Transition Bath

B&NES Local Plan Partial Update

Pre-Examination Written Statement

Transition Bath Updated Comments in Blue - we have added some specific answers to the Inspectors questions plus some general comments on each section

Policy CP1/H2 Retrofitting existing buildings

Original Transition Bath Response

Policy CP1 is Unsound

Whilst it is commendable that Policy CP1 sets an EPC standard for HMOs for the first time, it does not go far enough. The national Minimum Energy Efficiency Standard for rented domestic properties (MEES) will require an EPC C by 2027 and B by 2030. B&NES has the opportunity to bring the 2030 EPC B standard in within the plan period. Provision should be made in Policy CP1 to ratchet the EPC requirement during the plan period when evidence supports it.

Inspector's Questions

Q.77 What is the justification for requiring Houses in Multiple Occupation to achieve an Energy Performance Certificate ''C'' rating and would this be effective?

Updated Transition Bath Response

B&NES Council's proposed standards in the light of the recent energy crisis will reduce fuel poverty and the exposure of tenants to fuel price volatility. It is estimated that 40% of households will be in fuel poverty by Autumn 2022. Those most affected are typically in the social or private rented sector, often in HMOs. By requiring higher energy conservation standards in homes the council will help reduce fuel poverty.

There is a severe 'agency problem' in both the private and social rented sector in that landlords typically don't pay a tenants energy bills so have no incentive to invest in energy conservation measures in their properties. Setting these new standards will require landlords to address this issue. Landlords will need to invest to meet the new standards but surveys suggest they won't pass all of the costs on through higher rents, and so overall tenants costs, rent and fuel bills will reduce fuel poverty. There are also grants available to help landlords improve the energy performance of their buildings if the tenants are eligible for the Energy Company Obligation.

Feedback from landlords suggests that they will either address the issue using grants available to them or adjust their portfolios to more modern A, B and C rated properties. It also seems likely that only a proportion of the extra costs will be passed onto tenants.

It will also help B&NES meet its 2030 carbon targets.

Policy CP3 Renewable Energy

Original Transition Bath Response

Policy CP3 is Unsound

Whilst the approach to wind energy is sound, CP3 is unsound since it overly restricts solar energy. Solar is different from wind in that it can be easily hidden by local features whereas wind turbines which can be seen for far greater distances. An “areas of search” policy approach is unsuited for solar technology for this reason – the scale of the areas is not granular enough; decisions are best made on a site-by-site basis. Large solar farms which have the biggest potential to meet the renewable energy target require maximum latitude in terms of their ability to select sites. Very few sites will be acceptable, but might be found tucked behind a hill or a hedge anywhere in the district, not just in the areas of search. In addition, setting areas of search for large solar risks overloading the grid in that area or causing cumulative visual impacts – both of which will ultimately restrict capacity. Since CP3 restricts the ability to find optimal sites for large scale solar it does not fully meet the need for protecting B&NES residents against severe climate change.

Inspector’s Questions

Q.78 What is the current installed capacity of renewable energy and heat supplies available in the district?

Q.79 The Policy appears to identify where in principle wind and ground mounted solar PV energy developments of certain scales would be acceptable. Is the policy sufficiently clear that it is setting out a staged approach in respect of the acceptability of renewable energy development, and that further detailed site specific assessment is required at the application stage, and would it be effective

Q.80 Is the submitted Plan clear and would it be effective in identifying within which areas wind and ground mounted solar energy developments would be acceptable in principle, or not?

We would expect the council to make the maps available on the public mapping portal to enable developers to clearly see the boundaries of the proposed areas.

Q.81 Having regard to the wind energy and solar PV development sizes typologies considered in the Landscape Sensitivity Assessment Renewable Energy Development report (CD-RCC004), is the Plan sufficiently clear and would it be effective in identifying what scale of renewable energy development would be acceptable in principle and where?

The report seems to make it clear to us where there is potential for wind turbines and solar PV farms and should be a good starting point for potential developments’ planning process?

Q.82 Would the Policy be effective in the consideration of wind and ground mounted solar PV energy proposals in the Green Belt where elements of many renewable energy projects will comprise inappropriate development?

The policy does not remove or reduce the protections afforded by Green Belt status. We assume the test of Very Special Circumstances still applies?

Q.83 Is the Policy consistent with national policy as set out in NPPF paragraph 117 and consistent with the statutory purposes of AONBs in regard to renewable energy development in an AONB?

We didn't understand the inspector's comment about paragraph 117 which seems to refer to electronic communication installations and not renewable energy?

Q.84 What is the justification for the requirements for community benefit, and an option of 5% community ownership in commercial led energy schemes with a capacity of over 5MW, in wind energy criterion 1f)? Is this a land use planning matter and is it consistent with the tests for planning obligations as set out in NPPF paragraph 57 and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010?

NPPF paragraph 57 and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 states that planning obligations must only be sought where they meet all of the following tests:
a) necessary to make the development acceptable in planning terms;
b) directly related to the development; and
c) fairly and reasonably related in scale and kind to the development.

Paragraph: 004 of the Planning Practice Guidance 'Renewable and low carbon energy' sets out the basis for community benefit being necessary to make the development acceptable, stating the following:

"Community initiatives are likely to play an increasingly important role and should be encouraged as a way of providing positive local benefit from renewable energy development….Local planning authorities may wish to establish policies which give positive weight to renewable and low carbon energy initiatives which have clear evidence of local community involvement and leadership"

By stating this policy it appears to us that the council is seeking to clarify this situation with more concrete proposals and seeking to address an existing imbalance in community ownership of renewable schemes. If the community does not take up the offer, then this lack of take up in itself should not become a block on development.

Q.85 Would wind energy criterion 2c) be effective in:
- safeguarding the living conditions of residents from the potential effects of wind energy development?
- safeguarding telecommunications services/microwave transmissions?
- Regard to construction impacts, including access, sourcing of aggregates and concrete batching and grid connection infrastructure in so far as it falls within the land use planning regime?

Q.86 What is the justification for the requirement for applications for energy plant utilising virgin plant feedstocks to robustly demonstrate that the feedstock will be sourced sustainably? Would this be effective?

Updated Transition Bath Response

Onshore wind continues to be the cheapest form of electricity generation. There is very little onshore wind generation in the area partly because of national planning requirements/restrictions and grid capacity. UK government polling suggests 80% of the population support on-shore wind, with increased support from those living near wind turbines.

We feel that solar PV should be allowed with greater flexibility on a case by case basis compared with what is currently being proposed. Solar PV is more flexible than wind turbines and can in many circumstances be installed with minimal visual impact. B&NES Council has declared a climate emergency and solar PV with its short installation times is the quickest way of addressing this. Carefully designed schemes on lower grade agricultural land can increase biodiversity.

There will always be a tension between renewables visual impact on the landscape and the need to mitigate climate change but the majority of the population now feel that addressing climate change is more important in the short term.

Providing community benefit or shared ownership of wind turbines and solar farms will encourage local residents to support their installation and help B&NES reduce its carbon footprint.

The government's direction of travel is to allow the installation of wind turbines (and solar PV) with community support. A recent government spokesperson said the following: "Everybody is talking about community consent. The PM has spoken about that, Kwasi has spoken about that. That's one thing ministers would want to ensure that communities are to be paid to directly share in community infrastructure close by."

If in the long term future we manage to mitigate climate change and new technologies come along both wind turbines and solar PV farms can easily be removed leaving minimal legacy unlike nuclear power and traditional fossil fuel based power plants.

Original Transition Bath Response

Whilst the net zero element of the policy is sound, it should indicate an intention to go further to the full Passivhaus Standard. Thousands of buildings now meet this standard, ensuring an excellent level of occupant comfort plus almost no heating bills. In addition, the Overheating policy in SCR6 is unsound since it only applies to very large- scale development of 50 dwellings or more when the vast majority of development in the area is smaller scale. This means that most homes in the area could become a risk to health in the future climate, with occupants either suffering health impact from overheating or having to install energy -intensive air conditioning which would make the net zero target harder to reach.
This section of the policy does not meet the test for soundness in the NPPF (para 35) to ”meet the area’s objectively assessed needs”, since national projections show a temperature rise including in B&NES. This will cause overheating unless this risk is correctly assessed and mitigated.

To be sound, this policy should as a minimum apply to Major Developments of 10 dwellings or more, and indicate the intention to eventually move to the Passivhaus Standard.

Inspector’s Questions

Q.87 What is the justification for the requirement for new residential dwellings to demonstrate a space heating demand less than 30kWh/m2/annum, total energy use less than 40kWh/m2/annum, and on-site renewable energy generation to match the total energy use, with a preference for roof mounted solar PV?

The first justification is the overwhelming need to address climate change, as enshrined in national policy. In the words of David Attenborough, climate change is humanity’s greatest threat in thousands of years. We need to act quickly to address the climate emergency.

In 2019, the UK became the first major economy in the world to pass laws to end its contribution to global warming by 2050. The target requires the UK to bring all greenhouse gas emissions to net zero by 2050. In December 2020, the Committee on Climate Change published The Sixth Carbon Budget: the UK’s path to Net Zero. The UK subsequently enshrined a new target of reducing emissions by 78% by 2035 in law in April 2021.

While the UK’s targets focus on reducing greenhouse gas emissions, legislation also makes climate mitigation and adaptation central principles for local plan-making. As Client Earth have set out in their representation on the B&NES policies, the requirement to maximise emissions reductions is required by (among other policies) s. 19(1A) of the Planning and Compulsory Purchase Act 2004 and paras 152-153 of the NPPF, which require plans to "shape places in ways that contribute to radical reductions in greenhouse gas emissions" and to "take a proactive approach to mitigating climate change ... in line with the objectives and provisions of the Climate Change Act 2008".

The Council’s approach of replacing the metric of % carbon reduction with measurable energy metrics of space heating and overall energy use is strongly justified.
‘CD-RCC009 Cornwall Council, Technical Evidence Base for policy SCR1- New Housing’ notes that the Committee on Climate Change report ‘UK housing – fit for the future?’ highlights that

we need to build new buildings with ‘ultra-low’ levels of energy use. It also makes a specific reference to space heating demand and recommends a maximum of 15-20 kWh/m2 /yr for new dwellings. Transition Bath supports this more stringent standard due to the urgency of the climate crisis.

However, switching to the metrics used by SCR6 is vitally important for effective policy. To date, carbon reduction policies have been expressed as a % carbon reduction. However this figure is hard to design buildings to, since it is linked to an ever-changing carbon intensity figure for electricity as more renewables are added to the grid, requiring the policy threshold to constantly change if it is to stay robust.

SCR6 proposes to move away from this metric. It uses heat demand, a strong proxy for fabric performance and also Energy Use Intensity or total energy use which is an intuitive metric since performance can be checked once the building is occupied simply by checking the occupant’s energy bills, without further modelling or analysis. In addition to being more logical, measurable and robust, these metrics are no burden for developers - they are produced by the standard modelling undertaken for Building Regulations compliance so do not require developers to undertake additional modelling.

The second justification is that national Building Regulations do not respond commensurately to the climate crisis nor will they be able to, without local policies that first build the market to support more stringent Regulations. Unlike B&NES SCR6, the Future Homes Standard (FHS) does not achieve net zero, rather a 75% to 80% reduction in emissions. The ambition is also lower than SCR6 in that the FHS only covers ‘regulated’ emissions, those covered by building regulations, not the ‘unregulated’ emissions that arise from the use of each new building that is constructed. The FHS is simply not strong enough to address the climate emergency.

This is for the perfectly legitimate reason that national Building Regulations are just that - national - and need to be one-size-fits all, affordable everywhere. This inherently limits ambition. However in B&NES the viability study shows that the development market can support true Net Zero, as described by the standards above.

Any new practice or product introduced into the market follows an ‘uptake curve’ where early adopters go first, stimulating the skills and supplies needed to scale up to national coverage. By early adoption of net zero policy, far from undermining the Future Homes Standard, Policy SCR6 supports it, by building the markets the Standard will need to succeed. This was evidenced by the effect of Code for Sustainable Homes requirements in Local Plans which stimulated the market to ultimately support Part L 2013, which brought the energy performance of Code for Sustainable Homes into force nationwide.

This policy does not take a piecemeal approach. It is also being proposed in Cornwall, Bristol, South Gloucestershire and North Somerset, and other authorities will follow where the viability evidence supports it.

Q.88 Are the cost assumptions arising from Policy SCR6 in the viability assessment for the Plan robust, realistic and justified? What, if any, effect would the requirements of Policy SCR6 have on meeting the other policy requirements of the Plan, such as affordable housing? What would the effect of the Policy be on the deliverability of new homes?

Q.89 How do the proposed energy use requirements compare to the (transitional) requirements as currently set out in Part L of the Building Regulations?

Q.90 What is the justification for seeking a financial contribution where the use of onsite renewables to match total energy consumption is demonstrated to be not technically feasible or economically viable? Is this element of the Policy consistent with paragraph 57 of the NPPF and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010, and would it be effective?

Q.91 The Written Ministerial Statement of 15 December 2021 sets out that the new overheating standard is a part of the Building Regulations and is therefore mandatory and there will be no need for policies in development plans to duplicate this. In this context, what is the justification for the requirement for applications for 50 dwellings or more to demonstrate that the CIBSE TM59 overheating target has been met in the current climate, and a strategy submitted to show how overheating can be mitigated in the future climate, and is this consistent with national policy?

Updated Transition Bath Response

B&NES have the right to impose higher standards: B&NES Council currently has the right to require higher standards than current or proposed building regulations under the Secretary of State's direction. This has long been the case - for example, B&NES Policy SCR1 in the 2017 Placemaking Plan required a 10% reduction in carbon emissions and was fully adopted through Planning Examination in 2018.

For the avoidance of doubt, Government reiterated the ability for LPAs to set higher standards in its response to the Future Homes Standard Consultation ('The Future Homes Standard: 2019 Consultation on changes to Part L and Part F of the Building Regulations for new dwellings: Summary of responses received') which stated on page 4 that

"To provide some certainty in the immediate term, we will not amend the Planning and Energy Act 2008, which means that local authorities will retain powers to set local energy efficiency standards for new homes. ".

And so any questions the inspector or developers have about higher standards can only really pertain to 'viability'.

Proposed building regulations have a habit of being watered down: The proposed 2016 Part L zero carbon homes building standard was originally meant to be a 40% reduction over 2013 Part L, then it became a 25% reduction and eventually it provided no improvement on 2013 part L for domestic properties. So we cannot be confident the Future Homes Standard is likely to materialise in 2025. Building developers priority is to maximise their shareholders profits and not mitigate climate change, so building regulation is the main lever we have on them to help mitigate climate change. It is more cost effective for developers to donate to the political party in power at the time as encouragement to ministers to minimise higher and more costly standards than to actually do the right thing and construct homes which minimise their impact on the climate, reduce occupants fuel bills, reduce our exposure to dubious foreign regimes through consumption of their fossil fuels, and make UK plc more productive because of lower energy consumption. Building developers contributed £11 million to Conservative party funds last year; they are clearly doing this for a reason. This is why we feel that it is important that the council impose these higher standards in order to help support their declaration of a climate emergency rather than relying on a future government standard which might never happen.

Viability Studies suggest it is viable in Bath to build homes to high energy efficiency standards combined with affordable housing

The council commissioned viability study suggests these proposed standards are 'viable' in all but a few exception cases which developers can appeal through submitting their own site specific studies. So there is no economic reason not to require these higher standards. B&NES current local plan requires higher standards and there is no evidence that these higher standards have stopped new housing development from coming forward and we would expect this to continue to be the case in the future with the new standards. Where developers have submitted their own viability studies to justify the relaxation of standards on economic grounds it appears in many cases they have overpaid for the land assuming they can argue their developments are now uneconomic because of the council's higher standards.

National guidance is that land values should not be based on this circularity i.e. they are determined by how much developers will pay rather than how much they should pay taking into account local requirements. As an example land values for greenfield sites in Bath are above £3M/hectare, and an additional £7.5K in higher energy standards per home at a density of 30 homes/hectare will only depress the land value by £225K/hectare to £2.775M/hectare which we feel won't make any difference to a landowners decision to sell their land if planning permission is granted and as per the council's viability studies are significantly above benchmark land values.

There is also no evidence developers are not making sufficient profit, Persimmons for example made a 30% profit last year and paid its CEO £75M in salary and bonuses. This is over and above the minimum 15% assumed in viability studies.

We feel that the council's proposals don't go far enough: Given the recent energy crisis we feel that the council should now go further than the minimum 30 kWh/m2/year heat demand limit they are suggesting and meet Passivhaus standards of 15 kWh/m2/year. A recent AECB study suggests that the Future Homes Standard (which isn't particularly well insulated by international standards) will cost occupants an extra £500 a year to run compared with a home built to Passivhaus standards.

Recent changes to the direction of government planning permission: In recent weeks the government seems to have changed direction in terms of centrally imposed planning regulation and housing numbers with the inference of more local control over the overall planning process. We would assume this change in the direction of travel implies more local involvement in the planning process and would be consistent with B&NES's council's proposed higher energy conservation measures which have arisen through the local democratic process and which enjoys significant local support.

'**Allowable solutions**': Reading council, following a planning examination, have been allowed to ask developers to pay £1,800 per tonne of carbon emissions where zero-carbon standard is not possible, so we feel this arrangement must also be justifiable in B&NES.

In Summary:

- B&NES council continue to have the right to impose higher standards under the 2008 act
- These standards are 'viable', and if not developers have the right to appeal
- These higher standards will:
    - Help mitigate climate change, meeting the council's climate change objectives
    - Reduce fuel poverty
    - Reduce funding of dubious foreign regimes
    - Make UK plc more productive
    - Won't reduce developers profits but may have a minor reduction in future land prices
- The recent change in direction of travel in English planning law seems to imply more local say on these standards further supporting the council's case

Original Transition Bath Response

Despite this, policy SCR8 is unsound since there is no stated intention to ratchet the policy further within the plan period if evidence supports it. Whilst SCR8 is a good starting place in addressing embodied energy, the climate crisis requires a swift move from the current SCR8 requirement which aims to familiarise industry with the issue, to a requirement to actually bring down embodied carbon emissions more significantly. The requirement in SCR8 can be met with current new build practice, so is not in itself an incentive to retain and retrofit existing buildings instead of demolition and rebuild which is usually has a significantly higher lifecycle carbon impact.

Resultantly, this section of the policy does not meet the test for soundness in the NPPF (para 35) to 'meet the area's objectively assessed needs', since there is a strong need for the residents of B&NES to not suffer catastrophic climate change. According to the global scientific consensus this requires staying within 1.5 degrees of global heating. Unless embodied carbon in new buildings is brought down, this target will be missed.

The policy is also limited to developments greater than 5000 m2 or 50 dwellings. A lower minimum of 500 m2 and 10 dwellings should be set.

The policy is limited to developments greater than 5000 m2 or 50 dwellings. A lower minimum of 500 m2 and 10 dwellings should be set. The policy should define a reduction in embodied carbon of developments over time, so higher standards are met as developers get gradually more used to the new standards.

Inspector's Questions

Q.96 What is the justification for the size thresholds for the application of the Policy, and the requirement that an Embodied Carbon Assessment that demonstrates a score of less than 900kg/sqm of carbon can be achieved within the development for the substructure, superstructure and finishes?

Q.97 What effect would policy SCR8 have on the delivery of new buildings?

Our understanding is that the analysis: https://beta.bathnes.gov.uk/sites/default/files/CD-RCC008%20WOE%20NZB_Evidence%20Base_Embodied%20Carbon%20study_FINAL.pdf on which this is based outlined a cost neutral approach whose main purpose was to exclude excessively high embodied carbon approaches but didn't exclude common building methodologies and fabric types.

The intention of this policy appears to be

(a) to discourage buildings that have an exceptionally high embodied carbon design
(b) to familiarise industry with a crucial part of the carbon footprint that has hitherto been unregulated. If only an assessment is required with no standard, there would be no need for developers to engage with the outcome of that assessment, simply outsourcing it to consultants. The 900kg/m2 threshold will stimulate greater engagement with the outcome of the assessment since the project team will have to engage with the findings to verify compliance with the threshold.

Updated Transition Bath Response

From Transition Bath's and the council's perspective we are trying to deal with a 'climate emergency' which implies we need to act quickly, and it is therefore important that the development of new homes with high embodied energy contribute as little as possible to carbon emissions in the short term.

We feel that the policy should include support for further reducing the embodied carbon in developments over time as new evidence comes forward subject to viability constraints.

New Policy SCR9 Electric vehicles charging infrastructure

Original Transition Bath Response

We didn't comment as we felt the council policy was sound, however we would like to now comment as a consequence of the inspectors recent questions and developers comments. Additionally we would like to provide comments on behalf of some of our members who individually responded to the consultation.

Inspector's Questions

Q.99 The approved document supporting Part S of Schedule 1 to the Building Regulations 2010 takes effect on 15 June 2022. Given the changes to the Building Regulations does the Policy serve a clear purpose and would it be effective?

Q.100 Is the requirement for the provision of on-street charging of electric vehicles where off-street parking is not provided justified, and would it be effective?

Q.101 Is it intended that the Transport and Development Supplementary Planning Document will set out land use policy for parking standards? If so, why are these not set out in this Plan consistent with paragraph 107 of the NPPF?

Q.102 What is meant by an abnormally high local electric grid infrastructure connection cost?

Updated Transition Bath Response

We support the requirement that electric car charging is supported on every new home, as a way of future-proofing new homes.

We disagree with developer comments like "This is an ambitious target and not reflective of the currently low take up volume of electric vehicles and barriers to ownership, the policy is therefore not justified.". We feel that this developer statement is a non sequitur in that developers by refusing to install electric car charging are increasing the barriers. We also disagree with the developers' views that there is a low update of electric vehicles:

1. Electric vehicle sales are up 78% year on year
2. Electric vehicles account for 16% of the market
3. Although currently expensive most manufacturers predict electric cars will cost less than ICE cars in the 2025 to 2027 timeframe
4. The government has stated it will ban ICE car sales from 2030

And anyway, as the inspector suggests in his questions, 7 kW charge points will be mandatory from 15th June 2022.

The Independent Network Association which is used by large developers for the majority of large developments have stated that because of 'diversity' - not everyone wanting to charge at the same time, that on developments where every home has an electric car charger no additional network capacity will be required. Hence in almost all circumstances for new developments the £700 cost per connection will be valid and not the £3,600 government cap quoted by some of the developers in their examination response. The reasoning behind the need not to increase capacity above the current baselines for new developments is included in this document:
https://ina.org.uk/wp-content/uploads/2021/10/INA-Low-Voltage-Design-Policy.pdf

Some other comments:

- The average car drives 14 miles each day, which in consumption terms for an electric car is about 4 kWh which equates to 35 minutes of charging each day at 7 kW - so the impact on the grid is only for a short period, hence ‘diversity’ is very high
- EV car owners are increasingly making use of cheap overnight tariffs e.g. Octopus Go at 7p/kWh overnight compared with a 30p/kWh daytime rate, further diversifying demand
- The days of travelling sales people travelling 300 miles per day are largely over, particularly since COVID where much of this work is now carried out electronically over the internet using video (Zoom/Teams/Meet), so demand from lots of cars requiring to be fully charged will not happen; network operators, chargepoint manufacturers are assuming that this need although small will largely be satisfied by off-development DC rapid chargers
- The exception to the above is blocks of flats where individual connections from home occupiers consumer units/grid connections to individual chargepoints are not available where extra very localised grid capacity may be needed. In this case chargepoint providers have solutions where capacity requirements are limited via chargepoints communicating with each other e.g. Podpoint’s array charging solution: https://pod-point.com/products/business/array

So we believe that the government requirement to install electric vehicle chargers in every home is something which should be supported and that this will cost less than £700 per home and involve in almost all cases no requirement to increase grid capacity above the baseline and thus a very limited impact on ‘viability’. In the rarer cases where there is a ‘viability’ impact then the developers would as they can now submit a viability assessment to the council outlining why a site is not viable under all the requirements the council are placing on the development. The council can then decide which requirements they would be happy relaxing e.g. affordable homes, higher sustainability standards, EV charging standards etc..