Uttlesford District Council
Net Zero Evidence Base (WMS update)

09/04/24

Bioregional

Agenda & purpose

1. Introduction and recap of the project and our work tasks
2. Recap context: Powers and duties regarding carbon, and plan 'soundness'
3. Recent national events – Future Homes Standard/Written Ministerial Statement
4. Potential next steps for Uttlesford in light of these national changes
5. Discussion and Q&A

1. Introduction

About us

Bioregional

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Head of Sustainable Places
15 years in sustainability with BRE, developers & local authorities

Marina Goodyear BA MSc
Senior Consultant
7 years in sustainability; local authority & developer focus

Alex McCann BSc MSc
Senior Sustainability Analyst
3 years in sustainability; previously in local authority

Our project and tasks

Literature review & evidence base:

- Plan duties & powers around carbon
- Precedent / example policies
- Defining 'net zero carbon'
- Identify possible new build energy targets
- Justification, cost & feasibility

Policy options exploration

- Review Uttlesford draft policies
- Devise & appraise range of options
- Review Essex evidence & model policies

July 2023:
Presentation (virtual)

August 2023:
Presentation (in person) & Cllr decision to select option

Sept 2023: Meeting (virtual) on Essex position & link to selected option

Draft recommended policies for Regulation 18 consultation

December 2023:

- **Written Ministerial Statement** from government (affects validity of previous work)
- **Future Homes Standard** new consultation

New scope of works

A. **Review implications of national policy updates**

B. **Review further evidence from Essex work**

C. **Input into responses to Regulation 18 consultation representation**

Recap Uttlesford's draft policy at Regulation 18

UDC Requirement	UDC Target	UDC Applies to	UDC Size threshold	Tweaks made vs EDG?
Space heat demand	15kWh/m²/year	New homes	1 or more homes	n/a
		New non-resi	100+m² floorspace	
	20kWh/m²/year	New bungalows		
Energy use intensity	35kWh/m²/year	New homes Light industrial	1 or more homes	n/a
	70kWh/m²/year	New offices	100+m² floorspace	
	65kWh/m²/year	New schools		
	Reporting only	Other newbuild		
Meet minimum fabric + systems efficiencies		Residential conversions & extensions (any size) (+Optional alternative for new minor builds)		Removed airtightness & thermal bridging target
Renewables onsite (OR offset £1.35/kWh)	≥100% of energy use	All newbuild	1 or more homes 100+m² floorspace	Softened 'requirement' for >100% provision
Energy monitoring	5 years in-use, 10% coverage	All newbuild	100+ homes 10,000m² floorspace	Extended to non-resi as well as homes
Embodied carbon per m² floor space	Upfront: ≤500kg Total: ≤800kg	New homes	100+homes	n/a (BUT: evidence yet to come)
	Upfront: ≤600kg Total: ≤970kg	New non-residential	5,000m² floorspace	

Recap context: Duties, powers, and getting past the Inspector

- Getting past the Inspector: the Tests of Soundness
- Uttlesford's legal powers and duties regarding carbon and energy of new developments
- The two main 'camps' of approach to new build carbon policy

Getting through inspection

The four tests of 'soundness' in the NPPF

Plan should be positively prepared

- Responding to objectively assessed needs
- Delivering 'sustainable development'

Plan should be justified

- **Based on evidence**
- Having considered **reasonable alternatives**

Plan should be effective

- **Deliverable** in the plan period
- Based on effective joint working on cross-boundary strategic matters

Plan should be consistent with national policy

- Enable delivery of '**sustainable development**'
- **Accord with NPPF policies**
- **Accord with other statements of national planning policy**, where relevant
- Accord with relevant Acts (such as Climate Change Act 2008)

How can a local plan act on net zero buildings?

	Planning & Energy Act 2008	Town & Country Planning Act 1990	National Planning Policy Framework (2021)	Planning Practice Guidance
Powers	**Can require:** • "Energy efficiency standards" beyond building regs • a % of energy use … from low-carbon or renewable sources in scheme's locality	**S106 Obligations** • Can be used for offsetting **Local Development Orders:** De-risk the planning process for retrofit, renewables, etc	**Reduce CO^2 by location, orientation, design** **Positive strategy for renewable energy** **Heritage "viable uses consistent with conservation"**	**Reduce need to travel; sust transport** **Opportunities for renewables ≤50MW** **Promote low-carbon energy efficient design in new builds**
Limits	**Requirements that are 'reasonable'** **Energy efficiency standards = 'endorsed by Sec of State'** **Not inconsistent with relevant national policy**		**"Reflect the Government's policy for national technical standards"** **S106 only where necessary, directly related, proportional**	**Local standards must** • **Use robust evidence** • **Assess viability** • **… Use a specific carbon metric? (NEW – explained later)**

Two main ‘camps’ of precedent plan policies

Sticking within Building Regulations metrics

Planning & Energy Act 2008

- **“Energy efficiency standards”** beyond the building regulations baseline
- “a proportion of energy used … to be from **low-carbon or renewable sources** in the locality of the development”

Metrics to use as ‘levers’

- **Homes regulated energy & carbon % reduction (SAP)**
- **Non-residential regulated energy & carbon (SBEM)**
- **Renewables to match energy use of the building (annual)**

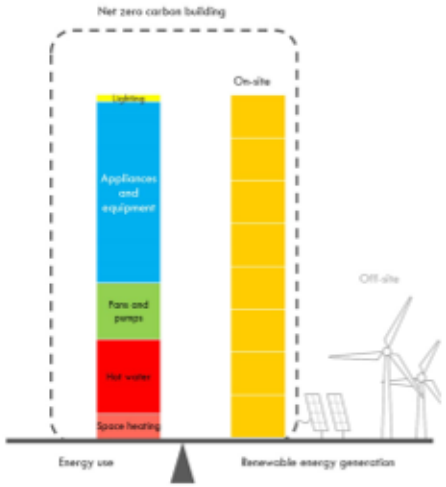
Section 106 carbon or energy offsetting

Going the extra mile

Alternative metrics – riskier for planning, but more effective

Fixed targets using PHPP/TM54

- Space heat demand
- Energy Use Intensity target (set low to rule out gas)
- Renewables to match 100% of onsite energy use



Policy approach

Two main 'camps' in the precedent policies

'Net zero' under Building Regulations

% improvement over TER (Building Regulations)

SAP compliance modelling – not intended to accurately model energy use

SAP **does not reward good building design**

Cannot be verified during operation

Not fit for development of true net zero buildings

... but this option is **what the 2023 WMS wants to see**

'True Net Zero' under EUI-based approach

Absolute energy-based targets – measurable post-construction

Proven predictive energy modelling tools

This option will require robust justification to the Planning Inspectorate

Supported by industry evidence

Easier to predict impact of design and construction choices on resident's energy bills

Prioritises renewable energy on-site, rather than through standalone renewable energy schemes (e.g. solar farms)

Uttlesford draft policy is in the 'true net zero' camp

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Recent events

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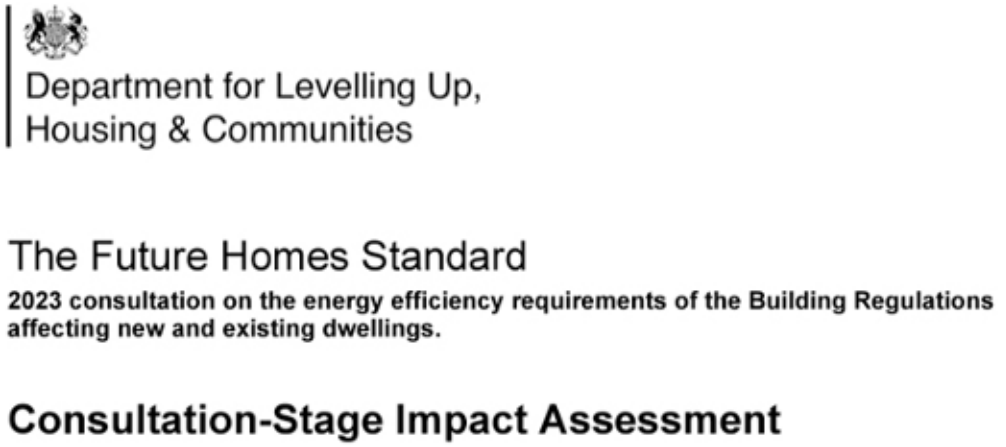
Future Homes Standard 2023/24 consultation

What is it?

- The Future Homes Standard consultation was published by the UK government in December 2023
- It outlines **proposed new energy-efficiency standards** for new homes in England. Likely to be in place by 2025 – it will become the new Part L of Building Regulations
- The consultation is open until March 6, 2024.
- Builds on previous consultation and work done by the Future Homes Hub, where different five contender specifications were created and analysed
- The new standards require **all new homes to be "zero-carbon ready," meaning they would have zero carbon emissions once the electricity grid has decarbonised.** But: this places significant stress on grid decarbonisation to deliver 'net zero' new homes, which may not occur until 2035 at the earliest.



Recent events

Future Homes Standard (FHS) 2023/24 consultation

Proposals insufficient for true 'net zero' transition

- **Two options** proposed for the Future Homes Standard – **both insufficient to achieve true net zero buildings**
- Both options propose heat pumps but also poor fabric standards
- One option proposes solar PV generation – but insufficient to match total energy use
- **Occupant bills not prioritised** – upfront capital cost to the developer is deemed to be further up the priorities (in FHS option 2, the developer saves money but the occupant's heating bills would be nearly double those of today's newbuilds!)
- In more positive news it also includes a replacement for SAP calculation – with the new Home Energy Model (HEM).

Additional justification for why local policy is still needed

- Neither option will deliver scale of action required to align with UK net zero 2050 target and legislated carbon budgets
- CCC recommendation that **all new homes are net zero by 2025** at the latest – the current FHS options do not meet this
- Therefore, local policy is required to drive innovation and deliver true net zero buildings now

- www.leti.uk/fhs
- https://goodhomes.org.uk/future-homes-standard-consultation-response

The Written Ministerial Statement (WMS)

What is it, and what did it do?

What is a WMS?

- **A formal statement of national policy therefore:**
  - Inspector will expect local policy to be consistent with it (as per NPPF tests of soundness)
  - Objectors will / could use this to undermine policy
- **Made by Lee Rowley – Minister for Housing**
- **No consultation, engagement or democratic process involved**

What did this one say?

"Planning policies that propose **local energy efficiency standards** that go beyond current or planned buildings regulation [BR] should be **rejected at examination** if they do not have a well-reasoned and robustly costed rationale that ensures:

- Development remains **viable**, and impact on housing supply and affordability is considered in accordance with the NPPF
- **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).**

Where policies go beyond current/planned BR, polices should be applied flexibly .... where the applicant can demonstrate that meeting higher standards is **not technically feasible**, in relation to the appropriate **local energy infrastructure and access to adequate supply chains."**

What does this do to potential policy options?

- EUI / Space Heat fixed target approach now more likely to be rejected by inspector (at least for residential development)
- Takes away power from local authorities to determine their own standards; hands this power to national government

The Written Ministerial Statement

What CAN we still do without contradicting the WMS?

Energy efficiency requirements

Must be expressed as a % improvement on Part L TER (Target Emission Rate).

Therefore, we can:

- Require a % improvement in Part L TER *from energy efficiency measures.*
  - For feasibility evidence: Echo the % set by others e.g. London Plan?
  - Define 'energy efficiency measures'
- Possibly: Require EUI or Space Heat Demand targets alongside this?

Renewable energy requirements

The WMS did not mention, therefore should not affect, renewable energy.

Therefore, we can:

- Propose a requirement for 100% renewable TOTAL energy use?
  - (... likely only feasible if building is also designed to the previously proposed energy efficiency targets!)
- OR require 100% renewable energy for regulated uses only, using Part L calculation?
  - (Would require extensive new feasibility evidence).

Embodied carbon requirements

No change – the WMS did not touch this.

Therefore, we can:

- Propose embodied carbon targets.
  - Note: There is only one adopted precedent for this, but several emerging.

2023 Written Ministerial Statement

Dynamic views and opinions – it is not all doom and gloom!

How things have moved on

- Initially a lot of confusion and fog around it. Many LPAs were unsure of its status and implications
- Importantly, **LPAs can still set local energy requirements**. Even the Chief Planner has re-confirmed this!
- However, it does look to push these down a Building Regs route (at least for homes) that we know is inadequate to meet net-zero targets

Status of the WMS

- The **WMS is subservient to statute** and can't undermine the primary powers of LAs to act on climate change [see High Court decision on other WMS, Feb 2024]
- We also feel that the **WMS doesn't strictly limit LPAs to only using BR metrics if local circumstances can be shown.**
  - Detailed feasibility and viability comparing the different approaches and carbon reductions
  - Engagement with the community

Legal advice

- Essex CC have undertaken specific legal advice (Estelle Dehon KC) on the WMS – some highlights:
  - **Unlawful to stop LA from using their legislated primary powers to mitigate climate change**
  - **WMS is contradictory in places**
  - **WMS is not fit for purpose and not evidenced**

2023 Written Ministerial Statement

Further recent legal developments

Pre-action correspondence

- **Estelle Dehon KC** on behalf of client coalition of local planning authorities
- **'Letter before Action' challenged the lawfulness of the WMS2023**
  - … *if* the WMS2023's intention was to significantly limit the exercise of local plan Energy & Planning Act powers and fulfilment of climate mitigation duty
  - … *especially considering* the apparent lack of evidence of the problems that the WMS2023 purported to address

Secretary of State response

- **Took a month to arrive** – indicates substantial legal consideration
- **Claims that this was *not* the intention of the WMS2023**
- **Concedes that:**
  - The WMS2023 only expresses *one way* to reasonably set local policy
  - WMS2023 not as binding as its language implies; only a material consideration alongside others
  - No evidence considered regarding the actual impact on housing supply, economies of scale, etc.

Consequences of the response

- **No Judicial Review resulting** – as deadline to initiate a JR was missed due to delayed response
  - (Albeit separate JR is ongoing by Rights:Community:Action)
- **Therefore, can be shared**
  - Likely to be published with interpretation note from industry planning professional body soon
- **Strengthens footing for any policies that go beyond Building Regs** – including ones like Uttlesford's.

The Political Environment

Caveat: national policy & political leadership may change before examination

Uttlesford's timeline

If Uttlesford chooses to reformulate policy, could this affect timeline for:

- Regulation 19, Jul-Sept 2024?
- Submission, December 2024?
- Examination, 2025?

Planning & regulatory changes

- Levelling Up Act: National Development Management policies to come in 2024
- Transitional arrangements before the 'new local plan making process' come into force
- FHS Consultation closed in March – what regulations will be enacted in the future?
- Future national carbon budgets (for the period 2037 onwards) due to be set in 2025

Potential political changes in 2024-25

- Results of forthcoming general election
- Friends of the Earth high court challenge against Energy Security and Net Zero Strategy (heard at the end of February 2024; judgement may not arrive until late June)
  - Note: this follows a successful case in 2022 which found the previous version of that Strategy unlawful
- Challenges to WMS2023 including:
  - High Court challenge (JR)
  - Goodlaw campaign

What does this all mean for Uttlesford and its next steps?

Recap: Policies are subject to a range of risks

Recap: Mismatch between duties/needs, and planning powers to fulfil them

Climate

- Carbon budgets & net zero goal
- Necessary sectoral changes
- Is the carbon responsibility proactively accepted, shirked, passed on, or postponed?
- Opportunities grasped or missed

Occupiers / users of building

- Energy bills
- Future retrofit: costs; disruption

Infrastructure & sectoral readiness

- Electrical grid
- Technical feasibility
- Materials availability
- Skills availability

Planning acceptability

- Viability
- Compatibility with national technical standards (Part L)
- Compatibility with national strategy / formally stated future policy direction
- Explicitly granted powers
- Explicitly stated restrictions
- Adopted precedent plans
- Alignment / conflict with 2023 WMS

Continue as is, or revisit previous options?

Least effective for climate ← → Most effective for climate

1. Downgrade to be WMS compliant	2. Step back, but test WMS boundaries	3. Stay the course to overcome the WMS
% TER improvement from energy efficiency measures	% TER improvement from 'energy efficiency features' (And *guideline-only* targets and reporting for energy use intensity & space heat demand)	Energy Use Intensity and space heating demand limits
Use of a quality assurance methodology to reduce the energy performance gap in practice		
On-site renewable energy generation to get to 100% TER reduction (equivalent to matching total ***regulated*** energy use)	On-site renewable energy generation to match total energy use (***regulated and unregulated***, calculated using Building Regs methods)	On-site renewable energy generation to match total energy use (***regulated and unregulated***, calculated with more accurate methods)
Offset any remaining regulated carbon emissions (£/tCO_2)	Offset any shortfall in on-site renewable energy generation (£/MWh)	Offset any shortfall in on-site renewable energy generation (£/MWh)
Report on embodied carbon for major development LETI embodied carbon targets set as limit for large-scale development	Report on embodied carbon for major development LETI embodied carbon targets set as limit for large-scale development	Report on embodied carbon for major development LETI embodied carbon targets set as limit for large-scale development

Potential policy approaches

Pros and cons of the range of potential next steps

Option 1. Downgrade to WMS compliant

- **Safe route to compliance with the WMS**, but improve on basic Building Regulations
- **Does not go far enough to ensure building performance** needed for UK's legally-binding carbon goals – arguably not meeting climate duty
- Safest option in terms of planning risk but poses **significant risk to the climate** and could cause future disruption to occupants and the electricity grid.
- Inspector could still reject.

Option 2. Step back but test boundaries

- **Middle ground** between WMS compliance and existing ambition.
- **Capable of creating true net zero buildings** if on-site renewable energy matches total energy use …
- … EXCEPT that Building Regs calcs are used, therefore inaccurate. **Performance gap** due to use of SAP or SBEM.
- Optimal energy efficiency will not be ensured, meaning more PV needed – in combination this is likely to put **greater strain on local grid infrastructure**.
- Therefore, might not improve viability vs the existing draft Uttlesford policy.

Option 3. Stay the course; overcome WMS

- Best practice approach **delivering the new build performance needed** for a 2050 net zero future. Most credible way to meet duty to mitigate climate change in the buildings sector.
- Lowest risk levels for occupant energy bills and future retrofit disruption/cost.
- Needs **extensive robust evidence** – already available from Essex work
- Utilises a sophisticated modelling tool, PHPP, to predict energy use and space heating demand that will **reduce the performance gap.**

6. Q&A and feedback

Thank you

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