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**OXFORD  
CITY  
COUNCIL**

*Local Plan 2040  
Net Zero Carbon  
policies and the  
Written Ministerial  
Statement*

**Oxford Local Plan  
2040**

**BACKGROUND  
PAPER 10b**

## 1. Introduction

1.1 The Council has produced a background paper as part of its Regulation 19 consultation (*BGP.010 Carbon reduction and net zero carbon development*) which set out the context and justification for the approach to net zero carbon policy we have taken in the Local Plan 2040 submission document. Since the policy was prepared, the government has published a Written Ministerial Statement (December 2023) which sets out its view as to the limits of Local Authorities’ ability to set standards for energy efficiency in new development. As the WMS is a material consideration in the examination process, we have prepared this additional paper which responds to the WMS and presents some of the material from our background paper afresh in this context.

1.2 The note is structured as follows:

1. Introduction.....	2
2. Background context – Net Zero Carbon objectives in Oxford and the Local Plan 2040.....	3
3. Background context – the Written Ministerial Statement (WMS) 13th December 2023 .....	3
What is the status of the WMS? .....	4
Contradictions and inconsistencies in the recent WMS.....	5
4. Justification for the Local Plan 2040 approach.....	7
Significant retro-fit burden in city already.....	7
Increasing use of electric solutions and grid capacity .....	10
Fuel poverty and social justice.....	12
5. Conclusions - Is the Council’s approach ‘sound’ in light of the WMS publication and national policy more broadly?.....	13
Robustly costed rationale .....	13
Well-reasoned rationale .....	14
Consistent policy approach for applicants whilst deviating from Building Regulations .....	14
Conclusion.....	16

## 2. Background context – Net Zero Carbon objectives in Oxford and the Local Plan 2040

2.1 The Council declared a climate emergency in 2019 and has committed to achieving net zero carbon emissions as a city by 2040, this is ten years in advance of the point (2050) that the nation is required to be net zero carbon which is enforced via legislation set out through the Climate Change Act 2008.

2.2 The Zero Carbon Oxford Partnership, a coalition of local stakeholders including the Council, universities and other bodies, has devised a roadmap and action plan<sup>1</sup> which identifies the existing carbon footprint of the city and therefore the key areas that need to be decarbonised. In Oxford, the predominant source of existing emissions is the built environment, which is responsible for more than two thirds of emissions which are largely associated with heating and powering buildings. The work also identifies the combination of steps that are necessary to take the city to net zero carbon by 2040, these include various measures such as electrification of transport and heat and installation of micro-renewables across the city. Work is happening across the city to put in place the changes necessary to secure a net zero carbon future. Across the county, work progresses with bringing forward Local Area Energy Planning.

2.3 The new Local Plan is proposing new housing and employment to 2040. Whilst additional growth to 2040 is not extensive compared with the extant plan to 2036, without sufficient policies in place to guide the quality of this development, each new development is likely to have impacts on meeting 2040 and 2050 net zero targets. It is essential new development does not add to the retrofit burden or impede on the ability to retrofit elsewhere. This means net zero but also energy efficient/self-sufficient wherever possible. This is the primary driver behind the policy approach proposed in the Local Plan 2040.

## 3. Background context – the Written Ministerial Statement (WMS) 13th December 2023

3.1 The 13<sup>th</sup> Dec 2023 WMS - [Written statements - Written questions, answers and statements - UK Parliament](#) and indicates that Local Authorities cannot set their own targets based on actual energy use in buildings and dissuades them from going beyond national standards. The rationale appears to stem from concern that there is an increasing lack of consistency across the country in how energy efficiency policies are applied to development which risks constraining the supply of new housing, as the WMS states: *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*. The WMS therefore promotes the use of the national building regulations as bringing *much-needed clarity and consistency for businesses, large and small, to invest and prepare to build net-zero ready homes*.

3.2 The WMS sets out that *“Any planning policies that propose local energy efficiency standards for buildings that go beyond current or planned building regulations should be rejected at examination if they do not have a well-reasoned and robustly costed rationale that ensures:*

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<sup>1</sup> <https://www.oxford.gov.uk/zerocarbonoxford>

- *That development remains viable, and 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 Emission Rate (TER) calculated using a specified version of the Standard Assessment Procedure"*

3.3 The WMS therefore does allow flexibility for the formulation and adoption of policies where they have been well-reasoned and robustly costed. This is positive in light of our existing legal powers to do so as set out in the Planning and Energy Act 2008 and previous assurances from government that they would not set out to remove these. However, it does seek to limit how policy is formulated where it does propose to go beyond national standards, which is an area of concern and one that the Council feels it cannot align with, as will be discussed further in this note.

What is the status of the WMS?

3.4 The first question that arises is the status of the WMS and how its message should be balanced with the Council's other clear and powerful legal commitments falling within the scope of planning and development in relation to addressing climate change. Written Ministerial Statements are in themselves statements of national policy and are therefore a material consideration in the determination of the Local Plan's accordance with national policy when it comes to examination. However, there is other important legislation and national policy which needs to be considered in this context. In terms of legislation, of particular relevance is as follows:

- **Schedule 7 (15C) of the Levelling Up and Regeneration Act 2023** (which amends Section 19 of the Planning and Compulsory Purchase Act 2004) requires that: 'The local plan must be designed to secure that the use and development of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change.' This obligation – first introduced through the Planning Act 2008 alongside the Climate Change Act 2008 – makes clear that local plans must contribute to the national carbon budget of 78% carbon reduction by 2035 and the net zero by 2050 target.
- The **Planning and Energy Act 2008** gives power to local authorities to set higher energy efficiency standards than Building Regulations, subject to a viability test. Government have recently confirmed that they have no intention of amending this act, both through their response in January 2021 to the Future Homes Standard consultation and correspondence with Bath and North East Somerset Council during the examination of their Local Plan Partial Update in 2022. This primary legislation is considered to be more weighty than the WMS, which cannot abrogate from this statute.
- The **Climate Change Act 2008** which sets statutory targets for the UK in reducing national carbon dioxide levels below 1990 levels at intervals up to 2050. The targets in the Act have been amended since to reflect updated goals for climate mitigation, such as in response to the Paris Agreement, most recently setting out a target of net zero emissions by the year 2050. A further amendment to achieve a 78% reduction in carbon emissions by 2035 was subsequently set into law.

3.5 Whilst the Written Ministerial Statement is a material consideration in the examination of the Local Plan, it is also subservient to statute such as the legislation set out above. Our judgement is that

whilst it is important, it cannot undermine the primary power of local authorities to act or go against their duty to mitigate climate change.

3.6 In relation to national policy for planning, this is set out within the National Planning Policy Framework (NPPF) and associated Planning Practice Guidance (PPG). The NPPF was most recently updated in December 2023 although, despite some changes in relation to additional support for energy efficiency and low carbon heat for existing buildings, the sections of relevance to climate change and energy efficiency received no updates that reflect the content or apparent change of direction contained within the WMS. As such, the following is still the most relevant context:

- Paragraphs 157 to 164 of the NPPF<sup>2</sup> set out the Government's approach to planning and climate change. In particular, paragraph 157 sets out the approach for the planning system as a whole. It states that the planning system should *support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.*
- Meanwhile, para 158 sets out that *plans should take a proactive approach to mitigating and adapting to climate change*, with footnote 56 clarifying that this should be in line with the *objectives and provisions of the Climate Change Act 2008*, which legislates for net zero carbon emissions by 2050 (and an 80% reduction by 2035).

3.7 Again, whilst the WMS is important context that local policy will need to be prepared with concern towards, there is clearly a strong expectation set out within national planning policy for local policies to be proactive in tackling the challenge of climate change and the impacts of development on it. The steer of the WMS towards national standards in the first instance would be more acceptable where it was clear that this would support endeavors to address this challenge, however as we will set out below, we are concerned that it is unable to appropriately do this alone, which generates conflict with the NPPF which cannot be ignored.

#### Contradictions and inconsistencies in the recent WMS

3.8 On a practical level, what is immediately clear upon reviewing the content of the WMS is that the proposed approach it outlines for all local authorities in regard to energy efficiency policies is undermined by a number of flaws and inconsistencies which we consider to undermine its key message. These issues suggest that the WMS is already potentially overtaken by, or at least out of step with, other advances being put forward by the government, and these are summarised below:

- The WMS allows for reference to current or future planned updates to the Buildings Regulations. Whilst current would be those set out in part L 2021, it should be noted that future planned updates (which government proposes to put in place in 2025) are still the subject of consultation, for example the Future Homes Standard consultation (which ran from December 2023 to March 2024) includes two options to standards for new buildings.

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<sup>2</sup> December 2023 - <https://www.gov.uk/government/publications/national-planning-policy-framework--2>

- Linked with the above, where a policy is to go beyond national standards the WMS states that this should be in the format of a % reduction over the TER and references the Standard Assessment Procedure (SAP) calculations. However, the recent consultation by government on the future updates to Building Regulations referenced above proposes to replace the SAP with a new methodology called the Home Energy Model (HEM).
- The WMS refers to ‘buildings’ at points but in other places seems to more specifically be targeting residential development in others, including in its reference to TER, a term used as part of SAP which relates to residential development (non-residential development is addressed through a separate methodology called the Simplified Building Energy Model or SBEM). The scope of the WMS application is therefore unclear.

3.9 The push for energy efficiency in new buildings is principally, though not entirely, about mitigating our impacts on the environment, including limiting our impact on climate change. The Local Plan proposes high standards on energy efficiency as part of a suite of a holistic approach that seek to support the city’s transition to net zero carbon by 2040 and to meet the legislative requirements of the country meeting its target of net zero by 2050. In this context, it is also worth briefly setting out the reasoning for why the constraints imposed by the WMS in tying policy to the assessment methods used in Building Regulations are not sufficient to meeting those objectives.

3.10 Principally, this is because the Building Regulations system is a regulatory process that seeks to ensure development complies with a range of minimum standards for safety and performance. They are not designed to deliver net zero carbon development and nor are they capable of delivering this alone in their current or proposed future forms. More specifically:

- The SAP/SBEM methodologies measure performance of carbon emissions against a fixed, notional building – rather than assessing performance as built, which means designing for efficiency in use is not incentivized and also results in bigger performance gap issues.
- The SAP/SBEM methodologies do not take account of all energy uses within the building—only those regulated by Building Control. As the Background Paper 010 explains in greater detail, the unregulated energy demand of buildings, which arises from sources not controlled by Building Control, can amount to up to half of a building’s operational energy usage, which would be ignored. This means that, even requiring a % uplift on the TER would fail to capture all energy demands.
- Even with the updates proposed in the Future Homes Standard – buildings built to this standard alone would be designed to 75-80% better in terms of emissions than a notional building before. The government uses the term ‘Net Zero Carbon ready’ meaning additional carbon reductions associated with energy use will rely on national grid decarbonisation. Whilst the grid is envisaged to be net zero by 2035 – this target has been called into question and is by no means guaranteed. Buildings will continue to have a carbon footprint associated with energy use until at least 2035, and potentially for longer.

3.11 For the reasoning above and in recognition of the need for an alternative way to ensure net zero carbon design, various groups such as UK Green Building Council (UKGBC)<sup>3</sup>, the Low Energy

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<sup>3</sup> <https://ukgbc.org/resources/future-homes-and-buildings-standard-consultation-response/>

Transformation Initiative (LETI)<sup>4</sup> have been championing an alternative policy approach which includes performance based, absolute energy metrics. Energy based metrics (such as targets for space heating demand and energy use intensity that are measured in Kwh/m2/yr) support the goal of net zero carbon and can be measured post-construction. We go into greater detail explaining why in the main background paper, which should be referred to for evidence and justification of the proposed policy position.

#### 4. Justification for the Local Plan 2040 approach

4.1 Prior to the publication of the WMS, the Council had already reviewed a range of evidence to understand the existing context of the city; the key issues and the likely future without new policy; as well as the potential approaches new policy could take (see evidence accompanying Issues consultation 2021; Preferred Options 2022), as it is required to in preparing a new Local Plan. In doing so, we identified clear justification, in accordance with relevant planning policy and legislation, for the Local Plan 2040 to continue to push beyond national standards in driving more energy efficient development and development that was net zero carbon in operation, as was consulted on in 2023 at Reg 19 stage. This justification is directly relevant to the 'well reasoned rationale' which the WMS asks for and can be focused down to three key arguments for why it is important for the Local Plan to have strong targets in relation to energy efficiency and net zero carbon development more broadly:

- The significant retro-fit burden already present in the city and not exacerbating this
- The existing and likely future challenges around energy grid capacity/resilience
- The existing and likely future challenges around fuel poverty

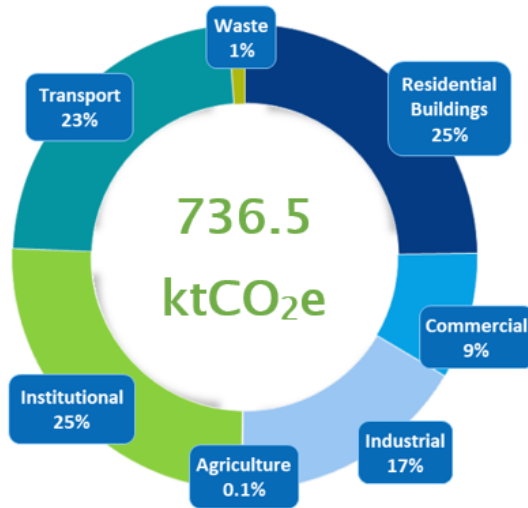
##### Significant retro-fit burden in city already

4.2 As set out in section 2 (para 2.2), the ZCOP roadmap and action plan<sup>5</sup> identified that buildings are the biggest source of emissions in the city, this is shown in Figure 4.1 There are many existing buildings in the city which have already gone through the planning process and that are an ongoing source of carbon emissions into the environment. Principally, this is due to the energy consumed for heating, cooking, powering buildings, which comes predominantly from direct burning of fossil fuels (e.g. in gas-burning boilers), or indirectly via the emissions from fossil fuel burning that powers the national grid.

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<sup>4</sup> <https://www.leti.uk/cedg>

<sup>5</sup> <https://www.oxford.gov.uk/zerocarbonoxford>



*Figure 4.1 Sector-by-sector greenhouse gas emissions in Oxford (2018 baseline year as used in the Zero Carbon Oxford Partnership Action Plan, 2021<sup>6</sup>)*

4.3 These existing buildings are likely to be one of the most significant challenges to address in decarbonising the city (as with elsewhere in the country). The response will require a range of solutions from installation of fabric efficiency solutions like insulation and more thermally efficient windows/doors to electrification of heating systems (replacing boilers with other technologies such as heat pumps). Figure 4.2 illustrates the significant proportions of retro-fit expected to be required as were projected as part of the ZCOP roadmap and action plan work. Cumulatively, these changes represent a vastly resource intensive retro-fit burden in terms of cost, skills and materials. It's likely that a proportion of these buildings will also come with additional challenges that will need more time to overcome, for example more constrained heritage assets that need to be retro-fitted more carefully.

<sup>6</sup> <https://www.oxford.gov.uk/zerocarbonoxford>



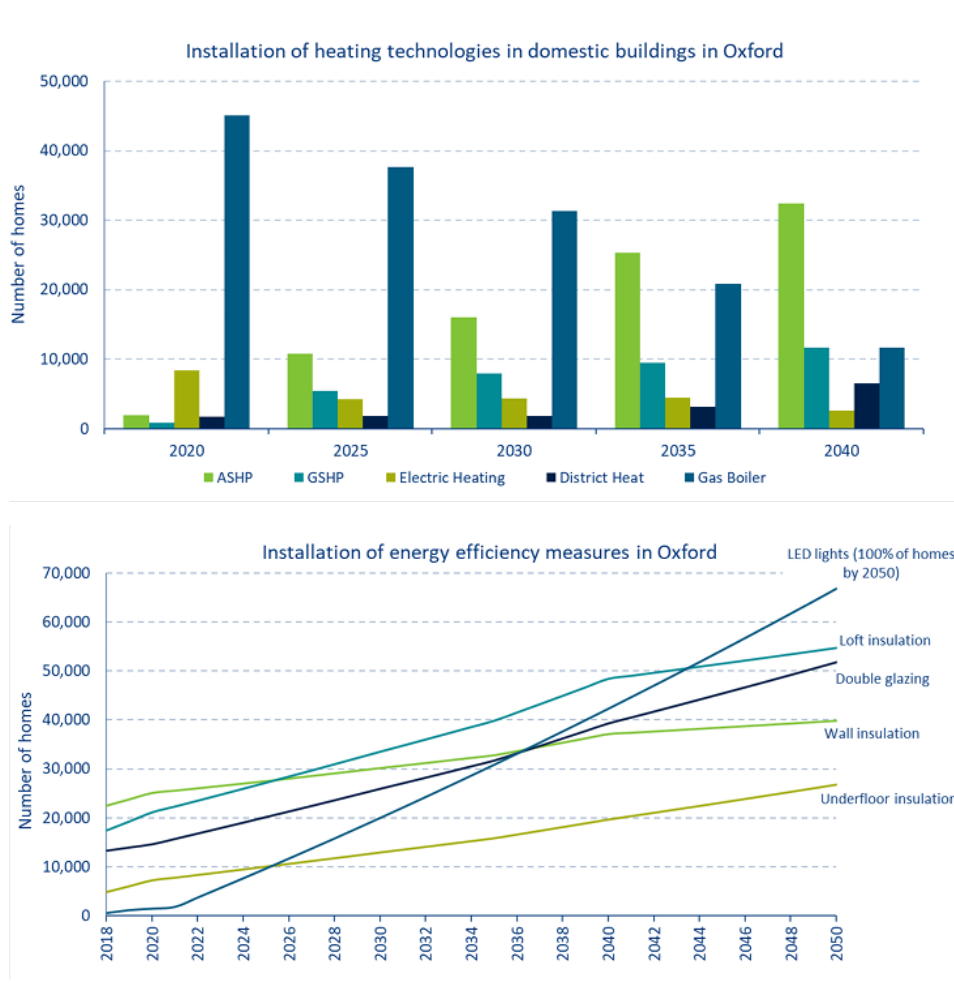


Figure 4.2 Projections of required rollout of heating technologies (top) and energy efficiency measures (bottom) in Oxford's existing housing stock (ZCOP Roadmap and Action Plan, 2021)

4.4 Bearing this huge challenge in mind, it is therefore vital that new buildings going through the planning process are not permitted to come forward in a way that would knowingly add to this burden. Principally this means not building with systems that we know will need to be retro-fitted in future (e.g. boilers). Not only will this leave more capacity to focus retro-fit actions on the existing built environment, but it will also ensure that future occupants (who are already living in an area that is massively challenged by lack of affordable housing) are not saddled with the cost of retro-fitting themselves where these actions were not avoided through careful design at the construction stage.

4.5 Of course, the future updates to the building regulations are indicated by government to result in 'net zero ready' development, which should by definition not require significant further retro-fit to operate. However, notwithstanding the uncertainty that remains about what these future regulations will look like (as they are still being consulted on), if we were to defer to these standards alone as indicated by the WMS this is not addressing the full picture of the challenge when we consider the other elements of our justification for the new policy, as are discussed next.

## Increasing use of electric solutions and grid capacity

4.6 The new Local Plan is coming forward at a time of increasing demands on our energy systems both in terms of how much electricity we use but also the ways we use it. Increasing uptake in electric solutions for the operation of existing and new properties, for example, will be necessary to reduce carbon associated with heating e.g. replacing fossil fuel burning boilers with technologies like Air Source Heat Pumps. Equally, the decarbonising of transport systems is already resulting in increased uptake in electric vehicles, leading to increased demand for EV charging infrastructure (Figure 4.3). These changes are only expected to increase as we move towards net zero targets and if these changes happen without appropriate mitigation, they are likely to place additional demands on an already overburdened energy grid.

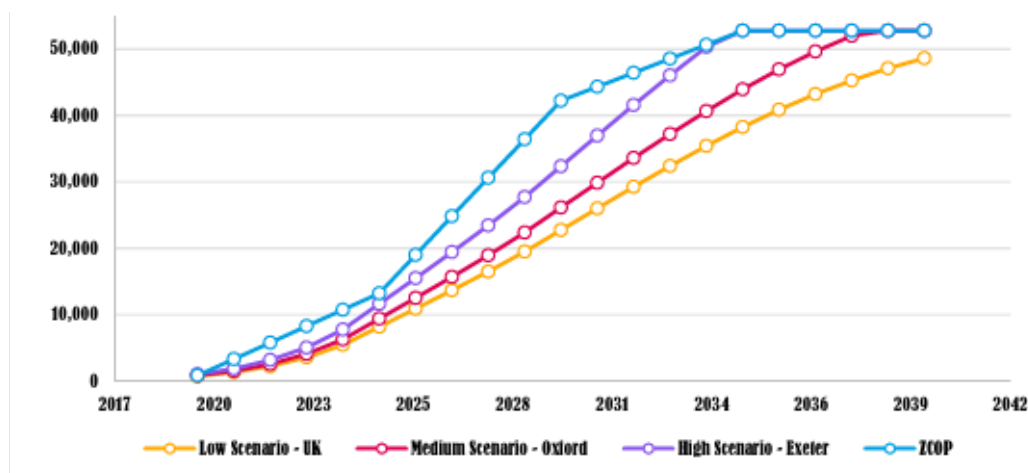


Figure 4.3: Projection of expected numbers of plug-in/electric vehicles in Oxford to 2040 (Oxford EV Infrastructure Strategy, 2022<sup>7</sup>)

4.7 ZCOP road map/action plan identified that energy grid constraints were a challenge that would need to be addressed to support net zero carbon ambitions, noting: *The electrification of heat, combined with the considerable electrification of transport, will necessitate extensive grid reinforcement above and beyond the £40bn Ofgem investment package within the 2021-26 Energy Network Price Controls.*

4.8 The Oxfordshire Energy Strategy (2018) and associated delivery plan (2019)<sup>8</sup>, supported by the Stage 1 work of the Oxfordshire Infrastructure Strategy (OXIS)<sup>9</sup>, identifies that the electricity grid across the county, like many parts of the country is already constrained. The OXIS work concluded that annual electricity consumption across the county to 2040 is expected to increase due to three reasons:

<sup>7</sup> <https://www.oxford.gov.uk/downloads/download/316/download-the-oxford-electric-vehicle-infrastructure-strategy>

<sup>8</sup> Published by the Oxfordshire Local Enterprise Partnership, more info: <https://www.oxfordshirelep.com/energystrategy>

<sup>9</sup> More information available here: [https://futureoxfordshirepartnership.org/project\\_categories/oxfordshire-infrastructure-strategy-oxis2/](https://futureoxfordshirepartnership.org/project_categories/oxfordshire-infrastructure-strategy-oxis2/)

continued increase in the number of domestic and non-domestic buildings; the transition to electric vehicles; and the decarbonisation of heat. These factors will not only increase annual consumption but will also increase peak demand.

4.9 The Oxfordshire Energy Strategy has an objective of reducing countywide emissions by 50% by 2030 from a 2008 baseline and states that by 2030, 56% of total electricity demand (and 40% of heat) would need to be met from low carbon sources, the majority of this being solar energy. The OXIS stage 1 work reported that in terms of grid constraints, the Distribution Network Operators across county are trying to introduce network flexibility services, to avoid or reduce some of the costly reinforcement work normally required and allow additional generation capacity to be connected to the grid, though concluded that significant reinforcement and upgrades will continue to be required to meet expected electricity demand and renewables targets. Aside from the grid upgrades required, OXIS flagged that an additional method to alleviate some of the future burden on the distribution networks is introducing much more onsite and local energy generation and storage (e.g. roof top P.V. on domestic and non-buildings). This is supported by the Oxfordshire Energy Strategy which suggests the county needs to plan for a 'six-fold' increase in solar capacity.

4.10 The above context highlights the existing and future constraints on energy supply that will need to be addressed to support the wholesale changes needed across the city to meet climate change objectives, as well as future growth objectives in the city in terms of new housing or employment in addition to what we already have. They will be of relevance whether new development comes forward to the standards set out in existing and future building regulations (which also rely on electrification of heat), or higher standards within a local policy. The challenge will require not only infrastructure improvements in the city and more widely, but also smaller scale solutions at a development level.

4.11 Local Area Energy Planning, as touched upon earlier, is in the early stages of preparation across the county and is expected to help to identify the constraints across the system and to facilitate the improvements necessary in the long term. However, in the context of an already constrained grid, we need to ensure that new development coming forward is as self-sufficient as possible in terms of energy use and energy generation which will help to leave spare capacity for extant buildings. The design process for new development offers opportunities to think holistically in a way that is less easy with an existing building, e.g. laying out a development in a way that not only minimises the energy needed to operate (e.g. highly fabric efficient) but also maximising opportunities to generate energy onsite (coupled with energy storage where possible).

4.12 As touched upon in section 3, the approach outlined by the WMS in relying on calculation methodologies of building regs neither encourages the most energy efficient design, nor does it consider all energy needs of a development in the design process (only regulated energy). Furthermore, the proposed standards of future updates do not deliver development that meets all energy needs through renewables onsite, thus will generally rely on some level of grid energy. This necessitates a local policy which can secure both the highest energy efficiency standards that are feasible and viable to reduce energy demands in the first place, but also the sufficient renewable energy generation, ideally onsite, to offset those energy demands.

## Fuel poverty and social justice

4.13 The final strand of reasoning which underpins the Local Plan 2040 policy approach is about addressing social challenges in the city. Oxford is challenged by high levels of unaffordable housing that make it very difficult for people to access places to buy and rent, but on top of this, like many urban areas, Oxford is also a city characterised by inequalities which compound the challenges people face. The city ranks 182 out of 317 in terms of average score for overall deprivation according to the Indices of Deprivation 2019 data set. Ten of Oxford's 83 LSOAs are in the top 20 per cent most deprived nationally and 21 of Oxford's 83 LSOAs are in the top 20 per cent least deprived nationally, which shows the inequalities. Those living in more deprived areas are not only likely to be more vulnerable in terms of spare economic wealth that can be spent on daily necessities but also in terms of susceptibility to disease of life-limiting disabilities as well as living in poorer quality accommodation.

4.14 In the context of this note, areas of higher deprivation are of relevance when we consider ability and propensity to undertake the significant retro-fit measures projected to be needed to deliver net zero carbon emissions from their homes in future. For individuals who are struggling just to meet daily needs with their current earnings and health, the process of retro-fitting is unlikely to be a reasonable expectation or priority. We can help to shield such groups from the burden of these costs by ensuring that new housing supporting these communities (as with everyone else) are built to a standard that does not require them to take on these significant costs in future.

4.15 Furthermore, the Oxfordshire Joint Strategic Needs Assessment<sup>10</sup> identifies that Oxford is significantly worse than the Oxfordshire regional average on fuel poverty, unlike other Oxfordshire districts are each significantly better than average (Figure 4.4). The JSNA considers a household to be fuel poor if: they have a fuel poverty energy efficiency rating of band D or below; and if they were to spend their modelled energy costs, they would be left with a residual income below the official poverty line. This means that a greater proportion of residents in the city are effectively unable to meet all of their basic daily needs because of the impacts of the costs of heating their homes.

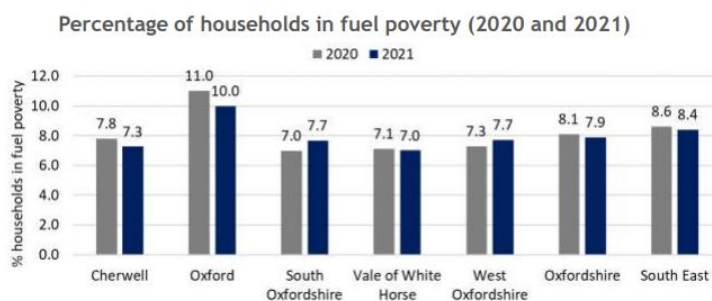


Figure 4.4: Percentage of households in fuel poverty across Oxfordshire in 2020 and 2021 (source: Joint Strategic Needs Assessment 2023)

4.16 Three factors affect fuel poverty: household income, fuel prices and household energy consumption. Buildings that demand a lot of energy to heat and run, combined with high energy prices

<sup>10</sup> Available here: <https://insight.oxfordshire.gov.uk/cms/joint-strategic-needs-assessment>

and pressures on household incomes can serve individually and cumulatively to exacerbate fuel poverty. Energy prices are subject international pressures and insecurities such as has been seen subsequent to global instability because of crises like the war in Ukraine and the covid recovery, thus the Local Plan has negligible influence in this area, equally household budgets are subject to various pressures and drivers which the Local Plan has limited influence on besides through the support of economic policies.

4.17 However, by ensuring that new development coming forward is highly fabric efficient so that it takes reduced energy demand to heat and power and ideally sources these powers directly from generation onsite, this can be beneficial in reducing operating costs for occupants and helping to reduce the numbers falling into fuel poverty in future, particularly where those other national and international contributors to this problem are less in our control. Whilst the national building standards will help to drive a higher standard of housing that can support these targets to some degree, as set out in para 4.12, the current and proposed updates are not going to fully achieve these ambitions without further local policy requirements. For example, the proposed Future Homes Standards will still not consider unregulated energy within the development, missing a potentially significant proportion of a building's energy use. Equally, coupled with only limited levels of fabric efficiency, they rely heavily on national grid decarbonisation to reduce emissions and meet net zero instead of pushing for high levels of onsite renewable energy generation (and there are currently two options being consulted on – one of which promotes even less renewables than the other).

## 5. Conclusions - Is the Council's approach 'sound' in light of the WMS publication and national policy more broadly?

5.1 The WMS requires that any policy which sets standards that go beyond national standards be 'well-reasoned' and 'robustly costed' and must be expressed as a % uplift in Target Emission Rate (TER) of building regulations methodology. In these concluding paras we take these points in turn, reviewing what has been set out in this note, and explain how the policy of the submission plan meets these requirements but also why it is justifiable and indeed necessary to deviate from what the WMS requires.

### Robustly costed rationale

5.2 First, on the point about being **robustly costed**. The Council is expected to demonstrate through the examination process that the policies when taken as a whole would not impose such onerous requirements that development would be unviable. This is a clear requirement of national policy prior to the publication of the WMS and includes the net zero carbon policy as well as all other policies. The Council has published its viability assessment along with the rest of its evidence base which demonstrates the testing that has been undertaken and that the requirements of the net zero carbon buildings policy is a robustly costed and appropriate approach.

5.3 Whilst the overall impact of the net zero carbon policies was not considered to have unsurmountable impacts on viability compared with other policy requirements (e.g. affordable housing), we have identified that there is potential for offsetting as is required in the proposed policy to have impacts on viability. We have therefore set out a mechanism (as part of policy S4) that would allow for contributions as part of this offsetting requirement to be reduced incrementally where it can be demonstrated to make a development unviable, as long as the development meets the other criteria of

the policy. There would therefore be no issue with viability for new development arising from the policy, and if it did, there are mechanisms in place to address this at the planning application stage.

#### Well-reasoned rationale

5.4 On the point about being **well-reasoned**. Our background evidence already sets out our reasoning for adopting a net zero carbon policy and for the approach that has been taken in the specifics of that policy, this note has presented again some of this reasoning in the context of the WMS. Earlier in the note (section 3) we set out why the current and future proposed building regulations are not adequate and do not go far enough for delivering net zero carbon development, or more simply, energy efficient development, which is problematic as the WMS refers to these as the only way authorities should frame higher standards. In summary, the Building Regulations are a regulatory process aimed at delivering development to minimum standards which do not address all energy needs and do not encourage efficient design, their future proposed form does not appear to address this and is still subject to uncertainty inherent in their being at consultation still at time of writing.

5.5 We then presented several key reasons for why Oxford requires higher standards which we consider to support our approach, which we can summarise again as:

- **Responding to the city's significant existing retro-fit burden** – there is a significant retro-fit burden in the city and it is important that new development does not add to this, particularly when many of the factors can be addressed more readily through the initial construction stage. If this were the only issue, the current and future Building Regulations may be able to address these challenges (though uncertainty remains as we do not know the form they will ultimately take), however there are interlinked issues which are not addressed.
- **Responding to challenges of a constrained energy grid now and in future** – the energy grid is constrained and likely to be put under increasing pressure as we work to electrify existing heating systems and transport. New development needs to be self-sufficient where possible in order to reduce strain on the grid and support retrofit (electrification) elsewhere by leaving capacity for existing development. The current and future Building Regulations are unlikely to fully address these challenges.
- **Responding to ongoing challenges of fuel poverty and social justice** – the city is characterised by inequalities with significant pockets of high deprivation as well as large numbers of households in fuel poverty. High quality, energy efficient houses can support households with more manageable fuel bills and shield them from future burden of retro-fitting. The current and future Building Regulations are unlikely to fully address these challenges.

#### Consistent policy approach for applicants whilst deviating from Building Regulations

5.6 The final point to make is in response to the concern of government about lack of consistency to energy/net zero policies from local authorities across the country hampering developers. Many authorities are in similar positions to Oxford in needing to address a range of issues such as meeting net zero carbon targets, addressing fuel poverty and energy security which the national standards could not respond to alone, as such, it might be expected that inconsistency could occur, however this does not appear to be the case in practice.

5.7 Prior to the publication of the December 2023 WMS, various pieces of confirmation from central government have come forward in response to ongoing uncertainties at local level confirming that

authorities can continue to pursue more reaching policies than national standards on energy efficiency<sup>11</sup>. In recognition of the fact that the SAP methodology of the Building regulations is ineffective at delivering net zero carbon development, a growing consensus emerged around the framing of net zero carbon policies around metrics that require developers to assess design using Energy Use Intensity (EUI) performance, rather than % improvement over targets in SAP. Indeed, we addressed why EUI was the more appropriate metric to include in the Local Plan 2040 policy as part of our evidence base.

5.8 We have reviewed numerous adopted and emerging local plans as part of our literature review evidence base supporting our policy and this was published as part of the Regulation 19 consultation. It is apparent from that work that whilst some local variation occurs in the specific targets set across these policies, the overall approach is one of consistency around a clearer and more effective policy approach. Policies are generally structured in the same way: measurement based on EUI; target for overall EUI; target for space heating component of EUI; match EUI with sufficient onsite renewable energy generation—this is the framework that the Local Plan 2040 also follows. Whilst this approach is different to the assessment methodologies associated with building regulations and what the WMS asks, we would propose that the requirements do not generate further inconsistency for applicants, but rather, are in line with the accepted best practice that is now emerging at the local level nationally and promoted by bodies such as LETI and UKGBC.

5.9 The Council recognises that whilst the approach we propose is consistent with other authorities, there may be challenges for applicants in meeting the standards. We have accordingly drafted the policy with some flexibility (and propose a further modification in response to some of the feedback in relation to challenges faced by high energy demand non-residential uses, which is documented in the list of proposed main modifications). We have included appropriate guidance in the policy which sets out how applicants should approach an application where they are not technically able to meet the policy requirements, which accords with the WMS wording that sets out: *Where plan policies go beyond current or planned building regulations, those policies should be applied flexibly to decisions on planning applications and appeals where the applicant can demonstrate that meeting the higher standards is not technically feasible.*

5.10 Importantly, a number of local authorities have already demonstrated at examination that policies which go beyond building regulations standards and follow this alternative approach are sound. Despite the recent WMS, it is unclear to us why this situation would be different. Indeed, this was a matter that was also recently explored and supported within open legal advice sought from the Essex Climate Action Commission and Essex County Council, who commissioned Estelle Dehon KC at Cornerstone Barristers to interrogate this subject<sup>12</sup> in light of the Dec 2023 WMS. Recently adopted local Plans/development plan documents of relevance include:

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<sup>11</sup> See response from DLUHC to BANES in response to direct query to government, captured in Local Plan partial update evidence document July 2022 -EXAM10:  
<https://beta.bathnes.gov.uk/sites/default/files/EXAM%2010%20Note%20on%20Local%20Energy%20Efficiency%20Targets%20FINAL.pdf>

See also Jan 2021 government response on Future Homes standard consultation:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/956094/Government\\_response\\_to\\_Future\\_Homes\\_Standard\\_consultation.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/956094/Government_response_to_Future_Homes_Standard_consultation.pdf)

<sup>12</sup> <https://www.essexdesignguide.co.uk/climate-change/essex-net-zero-evidence/essex-open-legal-advice-energy-policy-and-building-regulations/>

- Cornwall Climate Emergency Development Plan Document (Adopted 21 February 2023)<sup>13</sup>
- Bath and North East Somerset (BANES) Local Plan Partial Update (Adopted 19 January 2023)<sup>14</sup>
- Central Lincolnshire Local Plan (Adopted 13 April 2023)<sup>15</sup>

## Conclusion

5.11 What remains clear is that there is an ongoing need and requirement for local policy to respond to the challenges of energy efficiency, net zero carbon development and energy security. Whilst we recognise that the WMS is an important consideration, the reasoning set out above in relation to local circumstances clearly evidences the need for a standard of development (and a policy approach that can secure this) which the approach that the WMS outlines cannot deliver. In light of our legislative obligations and powers in addressing climate change, the guidance for plan-making as set out in the NPPF and our clear local justification, an alternative policy approach that goes beyond national minimum standards and deviates from the Building Regulations SAP methodology is necessary.

5.12 The Local Plan 2040 policy on net zero carbon buildings in operation has been **positively prepared** and is **justified** in light of the current and future context to which new development will need to respond to, as has been demonstrated in the Local Plan evidence base and summarised in this paper. Through tying the standards required in the policy to Energy Use Intensity performance as opposed to performance against Building Regulation standards—which are not designed to deliver net zero carbon or drive energy efficient performance—we are also ensuring we have the most **effective** policy possible for addressing those local and national challenges. Overall, the approach is also clearly **consistent with national policy**, according with the commitments placed upon us by legislation such as in the Levelling Up and Regeneration Act 2023 and the Climate Change Act 2008 and in line with the guidance set out in the NPPF. Ultimately, it will help deliver on a consistent approach to energy efficiency and net zero carbon standards that is emerging at local level across the country in response to weaknesses in the national standards for development at present, as we believe was the key driver behind the WMS, despite its flaws. We therefore consider the approach to be **sound** in line with the relevant tests for soundness as set out in national policy.

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<sup>13</sup> Available here: <https://www.cornwall.gov.uk/planning-and-building-control/planning-policy/adoptedplans/climate-emergency-development-plan-document/>

<sup>14</sup> Available here: <https://beta.bathnes.gov.uk/local-plan-partial-update-lppu-public-examination>

<sup>15</sup> Available here: <https://www.n-kesteven.gov.uk/central-lincolnshire>