
The 13 December 2023 Written Ministerial Statement and local plan policy for net zero

A statement from the Town and Country Planning
Association
16 January 2024

The TCPA shares the deep frustration of many local planning authorities about the complex and contradictory policy from national government on planning for net zero homes in England. National Government appears determined to stifle the attempts of local authorities to take innovative action on climate change through the use of local plan policy to secure energy efficient, net zero new development.¹

The Written Ministerial Statement (WMS) on ‘Planning – Local Energy Efficiency Standards Update’, published on 13 December 2023,² seeks to curtail the use of policy approaches that use energy-based metrics, which are designed to achieve emissions reductions through securing fabric efficiency standards and highly energy efficient buildings. Three local authorities have successfully adopted such policies (Bath and North East Somerset, Cornwall and Central Lincolnshire), and many authorities (we think as many as 70 others) have invested considerable expertise and resources to evidence and develop similar policy approaches for their local areas.

Whilst the WMS seemingly seeks to halt further development of such policies, it is the view of the TCPA that local authorities should continue to form local plan policy informed by robust evidence on carbon reduction, including those that set energy-based metrics to secure emissions reductions from new development.

There are two strong reasons for this:

1. The weight of the WMS should not be exaggerated.

The new WMS should be given the same weight as a statement of national policy. This means that the WMS is subservient to primary legislation and cannot be interpreted in a way that undermines legislative requirements placed on local planning authorities or undermine the powers that are granted to local authorities through primary legislation including the primacy of the Local Plan. The WMS is a powerful material consideration, but like all such considerations it can be set aside if there is an evidential case to support a different approach.

There are two legislative requirements that local authorities should consider in relation to the relative weight to be given to the WMS when balanced against the rationale and evidence supporting net zero buildings policies:

- i. **Schedule 7 (15C) of the Levelling Up and Regeneration Act 2023** (which amends Section 19 of the Planning and Compulsory Purchase Act 2004) requires that:

‘The local plan must be designed to secure that the use and development of land in the local planning authority’s area contribute to the mitigation of, and adaptation to, climate change.’

This obligation – first introduced through the Planning Act 2008 alongside the Climate Change Act 2008 – makes clear that local plans must contribute to the national carbon budget of 78% carbon reduction by 2035 and the net zero by 2050 target.

Local plans must provide robust evidence to demonstrate compliance with this legal requirement. For many local authorities, their evidence base demonstrates that achieving net zero buildings at the earliest viable opportunity is a fundamental aspect of a credible net zero pathway, and planning has a legitimate role in seeking to close the gap between building

¹ See for example our previous statement on this issue, available here: <https://www.tcpa.org.uk/wp-content/uploads/2023/03/20220714-climate-statement-W-Ox-2.docx>

² The Written Ministerial Statement is published here: <https://questions-statements.parliament.uk/written-statements/detail/2023-12-13/hlws120>

regulations and the net zero requirement. This is also in line with advice from the Climate Change Committee which advocates for ‘all new homes to be genuinely zero carbon’ by 2025.³

- ii. The **Planning and Energy Act 2008** gives power to local authorities to set higher energy efficiency standards than Building Regulations, subject to viability test. Government have recently confirmed that they have no intention of amending this act, both through their response in January 2021 to the Future Homes Standard consultation⁴ and correspondence with Bath and North East Somerset Council during the examination of their Local Plan Partial Update in 2022.⁵ This primary legislation is more powerful than the WMS, which cannot remove this statute.

There is no doubt that the WMS puts local authorities in a difficult position, and we believe that the WMS creates a contradictory position between legal requirements for carbon reductions placed on local authorities and policy obligations.

2. The WMS could be found to be unlawful.

This contradiction between the WMS and legislation also provides a clear ground for legal challenge. The TCPA is currently aware of at least one pre-action correspondence challenging the lawfulness of the WMS and understand this is likely to proceed to a legal challenge. Although a judicial review of the WMS will take time, the uncertainty should give local authorities pause to reflect and consider the best strategy for taking forward local plan policy.

What should local authorities do?

Our key message is that this is not the time to down tools. Local authorities must continue to develop policy based on robust, carbon literate evidence. We think that local authorities that are progressing policies that set energy requirements that exceed current and planned building regulations can consider three broad options:

1. Continue with the preferred policy approach. The WMS has three inherent weaknesses that should cause local authorities to consider standing firm on policy approaches, particularly if evidence clearly supports this approach.
 - a. The status of the WMS as a material consideration needs to be weighed against other obligations on plan making.
 - b. The WMS is subject to legal challenge.
 - c. A general election may result in changes to national policy on this issue.

All these factors mean that Circumstances may be very different in twelve months’ time, and authorities should be ready to take forward strong policies that support net zero.

2. The Planning and Energy Act (2008) provides powers for local planning authorities in England to set reasonable requirements for renewable and low carbon energy use in development.⁶ Local authorities could consider framing net zero policies in terms of

³ *Local Authorities and the Sixth Carbon Budget*. Climate Change Committee, 2020. <https://www.theccc.org.uk/publication/local-authorities-and-the-sixth-carbon-budget/>

⁴ The Future Homes Standard: 2019 Consultation on Changes to Part L (Conservation of Fuel and Power) and Part F (Ventilation) of the Building Regulations for New Dwellings. Summary of Responses Received and Government Response. Ministry of Housing, Communities and Local Government, Jan. 2021, Executive summary section (chapter 2). http://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/956094/Government_response_to_Future_Homes_Standard_consultation.pdf

⁵ Exam 10: Note on Local Energy Efficiency Targets. Bath & North East Somerset Council, July 2022. <https://beta.bathnes.gov.uk/local-plan-partial-update-lppu-public-examination>

⁶ *Planning and Energy Act 2008 Section 1*. UK Government: <https://www.legislation.gov.uk/ukpga/2008/21/section/1>

renewable energy requirements, essentially using a ‘Merton rule’ to secure development that can meet its own energy demand from renewable sources. This would require local plans to demonstrate land availability for renewables, but also incentivise high standards of energy efficiency in buildings, as reducing energy demand would reduce the land use required for renewable or low carbon energy production. This may be a less efficient route to securing net zero buildings, but is potentially less risky as the powers set in the Planning and Energy Act are unqualified, and this is not restricted by the WMS.

3. A third option is to align the policy approach with the WMS and set a percentage-based uplift of the Target Emissions Rate (TER). This approach was proposed by Lancaster City Council, and examination correspondence with the Inspector regards to the policies compliance with the WMS is in progress. However, this policy approach is likely to be less effective in securing emissions reductions as it doesn’t cover unregulated energy, and is vulnerable to the ‘performance gap’, whereby the energy performance of a building in operation is much poorer than the original design predicts, leading to much higher buildings emissions than first anticipated.

Other actions local authorities can take:

- Your local authority may consider writing to DLUHC to convey the challenges that the WMS will cause in meeting obligations for plan making to be in line with national net zero targets.
- Draw on industry advice to consider how policies can be adapted or evidenced in light of the WMS. A statement from LETI is linked below, and the TCPA will continue to highlight relevant industry guidance as this emerges.

The TCPA is working with partners across industry such as LETI and the Good Homes Alliance to continue to support local authorities and update guidance and advice for local authorities. We will also seek to share information and updates relating to the WMS. If you’d like to be added to the list of authorities that are considering the impact of the WMS, please email celia.davis@tcpa.org.uk.
