LOCAL AUTHORITIES WITH LOCAL PLAN POLICIES EXCEEDING BUILDING REGULATIONS

This paper has been prepared by Climate Action Leicester and Leicestershire (CALL).

PURPOSE OF THIS PAPER

This paper proposes that Leicester City Council immediately adopt a more stringent climate-ameliorating policy concerning carbon emissions from new development by applying powers available to the planning process that it is not currently using.

SUMMARY

Below is briefly described the background of recent energy policies application in Leicester and governmental changes that may have led to their abandonment but which may have been wrongly interpreted. Lastly, examples are given of LPAs successfully applying policies which might be termed Building Regulations PLUS, and the government policy that enables these policies is described.

BACKGROUND

In the Local Plan of 2006, amongst other energy-related policies, Leicester City Council introduced and successfully applied the renewable energy policy BE16 requiring on-site generation for a percentage of the annual overall energy requirement of the development. This policy was distinguished from policies in LPAs elsewhere by requiring an annually increasing percentage of total on-site energy (not solely *Regulated* energy as described by the Building Regulations). This commenced at a required minimum level of 10%, incrementally increasing by 1% per year as applied to new consents. This reached 16% in 2014, by which time there were few excepted cases and has resulted in substantial annual carbon emissions savings, which continue.

However, in 2015, in a Written Ministerial Statement by the Secretary of State, the capacity of Local Planning Authorities to impose local energy policies was curtailed, stipulating that energy-related policies should reflect aspects of Part L of the Building Regulations, **with the exception that policies could be set up to the then proposed Code for Sustainable Homes Level 4.** This is equivalent to a 19% emissions reduction over 2013, or 44% over 2006 Building Regulations.

Whilst this provision was to be deleted under the Deregulation Act of 2015 the relevant sections have never been confirmed so that the national policy remains in force and available to LPAs to adopt

A legal opinion supporting this position is given online at: https://www.burges-salmon.com/news-and-insight/legal-updates/can-local-authorities-adopt-energy-efficiency-standards-that-exceed-building-regulations/

PROPOSAL FOR GOING FORWARD

It is our assertion that as things currently stand the City Council as LPA is not taking the opportunity to build upon the already substantial, measurable and continuing annual carbon savings arising from the application of policy BE16 by at least applying the reduced carbon emissions permitted; i.e. 19% emissions reduction over 2013, or 44% over 2006 Building Regulations.

There is an absence in the Core Strategy of a commitment to the rigorous prescriptive standards that the urgency of climate change demands.

However, whilst Leicester has not to date followed this path and is weak on indicative future policies, a number of LPAs have actively pursued this opportunity to secure higher levels of building

energy efficiency performance. Please find in the Appendix below examples of other LPA policies which do take this opportunity, along with some cases of consented development.

These higher standards can be achieved on site through a combination ensuring optimal passive orientation to maximise winter solar receipts, improved air tightness and more thermally efficient fabric. These are all Building Regulation parameters of energy efficiency and no further on-building renewable or low carbon technologies are required to achieve the 19% reduction.

The scale of the benefit can be simply summed up as: *for every five years of operation, such development will secure a reduction almost equivalent to an additional year's further emissions.* This is a significant environmental benefit and should be capitalised upon as soon as administratively possible. It would be irresponsible not to do so.

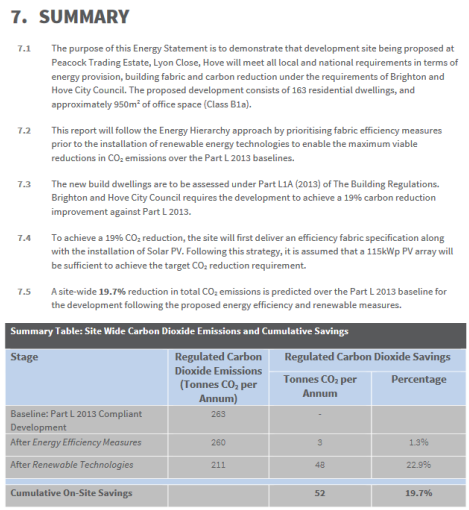
APPENDIX

CASE 1

Local Authority: Ipswich BC	**Date Adopted: Feb 2017**
Local Plan Policy	Examples of application
Page 79. POLICY DM1: Sustainable Design and Construction New development shall be required to achieve a high standard of environmental sustainability. This will be achieved by the following standards: a. New build residential development should achieve reductions in CO2emissions of 19% below the Target Emission Rate of the 2013 Edition of the 2010 Building Regulations (Part L); and **Page 80. POLICY DM2: Decentralised Renewable or Low Carbon Energy** All new build development of 10 or more dwellings or in excess of 1,000 sq. m of other residential or non-residential floorspace shall provide at least 15% of their energy requirements from decentralised and renewable or low-carbon sources. If it can be clearly demonstrated that this is not either feasible or viable, the alternative of reduced provision and/or equivalent carbon reduction in the form of additional energy efficiency measures will be required. The design of development should allow for the development of feed in tariffs. 9.13 This policy gives effect to Core Strategy policy CS1. It builds on national policy in the National Planning Policy Framework which states that planning plays a key role in supporting the delivery of renewable and low carbon energy.	IPSWICH POLICY COMPLIANCE EXAMPLE Application Reference: IP/17/00570/FUL Consent with conditions 2. The hereby-approved dwellings shall achieve reductions in CO2 emissions of 19% below the Target Emission Rate of the 2013 Edition of the 2010 Building Regulations (Part L) and water efficiency standards of 110 litres/person/day unless, in exceptional circumstances, it can be clearly demonstrated that this is either not feasible or not viable. Before the hereby-approved dwellings are first occupied, details of compliance with these requirements or demonstration that the requirements are not feasible or viable, shall be submitted to and approved in writing by the Local Planning Authority. 3. None of the hereby-approved dwellings shall be first occupied until a scheme to provide a minimum of 15% (or in the case that the achievement of this percentage is demonstrated not to be feasible or viable such lesser percentage as may be agreed in writing with the Local Planning Authority) of the predicted required energy supply for the new development from decentralised and renewable or low carbon sources has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full on first occupation and thereafter the provisions of the scheme

	shall be maintained for the lifetime of the development in accordance with the details of the approved scheme.

CASE 2

Local Authority: Brighton and Hove City Council	**Date Adopted: March 2016**
LP Policy (does this mean Local Plan policy)	Examples of application
CP8 Sustainable Buildings All development will be required to achieve the minimum standards as set out below unless superseded by national policy or legislation…Residential (New Build) Energy Performance 19% carbon reduction improvement against Part L 2013 **Page 166. CP8 Sustainable Buildings** The council will seek that all new development incorporate sustainable design features to avoid expansion of the city's ecological footprint, help deliver the principles of the One Planet approach, radical reductions in greenhouse gas emissions, particularly CO2 emissions, and mitigate against and adapt to climate change. Unless it can be demonstrated that doing so is not technically feasible and/or would make the scheme unviable: 1. All development will be required to achieve the minimum standards asset out below unless superseded by national policy or legislation; Residential (New Build) Energy Performance 19% carbon reduction improvement against Part L 2013188Water performance Water efficiency 'optional' standard 189 Non - residential Development Size Non-major Major and Greenfield BREEAM Very Good Excellent 2. All development proposals including conversions, extensions and changes of use will be expected to demonstrate how the development: a. addresses climate change mitigation and adaptation; b. contributes to a reduction in the city's current level of greenhouse gas emissions by delivering significant reductions in fuel use and greenhouse gas emissions via: passive design and orientation; fabric performance; energy efficiency measures; and low carbon solutions; c. facilitates on-site low or zero carbon technologies, in particular renewable energy technologies.	BRIGHTON EXAMPLE 1 BH2019/03817 | Reserved Matters application pursuant to outline approval BH2017/02869 Developer's Energy Statement shows intention to comply Decision – condition #15 None of the residential units hereby approved shall be occupied until each residential unit built has achieved an energy efficiency standard of a minimum of 19% CO2 improvement over Building Regulations requirements Part L 2013 (TER Baseline). APPLICANT RESERVED MATTER STATEMENT: Sustainability: The proposed building is to be constructed using highly insulated cavity wall and roof construction with low flow sanitary fittings and low energy lighting fittings. The proposed building will be built to deliver the 19% reduction in CO2 emissions that are required by the latest Building Regulations. BRIGHTON EXAMPLE 2 Developer's Energy Statement shows intention to comply BH2018/01738 | 152 dwellings DEVELOPER'S PROPOSALS FOR COMPLIANCE  **7. SUMMARY** 7.1 The purpose of this Energy Statement is to demonstrate that development site being proposed at Peacock Trading Estate, Lyon Close, Hove will meet all local and national requirements in terms of energy provision, building fabric and carbon reduction under the requirements of Brighton and Hove City Council. The proposed development consists of 163 residential dwellings, and approximately 950m² of office space (Class B1a). 7.2 This report will follow the Energy Hierarchy approach by prioritising fabric efficiency measures prior to the installation of renewable energy technologies to enable the maximum viable reductions in CO_2 emissions over the Part L 2013 baselines. 7.3 The new build dwellings are to be assessed under Part L1A (2013) of The Building Regulations. Brighton and Hove City Council requires the development to achieve a 19% carbon reduction improvement against Part L 2013. 7.4 To achieve a 19% CO_2 reduction, the site will first deliver an efficiency fabric specification along with the installation of Solar PV. Following this strategy, it is assumed that a 115kWp PV array will be sufficient to achieve the target CO_2 reduction requirement. 7.5 A site-wide **19.7%** reduction in total CO_2 emissions is predicted over the Part L 2013 baseline for the development following the proposed energy efficiency and renewable measures. **Summary Table: Site Wide Carbon Dioxide Emissions and Cumulative Savings** Stage | Regulated Carbon Dioxide Emissions (Tonnes CO_2 per Annum) | Regulated Carbon Dioxide Savings: Tonnes CO_2 per Annum | Regulated Carbon Dioxide Savings: Percentage Baseline: Part L 2013 Compliant Development | 263 | - | After *Energy Efficiency Measures* | 260 | 3 | 1.3% After *Renewable Technologies* | 211 | 48 | 22.9% **Cumulative On-Site Savings** | | 52 | **19.7%** COMMITTEE REPORT

188 This standard is equivalent to Code for Sustainable Homes level 4 in energy use. See paragraph 4.85-4.87 for guidance on demonstrating this standard.189 The 'optional' enhanced national standard is defined within the 2015 Approved Document G, Building Regulations 'Sanitation, hot water safety and water efficiency' March 2015, page 15, G2(3). At 2015 this is defined as consumption 110 litres per person per day to be demonstrated http://www.planningportal.gov.uk/uploads/br/BR_PDF_AD_G_2015.pdf Zero carbon technologies are those that harness renewable non fossil fuel energy to create heat or generate electricity. They are called zero carbon because they produce no carbon dioxide (CO2) emissions when producing heat or power. These technologies are sometimes referred to as micro generation, producing heat or energy locally on a small scale. Low carbon technologies are those that use fossil fuels in a highly efficient way.	8.79. Subject to the proposed conditions and developer contributions/ obligations the scheme is considered to be in accordance with development plan policies in respect of the transport impacts. 8.80. Sustainability: City Plan policy CP8 requires that all developments incorporate sustainable design features to avoid expansion of the City's ecological footprint, radical reductions in greenhouse gas emissions and mitigate against and adapt to climate change. The policy specifies the residential energy and water efficiency standards required to be met, namely energy efficiency standards of 19% reduction in carbon emissions over Part L Building Regulations requirements 2013 and water efficiency standards of 110 litres per day and conditions are proposed to secure these standards. A further condition is proposed to secure a BREEAM rating of excellent for the B1 office element of the scheme DECISION 6. None of the new build residential units hereby approved shall be occupied until each unit as built has achieved an energy efficiency standard of a minimum of 19% CO2 improvement over Building Regulations requirements Part L 2013 (TER Baseline). Reason: To ensure that the development is sustainable and makes efficient use of energy to comply with policy CP8 of the Brighton and Hove City Plan Part One

CASE 3

Local Authority: Cambridge City Council	**Date Adopted: Oct 2018**
LP Policy	Examples of application
In order to ensure that the growth of Cambridge supports the achievement of national carbon reduction targets...all new development will be required to meet the following minimum standards of sustainable construction...unless it can be demonstrated that such provision is not technically or economically viable: On-site reduction of regulated carbon emissions of 44% relative to Part L 2006. (This is equivalent to 19% reduction on 2013 Edition). https://www.cambridge.gov.uk/media/6890/local-plan-2018.pdf Pages 107/ 108	CAMBRIDGE COMPLIANCE EXAMPLE 1 19/1734/FUL | Erection of 35 dwellings Not yet determined Developer's Energy Statement extract shows intention to comply

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Policy 28: Carbon reduction, community energy networks, sustainable design and construction, and water use. All development should take the available opportunities to integrate the principles of sustainable design and construction into the design of proposals. Promoters of major development, including redevelopment of existing floor space, should prepare a Sustainability Statement as part of the Design and Access Statement submitted with their planning application, outlining their approach to the following issues: a. adaptation to climate change b. carbon reduction c. water management d. site waste management e. use of materials

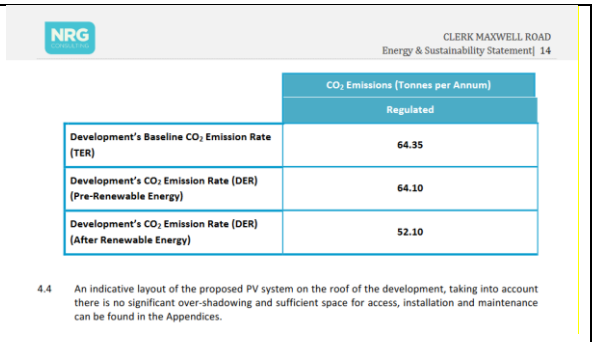
In order to ensure that the growth of Cambridge supports the achievement of national carbon reduction targets, and does not exacerbate Cambridge's severe water stress, all new development will be required to meet the following minimum standards of sustainable construction, carbon reduction and water efficiency, unless it can be demonstrated that such provision is not technically or economically viable:

YEAR*	On-site reduction of regulated carbon emissions relative to Part L 2006	Water efficiency
2014	44%	110 litres/person/day
2016 onwards	44% - note this requirement will only apply until commencement of the amendments to Section (1) (c) of the Planning and Energy Act 2008	110 litres/person/day

New non-residential development:

Year*	Minimum BREEAM Level	On-Site carbon reduction	Water efficiency
2014	Very good	In line with 2014 Part L	Full credits to be achieved for category Wat 01 of BREEAM
2016 onwards	Excellent	In line with the minimum requirements associated with BREEAM 'excellent'	Full credits to be achieved for category Wat 01 of BREEAM

* Application subject to financial year



NRG

CLERK MAXWELL ROAD
Energy & Sustainability Statement| 14

	CO_2 Emissions (Tonnes per Annum)
	Regulated
Development's Baseline CO_2 Emission Rate (TER)	64.35
Development's CO_2 Emission Rate (DER) (Pre-Renewable Energy)	64.10
Development's CO_2 Emission Rate (DER) (After Renewable Energy)	52.10

4.4 An indicative layout of the proposed PV system on the roof of the development, taking into account there is no significant over-shadowing and sufficient space for access, installation and maintenance can be found in the Appendices.

CAMBRIDGE COMPLIANCE EXAMPLE 2
19/1168/OUT | Outline application

Developer's Energy Statement shows intention to comply

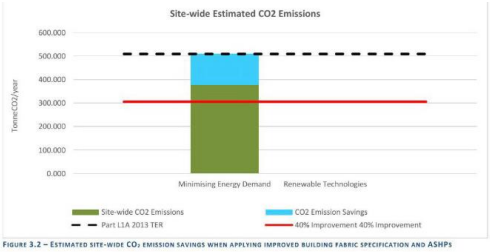


FIGURE 3.2 – ESTIMATED SITE-WIDE CO_2 EMISSION SAVINGS WHEN APPLYING IMPROVED BUILDING FABRIC SPECIFICATION AND ASHPS

Table 3.2 demonstrates the estimated CO_2 emission reductions over the TER outlined in Part L1A 2013 of the Building Regulations.

Target	Regulated CO_2 savings per stage	Regulated percentage CO_2 savings per stage
	Tonnes CO_2/annum	%
Minimising Energy Demand	130.247	25.63
Additional Renewable Technology	-	-
Cumulative on site savings	130.247	25.63

TABLE 3.2 – ESTIMATED CO_2 EMISSION SAVINGS ASSOCIATED TO BUILDING FABRIC AND BUILDING SERVICES DESIGN IMPROVEMENTS

CASE 4

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Local Authority: Milton Keynes	**Date Adopted: March 2019**
LP Policy	Examples of application
Page 221 Energy and Climate **Policy SC1 SUSTAINABLE CONSTRUCTION** A. Development proposals will be required to demonstrate how they have implemented the principles and requirements set out below. With the exception of requirements K.2/3/5, non-residential development of 1000 sq. m or more that is demonstrated to achieve a BREEAM Outstanding rating will not be required to meet the requirements below. **Materials and waste** B. Reuse land and buildings wherever feasible and consistent with maintaining and enhancing local character and distinctiveness. C. Reuse and recycle materials that arise through demolition and refurbishment, including the reuse of excavated soil and hardcore within the site. D. Prioritise the use of materials and construction techniques that have smaller ecological and carbon footprints, help to sustain or create good air quality, and improve resilience to a changing climate where appropriate. E. Incorporate green roofs and/or walls into the structure of buildings where technically feasible to improve water management in the built environment, provide space for biodiversity and aid resilience and adaptation to climate change. F. Consider the lifecycle of the building and public spaces, including how they can be easily adapted and modified to meet changing social and economic needs and how materials can be recycled at the end of their lifetime. G. Space is provided and appropriately designed to foster greater levels of recycling of domestic and commercial waste. **Energy and Climate** H. Implement the Energy Hierarchy within the design of new buildings by prioritising fabric first, passive design and landscaping measures to minimise energy demand for heating, lighting and cooling. I. Review the opportunities to provide energy storage and demand management so as to tie in with local and national energy security priorities.	Policy compliant applications unknown on this recently adopted policy

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J. The design of buildings and the wider built environment is resilient to the ongoing and predicted impacts of climate change. K. Development proposals for 11 or more dwellings and non-residential development with a floor space of 1000 sq. m or more will be required to submit an Energy and Climate Statement that demonstrates how the proposal will achieve the applicable requirements below: 1. Achieve a 19% carbon reduction improvement upon the requirements within Building Regulations Approved Document Part L 2013, or achieve any higher standard than this that is required under new national planning policy or Building Regulations. 2. Provide on-site renewable energy generation, or connection to a renewable or low carbon community energy scheme, that contributes to a further 20% reduction in the residual carbon emissions subsequent to 1) above.	