

**BATH & NORTH EAST SOMERSET COUNCIL: LOCAL PLAN PARTIAL  
UPDATE EXAMINATION**

**POLICY SCR6: NOTE ON THE SETTING OF LOCAL ENERGY EFFICIENCY  
STANDARDS FOR NEW BUILD DEVELOPMENT**

- 1.1. Recently, there has been uncertainty over the ability for local authorities to set their own energy efficiency standards for new build development. This has primarily been due to the NPPG text below.

NPPG Paragraph 12 (ID 6-012-20190315) explains that:

*Different rules apply to residential and non-residential premises. In their development plan policies, local planning authorities:*

- *Can set energy performance standards for new housing or the adaptation of buildings to provide dwellings, that are higher than the building regulations, but only up to the equivalent of Level 4 of the Code for Sustainable Homes.*
- *Are not restricted or limited in setting energy performance standards above the building regulations for non-housing developments.*

*The [Planning and Energy Act 2008](#) allows local planning authorities to set energy efficiency standards in their development plan policies that exceed the energy efficiency requirements of the building regulations. Such policies must not be inconsistent with relevant national policies for England. [Section 43 of the Deregulation Act 2015](#) would amend this provision, **but is not yet in force.***

*The [Written Ministerial Statement on Plan Making](#) dated 25 March 2015 clarified the use of plan policies and conditions on energy performance standards for new housing developments. The statement sets out the government's expectation that such policies should not be used to set conditions on planning permissions with requirements above the equivalent of the energy requirement of Level 4 of the Code for Sustainable Homes (this is approximately 20% above current [Part L 2013] Building Regulations across the build mix).*

- 1.2. However, it has since been confirmed that the Planning and Energy Act 2008 will not be amended in the [Future Homes Standard \(report of consultation and government response; January 2021\)](#):

***“To provide some certainty in the immediate term, the Government will not amend the Planning & Energy Act 2008, which means that local planning authorities will retain powers to set local energy efficiency standards for new homes.”***

- 1.3. It was also confirmed in the [Future Homes Standard \(report of consultation and government response; January 2021\)](#) that any standards set by local authorities may exceed Building Regulations:

*2.33 At present, local planning authorities may include policies in their local plans which require developers to comply with energy efficiency standards for new homes **that exceed the minimum requirements of the Building Regulations.***

*2.34 The Planning and Energy Act 2008 was amended in 2015 to provide Government with powers to stop local planning authorities from being able to exceed the minimum energy efficiency requirements of the Building Regulations, but this amendment has not been commenced. In the same year, the then Government set out in a Written Ministerial Statement an expectation that local planning authorities should not set energy efficiency standards for new homes higher than the energy requirements of Level 4 of the Code for Sustainable Homes, which is equivalent to a 19% improvement on the Part L 2013 standard.*

*2.35 The Future Homes Standard consultation recognised that the current position has caused confusion and uncertainty for local planning authorities and home builders, alike. While some local planning authorities are unclear about what powers they have to set their own energy efficiency standards and have not done so, **others have continued to set their own energy performance standards which go beyond the Building Regulations minimum and in some cases beyond the Code for Sustainable Homes.** Equally, for developers we have heard that this has resulted in disparate energy efficiency standards across local authority boundaries, the inconsistency of which can create inefficiencies in supply chains, labour and potentially quality of outcomes.*

- 1.4. Since Code Level 4 was the equivalent of a 19% CO<sub>2</sub> reduction from Part L 2013 ([page 32](#)) and the new current Part L 2021 requirement for new homes (introduced on 15<sup>th</sup> June 2022) requires a 31% CO<sub>2</sub> reduction from Part L 2013, it is sensible that NPPG Paragraph 12 (ID 6-012-20190315) should be considered out-of-date and redundant.
- 1.5. To ensure the utmost clarity on this issue, Bath & North East Somerset Council sought confirmation on this matter from the Department for Levelling Up, Housing and Communities (DLUHC). The following text was acquired on 22 June 2022 through Jonathan Mullard at the Department for Business, Energy and Industrial Strategy, who has confirmed that the official lines below have been provided by DLUHC:

We regret that due to the Secretary of State's quasi-judicial role in the planning system, we are unable to comment on the details of a specific Local Plan. However, we can provide the following general comments:

- The recent 2021 uplift to the Building Regulations will deliver a meaningful reduction in carbon emissions, while ensuring high-quality homes that are in line with our broader housing commitments.
- **Plan-makers may continue to set energy efficiency standards at the local level which go beyond national Building Regulations standards if they wish.**
- Local planning authorities have the power to set local energy efficiency standards through the Planning and Energy Act 2008.
- In January 2021, we clarified in the Future Homes Standard consultation response that in the immediate term we will not amend the Planning and Energy Act 2008, which means that local planning authorities still retain these powers.



Department for  
Business, Energy  
& Industrial Strategy

**Jonathan Mullard MRTPI FRSB CBIOL MCIEEM**

**Head of Local Net Zero Engagement**

**Local Net Zero Team**

**Net Zero Strategy Directorate**

Tel / Mobile: 0300 068 8237 / 07342 055429

[jonathan.mullard@beis.gov.uk](mailto:jonathan.mullard@beis.gov.uk)

1 Victoria Street, London, SW1H 0ET

[www.gov.uk/beis](http://www.gov.uk/beis) | [twitter.com/beisgovuk](https://twitter.com/beisgovuk)

- 1.6. It has been made clear by DLUHC that local authorities retain the power to set their own energy efficiency standards that go beyond national Building Regulations. Any policy requirement that exceeds current Building Regulations is also a requirement that exceeds Code Level 4 of the now redundant Code for Sustainable Homes.
- 1.7. Therefore, the policies set out in the Local Plan Partial Update are in conformity with the government's position on the setting of local energy efficiency standards for new build development.