

Report to: **Strategic Planning Committee**



Date of Meeting: 15 July 2024

Document classification: Part A Public Document

Exemption applied: None

Review date for release N/A

Local plan zero carbon policies for new developments

Report summary:

This report specifically seeks direction from committee on new development zero carbon policies for inclusion in the new local plan. In the draft plan, consulted on from 7 November 2022 to January 2023, we included a series of proposed policies in Chapter 7 - Tackling the climate emergency and responding to climate change. They were fit for purpose for consultation but they now need refinement going forward and depending on how we progress them it may be a requirement that we buy in specialist consultancy advice to undertake technical assessment in support of our approach. Through this report, whilst we do set out recommendations, we seek instruction from members on how they would like to progress with plan policy.

Is the proposed decision in accordance with:

Budget Yes No

Policy Framework Yes No

Recommendation:

1. That committee endorse a policy approach for new development that places the emphasis on seeking to minimise carbon emissions during and through the construction phase of development.
2. That committee endorse a local plan policy approach that relies on application of building regulations in respect to future energy standards for construction, rather than one that seeks to exceed these standards.

Reason for recommendation:

To seek agreement from committee to inform work going forward

Officer: Ed Freeman – Assistant Director, Planning Strategy and Development Management, e-mail – efreeman@eastdevon.gov.uk, Tel 01395 517519

Portfolio(s) (check which apply):

- Climate Action and Emergency Response
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Democracy, Transparency and Communications

- Economy and Assets
- Finance
- Strategic Planning
- Sustainable Homes and Communities
- Tourism, Sports, Leisure and Culture

Equalities impact Low Impact

Climate change Low Impact

Risk: Medium Risk;

Links to background information

Links to background documents are contained in the body of this report.

Link to Council Plan

Priorities (check which apply)

- Better homes and communities for all
 - A greener East Devon
 - A resilient economy
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1. Draft local plan policy

- 1.1 The draft local plan [commonplace-reg-18-final-071122.pdf \(eastdevon.gov.uk\)](#) under Regulation 18 of [The Town and Country Planning \(Local Planning\) \(England\) Regulations 2012 \(legislation.gov.uk\)](#) included within it Chapter 7 - Tackling the climate emergency and responding to climate change. The intent is to split off the 'responding to climate change' section/policies and put these in a new separate plan chapter. They, draft plan policies 35 to 38 and supporting text, relate to water and flooding matters and will form a logical plan chapter in their own right.
- 1.2 What we do seek clarity and instruction from committee on is, however, how in principle to proceed with draft plan policies on minimising carbon emissions in respect of new development and specifically the following policies in the draft plan:
 - Strategic Policy 28 - Net-zero carbon development
 - Strategic policy 34 - Embodied energy
- 1.3 Depending on the approach that committee wish to see policy take there may be a need to commission further technical advice and support from an outside specialist consultancy. We would also highlight that we comment on other carbon emission related matters in this paper.
- 1.4 Members will recall that in March 2024, as part of a report on the Local Plan timetable, Members were asked to consider whether they wish to pursue a policy approach in the new Local Plan that sets out Local Plan Policy on energy efficiency standards that exceed building regulations. This March report followed a written ministerial statement

advising that local authorities should not seek to do this, however Members were clear that they still wanted to pursue a higher standard in the new Local Plan. This report seeks to update Members on progress in considering these issues since that time including discussions with South West Energy and Environment Group (SWEEG) which suggest that seeking to exceed building regulations may not be the best approach.

- 1.5 The content of this committee report can be usefully read alongside the consultation feedback report that was produced in response to the draft plan consultation – see: [accessible-reg-18-consultation-feedback-report-spring-2023.pdf \(eastdevon.gov.uk\)](https://www.eastdevon.gov.uk/accessible-reg-18-consultation-feedback-report-spring-2023.pdf) Feedback was broadly supportive and encouraging, in principle, of reducing carbon emissions, though there were clear qualified concerns and objections raised to some aspects of policies. In this committee report we touch on some of the feedback received.

2. Wider corporate considerations

- 2.1 The Local Plan is essentially concerned with new development and determination of planning applications for new building. New dwellings and buildings built each year will form a limited addition to the existing stock and new dwellings will be more energy efficient than the dwellings that already exist, in many cases very much more so. It should be noted that we would generally be very supportive of energy efficiency measures being incorporated into older buildings (and they can apply to many newer ones as well). Though often planning permission will not be required and as such considerations fall outside of and beyond the planning system. Though where listed buildings, other heritage assets or other sensitivities apply, there may be valid planning constraints, which are relevant. Issues around undertaking such works really are matters of owner/occupier choice or if relevant would fall to other non-planning regulatory powers.
- 2.2 In respect of solar panel installation on roofs most developments would be Permitted Development and as such would largely fall outside of our control, subject to various conditions being complied with. Though there are exceptions to this in relation to heritage assets where a balance between protection of assets and avoidance of adverse impacts would need to be considered alongside carbon emission saving benefits. Many, especially larger scale, developments for renewable energy generation would however fall under the planning regime.
- 2.3 Outside of the local plan and planning policy there may be a corporate desire to encourage and support energy efficiency and renewable generation, including for example the energy efficiency upgrading of existing dwellings. However, these would be matters to be considered elsewhere/through other means rather than through the local plan.
- 2.4 It is important to highlight, as well, that the local plan, in various chapters, includes policies that have relevance to carbon emissions and their reduction. We do not comment on these in this report but, for example, planning for development in ways that can allow for people to choose to not use private vehicle, specifically making places that are walking and cycling friendly, is a critical consideration. In this respect

planning for the appropriate location of new development is one of the most important matters that local plan policy seeks to address.

3. Net zero-carbon development

- 3.1 The principle of net zero carbon in new development relates to:
- a) levels of carbon emissions arising from the construction of new buildings and any refurbishment during its life; and
 - b) in use demands for heating and other energy use as the building is used.
- In exceptional cases there can be third element as well, decommissioning after the end of building use/life. This is, however, a rare consideration that other than for temporary permissions would be a challenge to address through the planning system and a such is not addressed in plan policy

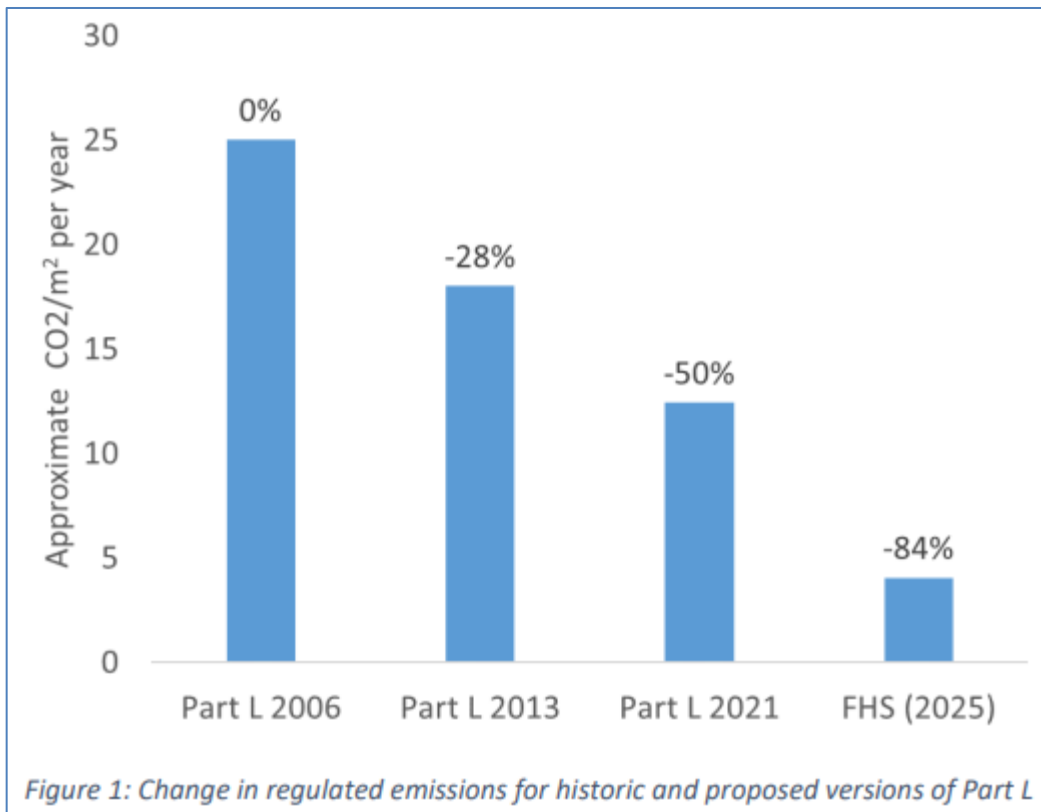
Embodied energy

- 3.2 The materials used in construction and refurbishment of buildings, including extraction, manufacture, transport and other related matters can emit substantial levels of carbon and do so in a relatively short time period associated with building construction, as opposed to the long-term time horizons of building operation.
- 3.3 The South West Energy and Environment Group (SWEEG) produced a report for Exeter City Council [oqjd5xnk4igekjjq6m0v.pdf \(cloudinary.com\)](#) in which they advise that initial analysis suggests that operational emissions from development may only be 3% (assumed per annum) of the upfront emissions of constructing it. As such many buildings will need to be occupied and used for many years before the operational carbon emissions exceed those emitted through and associated with the construction phase. The guidance in the SWEEG work is that there are significant opportunities to have a much greater impact on carbon emissions overall through an embodied carbon policy than through policies that relate to building operational matters.
- 3.4 The short time period of impacts during construction are important in that they occur over an immediate time horizon, thus embedding additional carbon in the atmosphere now that will have impacts over a long-time horizon. This is in comparison to operational demands where net cumulative time horizons are spread out over a longer period. Furthermore over the years ahead, as renewable energy generation increases, the operational impacts of buildings in respect of carbon emission can be expected to decline.
- 3.5 The draft local plan, in Strategy 34, has an aspirational policy around encouraging reduction of embodied energy use in construction of buildings. But as drafted at present it does not set out actual and measurable requirements. It is suggested that we should be doing more through policy to require defined standards or mechanisms in respect of testing the credentials of planning applications and ensuring embodied energy considerations are properly taken into account and schemes seek to and actually do achieve best (minimising carbon) impacts.
- 3.6 The proposal is that officers will do more work around this subject matter before coming back to committee with suggested policy refinement. We did, however, wish

to raise the matter with Committee as it is of importance, and more so than the issue of operational energy performance of (building regulation compliant) new buildings.

Operational carbon emissions of buildings

- 3.7 Operational energy demands of buildings in their day-to-day use include space and water heating (these generate the greatest emission levels), lighting, air-conditioning, appliance use and any other activities that emit carbon.
- 3.8 With exceptionally good building insulation and taking fullest advantage of the heating effect of sunlight entering a building (passive solar gain), and through other means, it can just about be possible to avoid having any heating appliances in new developments, specifically new homes. But having no heating appliances would be pushing building standards to the limits, if not beyond, what is realistically possible and heating appliances of some form are in reality going to be needed in new developments, specifically in new homes. The local plan policy debate is one of how we approach and interpret the goal of net zero and therefore what demands, if any, we seek to spell out in local plan policy.
- 3.9 Government policy, as given affect by the building regulations, is based on requiring high insulation standards in new development (though certainly not as high as is technically possible) and to allow for power (for example electricity to run heat pumps) to be bought into a property, from beyond that property, from the National grid. The development can be argued to be net zero on account of the net generation of the electricity used being from renewable sources. An issue is, of course, that the national grid carries power that is generated from renewable sources and also from non-renewable sources so making use of just renewables energy maybe seen as a somewhat notional concept. Over time, however, the expectation is for non-renewable contributions to the grid to diminish.
- 3.10 The Planning and Energy Act 2008, however, sets out that local plans may go beyond Government policy, such as through more and higher insulation standards. These would be standards that exceed current and future planned building regulations and/or that require on-site or locally generated renewable and low carbon energy, as opposed to that drawn from the national grid, to heat a building. There is an argument that to achieve this outcome, and potentially for a building to become a net exporter of clean energy, is a truer form of being net zero. Drawing from the March committee report we have explored this option further.
- 3.11 Just seeking to apply Government policy (and not setting local standards) is the easier option. It is very important to note that as building regulation standards have increased over the years the energy performance of buildings have increased significantly and through further planned changes, notably advised to occur in 2025, they will increase again. In this report drawing on the SWEEG work produced for Exeter City Council a graphical representation shows the decline in regulated emissions from new dwellings from those constructed in 2006 to projected construction in 2025, see below.



- 3.12 The graph illustrates the significance of changes in just 20 years, emissions down 84%, and if we were to look back further we could expect to see emissions, the height of the blue bars, being much greater.
- 3.13 Building improvement standards, when coupled with increasing electricity generation coming from renewable sources, can be expected to lead to an outcome where net carbon emissions from new developments are likely to be (comparatively) minimal. Furthermore, further changes to building regulations in conjunction with new application of new emerging technologies, in the years ahead and beyond 2025, could require even more energy efficient new buildings, with, over time absolutely zero or negative operational carbon impacts.
- 3.14 The challenges in seeking local standards, that go beyond building regulations include:
- Net gains made, from exceeding building regulation standards, could be very limited in benefit, especially when seen in the context of all the other ways that human activities emit carbon and the quantities involved and other ways that the planning system can seek to reduce emissions.
 - Exceeding standards will add to the cost of development and thereby reduces potential developer contributions to pay for infrastructure.
 - Although legislation allows for local standards, a government written ministerial statement from December 2023 [Written statements - Written questions, answers and statements - UK Parliament](#) seeks to restrict how these provisions are implemented. In simplified terms application of the statement would limit how far and in what ways local plan planning policy could go in setting local

standards. There is, however, a legal challenge around the weight and legal credence of the statement and this was heard in the High Court in mid-June 2024 with a judgement potentially to be handed down in July 2024.

d) Any attempt to exceed building regulations will require explanation of policy to applicants for planning permission and a regulatory regime to ensure compliance. This is likely to have some significant cost implications on the Council. There are external regulatory protocols and service providers that could be bought in, though at this stage costs have not been investigated. It would also be possible for the Council to employ specialist staff in this area. Timing impacts on determination of planning applications and development coming forward may arise. It should be noted that for compliance with building regulations we already have an effective, efficient and long-established staff and regulatory regime in place and operating and external approved inspectors exist.

- 3.15 It is relevant to note that in draft plan consultation there was some support for higher standards but there were also significant challenges raised around the practicalities and costs of doing so and concerns about viability impacts that may arise.
- 3.16 Notwithstanding the challenges we would highlight that some local authorities have adopted local plan policies, having taken them through Examination and gained approval by inspectors, for standards that exceed building regulations. Indeed, the Cranbrook Plan DPD adopted by the council in October 2022 includes policy CB12 Delivering Zero Carbon that sets out a series of steps that must be followed to achieve zero carbon across the development. This however proved a complex policy to develop and presents challenges in respect of implementation and enforcement. The policy wording and approach as applied at Cranbrook may be less appropriate for wider application across the district.
- 3.17 We would also highlight that others have failed in attempts to introduce policies that exceed building regulations. It is not, therefore, just simply a case of writing policies that exceed standards and these policies will automatically appear in the adopted local plan. Whenever a local plan deviates from national planning policy it would be prudent to work on the expectation of rigorous challenge from an inspector, and third parties, at plan Examination. A planning inspector could be expected to closely scrutinise such policies and wish to see clear logic for their inclusion in a plan, often such logic would need to rest on clear local circumstances justifying their inclusion.
- 3.18 In this committee report we deliberately do not seek to get into detailed technical debate around exceeding building regulations. We would though highlight that we have discussed the matter with academics from the University of Exeter - under the SWEEG partnership we are part of (also see the SWEEG paper that is referenced in this report produced for the City Council).
- 3.19 From our discussion with SWEEG (and in their paper) they provided a steer for not seeking to exceed building regulation standards. The basis for this is that the benefits in reducing carbon emissions overall are minimal, particularly when compared with the

benefits that can be achieved through other policy approaches, including as referenced in respect of building construction.

- 3.20 For reasons of balance we would, however, highlight that there are organisations and consultancies (other experts) that are advocates of promoting higher standards and that have advised planning authorities in respect of getting such standards into their local plans and through examination. The Town and Country Planning Association are one organisation that is actively championing the cause for setting higher standards – see for example: [The 13 December 2023 WMS and local plan policy for net zero - Town and Country Planning Association \(tcpa.org.uk\)](#) They specifically reference challenges to the Government position.
- 3.21 Aside from carbon emission matters we would also highlight that better insulated buildings, especially new houses, although costing more to build in the first place, can be expected to have lower heating costs in the longer term and provide for more comfortable living conditions.
- 3.22 Should Strategic Planning Committee be of the view that we continue to want to have standards that exceed those set out through building regulations we would seek instruction to do so. If this is the case then we would need to buy-in specialist consultancy advice to advise on and around the matter, we do not have ‘in-house’ officer expertise or time to do the work ourselves. But this is not the recommended course of action and also time available to commission such advice is very limited. In line with what SWEEG are saying officer advice would be to choose to go down the route of the application of the building regulation regime.

Photovoltaics in new development

- 3.23 The SWEEG work highlights potential for seeking or requiring through planning policy the installation of photovoltaics (solar panels or similar) on the roofs of new development at the point of construction.
- 3.24 However, SWEEG note the potential problem is that the way building regulations are set out a consequence or outcome of requiring photovoltaics might be that developers can produce building regulation compliant developments with lower insulation standards. In effect the generation of renewable energy would be ‘offset’ by less energy efficient build standards. As a variation SWEEG highlight the option of requiring developments to be built that are photovoltaic ready, rather than actually requiring installation as part of the development. This avoids the knock-on impact and makes it simpler and cheaper for home owners to install panels at a later date.

Financial implications:

There are no direct financial implications raised in the report.

Legal implications:

There are no legal implications requiring comment.