

READING BOROUGH COUNCIL

REPORT BY DIRECTOR OF ENVIRONMENT AND NEIGHBOURHOOD SERVICES

TO:	STRATEGIC ENVIRONMENT, PLANNING AND TRANSPORT COMMITTEE		
DATE:	24 NOVEMBER 2015	AGENDA ITEM:	15
TITLE:	WITHDRAWAL OF THE CODE FOR SUSTAINABLE HOMES		
LEAD COUNCILLOR:	COUNCILLOR PAGE	PORTFOLIO:	STRATEGIC ENVIRONMENT, PLANNING AND TRANSPORT
SERVICE:	PLANNING	WARDS:	ALL
LEAD OFFICER:	MARK WORRINGHAM	TEL:	0118 9373337
JOB TITLE:	PRINCIPAL PLANNER	E-MAIL:	mark.worringham@reading.gov.uk

1. EXECUTIVE SUMMARY

This paper highlights the withdrawal of the Code for Sustainable Homes, an assessment method for the environmental performance of new housing, in a ministerial statement on 25th March 2015. The Council's existing planning policies on the Code for Sustainable Homes can therefore no longer be applied, although an energy performance equivalent to our policy requirements can still be required under transitional arrangements.

The paper recommends asking the Secretary of State to clarify the status of those transitional arrangements and to reconsider preventing local planning authorities from setting their own sustainability standards for new homes, now that the Government's aim of introducing zero carbon homes has been abandoned.

2. RECOMMENDED ACTION

- 2.1 That the Council write to the Secretary of State for Communities and Local Government to express concern about the removal of the Code for Sustainable Homes and the abandoning of the commitment to zero carbon homes;
- 2.2 That the Council further ask the Secretary of State to clarify whether the transitional arrangements for energy efficiency for new homes set out in the ministerial statement of 25th March 2015 now continue until specifically withdrawn.

- 2.3 That the Council further ask the Secretary of State for Communities and Local Government to consider whether, in the absence of any lead on the sustainability of new homes from Government, local planning authorities should be able to once again set their own sustainable design and construction standards for new dwellings in their local policies.

3. POLICY CONTEXT

- 3.1 The Code for Sustainable Homes is a method for assessing the environmental performance of new homes. It covers nine different categories - energy and CO₂ emissions, water, materials, surface water run-off, waste, pollution, health and wellbeing, management, and ecology.
- 3.2 The Council, through policy CS1 of its Core Strategy (adopted 2008) and its Sustainable Design and Construction SPD (adopted 2011) currently requires that schemes of less than 10 dwellings meet the Code Level 3, whilst schemes of 10 dwellings or more achieve 50% Code Level 4 and 50% Code Level 3. This is generally enforced through the information submitted at planning application stage, and application of a condition to any planning permission.

4. THE PROPOSAL

(a) Current Position

- 4.1 On 25th March 2015 the Secretary of State for Communities and Local Government used a ministerial statement to withdraw the Code for Sustainable Homes. This had previously been consulted on as part of a rationalisation of the various standards that are to be applied to new housing development, with the consultation also covering matters such as security, accessibility and internal space.
- 4.2 In terms of sustainability, the Government's intention was to replace the Code for Sustainable Homes with measures in the Building Regulations. However, these measures would relate to only two aspects - water efficiency and energy. Any other aspects of the Code, such as materials or pollution, would no longer be covered. It has been made clear that local planning authorities cannot set any housing standards other than those offered at national level.
- 4.3 For water efficiency, a new voluntary standard of 110 litres per person per day has been introduced in the Building Regulations from 1st October 2015. These standards will be applied in those authorities that have 'opted in' through a policy in their Local Plan. If an authority has not included such a policy, which is currently the case in Reading, water use

will be in accordance with the existing minimum Building Regulations standard (125 litres per person per day). Transitional arrangements were in place to allow us to continue to seek water efficiency standards equivalent to our Code for Sustainable Homes policies, but these ended on 1st October.

- 4.4 For energy, at the time the Code was withdrawn, the Government intended to introduce zero carbon homes through the Building Regulations at some point in 2016. The transitional arrangements were therefore that local planning authorities could continue to apply energy requirements equivalent to their Code policies until zero carbon homes were introduced. For energy, Code Level 3 is now equivalent to the Building Regulations (as amended in 2013) in any case, meaning that only the 50% of major developments that were subject to Code Level 4 are affected. The equivalent to Code Level 4 is a 19% increase over part L of the Building Regulations 2013.
- 4.5 However, the 'Fixing the Foundations' paper published in July 2015 removed any commitment to zero carbon homes. It stated that:
- "The government does not intend to proceed with the zero carbon Allowable Solutions carbon offsetting scheme, or the proposed 2016 increase in on-site energy efficiency standards, but will keep energy efficiency standards under review, recognising that existing measures to increase energy efficiency of new buildings should be allowed time to become established" (paragraph 9.17).
- 4.6 There has been no guidance on how this proposed change affects the transitional arrangements outlined in paragraph 4.4 above. However, 'Fixing the Foundations' is a statement of intent rather than a policy statement as such. Officers' view is therefore that we should continue to apply the equivalent energy levels to the Code Level 4 for 50% of major housing schemes as set out above, until such time as those transitional arrangements are formally removed. Applicants will be required to demonstrate how this has been met by following the energy hierarchy in an Energy Statement in line with our existing planning application requirements.
- 4.7 The above changes apply to new applications, meaning that the Code for Sustainable Homes can continue to be applied where it was a requirement of a planning condition pre-dating the March 2015 statement. However, in practice, applicants are making applications to vary these conditions, and these need to be treated as new applications, subject to the above.
- 4.8 The sustainable design and construction policy requirements for non-residential buildings, under the BREEAM system, are not affected by any of these changes. Nor are some of the more general sustainability requirements for all types of development including residential, such as the need to consider incorporation of decentralised energy or to include

sustainable drainage systems. A Sustainability Statement is still required alongside major applications that demonstrates compliance with these policies.

(b) Option Proposed

4.9 It is firstly proposed that the Council seeks to apply the voluntary water efficiency standard in the Building Regulations of 110 litres per person per day, by inclusion of a policy in a new Local Plan. The Local Plan Issues and Options paper is the subject of another Item to this meeting (Item X), and this document raises the possible inclusion of such a policy as a matter for consultation. The recommendations in that report therefore cover this matter.

4.10 Secondly, it is considered that it is necessary to write to the Secretary of State for Communities and Local Government to:

- (a) Express concern about the recent changes to the Code for Sustainable Homes and the abandonment of the commitment to zero carbon homes;
- (b) Ask for clarification that the Council's interpretation that the transitional arrangements for seeking energy use levels equivalent to existing Code for Sustainable Homes policy levels are still in place is correct; and
- (c) Press the case for local planning authorities being able to set their own sustainability standards for new homes in the light of the expected abandoning of the implementation of zero carbon homes.

4.11 The sustainability of new dwellings is an important element of our overall commitment to tackling climate change. The Council has signed the Nottingham Declaration on climate change, a public statement of intent to work with the local community and businesses to respond to the challenges of climate change. Reading's Climate Change Strategy, Reading Means Business on Climate Change 2013-2020, aims to reduce the carbon footprint of the borough in 2020 by 34% compared with levels in 2005, and in order to achieve this target we need to ensure that we have all the tools at our disposal to ensure that new development contributes to this. Therefore, we consider that there are strong reasons why the Council, and other local planning authorities, should be able to set appropriate standards for their local areas, subject to local viability considerations.

(c) Other Options Considered

4.16 There is one alternative option that could be considered, which is to continue to apply our Code for Sustainable Homes policies regardless of the ministerial statement.

4.17 The changes that removed the Code for Sustainable Homes were made by way of a ministerial statement. The position in the law is that decisions

on planning applications are made in accordance with the development plan unless material considerations indicate otherwise. Therefore, there is a case for arguing that our existing policies that require compliance with the Code take precedence over any ministerial statement. There is potentially some validity to this argument, underlined by the recent decision on the judicial review into changes to affordable housing brought by this Council and West Berkshire Council, which was a similar situation of a ministerial statement being used to override local policies.

- 4.18 However, there are considerable risks with this approach, not least that it would likely lead to significant appeals on major sites, which could carry a considerable financial risk to the Council. In addition, the removal of the Code means that in practice very few Code for Sustainable Homes assessors are still offering the service, which would make it difficult for applicants to comply with our requirements.

5. CONTRIBUTION TO STRATEGIC AIMS

- 5.1 Ensuring that the design and construction of new homes is sustainable helps to achieve the priority of keeping the town clean, safe, green and active in the Corporate Plan 2015-2018.

6. COMMUNITY ENGAGEMENT AND INFORMATION

- 6.1 Engagement was undertaken by the Secretary of State on the proposal to rationalise housing standards, including removal of the Code for Sustainable Homes. However, this was in the context of moving towards zero carbon homes in the Building Regulations during 2016.
- 6.2 Reading Borough Council has not carried out any engagement on the changes to the Code for Sustainable Homes. However, it will be carrying out engagement on the Local Plan Issues and Options (see the specific item to this meeting) which includes asking whether a policy should be included that opts in to the higher water efficiency standards in the Building Regulations. The Local Plan Issues and Options will also consult more generally on sustainability policies.

7. EQUALITY ASSESSMENT

- 7.1 No Equality Impact Assessment is required.

8. LEGAL IMPLICATIONS

- 7.1 The withdrawal of the Code for Sustainable Homes has been undertaken through a ministerial statement rather than any change in legislation. Under section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004, decisions on planning applications must be taken in accordance with the development plan unless material considerations indicate otherwise. One could take the view therefore that our policies have primacy and

continue to require compliance with the Code for Sustainable Homes, but in practice this would risk significant adverse appeal decisions.

9 FINANCIAL IMPLICATIONS

- 9.1 Any correspondence with the Secretary of State on this matter will be carried out within existing budgets as will production of the local plan including sustainability policies.

Value for Money (VFM)

- 9.2 Any correspondence with the Secretary of State on this matter will have a minimal cost, which represents value for money given the significance of this issue.

Risk Assessment

- 9.3 There are no direct financial risks associated with the report.

BACKGROUND PAPERS

- Statement by the Secretary of State for Communities and Local Government (25th March 2015)¹.
- Core Strategy (adopted 2008, amended 2015)
- Sustainable Design and Construction Supplementary Planning Document (adopted 2011)
- Reading Means Business on Climate Change 2013-2020

¹ <https://www.gov.uk/government/speeches/planning-update-march-2015>