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**WEST OXFORDSHIRE  
DISTRICT COUNCIL**

19 November 2024

Inspector Helen Hockenhull BA (Hons) B.PI MRTPI

Dear Ms Hockenhull

### **Examination of the Remitted Part of the Salt Cross Village Area Action Plan (AAP)**

I am writing regarding the above, specifically to outline the work we have undertaken over the past few months and to detail the intended next steps for taking the AAP forward through the examination process.

As you will be aware, Policy 2 – Net Zero Carbon Development, as originally submitted in 2020, was hailed by many observers at the time as being ground-breaking and highly ambitious, reflecting a strong local desire for Salt Cross to be a sustainable and forward-looking new community which places the climate emergency at its core.

The policy is purposefully specific, including a number of key performance indicators relating to fabric and energy efficiency as well as the use of predictive energy modelling. It requires development to be fossil-fuel free, with 100% of the energy consumption of buildings on-site to be generated using on-site renewables. The policy also requires consideration of embodied carbon along with robust metering, monitoring and reporting mechanisms.

Naturally we were therefore extremely disappointed when the previous Inspectors concluded that the policy was unsound in their report of March 2023, particularly as very similar policies were adopted by Bath and North East Somerset Council in January 2023 and by Cornwall Council in June 2023.

We thus welcomed the outcome of the 3<sup>rd</sup> party legal challenge launched by Rights Community Action (RCA) which led to those parts of the Inspectors' report relating to Policy 2 being formally quashed in March this year.

On 22 April 2024, you wrote to the District Council to confirm your appointment and the re-opening of the examination to consider the remitted part of the AAP. Your letter helpfully explained that the starting point for the re-opened examination is Policy 2 as originally submitted in 2020 and that it will be necessary to consider Policy 2 in light of the RCA legal challenge and the Government's Written Ministerial Statement (WMS) on Local Energy Efficiency Standards of December 2023.

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As you are aware, the 2023 WMS states, inter alia, that the Government does not expect plan-makers to set local energy efficiency standards for buildings that go beyond current or planned building regulations and more specifically, that:

*‘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).*

It is within this context, that the Council has been undertaking the following strands of work over the past few months:

- Proposed Main Modifications to Policy 2 and associated minor Additional Modifications
- Zero carbon technical evidence update
- Viability evidence update
- Sustainability Appraisal (SA) update

In discussion with the appointed consultant team, it was agreed that the updated zero carbon evidence should consider two main approaches for Policy 2, one aligned with the Building Regulations Part L framework in accordance with the December 2023 WMS and one which continues to use energy-based metrics much like Policy 2 as originally submitted for examination.

The work which has been undertaken demonstrates that both approaches are technically feasible in the context of Salt Cross and that there is only a very small difference in cost from a viability perspective.

Importantly, it demonstrates that there a number of clear advantages with an energy-based approach, including the fact that it uses absolute metrics for space heating demand, energy use intensity and renewable energy generation, it addresses unregulated energy use (which can account for up to 50% of energy use in low-energy dwellings) it can help to promote good design and can more readily be verified and measured in operation.

Conversely, it demonstrates that a WMS compliant policy approach based on Part L of the Building Regulations uses a relative metric that varies from building to building (Target Emission Rate or TER), takes no account of unregulated energy use, can promote poor design and cannot readily be verified or measured in operation.

Effectively, it represents a ‘low carbon’ rather than a ‘zero carbon’ option.

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Importantly, we are aware that a number of other local authorities are pursuing net zero-carbon policies which incorporate energy-based metrics and therefore do not accord with the December 2023 WMS.

Most notably, I would draw your attention to Tendring District Council who are in the process of preparing a development plan document to guide the future delivery of the Tendring Colchester Borders Garden Community in Essex.

The Tendring DPD includes Policy 8: Sustainable Infrastructure which requires all buildings to be net zero carbon in operation and achieve net zero operational energy balance on-site. Notably, the policy includes a number of specific energy-based metrics relating to energy use and space heating demand, much like the Salt Cross AAP Policy 2 as originally submitted in 2020.

The DPD was submitted for examination in September 2023 with examination hearing sessions held in May 2024. Following the hearings, the Inspector wrote to the Council recommending a number of Main Modifications to make the DPD sound. Notably, although a number of modifications are proposed to Policy 8, none of these seek to remove or amend the energy-based metrics upon which the policy is based.

The proposed Main Modifications were the subject of public consultation from 10<sup>th</sup> September 2024 to 21<sup>st</sup> October 2024 and the Inspector's final report is expected before the end of the year.

In light of the work undertaken by our consultant team and the approach being taken in Tendring and elsewhere, up until very recently, it had been our intention to put forward two policy options for consideration through the re-opened examination and in doing so, make it clear that the Council's preference very much remains for the more robust net zero carbon approach based on the use of energy metrics.

However, we are concerned that such an approach may conflict with Section 1(5) of the Planning and Energy Act 2008 which, inter alia, states that policies included in development plan documents must not be inconsistent with relevant national policies for England.

As such, we have reached the conclusion that rather than submitting any material for your consideration at this stage, we should instead, write to the Secretary of State for Housing, Communities and Local Government, firstly to highlight the inconsistency of approach to this key issue within the Planning Inspectorate, secondly, to clarify the extent to which the WMS precludes the use of energy based-metrics and thirdly, to establish whether the Government intends to rescind, update or replace the WMS in the foreseeable future.

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Whilst this will inevitably cause some further delay to the examination and adoption of the AAP, I trust that you will appreciate the difficult position that the Council is currently placed in.

In terms of a potential way forward, we would respectfully suggest that the examination be formally 'paused' until such time as a response is received from Government and the Council is able to move forward with a greater degree of certainty and confidence.

We would be pleased to further discuss with you any timing and procedural implications that arise as a result of our proposed course of action.

As before, if you have any questions or require any further clarification, do please let me know.

Yours sincerely

A handwritten signature in black ink that reads "Hargraves".

Chris Hargraves  
Head of Planning