

NET ZERO CARBON DPD: REGULATION 19 REPRESENTATIONS

on Behalf of Taylor Wimpey

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REPORT

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1 INTRODUCTION

1.1 RPS has prepared these representations on behalf of Taylor Wimpey ('TW') to the Regulation 19 consultation being undertaken by Warwick District Council (the Council) on the Pre-Submission version of the Net Zero Carbon Development Plan Document (the DPD). Taylor Wimpey has a strong track record of developing much needed new homes within Warwick District and the wider West Midlands. Taylor Wimpey is supportive in principle of the Council's ambition to achieve net zero carbon emissions from new development, however they maintain their concerns with the approach proposed in the DPD as set out in these representations.

2 POLICY NZC1: ACHIEVING NET ZERO CARBON DEVELOPMENT

- 2.1 Policy NZC1 has been substantially rewritten following the draft NZCDPD consultation in 2021, which has resulted in text within Policy NZC2(A) being moved to Policy NZC1. Policy NZC1 now requires that new residential developments of one or more dwellings should achieve net zero carbon emissions on operation. To achieve this, all new dwellings should deliver a minimum 63% reduction in carbon emissions achieved by on-site measures, as compared to the baseline emission rate set by Building Regulations (Part L Conservation of Heat and Power) 2021. Paragraph 5.4 of the NZCDPD claims that this approach is *'broadly consistent with national ambitions as set out in the proposed Future Homes Standard to be introduced in 2025'* whilst paragraph 5.5 of the document explains the percentage target for residential development *'reflect the emissions reductions required for buildings to align with the Future Homes Standard, based on 2021 Building Regulations'*.
- 2.2 Despite representations submitted on behalf of TW to the previous consultation, the Council is persisting with the intention to adopt an enhanced standard (63% reductions from now) which is above and beyond the Government's current proposals to introduce the Future Homes Standard, which seeks to achieve the same 75% betterment from 2025 onwards. In doing so, this would exceed the 31% betterment being proposed by forthcoming changes to Part L, which were implemented in June 2022.
- 2.3 Having reviewed the supporting documents issued alongside the Regulation 19 version of the NZCDPD, RPS maintains the view that no evidence has been provided that clearly sets out the local circumstances that justify an enhanced standard being applied within the District prior to the implementation of changes to Building Regulations expected in 2025. In the Regulation 18 response, RPS presented a number of concerns that highlighted the potential risks to housing delivery as a result of a faster implementation of the national standards. The issues RPS highlighted were:
- an inadequate supply of such technologies that will be required to achieve the proposed 75% reduction due to immaturity of the supply chain for systems, such as air and ground source heat pumps.
 - the need to reinforce the electricity networks to accommodate the additional loads that the usage of such technologies require.
 - increased demand for electricity arising from the installation of electric vehicle charging points, which are already required under policy TR1 of the Council's adopted Local Plan.
- 2.4 To reiterate what RPS has stated previously, there is no clear timetable at a national level for when the infrastructure improvements needed to increase capacity in the electricity network will be secured, or when the supply chain will be developed to a sufficient scale to support the transition to a zero carbon economy. This will take time to deliver, and until these changes occur the proposed policy risks delaying the delivery of much needed new homes.

- 2.5 RPS notes that following the submission of responses to the consultation on the draft NZCDPD (Regulation 18) document in 2021, the Council commissioned Bioregional to prepare a topic paper seeking to justify the draft policies in the DPD, including Policy NZC1. This document is titled “*Warwick DC Zero Carbon DPD Energy and Sustainability policy review April 2022*”. In terms of providing a justification for pursuing an accelerated timescale for introducing carbon reduction targets specific to Warwick, RPS notes the comment at page 3 of the review document, which states: “*The pages overleaf explore how specific percentages have been set and justified in other local plans. However: even without in-depth local analysis, it is justified and feasible to require a certain amount of on-site carbon reductions...*” (RPS emphasis)
- 2.6 The Council is therefore heavily reliant for its justification on ‘precedents’ taken from local plan approaches elsewhere in England, notably London and other areas outside the capital. However, the review provides no examples to show that the accelerated standards now being pursued through Policy NZC1 have been adopted anywhere else in the country. This is plainly the case given that all the examples cited involve local plans that were adopted prior to the changes to Part L of the buildings regulations that come into effect on 15 June 2022 (equating to a 31% reduction in carbon emissions compared to the Part L 2013 baseline). Similarly, the Council accepts that it has no local evidence or ‘analysis’ to support the accelerated policy approach, which further undermines the soundness of seeking further reductions in advance of the Future Homes Standards to be made effective in 2025.
- 2.7 Paragraph 31 of the NPPF states:
- “The preparation and review of all policies should be underpinned by relevant and up-to-date evidence. This should be adequate and proportionate, focused tightly on supporting and justifying the policies concerned, and take into account relevant market signals.”*
- 2.8 RPS contend that Policy NZC1 is not justified as appropriate evidence to support an accelerated timescale for the implementation of enhanced energy efficiency measures has not been provided and therefore introducing the standard now is not soundly-based.
- 2.9 As the Council has not sought to justify the move to an accelerated timescale, prior to the introduction of the national Future Homes Standard in 2025, the Council continues to rely on viability evidence as its only obvious justification for its approach. Paragraph 5.4 of the NZCDPD repeats previous statements in the draft version, stating that it can demonstrate levels of development viability that can accommodate energy efficiency measures that go beyond the 2021 Part L building regulations. However, as RPS has made clear previously, this claim is not consistent with the findings of the Viability Study (updated to April 2022) prepared by BNP Paribas Real Estate published alongside the DPD.
- 2.10 RPS has reviewed the updated viability evidence. As shown in Table 6.51-6.59 of the study, it remains the case that against a large proportion of development typologies (including residential), sales value scenarios and benchmark land values, achieving the minimum 63% net zero policy requirement whilst also securing 40% affordable housing (and other policy standards) required

under existing development plan policies is not likely to be viable. On this basis, **the expression of Policy NZC1 target as a minimum is not justified and so if the policy is retained should be modified to remove the word ‘minimum’ and the policy target amended so that 63% is to be ‘sought’ rather than stated as a requirement.**

- 2.11 RPS acknowledges that Policy NZC1 (and other policies in this DPD) has been amended to reflect viability considerations and includes a reference to what alternative carbon reduction measures applicants must take where viability issues arise. Whilst this is noted, the viability study also recognises that the costs associated with the NZC policy and the provision of policy-compliant levels of affordable housing can both result in schemes becoming unviable (paragraphs 6.7-6.8 refers). Whichever policy requirement, either separately or in combination, that tips schemes into being unviable will be dependent on site-specific circumstances in question at the time. Ultimately, there will be circumstances where the delivery of the full carbon reduction requirements in the NZCDPD and the full provision of affordable housing provision in accordance with the adopted local plan will not be possible. The question arises; which policy requirement takes precedent over the other and how is this to be addressed in the NZCDPD (or other DPD)?
- 2.12 The tension between these two requirements is acknowledged in the viability study. Where viability issues do arise, the study concludes that the provision of a reduced percentage of affordable housing offers a potential solution that would ensure the delivery of the NZC policies (see paragraph 7.4). This is likely to be the most effective and efficient means by which the conflict between carbon reduction and affordable housing delivery can be resolved until such time as the local plan policy on affordable housing has been reviewed to take into account the move to net zero development.
- 2.13 Unfortunately, the adopted local plan does not allow for circumstances whereby more recently adopted DPDs (in this case the NZCDPD) can justify the over-riding of adopted policies for the provision of affordable housing, set out in Policy H2, as a matter of principle. This can only be done through a full review of the adopted Plan. Moreover, the NZCDPD does not reflect the advice in the viability study which advocates for a reduction of affordable housing over a reduced carbon reduction measures where viability issues are identified, or whether the provision of 40% affordable housing on sites can be sufficient justification for below-policy carbon reduction measures. This situation creates a potential uncertainty in how such tensions are to be tackled at the planning application stage, which could potentially delay or frustrate the delivery of much need housing in the District.
- 2.14 On this basis, Policy NZC1 is not effective because it remains unclear for applicants what the Council's expectations are in circumstances where both policy-compliant affordable housing under adopted Local Plan Policy H2 and full NZC emission reductions under Policy NZC1 cannot be delivered simultaneously on viability grounds. RPS therefore recommends the NZCDPD is modified in order to clarify this soundness issue. Alternatively, the Council should align the preparation of the NZCDPD with the ongoing review of the adopted Local Plan so the two policy standards can be updated to ensure they can be implemented concurrently in such a way so that delivering one requirement does not undermine the delivery of the other.

- 2.15 In addition, RPS would make the point that national planning policy, as set out in the NPPF¹, does not currently advocate the provision of zero carbon development. The only reference in the NPPF to 'zero' refers to zero emissions vehicles (which TW broadly supports). The NPPF does support the 'transition to a low carbon future' by shaping places that 'contribute to radical reductions in greenhouse gas emissions' (paragraph 152). However, this is not the same as advocating that all new residential developments comprising one dwelling or more should achieve net zero operational regulated carbon emissions.
- 2.16 RPS also notes that Paragraph: 012 Reference ID: 6-012-20190315 of the PPG sets out that energy performance standards can only be set up to the equivalent of Level 4 of the Code for Sustainable Homes. No reference to this is made in either the NZCDPD or the 'Energy and Sustainability Policy Review. Noting that the 2021 Part L exceeds Level 4 of the Code for Sustainable Homes the Council cannot introduce a standard in excess of the 2021 Part L and comply with this aspect of the PPG. Furthermore, the Council provides no local evidence to justify a departure from the PPG advice. Accordingly, Policy NZC1 (and NZC2(A)) is not consistent with national guidance.
- 2.17 On this basis, whilst the move to a zero carbon future is broadly supported, the proposed approach in the NZCDPD (notably under Policy NZC1) goes beyond national policy in place at this time, and so is not consistent with national policy and therefore is not soundly-based.

¹ National Planning Policy Framework July 2021

3 POLICY NZC2(A): MAKING BUILDINGS ENERGY EFFICIENT

- 3.1 Policy NZC2(A) expects applicants to demonstrate a 10% improvement on Target for Fabric Energy Efficiency (TFEE) for all new dwellings currently set out in Part L of the 2021 Building Regulations. The Council's justification for this approach (see paragraph 6.5 of the NZCDPD) is two-fold; firstly, that the 10% improvement reflects the approximate uplift between the interim 2021 Part L amended regulations and the indicative Future Homes Standard (FHS) to be made live in 2025; and secondly, that estimated cost data for fabric improvement measures at a national level has been taken into account as part of whole plan viability testing. RPS does not consider this to be a soundly-based approach.
- 3.2 Firstly, whilst again it is noted that Local Planning Authorities can set local energy efficiency standards that exceed national requirements, all development plan policies must be informed by adequate and proportionate evidence in order to be deemed soundly-based. However, having reviewed the commentary in the Council's Energy and Sustainability Policy Review document, (as with the justification for Policy NZC1) **no evidence has been provided setting out the local circumstances that justify the application of an enhanced system of TFEEs within Warwick District** through Policy NZC2(A) prior to the enacting of national changes in Building Regulations to be brought into effect in 2025.
- 3.3 Secondly, whilst the direction of travel toward zero carbon homes and buildings is currently expected to be secured through future changes to Building Regulations, national planning policy currently supports the transition to a low carbon future². National policy does not, however, require the provision of energy efficiency measures (and thus increased energy efficient performance) as part of new residential developments that exceed the standards set out in current regulations. A policy requirement that seeks 10% enhancements over current and future building regulations is therefore not consistent with national policy.
- 3.4 Thirdly, RPS would point out that using viability analysis merely relates to matters of deliverability (and thus effective in soundness terms) which is not the same as demonstrating that a policy is justified.
- 3.5 In light of these observations, RPS contend that the application of 10% 'improvement' over and above current building regulations is not justified nor consistent with national policy.
- 3.6 Consequently, RPS would recommend the first sentence of the policy is either deleted entirely or modified so that it reflects local circumstances. RPS would suggest the following amendment, if the Inspector is minded to retain the policy, to read as follows:

² NPPF 2021, para 152

“New development of one or more new dwellings (C3 or C4 use) will be encouraged to demonstrate a 10% improvement on the Part L 2021 Target for Fabric Energy Efficiency (set by SAP10.2)”.

4 POLICY NZC2(B): ZERO OR LOW CARBON ENERGY SOURCES AND ZERO CARBON READY TECHNOLOGY

- 4.1 Policy NZC2(B) retains the requirement for all proposals for new development to include an energy statement that demonstrates that zero and low carbon sources of energy have been considered and, where possible, incorporated or used in the development.
- 4.2 RPS had raised concerns at the previous consultation stage regarding the process of engagement between applicants and the Council on the preparation of the energy statement that would accompany a planning application. RPS recommended at that stage that wording should be added to the policy (or supporting text) to encourage the agreement of the scope of the energy statement between the applicant and the Council prior to submission of a planning application. Having reviewed the policy, no such changes have been made in line with this recommendation.
- 4.3 Given its central focus on low carbon and energy efficiency, the energy statement will be a critical component in determining all future residential applications in the District. This will be further complicated by the type and scale of residential developments coming forward in the District. Therefore, it is of the utmost importance that the policy provides sufficient guidance for all applicants in addressing the need for renewable, zero and low carbon energy technologies as part of a new development. However, the NZCDPD (see paragraph 7.2) only points to the requirement for an energy statement, whilst the supporting text only refers to *“other support that the Council or its partners may be able to offer”*.
- 4.4 National policy³ makes clear that policies and plans should serve a clear purpose and be clearly written and unambiguous so it is evident how a decision maker should react to development proposals involving the submission of energy statements. However, **no clarification or assistance is provided in the NZCDPD as to the types of technology or energy sources that would be best suited to, or supported by, a particular site or location**. This results in a considerable amount of uncertainty for applicants when devising proposals that might, potentially, not be supported by the Council or where the Council is aware of other alternative options that might be more suitable based on their local knowledge. This could result in unnecessary expense in developing proposals as different approaches to energy can vary the fundamental design principles of a scheme or, at worst, lead to greater risk that their schemes could be refused for reasons simply relating to the energy statement.
- 4.5 For these reasons, RPS contends that Policy NZC2(B) lacks sufficient detail to assist applicants in preparing energy statements in a timely and efficient manner. On this basis, Policy NZC2(B) is not effective and is inconsistent with national policy.

³ NPPF 2021, para 16

5 POLICY NZC2(C): CARBON OFFSETTING

- 5.1 Policy NZC2(C) requires that where a development cannot demonstrate that it is net zero carbon at the point of determination of planning permission, it will be required to either make a financial contribution to the Council's carbon offsetting fund or to a verified local off-site offsetting scheme. Paragraph 8.3 now sets out that the financial contribution required will be calculated on the basis of the carbon offset price of £245/tonne taken from the central figure for 2021 from the nationally recognised non-traded valuation of carbon, released annually as part of the Treasury Green Book data by BEIS.
- 5.2 The policy also retains the reference to payment of 'cash in lieu' contribution to the District Council's carbon offsetting fund. Contributions would be secured via a Section 106 agreement to be paid prior to occupation of the development. However, the policy makes no reference to circumstances that might transpire that may result in contributions remaining unspent over a considerable number of years. It is normal practice for legal agreements to specify time limits or other clauses that can lead to repayment of contributions back to applicants (or successors) if not spent within a certain time period and / or by a certain date. No reference to time limits on financial contributions is included in the policy as drafted. Without clarification, the contribution could be held indefinitely for no good reason. For this reason, RPS contend the policy is not effective or justified unless this issue is clarified.

6 POLICY NZC3: EMBODIED CARBON

- 6.1 Policy NZC3 is a new policy that has not been consulted on previously as part of preparing the NZCDPD. The Council again relies on information set out in the Warwick DC Zero Carbon DPD Energy and Sustainability policy review Rev: 05 - updated 26th April 2022 prepared by Bioregional, as justification for this new policy. Section 4 of the review recommends the inclusion of a new policy to address embodied carbon considerations.
- 6.2 The new policy makes clear that new major development should demonstrate in the energy or design statement how embodied carbon has been considered and reduced where possible. For proposals over 50 dwellings, applications should be accompanied by a 'whole-life assessment' of the material used.
- 6.3 The inclusion of an additional policy requesting a separate assessment specifically dealing with embodied carbon is lamentable. The Council already highlights on its validation checklist (for outline, full, and reserved matters applications) the potential for 30 separate reports needed to accompany each application. **The need for yet another statement or assessment dealing with embodied carbon is not necessary as this can be dealt with through the Sustainability Statement which is already included on the list of 'additional supporting information' required to accompany residential applications.**
- 6.4 Furthermore, the introduction to the review makes clear that the new policy "*has precedents in existing adopted local plans in other local authority areas*". RPS notes that in relation to Policy NZC3, the review highlights three 'precedents' as providing the justification for a specific policy in Warwick District, these being; *Bristol Local Plan Review: Draft Policies and Development Allocations – Consultation (March 2019)*; *Greater London Authority – The London Plan: Intend to Publish 2019*; and, the *Greater Manchester Combined Authority – GM Plan for Homes, Jobs and the Environment 2019*.
- 6.5 Of these other plans, only the London Plan has been examined and adopted (since March 2021). The other two plans are still at the preparation stage and so carry limited weight and in RPS opinion do not constitute a suitable evidence base for the NZCDPD. In addition, the London Plan (under Policy SI 2) only seeks whole-life carbon assessments on schemes 'referable to the Mayor'. For all other developments, a whole life-cycle approach in London is 'encouraged' (see paragraph 9.2.11).
- 6.6 Given the reliance on 'precedents' in development plans elsewhere in the country, only one of the plans identified by the Council provides any semblance of a precedent as justification for the approach in the NZCDPD. No other evidence is provided to justify the need to demonstrate that embodied carbon has been considered and reduced as part of residential applications in the District. On this basis, RPS contends that the evidence is insufficient to justify the specific requirement for a separate whole life assessment for schemes over 50 dwellings, and so is not soundly-based.
- 6.7 Consequently, in order to modify the plan so it can be found sound, the last sentence of Policy NZC3 should be deleted.

7 SUSTAINABILITY APPRAISAL

7.1 With regards to reasonable alternatives, in response to submissions made at the Regulation 18 consultation stage RPS notes the reference in paragraph 4.3 of the SA that the Council has now tested two additional options, namely; ‘do nothing’; and “follow the national approach to improved energy efficiency requirements”.

7.2 A summary of the appraisal findings is provided at Table 4.2 of the SA. These are represented below for reference.

Table 4.2: SA Summary Findings – Do Nothing; National Approach; NZC DPD Policies

SA Theme Scenario DPD Policies	Economy	Housing & Health	Access	Transport	AQ & C Change	Waste Land & Soils	Natural Env	Historic Env	Water
Do Nothing Scenario									
Do Nothing	-	-?	0	0	-?	0	-?	-?	+
National Approach Energy Efficiency Scenario									
National Approach	+?	+	0	0	+?	0	+?	+?	+
Proposed NZC DPD									
Proposed DPD Overall:	+	++	0	0	++	0	+	0	+
NZC1 Achieving Net Zero Carbon Development	+	++	0	0	++	0	+	0	+
NZC2 (A) Making Buildings Energy Efficient	++	++	0	0	++	0	+	0	+
NZC2(B) Zero or Low Carbon Energy Sources	++	++	0	0	++	0	+	0	+
NZC2(C) Offsetting Residual Carbon	+	+	0	0	+	0	0	0	0
NZC3 Embodied Carbon	+?	+	0	0	+	0	+	0	0
NZC4 Existing Buildings	+?	+	0	0	+	0	+	0	0

7.3 It can be seen that Policy NZC1 and NZC2(A), both of which deal with setting local standards on carbon emissions and energy efficiency respectively, scored slightly better (albeit not significantly) than the ‘follow national approach’. The key reason given for this difference is provided in the summary for preferred option ‘Proposed Net Zero Carbon DPD Scenario’ (see paragraph 4.61 of the SA), which states:

“It [the preferred option] also implements such requirements earlier by aiming to achieve net zero carbon as close as possible to 2030 (rather than 2050) indicating wider and more positive effects...this accelerates the delivery of the national ambition.” [RPS emphasis]

7.4 Thus, it is clear that the timing of when emission and energy efficiency standards would be introduced forms a key basis for justifying that the preferred option performs better in sustainability terms. However, drawing this conclusion is based on the premise that accelerating the introduction of such measures is, as a matter of principle, justified and consistent with national policy. As explained in this submission, RPS does not consider an accelerated timeframe for the measures proposed in draft policies NZC1 and NZC2(A) in particular to be justified or consistent with national policy and guidance. It follows, therefore, that the basis for the conclusion in the SA that the preferred

option performs better in sustainability terms, and thus should be progressed in favour of the 'national approach' or 'do-nothing' scenario, is also not justified and contradicts national policy and guidance.

- 7.5 Consequently, RPS contend that the SA is flawed in respect to the adequacy of reasons given for the selection and rejection of reasonable alternatives identified as part of the SA process. Thus, this brings into question the adequacy of the SA as a whole.