Energy Performance in Local Plans, Written Ministerial Statement and the Local Plan for the Broads

July 2024

Contents

1. Introduction

This paper explains the current situation in relation to what Local Plans can do when considering energy efficiency standards or policy requirements. It discusses various issues such as the Written Ministerial Statement, the Planning and Energy Act 2008, what other Local Planning Authorities do in their Local Plans as well as various other ways to make properties energy efficient. The proposed draft Local Plan policy relating to energy efficiency of dwellings is also included.

2. Written Ministerial Statement

On 13th December 2023 the Government issued a Written Ministerial Statement (WMS)[1] relating to Local Plan Energy Efficiency requirements. This updated the previous WMS dating from 2015. For the purposes of setting an Energy Efficiency requirement in the Broads Local Plan, the following paragraphs from the 2023 WMS are relevant.

[1] Government ministers can make written statements to Parliament as well as oral ones. Oral statements often address major incidents, policies and actions. Written ministerial statements are normally used to put the day-to-day business of government on the official record and in the public domain. Written ministerial statements are often used to provide or announce:
Detailed information and statistics from the government
The publication of reports by government agencies
Findings of reviews and inquiries and the government's response
Financial and statistical information
Procurement issues
Procedure and policy initiatives of government departments

The improvement in standards already in force, alongside the ones which are due in 2025, demonstrates the Government's commitment to ensuring new properties have a much lower impact on the environment in the future. In this context, the Government does not expect plan-makers to set local energy efficiency standards for buildings that go beyond current or planned buildings regulations. The proliferation of multiple, local standards by local authority area can add further costs to building new homes by adding complexity and undermining economies of scale. Any planning policies that propose local energy efficiency standards for buildings that go beyond current or planned buildings regulation should be rejected at examination 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.
- 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).

3. Legal actions

A Letter Before Action has been submitted by Rights Community Action into the WMS.

The application of the previous WMS (Published 25 March 2015[2]) has also been challenged via Judicial Review, in a challenge to the Planning Inspector Decision relating to the Salt Cross Garden Village Development Plan in West Oxfordshire.

The legal challenge was dismissed in July 2024.

4. Future Homes Standard

The Future Homes Standard (FHS)[3] was out for consultion until the end of March 2024. This will set a minimum standard for new build dwellings. It is essentially a strengthening of the existing Building Regulations Part L approach, with houses expected to achieve a "Target Emissions Rate" that matches a notional building. The Emissions rate is based on the GHG emissions of heating a house.

The FHS also requires all houses to be "net-zero ready" – in practical terms this means that once the grid has fully decarbonised (currently planned for 2035), the house will have zero emissions. This implies Electric Heating, most likely through heat pumps. Hydrogen heating with Green Hydrogen would theoretically meet this requirement, although it seems unlikely that this technology will be used for new builds.

There is now a new Government and it is not clear if or when the Future Homes Standard will be put in place. That being said in a recent email from the Planning Advisory Service, the Ministry of Homes and Local Government do appear to be progressing the Future Homes Standard.

[2] Written statements - Written questions, answers and statements - UK Parliament
[3] The Future Homes and Buildings Standards: 2023 consultation - GOV.UK (www.gov.uk)

5. Planning and Energy Act 2008

Under section 1 of the Planning and Energy Act 2008, a local planning authority may include policies imposing reasonable requirements for;

(1) A local planning authority in England may in their development plan documents, a 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.

This Act and these sections of the policy are still in place.

6. Other Local Planning Authority Actions

Essex County Council have cowritten a climate policy with the Planning Authorities in Essex, including the Unitary Authorities. This was published in November 2023 under the title "Planning Policy Position for Net Zero Carbon Homes and Buildings in Greater Essex". This is currently being implemented in two district local plans, and will eventually apply across all of Essex. The requirements under this policy are;

- **Space heating:** No more than 15/kWh/m^2 per year, with an exemption for Bungalows allowing 20 kWh/m^2 per year
- **Fuel:** No new building may be connected to the gas gird and fossil fuels must not be used on site to provide space heating, domestic hot water or cooking.
- **Energy use Intensity (EUI) limits:** Residential buildings must achieve an Energy use Intensity of no more than 35 kWh/m^2 per year
- Non residential buildings must achieve an Energy Use Intensity of
    - Offices – 70 kWh/m2 GIA/year
    - Schools – 65 kWh/m2 GIA/year
    - Light Industrial – 35 kWh/m2 GIA/year

Greater Norwich Local Plan – adopted 2024.

The Final Local Plan includes part 10 of policy 2 that says:

10. Protect water quality and ensure a low level of energy consumption. To achieve this development proposals should:

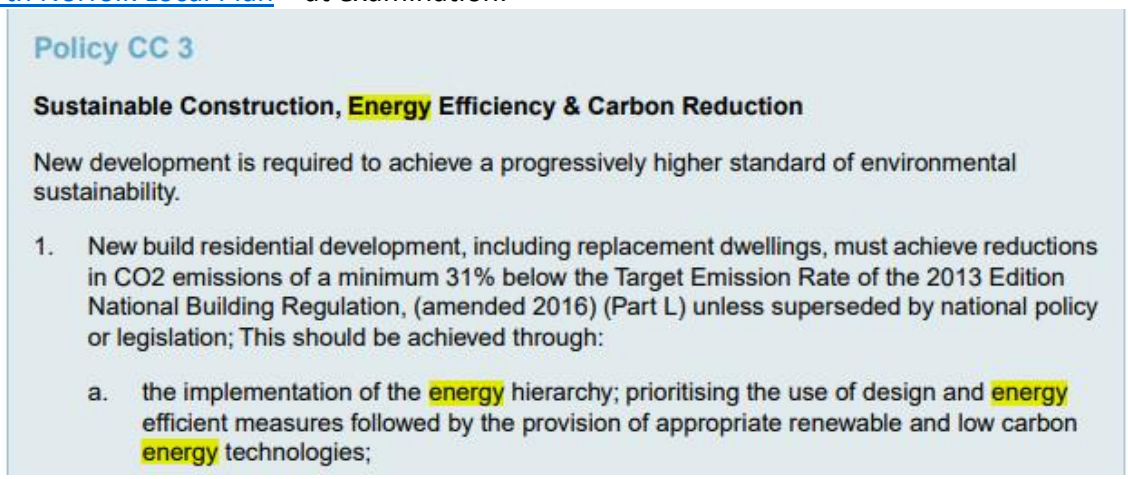
i. Take account of landform, layout, building orientation, massing and landscaping to minimise energy consumption and the risk of overheating.

ii. Provide for the use of sustainable energy, local energy networks and battery storage where appropriate

The Inspector's Report said: . The deletion of part 10 of the policy is necessary as these matters are now addressed in the Building Regulations, which have subsequently set higher Greater Norwich Local Plan, Inspectors' Report February 2024 22 national minimum energy efficiency standards than are referred to in the policy. A further change to the Building Regulations is planned for 2025 which will mean that homes built to that standard will be net zero ready. A new part 10 of the policy is necessary to address energy consumption in terms of design, layout, and orientation and to provide for the use of sustainable energy, local energy networks, and battery storage where appropriate. The transfer of part iv into the explanatory text is also necessary as this section is for information only and is not intended to guide the determination of planning applications.

King's Lynn and West Norfolk Local Plan – at examination.
LP06: Until the Building Regulations change when new development is assumed to conform to the Future Homes Standard (Option 2, as will likely be implemented through a change to Part L of the Building Regulations) all new development will be required to follow the 'Merton Rule', whereby 10% of all energy will come from onsite renewable sources for new domestic development of 10 units or more, and new commercial developments over 1000m2; proposals which exceed these CO2 reduction targets will be encouraged and supported; including developments over 100 dwellings providing a 20% reduction of CO2 emissions (in accordance with LP18, 24).

North Norfolk Local Plan – at examination.



Policy CC 3

Sustainable Construction, Energy Efficiency & Carbon Reduction

New development is required to achieve a progressively higher standard of environmental sustainability.

1. New build residential development, including replacement dwellings, must achieve reductions in CO2 emissions of a minimum 31% below the Target Emission Rate of the 2013 Edition National Building Regulation, (amended 2016) (Part L) unless superseded by national policy or legislation; This should be achieved through:

    a. the implementation of the energy hierarchy; prioritising the use of design and energy efficient measures followed by the provision of appropriate renewable and low carbon energy technologies;

b. incorporation of measures to maximise opportunities for solar gain through building orientation, natural ventilation, use of green roofs, natural shading, and other appropriate measures;
c. by 2035 all new dwellings and workplaces should be zero carbon ready.

2. All development proposals should be accompanied by a separate compliance statement setting out:

   a. the approach taken to address energy efficiency within the design and technical specification of the proposed development;
   b. comparative energy performance and carbon emission rates of the proposal in relation to the benchmarked Target Emmissions Rate.

3. The above standards should be achieved as a minimum unless, it can be clearly demonstrated that this is either not technically feasible or viable.
4. Proposals for non-residential development above 250sqm floor space are required to achieve a minimum of BREEAM Very Good Standard or equivalent.

Breckland Local Plan – emerging.
HOU20: New homes will be required to adopt the Fabric Energy Efficiency Standard to measure energy efficiency and the requirements of Building Regulations including Parts F and L.
ENV01: Energy efficiency should be embedded in design both to minimise costs to users and to reduce their environmental impact. All developments should follow the energy hierarchy and design in energy efficiency features from onset.

West Suffolk Local Plan – at examination.

- SP1: Minimising energy consumption.
- LP1: Designs utilise the fabric first approach and achieve carbon standards primarily through energy efficient design and materials. This should specifically focus on how demands on heating and cooling have been considered in the design stage and reduced through orientation of the building, the location of windows, thermal mass and shading, and how orientation optimises opportunities for on-site photovoltaic or solar thermal heating. Designs should indicate how the balance between solar gain and solar shading is to be managed.

Great Yarmouth Local Plan – emerging.
This includes this draft policy:

Non-Strategic Policies

Policy CLC6 – Energy Efficiency for New Developments

Development proposals are encouraged to reduce energy and resource consumption compared to the minimum required under Part L of the Building Regulation and where they implement the following core principles:

a) **Designing buildings by prioritising fabric first, orientation and landscaping in order to minimise energy demand for heating, lighting and cooling with reference to CC2, CC8 and BF4 of the Design Code (Appendix 1). All proposals should consider opportunities to provide solar PV and energy storage.**

b) **New Major Non-Residential Developments – are encouraged to achieve BREEAM 'Excellent' or an equivalent or better methodology.**

Supporting text

14.59. Great Yarmouth is highly vulnerable to the effects of climate change, principally through the risk of flooding and coastal erosion. The Borough will therefore particularly benefit from efforts to move towards net-zero carbon emissions.

14.60. Energy efficiency requirements are set through buildings regulations and the Government's Future Homes and Buildings programmes intend to increase reductions in energy resource use in new buildings with the next increase in standards due in 2025. National planning policy restricts the introduction of additional local energy efficiency standards which go above and beyond building regulations. However, it is possible to give weight to proposals which do, given the need to tackle climate change.

14.61. This policy has been developed with an energy hierarchy which seeks to, in order of preference:

- Reduce energy demand.
- Increase energy efficiency.
- Utilise renewable resources.
- Utilise low carbon resources.
- Utilise conventional sources of energy

14.62. The policy seeks to encourage developers to reduce the carbon emissions associated with new buildings through implementing the energy hierarchy in building design. This means improving fabric standards, energy efficiency and minimising space heating requirements, before installing renewable energy and then offsetting residual energy if required. The policy is an encouragement policy in that development will not be refused if does not incorporate the desires of the policy, however, weight will be given in favour of proposals which do go beyond the building regulations in line with the policy.

7. Passivhaus Standards

The Passivhaus standard is a global standard aimed at producing energy efficient homes. The aim is for all or nearly all heating and cooling demand of the house to be met by passively – reducing or eliminating the need for heating and cooling through use of insulation and carefully designed ventilation. Examples of significant Passivhaus developments in Norfolk include the Goldsmith Street estate and Rayne Park estate in Norwich.

In the UK, guidance is provided by the Passivhaus Trust.

The core requirements for a dwelling to be classed as a Passivhaus dwelling are:

- Space heating demand no more than 15 kWh/m^2/a. For an average UK house with 110m2 of floorspace, this would be 1,650 kWh. This is compared to a typical extant UK house usage of over 10,000 kWh of heating energy a year.
- Space cooling demand of no more than 15 kWh/m^2/a. In a warming climate with increased risk of heatwaves, this may become a significant part of energy use for households.
- Primary Energy Demand of less than 60 kWh/m^2/a. This includes all the energy uses of the house, including water heating, kitchen appliances, and other uses in the property.

8. Preferred Options policy and consultation

The Preferred Options version of the Local Plan that was consulted on, includes a policy relating to energy and this can be found at Appendix 1 (although there are some amendments included and marked up). The comments received on that policy are included at Appendix 2.

9. Discussion

The FHS will not maximise possible energy efficiency savings for houses. Building houses with higher energy demand will slow the decarbonisation of the grid, which can be achieved more quickly if there is less demand in the first place.

The Target Emissions Rate is the CO2 emissions of a property arising from its use. This has been criticised on the basis that an electrically heated house with Solar Panels installed will nominally have a low emissions rate, however it can still leave an occupier with high energy bills if the overall insulation and design is poor. This has led to a preference for a “Fabric First” approach to reducing emissions, and local authorities to specify Energy use levels in terms of kilowatt-hours per year per area. (kWh/y/m^2).

As primary legislation, the Planning and Energy Act takes precedence over Written Ministerial Statements.

The Written Ministerial Statements have offered guidance to Planning Inspectors on what a “reasonable requirement” is. However, it is not clear that the requirement to use a Target Emissions Rate rather than an energy efficiency metric can be imposed on a Planning Authority.

There is now a new Government in place and it is not clear what will happen to the Future Homes Standard as well as the Written Ministerial Statements.

This creates two areas of uncertainty for the setting of local plans.

In Summary these are:

1. The Future Homes Standard was only recently out for consultation and now there is a new Government, so in setting a local plan it is not clear what standards may apply post 2025.
2. The Target Emissions Rate is not considered a good indicator for home energy efficiency, and it is not clear that Local Plans can be forced to use it as it doesn't fit with the power Planning Authorities have under section 1 of the Planning and Energy Act 2008.

Whilst there may be debate about what the Written Ministerial Statement actually means as well as its strength when compared to primary legislation, the Written Ministerial Statement, when what it actually says is considered, says that local energy efficiency standards that go beyond current of planner building regulations can be set if they are well-reasoned and robustly costed and the standard ensures development remains viable. These are the tests that any policy in a Local Plan need to pass anyway. The main issue however is where the Written Ministerial Statement says '*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)'.* The Target Emissions Rate is not considered a good indicator for home energy efficiency, and it is not clear that Local Plans can be forced to use it as it doesn't fit with the power Planning Authorities have under section 1 of the Planning and Energy Act 2008.

10. Options

This has been debated at the High Court and dismissed. The timeline to submit the Local Plan for examination under the current planning system is by June 2025 and is a tight timescale. It is not clear what the new Government plan to do.

There are these three options, with number three being the tightest measure:

1. Have a policy that encourages, but does not require, Passivhaus building – this is what the policy in the Preferred Options currently says.
2. Adopt a policy similar to the Essex Net Zero Carbon Homes Policy
3. Require Passivhaus building

It is recommended that option 1 is taken forward. This is what the current draft policy says. We will keep informed of any progess on the Future Homes Standard, any other other standard set out by Government (and this could be in the revised NPPF) and we will also keep informed of any changes to the legal challenge to the WMS. During the Examination into the Local Plan, we will discuss the best way forward regarding energy efficiency with the Planning Inspector.

Appendix 1 - Draft Policy

Policy PODM18: Energy demand and performance of new buildings (including extensions)

1. The expected energy use of buildings must be as low as possible~~; the building regulation standards are the minimum~~.

2. Energy efficiency will be embedded in design both to minimise costs to users and to reduce their environmental impact.

3. All developments will follow the energy hierarchy (see point 5) and design in energy efficiency features from onset.

4. Applicants will be required to demonstrate what measures they have taken to achieve ~~more~~ energy efficiency beyond the building regulation standards (see part 10 of this policy).

Reducing energy requirements of new build

5. Developments are required to meet or reduce at least 10% of their predicted energy requirements, using the following hierarchy:

a) Reduce the overall energy demand in the first place. Development is required to take a 'fabric first' approach and reduce overall energy demand through its design, materials, layout and orientation.

b) Energy efficient and conservation measures. Proposals are then also required to maximise the use of energy efficiency and energy conservation measures; and

c) Decentralised and renewable or low-carbon sources for any residual amount.

6. Buildings designed to Passivhaus standard (or equivalent) would generally be encouraged, subject to other relevant policies of the Plan.

Reducing Energy Consumption in Existing Buildings

7. For all development proposals which involve the change of use or redevelopment of a building, or an extension to an existing building, the applicant is encouraged to consider all opportunities to improve the energy efficiency of that building including the original building, if it is being extended.

8. Where the building pre-dates 1919[4], methods of improving energy efficiency should be carefully considered so that they are not detrimental to the fabric of the building.

Heritage Assets

[4] Retrofit and Energy Efficiency in Historic Buildings | Historic England

9. Planning permission and, where relevant, listed building consent, will be granted for works required to improve the energy performance of designated and non-designated heritage assets where it complies with other relevant policies and can be clearly demonstrated that this is compatible with all of the following:

a) The heritage asset's character and appearance;
b) The heritage asset's special architectural or historic interest;
c) The long-term conservation of the built fabric; and
d) The wider setting of the heritage asset.

Energy Statement

10. An energy statement which demonstrates the approach is required to accompany planning applications (and this can be done through the design and access statement or planning statement).

Reasoned Justification

The Climate Change Act 2008 legislates for a 34% reduction in greenhouse gas emissions against 1990 levels by 2020, and an 100% reduction by 2050. The UK government has set the climate change target into law to reduce emissions by 78% by 2035 compared to 1990 levels. The incorporation of renewable energy generation technologies and energy efficiency measures into the design of new development can make a significant contribution to achieving these targets.

The policy approach seeks development that is designed to reduce energy demand in the first place, then to use energy efficiency improvements, and finally to use renewable energy technologies where appropriate.

On-site provision will normally be the preferred mechanism for decentralised and renewable or low-carbon sources. However, off-site schemes will be permitted where it would result in the generation of a greater amount of energy or would have a lesser visual/environmental impact. Planning conditions and/or obligations will be used to make sure the energy infrastructure comes on-line before the development is occupied.

Addressing climate change is also about making improvements to resource and energy efficiency.

Future Homes Standard

The Conservative Government ~~is~~ was committed to improving the energy efficiency of new homes through the Building Regulations system through the Future Homes Standard (FHS). The introduction of the FHS will ensure that an average home will produce at least 75% lower CO2 emissions than one built to recent/current energy efficiency requirements. Homes built under the FHS will be 'zero carbon ready', which means that in the longer term, no further retrofit work for energy efficiency will be necessary to enable them to become

zero-carbon homes as the electricity grid continues to decarbonise. However, the FHS is only proposed to take effect from 2025 and there is no legal guarantee of even that date being met, especially given that there is now a new Government in place. There has been an uplift in Building Regulations as a step towards FHS having taken place in 2022 which changes Part L of the Building Regulations to reduce carbon emissions by 31% for new homes through a set of reformed insulation and air tightness requirements.

Design principles

The following design expectations should be considered and in the following order:

1. Orientation of buildings – such as positioning buildings to maximise opportunities for solar gain, and minimise winter cold wind heat loss whilst also addressing the risk of overheating;
2. Form of buildings – creating buildings that are more efficient to heat and stay warm in colder conditions and stay cool in warmer conditions because of their shape and design;
3. Fabric of buildings – using materials and building techniques that reduce heat and energy needs. Ideally, this could also consider using materials with a lower embodied carbon content and/or high practical recyclable content;
4. Heat supply – net zero carbon content of heat supply (for example, this means no connection to the gas network or use of oil or bottled gas);
5. Renewable energy generated – generating enough energy from renewable sources onsite (and preferably on plot).

Passivhaus

Where Passivhaus certification is being sought, a 'pre-construction compliance check' completed by a Passivhaus certifier will be required, secured by condition and upon completion, a Quality Approved Passivhaus certification for each dwelling/ building will be required.

Retrofit

The UK's Committee on Climate Change has identified retrofitting existing homes as one of five priorities for government action (CCC, 2019). The policy encourages applicants to improve the energy efficiency of the existing building if appropriate to do so.

Heritage assets

Historic England (Heritage Counts) research shows that sympathetic refurbishment and retrofit can reduce the carbon emissions of historic buildings by over 60% by 2050. The Heritage Counts research also demonstrates that the speed at which carbon is reduced in buildings has a greater impact than the scale of retrofit showing that the sooner actions are taken, the more effectively we can address carbon in buildings.

The retrofit of historic buildings to enhance their energy efficiency would be welcomed subject to it meeting the tests. The Authority will assess the impact of the adaptations,

taking regard of the significance of the historic asset and the character, historic interest, setting and integrity of the elements of the asset likely to be affected[5]. The 'whole-house approach[6]' is encouraged for use in historic buildings and it is likely that the measures taken in a listed building will need to be bespoke, taking into account the construction and special characteristics of the building.

Guidance

Further guidance on designing new development to minimise energy consumption is provided in the Broads Authority's Sustainability Guide[7].

The Broads Authority may want to consider the Net Zero Carbon Toolkit when looking at the design of new homes and the retrofitting of existing homes: www.greensuffolk.org/net-zero-carbon-toolkit-housing/.

[5] Historic England guidance Energy Efficiency and Historic Buildings – Application of Part L of the Building Regulations to historically and traditionally constructed buildings https://historicengland.org.uk/images-books/publications/energy-efficiency-historic-buildings-ptl/ may be helpful in understanding these special considerations. And Energy Efficiency and Historic Buildings | Historic England may be of relevance.

[6] Guidance can be found here: STBA Whole House Approach – STBA (stbauk.org)

[7] Sustainability Guide (broads-authority.gov.uk)

Appendix 2 - Comments received on Preferred Options draft policy

Name	Organisation	Comment
Ian Robson	RSPB	4. As written this suggests that so long as the applicant 'considers' opportunities to improve energy efficiency that is all they need to do. Is this correct, is there no requirement to implement?
Helen Binns	Walsingham Planning on behalf of Greene King	PODM18 'Energy Demand and Performance of new buildings' – requires the expected energy use of buildings to be as low as possible with Building Regulations being the minimum standard. Applicants for change of use of a building will be required to improve energy efficiency.
Andrew Marsh	Historic England	We welcome reference to heritage assets within this policy and the need for developments to comply with points 6a – d as well as other relevant legislation.
Dr Sarah Eglington	Norfolk Wildlife Trust	We support general intention of this policy to reduce the energy demand of buildings, in line with the weight afforded to the measures in the updated NPPF (Paragraph 164): In determining planning applications, local planning authorities should give significant weight to the need to support energy efficiency and low carbon heating improvements to existing buildings, both domestic and non-domestic (including through installation of heat pumps and solar panels where these do not already benefit from permitted development rights).
Dr Sarah Eglington	Norfolk Wildlife Trust	However, given the scale of the climate crisis we recommend that the policy should be more ambitious and require new developments to follow an approach to achieving net zero emissions by 2035 based on the principle of setting ambitious fabric efficiency standards and then providing all heat and power renewably, on- or off-site. An example of this can be seen in the approach taken by Cornwall Council, who are using a policy approach that requires proposals to demonstrate how they will achieve net zero through energy efficiency and use of sustainable energy throughout their lifecycle (see Policy SEC1 – Sustainable Energy and Construction).
Dr Sarah Eglington	Norfolk Wildlife Trust	We are guided in our response by the best practice document 'The Climate Crisis: A Guide for Local Authorities on Planning for Climate Change', which gives encouraging examples from other local authority plans on positive policies already adopted which will ensure local plans make clear and measurable contributions to national progress towards net zero.

Name	Organisation	Comment
Dr Sarah Eglington	Norfolk Wildlife Trust	For all development proposals which involve the change of use or redevelopment of a building, or an extension to an existing building, the applicant is encouraged to must consider all opportunities to improve the energy efficiency of that building including the original building, if it is being extended.
Dr Sarah Eglington	Norfolk Wildlife Trust	As minor point, we recommend amending the title of this policy to remove the word 'new', as it is only in fact clauses 2 and 3 that deal with new buildings.
Tessa Saunders	Anglian Water	Improved water efficiency measures can reduce the operational energy demand of buildings. Of all the CO2 emissions in the UK, 6% are from water use, and a massive 89% of this comes from heating water in homes - meaning 5.3% of UK emissions is from domestic water heating. The remainder (0.67%) from pumping and treating water as part of the supply and sewerage network. Improved water efficiency measures (fixtures and fittings such as water efficient showers and taps and white goods appliances) are therefore important in helping to reduce overall operational carbon in new homes.
Dickon Povey	East Suffolk Council	The Written Ministerial Statement of 13 December 2023 requires energy efficiency standards to be an uplift of dwelling target emission (TER). Bullet point 2 of the proposed policy uses the term "predicted energy requirements". Perhaps TER should be specified in accordance with the WMS.
Dickon Povey	East Suffolk Council	I understand the FHS CO2 emissions will be 75% less than the 2013 Part L Building Regulations not the current/latest energy efficiency requirements (which are the 2023 Part L Building Regulations). The uplift in Building Regulations that took place in 2022 was relative to the 2013 Part L Building Regulations.