BRIEFING ON CHANGES TO PLANNING AND BUILDING STANDARDS

Significant changes over the last few years to our planning and Building Regulations systems are now culminating in one of the most significant shifts to the way in which we prioritise and articulate sustainability in new developments for a generation.

Notwithstanding the fact that the impacts of these changes are still to fully reveal themselves, and there are still some unclarified areas, this briefing describes the new landscape and how it affects sustainability in new housing led-developments.

Context: the National Planning Policy Framework

In 2012 the National Planning Policy Framework, which provides the framework for planning policy, was introduced. The new framework aimed to make the planning system less complex and more accessible, consolidating a huge amount of planning policy into one document (plus guidance). The NPPF places sustainability at the centre of planning, with an emphasis on the three pillars of sustainability and a ‘presumption in favour of sustainability’ which it states should be taken as the ‘golden thread’ running through plan-making and decision-making.

Housing Standards Review (England)

The Housing Standards Review was announced in October 2012, with the stated aim to rationalise and nationalise the many different standards applied to new build homes that existed at the local level. The results of the Review were announced just before the 2015 election.

The Housing Standards Review resulted in significant changes to the content and structure of Building Regulations. It brought about a new national approach under which all homes should be of the same technical performance regardless of geographical location.

Previously, Local Authorities had specified building standards relating to energy efficiency, water efficiency, materials use etc relevant to their area, usually making use of the Code for Sustainable Homes as a tool.

As a result of the Housing Standards Review, the Code for Sustainable Homes was withdrawn [effective 26 March 2015]. From this date the Code for Sustainable Homes can only be used to assess legacy projects that use the Code as part of planning consent. Local Authorities can no longer stipulate compliance with Code levels or require Code assessments in planning policy.

In place, a number of changes to existing Building Regulations standards were introduced, along with some new standards. Local Authorities are longer able to require standards outside of those on this short list. The technical standards are:

- Accessibility (Part M). Three standards relevant to different buildings: the baseline standard that already existed in Part M and two optional standards for accessible and adaptable dwellings, and for wheelchair user dwellings
- Water (Part G). A new optional standard (110litres/person/day) for water stressed areas has been added to the baseline standard as per existing Part G (125litres/person/day)
- Waste (Part H) additional measures with guidance on to Part H to address bin blight
- Security (new Part Q) a new baseline regulation for security of building envelope, doors and windows.

In addition, a new standard was introduced as a planning standard:

- Space: Nationally Described Space Standard, opt-in minimum space standard (for England) subject to need and viability assessment

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Technical detail of the changes can be found here.

The new optional Building Regulations standards and the Nationally Described Space Standard can be adopted by a Local Authority via its Local Plan. Local Authorities must present evidence of need, viability and deliverability. The developer will still have the opportunity to negotiate against the standard in the Plan.

The Housing Standards Review was silent on energy efficiency standards as the zero carbon homes policy was, at the time, still expected to be introduced in 2016. This would have introduced a change to the energy efficiency standard in Building Regulations (Part L) raising it to the equivalent of Code level 4 (around 19% better than current, 2013 Regulations), and an allowable solutions mechanism which allowed the remaining carbon emissions to be delivered either onsite or offset through offsite measures.

Enabling the changes - Deregulation Act and the Planning and Energy Act

The Deregulation Act (passed in March 2015) was the legislative tool used to put in place the changes of the Housing Standards Review. It enabled changes to two separate pieces of legislation.

Firstly, the Deregulation Act 2015 changes the Building Act 1984 (which underpins the Building Regulations) to enable the new optional standards to be introduced and required.

Secondly, it enabled an amendment to the Planning and Energy Act to remove the ability of local Authorities to require higher than Building Regulations energy efficiency standards for new homes. This was in line with the expected nationalisation of energy efficiency standard under the zero carbon policy. This amendment of the Planning and Energy Act has yet to be enacted.

Transitional arrangements were set out in a Written Ministerial Statement in March 2015 that made clear that Local Authorities could continue to require higher than Building Regulations standards for energy efficiency, in expectation of the zero carbon standard, as long as they did not exceed the Code level 4.

Post-election changes

All of the above changes were made shortly before the election in May 2015.

Shortly after the election, the new Government released its wide ranging Productivity Plan Fixing the Foundations.

In this document it announced Government’s intention not to proceed with the zero carbon homes policy. This means that the expected change to the energy efficiency standard in Building Regulations (Part L) will not be delivered in 2016 and the ‘allowable solutions” mechanism will not be put in place.

Government has stated it will keep energy efficiency standards under review but has given no timescale for this review or provided any indication of long term direction of travel for energy efficiency or any other building standards.

Read UK-GBC’s briefing on the zero carbon policy and response to the announcement.

European legislation

European legislation provides a backstop for the UK’s ambitions on many environmental performance standards.

The Energy Performance of Buildings Directive (EPBD) requires that all Member States put in place ‘cost-optimal’ minimum energy performance standards in their Building codes. Building Codes are required to be checked periodically against a ‘cost-optimality’ test and updated accordingly. The UK will therefore have to carry out a cost-optimal review of energy efficiency standards (Part L) in 2017.
The EPBD also requires that all new buildings in Member States are ‘nearly zero energy buildings’ by 2020. Following the scrapping of the zero carbon policy, the UK government has not indicated how it expects to comply with this requirement. However, enforcement of compliance with this requirement of the Directive may be hindered by the lack of a clear definition or backstop in the Directive or additional guidance on the minimal standards for a Member State’s ‘nearly zero energy building’ definition. (Read UK-GBC’s submission to the European Commission on the EPBD [here](https://www.ukgbc.org/)).

Expectation of the referendum on the UK’s European Union membership in 2017 may divert attention of the UK government from a focus on delivering on its European obligations.

**Devolved nations**

The powers to set Building Regulations standards are devolved. The Scottish and Welsh Governments therefore set their own Building Regulations standards and also both have their own zero carbon standards.

**Impact of changes**

The full impact of these changes is still to be fully realised. However, below is a summary of some of the changes already evident:

**For Local Authority Planning powers:**

- Local Authorities can no longer require standards above those set out under the Housing Standards Review. The Code for Sustainable Homes can no longer be used as a condition of planning and the Code has been closed for new assessments since March 2015.
- Local Authorities can introduce into their Local Plans the optional standards set out in the Housing Standards Review provided they can present evidence of need and viability.
- As per the [Written Ministerial Statement](https://www.ukgbc.org/) of March 2015, Local Authorities can continue to set and apply energy performance standards for new homes that exceed current Building Regulations providing they have a policy in place and can evidence need and viability. But Local Authorities are ‘not expected’ to require energy performance above that required by Code Level 4 (19% above BR 2013). If the changes to the Planning and Energy Act are brought into effect in future, this ability may be removed.
- Local Authorities can still include Merton style policies in their Plans which require a percentage of a development’s energy use to be delivered by renewable or low carbon energy on or near to the site. (Sections 1A and 1B of the Planning and Energy Act have not been affected by the Deregulation Act, only section 1C which enabled local authorities to require above Building Regulations energy efficiency standards).
- Where local plans require decentralised energy to be considered in accordance with the NPPF this can be maintained.
- Non domestic building have not been affected. Local Authorities can still require above building regulations standards (commonly defined by the use of BREEAM, LEED or any other tool) for non-domestic buildings.

**For standards in new homes**

Consideration of a number of very important building standard elements have been ‘lost’ as a result of the removal of the Code for Sustainable Homes and have not been picked up in the new national standards, some of these are:

- Daylight - there is now no obligation for internal daylight calculations
- Indoor Air quality - Not addressed in Part F of Building Regulations
- Overheating - addressed only in SAP. Government has recognised the importance of this issue and is supporting [research](https://www.ukgbc.org/) into this issue.
- Materials - Not addressed in Building Regulations

**UK-GBC position**

UK-GBC played a central role in the introduction and development of the zero carbon standards for both homes and non-domestic buildings. UK-GBC therefore strongly condemned the government’s decision to scrap the policy (press release). UK-GBC is now calling on Government to provide clarity to the industry on the future trajectory for Building Regulations and how it proposes to deliver against its European obligation to delivery ‘nearly zero energy’ new buildings from 2020.

UK-GBC strongly advocates a fabric first approach to energy reduction in the built environment. It is therefore perverse that Local Authorities are now in a position in which they are restricted from requiring ambitious fabric energy efficiency standards but can require renewable energy generation.

UK-GBC was broadly supportive of the transition from the patchwork of local standards into a national framework but was very clear about the need to maintain high quality, energy efficiency and sustainability standards through Building Regulations and for a challenging trajectory to be set out for building regulations to encompass more issues (like materials use, health and wellbeing and embodied carbon) (see UK-GBC briefing [here](#)). In the absence of this challenging trajectory and in light of the Government backtrack on zero carbon, and given the urgency of the need to address climate change and other environmental challenges, UK-GBC believes it is right that local authorities explore their options for driving locally-appropriate higher standards that do not result in unintended consequences or affect viability.

**Further references:**

- *Housing Standards Update 2015*: What this means for housing development. PRP Architects
- UK-GBC’s course on [Integrated Planning](#) (25th November 2015)

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