

Homes fit for the future?

DCLG plans to dilute Zero Carbon Homes policy and repeal the Planning & Energy Act will lead to *higher* energy bills for new homes

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1 Executive Summary

In the last decade, a combination of industry innovation, Government regulation and Local Authority intervention has led to new homes being warmer and cheaper to heat and power. However, this rate of improvement is substantially below the trajectory required to achieve the UK's legally binding commitment to reduce carbon emissions by 80 percent by 2050; to future proof homes from reliance on expensive fossil fuels; and foster a domestic industry to achieve all this.

In a dramatic departure from the Coalition Government's priority to deliver Zero Carbon Homes – which reduce energy bill burdens on residents - DCLG now has a priority under the “Red Tape Challenge” to reduce regulatory “burdens” on the builders of those dwellings. The recently released DCLG consultation on the Housing Standards Review, proposes the abolition of the *Code for Sustainable Homes* and the removal of local planning authority (LPA) statutory powers to demand higher energy carbon emission standards than building regulations. If the proposed changes take place, it will have serious implications for low-carbon heating and small scale renewable energy technologies. This would also represent a break with Government commitments on reducing emissions and energy bills in the building stock.

To persuade Government to rethink this approach, a coalition of organisations including the Micropower Council, ACE, REA, CHPA, WWF, BEAMA and the Solar Trade Association are providing information to policy makers in order to help them fully understand the economic, environment and social impact of the DCLG proposals. These organisations are calling on Government to reduce householders' bills, stimulate the economy and move away from fossil fuel reliance by:

- keeping the Planning and Energy Act 2008;
- maintaining the *Code for Sustainable Homes*; and
- keeping 2016 as the implementation date for Zero Carbon Homes.

This report reviews the Government's history of commitment to zero carbon buildings, including DCLG's original case – now apparently abandoned – that any increase in capital costs caused by regulation can be passed back by housebuilders to the sellers of land. This report also maps how the commitment to zero carbon has been progressively watered down and challenges DCLG claims that higher standards will directly reduce the number of homes built.

The Housing Standards Review consultation Impact Assessment estimates the cost of discontinuing present policies will save housebuilders £33.5m a year or £288 million over 10 years on on-site renewable technologies and connection to district heating networks. The consultation and impact assessment do not estimate the resulting cost to the environment through increased carbon emissions, the increase in on future residents' energy bills, and the value to the wider economy of investment in local energy.

DCLG has ignored evidence from London where the GLA has imposed carbon and energy standards on new development superior to the current building regulations, apparently without deterring new development. A report on the implementation of the London Plan Energy Policy highlights that the planning policies have helped secured £20 million of investment in combined heat and power (CHP) plant with a capacity of 29MW of electricity and a similar amount of heat; £133 million of investment in heat network infrastructure for approximately 53,000 communally heated dwellings; and regulated CO2 emission reductions of 36 per cent more than 2010 Building Regulations

requirements for developments. The present London Mayor, Boris Johnson, recently stated that the Housing Standards review currently out to consultation may have an impact on his carbon dioxide targets and energy efficient housing in the future.

Finally, this report examines the experience of Scotland, which has apparently squared the circle of the house builders' demand for national standardised building regulations with the local communities' desire to set higher standards where viable.

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The views and opinions expressed in this report are those of the authors and do not necessarily reflect those of the CHPA and REA and their members, or those of other organisations supporting the campaign to keeping the Planning and Energy Act 2008; maintain the Code for Sustainable Homes; and keep 2016 as the implementation date for Zero Carbon Homes.

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3 Introduction

The Department of Communities and Local Government (DCLG) controls the spatial planning system and building regulations in England. DCLG have made clear their priority is to reduce housebuilders' costs. Three related announcements (two of them consultations), made recently by DCLG could have negative implications for district heating in new development, and present a serious threat to the installation of gas CHP and renewable energy systems in new buildings. These announcements are:

- Part L of the 2013 Building Regulations;
- the consultation on Zero Carbon Homes Allowable Solutions; and
- the consultation on the Housing Standards Review.

The consultation on the Housing Standards Review (released in late August), proposes the abolition of the *Code for Sustainable Homes* and the removal of local planning authority (LPA) powers to specify carbon saving measures on specific sites (which presently could include gas CHP). These would be covered by future building regulations, yet to be confirmed. To enable the diminution of LPA powers, DCLG proposes the repeal of the Planning and Energy Act 2008, which currently gives statutory rights to local planning authorities to demand higher energy carbon emission standards than building regulations.

Taken altogether, the three related announcements, if carried out in the ways that DCLG has indicated, could have negative implications for district heating, small gas CHP and buildings scale renewable energy industries. They also represent a break from recent Government announcements on maintaining the zero carbon buildings commitments of the previous Government, and with the long-term trajectory to reduce carbon emissions in buildings to zero by 2050.

This report sets out the history of the Government's original commitment to zero carbon buildings, including the expectation that increased costs could be passed back by housebuilders to the sellers of land. This report also sets out how the commitment to zero carbon, while still maintained, is being progressively watered down and examines claims by DCLG that even these reduced standards will have a negative effect on the quantity of dwellings built over the remainder of this decade. It also asks why the benefits to householders of low and zero carbon energy services were not considered in the Impact Assessments. The case is made, citing London, that the positive net value of the benefits from continuing with the zero carbon trajectory and the Planning and Energy Act far outweighs the negative costs.

Finally, the question of who bears the cost of Zero Carbon Homes is asked. At various times DCLG has said that it is the land sellers who pay for the policy, not the speculative housebuilders. Why can't the DCLG policy makers commit to this approach?

4 Context

4.1 Zero Carbon buildings ambition of the previous government

In December 2006 the department of Communities and Local Government (DCLG) published "Building a Greener Future: Towards Zero Carbon Development". DCLG sought views on the Government's proposals to reduce the carbon footprint of new housing development. It explored the relationship between the planning system, the emerging *Code for Sustainable Homes* and Building Regulations in delivering zero carbon; and proposed a timetable for revising the Building Regulations in order to reach zero carbon development in all new housing in England and Wales.

According to the Regulatory Impact Assessment (RIA) published by DCLG alongside their consultation it was estimated that having all new development built according to a zero-carbon standard would save between 6.5 MtC (million tonnes of carbon) and 7 MtC per annum in England and Wales by 2050 compared to the *do nothing* option. As HMT pointed out¹, "this measure will have an additional effect on carbon savings in years to come".

In June 2007 Yvette Cooper, Minister for Housing and Planning, pointed out in support of the policy

"A quarter of carbon emissions come from our homes. That's why Zero Carbon Homes are so important."²

The Code, launched in April 2007, was developed by DCLG based on BRE's EcoHomes method to enable a step change in sustainable building practice for new homes. It provides a means of assessing the sustainability credentials of new homes for energy, water, materials, waste, pollution and other issues (source: BRE).

On 10 August 2007 Housing Minister Yvette Cooper hailed an agreement with housebuilders and councils which will make zero carbon housing a reality within 10 years - and urged other partners in the industry to follow suit and 'sign the green pledge'. Key members of the homebuilding industry, councils, green groups and homeless organisations gave their support to the Government's housing agenda by signing up to Communities and Local Government's 2016 Commitment, joining with it in an ambition to build 240,000 new Zero Carbon Homes a year by 2016. The parties agreed that by 2016, all new homes will be built to zero carbon standards; over the interim period, new homes will be built to increasingly higher environmental standards and to work closely together to resolve obstacles to reaching these targets.

Stewart Baseley of the Home Builders' Federation said:

"Homebuilders are willing to play their part, but need government and many others to help if we are to be successful. We very much welcome therefore the public pledge to partnership working by all those involved in the 2016 Commitment."³

The Pre-Budget Report 2006 announced that a stamp duty land tax exemption for new zero-carbon homes would be introduced in 2007. Further details of the exemption, as promised, were set out in

¹ <http://www.hmrc.gov.uk/ria/9-zero-carbon-homes.pdf>

² <http://www.bre.co.uk/news/Yvette-Cooper-launches-world-leading-sustainable-buildings-on-BREs-Innovation-Park-443.html>

³ Source: <http://www.easier.com/35942-housing-minister-yvette-cooper-rallies-support-for-green-housing.html>

Budget 2007; this included a five-year time limit, a cap on the relief of £15,000 and a definition of a new zero-carbon home⁴.

In December 2007 the Planning Policy Statement on climate change, published by the CLG, stated that councils should apply 'Merton plus' rules for new developments⁵, and encouraged them to go further where possible. Councils will be expected to set stringent green targets to developers under new government rules.⁶

4.2 Who would pay - the role of land values

The proposal of the Zero Carbon Homes policy initiated a debate about who would pay for the additional costs. In the *Zero Carbon Homes Impact assessment* (December 2009) published by DCLG the matter was settled in paragraph 76. Far-sighted signalling of policies would help drive down costs through innovation, standardisation and economies of scale; and the "costs of the policy can potentially be *passed back to landowners* in the form of reduced land prices".⁷

At the end of July 2010 the Minister for Housing and Local Government commissioned the Zero Carbon Hub to establish a Task Group to test a level for Carbon Compliance within the context of Zero Carbon Homes policy. In their subsequent report, David Adams, Director, Zero Carbon Hub and Carbon Compliance Task Group Chair warned that

"Someone will have to pay, so the costs are considered from a range of perspectives including society, the householder and the developer. The Group recognises that the cost of zero carbon new homes, together with other regulatory burdens, must not be so high that either the *price of land* or the *selling price for new homes* becomes uncompetitive with impact on housing supply.⁸

It was widely recognised that housebuilders would pass on any increased costs to maintain their economic model. As housebuilders maintain that they cannot charge more for a new house (however energy efficient) than the equivalent existing house type in the same area, this means the cost is passed back to the seller of the land for development.

The Labour government was concerned that it should not be seen as reducing the number of homes being built if costs were loaded onto the housebuilders. Therefore, it was crucial to the adoption of Zero Carbon Homes policy that there was acceptance that land values would absorb the cost of Zero Carbon Homes. Land price could be negotiated by a housebuilder if their competitors had the same costs, as they were subject to the same regulatory or planning regime⁹. It was taken that land sellers would not be sensitive to the relatively small reduction in land value. Once this premise had

⁴ <http://www.hmrc.gov.uk/ria/9-zero-carbon-homes.pdf>

⁵ See 4.3 for explanation of Merton Rule.

⁶ <http://www.bdonline.co.uk/news/government-tells-councils-to-go-beyond-merton-rule/3102503.article>

⁷ http://www.legislation.gov.uk/ukia/2009/337/pdfs/ukia_20090337.pdf

⁸ *CARBON COMPLIANCE: SETTING AN APPROPRIATE LIMIT FOR ZERO CARBON NEW HOMES - FINDINGS AND RECOMMENDATIONS* (February 2011) http://www.zerocarbonhub.org/resourcefiles/cc_TG_Report_Feb_2011.pdf. The report goes on to say that house builders will need to be fully aware of costs when purchasing land and the energy (and hence carbon) strategy for a site will also become one of the primary design factors (p8). The report also says that within this context of land values, their modelling shows that tightening the Carbon Compliance limit (within the range they were asked to consider) has only a minor impact (see p7 second paragraph).

⁹ In certain areas of the country house prices are so low that green field land values are negative and house building can only happen after subsidy or gift of the land (often an issue with polluted brownfield sites). This issue became more widespread in the subsequent 2009 recession.

been accepted, the question arose about whether advantage could be taken of areas of high land values. The key was an *energy in buildings policy*, either local or national, flagged up in advance.

4.3 Going faster where viable: the Fallon Bill – Planning and Energy Act 2008

An example of a local energy policy was the so-called “Merton rule” on renewable energy. This was developed and adopted in 2003 by the London Borough of Merton, which required new building developments to generate at least 10 percent of their energy needs from on-site renewable energy equipment in order to help reduce annual CO2 emissions in the built environment. Merton Council subsequently worked with other authorities, professions and industry to embed the Merton Rule¹⁰. Eventually around 100 councils adopted some variant of the rule.

The Merton Rule was controversial with builders, as it prevented them from building a standard development where all the energy was provided entirely by connecting up to the regulated utilities. In addition, the Merton Rule varied in different local planning authorities, with some LPA’s asking 5, 10 or 20 percent renewables. The emphasis on renewable energy, rather than lowering carbon, was controversial with some in the green building industry, as it may not always be the optimum solution to reducing emissions.

To add a level of controversy regarding the Merton Rule, it was challenged by some as being beyond local planning authorities’ powers. DCLG wanted energy production to be absorbed into building regulations.

It was in the spirit of regularising the situation and LPA’s negotiating the optimum carbon saving solution with developers that the *Planning and Energy Bill* was put forward. The Bill, proposed by Conservative MP Michael Fallon¹¹, did not originally have government support, but Fallon gained backing from prominent MPs in all parties and eventually DCLG ministers agreed to support it. It received Royal Assent on 13 November 2008¹².

The Bill allowed local councils to set targets in their areas for on-site renewable energy, on-site low carbon electricity and energy efficiency standards in addition to national requirements¹³. The Bill covered England and Wales¹⁴.

In the House of Commons second reading debate of 25 January 2008 (reported in Hansard¹⁵) Mr Fallon explained what his Bill could and could not do:

¹⁰ <http://www.merton.gov.uk/environment/planning/planningpolicy/mertonrule.htm>

¹¹ Michael Fallon MP drew first place in the 2007/08 ballot for Private Members’ Bills. Mr Fallon is presently a joint energy and business minister (as of September 2013).

¹² The Government opposed the Bill on Second Reading, but supported an amended version in Public Bill Committee on 20 February 2008.

¹³ The full text of the Act reads: *A local planning authority may in its development plan and development plan documents specify that any person making an application for planning permission should include such reasonable provision as the authority may specify for (a) the generation of energy from renewable sources as part of the proposed development; (b) the generation of low carbon energy as part of the proposed development; (c) an energy efficiency standard in all, part or parts of the proposed development that exceeds that required by any building regulations in force at the time of the application.* <http://www.publications.parliament.uk/pa/cm200708/cmbills/017/2008017.pdf>

¹⁴ <http://services.parliament.uk/bills/2007-08/planningandenergy.html>

“The Bill therefore gives Merton-style planning policies statutory protection. I should emphasise that it does not compel other councils to follow Merton, although around 100 are doing that. The Bill does not compel anybody to do anything. What it does is to put on the statute book the ability of a council to adopt a Merton-style policy, if it wants to do so. Without the Bill, councils will be left uncertain as to whether the policies that they adopt will remain legal.

...The whole point of the Bill is to ... give councils the certainty that they need, so that they are no longer dependent upon a supportive Minister or at the mercy of the latest lobbying of No. 10. The Bill therefore sets out, very simply, that councils can—not must, but can—set a minimum requirement for local energy generation and energy efficiency standards that are higher than the minimum.

The big volume housebuilder would of course prefer a single set of rules for the whole country; but I want to be clear to the House that I would not be promoting the Bill if I thought that it would inhibit the future development of new affordable housing.

The provision in clause 1(c) will incentivise councils to reach beyond the minimum building standards, and of course I should like to see that aligned with Government policy on the code for renewable energy. I also want to point out that, as set out at the beginning of clause 1, the whole of my Bill is subject to the test of reasonableness. Developers and housebuilder will not—cannot—be required to do anything that is unreasonable. In any event, they will be fully consulted in the drawing up of the local development plans to which my Bill refers.

In the final analysis, Ministers will still have control. It is for Ministers to approve local development plans, and when individual planning applications are taken to appeal the Secretary of State sends her inspectors in to rule on them.”

The purpose of the Fallon Bill, which became the Planning and Energy Act 2008, is to take account of local circumstances, subject to a test of reasonableness, based on viability.

4.4 Coalition Government reaffirms Zero Carbon target of 2016

There was concern that the Coalition Government may not support Zero Carbon Homes and buildings. In July 2010, Housing Minister Grant Shapps provided some relief when he made a statement confirming “We are committed to all new homes being zero-carbon from 2016”¹⁶.

4.5 Shapps supports the Planning and Energy Act 2008

On 20 December 2010, the Housing minister Grant Shapps issued a statement confirming that developers will be able to pay into a community energy fund, where contributions are spent on local carbon reduction projects, as a way of reaching development carbon emissions targets.

In his statement¹⁷ Shapps said that areas can already plan for zero carbon development, using powers in the Planning and Energy Act 2008, where it is reasonable to do so and is consistent with national planning policy, including relevant requirements on feasibility and viability, and relevant regulation.

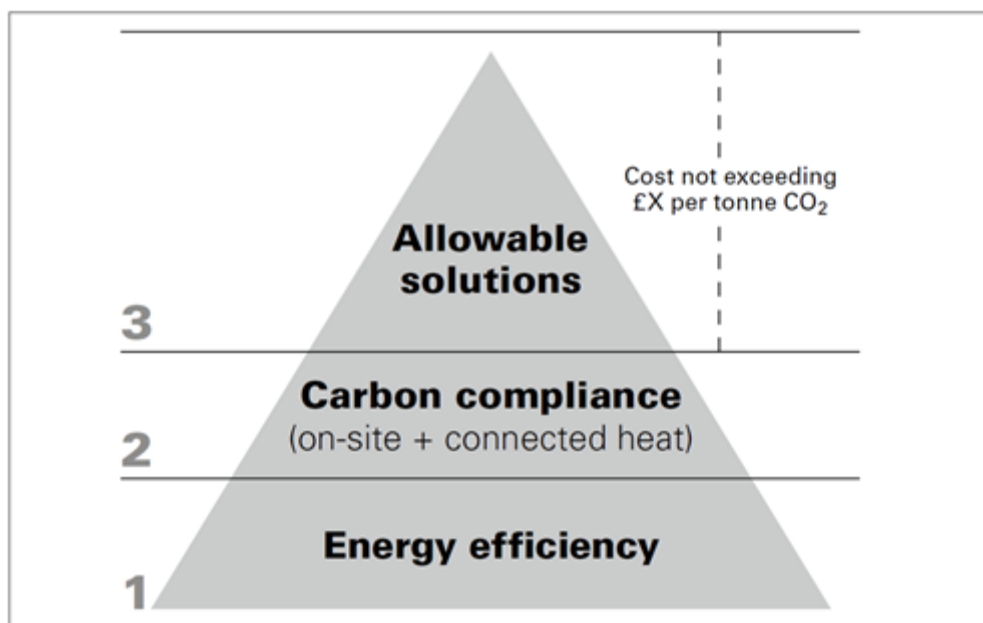
¹⁵ <http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080125/debtext/80125-0001.htm>

¹⁶ See annex for full article.

¹⁷ See annex for full article and further reference.

5 The rocky road to zero carbon

The aim of Zero Carbon Homes policy was that for new homes built under 2016 building regulations, the three mitigation measures portrayed in the triangle below will account for the carbon emissions from energy use. Having met the fabric energy efficiency and carbon compliance standards on-site, developers will then be required to mitigate the remaining carbon by a variety of potential means, under the generic term “Allowable Solutions”.



Whilst the detail has seen considerable dilution since the policy was first proposed in 2006, the goal of introducing ‘zero carbon’ by 2016 still represents a significant challenge, especially as progress in recent years has been extraordinarily slow. The government is taking 2011 recommendations by the Zero Carbon Hub as its indicative starting point for the standards in these areas (though both will be subject to further detailed consultation).

5.1 2011 intervention of Chancellor weakens regulations

The Chancellor weakened the zero-carbon standard in his 2011 Budget after the Treasury announced “more realistic” requirements. Housebuilders will only be accountable for CO₂ emissions from energy use for heating, hot water, fixed lighting and building services – and not those responsible for emissions from appliances and cookers. This also meant that there will be a reduced requirement for Allowable Solutions. As a result, “new homes will only be two-thirds of the way to being zero-carbon”¹⁸.

5.2 2013 Part L – description, summary

The government updates Building Regulations (Part L) on a three year cycle and the most recent update (for 2013) was launched with a consultation in early 2012. On 30 July 2013 DCLG finally announced the outcome of the [consultation](#) through a [press notice](#). DCLG subsequently published a [final impact assessment](#) on 8 August 2013, setting out its more detailed response to the consultation. For both sectors the outcome was weaker than either of the options consulted on by DCLG, with new standards now to be introduced in April 2014:

¹⁸ <http://www.fcni.org.uk/research-library/policies-and-legislation/general-climate-policy-analysis/budget-2011>

Domestic sector: carbon emissions from new homes are to be reduced by 6% relative to the current 2010 standard, compared with the consultation options of 8% and 26%, the latter representing the “halfway to zero carbon” step strongly advocated by the local-energy trade associations. In addition there will be a “Target for Fabric Energy Efficiency” broadly in line with the “Interim Fabric Energy Efficiency Standards” consulted on (43kWh/m²/year for mid-terrace houses and apartments, and 52kWh/m²/year for detached and semi-detached houses). DCLG expects that the carbon compliance standards can be achieved through fabric energy efficiency, together with low energy lighting and an A-rated boiler and states explicitly that on-site renewables will not be required.

Non-domestic sector: carbon emissions from new non-domestic buildings are to be reduced by 9% relative to the current 2010 standards, compared with the consultation options of 11% and 20%. Again DCLG says that it is likely that the emissions reduction would be achievable in most building types through fabric and services efficiency improvements.

In the 2013 budget the government reaffirmed its commitment to use the Building Regulations to bring in zero carbon standards by 2016 for new housing and by 2019 for new non-domestic buildings. However relevant details have yet to be announced and, even if they are, it will be several years before they start to have a significant market impact. DCLG acknowledges that it can take up to five years for new standards to fully impact on what actually gets built, so it can be several years before Building Regulations become a regulatory tool that can truly drive the uptake of on-site and connected renewables in new build.

According to the REA, “the momentum and clear direction of travel that existed in the early years of zero carbon policy have been lost, replaced by a desire not to burden the construction industry with additional costs”.

According to CHPA, the new Part L of the 2013 Building Regulations is unlikely to be adequate, in itself, to drive the market for district heating and buildings based CHP and renewable energy systems.

5.3 Allowable Solutions consultation

The consultation on Allowable Solutions, the buy-out arrangement for developers who cannot meet the (yet to be confirmed) zero - carbon requirements of the 2016 Building Regulations, was published on 6 August and closed on 15 October 2013. The consultation (and many of its 51 questions) gives the impression that DCLG has yet to decide on many of the important issues, seeking views from stakeholders to narrow down the detailed options that will need to be subject to further consultation in due course.

One of these issues is that no level has been set for carbon compliance (onsite emissions and connected heat), so it is not known by how much a developer will be allowed to use Allowable Solutions (AS) to discharge their obligations. DCLG wants to let a housebuilder keep control of any AS money it generates, but speculative housebuilders are unlikely to invest in energy services as, with exceptions, this is usually a bought in facility.

Apparently there would be a central pot for residual undirected AS money, although the rules under which this would operate are not set out in detail. Without more information, it is difficult to say whether Allowable Solutions will drive the market for district heating, buildings-based CHP and onsite renewable energy systems.

DCLG believes that Allowable Solutions should be functional in nature, allowing developers flexibility to choose the option that suits them best. Carbon savings should be additional to what would be delivered without them. The carbon savings should be cost effective and the administrative burden on developers kept to a minimum.

The delivery options available to developers are proposed as a 'Housebuilder menu':

- 100% abatement on-site through further energy efficiency measures or provision of on-site low-carbon energy.
- Meeting the requirement themselves off-site (e.g. by mitigating carbon emissions from existing buildings).
- Contracting with a third party Allowable Solutions provider (which could be private sector or a local authority).
- Making a payment into an Allowable Solutions fund which then invests in carbon abatement on their behalf.

The report considers options that would allow local authorities to manage their own scheme but these approaches are effectively discounted.

Housebuilders could have a completely free choice in choosing Allowable Solutions or they could be limited to choosing from a prescribed list. Alternatively a set of criteria could be set out and Allowable Solutions' measures could then be chosen provided they could demonstrate how they meet those criteria. The key considerations presented are the need for flexibility (e.g. to accommodate new ideas), clarity/transparency and an ability to verify that the carbon savings are real and 'additional'. One option would be a prescribed list, but the government favours more flexibility than this would provide. Another option would be to restrict measures to those in the built environment but the government is concerned this may exclude more cost-effective options. The government believes measures should not be supported outside the UK, but the consultation asks whether other spatial restrictions should be imposed, potentially even down to the locality of the housing development.

An alternative option considered is to use a criteria based approach, with suggestions including: complementarities; market additionality; cost effectiveness; carbon impacts and spatial criteria.

The consultation lists a number of potential measures that have been suggested to the government, but stresses that they are only 'indicative' and that the government is keen to maintain maximum flexibility:

- creation or expansion of sustainable energy infrastructure (e.g. district heating schemes, district heating pipework to connect to existing schemes / support new schemes, community Combined Heat and Power plant).
- retro-fitting of low carbon technologies in existing buildings, such as hard-to-treat solid wall insulation in existing housing, retro-fitting of existing communal buildings and non-domestic buildings.
- investment in low carbon electricity generation assets.
- investment in energy efficient infrastructure, such as low carbon street lighting.
- energy storage solutions and demand-side management.
- energy-from-waste plants, such as anaerobic digestion.
- low carbon cooling.

The need to be able to verify the resulting carbon savings is stressed, by both 'ex ante' and 'ex post' means (i.e. determined in advance or measured subsequent to implementation).

Allowable Solutions price cap: The government recognises that the pricing of Allowable Solutions is a key consideration, both for housebuilders and for those wishing to propose measures. Options briefly considered include allowing the market to set its own price and setting a single fixed price, but these are clearly not favoured. It wants to encourage competition and provide incentives for the market to deliver cost effective measures, so it does not favour a price floor. However it does like the idea of a price cap that would assist housebuilders to identify their maximum liability while also providing an opportunity for the market to bring forward Allowable Solutions at lower prices. To set a price cap the consultation proposes three possible options:

- Low Price Cap - **£36/tCO₂**: this has been derived using the carbon price floor, which could be an appropriate comparator for measures generating low carbon electricity.
- Central Price Cap - **£60/tCO₂**: this has been set in line with the non-traded carbon price series used in government policy appraisal, and is the 'preferred' option used in the accompanying '[development stage impact assessment](#)'¹⁹.
- High Price Cap - **£90/tCO₂**: this has been derived using the marginal on-site abatement technology, assumed to be PV (and using cost data from the Parsons Brinkerhoff [study](#)²⁰ carried out for DECC in 2012 during the FiTs Review).

Whatever price cap is adopted, it is likely to be reviewed regularly, probably every three years.

5.4 Housing Standards Review consultation

5.4.1 Introduction

As part of the Government's "Red Tape Challenge" DCLG launched its [Housing Standards Review](#)²¹ in August 2012, in response to views that a "large and complex range of local and national standards, rules and codes" add excessive cost and time to the house building process. Building on an [earlier review](#)²² chaired by Sir John Harman, DCLG established a number of working groups to focus on the standards applying in specific areas, with an overall Review Group assimilating their outputs, aided by an independent four member Challenge Panel.

5.4.2 Energy Working Group

The REA was invited to join the Energy Working Group. The majority view, from which REA dissented, was that Building Regulations should be the sole basis for setting energy standards in new build and that, therefore, energy standards within the *Code for Sustainable Homes* and Merton Rule type planning conditions imposed by local authorities should be phased out. However, given the state of flux on Building Regulations and zero carbon policy in early 2013, the Energy Working Group found it impossible to reach any definitive conclusions.

¹⁹ <https://www.gov.uk/government/publications/next-steps-to-zero-carbon-homes-allowable-solutions>

²⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/43083/5381-solar-pv-cost-update.pdf

²¹ <https://www.gov.uk/government/news/independent-panel-to-help-government-cut-housebuilding-red-tape-and-boost-growth>

²² <http://www.nhbc.co.uk/NewsandComment/Name,47338,en.html>

5.4.3 Panel reports

On 21 August 2013 DCLG published the [Challenge Panel's report](#)²³ which sets out the Panel's views on the current system of standards, their aspirations for the review and their response to the outcomes of the review process and working group proposals, as well as a [consultation](#)²⁴ on the Review that closed on 22 October 2013. It clearly demonstrates the direction the government wishes to go in: chapter 5, on Energy, describes the government's concerns that the *Code for Sustainable Homes* and use of 'Merton-type' planning conditions as enabled by the [Planning and Energy Act 2008](#)²⁵ can undermine the viability of housing development. It believes that progressively tightening Building Regulations is making these other standards redundant and is clearly unconcerned that this is not the case for on-site renewables and connected heat. It justifies the relatively small step imposed in 2014 by saying that it wants to avoid "developers being led up technological blind alleys" that could result from interim standards going part of the way towards 2016 zero carbon.

Two of the key statements in the consultation are as follows:

Paragraph 229: *"The government considers however that the progressive strengthening of Building Regulations means it is no longer appropriate for local plan policies to specify additional standards for how much of the energy use from homes should come from on-site renewables. Developers should be free to decide the most appropriate solutions to meet stronger Building Regulations."*

Paragraph 232: *"The government considers that with this proposed new approach, it will need to consider the role of the Planning and Energy Act 2008, which allows local authorities to set policies for on-site renewables on new homes. With the preferred Building Regulations only approach to energy standards, the government considers that the Act may need to be amended or removed."*

DCLG is apparently keen to hear views on this, especially from local authorities.

5.4.4 The one-sided Impact Assessment

The motivation behind the government's approach becomes clearer when one examines the [Impact Assessment](#) which cites the estimated extra costs to builders of meeting *Code for Sustainable Homes* or Merton-type requirements, as shown in the tables below.

Table 2 – Extra over costs associated with all standards in the *Code for Sustainable Homes*

Code Level	Flat (£)	2B House (£)	3B House (£)	4B House (£)
Code 1	75	0	0	0
Code 2	75	75	75	75
Code 3	118	143	143	143
Code 4	1,437	1,712	2,147	2,432
Code 5	14,075	16,050	16,485	16,770
Code 6	18,010	26,740	27,610	28,180

Source: EC Harris 2013: *Housing Standards Review*

²³ <https://www.gov.uk/government/publications/housing-standards-review-towards-more-sustainable-homes>

²⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/230250/1- Housing_Standards_Review_-_Consultation_Document.pdf

²⁵ <http://www.legislation.gov.uk/ukpga/2008/21/contents>

Paragraph 59 of the IA then goes on to say: “Applying the savings from the number of homes no longer having to incorporate the energy and process elements of the Code for Sustainable Homes results in midrange total present value benefits of **£92.6m** (range £85.2m - £101.4m) over the 10 year life of the policy. This results in an equivalent annual net benefit to business of **£10.8m** (range £9.9m - £11.8m).”

Table 9 – Planning and Energy Act - extra cost, per dwelling, of on-site energy requirement

Planning condition under the Planning and Energy Act	10% renewable rate	20% renewable rate
2B Apartment	£1,560	£3,120
2B House	£1,400	£2,800
3B House	£1,850	£3,608
4B House	£2,400	£4,600

Source: EC Harris 2013: Housing Standards Review

Paragraph 68 of the IA then goes on to say: “The savings from removing renewable energy targets from local plans have been estimated over the ten years outlined in the table above. When aggregated using the assumptions outlined above, the total benefit from savings due to the removal of renewable energy targets is estimated at a present value benefit over 10 years of **£195.4m** (range £181.2m - £210.7m). This results in an equivalent annual net saving to housebuilder of **£22.7m** (range £21.1m - £24.5m)”.

It is therefore clear that the government’s motivation is to save builders the costs of these two measures, estimated at **£288million over 10 years**, the majority of which would have resulted from application of on-site renewables and connected heat. The consultation and impact assessment express no concern over the resulting loss to the environment through increased carbon emissions, or the impact on renewable energy goals and future residents’ energy bills – the sole concern appears to be the costs incurred by builders. The Impact Assessment may be contrary to the rules in the Treasury ‘green book’, which specifies that all costs and benefits should be assessed.

The Building Regulations model uses the ZCH energy profile for different house types to estimate the cost and benefits of installing microgeneration technologies and energy efficiency measures in new buildings. The calculations use Solar PV as a proxy and therefore do not assess the true costs and benefits of installing other microgeneration.

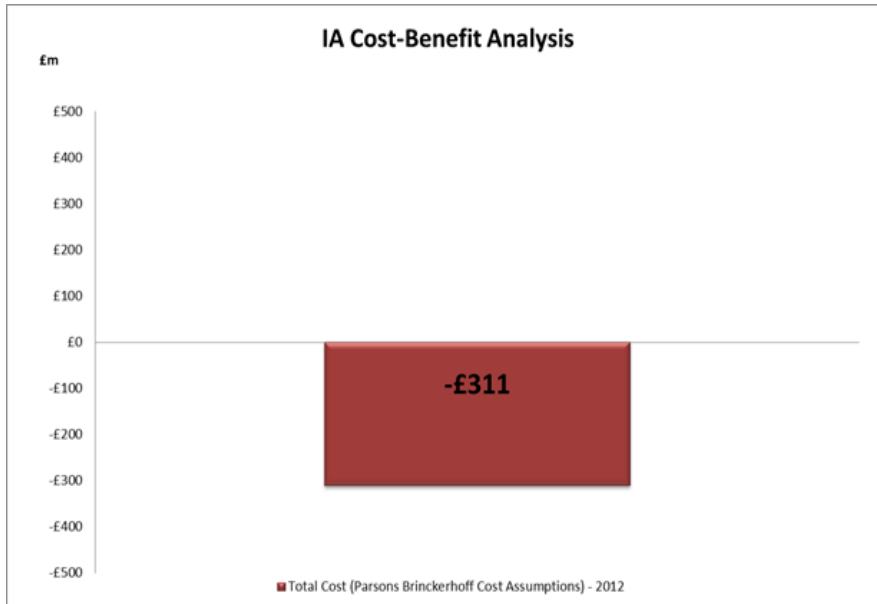
In the 2012 Consultation Impact Assessment, the cost of the ‘halfway point’ policy was stated to be £453 million – i.e. it would cost housebuilders that amount to comply with it. According to the Micropower Council, this figure was based on out-of-date figures – the costs for installing solar PV had fallen by nearly 50 percent since this time. The real cost to housebuilders would in fact be £317 million.

The Impact Assessment on the ‘halfway point’ policy also failed to take into account the benefits to consumers of the policy, contrary to the rules in the Treasury ‘green book’, which specifies that all costs and benefits should be assessed. This meant that benefits to consumers of fuel savings of £375 million were ignored. If the benefits to consumers were taken into consideration and the real cost to housebuilders was used the net benefit to society would be £58 million.

The 2013 Final Impact Assessment uses updated Parsons Brinckerhoff figures for Solar PV but only to 2012 and therefore already out of date in a rapidly changing market. Based on these the costs would

be £311 million. According to the Micropower Council, if the figures are updated using the Parsons Brinckerhoff 2014 cost estimates (i.e. when the regulations come into force) the costs would be £272 million. This is close to anecdotal evidence on current prices.

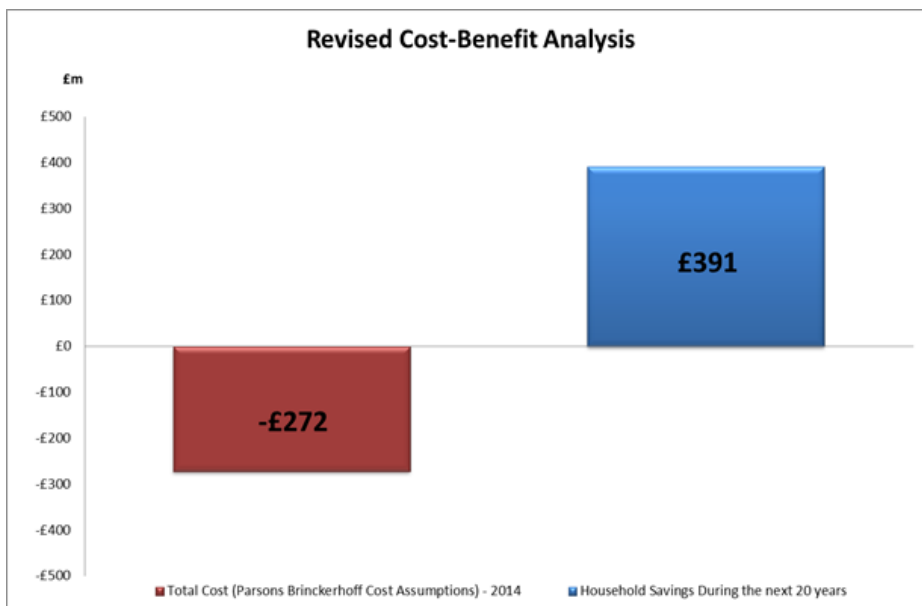
Table 10: Parsons Brinckerhoff 2012 estimates (DCLG September 2013 IA)



£311m is the cost of installing PV systems in new buildings using Parsons Brinckerhoff 2012 estimates used in the DCLG September 2013 Impact Assessment. No allowance is made by DCLG for any benefits.

According to the Micropower Council, £272m would be the cost of installing PVs if Parsons Brinckerhoff 2014 cost estimates were input in the model. £391m is the household savings (using DCLG September 2013 revised dwelling assumptions). Therefore £119m is the net benefit.

Table 11: Micropower Council revised figures



6 Initial reactions to the 2013 DCLG plans

6.1 Housebuilders

The major housebuilders and their trade associations have been broadly supportive of the Housing Standard Review conclusions, as set out by DCLG. Recently, a number of strong views have been heard from the building industry suggesting that carbon compliance limits should be abandoned in favour of mitigating all emissions through Allowable Solutions, once 'zero carbon' energy efficiency standards have been implemented.

6.2 Local authorities and the London Mayor – it “may have an impact”

The London Mayor, Boris Johnson, replied to a question by Murad Qureshi on 11 September 2013 that the Government's Housing Standards review currently out to consultation *may have an impact* on the Mayor's carbon dioxide targets and elements of his 'be lean' approach to housing through the planning system in the future. See annex for full Q&A.

While it seems too soon for Local Authorities to express an official position their staff have expressed disappointment in various on line forums for a about the removal of a right to Allowable Solution monies and the removal of their powers under the Planning and Energy Act 2008.

6.3 ACE, REA, STA, MPC, and CHPA

6.3.1 “Save the Planning and Energy Act and Zero Carbon Homes”

The Renewable Energy Association, Micropower Council, Solar Trade Association and Association for the Conservation of Energy issued [a joint press release](#) on 21 August 2013 critical of the proposal by DCLG to repeal the Planning and Energy Act 2008. The Combined Heat and Power Association issued its own press release critical of the DCLG position a short while later. Since then, all these organisations have agreed to pool their resources in a joint local energy campaign to save the Planning and Energy Act 2008 and the trajectory for zero carbon buildings.

The view of the group is that the recent update to Part L of the national Building Regulations, weaker than the minimum consulted on a few months earlier, did not impose strict enough carbon reduction targets to incentivise the integration of on-site renewables or gas CHP, into new properties. DCLG has admitted this in its Impact Assessment. The Planning and Energy Act is therefore the only policy tool explicitly incentivising on-site renewables and gas CHP in new buildings, and must remain available to local authorities at least until Building Regulations are sufficiently strong to drive uptake of these technologies.

6.3.2 Is district heating threatened?

While the Housing Standards Review document explicitly points out that LPAs have powers under the National Planning Policy Framework (NPPF) to direct developers on adopting the technology; these powers can be altered more easily by the Secretary of State for Communities and Local Government than the powers given to LPAs in the Planning and Energy Act 2008.

6.3.3 Growth and investment – GLA report

The campaign group maintain that the Green Energy Industry case, that improved standards leads to more jobs and investment, increase capacity, and create better buildings; was not adequately examined in the Housing Standards Review Impact Assessment.

The best example where improved standards have led to more local energy investment is London. For some time, under both London Mayors, the GLA has imposed superior carbon standards on new development than building regulations. This has been apparently done without restricting new development. A new report on the implementation of the London Plan Energy Policy highlights that the planning policies have helped secured in 2012:

- Circa £20 million of investment in new, high efficiency combined heat and power (CHP) plant able to produce 29MW of electricity and a similar amount of heat.
- 74MW of cumulative CHP electrical capacity has been secured through the planning process since 2010 to the end of 2012, broadly equivalent to the capacity required to supply 150,000 homes.
- Circa £133 million of investment in heat network infrastructure for approximately 53,000 communally heated dwellings.
- Regulated CO2 emission reductions of 36 per cent improvement over 2010 Building Regulations requirements for developments. This percentage improvement is greater than the 25 per cent target for new developments set out in Policy 5.2 of the London Plan for the period 2010 to 2013.

These figures put in perspective the figures issued by DCLG for the cost of carrying forward present policies, including retention of the Planning and Energy Act. They show that in London alone enough "value added" is provided by continuing present policies to easily compensate for the extra costs of building a lower carbon house to London rules.

London Mayor, Boris Johnson, recently stated that the Housing Standards review currently out to consultation may have an impact on his CO2 targets and elements of his 'be lean' approach to housing through the planning system in the future.

6.4 DECC – carbon targets, green energy capacity, community energy, fuel poverty

The Climate Change Act requires the UK to reduce its greenhouse gas emissions by 80% relative to 1990. Clearly any new housing or non-domestic buildings constructed now are relevant to achieving this target, as well as to shorter-term targets. The Renewable Energy Directive requires the UK to achieve 15% of its energy consumption from renewable energy by 2020, from a starting point of 1.3% in 2005. The most recent data for 2012 puts the UK at 4.1%, having just missed its first interim target under the directive. Consequently renewable energy use needs to grow by at least 16% annually if the 2020 target is to be achieved.

Energy Minister Greg Barker has spoken of his determination to encourage a "decentralised *power to the people* energy revolution" made up of households and businesses producing their own energy. Addressing the Conservative Party conference on 30 September 2013, the Minister said there are already more than half a million local energy systems installed in homes and businesses and growing this sector can challenge the dominance of the Big Six energy suppliers, bringing down energy bills²⁶. This followed the release of the community energy strategy by his department.

²⁶ <http://www.businessgreen.com/bg/news/2297602/greg-barker-calls-for-decentralised-energy-revolution>

6.5 Is zero carbon and the Planning and Energy Act the last straw for the housebuilders?

6.5.1 What are the real costs to the housebuilders?

Many of the arguments used on behalf of the housebuilders against higher standards, of any type, centre on increase costs of construction and the logic that this will naturally reduce the number of new homes being built. These arguments are simplistic and disguise the complex world of the UK property market.

The data shows that more housing is being built now than in the recession²⁷ with a total of 67,422 new homes were registered in the first half of this year with the National House Building Council (NHBC), the highest such figure since 2008. NHBC stated that its registrations, which reflect builders' housing starts, account for 80 percent of the UK new build market.

On 15 August 2013 the latest national statistics on house building in England were released by DCLG²⁸. House building starts in England were estimated at 29,510 in the June quarter 2013, 6 per cent higher than the previous quarter; completions were 27,270 in the same quarter, 9 per cent higher than the previous quarter.

Elsewhere in this report it is set out how the cost of Zero Carbon Homes was originally expected to be borne by the sellers of land to the housebuilders²⁹. It can be argued that now landowners and housebuilders are essentially the same, as the major firms acquired extensive land banks before the recession. So, higher standards would be squeezing their margins, however one allocates cost. But this depends on the present value of the land, how much of its value was written down during the recession³⁰, and what value it has now on the housebuilders' books.

In 2008, the 20 biggest UK housebuilders collectively lost £4bn. In 2012, they collectively posted a profit of £538.7m³¹. It is beyond the resources available to the authors of this report to go through the published accounts of the major housebuilders to estimate the internal mark up on their landholdings, however, it is not beyond the resources of the Government to do so, to measure how effective their policy changes will be.

The question is, will the housebuilders, effectively go on a capital strike if higher standards are imposed on them, or will it make no difference at all?

6.5.2 Outstanding planning permissions and land banks

Speculative builders have built between 140,000 and 60,000 dwellings a year in England since 2004, with the peak in 2004 and the trough in 2010³². Figures presently seem to be rising towards the 100,000 plus dwellings a year. As Building Regulations of the time apply to a site once it is started, however trivial the building work, it means there is a time lag in new Building Regulations having a

²⁷ <http://www.telegraph.co.uk/finance/newsbysector/constructionandproperty/10203032/Number-of-new-homes-hits-5-year-high-says-industry.html>

²⁸ <https://www.gov.uk/government/publications/house-building-in-england-april-to-june-2013>

²⁹ It has been pointed out that we should not feel too sorry for the landowners of greenfield sites, as agricultural land rises considerably in value when planning permission is given for construction.

³⁰ Was it the housebuilders shareholders who paid for the overvaluation of land pre 2009?

³¹ <http://www.theconstructionindex.co.uk/market-data/top-20-house-builders/2012>

³² http://england.shelter.org.uk/data/assets/pdf/file/0011/689447/Solutions_for_the_housing_shortage_-_FINAL.pdf

significant effect, sometimes of several years. Therefore, it is helpful to examine if the amount of land housebuilders control where they could carry on building into the future under present building regulations.

On 22 August 2013 *Inside Housing* reported³³ that planning permissions had been given in England for 400,000 homes yet to be built. A study, commissioned by the Local Government Association, shows 6,500 schemes with planning permission were yet to be completed by 31 March, consisting of 381,390 homes. Building work is yet to begin on 61 per cent of the schemes, with the average completion time sitting at 27 months.

Natalie Elphicke, a non-executive director of building society, recently wrote on *ConservativeHome* website³⁴ that “the housebuilding industry itself has enough planning permissions comfortably to build out for the next five years and more.”

On the basis of their present land banks and planning permissions, and if the housebuilders manage to build an average of 100,000 dwellings a year for the next four years, then it will be 2017 before any Zero Carbon Homes are built. If more land is acquired by the builders before 2016 then Zero Carbon Homes, in any quantities, could be pushed further into the future.

Around half a million homes will be built under 2010 and 2013 Building Regulations, unless standards are raised by local planning authorities citing the Planning and Energy Act. If the Act is removed it could also have implications for houses yet to be built that have received planning permission with conditions imposed under powers contained in the Act.

6.6 Have alternatives been seriously considered?

6.6.1 Keep things as they are, while doing a proper investigation?

The lack of consideration of benefits to society in the Housing Standard Review consultation and impact assessment has already been highlighted. The local energy industry case that improved standards leads to more jobs and investment, increased capacity and creates better buildings; has not been adequately examined, nor were the carbon savings priced. DCLG may have broken government rules on impact assessments with the lack of balance in cost benefit terms. There should be a proper impact assessment before any of the current proposals are implemented.

6.6.2 The Scottish option?

Policies north of the border were not apparently considered either, at least not publicly. If the driver for DCLG is to remove red tape then a simplification of standards and more standardisation across England could be achieved by adoption of the sustainability requirements of the [Scottish Building Regulations \(Section 7\)](#)³⁵. These should be examined to see if they offer a way forward for adoption in England. In effect Scotland operates a system whereby the regulations define a minimum sustainability standard (Bronze) but then allow planners and funding bodies to specify a more demanding standard from a choice of well-defined options, the top one (Platinum) being equivalent to true zero carbon.

This approach combines features from both the *Code for Sustainable Homes* and the Planning and Energy Act 2008 into Building Regulations, in a straightforward package that provides clarity and

³³ <http://www.insidehousing.co.uk/development/400000-unbuilt-homes-with-planning-permission-in-england/6528243.article>

³⁴ <http://www.conservativehome.com/platform/2013/09/natalie-elphicke-2.html>

³⁵ <http://www.scotland.gov.uk/Topics/Built-Environment/Building/Building-standards/techbooks/techhandbooks>

choice. It would allow rationalisation to take place so that the Building Regulations could stand alone, whilst allowing the minimum level to be set at whatever level was appropriate at the time.

7 Conclusions

The DCLG/housebuilders position – if held to – will make it harder to reach zero-carbon buildings, and there is concern in some quarters that these will be quietly dropped or given over to 100 percent Allowable Solutions, under control of the builders rather than the community.

Uniformity of a low minimum standards means lost opportunities to reduce carbon emissions in areas where the property market is able to support it. It is also anti localism. Around half a million homes will be built under 2010 and 2013 Building Regulations over the next four to five years, unless standards are raised – where viable – by local planning authorities citing the Planning and Energy Act.

In 2012, the 20 biggest UK housebuilders collectively posted a profit of £538.7m. The Government should investigate the major housebuilders accounts to estimate the internal mark up on their landholdings and whether Zero Carbon Homes, and the Planning and Energy Act, can actually be afforded out of land values, as was originally intended.

The legal rights that LPAs have under the Planning and Energy Act 2008 to direct new development with regards to district heating should be retained. Other parts of the Planning and Energy Act 2008 should only be amended when carbon compliance standards are no less demanding than those recommended by the Zero Carbon Hub have been incorporated into Building Regulations. A solution worth looking at would be to incorporate graduated requirements within Building Regulations now, as in Scotland.

Around half a million homes will be built under 2010 and 2013 Building Regulations, unless standards are raised by local planning authorities citing the Planning and Energy Act.

For these reasons alone, before committing, DCLG should reflect further on its current plans and properly investigate their full effects, rather than repenting at leisure.

8 Annexes

8.1 Planning and Energy Bill Committee (2007/8)

Committee Membership and attendance (out of 1)

Members of Parliament:

Peter Atkinson (1) Chairman

Gregory Barker (1)

Dan Rogerson (0)

Caroline Flint (1)

Julia Goldsworthy (1)

Michael Jack (0)

John Battle (0)

Bill Wiggin (1)

Colin Challen (1)

Michael Meacher (0)

Nick Hurd (1)

Elliot Morley (0)

Michael Fallon (1)

Alan Whitehead (1)

David Drew (0)

Chris Ruane (1)

Hugh Bayley (0)

8.2 Changes to Building Regulations – Boris Johnson

Question number 3195/2013

Meeting date 11/09/2013

Question by Murad Qureshi to Mayor of London

How will the Department for Communities and Local Government's recent proposals to dilute 2013 building regulation Part L energy efficiency targets affect the Mayor's own 'be lean' requirements in the London Plan?

Written response from the Mayor

The Government's published update to Part L of the Building Regulations will not affect the application of the Mayor's carbon dioxide reduction targets and energy hierarchy (the first step being 'be lean') as set out in Policy 5.2 of the London Plan, as the Mayor's targets and energy hierarchy have been adopted through the planning system and therefore are also negotiated and secured through the planning system. The Government's diluted Part L of the Building Regulations does not amend adopted planning policy.

*However, the Government's Housing Standards review currently out to consultation **may have an impact** on the Mayor's carbon dioxide targets and elements of his 'be lean' approach to housing through the planning system in the future.*

8.3 Commitment to Zero Carbon Homes by 2016 – Grant Shapps

Published on 28 July 2010 in Builders Merchant Journal ³⁶

The Coalition government has committed to ambitious eco-standards to ensure all new homes are zero carbon from 2016, Housing Minister Grant Shapps said today

Under the government's aims, councils and developers could be given much more flexibility to enable them meet eco-standards.

Shapps said he will look at ways builders could make payments to fund community energy projects, such as wind farms and district heating schemes, to meet their obligations to reduce carbon emissions from new homes - this could give developers and councils more freedom and flexibility to decide how to meet their zero-carbon obligations.

Minimum standards for energy efficiency measures such as cavity wall insulation will also be set through future revisions to building regulations. These will be based on those revisions outlined in a recent consultation on the *Code for Sustainable Homes*, which set key benchmarks for the sustainability of new homes.

Shapps said: "This is about meeting tough environmental standards, but not dictating how every home should be built. Councils and developers together are in the best position to decide how best to meet these standards, so we are looking at giving them the flexibility and a range of options to do this.

"We are committed to all new homes being zero-carbon from 2016, and have the right mix of measures in place. First and foremost a zero carbon home must use as little energy as possible, which is why I will shortly announce a minimum standard for key energy efficiency measures like loft and cavity wall insulation".

³⁶

www.buildersmerchantsjournal.net/news/news.asp?id=7105&title=Government+commits+to+zero+carbon+homes+by+20

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8.4 Grant Shapps sets out role of community energy fund for Zero Carbon Homes

Published on 20 December 2010 in Building4change website³⁷

Housing minister says fund has part to play for housing, and similar framework will apply for non-domestic buildings

Housing minister Grant Shapps today issued a statement confirming that developers will be able to pay into a community energy fund, where contributions are spent on local carbon reduction projects, as a way of reaching development carbon emissions targets.

The *Code for Sustainable Homes* set out a trajectory for all new homes to be built by 2016 to a zero-carbon definition that relied on on-site emissions reduction. CLG is set to publish a new definition of zero carbon early next year, once it has taken into account recent work by the Zero Carbon Hub.

In his statement Shapps said that areas can already plan for zero carbon development, using powers in the ***Planning and Energy Act 2008***, where it is reasonable to do so and is consistent with national planning policy, including relevant requirements on feasibility and viability, and relevant regulation.

On the community energy fund, he said: "The recently confirmed Community Infrastructure Levy provides a mechanism for local authorities to achieve reductions in carbon dioxide emissions locally, through investment in local renewable energy infrastructure that supports development in their area. It will be important that any approach operates in a way that demonstrates transparently that real carbon savings are achieved. We will now work with local authorities and industry on how best to do that."

Shapps said a consistent framework will be created for both new homes and non-domestic buildings, and confirmed the target for all new non-domestic buildings to be zero carbon by 2019. But he said government will consider taking a different approach on some elements, where diversity of non-domestic stock or the nature of the commercial market justifies it. Government today published the findings of the consultation on policy options for zero carbon new non-domestic buildings concluded earlier this year, carried out by UK Green Building Council.

Shapps added: "Off-site measures could be supported using the same approaches as for homes, and will investigate this possibility further so it will be open for local areas to use a Community Energy Fund through the Community Infrastructure Levy to achieve the zero carbon standard for non-domestic buildings should they wish to do so."

Paul King, chief executive of UK Green Building Council, said:

"Building on robust levels of fabric energy efficiency and sensible provision of on-site renewable energy, this is a pragmatic way to deliver zero carbon developments and should give local authorities and local communities a central role in delivering low and zero carbon infrastructure and deciding what solutions work best for them."

³⁷ <http://www.building4change.com/page.jsp?id=606>