



## Association for the Conservation of Energy

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# EAC inquiry: Code for Sustainable Homes and the Housing Standards Review

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## Summary

The Association for the Conservation of Energy aims to reduce overall energy demand to ensure a secure and sustainable energy future. Through our lobbying, campaigning and research we help to achieve sensible and consistent policy, legislation and targets. ACE works to raise a positive awareness of energy conservation and encourage increased investment in all energy-saving measures. We welcome the opportunity to submit evidence to this inquiry, and are grateful to the Environmental Audit Committee for it. The main points provided in evidence are:

- The new Part L of the Building Regulations has not gone as far as anticipated in terms of the *minimum* standard it sets for new housing.
- Against this backdrop, the justifications used for proposing to get rid of Code for Sustainable Homes energy standards and falling back to Part L alone, whilst proposing to amend or remove the Planning and Energy Act in consequence, are even flimsier and more narrow-minded than they would otherwise have been.
- The proposals, if adopted, would reduce housing quality, increase running costs for occupants, damage localism and stifle construction innovation.
- And the proposals are made all the more remarkable for their political naivety and short-sightedness.

## Views given in evidence to the inquiry

### Poor rationale

1. The recent update to national Building Regulations did not impose strict enough carbon reduction targets to incentivise the integration of on-site renewables (such as solar energy systems, heat pumps and biomass boilers) into new properties<sup>1</sup>. Nor did it go as far as anticipated in driving improved energy efficiency in new homes. DCLG admitted this in its Impact Assessment<sup>2</sup>. The Planning and Energy Act's 'Merton Rule' is therefore the only policy tool explicitly incentivising on-site renewables in new homes and allowing for higher overall energy performance standards, and must remain available to local authorities at least until Building Regulations are sufficiently strong to drive uptake of on-site renewables in new homes (which will not be before 2016 at the earliest).
2. Part L of the '2013' Building Regulations will come into force in April 2014, a year later than promised by this Government, and a year later than anticipated by industry. It was originally planned to require energy performance akin to Code for Sustainable Homes ('the Code') level 4. This would have made it consistent with the requirement for zero carbon homes from 2016, and would have been the continuation of the roadmap for the tightening of Part L standards, as pioneered by the Code, since 2005. The Housing Standards Review consultation consistently uses as justification for its proposals to scrap the voluntary Code standards and the powers granted to local authorities by the Planning and Energy Act the fact that Part L 2013 is equivalent to being between Code levels 3 and 4.
3. This means that Part L has now for the first time diverged from the roadmap to 2016, and is actually situated much closer to Code level 3 than level 4 (the latter being the level required of new social housing since 2010). Not only has it diverged, it has fallen behind schedule. Against this backdrop, the powers granted to local authorities under the Planning and Energy Act are more important than ever in ensuring 2016 can be met at least cost and maximum benefit, by continuing to drive sustainability, innovation, and learning effects in the construction sector – a role which Part L is now in a less strong position to play than it could have been.
4. As the Impact Assessment accompanying the consultation reports, 39% of homes are being built to Code levels 3 and above. What appears to have been forgotten throughout is that homes compliant with the Code are of higher quality and desirability than homes not built to the Code, and that occupants face lower running costs. Many, if not most, local authorities around the country understand this. The Greater London Authority now proposes to move to a 40% improvement on 2010 building regulations for all planning submissions to the Mayor from October 2013<sup>3</sup>. This is consistent with Code level 4 and of course what the 2013 Part L of the Building Regulations should have been.
5. Against this backdrop, the Housing Standards Review proposes to use the watered down minimum standard that is Part L of the Building Regulations as the only nationally described standard. The first justification used is that a diversity of higher and nationally recognised voluntary standards being required of developers makes new housing construction less economically viable. There is zero evidence in the consultation's impact assessment to substantiate this, and new housing starts have been

<sup>1</sup> <http://www.r-e-a.net/news/new-building-regulations-a-missed-opportunity-for-cost-effective-emissions-reduction>

<sup>2</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/226965/Part\\_L\\_2013\\_IA.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/226965/Part_L_2013_IA.pdf)

<sup>3</sup> <http://www.london.gov.uk/sites/default/files/MAINSR%26C%20SPG%2020130730.pdf>; p.38

increasing consistently this year compared to 2012. The second justification used argues higher than minimum energy standards, based on the Code, only have a 'shelf life' of three years as all new homes will have to be built to zero carbon standards from 2016. This justification is then also used to argue that the Planning and Energy Act "may need to be amended or removed".

6. In one fell swoop, the consultation attempts to remove widely recognised higher energy performance standards for new homes as well as the Planning and Energy Act. The justifications are flimsy as well as narrow-minded.

7. The justifications are flimsy because they appear to imply that Part L in 2016 will be the end point for Part L for new homes, that new homes will then no longer be capable of being built to standards higher than Part L, and that as a result, there is no point continuing to grant local authorities the power to demand homes that are of higher quality and lower running cost than the national minimum standard. It will always be possible to build homes to a higher standard, and innovation in energy efficient and low carbon construction will of course continue beyond 2016. The proposals put forward would merely serve to stifle this innovation. Their timing is also alarming owing to the fact that this consultation is wanting to make its decisions before awaiting the outcome of the allowable solutions consultation.

8. The justifications are narrow-minded because they appear to forget that the Planning and Energy Act also allows local authorities to set higher standards for non-residential developments, a sector which, certainly in its recent history, has seen considerable innovation in energy and carbon performance – and a sector which will also continue to innovate well beyond the time it has to build to zero carbon as a minimum standard from 2019, unless it is stifled in a similar way as proposed via the possible removal of the Act.

### Poor politics

9. The politics surrounding these proposals are as remarkable as the genesis of the Planning and Energy Act 2008 is important. It started in December 2007 when a Conservative backbencher called Michael Fallon came top of that ballot. Despite being not desperately well-known for any strong ecological interests, he was nonetheless the subject of a very heavyweight persuasion campaign from his Party leaders, led by the Party chairman. To quote from an 'op-ed' article ("*Hot air is never going to save the world*") published in the Daily Telegraph by Philip Johnston on December 17 2007<sup>4</sup>, shortly after Mr Fallon announced his intention to adopt the Planning & Energy Bill:

*If you had the chance to bring in a new piece of legislation, what would it be? Each year, backbench MPs enter a ballot for private member's Bills that gives them just this opportunity. Those who come near the top are then bombarded by campaigners seeking a legislative vehicle for their pet issue. Alternatively, an MP who has long harboured a desire to right a perceived wrong might get the opportunity to do so. The Government may also offer one of the high-ranking MPs an off-the-shelf Bill, something they are keen to see in law, but have not specifically timetabled.*

*This year's ballot has been held and the lucky MPs have now made their various dispositions. Top of the pile was Michael Fallon, the Conservative MP for Sevenoaks. His Planning and Energy Bill is specifically*

<sup>4</sup> <http://www.telegraph.co.uk/comment/columnists/philipjohnston/3644783/Hot-air-is-never-going-to-save-the-world.html>

*designed to re-enforce the "Merton rule", a planning policy which requires all new buildings over a certain size to cut their carbon emissions by 10 per cent through the use of on-site renewable energy sources, such as solar panels or a wind turbine. I must confess that I had never heard of this rule, despite being a resident of the south London borough that pioneered it.*

*Now Mr Fallon is very much a member of the Thatcherite free market, No Turning Back wing of the Conservative Party. He is not someone you would automatically consider a tree hugger. He would as likely have been in Bali with the climate change zealots over the past fortnight, as he would join the Labour Party. So it is a sign of the political times that Mr Fallon has come top of the private member's ballot and has opted for an environmental measure that, arguably, places extra regulatory pressures on house builders.*

*There is a dilemma here. The Government wants the industry to supply two million new homes by 2016. But the builders say the Merton rule will make this more expensive and want flexibility. The British Property Federation says: "The industry must not be straitjacketed into a single method which may not always work."*

*Mr Fallon and others are worried that the Government is ready to water down the Merton rule, which is considered to be one of the few genuine drivers of renewable energy technologies in Britain. Over the summer, Yvette Cooper, the Housing Minister, proposed new planning guidance under which it would be possible to meet the 10 per cent rule by using off-site renewables. In other words, instead of integrating a wind turbine into the new development, the developers could invest in an offshore wind farm which might have been built anyway, thereby failing to improve the provision of non-carbon energy.*

*Miss Cooper has since said that the Government remains committed to the rule. But Mr Fallon, supported by former environment ministers from across the political divide, remains suspicious and wants to put the rule in statute - not to force councils to do it but to prevent the Government removing the option.*

*Free-market conservatives instinctively shy away from regulation, but they recognise posturing on the Left when they see it. On this issue, as on so many others, Labour is good at talking about a problem but poor at delivering the answer - not because they don't care, but because they approach everything from a statist viewpoint. Setting targets for cutting greenhouse gas emissions is the easy bit; achieving them is far more difficult. What is most ingenious about the Merton rule is not its potential for energy saving but that councils can adopt it on a voluntary basis and negotiate it locally with developers. Apart from Merton, 25 other boroughs have followed suit. Another 100 want to change their local plans to include the provision. They are doing it without Whitehall having to tell them to. The House Builders Federation would prefer to see a national strategy, rather than leaving this to councils. But is this not just the type of localism we should encourage?*

10. With consummate skill, Mr Fallon succeeded in placing upon the statute book the first new Conservative-inspired Environmental Act of Parliament for many years. His Party Chairman even broke with precedent and signed a Parliamentary Early Day Motion in support. He even coined the phrase 'Go Green, Vote Blue'. David Cameron promised in two Policy Green Papers (on homes and communities,

and on the low carbon economy<sup>5</sup>) that his party would ensure “this legislation is implemented in full”.

11. But now in 2013 the Secretary of State for Communities & Local Government is proposing, in paragraph 232 of the Housing Strategy Review consultation, to ‘amend or remove’ the 2008 Planning and Energy Act. As discussed above, it is now apparently unnecessary bureaucratic red-tape.

12. This Association believes this to be a very strange and foolish proposal for three reasons:

- a. The first, elaborated in the first section above, is because by common consensus the Planning and Energy Act has been instrumental in promoting exemplar standards of meeting the energy needs of new buildings and as such, has driven considerable commercial value across all parts of the sustainable energy industry’s role in the built environment.
- b. The second is because Michael Fallon, the backbench Conservative MP, who was persuaded to pilot this legislation through, is now a Minister at the Department of Energy and Climate Change, known to be seriously persuaded of the effectiveness of the Act, particularly as part of the localism agenda.
- c. But the third reason is because the Chairman of the Conservative Party in 2008, who was its primary champion in order to achieve that ‘Go Green, Vote Blue’ re-branding, just happens to be Eric Pickles – the very same man who as Communities Secretary is now seeking to remove it from the Statute Book.

13. This daft suggestion must progress no further. As he showed with his building regulations ‘consequential improvements’ U-turn, Mr Pickles is quite prepared to reverse his public position following a consultation exercise. He must do so again.

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<sup>5</sup> <http://www.conservatives.com/~media/Files/Green%2520Papers/Housing-Green-Paper.ashx%3Fd1%3Dtrue>;  
<http://www.conservatives.com/~media/files/downloadable%20files/lce.ashx>