

# Policy-making: How to plan for Net Zero?

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# The context

Net zero, why buildings matter, UK progress and the role of local authorities

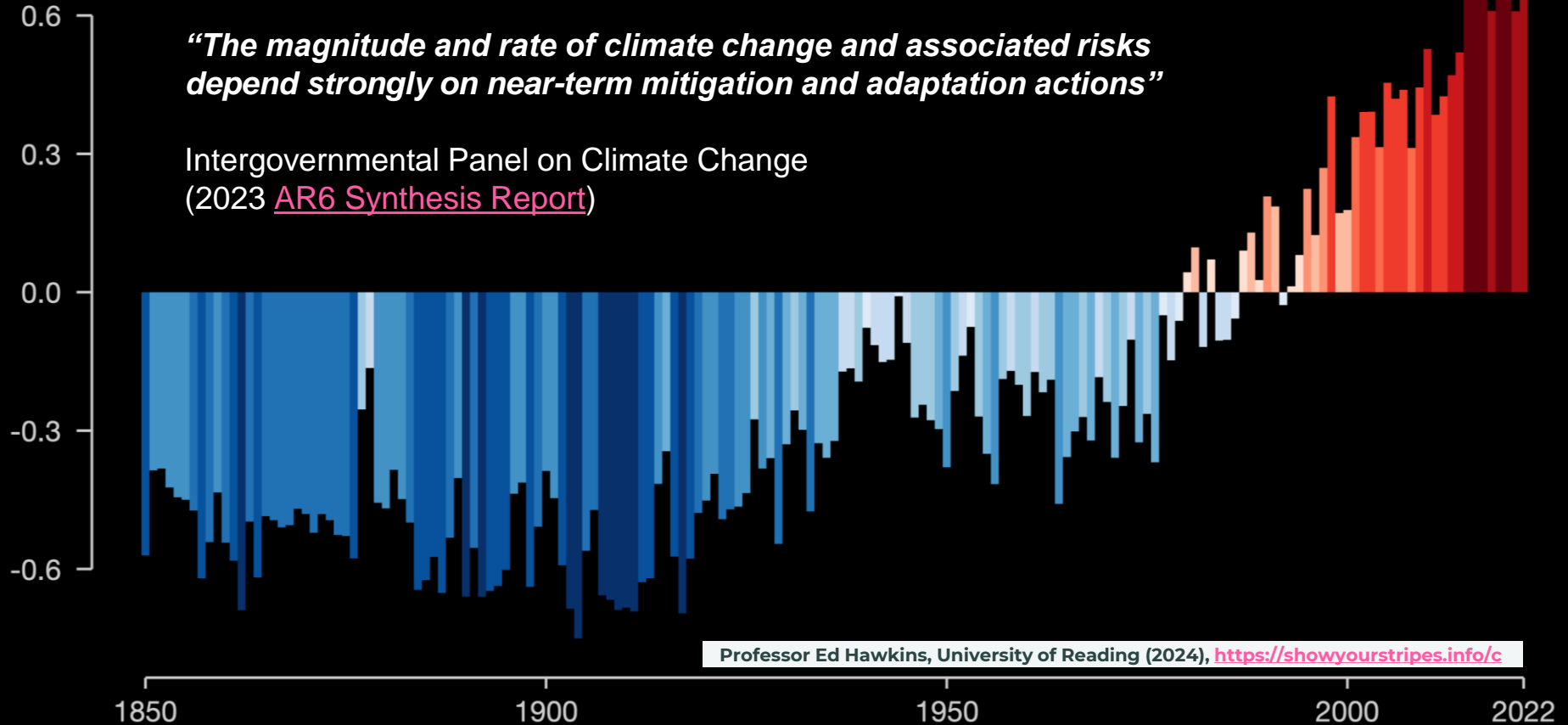


# Global temperature change

Relative to average of 1971-2000 [°C]

***“The magnitude and rate of climate change and associated risks depend strongly on near-term mitigation and adaptation actions”***

Intergovernmental Panel on Climate Change  
(2023 [AR6 Synthesis Report](#))



Professor Ed Hawkins, University of Reading (2024), <https://showyourstripes.info/c>

# Net zero: statutory context

- **Duty** to ensure UK's net carbon account for 2050 is 100% lower than 1990 base line: s.1(1) CCA 2008.
- SoS **must set regular carbon budgets**, taking into account advice from Climate Change Committee, and ensure that the net UK carbon account for each budgetary period does not exceed the carbon budget: ss. 4, 9 CCA 2008.

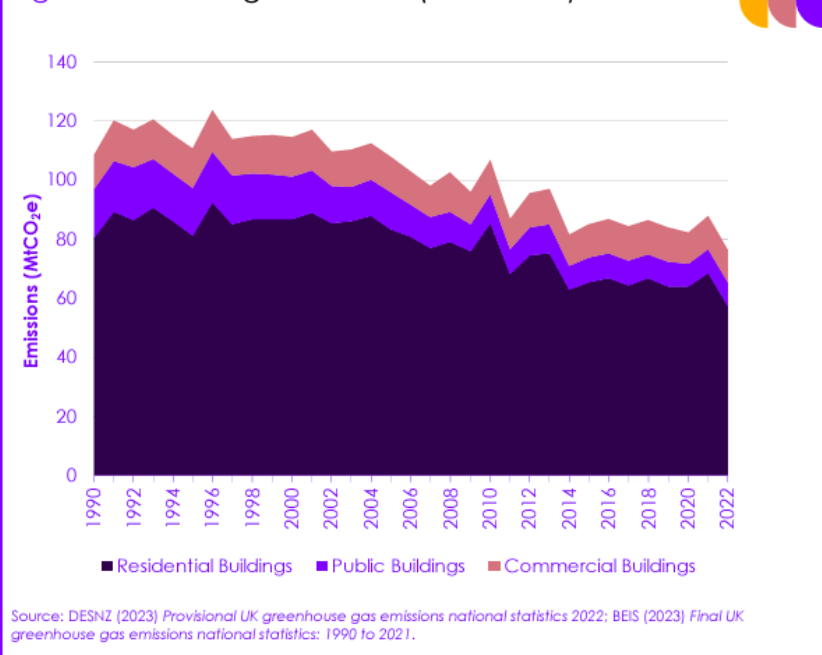


# Why buildings matter

- **Buildings and construction sector amongst most polluting:** responsible for 37% of global emissions and 17% of UK emissions.
- To meet UK's domestic climate commitments **requires a 30% reduction** in total energy demand in buildings by 2035 compared to 2021 levels.
- The **next ten years** are the **crucial period** to decarbonise buildings.

**Sources:** [UN](#); CCC Progress Report 2023, p.140 & p.143.

Figure 5.3 Buildings emissions (1990-2022)



CCC's [Progress Report](#) (2023), Fig. 5.3, p.148

# How is the UK doing?

- The Government has laid out **broad ambitions** for the buildings sector, but **details of policies** that will achieve these **are largely missing**.
- UK continues to build new homes to standards which **do not align** with the Net Zero target.
- On energy efficiency, overall energy demand will **drift further off track without faster deployment** of energy efficiency measures in homes.
- Policy progress in the buildings sector is **not on track**

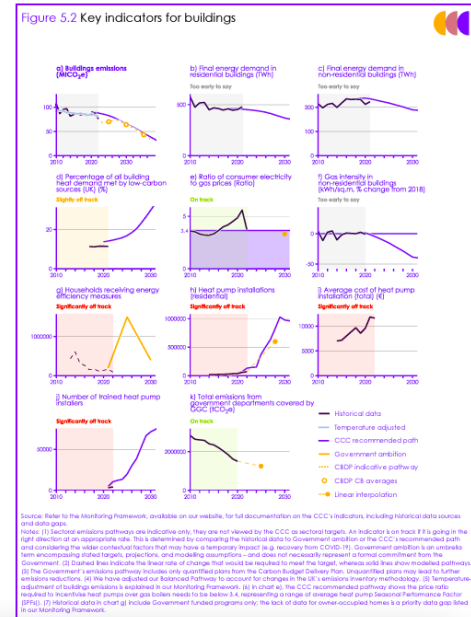


Fig. 5.2. Key indicators for buildings, CCC's 2023 Progress Report, p.147. The repeated red text says it all: **"significantly off track"**.

# Why do local authorities matter?

**300 LAs**

**2-5% local  
emissions**

**Knowledge  
& networks**

**50%+  
emissions  
cuts**

**1/3 UK's  
emissions**

**Maximise  
opportunity**

Source: Climate Change Committee, '[Local Authorities and the Sixth Carbon Budget](#)' (2020)

# Plan-making statute and policy

- Development plan documents **must include policies** designed to secure that development of land in area contributes to the **mitigation** of, and **adaptation** to, climate change: s.19(1A) PCPA 2004
- Plans should take a **proactive approach** to **mitigation** of, and **adaptation** to, climate change. (NPPF ¶158)
- Policies should support **appropriate measures** to ensure **future resilience** of communities and infrastructure to climate change impacts. (NPPF ¶158)





# PEA 2008: LPAs' power to set energy efficiency standards

LPAs may in development plan documents include policies imposing **reasonable** requirements for–

- (a) a proportion of energy used in development in their area to be energy from renewable sources in the locality of the development;
- (b) a proportion of energy used in development in their area to be low carbon energy from sources in the locality of the development;
- (c) development in their area to comply with energy efficiency standards that **exceed the energy requirements of building regulations**

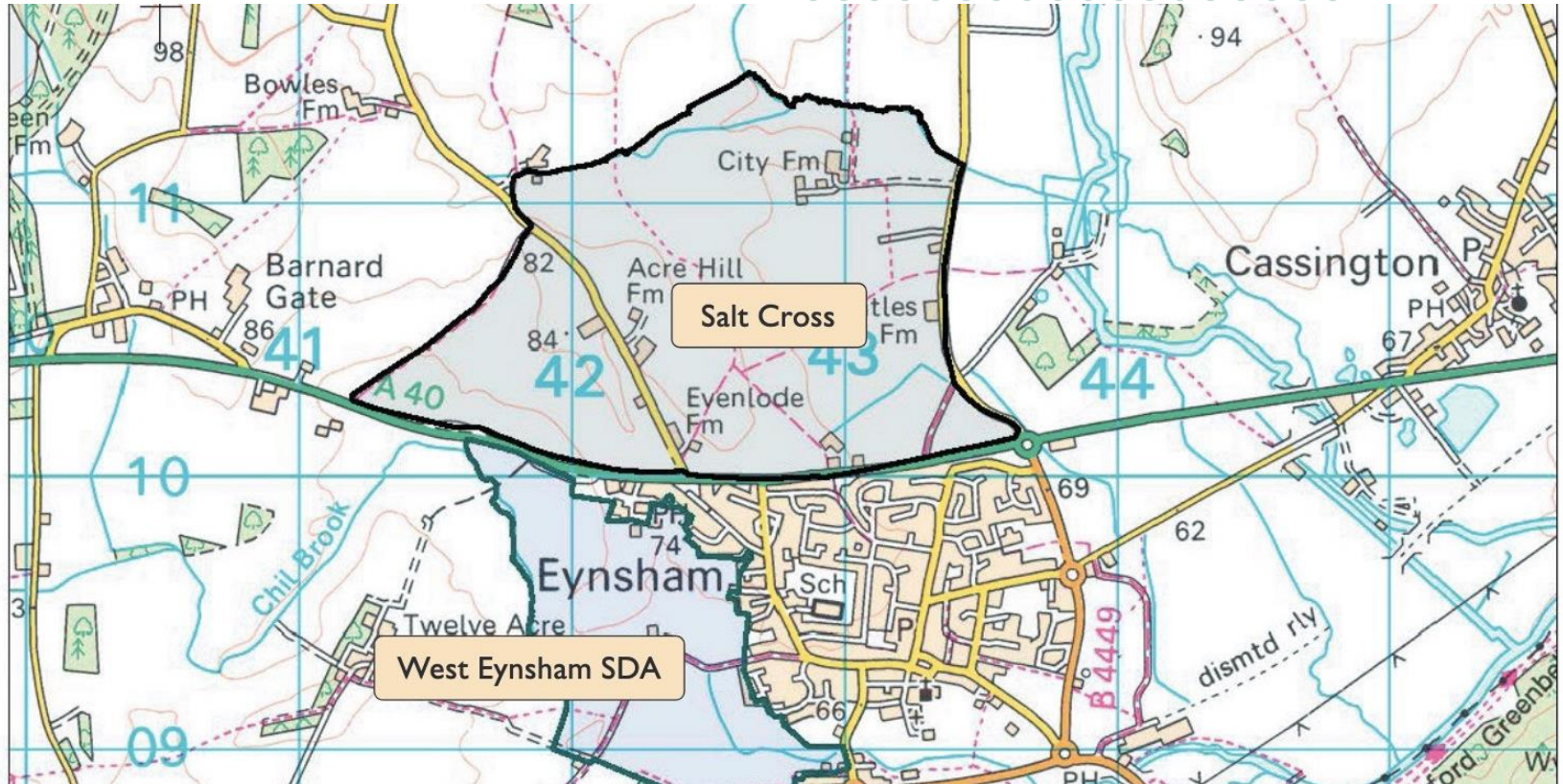




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# Salt Cross Garden Village

*R (Rights: Community: Action Ltd) v SSLUHC & Ors* [2024] EWHC 359 (Admin)







# The Facts

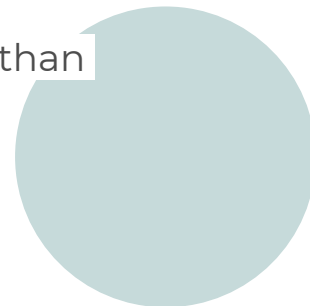
- **Area Action Plan** produced for Garden Village
- **Policy 2:** ambitious set of requirements for “net zero carbon development”
- E.g. building fabric, energy efficiency targets, fossil-fuel free, etc
- Tested by 2 x Inspectors for soundness



# Legislative background



- **Planning and Energy Act 2008:**
- **Section 1:**
  - LPA may include energy efficiency policies in DPDs which *go further than* building regs
  - So long as not inconsistent with **relevant national policies**



# Legislative background

- **The Written Ministerial Statement 2015**



# Legislative background

- **The Written Ministerial Statement 2015:**

- Wide-ranging WMS
- Re “plan-making” –
  - LPAs may continue to go above and beyond building regs
  - Until amendments in Deregulation Act into force
  - From that point – CSH 4
  - Until then – don’t go above CSH 4





# Legislative background

- **Subsequent events:**
  - Changes in Deregulation Act did *not* come into force
  - 2021 – govt confirmed would *not* come into force
  - 2021 - Building Regs changed – now above CSH4 level
  - 2022 – Govt response to Select Committee – LPAs can go above building regs standards
- NB – 2015 WMS not yet withdrawn



## Recap – the 2015 WMS

- LPAs can go ‘above and beyond’:



**Until amendments in Deregulation Act into force:**



- not in force, and never will be



**But not beyond CSH4 before then:**



- CSH 4 now *exceeded* by Building Regs



# The Inspectors

- **Looked at whether Policy 2 was sound:**
- Indicated they thought **not**, as inconsistent with 2015 WMS – went beyond CSH4, etc
- If inconsistent – not within PEA s.1
- Also unhappy with evidence base for it
- Recommended Main Mods to dilute it



## The Challenge

- **Rights; Community; Action**
- JR of **recommendation:**
  - Incorrect approach to 2015 WMS
  - 2 x other Reports – BANES, Cornwall
  - Insufficient reasons re WMS



**RIGHTS  
COMMUNITY  
ACTION**



# The Judgment


- **Recommendation QUASHED:**
  - approach to 2015 WMS “*plainly wrong*”
  - Given subsequent events
  - Regard to ‘mischief’ – things had moved on
  - Could not apply in ‘black letter’ way



# Does any of this matter?

- 2015 WMS **withdrawn** December 2023

## Statement made by




**Baroness Penn** >

Parliamentary Under Secretary of State for Levelling Up, Housing and Communities

Conservative

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Life peer  Lords



The above supersedes the section of the 25 March 2015 WMS entitled 'Housing standards: streamlining the system', sub-paragraph 'Plan making' in respect of energy efficiency requirements and standards only. Planning Practice Guidance will also be updated to reflect this statement.



Credit: Andy Morffew

## Procedural issues x 2

### A: STANDING:

- R;C;A *did* have standing:
  - “*sufficient interest*”
  - Not a busybody
  - No test of whether a “better placed Claimant”
  - Didn’t matter that only got involved quite late



RIGHTS  
COMMUNITY  
ACTION

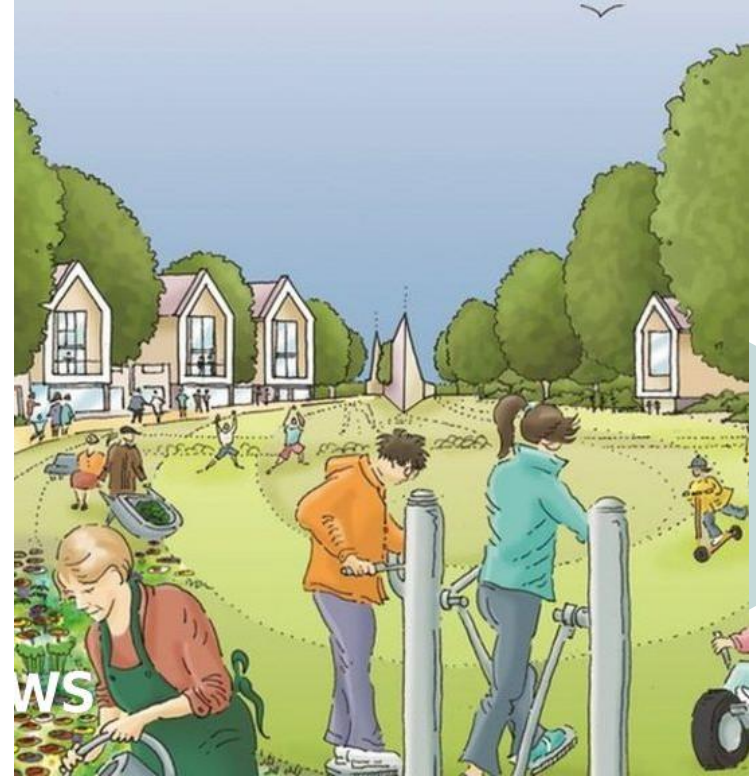




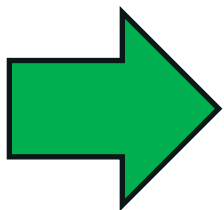
# Procedural issues x 2

## B: Justiciability:

- “Recommendation” *was* justiciable:
  - In reality binding
  - Is the ‘critical moment’
  - No need to wait until adoption

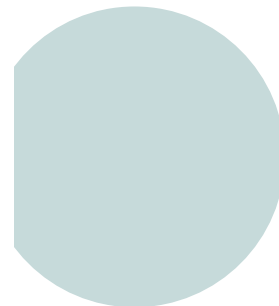


## WMS December 2023



The improvement in standards already in force, alongside the ones which are due in 2025, demonstrates the Government's commitment to ensuring new properties have a much lower impact on the environment in the future. In this context, the Government does not expect plan-makers to set local energy efficiency standards for buildings that go beyond current or planned buildings regulations. The proliferation of multiple, local standards by local authority area can add further costs to building new homes by adding complexity and undermining economies of scale. **Any planning policies that propose local energy efficiency standards for buildings that go beyond current or planned buildings regulation should be rejected at examination if they do not have a well-reasoned and robustly costed rationale that ensures:**

- That development remains viable, and the impact on housing supply and affordability is considered in accordance with the National Planning Policy Framework.
- The additional requirement is expressed as a percentage uplift of a dwelling's Target Emissions Rate (TER) calculated using a specified version of the Standard Assessment Procedure (SAP).





Credit: Andy Morffew

# Response to the 2023 WMS

The TCPA “shares the **deep frustration** of many local planning authorities about the **complex and contradictory policy from national government** on planning for net zero homes in England. National Government appears determined to **stifle the attempts of local authorities to take innovative action on climate change** through the use of local plan policy to secure energy efficient, net zero new development”

**Live question:** Is the 2023 WMS unlawful?



# How to plan for Net Zero?



# Plan-making for Net Zero?

*“Put another way, this Local Plan would be unlawfully produced if it did not meaningfully contribute to reducing emissions, help mitigate against climate change and help society to a changing climate.*

*...*

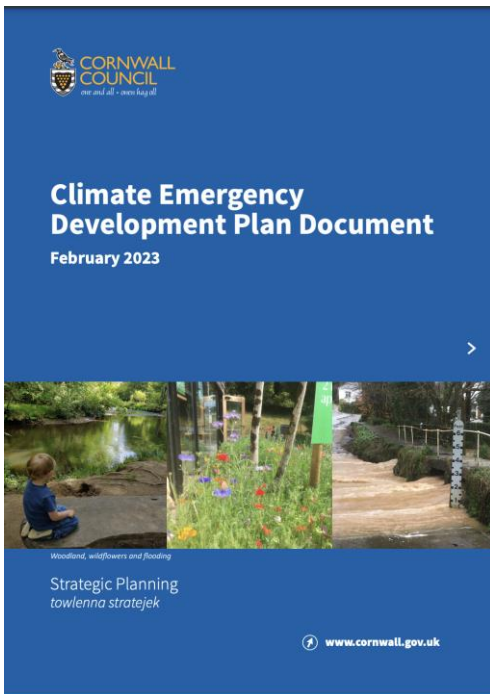
*We are legally obliged to do more. And, for future generations, we are morally obliged to do more.”*

(Central Lincolnshire Local Plan (2023))

# Plan-making for Net Zero?



# Strategic priority



## Policy C1 – Climate Change Principles

Development in Cornwall should represent sustainable development and manage our natural, historic and cultural assets wisely for future generations, contributing in line with the scale and type of development to achieving the following objectives:

- 1) Make the fullest possible contribution to minimising greenhouse gas emissions in accordance with the energy and waste hierarchies through ensuring resource efficiency, minimisation of waste and the prioritisation of renewable energy;
- 2) Mitigate against and improve resilience to the effects of climate change;
- 3) Contribute positively to the health, wellbeing and resilience of our communities and the natural world;
- 4) Use and reuse land efficiently and minimise impact of development on soils through over compaction, pollution or reduction in the quality of soil and encourage regenerative practice to conserve the capacity of soils for sustainable production of food, water, raw materials and energy;
- 5) Contribute positively to environmental growth, protecting irreplaceable habitats and the integrity of ecosystems, restoring natural processes and strengthening nature recovery networks, and ensuring a net gain for biodiversity.
- 6) Maximise the ability to make trips by public transport, sustainable and active modes of transport in all developments through careful design and mix of uses that actively support walking and cycling rather than car use for day to day living;
- 7) Conserve and enhance our natural and historic environment and cultural heritage according to their international, national and local significance and increase built and natural environment distinctiveness through locally distinctive, high quality and sustainable design and multi-functional green infrastructure provision;
- 8) Avoid or minimise light, water, air and noise pollution and improve or maintain air and water quality;
- 9) Protect and enhance carbon storage in our natural environment (including the marine environment); and
- 10) Regenerate, improve or maintain the natural functioning of coastal and river processes, avoiding areas at risk of flooding and coastal change and further reducing flood risk elsewhere wherever possible.

# Low-carbon and renewable energy

- Identify the potential for different forms of renewable and low-carbon energy generation
- Maximise community-led opportunities, including community benefits
- Energy masterplans?





# Buildings: energy efficiency

## **H5: STANDARDS FOR NEW HOUSING**

Reading Borough Local Plan (2019)

*New build housing should be built to the following standards, unless it can be clearly demonstrated that this would render a development unviable:*

- a. All new build housing outside the Central Area as defined on the Proposals Map will comply with the nationally-described space standard.*
- b. All new build housing will be built to the higher water efficiency standard under Regulation 36(3) of the Building Regulations<sup>79</sup>.*
- c. All major new-build residential development should be designed to achieve zero carbon homes.*
- d. All other new build housing will achieve at a minimum a 19% improvement in the dwelling emission rate over the target emission rate, as defined in the 2013 Building Regulations.*
- e. All new build housing will be accessible and adaptable in line with M4(2) of the Building Regulations, unless it is built in line with M4(3) (see below).*
- f. On developments of 20 or more new build dwellings, at least 5% of dwellings will be wheelchair user dwellings in line with M4(3) of the Building Regulations. Any market*

## Examples:

- Benchmarked against and exceed Building Regs
- Quantified limits on space heating and total energy consumption
- Residual energy requirements to be met by renewable sources

# Buildings: embodied carbon / construction

Development proposals referable to the Mayor should calculate whole life-cycle carbon emissions through a nationally recognised Whole Life-Cycle Carbon Assessment and demonstrate actions taken to reduce life-cycle carbon emissions.

London Local Plan (2021)

## 6 **Materials and Waste**

Cornwall Climate Emergency DPD (2023)

All development proposals should minimise use of materials and creation of waste and promote opportunities for a circular economy through:

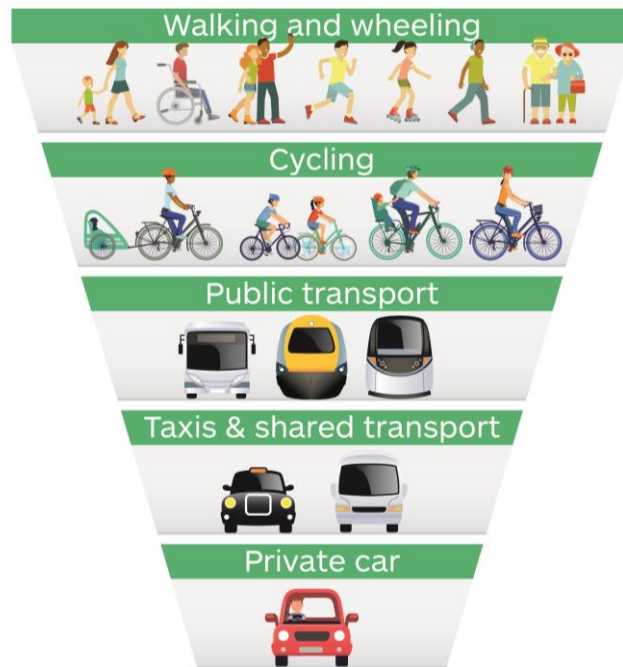
- a) Wherever possible reusing or adapting existing buildings as part of the development, whilst maintaining and enhancing local character and distinctiveness;
- b) Reuse and recycling of appropriate materials that arise through demolition and refurbishment, including the reuse of non-contaminated excavated soil and hardcore within the site;
- c) Prioritise the use of locally sourced and/or sustainable materials and construction techniques that have smaller ecological and carbon footprints;
- d) Using locally distinctive, resilient, low maintenance materials that are appropriate for Cornwall's damp maritime climate, for example locally won materials such as slate and granite (particularly

# Sustainable transport

Examples:

- Promoting active travel
- Cycle network, parking, storage
- Demand management
- EV charging
- 'Living locally'

## Prioritising Sustainable Transport



# Green infrastructure

## Policy GI1: Development and green infrastructure

Development shall protect and enhance the green infrastructure network in Salford by helping to maximise its:

- 1) **Extent, whilst having regard to the development needs of the city;**
- 2) **Interconnectedness, enabling individual pieces of green infrastructure to deliver greater benefits through links to the wider network;**
- 3) **Multi-functionality, whilst not detracting from the important primary functions of individual pieces of green infrastructure; and**
- 4) **Quality, ensuring that it can meet its various functions as effectively as possible.**

Salford City Council (2023)



# Climate change adaptation





# Plan-making for Net Zero?



- Legal and national policy obligations
- Robust evidence base (including on viability)
- Community involvement
- Local carbon budgets (Tyndall Centre Carbon Budget Tool)
- Established assessment frameworks
- Resources: TCPA, RTPI, CIHT, Climate Just etc.



# Questions?

