 2026 NPPF, supporting both plan-making and decision-taking which require proposals, as appropriate to the nature of the developments and their locations, to "*contribute to climate change mitigation and adaptation and the transition to net zero by using building layouts, building orientation, massing, landscaping and materials which conserve energy and other resources, and which minimise risks from the impacts of climate change including overheating*". Given the significant impact of the built environment and, in particular, new development, on the UK's climate obligations, and the risks to adaptation if new development fails properly to address climate impacts, the requirement to contribute to climate change mitigation and adaptation and the transition to net zero will be "*appropriate*" to all development in all locations in the UK. The question to be answered in local policies and decision-taking is <u>the extent to which</u> design must contribute to climate change mitigation and adaptation and the transition to net zero, not whether it must do so.

2.6 There is no conflict between the PEA 2008 and section 19(1A) of the 2004 Act (indeed, it was anticipated they would work together), and where there are two different, overlapping ways of achieving a local authority's objective, it is open to the authority to choose the power on which it relies. Accordingly, LPAs can choose the power under which they bring forward local energy efficiency policies.

2.7 That position is not changed by the 2026 NPPF. Nor was it changed by the previous Written Ministerial Statement titled "Planning – Local Energy Efficiency Standards Update" ("**the 2023 WMS**"), which is partly reflected in the 2026 NPPF plan-making policy PM13 and has been superseded by it. The Government has intentionally rowed back from its position, articulated in the consultation on the draft NPPF, which would have entailed repeal of the PEA 2008 coupled with policy in the NPPF strongly dissuading plans setting local energy efficiency standards above Building Regulations.

2.8 Policy PM13(1)(b)(iii) of the 2026 NPPF supports local energy efficiency policies that go beyond Building Regulations, so long as they are justified by a robust evidence base that addresses cost, viability and deliverability. PM13(1)(b)(iii) provides a more flexible route for LPAs to bring such policies than was the case under the 2023 WMS. Although the policy still specifies use of certain metrics, it introduces the phrase "*or other approved calculation methodology*" (giving flexibility) and also introduces language that explicitly countenances departure from the part of the policy concerning metrics.

2.9 In light of the phrase "*other approved calculation methodology*" in PM13(1)(b)(iii), LPAs can bring forward policies going beyond Building

Regulations that use, for example, metrics focusing on space heating and/or Energy Use Intensity and/or carbon efficiency, where those calculation methods have previously been approved by other local plan Inspectors or are approved by relevant professional bodies, and doing so will comply with policy PM13(1)(b)(iii) so long as the policies are justified by a robust evidence base that addresses viability and deliverability.

2.10 Even if (contrary to the above) proposed local plan energy efficiency policies were considered to be in conflict with some or all of the provisions of PM13, that would still not prevent LPAs from promoting and Inspectors from finding sound local plan policies that require higher energy efficiency standards than Building Regulations, expressed in metrics other than Target Emissions Rate ("**TER**"), calculated via the Standard Assessment Procedure ("**SAP**") (or other approved methodologies). In light of the trio of Court of Appeal decisions in *R (West Berkshire DC) v SSCLG* [2016] 1 WLR 3923 ("***West Berkshire***"); *R (Rights:Community:Action) v SSLUHC* [2026] PTSR 864 ("***RCA***") in *Mead Realisations Ltd v SSHCLG* [2025] PTSR 1158 ("***Mead Realisations***"), the 2026 NPPF cannot lawfully seek to countermand or frustrate the effective operation of relevant statutory powers, such as section 19(1A) PCPA 2004. It is one among many aspects of national policy to which LPAs and Examining Inspectors must have regard. It is a material consideration to which whatever weight is rationally justified can be given in the exercise of planning judgment. That is not changed by wording in the Introduction to the 2026 NPPF, characterising it as a material consideration "*of critical importance*" in plan making and decision-taking in England.

2.11 So long as there is a robust evidence base – a reasoned and robustly costed rationale – it is open to Examining Inspectors, in the exercise of their planning judgment, to determine that policies using metrics and methods of calculation other than those specified in PM13(1)(b)(iii) or other approved methodologies are sound. Such policies would be consistent with national policy on climate change mitigation, adaptation and the net zero obligation. To the extent that there would be deviation from any part of PM13(1)(b)(iii), that can be justified on the evidence and does not prevent overall consistency of the proposed local plan with the 2026 NPPF (particularly as national policy can pull in different directions and the climate and design policies highlighted above support such local energy efficiency measures).

2.12 There are a number of examples of LPAs which have successfully sought to include policies in their local plans mandating energy efficiency standards above the national baseline, and Inspectors have been satisfied that such policies will not have an unreasonable impact on the viability or deliverability of development. These are also important as some provide examples of where Planning Inspectors, on behalf of the Secretary of State, have "approved" calculation methodologies other than TER and SAP. The 2026 NPPF does not diminish the usefulness of these as examples, nor will its transitional provisions limit the weight to be given to these policies.

## REASONS

3. This opinion has the following structure:


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## FACTUAL BACKGROUND

### The Climate Crisis

4. In October 2018, the Intergovernmental Panel on Climate Change ("**IPCC**") reported in its *Special Report on Global Warming of 1.5$^{o}$C* (the "**SR1.5 Report**"), that human activities had caused the Earth's surface to warm by more than 1$^{o}$C since the industrial period of 1851-1900.[2] The SR1.5 Report made two further significant findings: (i) the climate impacts of 2°C of warming would be very much more serious than those of 1.5°C of warming; and (ii) there were then only 12 years in which to take action to prevent global temperature rise above 1.5$^{o}$C.

5. On 9 August 2021 the IPCC published the contribution of Working Group I to the IPCC's Sixth Assessment Report, regarding the physical science basis of climate change. Its key findings of fact can be summarised as follows:[3]
   a. It is unequivocal that human influence has warmed the atmosphere, ocean and land. Widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred.
   b. The scale of recent changes across the climate system as a whole and the present state of many aspects of the climate system are unprecedented when compared to the globe's climate over many thousands of years.
   c. Human-induced climate change is already affecting many weather and climate extremes in every region across the globe; evidence of observed changes in extremes such as heatwaves, heavy precipitation, droughts, and tropical cyclones and, in particular, their attribution to human influence, has strengthened since the IPCC published its Fifth Assessment Report in 2013.
   d. Global warming of 1.5°C and 2°C will be exceeded during the 21$^{st}$ century unless deep reductions in $CO_2$ and other greenhouse gas emissions occur in the coming decades.
   e. Limiting human-induced global warming to a specific level requires limiting cumulative $CO_2$ emissions, reaching at least Net Zero $CO_2$ emissions, along

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[2] IPCC 2018 *Special Report on Global Warming of 1.5$^{o}$C*, Summary for Policymakers ("**SPM**") A1.

[3] IPCC, 2021: SPM in *Climate Change 2021: The Physical Science Basis Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Cambridge University Press.

with strong reductions in other greenhouse gas emissions.[4] Strong, rapid and sustained reduction in $CH_4$ (methane) emissions would also limit the warming effect resulting from declining aerosol pollution and would improve air quality.

6. At that point, the IPCC estimated a remaining carbon budget of 500 gigatonnes of $CO_2$ ("**$GtCO_2$**") (from 2020) for a 50% chance of restricting warming to 1.5°C, i.e., a little over 420$GtCO_2$ from the start of 2022.[5] This new budget represents just over ten years' worth of global emissions at pre-pandemic (2019) levels (a level that 2021 broadly matched).

7. The Government's 2022 Climate Change Risk Assessment,[6] based on a series of reports by the Climate Change Committee ("**CCC**")[7] and an independent Technical Report,[8] and presented to Parliament pursuant to section 56 of the Climate Change Act 2008 ("**CCA 2008**"), set out that the effects of climate change are being felt now across the UK and identified future risks which threaten property and lives from impacts such as flooding; wildfires; drought; sea level rise; coastal erosion and heating. It also sets out that, even under low warming scenarios, the UK will be subject to a range of significant and costly impacts unless accelerated further action is taken now.[9] For eight of the risks identified, economic damage by 2050 under 2°C of warming could exceed £1 billion per annum.[10] It states:

> "*The evidence shows that we must do more to build climate change into any decisions that have long-term effects, such as new housing or infrastructure, to avoid often costly remedial action in the future.*"[11]

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4 IPCC, 2018: Annex I: Glossary defines Net Zero $CO_2$ emissions as being achieved when global $CO_2$ emissions are balanced by $CO_2$ removals. Note that Net Zero $CO_2$ emissions and carbon neutrality have different meanings and can only be used interchangeably at a global scale. At a regional, national, local, or sectoral level, Net Zero requires the reduction of emissions to a level as close to zero as possible, while carbon neutrality can rely on offsetting elsewhere. See IPCC, 2022, Technical Summary ("**TS**") in *Climate Change 2022: Mitigation of Climate Change, Working Group III*, Box TS.6, fn. 19.

5 IPCC, 2021, Table SPM2 and paras D.1.3-D.1.8.

6 *UK Climate Change Risk Assessment 2022* (17 January 2022).

7 https://www.ukclimaterisk.org/publications/technical-report-ccra3-ia/.

8 *Technical report* (CCRA3-IA) (16 June 2021).

9 *UK Climate Change Risk Assessment 2022* pg 3.

10 Ibid, pg 4.

11 Ibid, pg 4 and pg 9.

8. On 27 February 2022 the IPCC published the contribution of Working Group II to the IPCC's Sixth Assessment Report. Its key findings of fact are:

a. The extent and magnitude of climate change impacts are larger than estimated in previous assessments;[12]

b. Climate change has caused increased heat-related mortality; hot extremes including heatwaves have intensified in cities, where they have aggravated air pollution events and limited functioning of key infrastructure;[13]

c. Continued and accelerating sea level rise will encroach on coastal settlements and infrastructure,[14] and, combined with storm surge and heavy rainfall, will increase compound flood risks;[15]

d. There have been irreversible losses, for example through species extinction driven by climate change;[16]

e. "*The cumulative scientific evidence is unequivocal: Climate change is a threat to human well-being and planetary health. Any further delay in concerted anticipatory global action on adaptation and mitigation will miss a brief and rapidly closing window of opportunity to secure a liveable and sustainable future for all.*"[17]

9. On 20 March 2023, the IPCC published its Synthesis Report, which draws together conclusions and recommendations from its detailed reports produced over the last six-year reporting cycle.[18] It emphasises that deep, rapid, sustained, and immediate reductions in greenhouse gas emissions are needed to avoid dangerous and irreversible consequences for human and natural systems.[19] A wide range of co-benefits would accompany rapid and sweeping emissions reductions, especially in terms of air quality and public health.[20] It sets out that substantial emissions and policy gaps presently exist, with implemented policies being on

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12 IPCC, 2022, SPM in *Climate Change 2022, Impacts, Adaptation and Vulnerability, Working Group II contribution*, para SPM.B.1.2.
13 Ibid, SPM B.1.1 and SPM.B.1.5.
14 Ibid, SPM.B.3.1.
15 Ibid, SPM.B.5.1.
16 Ibid, SPM.B.1.2.
17 Ibid, SPM.D.5.3.
18 IPCC 2023 AR6 Synthesis Report.
19 Ibid, C.2.1 pg 27.
20 Ibid, C.2.3 pg 27.

track for warming of 3.2ºC, with a range of 2.2ºC to 3.5ºC.[21] Importantly, it emphasises that even the smallest increments of warming matter.[22] Every fraction of a degree will increase the severity and frequency of floods, droughts, storms, heatwaves, and other extreme weather events.

10. On 2 September 2026, the UN Environment Programme ("**UNEP**") published a key report: Limiting Overshoot Navigating Exceedance of 1.5°C and Pathways Towards Return.[23] That report concluded that, while the international community has made progress on climate change, global action to cut greenhouse gas emissions has not been fast enough to avoid global warming crossing 1.5°C above pre-industrial levels in the next few years. Human-induced global warming is nearing 1.4°C above pre-industrial levels, and observed global temperatures have been increasing at about 0.25°C per decade, with some recent studies showing an even higher rate. Extrapolating current trends, global warming may reach 1.5°C around the end of this decade. Even an optimistic scenario of current government pledges (full implementation of all national climate plans plus meeting additional net-zero targets) puts expected peak temperature rise at 1.8°C.[24]

11. UNEP's clear conclusion was that "*there are **no benign scenarios** with global temperature rise above [1.5°C].*" (emphasis added).[25] Cities and infrastructure will be at greater risk from stronger and longer heatwaves, flooding and wildfires. Higher energy demand, consumer costs, and insurance and financial system stress will pose risks to all nations. Significant steps will have to be taken to remove carbon from the atmosphere in order to come back below 1.5°C of warming.

12. UNEP makes clear that avoiding every additional fraction of a degree of global warming and reducing the time in overshoot decrease risks and damages and increase the chances of bringing temperatures back down. "*The duration and severity of the overshoot, peak and decline pathway, and the ability of communities to cope, will depend on how fast emissions are cut and how quickly transformational*

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21 Ibid, figure 5 pg 23.
22 Ibid, B.2.2 pg 15 and figure 4 pg 18.
23 UNEP, Overshoot Report.
24 Ibid, pg 2.
25 Ibid, pg 2.

*adaptation measures are implemented.*"[26] The remaining carbon budget continues to be revised downward as global emissions continue to consume it and science is updated. UNEP estimates that it presently stands at 130 $GtCO_2$ from 2026.[27]

13. Importantly, missing a legal target does not make the target irrelevant – quite the opposite. Missing a legal target imposes an even stronger obligation on states to take the steps needed to address the unlawfulness and bring themselves back into compliance with the target as quickly as possible, or to limit as much as possible the extent of the failure to comply. UNEP emphasises that rapid and sustained mitigation within this decade is both necessary and feasible across all sectors and greenhouse gases to hold warming well below 2°C and as close to 1.5°C as possible by the end of the century. This requires reaching global net-zero $CO_2$ emissions in the 2050s. UNEP makes clear that: "*Decisions taken this decade will determine whether viable options remain to gradually reverse warming back to 1.5°C.*"[28]

14. Residential buildings are the UK's second-highest emitting sector.[29] As at 2022, the operational greenhouse gas emissions from energy needed to heat, cool and power buildings accounted for 17% of total emissions,[30] and as at 2023 the operational emissions from just residential buildings accounted for 12% of UK emissions.[31] To meet the UK's domestic climate commitments requires a 30% reduction in total energy demand in buildings by 2035 (compared to 2021 levels),[32] and a 66% reduction in emissions from residential buildings by 2040 (relative to 2023).[33]

**Work in Essex to Address the Climate Crisis**

15. The Essex Climate Action Commission ("**ECAC**") is an independent body that advises on how best to tackle the climate challenge and for Essex to become a net

26 Ibid, pg 3.
27 Ibid, pg 14.
28 Ibid, pg 48.
29 CCC *The Seventh Carbon Budget* pg 159.
30 CCC, *Progress in reducing UK emissions 2023 Report to Parliament* pg 140.
31 CCC, *The Seventh Carbon Budget* pg 159. See also CAG Consultants, *Local Authorities and the Seventh Carbon Budget – Summary Report*, July 2026 pg 7.
32 CCC, *Progress in reducing UK emissions 2023 Report to Parliament* pg 143.
33 CCC *The Seventh Carbon Budget* pg 159.

zero emissions county.[34] There are over 30 commissioners, drawn from a range of private, public and third sector organisations. In July 2021, ECAC published its report 'Net Zero: Making Essex Carbon Neutral', in which it set out a series of recommendations, which were adopted in full by Essex County Council ("**the County Council**") at that time. Among these was the recommendation that all new homes and commercial buildings granted planning permission in Essex should be zero carbon by 2025, and carbon positive by 2030.[35]

16. These targets do not have statutory authority, but through leadership and information sharing, ECAC, the County Council and EPOA, working with district council Chief Planners, have sought to assist LPAs to adopt energy performance policies in their local plans, and developers to commit to higher standards of energy efficiency. ECAC's 2024-2025 Essex Climate Action Annual Report[36] reinforces this and supports the inclusion of the Essex Energy and Carbon (Net Zero) Policy in local plan reviews, using the publicly available evidence base[37] which justifies the ways in which the policy goes beyond Buildings Regulations.

17. The Essex Developers Group ("**EDG**") has signed up to a Developers Climate Action Charter in June 2022, in support of the ECAC targets.[38] The Charter has been adopted by the EDG as well as Homes England, the South East Local Enterprise Partnership and the Essex Planning Officers Association (representing the 15 local authorities of Essex).[39]

The Essex Model Energy and Carbon in Homes and Buildings Policies

18. EPOA published two Planning Policy Statements in October 2025 which updated the earlier November 2023, "Planning Policy Position for Net Zero Carbon Homes and Buildings in Greater Essex". The updated Planning Policy Statements took on board new and updated evidence, responses to consultations on local plans, feedback from industry organisations, scrutiny at local plan examinations and

34 https://www.essexclimate.org.uk/.
35 ECAC, 'Net Zero: Making Essex Carbon Neutral' pg 33.
36 https://www.essexclimate.org.uk/sites/default/files/climate-action-report-24-25.pdf
37 The EPOA hosted 'Essex Design Guide.
38 https://www.housingessex.org/topic/climate-action.
39 Essex Developers' Group Climate Action Charter.

Inspectors' Reports. Further minor revisions were made in April 2026 to both Statements. The Statements provide two model policies relevant to the climate change impact of development: Policy GE1 on Operational Energy and Carbon (Net Zero) and Policy GE2 on Embodied Carbon and Circular Economy.[40]

19. The policies are supported by a suite of implementation resources, including resources to support small and medium developers to convert energy information produced by the use of Building Regulations compliance software (and so expressed in SAP) to indicate whether compliance with the policy requirements for space heating demand, total energy use (energy use intensity) and Solar PV generation has been achieved.[41]

20. The Energy and Carbon Model Policies are the culmination of collaborative work between the ECAC, the County Council, EPOA and officers from all the Essex LPAs to establish a robust evidence base to support a consistent, clearly defined energy and carbon (net zero) 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:

a. Net Zero Carbon Viability and Toolkit Study (Report of Findings) (Three Dragons, Qoda and Ward Williams Associates, August 2022);[42]
b. Essex Net Zero Policy Study (Reports 1 and 2) (Introba, Etude, Currie & Brown, July 2023, updated September 2025);[43]
c. Essex Energy Offsetting Tariff Report (Introba, Currie & Brown, September 2025);[44]

40 https://www.essexdesignguide.co.uk/media/3283/policyge1_energyandcarbon-oct-2025-v11-april-2026.pdf and https://www.essexdesignguide.co.uk/media/3281/policyge2_embodiedcarboncircecon-oct-2025-v11-april-2026.pdf.

41 https://www.essexdesignguide.co.uk/climate-change/essex-policy-implementation/.

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

43 https://www.essexdesignguide.co.uk/climate-change/essex-energy-carbon-policy-study/.

44 https://www.essexdesignguide.co.uk/media/3171/essex-energy-offsetting-tariff-report-sept-2025.pdf.

d. Essex Embodied Carbon Policy Study – technical evidence base (Levitt Bernstein, Etude, Introba, Hawkins/Brown, Currie & Brown, June 2024, re-issued September 2025);[45]
e. 'Essex Net Zero Specifications' – Specification Guidance (Introba, Currie & Brown, Etude, Levitt Bernstein September 2025);[46]
f. Comparison Between Essex Policy GE1 and Confirmed Future Homes Standard (Part L 2026) Including Cost Analysis for Residential Typologies (Etude, June 2026);[47] and
g. Technical Advice Note on Cost Assumptions for Local Plan Viability (Currie & Brown, August 2026).[48]

21. The Essex Net Zero Policy Study includes costs (which have been updated in the Etude, June 2026 report, and also further updated and re-presented in a Technical Advice Note on Cost Assumptions for Local Plan Viability (Currie & Brown, August 2026) that can be used in local plan viability assessments, thus proving the basis for a consistent approach across Essex towards evaluating the costs of energy and carbon (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.

## LEGAL AND POLICY BACKGROUND: CLIMATE CHANGE

### Climate Change Case Law

22. The UK Supreme Court in *R (Finch) v Surrey County Council* [2024] UKSC 20 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*

45 https://www.essexdesignguide.co.uk/climate-change/essex-embodied-carbon-policy-study/.
46 https://www.essexdesignguide.co.uk/climate-change/essex-building-specification-guidance/
47 https://www.essexdesignguide.co.uk/media/3297/comparison-of-essex-policy-ge1-with-fhs-part-l-2026-june-2026.pdf.
48 https://www.essexdesignguide.co.uk/media/3300/technical-advice-note-cost-assumptions-essex-policies-ge1_ge2-for-local-plan-viability.pdf.

*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).*"

23. 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.

24. In *R (Frack Free Balcombe Residents Association) v SSLUHC* [2023] EWHC 2548 (Admin) at §65, Lieven J 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*".

25. On 23 July 2025, the International Court of Justice ("**ICJ**") published its *Advisory Opinion on the Obligations of States in Respect of Climate Change* (Case/187),[49] which definitively sets out States' obligations under the climate change treaties and other environmental treaties, as well as customary international law and international human rights law, emphasising a strong interrelation between these obligations.[50] The Court recognised the severe and far-reaching consequences of climate change, including extreme weather events, irreversible loss of biodiversity and human life and health, noting the "*urgent and existential threat posed by*

[49] Unanimous 14-judge Advisory Opinion on the Obligations of States in Respect of Climate Change (Case/187, 25 July 2025) ("**ICJ AO**").

[50] While advisory opinions are formally non-binding, the ICJ is the UN's principal judicial organ, and its authoritative interpretations of treaty obligations carry profound normative weight. In dualist states where international law is not automatically incorporated into domestic law, such as the UK, the ICJ opinion is persuasive.

*climate change*".[51] It makes clear that under customary international law, States have a duty to act with due diligence and to use all means at their disposal to prevent activities carried out within their jurisdiction or control from causing significant harm to the climate system and other parts of the environment.[52]

## Legal Obligations to Reach Net Zero by 2050

26. The United Kingdom is subject to a statutory obligation to ensure that its net carbon account for the year 2050 is at least 100% lower than the 1990 baseline, pursuant to section 1(1) of the Climate Change Act 2008 ("**CCA 2008**"), as amended by the Climate Change Act 2008 (2050 Target Amendment) Order 2019. 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.

27. The duties of the CCC are set out in Part 2 of the CCA 2008 and include obligations to advise the Secretary of State on the setting of carbon budgets (section 34) and to make annual reports to Parliament on the progress that has been made towards meeting the carbon budgets and the 2050 Net Zero target (section 36).

28. 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.[53] It was set so as to be on track for the previous target of an 80% reduction in greenhouse gas emissions by 2050. The

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51 ICJ AO, §73. The same conclusion – that climate change represents an existential threat – was reached in the unanimous 21-judge Advisory Opinion of the International Tribunal on the Law of the Sea in Case No. 31 (21 May 2024) at §66 and the unanimous 9-judge Advisory Opinion of the Inter-American Court of Human Rights (AO-32/25 of May 29, 2025. Series A No. 32) at §289.]. The UK Government was ahead of this: in May 2022, in its published guidance *Climate and health: applying All Our Health*, it confirmed citing The Lancet, that: "*The science is unequivocal; a global increase of 1.5°C above the pre-industrial average and the continued loss of biodiversity risk catastrophic harm to health that will be impossible to reverse*." HM Treasury also recognised the existential threat posed by climate change: "Net Zero Review: Interim Report" (20 July 2021) pg 2.

52 ICJ AO, §§135 and 208.

53 $CO_2$ 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 IPCC 2018, Annex 1: Glossary.

Fifth Carbon Budget (2028-32), set on the same basis, is 1,725 $MtCO_2e$, which requires an average of a 57% reduction.

29. The CCC published its Sixth Carbon Budget recommendation and report in December 2020. The Government accepted the recommendation and enshrined the budget in law by the Carbon Budget Order 2021. It sets a target of 965 $MtCO_2e$ for the period 2033–2037, which would equate to a 78% reduction in emissions by 2035, relative to the 1990 baseline.[54]

30. The adoption of the Sixth Carbon Budget had 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. In its December 2020 report, the CCC calculated a difference of at least 28-68 $MtCO_2e$ a year in 2030 between the average emissions allowed by the Fifth Carbon Budget, and the CCC's "Balanced Pathway", which is a trajectory that if followed would allow the UK to meet the Sixth Carbon Budget and the 2050 Net Zero target.[55]

31. 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.[56]

32. The CCC published its advice on the Seventh Carbon Budget on 26 February 2025; the Government accepted that advice and, on 26 June 2026, it passed into law: the carbon budget for the 2038-2042 budgetary period is 535 $MtCO_2e$. The CCC's recommended pathway to meet that budget focuses on 2040, recommending an 87% reduction of greenhouse gas emissions by then, compared to 1990 levels.[57] That is a reduction of three-quarters from current levels. Electrification is the key tool for achieving the reductions. Sectorally, the most work will need to be done by surface transport emissions and residential buildings emissions – much more

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54 CCC, *The Sixth Carbon Budget – The UK's path to Net Zero*, December 2020.
55 Ibid, pg 432.
56 Ibid, pgs 24 and 430-433.
57 CCC, *The Seventh Carbon Budget* pg 12.

of Carbon Budget 7 relies on progress being made on residential buildings than was previously the case.[58]

33. Alongside the CCA 2008, the UK is required, under the Paris Agreement, to produce Nationally Determined Contributions ("**NDCs**"), which are climate pledges and action plans that each country is required to develop in line with the Paris Agreement temperature goal of limiting global warming to 1.5° C. The UK's first NDC committed the UK to reduce all greenhouse gas emissions by at least 68% by 2030 on 1990 levels, and the second to an 81% reduction by 2035.[59]

**Climate Change and the 2026 NPPF**

34. The 2026 NPPF was published on 17 August 2026 and is the most significant amendment to the NPPF since its first publication in 2012. Each thematic chapter is split into plan-making policies and national decision-making policies. The plan-making policies must not be used when determining applications (paragraph 8).

35. Climate change is given greater prominence in the 2026 NPPF, while also being retained as a key part of wider strategic policies. The Government's consultation response on the draft updated NPPF states:

> "*The government recognises the importance of addressing climate change in a comprehensive and integrated way. The Framework should be read as a whole, with climate considerations also being reflected across other relevant policies, including design, transport, health and the natural environment.*"[60]

[58] Ibid, Figure 2, pg 12.

[59] CCC, Letter – Advice on the UK's 2035 Nationally Determined Contribution (24 October 2024). The CCC explained that this is in line with the Sixth Carbon Budget (despite requiring a higher percentage of reductions) as emissions accounting has changed slightly since the publication of the Sixth Carbon Budget.

[60] *Government response to the proposed reforms to the National Planning Policy Framework and other changes to the planning system consultation* (August 2026), pg 39.

36. Plan-making policy S1(b) defines, as part of positive plan-making, that plans must provide for new development "*in a way that promotes a sustainable pattern of growth and seeks to mitigate climate change and adapt to its effects*."[61]

37. "*Meeting the challenge of climate change*" is also addressed separately, in Chapter 5. CC1 is the key plan-making policy. CC1(1) retains the 2024 NPPF requirement for development plans to "*take a proactive approach*", but is more detailed in specifying that this approach encompasses:

    a. Mitigating climate change and supporting the transition to net zero, in accordance with the objectives and provisions of the CCA 2008 (the latter now referred to in the main text rather than footnoted); and
    b. Adapting to climate change, taking into account the implications of extreme weather and long-term climate trends.

38. CC1(1)(a) then gives examples of how LPAs should comply with these obligations, using the form of words (recurring across the NPPF in relation to plan making) "*They should do this by:...*." In my view, this is not intended to be a closed list of ways in which proactive plan making addressing climate mitigation and adaptation can take place. The list gives specific examples of what that obligation clearly requires, but it is not meant to be exhaustive, particularly in light of the reference to the CCA 2008 in CC1; the intersection with section 19(1A) PCPA 2004, and the contextual box for Chapter 5, which makes clear that the objectives of the policies in the chapter are "*to shape places in ways that contribute to radical reductions in greenhouse gas emissions and adapt to the full range of current and potential impacts of climate change, by minimising vulnerability and improving resilience*.".[62] The Government's consultation response, set out above, clarifies this

[61] Climate mitigation and climate adaptation remain defined terms in the Glossary in Annex B: "***Climate change adaptation:*** *Adjustments made to natural or human systems in response to the actual or anticipated impacts of climate change, to mitigate harm or exploit beneficial opportunities.*
***Climate change mitigation:*** *Action to reduce the impact of human activity on the climate system, primarily through reducing greenhouse gas emissions.*" (emphasis in original).

[62] Paragraph 10 of the Introduction explains that "*Short objectives are included in boxed text at the start of chapters for context only and should not be applied as either plan-making or decision-making policy*." This reflects the approach taken in local plan documents to the supporting text or reasoned justification, which the Court of Appeal stated in *R (Cherkley Campaign Limited) v Mole Valley DC* [2014] EWCA Civ 567 at §16 "*is plainly relevant to the interpretation of a policy to which it relates but it is not itself a policy or part of a policy, it does not have the force of policy and it cannot trump the policy.*"

in part, as it addressed concerns raised that the policy may be read as insufficiently addressing emissions beyond spatial strategy and allocations.

39. Accordingly, reading the NPPF as a whole, while CC1(1)(c) refers specifically to setting local water energy efficiency standards for new development where these are justified in accordance with policy PM13, that should be read as particular support for such policies, rather than as suggesting lack of support from CC1 for other PM13 policies, such as local energy efficiency standards above Building Regulations.

40. There is also clear interaction between CC1 and the design-focused policies in Chapter 14, in particular DP1 and DP2. Those policies aim to promote high quality, healthy, inclusive and sustainable places, and strongly support the use of design guides and design codes to secure these outcomes. Policy DP1(1)(c), requiring development plans to set out clear design expectations, includes within that setting out "*locally-specific design policies or standards which are necessary to add further detail to the principles in policy DP3, in response to particular local issues which will benefit from clear design expectations*".

41. DP3 requires development proposals to reflect the relevant aspects of various principles, as appropriate to the nature of the development and its location, with DP3(2)(b) specifically addressing Climate and requiring that proposals "*contribute to climate change mitigation and adaptation and the transition to net zero by using building layouts, building orientation, massing, landscaping and materials which conserve energy and other resources, and which minimise risks from the impacts of climate change including overheating*". Given the significant impact of the built environment and, in particular, new development, on the UK's climate obligations (as repeatedly identified by the CCC, see §§51-57 below), and the risks to adaptation if new development fails properly to address climate impacts (again, repeatedly identified by the CCC, see above) the requirement to contribute to climate change mitigation and adaptation and the transition to net zero will be "*appropriate*" to all development in all locations in the UK. The question is <u>the</u>

<u>extent to which</u> design must contribute to climate change mitigation and adaptation and the transition to net zero, not whether it must do so.

42. This is further (and strongly) buttressed by the decision-making policies, especially DP3(3), which provides that development proposals should be <u>refused</u> if, "*without clear justification, they conflict with paragraph relevant aspects of the principles in [… DP3(2) (which include addressing climate)], or with any explicit design standards set out in the development plan (including those in locally-specific policies, guides, codes or masterplans).*". It further provides that substantial weight should be given to compliance with relevant development plan policies when assessing the design quality of proposals.

43. The new, express, free-standing national decision-making policies on climate mitigation (CC2) and climate adaptation (CC3) in Chapter 5 both cross-refer to DP3(2)(b). CC2(1)(c) requires development proposals, "*where relevant to the proposal*", to contribute to climate mitigation and the transition to net zero (ie reduce greenhouse gas emissions) by using "*design approaches which conserve energy and other resources in accordance with policy DP3(2)(b)*" – as above, it is difficult to see how, rationally, in light of the CCC's evidence, this could be irrelevant to development proposals.

**The Net Zero Strategy, the Carbon Budget Delivery Plan and the Carbon Budget and Growth Delivery Plan**

44. Sections 13 and 14 of the CCA 2008 require the Secretary of State for Energy and Net Zero to prepare and publish policies and proposals which will enable the carbon budgets to be met.

45. This duty has twice been failed:
    a. On 18 July 2022, the Net Zero Strategy for meeting the carbon budgets up to and including the Sixth Carbon Budget was found unlawful. In <u>*R (Friends of the Earth Ltd) v Secretary of State for the Business, Energy and Industrial Strategy*</u> [2023] 1 WLR 225; [2022] EWHC 1841 (Admin), Holgate J (as he then was) held the Secretary of State had not been briefed with sufficient

information to enable him to be satisfied that the policies and proposals included in the Net Zero Strategy would allow the UK to meet the Sixth Carbon Budget (§§202–204, 211–217, 256–257). The Net Zero Strategy was required to be re-drafted by 31 March 2023.

b. On 3 May 2024, the successor suite of policies, and in particular the Carbon Budget Delivery Plan ("**CBDP**"),[63] was successfully challenged: Sheldon J, in *R (Friends of the Earth) v SSESNZ* [2024] EWHC 995 (Admin), [2024] PTSR 1293 ("**the *CBDP* judgment**"), held the Secretary of State took an erroneous or unreasonable approach to risk assessment in making the CBDP and that 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.

46. On 29 October 2025, the successor document, the Carbon Budget and Growth Delivery Plan ("**CBGDP**") was presented to Parliament by the Secretary of State for Energy and Net Zero, pursuant to section 14 CCA 2008. The CBGDP sets out policies and proposals which are assessed as meeting CB4 and CB5, and enough in the pipeline to secure 100% of the emissions cuts required for CB6. It quantifies the projected emissions savings attributable to each proposal and policy, sets out the modelling and baseline assumptions on which those savings rest, and addresses delivery confidence; expressly addresses the contribution of the package to sustainable development and its impact across sectors of the economy.

**Progress Towards the Net Zero Obligation**

47. In short, while the Government is on target to meet the non-Net Zero aligned Fourth and Fifth Carbon Budgets, it is not currently on track to meet any of its Net Zero aligned targets. This has been the case for a number of years. This is relevant in a number of ways. For example, it is the context within which the statutory duty in section 19(1A) of the 2004 Act must be interpreted and applied, strengthening the duty and the need for more accelerated action. Given the role that the built environment plays in relation to both climate mitigation and action (addressed in more detail below), the fact that the Government is off track is the context within

63 https://www.gov.uk/government/publications/carbon-budget-delivery-plan.

which the climate, design and local energy efficiency policies in the 2026 NPPF (among others) must be interpreted and applied (see, for example, §§38-39 in relation to the design policies).

48. In June 2022, the CCC found in its *Progress Report to Parliament* concerning the previous Net Zero Strategy that significant risks or policy gaps existed in relation to 38% of the emissions reductions required to meet the Sixth Carbon Budget.[64] This was particularly so in relation to land use and the energy efficiency of buildings.[65] The CCC also highlighted that, under the current Building Regulations, "*the UK continues to build new homes to standards which do not align with the Net Zero target.*"[66]

49. In a letter to Chancellor Jeremy Hunt in November 2022, the CCC recommended that the Government consider bringing forward the date for the introduction of the Future Homes Standard from 2025.[67] This recommendation was not followed in the Carbon Budget Delivery Plan.[68] A similar recommendation made in the independent Net Zero Review, carried out by former energy minister Chris Skidmore MP,[69] was rejected.[70] The Government launched its consultation on the specification in December 2023 (see §60 below) and intended to legislate in 2024 ahead of implementation in 2025. In March 2023, the Government indicated that it would, as part of the consultation, "*explore what transitional arrangements are appropriate to make sure that as many homes as possible are built to the new standard as quickly as possible.*".[71]

50. On 28 June 2023, the CCC responded to the CBDP and the new suite of Net Zero Strategy documents in its *Progress Report to Parliament* ("**2023 Progress Report**").[72] This set out that, despite new detail from Government, the CCC's

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64 CCC, Progress Report, June 2022, pg 22,.
65 Ibid, pg 14.
66 Ibid, pg 180.
67 CCC, Letter: Reducing energy demand in buildings in response to the energy price crisis, November 2022.
68 Policy 97, pg 78.
69 Mission Zero: Independent Review of Net Zero, January 2023.
70 Responding to the Independent Review of Net Zero's Recommendations, March 2023.
71 Ibid, pg 54, response 108.
72 https://www.theccc.org.uk/publication/2023-progress-report-to-parliament/.

confidence in the UK meeting its 2030 NDC and the Sixth Carbon Budget had decreased. The CCC made the point that, excluding the power sector, emissions had only fallen by an average of 1% in the last eight years, but that rate of progress would need almost to quadruple in the next eight years for the UK to meet its 2030 NDC commitment. It concluded a doubling of progress on buildings is required, but that policy gaps remained, particularly for energy efficiency measures, which it reported are significantly off track.

51. Focusing on buildings, the 2023 Progress Report recorded that most indicators were off track and that the UK needed significant new policies and programmes to underpin the delivery or, inter alia, energy efficiency.[73] The CCC judged most of the policies in the CBDP and net zero suite of documents to achieve emission reductions from buildings "*to be either at significant risk or with insufficient plans*".[74]

52. The CCC *Progress Report to Parliament*, provided in July 2024 ("**the 2024 Progress Report**")[75] 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 covered 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.[76] In particular, the CCC found that missing or incomplete policies included those on energy efficiency in buildings.[77]

53. Emissions reductions from buildings (from a 2008 baseline) were smaller than the CCC had predicted.[78] The CCC specifically highlighted that the "*spatial planning system continues to cause issues for delivering Net Zero*".[79] While the CCC praised some improved clarity in the December 2023 NPPF on the weight LPAs 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

73 Ibid, pgs 140-141.
74 Ibid, pg 151.
75 CCC, *Progress in reducing emissions 2024 Report to Parliament*, July 2024.
76 Ibid, pg 70.
77 Ibid, pg 71.
78 Ibid, pg 36.
79 Ibid, pg 81.

Statement on local energy efficiency standards (see §§59 and 91ff below), which it said would be "*likely to cause further confusion and delays around adopting local NetZero policies, which is a setback.*" [80]

54. 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.*"[81]

55. The CCC's *Progress Report to Parliament*, published in June 2025 ("**the 2025 Progress Report**")[82] confirmed that substantial policy gaps remained, particularly in the built environment sector, and that urgent further action was required to meet statutory climate targets. It recorded that, while there has been some positive progress on residential buildings decarbonisation, there is still significant uncertainty on how the emissions reductions required for the 2030 target and Sixth Carbon Budget will be met.

56. The latest CCC *Progress Report to Parliament*, published on 24 June 2026 ("**the 2026 Progress Report**")[83] concludes that around three-fifths of the CB6 reduction is covered by credible "*policies and plans*"[84] (or policies and plans carrying only some risk), and although the pathway does achieve CB6, it does so largely through measures assessed as carrying significant risks or as having

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[80] Ibid, pg 81.

[81] https://www.theccc.org.uk/publication/progress-in-reducing-emissions-2024-report-to-parliament/#publication-downloads

[82] CCC, *Progress in reducing emissions 2025 Report to Parliament*, June 2025.

[83] CCC, *Progress in reducing emissions 2026 Report to Parliament*, June 2026.

[84] These are not planning-specific terms, but refer to the general duty on the Secretary of State in s13 CCA 2008 to "*prepare such proposals and policies*" as the Secretary of State considers will enable the carbon budgets to be met. The CCC uses the cognate term "*plans*".

insufficient plans, with the proportion covered by insufficient plans rising to 17% over CB6.

57. On Buildings, the CCC concluded that there has been "*mixed progress in the buildings sector compared to our 2025 assessment. Over half of the Government's short-term plans are assessed as credible or with some risks. Emissions reductions after 2030 are assessed as having a larger share – around 60% – of significant risks and insufficient plans.*"[85] The CCC reviewed the planned revision of the Buildings Regulations, due to come into force in England from March 2027, and nevertheless concluded that there is "*scope in future for more stringent energy efficiency standards and use of flexibility in new buildings, particularly homes. This would reduce household energy bills and the impact of new buildings on electricity demand.*"[86]

58. The Government is also not on track to meet its obligations to adapt to climate change. Sections 58 of the CCA 2008 places a duty on the Secretary of State to lay programmes before Parliament setting out the objectives of the Government in relation to adaptation to climate change and the proposals and policies for meeting those objectives, including time-scales and risks. The UK's Third National Adaptation Programme ("**NAP3**") was laid before Parliament on 17 July 2023. On 30 April 2025, the CCC published its Adaptation Progress Report to Parliament, the first to assess the extent to which NAP3 and its implementation are preparing the UK for climate change.[87] It finds, definitely, that the UK's preparations for climate change are inadequate and the NAP3 falls short of what is required to address the climate change the UK is experiencing today, let alone that coming in future.[88]

**Action by LPAs**

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85 Ibid, pg 121.

86 Ibid, pg 122.

87 CCC, *Progress in adapting to climate change 2025 report Parliament*, April 2025.

88 This has been borne out by the multiple negative impacts on the UK's population of overheating, drought and then flash flooding during the summer of 2026.

59. National policy gaps, including on the energy efficiency of buildings, do not mean that LPAs are prevented from taking action now, or in advance of national policy. On the contrary: localised action is all the more important for keeping the UK on track to meet its 2030 and 2035 NDCs, the Sixth and Seventh Carbon Budgets and the 2050 Net Zero target. Local authorities, commercial developers and associated partners, and third sector organisations all have a role to play in delivering higher energy performance standards in new development.

60. The CCC commissioned and published a specific detailed report on what its advice for the Seventh Carbon Budget means for local authorities.[89] It highlights the wide range of roles that local authorities can play, from direct delivery and local leadership to enabling, coordinating, and influencing action by residents, businesses and partners. A section focuses on "*Using place shaping and planning to align development with Net Zero*", includes integrating energy efficiency measures in residential and non-residential buildings as a key element. This place shaping explicitly includes: "*Adopting local plans that require higher standards than building regulations.*" [90]

61. This is bolstered by section 19(1A) of the 2004 Act, which requires that development plan documents must include policies designed to secure that development of land in the local authority's area "*contribute to the mitigation of, and adaptation to, climate change*". This, read with the NPPF provisions set out at §§34-43 above, means that both statute and national government policy require LPAs to bring forward carbon literate planning policies to secure compliance with the UK's climate obligations.

62. Furthermore, section 38(6) of the 2004 Act 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.*" The 2026 NPPF explicitly does not

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89 CAG Consultants, *Local Authorities and the Seventh Carbon Budget – Summary Report*, July 2026.

90 Ibid, pg 18.

displace that.[91] This is important. Section 93 of the Levelling Up and Regeneration Act 2023 (LURA) proposed to amend section 38, adding sections 38(5A-C) to insert "*national development management policies*" ("**NDMPs**") into the test, alongside development plans, such that decisions must be taken in accordance with them as well as with development plans, "taken together", unless material considerations indicate otherwise; and where there is conflict between a development plan and an NDMP, providing that the conflict is to be resolved in favour of the NDMP. However, section 93 has not been brought into force and there is no obvious intention to do so. On 11 November 2025, Steve Reed MP announced that NDMPs would be brought forward on a non-statutory basis. This has effectively happened in the 2026 NPPF and has driven the restructure of the Framework and the split of each thematic chapter into plan-making policies and national decision-making policies.

63. Nevertheless (and contrary to section 93 scheme for NDMPs), the 2026 NPPF reasserts the primacy of the development plan. Although section 1 of the 2026 NPPF describes the Framework as "*a material consideration of critical importance*" for plan-making and decision-taking, that does not change its standing as a matter of law: *Mead Realisations* in both the High Court and the Court of Appeal clarified that the NPPF does not have any special legal status, nor any greater force than planning practice guidance or written ministerial statements.[92] The weight to be given to any NPPF policies is a matter for the planning decision-maker, subject to the Court's intervention on public law grounds, with the terms of the policy, and how it sits with other policies, being relevant factors.[93]

64. Local development plans thus remain a crucial avenue for promoting higher standards in new development and ensuring that homes built today will not require expensive retrofits in years to come (see also §§81-86 below on plan-making policy PM13).

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91 Paragraphs 2-3 and fn1.

92 [2025] PTSR 1158 (Court of Appeal) at §§32-33.

93 Ibid, §38.

65. On the consumer side, there has for some time been demand from buyers and renters for more energy efficient and sustainable homes and workplaces (sometimes resulting in a 'green premium'),[94] alongside a 'brown discount' for commercial properties that are not energy efficient.[95]

66. Some developers, such as the members of the EDG who signed the Developers Climate Action Charter, have recognised this 'green premium' and voluntarily committed to higher standards for energy efficiency. Initiatives such as developers' charters are important statements of intent, even though they have no power legally to bind their signatories.

67. Finally, there is evidence of developers being attracted to areas where there is policy support for net zero development. Well-known examples in Essex include:

    a. Carpenters Yard: residential developer and contractor gs8's carbon negative housing development in Thornwood, Epping, comprising 78 private homes and 35 affordable homes, all built with the same high energy efficiency building fabric standards and all eligible for Octopus Energy's 'Zero Bills' tariff, which guarantees no home energy bills for at least five years (the first phase of which has completed[96]);[97]

    b. Rochford Park: a much larger proposed development for around 2,000 homes (40% affordable), which would be the flagship development of Hemspan, a UK company specialising in bio-based building materials.[98]

## LEGAL AND POLICY BACKGROUND: ENERGY EFFICIENCY

### Previous 2021 Updates to the Building Regulations

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[94] See, for example, Savills, "Buyers paying significantly more for homes with low-carbon technology, as energy prices rise", April 2022; Legal & General/YouGov Research, July–August 2022; Santander, Buying into the Green Homes Revolution, October 2022.

[95] Knight Frank data reported in "Why it's so hard to find an affordable sustainable office space in London", London Post, June 2026; take-up figures from Savills Q1 2026 as reported in Office Rent in London 2026. Second-hand offices rated EPC C and below now let at around a 35% discount to prime London rents, up from 27% in 2020. In Q1 2026, 53% of Central London take-up was in BREEAM Excellent or Outstanding buildings and 92% was Grade A. Knight Frank estimates that around 80% of London office stock sits below the EPC B standard expected to apply by 2030.

[96] Housing Secretary Launches World's Largest Zero Bills Development (9 December 2025).

[97] Exemplar Case Study: Carpenters Yard (July 2026).

[98] Wider Benefits of Embodied Carbon & Circular Economy Planning Policy in Greater Essex (July 2026).

68. From June 2022, updated Approved Documents F (Ventilation) and L (Conservation of Fuel and Power), which provide guidance on how compliance with the Building Regulations can be achieved with respect to energy efficiency, came into effect. They will remain in effect until March 2027 (see §76 below).

69. Those measures are intended to deliver reductions in carbon emissions from new dwellings of 31% lower than the previous 2013 baseline, and from new non-residential buildings of 27% lower. The updated guidance also includes a range of new energy efficiency standards and metrics in relation to components of the fabric and heating systems of new buildings to achieve the required overall emissions reductions.

**The 2023 WMS and the Future Homes and Buildings Standard Consultations**

70. The now superseded 2023 WMS, titled "Planning – Local Energy Efficiency Standards Update", was made on 13 December 2023.[99] It is helpful to set out the previous position under the 2023 WMS, as it shows how it is (and is not) reflected in the 2026 NPPF.

71. The 2023 WMS addressed both plan-making and decision-taking. On plan-making, it stated that, in the context of the improvement in standards already in force through the 2021 Part L uplift, alongside the standards due in 2025, "*the Government does not expect plan-makers to set local energy efficiency standards for buildings that go beyond current or planned buildings regulations*".

72. The 2023 WMS also gave guidance to local plan examiners that they should reject energy efficiency standards going beyond "*current or planned building regulation*", "*if they do not have a well-reasoned and robustly costed rationale that ensures:*

- *That development remains viable, and the impact on housing supply and affordability is considered in accordance with the National Planning Policy Framework.*

[99] See Parliamentary Under Secretary of State (Housing and Communities), Baroness Penn, in the House of Lords (HLWS120) and Lee Rowley as Minister of State for Housing (HCWS123). There was previously a 2015 WMS. The 2023 WMS stated that the 2021 Part L amendments effectively rendered the sections of the 2015 WMS dealing with this issue moot and that the 2023 WMS superseded the aspects of the 2015 WMS relating to energy efficiency.

- *The additional requirement is expressed as a percentage uplift of a dwelling's Target Emissions Rate (TER) calculated using a specified version of the Standard Assessment Procedure (SAP).*"

73. Also on 13 December 2023, and referred to in the 2023 WMS, DLUHC launched two consultations:
    a. The Future Homes and Buildings Standards: 2023 consultation on changes to Part 6, Part L (conservation of fuel and power) and Part F (ventilation) of the Building Regulations for dwellings and non-domestic buildings and seeking evidence on previous changes to Part O (overheating).[100]
    b. Home Energy Model: Future Homes Standard. The methodology which was envisaged to be used to demonstrate that new dwellings comply with the future Homes Standard, intended to replace the SAP version 10.2 for the energy rating of dwellings.

**Legal Challenge to the 2023 WMS – the *RCA* Litigation**

74. In 2024, the NGO Rights:Community:Action challenged the lawfulness of the now-superseded 2023 WMS, on grounds that included that the 2023 WMS unlawfully purported to restrict the exercise by LPAs of powers conferred by statute. Both the High Court and the Court of Appeal dismissed the challenge, finding that the previous 2023 WMS did not prevent LPAs from adopting local plan policies that require higher energy efficiency standards than Building Regulations. The Court of Appeal reminded that national policy such as the 2023 WMS are "*no more than guidance*", and that "*[l]ocal circumstances may justify a departure from national policy…even where national policy is expressed in unqualified terms*" (§24), citing *West Berkshire* at §§21-30, per Laws and Treacy LLJ.

75. The Court of Appeal also confirmed that the previous 2023 WMS did not override the power conferred by section 1 of the PEA 2008 (addressed at §§97-105 below) or distort or displace the statutory scheme (§73). Given that was the position in relation to the previous 2023 WMS, it remains the case under the 2026 NPPF, which superseded the 2023 WMS (see §§81-85 below).

[100] https://www.gov.uk/government/consultations/the-future-homes-and-buildings-standards-2023-consultation.

**2026 Updates to the Building Regulations and the Future Homes Consultation Response**

76. From March 2027, Part L 2026 (or the Future Homes Standard) will replace Part L 2021.[101] The standard was released in March 2026 and is supported by a new Approved Document L in two volumes, one for Dwellings and one for Buildings other than Dwellings. There are a large number of changes from Part L 2021, but for the purposes of this advice, it is notable that the amendments create a new functional requirement for the provision of on-site renewable electricity generation for new dwellings (which will encourage more solar photovoltaics, as it is a duty to install) and heating and hot water systems in a new dwelling must now use only low-carbon fuels or be supplied by a heat network (which in practice excludes gas and oil while leaving the choice between heat pumps, direct electric heating and heat networks open). Fabric standards have, however, largely remained unchanged: the minimum standards for walls, roofs, floors and windows are unchanged from 2021, and the fabric assumed in the notional dwelling against which the targets are set is substantially the same, the only material change being an assumption of better airtightness.

77. The new measures are expected to deliver, on average, carbon emissions from new residential buildings at least 75% lower than the 2013 baseline,[102] together with an equivalent uplift for new non-domestic buildings under the parallel Future Buildings Standard. However, that uplift is delivered almost entirely through how new homes are heated and powered, rather than through how well they are built. Local policies directed at fabric performance or energy use intensity therefore continue to add value.

[101] The Approved Documents and SI 2026/335 were published/laid on 24 March 2026 and come into force 24 March 2027 (24 September 2027 for higher-risk building work), with transitional arrangements running to 24 March 2028 (documents submitted by 24 March 2027 with construction commenced by 24 March 2028 are to build to the 2021 standard).

[102] The WMS that accompanied the Government's Response to the Future Homes and Buildings Standards consultation response (Written Statement HCWS1445, made 24 March 2026 by Samantha Dixon MP, Minister for Building Safety, Fire and Democracy), articulates the Government's expectation that new homes should emit, on average, at least 75% less carbon than 2013 standards homes.

78. In March 2026, the Ministry of Housing, Communities and Local Government ("**MHCLG**") also published the Government's response to the Future Homes and Buildings Standards consultation.[103] Notably:

a. The Government did not say that "delivered energy" metrics are a poor measure of building performance or that the metric is technically unsound, unverifiable, or duplicative of what TER and other metrics already capture. It recorded consultees' arguments that delivered energy better reflects real-world performance and would drive more targeted efficiency improvements (§4.4), and did not contradict them. The Government's response was to support the use of delivered energy metrics – such as Energy Use Intensity ("**EUI**") – as a voluntary reporting metric for new dwellings, which housebuilders can use to report delivered energy via the Building Regulations Part L ("**BREL**") report (§4.7)." This is explicitly hoped to "*increase awareness of*" that metric, which translates into a hope to increase awareness of EUI.

b. The Government retained TER (and TPER and FEE) to ensure continuity, familiarity and "*minimal disruption for industry, while allowing those who wish to start using delivered energy as a voluntary reporting metric too.*"(§4.8)

**Local Energy Efficiency Standards and the 2026 NPPF**

79. The 2026 NPPF was published on 17 August 2026, together with MHCLG's response to the consultation on the updated draft NPPF,[104] which ran from 16 December 2025 to 10 March 2026 and drew 20,572 responses. The 2026 NPPF replaces the December 2024 version in full. Its policies are material considerations in decision-making from the day of publication (Annex A, paragraph 1).

80. The transitional provisions regarding plan-making are both more gradual and more complex. The 2026 NPPF applies immediately to all 'new-system plans', ie plans being prepared under the Town and Country Planning (Local Planning) (England) Regulations 2026 (SI 2026/186), which came into force in March

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103 The Future Homes and Buildings Standards: 2023 consultation on changes to Part 6, Part L (conservation of fuel and power) and Part F (ventilation) of the Building Regulations for dwellings and non-domestic buildings and seeking evidence on previous changes to Part O (overheating) (24 March 2026).

104 Government response to the proposed reforms to the National Planning Policy Framework and other changes to the planning system consultation (17 August 2026).

2026.[105] Legacy-system plans continue under the 2024 NPPF, unless, before 12 March 2025, they were at regulation 22 stage or at regulation 19 stage (and meet at least 80% housing need).[106]

81. Plan making policy PM13 concerns "*Setting standards*". It provides:

> *"1. Quantitative standards set through development plan policies for infrastructure provision, affordable housing requirements, parking, density, and design and placemaking should provide clarity and a high degree of certainty about the requirements that relevant development proposals are expected to meet. Such standards should:*
>
> *a. Be justified, drawing upon relevant evidence of local characteristics and needs, while utilising or adapting relevant national standards where it is appropriate to do so (such as in relation to green infrastructure). Evidence in support of standards should be proportionate, in accordance with policy PM8, especially where relevant national standards already exist; and*
>
> *b. Not cover matters that are already addressed by Building Regulations, other than in relation to:*
>
> *i. Accessibility standards, for which local standards in relation to requirement M4(2) (accessible and adaptable dwellings) and/or M4(3) (wheelchair user dwellings) of the Building Regulations should be set in accordance with policy HO5; or*
>
> *ii. Water efficiency, for which it may be appropriate to apply the tighter Building Regulations optional requirement where justified, or exceptionally a more stringent local standard in areas of serious water stress; or*
>
> *iii. Energy efficiency, for which any standards that go beyond the current or proposed Building Regulations should have a clear and robustly costed rationale which shows that there will not be an adverse impact on the viability and deliverability of development. Any such standards should be expressed as a percentage uplift of a dwelling's Target Emissions Rate (TER) calculated using a specified version of the Standard Assessment Procedure (SAP) or other approved calculation methodology*.

[105] 2026 NPPF, Annex A, paragraphs 4 and 7.
[106] 2026 NPPF, Annex A paragraph 8; 2024 NPPF, Annex A, paragraph 234.

> 2. *Quantitative standards should not cover other matters, or relate solely to the internal layout of buildings, unless:*
>    a. *They are to implement the nationally described space standard; or*
>    b. *They have a clear and robustly costed rationale, are proportionate and will not have an adverse impact on the viability and deliverability of development.*"

82. The draft version of PM13 did not include (1)(b)(iii) and the consultation document indicated the Government intended to commence section 43 of the Deregulation Act 2015, which would have repealed section 1(1)(c) PEA 2008 (which confirms the power of local authorities to set local energy efficiency standards above Building Regulations – see §§97-104 below). Question 18, which asked for views on this course of action, drew 1,604 responses, of which 54% strongly disagreed and only 14% strongly agreed. A majority of respondents argued that the proposed PM13 was "*overly restrictive on local planning authorities, particularly in relation to local standards on energy efficiency. Many of those respondents raised concerns that this could hinder local authorities' ability to address climate change in their areas.*"

83. The Government retained PM13 but added the new sub-paragraph (1)(b)(iii), and the consultation response confirmed that it "w*ill not commence s.43 of the Deregulation Act 2015 at this time*".

84. PM13(1)(b)(iii) has not just preserved, but has extended local authorities' ability to set energy efficiency standards that go beyond existing and planned Building Regulations. PM13(1)(b) still starts from a prohibition: plan standards "*should not cover matters that are already addressed by Building Regulations*", with three exceptions only: accessibility, water efficiency and energy efficiency. Any energy efficiency standard must have "*a clear and robustly costed rationale which shows that there will not be an adverse impact on the viability and deliverability of development*". That much is carried across from the now superseded 2023 WMS.

85. PM13(1)(b)(iii) then deviates from the now superseded 2023 WMS (and Annex A to the 2026 NPPF makes clear the 2023 WMS no longer represents up to date

Government policy). As set out above, the 2023 WMS directed that policies going beyond Building Regulations "*should be rejected at examination*" if they lacked a costed rationale which ensured that "*the additional requirement is expressed as a percentage uplift of a dwelling's Target Emissions Rate (TER) calculated using a specified version of the Standard Assessment Procedure (SAP)*". TER and SAP were thus the only route envisaged by the 2023 WMS, and non-compliance carried an express rejection consequence. PM13(1)(b)(iii) instead provides that "*any such standards <u>should</u> be expressed as a percentage uplift of a dwelling's Target Emissions Rate (TER) calculated using a specified version of the Standard Assessment Procedure (SAP) <u>or other approved calculation methodology</u>*" (emphasis added). Accordingly, there is a move from 'must' to 'should' in relation to the metric, and PM13(1)(b)(iii) expressly envisages that other approved calculation methodologies can be used.

86. PM13(2) allows quantitative standards on matters not named in PM13(1) where they "*have a clear and robustly costed rationale, are proportionate and will not have an adverse impact on the viability and deliverability of development*". The consultation response clarified that this "*allow[s] a wider range of local standards to be set compared to what was consulted upon*". Embodied carbon was among the matters respondents raised, and is not addressed by Building Regulations. PM13(2)(b) is therefore the gateway for a local embodied carbon standard, on an evidential test.

## LEGAL POSITION ON ENERGY EFFICIENCY TARGETS BEYOND NATIONAL MINIMUM STANDARDS

87. Matters such as the making of the 2023 WMS, the decisions in the <u>*RCA*</u> litigation, and the publication of the consultation draft NPPF in 2025 and of the amended 2026 NPPF have caused LPAs concern as to the extent of their ability to bring forward local plan policies that set higher targets for energy performance standards for development in their area than the national baseline in Building Regulations.

88. In short, despite these apparently confounding factors, LPAs have, since at least 2008, been under a strong statutory duty to ensure their development plan documents include policies designed to secure that development mitigates climate change impacts. That remains the case, and is arguably amplified by the climate change policies in the 2026 NPPF and protected by the relevant plan making policy in the 2026 NPPF. In light of this, and given a proper understanding both of the extent of the 2026 NPPF (and the ability of LPAs and Inspectors to depart from it if needed), LPAs can, with confidence, bring forward draft policies that set higher targets for energy performance standards for development in their area than the national baseline in Building Regulations, including policies that use metrics not previously specified in the 2026 NPPF. Such policies would still be consistent with national policy.

**The Planning and Compulsory Purchase Act 2004**

89. Section 19(2)(a) of the PCPA 2004 provides that, in preparing a development plan document, the local planning authority "*must have regard to … national policies and advice contained in guidance issued by the Secretary of State*".

90. Section 19(1A) of the PCPA 2004, which was added by Planning Act 2008 and which has been in force since 6 April 2009, imposes a general requirement 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*".

91. Section 20 requires the authority to submit every development plan document to the Secretary of State for independent examination by a person appointed by her or him. Section 20(5) provides that the purpose of an independent examination is to determine:

> "*(a) whether it satisfies the requirements of sections 19 and 24(1), regulations under section 17(7) and any regulations under section 36 relating to the preparation of development plan documents;*
>
> *(b) whether it is sound*".

92. Accordingly, the obligation in section 19(1A) falls both on the LPAs bringing forward the plans and on the Inspectors examining them. Given the nature of this duty, against the background of the CCA 2008 net zero obligation, local authorities have the power to bring forward local plan policies which secure the mitigation of climate change needed to contribute to meeting the NDC, the carbon budgets and the 2050 target.

93. This gives a firm legislative footing for LPAs to include in their draft local plans, and Inspectors to find sound, policies which go beyond current Building Regulations, either by:

a. focusing on reducing carbon emissions from regulated energy sources[107] via a percentage reduction in emissions compared to the baseline set by Part L 2023 (using metrics referred to in the 2026 NPPF); or

b. incorporating a suite of energy-based metrics, addressing emissions from both regulated and unregulated energy sources, and focusing on achieving absolute energy use targets (either using "*other approved calculation methodologies*", per PM13(1)(b)(iii), or metrics not explicitly referred to in the 2026 NPPF).

94. The lack of progress in reducing emissions from the built environment sector since the section 19(1A) duty came into force in 2009, the lack of adaptation, and the need for significant and swift action, supported by the CCC (see §§47-58 above) and the NPPF (see §§34-43 and 79-86 above), against the background of international overshoot (see §§10-13) and the ICJ's AO (see §25 above), all justify such policies and mean that they would, overall, be in compliance with national policy.

95. The obligation to "*have regard*" to national policy also falls on both LPAs and Inspectors. It is well understood, as a statutory obligation to "*have regard*" to

[107] "Regulated energy" is energy consumed by a building, associated with fixed installations for heating, hot water, cooling, ventilation, and lighting systems. "Unregulated energy" is energy consumed by a building that is outside of the scope of Building Regulations, e.g. energy associated with equipment such as fridges, washing machines, TVs, computers, lifts, and cooking. See the LETI Climate Emergency Design Guide pg 24 and the Essex Design Guide Operational Energy & Carbon (GE1) Planning Policy Statement – October 2025 (EPOA, April 2026) pg 5.

something arises in many different contexts and has been considered by the Courts on a number of occasions. It means that the guidance or policy must be considered when exercising the function or making the decision in question. That does not mean that it must be "*followed*" or "*slavishly obeyed*"; a decision-maker may depart from such guidance or policy if there is good reason to do so: *R (London Oratory School) v Schools Adjudicator* [2015] ELR 335 at §58 per Cobb J, cited in *R (Harris) v Environment Agency* [2022] PTSR 1751 at §80 per Johnson J.

96. It is key to give clear reasons for departure from the guidance or policy, but the statutory obligation to have regard to guidance or policy does not "*bind public bodies more tightly to a duty of obedience to guidance to which by statute they are obliged (no more, no less) to have regard*": *R (Khatun) v Newham LBC* [2005] QB 37 at §47, per Laws LJ. This is addressed further at §§110-117 below in relation to the 2026 NPPF.

**Planning and Energy Act 2008**

97. Section 1 of the PEA 2008 provides as relevant:

> "*(1) A local planning authority in England may in their development plan documents, corporate joint committee may in their strategic development plan, and a local planning authority in Wales may in their local development plan, include policies imposing reasonable requirements for—*
> *(a) a proportion of energy used in development in their area to be energy from renewable sources in the locality of the development;*
> *(b) a proportion of energy used in development in their area to be low carbon energy from sources in the locality of the development;*
> *(c) development in their area to comply with energy efficiency standards that exceed the energy requirements of building regulations.*
>
> *(2) In subsection (1)(c)—*
> *"energy efficiency standards" means standards for the purpose of furthering energy efficiency that are—*
> *(a) set out or referred to in regulations made by the appropriate national authority under or by virtue of any other enactment (including an enactment passed after the day on which this Act is passed), or*
> *(b) set out or endorsed in national policies or guidance issued by the appropriate national authority;*

*"energy requirements", in relation to building regulations, means requirements of building regulations in respect of energy performance or conservation of fuel and power.*

*(3) In subsection (2) "appropriate national authority" means—*

*(a) the Secretary of State, in the case of a local planning authority in England;*

*[…]*

*(4) The power conferred by subsection (1) has effect subject to subsections (5) to (7) and to—*

*(a) section 19 of the Planning and Compulsory Purchase Act 2004 (c. 5), in the case of a local planning authority in England; […]*

*(5) Policies included in development plan documents by virtue of subsection (1) must not be inconsistent with relevant national policies for England.*

…

*(7) Relevant national policies are—*

*(a) national policies relating to energy from renewable sources, in the case of policies included by virtue of subsection (1)(a);*

*(b) national policies relating to low carbon energy, in the case of policies included by virtue of subsection (1)(b);*

*(c) national policies relating to furthering energy efficiency, in the case of policies included by virtue of subsection (1)(c).*"

98. As set out above, the PEA 2008 has been considered by both the High Court[108] and the Court of Appeal[109] in the RCA litigation. It is instructive to note that the Secretary of State submitted to the High Court,[110] Mrs Justice Lieven accepted,[111] that the PEA 2008 is declaratory or confirmatory of local authorities' powers. This means that local authorities' powers to adopt local energy efficiency policies that go beyond building standards are not drawn solely from the PEA 2008 (such that the PEA 2008 contains the entire scope of local authorities' powers); this statute simply confirms pre-existing powers and articulates them in a specific way, to make clear that such powers exist.

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108 [2026] PTSR 864.

109 [2024] EWHC 1693 (Admin).

110 See Detailed Grounds of Defence (7 May 2024) §25. *RCA* High Court judgment [2024] EWHC 1693 (Admin) at §10. The Secretary of State explained that the 2023 WMS and the Future Homes Standards consultation were approached as one package of measures.

111 [2024] EWHC 1693 (Admin) at §55; not disagreed with by the Court of Appeal.

99. The Court of Appeal confirmed that the PEA 2008 gives LPAs the power to choose an energy efficiency standard, falling within the ambit of a standard referred to in regulations or policy made by the Secretary of State, which goes further than Building Regulations.[112]

100. Turning to section 1(7), the use of the phrase "*relating to*", rather than "*concerning*", indicates that the policy or guidance does not need solely to concern energy efficiency, but that at least part of the policy or guidance must have some relevance to energy efficiency. This is the understanding of "*relating to*" which most closely aligns with the Parliamentary intention[113] of the PEA 2008: "*building into the legislation the powers of local councils to make policies on local energy requirements for new developments [and making] a positive contribution to the clear need for local authorities to take action to tackle climate change locally*".[114]

101. Nevertheless, section 1(2) does limit the nature of the power clarified or declared by section 1 PEA 2008. That power is thus narrower than the power given by section 19(1A) PCPA 2004, as amended. There is no conflict between the statutory regimes (indeed, as set out above, it was anticipated they would work together). The Court of Appeal in *RCS* (which did not look at the Hansard material on the point) expressed the view that, if section 19 "*provides the source of power for a LPA to make a local policy setting a more onerous standard than one endorsed by the Secretary of State, such as the draft Future Homes Standard ("FHS"), it could be said that a LPA has no need to rely upon s.1 of the PEA 2008 at all and the restraints in that provision upon setting standards that exceed the requirements of building regulations could be circumvented. That would make no sense.*"[115] However, the Court of Appeal declined to reach a conclusion on the matter as the "*parties did not*

[112] [2026] PTSR 864 at §68.
[113] The meaning of the phrase "*relating to*" or "*relates to*" in various pieces of legislation has been the subject of much discussion across the case law. The House of Lords in *In re Smalley* [1985] AC 622 at 642 accepted, by reference to other House of Lords and Court of Appeal authority, that the phrase may be given a broad or a narrow interpretation, and that resolution of any uncertainty should be guided by an interpretation that will secure the object of the legislation without creating results that unnecessarily cut across existing legal rights or otherwise creating harsh results.
[114] Hansard, 17 October 2008, column 1046.
[115] [2026] PTSR 864 at §78.

*produce a convincing analysis of the legislation which would resolve the issue*." (§80).[116]

102. Where there are two different, overlapping ways of achieving a local authority's objective, it is open to the authority to choose the power on which it relies. [117] Given the matter was left open, and the Court of Appeal never suggests that section 19(1A) of the PCPA would not be capable of providing LPAs with power to put in place the policies which go beyond current Building Regulations, my view is that LPAs could choose to act under section 19(1A) of the PCPA 2004, rather than under section 1 of the PEA 2008, and that Inspectors can find sound policies brought forward pursuant to section 19(1A) which go beyond current Building Regulations.

Conclusion on the PEA 2008

103. In conclusion, the PEA 2008 confirms beyond peradventure that LPAs can bring forward policies that go beyond current Building Regulations standards, and confirms one way in which LPAs' pre-existing powers can be exercised: it supports authorities bringing forward policies using energy efficiency standards set out or endorsed in national policies or guidance that go beyond current Building Regulations standards.

104. The PEA 2008 is not the only power on which LPAs can rely, nor does it circumscribe other powers or foreclose other legislative routes by which LPAs are obliged or empowered to act (such as section 19(1A) of the PCPA 2004, inserted by the Planning Act 2008). Quite the opposite; it was always recognised that climate-related legislative amendments might result in provisions providing such powers.[118]

105. The Court of Appeal explicitly confirmed in §67 of its judgment that sections 1(5) and 1(7) PEA 2008 must be read compatibly with sections 1(1)(c) and (2). Those

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116 Ibid, §80.
117 *Cusack v Harrow LBC* [2013] 1 WLR 2022 per Lord Carnwath at §§9-12 and 27-28; *R (Sharp) v North Essex Magistrates' Court* [2017] 1 WLR 3789 per Gross LJ at §§30-33.
118 Hansard, 17 October 2008, column 1045.

sections thus cannot lawfully be read as giving additional legislative force to national policies in the context of energy efficiency, or as disapplying the usual approach to the weight to be given to national policy as a material consideration and to departing from policy where it is rational so to do.

**Why the 2026 NPPF Supports LPAs' powers**

106. There are two reasons that the 2026 NPPF supports (and certainly does not undermine) LPAs' powers to bring forward, in their local plans, policies to set higher targets for energy performance standards for development in their area than the national baseline:

a. <u>The flexibility in, and limits of, the PM13</u>. The Government deliberately chose, via PM13(1)(b)(iii), to preserve a route by which LPAs can set higher energy efficiency standards than Building Regulations, and to give more obvious flexibility than had previously been the case under the 2023 WMS; and

b. <u>Limited departure from the 2026 NPPF</u>: In any event, there are clear circumstances in which policies that use metrics other than those specified in PM13(1)(b)(iii), and/or do not require calculation by the methods specified, can be justified and Inspectors can, in the exercise of their planning judgment, find these policies to be sound and in overall compliance with the 2026 NPPF.

<u>The Flexibility in the 2026 NPPF</u>

107. Policy PM13(1)(b)(iii) gives LPAs a deliberately wider ambit in which to bring forward local energy efficiency standards that go beyond Building Regulations, so long as they are justified by a robust evidence base that addresses viability and deliverability.

108. In particular, the deliberate introduction of the "should" language around the use of specific metrics is important, and the introduction of the phrase "*or other approved calculation methodology*", is important. The 'should' aspect is addressed below, because it countenances departure from the policy. The phrase "*or other approved calculation methodology*" is also very significant. The drafting raises the question of how such 'approval' is given. PM13(1)(b)(iii) itself does not limit the phrase, nor does any other part of the NPPF; nor does the Consultation Response.

In my view, there are at least three sources for such "approval", all of which fall within the plain language of PM13(1)(b)(iii):

a. Approval by the Secretary of State, for example via the forthcoming Home Energy Model or under any other methodology approved pursuant to regulation 24(1)(a) of the Building Regulations 2010 or in the voluntary element of the BREL report;
b. Approved by Planning Inspectors (acting as representatives of the Secretary of State) in finding various local plans sound, in particular those found sound when the 2023 WMS was extant. These are addressed in detail below, but it is notable that standards and metrics focusing on the carbon efficiency of the homes themselves, space heating demand and Energy Use Intensity, have all been approved as calculation methodologies;
c. Approval by a recognised expert body in the area of energy efficiency, such as the Low Energy Transformation Initiative ("**LETI**").[119] Its work on energy standards has been recognised as robust via a number of local plan processes.[120]

109. Accordingly, authorities can bring forward policies going beyond Building Regulations that use, for example, metrics focusing on space heating and/or EUI and/or carbon efficiency, where those calculation methods have previously been approved by other local plan Inspectors or are approved by LETI, and doing so will comply with policy PM13(1)(b)(iii) so long as they are justified by a robust evidence base that addresses viability and deliverability.

<u>Limited Departure from the 2026 NPPF</u>

110. If, contrary to the above, "*other approved methodologie*s" is somehow to be interpreted narrowly (not an approach I consider justified on the language of the 2026 NPPF, nor in light of its purpose), then the question arises of limited departure from policy PM13(1)(b)(iii).

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[119] LETI is a network of over 1000 built environment professionals comprising developers, engineers, housing associations, architects, planners, academics, sustainability professionals, contractors and facilities managers, with support and input provided by the GLA, Local Authorities and other organisations.

[120] See, for example, the Winchester Local Plan 2020-2040 at §§4.33-4.37.

111. As set out above, LPAs would be justified, in light of their primary legislative duty under section 19(1A) PCPA 2004, to bring forward policies which do not use the TER metric. That metric has a number of limitations:

a. It may in fact be achieved with a poor level of energy efficiency, because the improvement of a building against the TER does not consider the impact of the design of the dwelling (i.e. the building form), which is a key factor in energy efficiency;
b. It does not address unregulated emissions, which can represent up to 50% of a building's operational emissions;
c. The TER also cannot be measured post-construction and 'in-use', which makes it unsuitable for use where authorities need to determine whether their policies actually deliver buildings that are more energy efficient, particularly as part of the post adoption policy-monitoring process.

112. Other metrics – space heating demand; EUI and renewable energy generation – have been found by multiple planning inspectors to be justified in order to achieve the energy efficiency levels necessary for particular local areas, and to be sound in light of the evidence base, taking into account housing delivery.[121] While policies expressed as a percentage uplift of TER may also have been chosen by LPAs and found to be sound (particularly in light of the now superseded aspects of the 2023 WMS), that does not mean that the TER metric operates as an energy efficiency metric, or that it alone is suitable for all LPAs and to be used in all local energy efficiency policies.

113. If LPAs sought to bring forward policies going beyond Building Regulations, using standards other than TER and calculations other than via SAP or another approved

[121] See, for example, the Report on the Examination of the Winchester District Local Plan Proposed Submission Local Plan (Regulation 19) 2020-2040 at §§225-231 re Policy CN3; the Report on the Examination of the Remitted Part of the Salt Cross Garden Village Area Action Plan (7 January 2026) at §§27-66 re Policy 2; Report on the Examination of the Uttlesford Local Plan 2021–2041 (16 January 2026) at §§130-142 re Core Policy 22. See also, earlier, the Report on the Examination of the Central Lincolnshire Local Plan Review at §§169 and 177-184 re Policy S7; Bath & North East Somerset Inspector's Report on the Examination of the Local Plan (Core Strategy and Placemaking Plan) Partial Update at §89 re Policy SCR7; and Cornwall Climate Emergency DPD, Inspector's Report at §§162-163 and 168-169 re Policy SEC1.

methodology, that would amount to a departure from one aspect of policy PM13(1)(b)(iii) (note it would not, however, be a complete departure from that policy, given its overall recognition of the ability to go beyond Building Regulations; nor would it be a departure from the climate and design policies in the 2026 NPPF, all of which are also relevant – see §§35-39 above). The evidence and findings in the *RCA* judgment of what the 2023 WMS was intended to achieve, despite its trenchant language, remain relevant given that PM13(1)(b)(iii) reflects and replaces the 2023 WMS.

114. In those circumstances, Examining Inspectors faced with such policies are required as a matter of law to consider whether departure from the metric-specification aspect of PM13(1)(b)(iii) is justified, given that such national policy must not be "*slavishly obeyed*" (see §95 above) and may be departed from where there is good reason to do so.

115. The Courts have emphasised that guidance in the NPPF "*does not amount to a legal rule*": see, for example, *Keep Bourne End Green v Buckinghamshire CC & SSHCLG* [2020] EWHC 1984 (Admin) at §105. It is therefore important that PM13 is flexibly applied. Holgate J (as he then was) made clear "*that local decision-makers are free to rely on local or exceptional circumstances as to why a departure from that national guidance is considered to be justified*" (§105). Accordingly, local decision-makers are free to rely on local **or** exceptional circumstances to depart from PM13(1)(b)(iii) (over and above their reliance on the statutory framework referred to above) – the "or" is important, as exceptionality is not required.

116. As a matter of general principle (see §63 above), the NPPF does not displace the primacy given to statutory duties placed on LPAs and that the weight to be given to conflict or compliance with the NPPF "*is a matter of judgment for the decision-maker, a decision with which the court may only intervene on public law grounds*": *Mead Realisations Ltd*.[122] PM13(1)(b)(iii) is one material consideration among many (including others within the 2026 NPPF) and decision-makers (including Examining Inspectors assessing local plans) may give material considerations

[122] [2024] PTSR 1093 (High Court) at §§59-60; [2025] PTSR 1158 (Court of Appeal) at §38.

little or no weight, provided they do so rationally: *Tesco Stores Ltd v SSE* [1995] 1 WLR 759 (HL) at 780F–H.

117. Accordingly, so long as there is a robust evidence base – a reasoned and robustly costed rationale – it is open to Examining Inspectors, in the exercise of their planning judgment, to determine that policies (using metrics and methods of calculation other than those specified in PM13(1)(b)(iii) or other approved calculation methodologies) are consistent with national policy on climate change mitigation and the net zero obligation, and, to the extent that there would be deviation from that part of PM13(1)(b)(iii), that can be justified on the evidence and does not prevent overall "*consistency*" of the proposed local plan with national policy.

**Conclusion**

118. The PEA 2008 confirms one way in which LPAs' pre-existing powers can be exercised to set higher targets for energy performance standards for development in their area than the national baseline. There are other legislative routes by which LPAs have different or more ambitious powers, such as the general power flowing from the duty in section 19(1A) of the PCPA 2004, 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*".

119. This position has not been changed by the 2026 NPPF, which explicitly retains a flexible route by which LPAs can bring forward energy efficiency policies that go beyond Building Regulations. LPAs and planning inspectors cannot lawfully interpret the 2026 NPPF in a way that removes or frustrates the effective operation of the power that LPAs still have, via sections 1-5 of the PEA 2008. Nor can it be read to remove or frustrate section 19(1A) of the 2004 Act. Nor can policy PM13 be treated as though it is a legal rule. This means that the 2026 NPPF cannot be interpreted to prevent LPAs from putting forward, and planning Inspectors from finding sound, policies which are justified and evidenced and which use metrics other than the TER metric and/or do not require calculation by SAP (or

other approved methodology, narrowly construed), such as the EPOA-endorsed Essex energy and carbon (net zero) evidence base and model policy. Additionally, local decision-makers are also free to rely on local or exceptional circumstances to depart from the 2026 NPPF.

## ENERGY EFFICIENCY POLICY CASE STUDIES

120. There are a number of case studies showing that a range of LPAs and developments – from densely populated urban centres such as London[123] (and boroughs like Merton and Kensington and Chelsea), to historic cities like Winchester, to rural and mixed authorities like Uttlesford and Lancaster to garden community developments in West Oxfordshire and on the Tendring and Colchester Borders – have successfully included energy efficiency and/or other emissions reduction requirements beyond those of the Building Regulations in development plan documents which have passed examination. This advice focuses on case studies that post-date the 2023 WMS [124]

121. Given the 2026 NPPF brings into PM13 a key operative part of the 2023 WMS (but with more express flexibility), these case studies are important in light of the well-established principle of consistency in planning decision-making. It is important and in the interests of developers, third parties and LPAs alike, because it serves to maintain public confidence in the operation of the development control system. Whilst it is open to the decision maker to depart from the reasoning in a previous decision, clear reasons for the departure should be given: *North Wiltshire DC v Secretary of State for the Environment* (1992) 65 P & CR 137 at 145.

122. In summary, while like cases do not have to be decided alike, a departure from a sufficiently similar decision requires a "clear explanation": *Hallam Land Management Ltd v Secretary of State for Communities and Local Government* [2019]

[123] The London Plan 2021 included local energy efficiency Policy SI 2 "'Minimising greenhouse gas emissions", which required various types of development to exceed the 2013 Building Regulations by various fixed percentages for different types of development. The policy provided for the threshold to be reviewed, which happened in June 2022, so that they relate to the 2021 Building Regulations. There is now an emerging Draft London Plan, which is addressed below.

[124] Examples that pre-date the 2023 WMS (and so were made taking into account the 2015 WMS) are **Central Lincolnshire** (Report on the Examination of the Central Lincolnshire Local Plan Review at §§169 and 177-184 re Policy S7); **Bath and NE Somerset** (Bath & North East Somerset Inspector's Report on the Examination of the Local Plan (Core Strategy and Placemaking Plan) Partial Update at §89 re Policy SCR7, adopted December 2021); **Cornwall** (Cornwall Climate Emergency DPD, Inspector's Report at §§162-163 and 168-169 re policy SEC1, made February 2023); **South Gloucestershire** (South Gloucestershire Policies, Sites and Places Plan, policy PSP6, adopted November 2017. There is plainly a long history of local energy efficiency policies going beyond Building Regulations being found to be sound.

JPL 63 at §74. As consistency in planning decision-making is important, there will be cases in which it would be unreasonable for the Secretary of State not to have regard to a relevant appeal decision bearing on the issues in the appeal he is considering: *DLA Delivery Limited v Baroness Cumberlege of Newick* [2018] JPL 1268 at §34.

123. This case law remains the relevant guiding principle for decision-makers. I address the position in light of the transitional provisions of the 2026 NPPF in §§147-151 below.

**Energy efficiency policies which passed examination (2024 – 2026)**

124. The **Kensington and Chelsea New Local Plan Review** (adopted in July 2024), found to be sound by the Examining Inspector on 5 July 2024), contains Policy GB4: Energy and Net Zero Carbon.[125] It requires major development to be net zero carbon in operation and uses EUI – a metric which the Examining Inspector found to be "*an appropriate and effective means of driving down carbon emissions*".[126]

125. The **Tendring Colchester Borders Garden Community DPD**, (adopted May/June 2025) found to be sound by the Examining Inspector on 31 March 2025, contains Policy 8: Sustainable Infrastructure, Part A of which concerns "*Net Zero Carbon*" and requires that all buildings be "*net zero in operation at occupation or, in exceptional circumstances, have an agreed strategy to achieve net zero within five years of occupation, and achieve net zero operational energy balance onsite across the Garden Community*". It requires proposals to:

"*demonstrate how new homes will achieve:*

- *Space heating demand less than 30kWh/m2/per annum.*
- *Total energy consumption (energy use intensity) of less than 40kWh/m2/annum.*

[125] New Local Plan July 2024 pg 131.
[126] Report to the Royal Borough of Kensington and Chelsea (5 July 2024) at §69.

- *Onsite renewable generation to match or exceed the total energy consumption (energy use intensity).*"[127]

126. In his Report, the Inspector recognised that this approach was in contrast to the use of the single TER metric, but referred to the work done, and evidence produced in relation to, the Essex Net Zero Policy Study, as well as site specific viability testing.[128] The Inspector addressed the 2023 WMS at §§78-79:

> *"78. In reaching this decision I have had regard to the 2023 Written Ministerial Statement (WMS), published after submission of the DPD for examination. However, whilst the WMS is a material consideration of significant weight, the Councils must prepare development plan documents that, in accordance with Section 19(1A) of the 2004 Act, include policies which contribute to the mitigation of, and adaption to, climate change. Additionally, Section 1 of the Planning and Energy Act 2008 states that local planning authorities may in their development plans include policies imposing reasonable requirements for development in their area to comply with energy efficiency standards that exceed the energy requirements of building regulations.*
>
> *79. Consequently, in this particular case, I am satisfied that GC Policy 8 Part A is appropriate and justified. The policy provides the detail to a new garden community, which has been the aspiration of both Councils through the already adopted development plan, has been tested and demonstrated to be viable and is supported by a lead developer with shared aspirations to deliver an exemplar mixed-use development.*"

127. In my view, this was the correct approach, and the same approach applies to the 2026 NPPF. Such national policy is a material consideration and, even if it is one to which considerable weight should be given, it is lawful to depart from an aspect of it where it is reasonable to do so. It is open to Examining Inspectors to find

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[127] Tendring Colchester Borders Garden Community DPD (may-June 2025) and the Inspector's Main Modifications (31 March 2025), pg 19. Note the modifications did not amend the metrics used, but added some flexibility by allowing for exceptional circumstances to be taken into account.

[128] Report on the Tendring Colchester Borders Garden Community DPD (31 March 2025), §76 pg 19. There was also an agreed Statement of Common Ground with the lead developer that the Garden Community shall meet the principles of Net Zero by cutting carbon emissions.

sound, and in overall compliance with national policy, draft policies which do not refer to the TER metric or which refer to a different metric, so long as this is supported by robust viability evidence. Indeed, it would be unlawful for Examining Inspectors to apply national planning policy inflexibly.

128. The **Lancaster Climate Emergency Review DPDs** (adopted 22 January 2025) provides, in policy DM30a, a stepped approach to carbon reduction and the energy efficiency of new homes through the setting of energy performance requirements: a minimum 31% reduction in carbon emissions against Part L of Building Regulations (2013) at adoption of the Plans; a further minimum 75% reduction against Part L of Building Regulations (2013) by January 2025 with reduced energy consumption achieved via a fabric first approach; and net zero carbon to be achieved by January 2028.[129]

129. Care needs to be taken in understanding the main modifications made to policy DM30a, where the Inspector recommended explicit reference be made to TER in order to achieve compliance with the 2023 WMS.[130] This was in the context of policies expressed using carbon metrics, so the Inspector did not need to consider energy metrics (EUI) or whether departure from the single bullet point in the 2023 WMS was justified in light of the LPA's viability evidence. The Inspector appears to have taken a risk averse approach in relation to the carbon metrics in policy DM30a. In my view, explicit reference to TER was not needed for the policy to be sound. Had policies using energy metrics been proposed, the Inspector would have needed to address her mind to whether departure from the single bullet point in the 2023 WMS was justified.

130. The **Merton Local Plan 2024 – 2037/38** (adopted 20 November 2024) includes a suite of policies addressing climate change.[131] Strategic Policy CC2.1 on

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129 Climate Emergency Review of the Lancaster District Strategic Policies & Land Allocation Development Plan Document 2020 – 2031 and the Development Management Development Plan Document 2020 – 2031 (22 January 2025).

130 Report on the Examination of the Climate Emergency Review of the Lancaster District Strategic Policies & Land Allocation Development Plan Document 2020 – 2031 and the Development Management Development Plan Document 2020 – 2031 (2 December 2024) §54.

131 Merton Local Plan 2024 – 2037/38 (20 November 2024) at pgs 30-64.

"*Promoting Sustainable Design to Mitigate and Adapt to Climate Change*" requires, among other things, that all development "*Minimise greenhouse gas emissions and support the transition to a low carbon society by maximising energy efficiency, low carbon heat and local renewable energy generation*".

131. Policy CC2.2 "*Minimising Greenhouse Gas Emission*" requires all development to "*seek to minimise greenhouse gas emissions on site*". It specifies that all development resulting in the creation of 1 or more dwellings or 500sqm of more non-residential GIA must both:
  a. demonstrate compliance with the Mayor's net-zero carbon target; and
  b. achieve minimum carbon reduction targets set out in a table, including 35% on-site total reduction in $CO_2$ for residential development of 10 or more dwellings.

132. Policy CC2.3 addresses "*Minimising Energy Use*" specifically, and requires "*all proposed development within the borough to demonstrate that they have made the fullest contribution to minimising energy use through energy efficiency on site*." It further requires all new build development resulting in the creation of 1 or more dwellings or 500sqm of more non-residential GIA to demonstrate compliance with a table of fabric efficiency targets based on regulated energy use (all new build residential and non-residential development to achieve a space heating demand of 15kWh/m$^2$/yr or less by 2025), and to disclose the anticipated EUI at design or pre-occupation stage for both regulated and unregulated energy use.

133. The reasoned justification at §§2.3.14 – 2.3.24 explains the inclusion of EUI in light of the limitations in methodologies that address only regulated emissions and the recognised gap between predicted and actual energy demand. It requires that all Major Developments monitor and report actual operational energy performance for at least five years post-occupancy in line with policy SI 2 in the London Plan 2021. It sets out modelled EUI benchmarks and explains at §2.3.23 that "*all new development to make all reasonable but commercially prudent endeavours to achieve these EUI and space heating demand benchmarks in demonstrating that it*

*has made the fullest contribution to minimising energy use in accordance with Policy CC2.3.*"

134. The Examining Inspectors found the Local plan to be consistent with the 2023 WMS "*insofar as it is supported by a well-reasoned rationale for its approach*."[132] The Inspectors modified the way in which energy targets were expressed in order to reflect the GLA's Guidance on how the London Plan's targets are to be applied.[133]

135. Core Policy 22 of the **Uttlesford Local Plan 2021 – 2041** (adopted March 2026) requires all new buildings (of one or more new dwellings or 100sqm or more non-residential floor space) to be designed and built to be Net Zero Carbon in operation.[134] To achieve this, the new buildings are required to comply with specified energy requirements, which include EUI limits and space heating demands. The policy refers to the Essex Design Guide and is supported by the Essex Building Specification Guidance document.

136. Various parties at the Local Plan Examination contended that the draft policy was not consistent with national policy because it was inconsistent with the 2023 WMS, including because of the absence of a TER metric. The Inspectors recognised that there was a degree of consistency in Essex regarding the use of EUI and that the metric "*is becoming more common nationally*".[135] They accepted the cost and viability evidence supporting the policy and concluded:

> "*While undoubtedly an ambitious approach, the requirements in Core Policy 22 would help design buildings in ways that contribute to significant reductions in greenhouse gas emissions, which is consistent with the approach to mitigating and adapting to climate change in the Framework. Given the above conclusions we find that there is a justified rationale for the approach taken in Core Policy 22. Although the use of alternative metrics to TER means that it departs from the WMS, that departure is*

132 Report to the Council of the London Borough of Merton (4 October 2024), §44.
133 Ibid, §48.
134 Local Plan 2021 - 2041 - Uttlesford District Council (March 2026).
135 Report on the Examination of the Uttlesford Local Plan 2021-2041 (16 January 2026) at §133.

*justified by the evidence presented to us and the objectives of the Plan in addressing climate change.*"[136]

137. The **Salt Cross Area Action Plan** ("**AAP**"), adopted in February 2026, concerns a new garden village in West Oxfordshire. In March 2023, examining inspectors found that the proposed local energy efficiency policy was unsound,[137] but that was quashed[138] and "Policy 2 – Net Zero Carbon Development" ("**Policy 2**") of the AAP was remitted for reconsideration at a re-opened examination on 30 June 2025. Policy 2 requires all development to achieve net zero operational carbon on site and sets building fabric requirements:

   a. buildings to meet a space heating demand of <15 – 20 kWh/m2.yr through ultra-low energy fabric, verified via predictive energy modelling at the detailed planning stage and monitored post-completion; and

   b. sector-specific EUI targets of <35 kwh/m2.yr for Residential; <70 kwh/m2.yr for Office and <65 kwh/m2.yr for Schools, with other sectors to be discussed with West Oxfordshire District Council as part of any pre-application discussions.[139]

138. Although stating that it supports the transition to Net Zero, the promoter of the development, Grosvenor, argued[140] that the Policy was unsound because it was not consistent with national policy and was prescriptive and unreasonable. Grosvenor relied on:

   a. The PEA 2008, asserting that Policy 2 did not meet its "requirements"; and

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136 Ibid, §137.

137 Report on the Examination of the Salt Cross Garden Village Area Action Plan, 1 March 2023, §§131–138. They decided that the policy was inconsistent with the relevant WMS (2015) and that the prescriptiveness of the policy was not justified on the basis of the evidence submitted, specifically the reliance on generic typologies in the viability appraisal.

138 *R (Rights: Community:Action Ltd) v SSLUHC* [2024] EWHC 359 (Admin). Lieven J held that the 2015 WMS had to be interpreted in accordance with the mischief that it was seeking to address, and with an "*updating construction*", ie a construction that allows for changes that have occurred since the policy was initially made. Accordingly, the inspectors should have taken into account that the proposed amendment to the PEA 2008 was not brought into force and that the restriction on setting conditions above Code Level 4 no longer applied, in light of amendments to the Building Regulations (see §75 of the judgment). So understood, the inspectors' interpretation of the WMS as preventing or restricting the ability of LPAs under sections 1-5 of the PEA 2008 to set a standard higher than Level 4 "*was plainly wrong in light of subsequent events*" (§76).

139 ED9D Proposed Modifications To Policy 2 And Supporting Text (March 2025).

140 Hearing Statement on behalf of Grosvenor (June 2025).

b. The 2023 WMS, asserting that it remains an extant expression of national policy; that West Oxfordshire District Council had failed to meet the five "tests" set out in the 2023 WMS and that West Oxfordshire District Council had not put forward evidenced reasons to justify any deviation from the WMS at Salt Cross.

139. Grosvenor also argued that the West Oxfordshire District Council's costs modelling in the Net Zero Carbon Development Evidence Base was not robust and that the Viability Appraisal was not robust or justified in its methodology. It argued the space heating demand and EUI targets were not justified.

140. Based on an earlier iteration of this advice, West Oxfordshire District Council argued[141] that it was empowered to bring forward Policy 2 relying on (among other things) the duty in section 19(1A) of the PCPA 2004. West Oxfordshire District Council emphasised that Policy 2 addressed both climate mitigation and adaptation. The District Council further argued that the only departure from the 2023 WMS was in relation to the bullet point regarding TER, and that this was justified as the evidence base demonstrated that the use of TER would result in a distinctly sub-optimal solution, including that it would be more expensive. West Oxfordshire District Council argued that both its net zero and its viability evidence were robust.

141. On 1 August 2025, the Inspector published her Post Hearing Letter. Although the Inspector accepted there was evidence that viability was an issue for the Garden Village development, she concluded that the cost of Policy 2, while putting pressure on the overall viability of the scheme, did not increase its costs such that it would have a notable impact on viability. She considered the additional cost of going beyond the proposed FHS, and concluded, taking a holistic view, that the application of Policy 2 was unlikely to impose a high financial burden on the scheme or have a significant effect on housing supply and affordability.

[141] Hearing Statement on behalf of West Oxfordshire District Council (June 2025).

142. The Inspector accepted the Essex Energy and Carbon (Net Zero) Evidence Base demonstrated that the EUI metric was "*suitable and feasible to assess energy use*" (§14) and concluded that the 2023 WMS was:

> "*a material consideration, but it should also be read in the context of wider national policy and legislative considerations. Reducing carbon emissions and supporting the transition to net zero forms a central part of the Framework [Paragraphs 8(c), 161 and 164] in line with the objectives and provisions of the Climate Change Act 2008. However, no matter how energy efficiency is proposed to be measured, the environmental outcome, to mitigate climate change and contribute to meeting the net zero obligation, will remain the same. Based on the evidence before me, I conclude [West Oxfordshire District Council's] approach is consistent with national policy.*"

143. The Inspector concluded that some modifications would be needed, including to provide an element of flexibility and to clarify the space heating demand, which West Oxfordshire District Council has been invited to prepare.

144. The **Winchester Local Plan 2020-2040** (adopted in March 2026) addresses mitigating and adapting to climate change in detail, including through comprehensive information and policies concerning the energy hierarchy; a fabric first approach and improving energy efficiency standards.[142] Policy CN3 specifies the use of EUI predictive calculations, and requires all new residential development to be able to demonstrate net-zero operational carbon on site, at a building level, by ensuring:

   a. The predicted space heating demand, based on predicted energy modelling, showing that the target of <15 kWh/M2/year is met;
   b. The total kWh/yr of energy consumption of the building based on predicted energy modelling tools showing that the target of <35 kWh/M2/year is met;
   c. The total kWh/yr of energy consumption of the buildings on the site and the total kWh/yr of energy generation by renewables to show that the balance is met; and

[142] Winchester District Local Plan 2020-2040 (March 2026) at pgs 27-45.

d. Onsite renewables to provide 100% of the energy consumption that is required by residential buildings.

145. It specifies minimum information to be submitted with applications, including at pre-application stage. The examining Inspector found that the policy would be unlikely to impose a significant financial burden on development or have a significant effect on viability, and echoed the Salt Cross Inspector in the approach to the specification of EUI, finding overall compliance with national policy.[143]

146. Finally, the draft **Draft London Plan**, published in 16 July 2026, proposes policy GHR1 Energy efficiency,[144] which seeks to set a pan-London requirement for developments to minimise energy consumption through highly energy-efficient building fabric measures, design and heating systems. It requires that development should minimise both annual and peak regulated and unregulated energy demand by meeting specified minimum EUI and space heating demand standards. The justification for this approach relies on the specific legal duties on the Mayor of London in relation to climate change and sets out why it is necessary to go beyond Building Regulations in order to meet those obligations, in relation to both mitigation and adaptation, given that "*London's homes and workplaces are responsible for producing approximately two-thirds of the city's greenhouse gas emissions*".[145] It identifies that the approach will help to continue to drive innovation in sustainable design, which builds the demand and deployment of low carbon materials and products that help to drive the green economy – a key growth sector for the UK.

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[143] Report on the Examination of the Winchester District Local Plan Proposed Submission Local Plan (Regulation 19) 2020-2040(9 March 2026) at §§225-231.

[144] Policy GHR 1.

[145] Ibid, §§5.18–5.24. Interestingly, the justification addresses head-on the approach in the consultation version of the 2026 NPPF and sets out why the policy deliberately took a different approach: "*5.19 The London Plan therefore sets standards that go beyond those in national Building Regulations. In doing so the Mayor is cognisant of the context of the draft NPPF which seeks to standardise energy-efficiency requirements at the national level. However reverting to national standards would not only undermine progress towards net zero and the fulfilment of his legal duties, but would represent a worsening of the current position in London which seems untenable in the context of the climate challenges facing the city. London has consistently and effectively achieved higher standards than those set by national requirements.*"

**The Position for Development Plans Adopted Prior to the 2026 NPPF**

147. Paragraphs 2 and 3 of Annex A of the 2026 NPPF concern the weight to be given to development plan policies adopted prior to the 2026 NPPF. Paragraph 2 retains the previous approach that development plan policies should not be given reduced weight simply because they were adopted prior to the publication the 2026 NPPF, but additionally provides that, for the purposes of decision-making, "*[d]evelopment plan policies (or parts of those policies) which are <u>materially inconsistent</u> with <u>national decision-making policies</u> in this framework should be given very limited weight.*" (emphasis added).

148. The relevant national decision-making policy in relation to local energy efficiency is DM7(2), which provides that planning decisions "*should not seek to duplicate or extend controls imposed by separate regulatory regimes other than where there is a development plan policy in place applying optional technical standards for the development proposed (see policy PM13)*." Accordingly, this makes PM13(1)(b)(iii) relevant to the question of "*material inconsistency*".

149. Pre-2026 NPPF local plans with energy efficiency standards above Building Regulations which are expressed in TER and SAP are fully consistent with DM7(2) and PM13(1)(b)(iii). Pre-2026 NPPF local plans with energy efficiency standards above Building Regulations which are expressed in other metrics are also, in my view, fully consistent with DM7(2) and PM13(1)(b)(iii), as those metrics are 'other approved calculations methodologies', having been approved via the local plan process (and may also be approved by bodies such as LETI).

150. If an (in my view unjustifiably) narrow interpretation of "*other approved calculation methodology*" is taken, nevertheless full weight should be given to pre-2026 NPPF local plans with energy efficiency standards above Building Regulations which are expressed in other metrics, as they are not <u>materially</u> inconsistent with DM7(2), given the PM13(1)(b)(iii) uses the flexible language "*should*" in relation to the metrics aspect of the policy.

151. In any event, the 2026 NPPF does not change the statutory position that an adopted plan policy remains part of the development plan for the purposes of section 38(6) of the Planning and Compulsory Purchase Act 2004; the NPPF is a material consideration and its guidance (including its transitional provisions) do "*not amount to a legal rule*", [146] and the courts have been clear that the NPPF is no different to any other Government policy (see §§63 and 116 above). The weight to be given to a material consideration is a matter for the decision-maker, subject only to *Wednesbury* review; and the Court of Appeal made clear in *West Berkshire* that even where a policy in is expressed in trenchant language, it cannot be read as directing a specific outcome in a blanket fashion, without any possibility for justifiable local exceptions or rational departure from its apparent strictures (§30). Accordingly, in my view, even a pre-2026 NPPF local plan policy which is materially inconsistent with DM7(2) could, despite Annex A paragraph 2, be given full weight.

**CONCLUSION**

152. In light of the above, LPAs should be confident in bringing forward, and Inspectors confident in finding sound, policies which set requirements for energy efficiency and performance standards for development that go beyond the national baseline in Building Regulations, including policies that do not use TER and SAP metrics. LPAs remain under the strong statutory duty in section 19(1A) of the PCPA 2004 to ensure their development plan documents include policies designed to secure that development mitigates and adapts to climate change impacts.

153. This is amplified by the requirements in the 2026 NPPF that plans must take a proactive approach to mitigating and adapting to climate change and plan making must support the transition to net zero by 2050, including through securing radical reductions in greenhouse gas emissions. Policy PM13(1)(b)(iii) of the 2026 NPPF supports such policies, so long as they are justified by a robust evidence base that addresses cost, viability and deliverability.

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[146] *Keep Bourne End Green v Buckinghamshire CC & SSHCLG* [2020] EWHC 1984 (Admin) at §105.

154. A summary of my advice is given in §2 above. Please do not hesitate to contact me if anything requires clarification, or if I can be of further assistance.

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