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# Motion to Council requesting a Supplementary Planning Document within 6 months requiring new dwellings to minimise CO<sub>2</sub> and H<sub>2</sub>O

## Summary Report

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<b>Committee considering report:</b>	Council
<b>Date of Committee:</b>	09 January 2020
<b>Portfolio Member:</b>	Councillor Hilary Cole
<b>Date Portfolio Member agreed report:</b>	01 December 2019
<b>Report Author:</b>	Bryan Lyttle
<b>Forward Plan Ref:</b>	C3843

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### 1. Purpose of the Report

- 1.1 At the September meeting of Council the following motion was submitted:

“This council notes that it has declared a climate emergency and adopted a policy of achieving carbon neutrality by 2030. Given that private dwellings account for around 20% of carbon dioxide emissions, it is essential for measures to be urgently taken to reduce the emissions from new dwellings and extensions to be reduced by the maximum possible. This council also notes concerns by the Environment Agency and others about the effect of water abstraction on our watercourses and, particularly, on our chalk streams. Thames Water is classified as being under serious stress.

This council therefore resolves to draw up and adopt a Supplementary Planning Document within six months requiring new dwellings and extensions to be built to standards requiring carbon dioxide emissions and water consumption to be minimised to the maximum extent consistent with government guidance”.

- 1.2 The Chairman informed the Council that the Motion would not be debated at the meeting. In accordance with Procedure Rule 4.9.8, it would be referred to the Planning Advisory Group for consideration and a response would be brought back to Council.
- 1.3 The Planning Advisory Group considered the attached report (appendix C) at its meeting in November 2019.

### 2. Recommendations

- 2.1 The motion to the Council seeks the introduction of an SPD for CO<sub>2</sub> and H<sub>2</sub>O, while this is possible it would not be advisable to do so as any SPD would not be enforceable under planning legislation as it would not be in conformity with both national and our local planning policies.

- 2.2 In order for the Council to progress such a policy as proposed, it will have to part of the new local plan and subject to consultation and examination in public and this is the intention.
- 2.3 However, this does not prevent the Council from progressing with the Environment Strategy, the consultation on which ends on the 21<sup>st</sup> February 2020, and which aims to make West Berkshire Council is carbon neutral by 2030.
- 2.4 For the reasons set out in this report the motion to Council is not supported.

### **3. Implications**

3.1 **Financial:** If the Council was to introduce a SPD on this issue in advance of the local plan it would expose the Council to appeals as developers sought to remove the condition in their planning applications. It is highly likely that these appeals would include cost applications as the Council had acted outside of both National and Local Planning policy.

3.2 **Policy:** The Council has declared a Climate Emergency, and is progressing with its Environment Strategy which aims to make the Council and West Berkshire carbon neutral by 2030.

In order for planning permissions to be granted permissions must conform to both national planning policy and local planning policy. If it doesn't then it opens up the Council to risk of legal challenge. In addition new development must also conform to the building regulations. If the authority was to deviate away from this then the developer could challenge the authority and apply for costs as the Council has acted "unreasonably". The new local plan will cover this issue and the evidence is currently being collected from the Building Research Establishment and the Construction Industry Products Association to support this work.

3.3 **Personnel:** Not Applicable

3.4 **Legal:**

3.5 **Risk Management:**

3.6 **Property:**

3.7 **Other:**

### **4. Other options considered**

4.1 A new policy in the Local Plan section 3.3 of appendix C sets out the benefits of such an approach.

## Executive Summary

### 5. Introduction / Background

5.1 At the September meeting of Council the following motion was submitted:

“This council notes that it has declared a climate emergency and adopted a policy of achieving carbon neutrality by 2030. Given that private dwellings account for around 20% of carbon dioxide emissions, it is essential for measures to be urgently taken to reduce the emissions from new dwellings and extensions to be reduced by the maximum possible. This council also notes concerns by the Environment Agency and others about the effect of water abstraction on our watercourses and, particularly, on our chalk streams. Thames Water is classified as being under serious stress.

This council therefore resolves to draw up and adopt a Supplementary Planning Document within six months requiring new dwellings and extensions to be built to standards requiring carbon dioxide emissions and water consumption to be minimised to the maximum extent consistent with government guidance”.

### 6. Proposals

6.1 The motion was discussed at the Planning Advisory Group in November 2019 as requested by the Chairman of the Council (appendix C).

6.2 Members were informed that the provision of new dwellings must comply with both the national and local planning regulations as well as the nationally approved Building Regulations 2010 (as amended).

6.3 The legislation relating to the provisions of “Supplementary Planning Documents” was also outlined in detail as was the provisions of the Planning and Energy Act 2008, the Written Ministerial Statement on Plan Making dated 25<sup>th</sup> March 2015 and Planning Practice Guidance revision date 15<sup>th</sup> March 2019.

6.4 The report considered a new SPD but states that such an SPD would not be able to compel developers to go above and beyond what was in the Current Building Regulations and Core Strategy.

6.5 If the Council introduced an SPD now with higher standards and was then to refuse planning permissions for new development that did not go beyond the existing Building Regulations (which are to Code level 4) for example, a developer could appeal and the Council would be liable for costs for unreasonable behaviour.

6.6 The report also answered the question “Why have other authorities been able to introduce a new policy approach?” and the answer is that they have had their local plan policies examined by an Independent Planning Inspector at a local plan public inquiry after the Ministerial Statement of March 2015.

6.7 The existing local plan had a policy requiring Zero Carbon Homes by 2016 which although approved in 2012, was overtaken by Government policy and it has been officers’ intention to provide an updated policy for inclusion in the new local plan, the draft of which will be produced for consultation next summer.

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- 6.8 Officers have been in touch with the Building Research Establishment (BRE) and the Construction Products Association (CPA) to discuss how best to “future ready” such a policy and this dialogue is on-going.
- 6.9 Further, in order to ensure such an approach remains economically viable, officers have commission separate viability work on the costs associated with creating a zero carbon development. This will enable the Council to rebuke developers at the examination in saying that such a proposal will render development in West Berkshire uneconomical and therefore inconsistent with national policy.

**7. Conclusions**

- 7.1 While the aim of the motion to Council is supported it needs to be introduced via the local plan process to be enforceable and it is for this reason alone that the recommendation is not to support the motion.

**8. Appendices**

Appendix A – Data Protection Impact Assessment

Appendix B – Equalities Impact Assessment

Appendix C – Supporting Information

## Appendix A

### Data Protection Impact Assessment – Stage One

The General Data Protection Regulations require a Data Protection Impact Assessment (DPIA) for certain projects that have a significant impact on the rights of data subjects.

Should you require additional guidance in completing this assessment, please refer to the Information Management Officer via [dp@westberks.gov.uk](mailto:dp@westberks.gov.uk)

Directorate:	Place
Service:	Development and Planning
Team:	Planning Policy
Lead Officer:	Bryan Lyttle
Title of Project/System:	Motion to Council CO2 and H2O
Date of Assessment:	10/12/201

**Do you need to do a Data Protection Impact Assessment (DPIA)?**

	Yes	No
<p><b>Will you be processing SENSITIVE or “special category” personal data?</b></p> <p>Note – sensitive personal data is described as “<i>data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person’s sex life or sexual orientation</i>”</p>	<input type="checkbox"/>	<b>X</b>
<p><b>Will you be processing data on a large scale?</b></p> <p>Note – Large scale might apply to the number of individuals affected OR the volume of data you are processing OR both</p>	<input type="checkbox"/>	<b>X</b>
<p><b>Will your project or system have a “social media” dimension?</b></p> <p>Note – will it have an interactive element which allows users to communicate directly with one another?</p>	<input type="checkbox"/>	<b>X</b>
<p><b>Will any decisions be automated?</b></p> <p>Note – does your system or process involve circumstances where an individual’s input is “scored” or assessed without intervention/review/checking by a human being? Will there be any “profiling” of data subjects?</p>	<input type="checkbox"/>	<b>X</b>
<p><b>Will your project/system involve CCTV or monitoring of an area accessible to the public?</b></p>	<input type="checkbox"/>	<b>X</b>
<p><b>Will you be using the data you collect to match or cross-reference against another existing set of data?</b></p>	<input type="checkbox"/>	<b>X</b>
<p><b>Will you be using any novel, or technologically advanced systems or processes?</b></p> <p>Note – this could include biometrics, “internet of things” connectivity or anything that is currently not widely utilised</p>	<input type="checkbox"/>	<b>X</b>

**If you answer “Yes” to any of the above, you will probably need to complete [Data Protection Impact Assessment - Stage Two](#). If you are unsure, please consult with the Information Management Officer before proceeding.**

## Appendix B

### Equality Impact Assessment - Stage One

We need to ensure that our strategies, policies, functions and services, current and proposed have given due regard to equality and diversity as set out in the Public Sector Equality Duty (Section 149 of the Equality Act), which states:

- “(1) A public authority must, in the exercise of its functions, have due regard to the need to:**
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;**
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; This includes the need to:**
    - (i) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;**
    - (ii) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;**
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it, with due regard, in particular, to the need to be aware that compliance with the duties in this section may involve treating some persons more favourably than others.**
- (2) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.**
- (3) Compliance with the duties in this section may involve treating some persons more favourably than others.”**

The following list of questions may help to establish whether the decision is relevant to equality:

- Does the decision affect service users, employees or the wider community?
- (The relevance of a decision to equality depends not just on the number of those affected but on the significance of the impact on them)
- Is it likely to affect people with particular protected characteristics differently?
- Is it a major policy, or a major change to an existing policy, significantly affecting how functions are delivered?
- Will the decision have a significant impact on how other organisations operate in terms of equality?
- Does the decision relate to functions that engagement has identified as being important to people with particular protected characteristics?
- Does the decision relate to an area with known inequalities?
- Does the decision relate to any equality objectives that have been set by the council?

Please complete the following questions to determine whether a full Stage Two, Equality Impact Assessment is required.

<b>What is the proposed decision that you are asking the Executive to make:</b>	
<b>Summary of relevant legislation:</b>	Town and Country Planning Act 1991 (as amended) Energy Act 2008 And the associated regulations in relation to these acts Building Regulations 2010 (as amended) National Planning Policy Framework 2012 (as amended) Planning Practice Guidance (as amended)
<b>Does the proposed decision conflict with any of the Council's key strategy priorities?</b>	No
<b>Name of assessor:</b>	Bryan Lyttle
<b>Date of assessment:</b>	10/12/2019

<b>Is this a:</b>		<b>Is this:</b>	
<b>Policy</b>	<b>Yes</b>	<b>New or proposed</b>	<b>Yes</b>
<b>Strategy</b>	<b>No</b>	<b>Already exists and is being reviewed</b>	<b>Yes</b>
<b>Function</b>	<b>No</b>	<b>Is changing</b>	<b>Yes/No</b>
<b>Service</b>	<b>No</b>		

<b>1 What are the main aims, objectives and intended outcomes of the proposed decision and who is likely to benefit from it?</b>	
<b>Aims:</b>	
<b>Objectives:</b>	
<b>Outcomes:</b>	
<b>Benefits:</b>	

<b>2 Note which groups may be affected by the proposed decision. Consider how they may be affected, whether it is positively or negatively and what sources of information have been used to determine this.</b>  (Please demonstrate consideration of all strands – Age, Disability, Gender Reassignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race,
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Religion or Belief, Sex and Sexual Orientation.)		
Group Affected	What might be the effect?	Information to support this
Age		
Disability		
Gender Reassignment		
Marriage and Civil Partnership		
Pregnancy and Maternity		
Race		
Religion or Belief		
Sex		
Sexual Orientation		
<b>Further Comments relating to the item:</b>		
All groups are equally impacted as the policy does not discriminate since it applies to the provision of all new housing.		

<b>3 Result</b>	
<b>Are there any aspects of the proposed decision, including how it is delivered or accessed, that could contribute to inequality?</b>	<b>No</b>
<b>Please provide an explanation for your answer:</b> All groups are equally impacted as the policy does not discriminate since it applies to the provision of all new housing.	
<b>Will the proposed decision have an adverse impact upon the lives of people, including employees and service users?</b>	<b>No</b>
<b>Please provide an explanation for your answer:</b>	

If your answers to question 2 have identified potential adverse impacts and you have answered 'yes' to either of the sections at question 3, or you are unsure about the impact, then you should carry out a Stage Two Equality Impact Assessment.

If a Stage Two Equality Impact Assessment is required, before proceeding you should discuss the scope of the Assessment with service managers in your area. You will also need to refer to the [Equality Impact Assessment guidance and Stage Two template](#).

<b>4 Identify next steps as appropriate:</b>	
<b>Stage Two required</b>	

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<b>Owner of Stage Two assessment:</b>	
<b>Timescale for Stage Two assessment:</b>	

**Name: Bryan Lyttle**

**Date: 10/12/2019**

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**Please now forward this completed form to Rachel Craggs, Principal Policy Officer (Equality and Diversity) ([rachel.craggs@westberks.gov.uk](mailto:rachel.craggs@westberks.gov.uk)), for publication on the WBC website.**