

Evidence and arguments for binding Energy Efficiency policies in neighbourhood plans - draft

Whilst the building regulations are steadily strengthening regulatory requirements on development, they fall well short of requiring new development to be zero carbon, and many local plans lack such policies as well.

As a result, many neighbourhood planning groups are keen to adopt binding energy efficiency policies in their plans, ideally requiring new development to be zero carbon. There is however uncertainty amongst planning authorities and neighbourhood plan examiners as to whether or not neighbourhood planning groups are able to adopt binding standards in this way, and also a lack of from examiners as to how stringent policies can be. Some weak policies are watered down further whilst some more stringent policies get through.

Often it's best if your local authority brings in binding energy efficiency carbon policies through its local plan. Even with the impact of austerity, local planning authorities are better resourced to build the technical evidence base for ambitious energy efficiency or zero carbon policies, and they currently have clear powers to do so through the planning and energy act 2008. However if this is not happening, or if the policies are too weak, you can try to create stronger policies through your neighbourhood plan.

This document aims to clarify the arguments which would support the inclusion of ambitious energy efficiency policies, so that neighbourhood planning groups are equipped to address the issues raised by inspectors, developers and local planning authorities. The document also provides recommendations for the type of evidence which could be submitted in support of these policies and links to free sources of evidence which could support you.

The best approach is to marshal your arguments to counter likely lines of objection before they arise, and assemble strong evidence to support the need for these policies.

Neighbourhood plan assessment process – the basic conditions

Neighbourhood plans are assessed against the basic conditions, copied in below. We have concentrated conditions a. and b. (highlighted in bold) as these are the ones which you will most often come up against when seeking to develop ambitious energy efficiency policies.

- a. Having regard to national policies and advice contained in guidance issued by the Secretary of State it is appropriate to make the order (or neighbourhood plan).**

- b. Having special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest that it possesses, it is appropriate to make the order. This applies only to Orders.
- c. Having special regard to the desirability of preserving or enhancing the character or appearance of any conservation area, it is appropriate to make the order. This applies only to Orders.
- d. The making of the order (or neighbourhood plan) contributes to the achievement of sustainable development.
- e. **The making of the order (or neighbourhood plan) is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area)."**

Basic condition a: compliance with national guidance

The online Planning Practice guide provides further interpretation at [Paragraph: 069](#):

"A neighbourhood plan or Order must not constrain the delivery of important national policy objectives. The [National Planning Policy Framework](#) is the main document setting out the government's planning policies for England and how these are expected to be applied."

The argument is often encountered that energy efficiency policies within neighbourhood plans are in conflict with a 2015 Written Ministerial Statement¹. This stated that LPAs and qualifying bodies should not set in their local plans or neighbourhood plans "any additional local technical standards or requirements relating to the construction, internal layout or performance of new dwellings.

This is often used as evidence that NPs cannot set their own standards, however the legal opinion attached at appendix A. (supplied by the [Environmental Law Foundation](#)) includes useful arguments to counter this at paragraphs 17 – 23, in particular that there is conflicting national policy and guidance and that the 2015 WMS statement appears to have been superseded by subsequent events and should not be read in isolation. We would suggest using the arguments from the legal opinion to support your case, both in discussions with your planning authority and the examiner.

Basic condition e. general conformity with the strategic policies in the development plan

Another challenge encountered in the examination process by neighbourhood planning groups seeking ambitious energy efficiency policies is that the plan is not in general conformity with the development plan.

¹ www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2015-03-25/HCWS488/

1. Paragraph 74 of the PPG² on Neighbourhood Planning lists the following considerations in respect of “general conformity”:

- a. Whether the NP policy supports and upholds the general principle that the strategic policy is concerned with.
- b. The degree, if any of conflict between the draft NP policy and the strategic policy.
- c. Whether the draft NP policy provides an additional level of detail and/or a distinct local approach to that set out in the strategic policy without undermining that policy.
- d. The rationale for the approach taken in the draft NP and the evidence to justify that approach.

The legal opinion at Appendix A (paragraphs 8 – 13) summarises case law relevant on how “general conformity” should be interpreted, from which the following principles are distilled:

- It is necessary to look at whether the NP plan is in conformity with the strategic policies in the development plan “as a whole”. The fact that a policy in the NP is inconsistent with a strategic policy in the development plan does not necessarily mean that the NP is not in general conformity with the strategic policies as a whole.
- The phrase “general conformity” is “inherently imprecise” and therefore it is not for the court to seek to give it a “spurious degree of precision”. The same can be said for the term “strategic policies”.

Applying this to your neighbourhood plan, it is worth reviewing the local plan, both looking at the strategic policies themselves, in particular any which address climate change mitigation or carbon emission reductions, and the vision and strategic objectives of the plan. Assess the general conformity of your proposed neighbourhood plan policy against the four criteria set out in paragraph 74 of the PPG.

² <https://www.gov.uk/guidance/neighbourhood-planning--2#General-conformity-with-strategic-policies>

Another consideration is whether the council has declared a Climate Emergency Declaration, a commitment to reduce carbon emissions to (net) zero by a particular date. Nearly 70 % of local councils have declared a climate emergency ([this link shows which councils have](#)), with many setting 2030 as their date for achieving net zero carbon emissions within their area.

Beyond these arguments about the role of neighbourhood plans, locally specific evidence will normally fall into 3 elements:

Viability / feasibility

National planning policy requires that planning policies imposed by local authorities must not make development economically unviable. Consequently the argument is often encountered that ambitious energy efficiency policies are economically unviable. You will need proportionate evidence to demonstrate this is not the case.

Where neighbourhood planning groups are seeking to create ambitious carbon saving policies, there's a lot to be said for basing these roughly on policies already created by local authorities, and using the evidence bases these LPA's built up to support viability and feasibility arguments. It's expensive, lengthy and highly technical to build up a reliable evidence base on the cost of bespoke energy efficiency policies, so best avoided by neighbourhood planning groups if at all possible.

Free Sources of evidence

- The [Policy playbook](#) by the Green Building council also includes a range of viability studies modelling different policy standards adopted by different local authorities.
- This [report](#) from the West of England authorities looks at the added capital cost of a range of energy performance standards for their local plan.
- This government [study](#) includes an assessment of the added capital costs of the proposed Future Homes standards, which would come into full force in 2025.
- BREAM have [published research](#) on the additional capital costs which would result from delivering BREEAM "excellent" over the costs of delivering BREEAM "very good"
- The [Impact Assessment supporting the Government's Consultation on the Future Homes Standard](#) also includes an assessment of the additional capital costs resulting from the future homes standard, due to come in 2025

The sources above look at the additional capital costs of particular policies and standards, but to know the impact on development viability, you also need to know how they would influence the profitability of development in your local area, which is dependent on local property and land values. Your council may be able to assist in this by giving you access to their viability evidence.

In preparing local plans, councils themselves have to demonstrate that their policies won't compromise development viability, so may have locally relevant information on land and property values so that you can see how much 'headroom' there is to support additional policy requirements.

If your community is vulnerable to fuel poverty, it may also be worth submitting evidence to substantiate this. Some evidence which can be used to this includes: the local prevalence of [fuel poverty](#), the [excess winter deaths](#) in your local authority area, and the proportion of [off-gas properties](#) in your area, (these properties are often heated by oil boilers and resistive electric heaters, which are the most expensive options). Costs are not just capital costs for developers and the costs of buying a house but the energy costs of running a home too.

More energy efficient homes have benefits beyond reducing carbon emissions. Well built, energy efficient homes can reduce heating costs and fuel poverty and the ill health that goes with it, so if its available include evidence on the impact of your proposed policies on the running costs of homes.

Specific local position and local justification

Specific local justification is needed for neighbourhood plan policies. Climate change is of course primarily a global not a local problem, and zero carbon development is needed everywhere, so finding specific local justification is somewhat artificial.

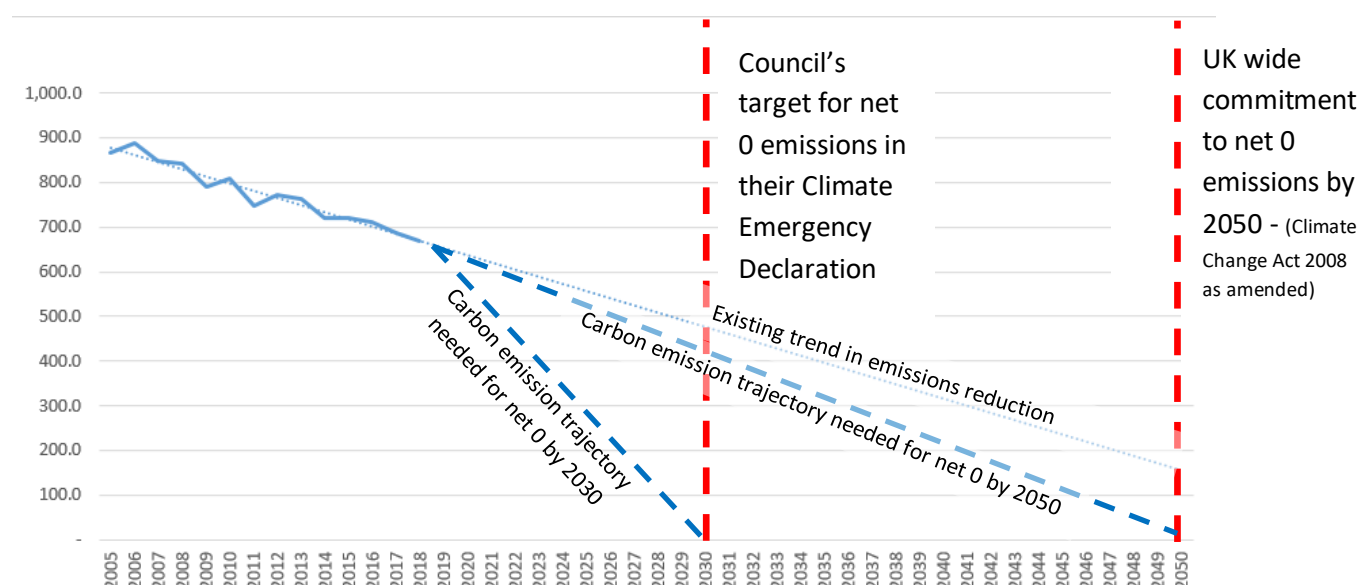
Our recommendation is to show the local trends in carbon emissions within your council area, ideally against the legislated emission reduction targets under the climate change act and potentially against the council's climate emergency declaration if they have one. The Climate Change Act sets interim carbon budgets³ for the country as a whole every 5 years, working towards the 2050 target.

³ <https://commonslibrary.parliament.uk/research-briefings/cbp-7555/#:~:text=Carbon%20budgets%201%2C%202%2C%203,the%20Carbon%20Budget%20Order%202011.>

Carbon budget	Required % reduction from 1990 baseline
1 – 2008 – 2012	25%
2 - 2013-17	31%
3 - 2018-22	37% by 2020
4 - 2023-2027	51% by 2025
5 - 2028–2032	57%
2050	Net 0 carbon emissions

Table 1 - Interim carbon budgets derived from the 2008 Climate Change Act, Committee on Climate Change

This [dataset](#) shows carbon emissions back to 2005 by local authority: and allows emissions to be graphed, as shown below in this example for the Chorley District Council area, with a trend-line showing their likely date for reaching zero carbon emissions if existing emission reduction trends were to continue. A neighbourhood planning group in this area would be able to argue that the area was not reducing emissions at the pace required by the climate change act, supporting a case for ambitious climate reductions in the neighbourhood plan to increase the pace of carbon reduction. Furthermore reaching net zero carbon emissions by 2030 (the council's own target in its climate emergency declaration) would require even faster emission reductions.

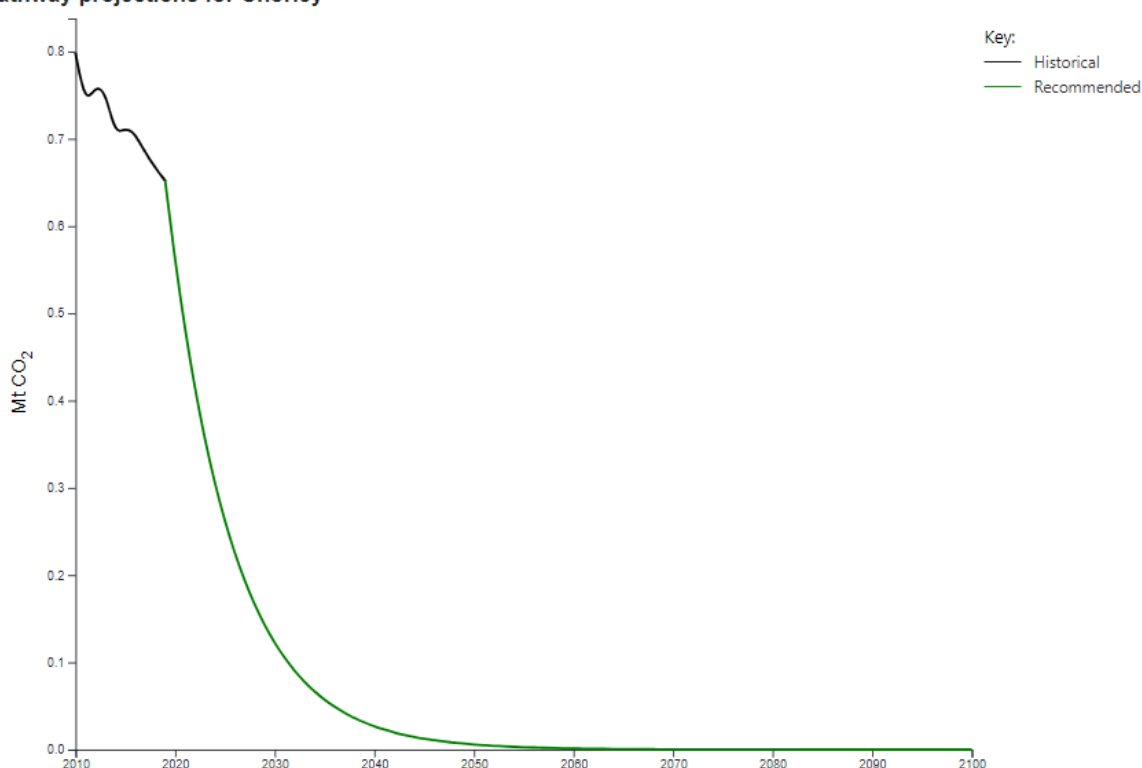


This would be more powerful if the 1990 figure for carbon emissions (the baseline) were known, as this would allow direct comparisons of how the area has been progressing against

the interim carbon budgets set by the committee on climate change, however these records don't exist.

The Tyndall centre have also created a free [tool](#) to create climate change targets for UK local authority areas that are based on the commitments in the United Nations Paris Agreement, informed by the latest science on climate change and defined by science based carbon budget setting. Their tool shows the remaining carbon budget allowable under the Paris climate accord, and a recommended carbon reduction pathway. See the pathway projections for Chorley, again illustrating (in green) the need for faster emission reductions in order to meet our commitments under the Paris Climate Accord.

Pathway projections for Chorley



Both approaches are legitimate and both reference either domestic or international legislative commitments but they have different strengths and weaknesses. The Paris Climate Accord is a science based set of targets and calculates an overall remaining carbon budget, but is not directly referenced in UK Planning legislation. The Climate Change Act by contrast is directly referenced in both planning legislation and national planning policy and is therefore a consideration in writing planning policy. It is however not a science based policy, and sets an end date for achieving net zero emissions nationally (and interim reduction targets) without setting an overall carbon emission budget.

Some additional discussion of the action the local authority is taking (or not taking) to reduce emissions would further help here. If the council is not very proactive in pursuing

emission reductions (and for example has only supportive energy efficiency policies, rather than binding zero carbon policies), the need for ambitious climate policies can be argued to be greater, not less.

Local Climate Vulnerability

Once again the problem is global and any carbon emissions reductions achieved locally will help globally or nationally, but nevertheless, in communities which have experienced climate impacts, for example flooding, summer heatwaves, or coastal erosion, or are predicted to do so as a result of climate change, evidence of these impacts could help add to the case for policies. Relevant considerations include both the likelihood of risks materialising (for instance the risk of your community being flooded), the consequences of those impacts, and the make-up of your population, and the impact of climate change in the future.

Extreme weather impacts on people in different ways, but has greater impacts on those social groups least equipped to be resilient. For instance, older people are more sensitive to heat waves, and are less able to withstand the disruption from moving out of a property after a flood. Many disadvantaged people may not have home or contents insurance, and may live in areas of higher flood risk or in buildings which are vulnerable to overheating (for example small single aspect flats). Free sources of evidence:

- The website www.climatejust.org.uk/mapping/ has mapped climate risks and vulnerability in this way.
- In coastal areas, the [shoreline management plan](#) for your area will show whether your area is vulnerable to sea level rise in the long-term.
- The [Environment Agency flood map](#) shows existing flood zones, as will your councils Strategic Flood risk Assessment in greater detail. The environment agency also has [high level predictions](#) on the impacts of climate change in terms of peak river flow, peak rainfall intensity, sea level rise and wave heights.
- The environment agency may be able to help you with mapping future flood zones and risks, taking into account the impact of climate change:
mailenquiries@environment-agency.gov.uk, tel. 03708 506 506

Evidence of Local support for ambitious climate policies

Clearly on its own, evidence of public support for a policy is not worth much if the policy is unworkable, prejudices development viability, or lacks evidence as to the need for it.

However, with the other lines of evidence discussed above, it can help build a case that ambitious policies are both needed to meet our legislative commitments, economically viable and wanted by the local community.

This could be evidence of the community involvement and support for ambitious climate policies – demonstrated through workshop outputs, responses to household surveys and consultations.

We have published resources to assist you in building this mandate and evidencing this support: www.cse.org.uk/local-energy/neighbourhood-plans/community-engagement. The graph below represents the response to a community consultation we assisted with in Pill, Easton in Gordano and Abbots Leigh, in support of their neighbourhood plan. It demonstrates strong support for the inclusion of a wide range of climate change mitigation and adaptation measures in new development.

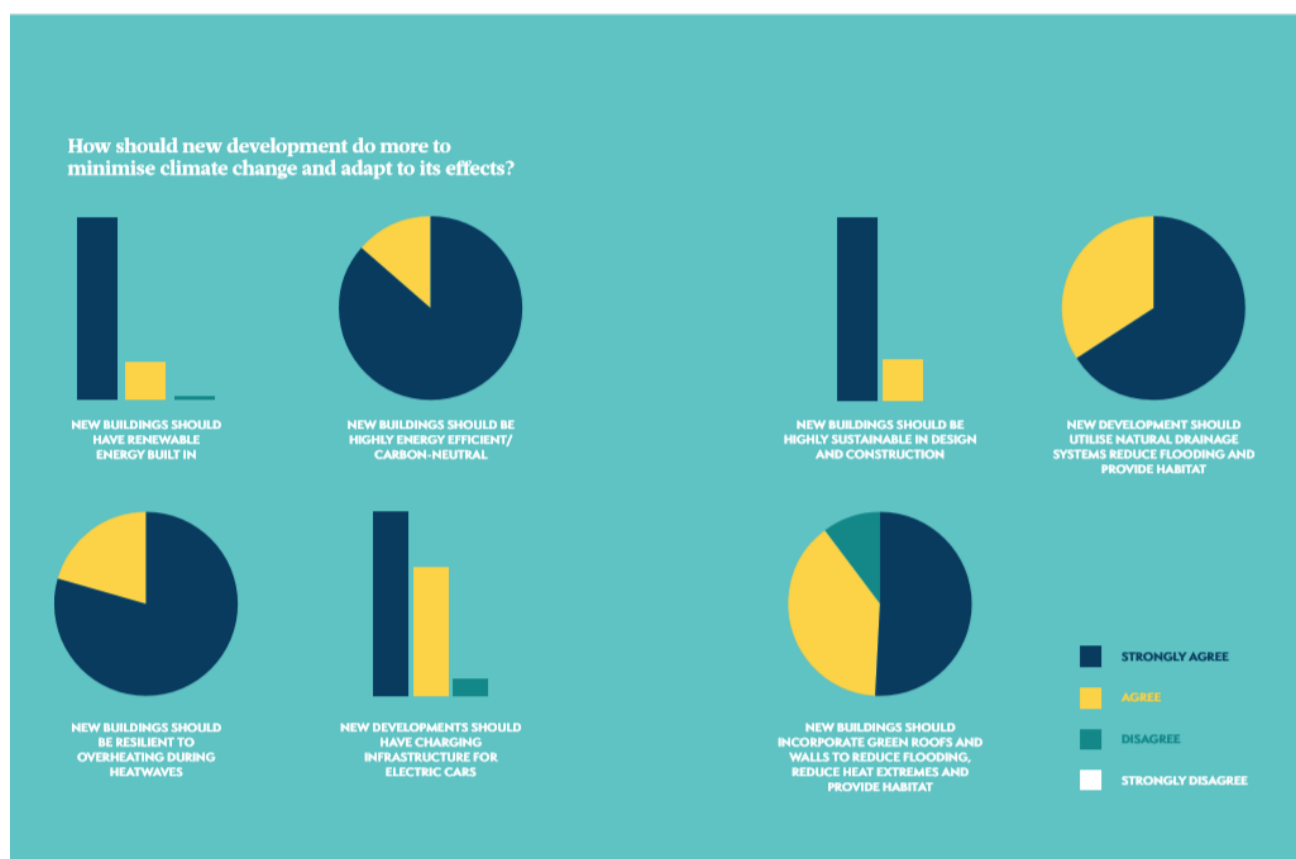


Figure 1 - results of household questionnaire - Pill, Easton in Gordano and Abbots Leigh Neighbourhood Plan – How should new development do more to minimise climate change and adapt to its effects?

Appendix 1.

NORTH HINKSEY NEIGHBOURHOOD PLAN

ADVICE

Introduction and summary of conclusions

2. I am asked to advise North Hinksey Parish Council (“the Parish Council”) in respect of suggested modifications to their Neighbourhood Plan (“NP”) which has just been through examination. Specifically, I am asked to advise on the lawfulness of the Parish Council’s proposed policy on sustainability standards for new developments (“Policy UT2”).
3. Those instructing me are familiar with the background facts and therefore I do not repeat them here. This advice is structured as follows:
 - a. The legal requirements for neighbourhood plans;
 - b. The independent examiner and LPA’s concerns regarding the submitted NP;
 - c. Analysis of the examiner’s concerns.
4. For the reasons set out herein, I have concluded that the independent examiner’s recommendations are legally flawed in a number of ways. Contrary to his findings, my view is that Policy UT2 (subject to some small modifications set out below) meets the basic conditions required for a NP and that it must therefore be put to a referendum by the LPA.

The legal requirements for neighbourhood plans

The NP-making process

5. In overview, the process for adopting a neighbourhood plan is as follows:
 - a. The “qualifying body” – in this case the Parish Council – prepares a draft plan with the guidance and support of the LPA.

- b. The plan is then submitted to the LPA who considers it against the statutory requirements in paragraph 6 of schedule 4B to the Town and Country Planning Act 1990 (“TCPA”). At this stage the LPA only needs to be satisfied that a basic condition statement has been submitted but is not required to consider whether the draft plan in fact meets the basic conditions. The LPA should provide “constructive comments” on the plan at this stage.
 - c. If the LPA is satisfied that the draft plan meets the paragraph 6 requirements it must publicise the plan for a minimum of 6 weeks, invite representations on the plan, notify any statutory consultees and send the draft NP to independent examination. During this period anyone who has views on the NP can submit evidence or written representations to the LPA.
 - d. The independent examiner then produces a report for the LPA which includes any recommended modifications to the NP. The independent examiner’s role is limited to testing whether or not the draft plan meets the basic conditions and other matters set out at paragraph 8 of schedule 4B to the TCPA. Their role is not to assess the soundness of the plan or assess other material considerations.
 - e. The LPA then takes a decision as to whether to accept the examiner’s recommendations as to any modification and whether to submit the NP to a referendum. The LPA may only make modifications to the draft NP (whether or not recommended by the examiner) for the reasons listed at paragraph 12(6) of schedule 4B to the TCPA. Most relevant for present purposes is sub-paragraph 12(6)(a) which provides that modifications may be made if they are necessary to secure that the NP meets the basic conditions.
 - f. If the LPA is satisfied that the plan meets the basic conditions or would do so subject to modifications then it must put the plan to a referendum.
6. For ease of reference, the basic conditions are as follows:
- (a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the order,*

(b) having special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest that it possesses, it is appropriate to make the order,

(c) having special regard to the desirability of preserving or enhancing the character or appearance of any conservation area, it is appropriate to make the order,

(d) the making of the order contributes to the achievement of sustainable development,

(e) the making of the order is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area),

(f) the making of the order does not breach, and is otherwise compatible with, EU obligations, and

(g) prescribed conditions are met in relation to the order and prescribed matters have been complied with in connection with the proposal for the order.

7. There is guidance on the process in the NPPF and NPPG which I refer to, where relevant, in the discussion below.

Relevant Case law

8. In R (Kebbell Developments Ltd) v Leeds City Council [2018] 1 WLR 4625 the Court of Appeal had to consider whether a NP was unlawfully put to a referendum following modifications by the LPA which differed to the examiner's recommendations. That case concerned a NP policy which sought to protect a particular site from development with the possibility of returning it to the Green Belt despite the adopted Local Plan having identified the area of possible future development.
9. The independent examiner recommended deleting the policy which the LPA accepted but it added text to a surviving part of the plan explaining why the parish council considered the site to be unsuitable for development. The claimant (a developer seeking planning permission for the site in question) challenged the decision on the ground, inter alia, that the authority had acted outside its powers under paragraph 12(6) of schedule 4B, TCPA.
10. The key question before Kerr J at first instance and before Lindblom LJ on appeal was:

...whether the city council was entitled to be "satisfied" that it was "appropriate" to adopt the neighbourhood plan, having regard to national planning policy and

guidance, and that the making of the plan was in “general conformity” with the strategic policies in the development plan.

11. Kerr J held, and the Court of Appeal affirmed, that the question of whether one plan is in “general conformity” with another is a matter of planning judgment for the decision-maker with the court playing a supervisory role applying the usual public law standard. The court confirmed that the LPA was not obliged to limit itself to the modifications recommended by the examiner.
12. It went on to consider whether the LPA had acted within the scope of its powers in modifying the NP in the way described above. Lindblom LJ emphasised that the question of whether a modification is necessary and, if so, what form it should take, is an exercise of planning judgment, as is the question of whether the basic conditions have been met. This led him to take a “generous view” of LPAs’ powers under paragraph 12(6)(a) and ultimately conclude that the LPA had acted lawfully in making the modifications it made.
13. In R (Hoare) v Vale of White Horse DC [2018] P.T.S.R. 210, John Howell QC (sitting as a Deputy High Court Judge) had to consider, inter alia, whether a NP was “in general conformity with the strategic policies contained in the development plan” per the fifth basic condition. The following principles can be distilled from his judgment:
 - a. It is necessary to look at whether the NP plan is in conformity with the strategic policies in the development plan “as a whole”.
 - b. This is not entirely a matter of planning judgment as it is for the court to construe the meaning of the term “general conformity”.
 - c. The phrase “general conformity” is “inherently imprecise” and therefore it is not for the court to seek to give it a “spurious degree of precision”. The same can be said for the term “strategic policies”.
 - d. The question for the court on review is whether the decision-maker could reasonably have reached the conclusion that it did within the inherently imprecise limits indicated.

- e. The fact that a policy in the NP is inconsistent with a strategic policy in the development plan does not necessarily mean that the NP is not in general conformity with the strategic policies as a whole.

The examiner and LPA's concerns regarding the submitted NP

14. The examiner's views on Policy UT2 are set out at paragraphs 7.57 to 7.63 of his report to the LPA. In sum he concludes that the Local Plan does not provide "a strategic context for the development of the ambitious and challenging approach included in the draft NP". For this reason he recommends reframing Policy UT2 so as to offer support to development proposals which go beyond the requirements in the Building Regulations rather than prohibiting development which does not meet this standard.
15. I have had sight of the LPA's concerns regarding UT2 as set out in a document headed "From Vale District Council planner, Friday 13th September". These can be summarised as follows:
 - a. The policy is in conflict with a 2015 Written Ministerial Statement which states that LPAs and qualifying bodies should not set in their local plans or neighbourhood plans "any additional local technical standards or requirements relating to the construction, internal layout or performance of new dwellings". There is an exception for LPAs in relation to energy performance standards pending the commencement of amendments to the Planning and Energy Act 2008 under the Deregulation Act 2015 but this does not extend to NPs.
 - b. The use of the term "must" is only appropriate in cases where the requirements of the policy are compulsory in all circumstances. In the LPA's view it would be better to set out what a development would be expected to achieve subject to viability considerations.
 - c. The policy will apply to all new development proposals not just new dwellings and commercial buildings. Local residents may not be fully aware of how this policy may affect them and/or increase the costs of development they may wish to carry out (e.g. extensions or alterations to existing buildings).

- d. There is insufficient evidence underpinning the policy, in particular as to: (a) why there is a particular need for a more stringent approach in the North Hinksey area; (b) the reason for setting the target at 40%; and (c) the impact of such a requirement on viability.

Analysis of concerns

16. The concerns of the examiner and the LPA all relate to compliance with basic conditions (a) and (e) above. I consider each of these in turn.

(a) Is it appropriate to make the NP having regard to national policies and advice contained in guidance issued by the Secretary of State?

Climate Change policy and guidance

17. The most important concern in this regard is the apparent conflict between Policy UT2 and the requirements of the 2015 WMS. In my view, to focus solely on the 2015 WMS would be to give the basic requirement too narrow a scope. As the High Court in *Hoare* (above) held in relation to strategic policies in the development plan under basic condition (e), in my view it is just as important to look at the range of relevant national policies and guidance in determining whether it is appropriate to make the NP.

18. In this case there is conflicting national policy and guidance.

19. On the one hand, the 2015 WMS provides that a NP “should not be used to apply the new national technical standards” and that even LPAs should not set energy performance requirements higher than the equivalent of Level 4 of the Code for Sustainable Homes. On my understanding of that document this equates to a maximum 25% reduction in carbon emissions. This would appear to be supported by paragraph 150(a) of the NPPF which provides that “local requirements for the sustainability of buildings should reflect the Government’s policy for national technical standards”.

20. On the other hand, the 2019 NPPF, at paragraph 149 and footnote 48, provides that “Plans should take a proactive approach to mitigating and adapting to climate change”, “in line with the objectives and provisions of the Climate Change Act 2008”. The amendments to

the Climate Change Act 2008 introduced earlier this year have set a net zero target for UK carbon emissions by 2050.

21. In response to that new target the Government is consulting on a new “Future Homes Standard” which would make changes to Part L and Part F of the Building Regulations for new dwellings. The consultation paper provides that the Government “expect that an average home built to [the new standard] will have 75-80% less carbon emissions than one built to current energy efficiency requirements”. It proposes “introducing in 2020 a meaningful but achievable uplift to energy efficiency standards as a stepping stone to the Future Homes Standard.” The Government’s “preferred option” for this 2020 uplift is a 31% reduction in carbon emissions compared to the current standard.
22. It is evidently difficult to reconcile these apparently contradictory statements of government policy. However, as confirmed in the Kebbell decision (above), whether to make a modification to an NP is a matter of planning judgment for the decision-maker. In my view it would not be at all unreasonable for the LPA, who have to consider these policies as a whole, to reach the conclusion that the more recent statements of government policy ought to be given more weight than the earlier ones. The 2015 WMS in particular appears to have been superseded by subsequent events (for example, it states that the government will introduce a “zero carbon homes policy in late 2016” which has since been scrapped).
23. It is also important to note that the 2015 WMS applies only to dwellings. Therefore modifications should not be made to Policy UT2, insofar as it relates to non-dwellings on this basis.

Viability

24. The LPA’s remaining concerns (labelled (b)-(d) above) do not point to a conflict with any specific national policy or guidance. However, on my reading, they appear to relate broadly to the viability of setting such a high bar for all development. This is to some extent supported by paragraph 009 of the National Planning Guidance on Climate Change which provides that:

“The National Planning Policy Framework expects local planning authorities when setting any local requirement for a building’s sustainability to do so in a way consistent with the government’s zero carbon buildings policy and adopt nationally described standards. Local requirements should form part of a Local Plan following engagement with appropriate partners, and will need to be based on robust and credible evidence and pay careful attention to viability. In this respect, planning authorities will need to take account of government decisions on the Housing Standards Review when considering a local requirement relating to new homes.

If considering policies on local requirements for the sustainability of other buildings, local planning authorities will wish to consider if there are nationally described standards and the impact on viability of development. Further guidance can be found under Viability.”

25. There is no express guidance on the level of viability assessment required when making a NP. Paragraph 005 of the PPG on Neighbourhood Planning states that “Plans should be prepared positively, in a way that is aspirational but deliverable” but then goes on to discuss viability only in relation to contributions expected from development. Similarly, the general Viability guidance deals exclusively with contributions rather than imposing higher standards on development.
26. To the extent that viability assessment is required, I have had sight of at least some of the viability evidence that has been presented to the LPA which supports the view that, at least in relation to housing, the policy is viable. Therefore, in the absence of any countervailing evidence (or, as far as I am aware, representations from developers or others setting out why such a policy would not be viable), it is difficult to see how the LPA can justify concluding that it would not be appropriate to adopt the policy on this basis.
27. It may be possible to bolster the existing viability evidence on this matter by looking at the Impact Assessment supporting the Government’s Consultation on the Future Housing Standard (albeit that this will have considered impact at a national level).
28. In relation to non-residential dwellings there is at least some evidence from BREEAM’s research on the additional capital costs which would result from delivering BREEAM “excellent” over the costs of delivering BREEAM “very good”. This evidence appears not to be locally specific and the Council may therefore be more justified in its concerns on this matter. Further, this evidence deals solely with the BREEAM standards and it is

unclear how this relates to the general 40% reduction required under Policy UT2(a). (I am generally unclear as to the relationship between UT2(a) and (b)).

29. Nonetheless, as UT2(b) provides that proposals will be supported where they achieve BREEAM excellent or above, rather than requiring that development meets this standard, the need for viability evidence is reduced.

30. As is acknowledged in the papers, there is currently no viability evidence before the LPA in relation to other development such as residential extensions.

31. Overall, on the basis of the evidence that I have seen, my advice would be to suggest that the LPA amend the policy so that UT2(a) applies only to new residential dwellings with UT2(b) then applying in respect of non-residential development. Such a policy would, in my view, accord with national policy on viability in plan-making, if and in so far as that applies to policies such as Policy UT2 in a NP context. Further, it may be worth reminding the LPA that an application for planning permission can always bring forward viability evidence at application stage.

(e) Is the making of the NP in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area)?

32. There is, in my view, no basis whatsoever for the examiner's conclusion that the development plan does not "provide a strategic context for" the approach to reducing emissions and tackling climate change proposed in Policy UT2.

33. Even if this was correct, it would be a misinterpretation of the basic condition which only requires "general conformity" with the strategic policies which exist, see R (DLA Delivery Ltd) v Lewes DC [2017] PTSR 949:

"The true sense of the expression "in general conformity with the strategic policies contained in the development plan" is simply that if there are relevant "strategic policies" contained in the adopted development plan for the local planning authority's area, or part of that area, the neighbourhood development plan must not be otherwise than in "general conformity" with those "strategic policies"."

Similarly, in Hoare, the judge noted that: *“The absence of strategic policies in respect of a particular type of development does not preclude the making of a neighbourhood plan that meets this basic condition.”*

34. Applying the proper approach to basic condition (e), policy UT2 is in general conformity with the strategic policies in the development plan. In addition to Core Policies 40 and 41, there are several references in the “Key Challenges and Opportunities” and “Spatial Vision and Strategic Objectives” sections of Part 1 to protecting the environment and responding to climate change including through the reduction of greenhouse gas emissions (see, in particular SO12). Proposed policy UT2 is therefore clearly in general conformity with the strategic objectives of the development plan.
35. More importantly, assuming that Core Policies 40 and 41 are indeed “strategic policies” (which in my view is arguable either way), UT2 is clearly in general conformity with those policies when one considers the applicable guidance. Paragraph 74 of the PPG on Neighbourhood Planning lists the following considerations in respect of “general conformity”:
- a. Whether the NP policy supports and upholds the general principle that the strategic policy is concerned with.
 - b. The degree, if any of conflict between the draft NP policy and the strategic policy.
 - c. Whether the draft NP policy provides an additional level of detail and/or a distinct local approach to that set out in the strategic policy without undermining that policy.
 - d. The rationale for the approach taken in the draft NP and the evidence to justify that approach.
36. Taking each of these in turn, UT2 clearly supports and upholds the general principle that the policies are concerned with, namely, responding to climate change and providing more renewable energy. Second, there is no conflict between the NP policy and the Core Policies. There is simply, as expressly provided for under the PPG, “a distinct local

approach” which in no way undermines the Core Policies and in fact further promotes the aims of those policies. Finally, the Parish Council has provided a clear and convincing rationale for the approach it has taken and, as discussed above, has provided evidence to justify such an approach.

37. Further support for such a conclusion is derived from the decision in Hoare above and the finding that a degree of conflict or tension between the NP and a policy in the DP does not necessarily preclude there from being “general conformity”.

Conclusion

38. In sum, subject to the suggested modification above (changing UT2(a) to new residential development only), policy UT2 satisfied the basic conditions as drafted. The LPA would therefore be perfectly justified in (and is in fact required under the TCPA to) putting this policy of the NP to referendum. Further, the LPA would arguably be acting outside of its powers under paragraph 12 of schedule 4B to the TCPA in making the modifications proposed by the examiner.

39. Please do not hesitate to contact me in chambers if I can be of any further assistance.

Kimberley Ziya
Landmark Chambers
15th October 2019