

Matter 4: Policies D12-D15: Sustainable and Low Impact Development; Climate Change Adaptation; Carbon Emissions from Buildings & Renewable and Low Carbon Energy Generation and Storage

1 Question - Whether Policies D12-D15: Sustainable and Low Impact Development; Climate Change Adaptation; Carbon Emissions from Buildings & Renewable and Low Carbon Energy Generation and Storage are positively prepared, justified, effective and consistent with both national policy and the LPSS.

1.1 The LPDMP contains the following climate change policies.

- Policy D12: Sustainable and Low Impact Development
- Policy D13: Climate Change Adaptation
- Policy D14: Carbon Emissions from Buildings
- Policy D15: Renewable and Low Carbon Energy Generation and Storage

1.2 The policies set out a range of measures that address climate change mitigation and adaptation, and the need to reduce the environmental impacts of development.

1.3 The NPPF at paragraph 35 defines the meaning of “positively prepared”, “justified”, “effective” and “consistent with national policy”. It states:

“35 Local plans and spatial development strategies are examined to assess whether they have been prepared in accordance with legal and procedural requirements, and whether they are sound. Plans are ‘sound’ if they are:

a) Positively prepared – providing a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs; and is informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development;

b) Justified – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;

c) Effective – deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground; and

d) Consistent with national policy – enabling the delivery of sustainable development in accordance with the policies in this Framework and other statements of national planning policy, where relevant.

Positively prepared

- 1.4 The LPDMP forms a subsidiary plan to the LPSS and policies D12-D15 are strategic policies that provide further detail for the strategic framework set out in LPSS policy D2. The LPSS provides a positive strategy to meet housing need and was found sound at examination on that basis. The proposed climate change policies in the LPDMP have been subject to tests of viability do not present a risk to delivery of objectively assessed needs or the achievement of sustainable development. As a result, the strategy remains positively prepared when assessed against NPPF paragraph 35(a).
- 1.5 The NPPF provides further detail on the meaning of positive preparation as it relates to climate change policies (paraphrased, our underlining).
 - Paragraph 15: plans should provide a positive vision for the future of each area; a framework for addressing housing needs and other economic, social and environmental priorities.
 - Paragraph 16: plans should be prepared positively, in a way that is aspirational but deliverable.
- 1.6 The policies set out a positive vision of low carbon, climate change adapted and environmentally friendlier development by providing a policy framework that addresses economic, social and environmental priorities as follows:
 - Energy efficient homes and commercial buildings – reduces energy costs for residents and businesses and addresses fuel poverty in accordance with LPSS societal objectives on deprivation, and reduces the impact on the global and local environment from carbon emissions and other pollutants in accordance with national and local priorities, including LPSS environmental objectives, Surrey Greener Futures, the British Energy Security Strategy and the UK Levelling Up strategy.
 - Conservation of water resources – addressing water stress a key priority for the Thames River Basin Management Plan and Defra’s strategy for the Southeast, and is necessary to ensure a growing population can be accommodated sustainably so is linked to priorities on housing delivery.
 - Reduction of waste/efficient use of natural resources – this accords with priorities set by policy CW1 of the Surrey Waste Plan and policies MC4 and MC5 of the Surrey Minerals Plan, national resources strategies such as the Resources and Waste Strategy for England and national and local environmental strategies (e.g. sustainable forestry, reduction of peat use etc.).
 - Adaptation to key climate change impacts at building level and community scale – this accords with priorities set out locally in LPSS environmental objectives and strategies such as Surrey Greener Futures, nationally in the Climate Change Act

and documents such as the 25 Year Environment Plan and National Adaptation Plan.

- A policy framework for considering applications for renewable energy schemes – this delivers on national priorities for energy security, and national and local priorities covering conservation of landscapes/character, decarbonisation, economic development, environmental enhancement and community benefits.

- 1.7 Each of the above also addresses NPPF priorities as set out in the Climate Change Topic Paper (paragraphs 2.7, 3.14, 3.34, 3.43 and 3.45).
- 1.8 The NPPF further addresses the meaning of positive preparation at paragraph 145 where it states “local planning authorities should plan positively to enhance the beneficial use of Green Belts, such as looking for opportunities to retain and enhance biodiversity.”
- 1.9 Policy D13 protects the countryside, most of which is Green Belt, where it requires measures to prevent the incidence and spread of wildfire (a significant hazard in our borough) and measures to combat flash flooding that could damage countryside sites.
- 1.10 Policy D15 looks to enhance the beneficial use of Green Belt land by allowing renewable energy developments to go ahead where exceptional benefits outweigh harm to the Green Belt. In doing so it ensures that opportunities for exceptional benefits (decarbonisation, economic diversification, supporting communities etc.) are an explicit part of decision-making. It includes a specific clause to promote benefits to biodiversity in such developments in direct alignment with paragraph 145.
- 1.11 The policies are therefore positively prepared in accordance with paragraph 145 as well as paragraph 35.

Justified

- 1.12 The Council’s view is that inclusion of the policies is justified. See the section “Is it justified for Policies D12 and D13 to revisit matters covered in LPSS Policy D2 and the Council’s SPD?” below and the Climate Change Topic Paper.

Effective and consistent with both national policy and the LPSS

- 1.13 NPPF paragraph 35(c) defines effective plans as being deliverable over the plan period, based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground.
- 1.14 The policies are strategic (see LPDMP Appendix C) and provide detail that supplements the strategic framework set out in the LPSS (primarily in Policy D2). Policy D2, as amended through the LPSS examination, was found sound in relation to paragraph 35 and the new policies reinforce and do not undermine that framework.

1.15 Policy D14 supersedes some of the detail of policy D2 to update the references to heat networks so that they encompass all low carbon technologies, and updates the carbon reduction standards (Appendix D of the LPDMP sets out the superseded paragraphs). These updates reflect changes in national policy and strategy since the LPSS was adopted (see Climate Change Topic Paper paragraphs 3.18 and 3.20) and in doing so ensure that the strategic framework remains up-to-date and effective. The updates also ensure the policies remain evidence based and therefore justified when measured against paragraph 35(b).

2 Supplementary Question 4.1 - Is it justified for Policies D12 and D13 to revisit matters covered in LPSS Policy D2 and the Council's SPD?

- 2.1 The LPSS sets a strategic framework and the subsidiary LPDMP provides further necessary detail to supplement it (the exception to this is LPDMP Policy D14 which supersedes elements of LPSS Policy D2). This is an appropriate approach and local plans frequently contain overarching strategic policies and detailed development management policies that have the same relationship. As set out below, the policies are justified, both in terms of paragraph 35 (b) which requires an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence, and also in terms of developing matters already covered by the LPSS.
- 2.2 Regarding the need to take into account reasonable alternatives, the policies have been through a Regulation 18 "preferred options" process and have been subject to a Sustainability Appraisal. These show that the most appropriate options have been selected. Each has also been based on proportionate evidence. Further detail is provided in the Climate Change Topic Paper.
- 2.3 A justification for Policy D12 is set out in the Climate Change topic paper in paragraphs 3.3 – 3.13. In summary, the key points are:
- Strategic policy D2 requires schemes to be designed in accordance with the energy hierarchy, which implicitly requires a 'fabric first' approach as explained in the SPD (paragraphs 5.8-5.11). However, submitted schemes have in practice overlooked or ignored this leading to a more difficult and lengthy planning process. Making 'fabric first' explicit in local plan policy will ensure a smoother process and produce better outcomes.
 - The SPD covers reducing embodied carbon emissions, which is not explicitly addressed in Policy D2. D12 incorporates that requirement in policy. Embodied emissions become more important as operational energy decarbonises and these measures need to be addressed in policy if the NPPF requirement¹ for the planning system to help deliver radical carbon reductions is to be achieved.

¹ Paragraph 152

- Energy improvements to existing buildings are covered by policy D2 where it applies the energy hierarchy to conversions and refurbishments. However, D12 adds explicit support for improvements to existing buildings that go significantly beyond prevailing standards in order to encourage such improvements and promote the reuse of existing buildings.
- Policy D2 requires waste and resource efficiency. Practice in implementing Policy D2 has shown that this is most easily addressed through a Site Waste Management Plan (SWMP), and that without one the information provided is often poor. As a result, D12 seeks to improve the planning process by mandating SWMP for specific high waste generating developments and major developments. The threshold for this differs from the SPD (see Climate Change Topic Paper paragraphs 3.9-3.10) in response to comments received during consultations. The SPD will be updated to reflect this after the LPDMP is adopted.
- Water resources are a critical matter in the Southeast region. D2 requires schemes to implement water efficiency measures and the SPD mentions greywater reuse, but applicants have been reluctant to consider measures beyond the 110-litre design standard for new dwellings² and water butts for residential gardens. The policy therefore expects development to implement water reuse and recycling systems where possible to ensure such measures are given adequate consideration.

2.4 A justification for Policy D13 is set out in the Climate Change Topic Paper at paragraphs 3.14-3.16. In summary, Policy D2 sets a high-level requirement for schemes to be fit for purpose and remain so into the future by incorporating adaptations for a changing climate and changing weather patterns that avoid vulnerability and offer resilience to the full range of expected impacts. The SPD provides guidance on the expected key impacts, but the information submitted by applicants often provides insufficient detail on adaptation. Policy D12 singles out key impacts to ensure that they are adequately addressed and that applications are not delayed by the need to seek further information.

2.5 The SPD forms supplementary guidance for policy. It is appropriate to provide a more detailed policy framework rather than rely only on SPD guidance as the measures proposed in the new policies address important local and national priorities. Additionally, the Council considers that the SPD is largely consistent with the emerging LPDMP (as a nimble document with a lower status and a more streamlined process for amendment, the SPD will be amended to align with adopted policy in the few areas where it is not consistent) and it should be noted the majority of the detailed guidance remains in the SPD only. It is necessary, however, to put key requirements in policy because the Council has encountered problems where some of the guidance has not been addressed

² See PPG 'Housing: optional technical standards' available at <https://www.gov.uk/guidance/housing-optional-technical-standards>

in proposals which slows down the planning process while supplementary information has been requested. Additionally, many climate change measures must be considered from the outset and when addressed later in the planning process cannot be adequately accommodated (see paragraph 3.4 of the Climate Change Topic Paper).

3 Supplementary Question 4.2³ - Do these policies conflict with, or unnecessarily duplicate matters covered by national guidance or legislation?

National guidance

- 3.1 The Climate Change Topic Paper sets out how the policies align with national guidance. Rather than conflicting or duplicating, the policies provide detail that national guidance lacks.
- 3.2 The NPPF sets out a number of requirements for Local Plans:
 - Paragraph 152 - The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.
 - Paragraph 153 and footnote 53 - Plans should take a proactive approach to mitigating and adapting to climate change, taking into account the long-term implications for flood risk, coastal change, water supply, biodiversity and landscapes, and the risk of overheating from rising temperatures... In line with the objectives and provisions of the Climate Change Act 2008.
- 3.3 The policies respond directly to these overarching requirements. It should be noted that the starting point for planning decisions is the Development Plan, so in order to deliver a 'planning system' that achieves the outcomes in paragraph 152, the Local Plan must respond. That such policies are appropriate for inclusion at Local Plan level is also supported by the NPPF at paragraph 153.
- 3.4 Policies D12 and D13 - The reasons for including these policies are set out above in the section "Is it justified for Policies D12 and D13 to revisit matters covered in LPSS Policy D2 and the Council's SPD?" The policies do not conflict with or duplicate the NPPF as they deliver NPPF objectives by providing additional detail.

³ Document ID02 states "3.2 Do these policies conflict with, or unnecessarily duplicate matters covered by national guidance or legislation?" but for clarity this has been renumbered to 4.2

- 3.5 Policy D14 – Policy D2 of the LPSS aims to support the transition to a low carbon future and contribute to radical reductions in greenhouse gas emissions as per the NPPF through the energy hierarchy and carbon emission standards for new builds. This policy was found sound at examination. Policy D14 paragraphs 1-3 update and supersede the policy where it refers to heat networks in order to ensure the policy is up to date with current practice and national energy policy. This is explained further in paragraph 3.18 of the Climate Change Topic Paper. As Policy D2 is sound, and paragraph 1-3 of Policy D14 merely bring the policy up to date, the Council’s view is that they do not conflict with or duplicate national policy.
- 3.6 Policy D14 paragraph 4 updates Policy D2’s carbon emissions standard for new buildings. As above, this policy was found sound at examination and the update is intended to ensure the policy aligns with the Building Regulations standards introduced in June 2022. Updating and superseding the policy does not introduce a conflict with national policy.
- 3.7 Policy D14 paragraph 5 is new and strongly encourages new developments to improve upon the standards in paragraph 4 (building regulation standards). This accords with the NPPF paragraphs 152 and 153.
- 3.8 Policy D15 covers renewable and Low Carbon Energy Generation and Storage. Policy D2 does not cover this matter, and while the NPPF encourages such development, it introduces caveats for such developments in Green Belt areas. However, NPPF policy in this regard is not clear and ambiguity remains as to when such developments should be considered acceptable in principle. Policy D15 removes the ambiguity by setting out detail as to how this will be considered in a manner that supplements, and does not conflict with, NPPF policy. This approach itself accords with NPPF paragraph 15 which calls for a plan-led planning system. Further details of compliance with specific NPPF paragraphs and national precedent in planning decisions are set out in the Climate Change Topic Paper paragraphs 3.34 to 3.53

Legislation

- 3.9 The question of whether policies duplicate legislation is most relevant for Policy D14 which at paragraph 4 alters the carbon emission standard for new buildings that is included Policy D2 to align with the standards in the June 2022 Building Regulations. The reasons for including clause 4 are set out in paragraphs 3.20 to 3.27 of the Climate Change Topic Paper.
- 3.10 The Planning and Energy Act 2008 (1) grants powers to LPAs to set standards covering energy efficiency and low carbon energy in new developments. Including a carbon emissions standard therefore complies with legislation.

- 3.11 The policy directly refers to the standards in the Building Regulations. It is necessary to have a policy identifying the correct standard in order to avoid any suggestion that Policy D2 (which sets a standard 20% better than the outgoing 2013 Building Regulations) conflicts with the June 2022 Building Regulations (which improve standards for new homes and non-residential buildings by 31% and 27% respectively). Additionally, by setting Building Regulations standards in planning policy it provides scrutiny and acts to close the chronic performance gap that the UK construction sector is known to suffer from (see Climate Change Topic Paper paragraph 3.25).
- 3.12 Due to the Building Regulations transitional arrangements some schemes may still be assessed under the outgoing regulations and these schemes should be required to achieve the 20% carbon reduction in order to prevent a fall in standards.