

As part of Future of London's programme of work examining the implementation of the Green Deal and ECO across the Capital, issues relating to national and local planning policies have regularly been cited as barriers to the two schemes' potential success.

There are, for example, around 600,000 homes in conservation areas in London, roughly half the national total.¹ Conservation areas are subject to much tighter and additional planning regulations, and therefore applying Green Deal measures to these properties is likely to be much more difficult, time-consuming and therefore expensive.

London also contains a high volume of solid wall properties – around 60 per cent of all homes in the capital.² As cavity wall insulation is not applicable to these buildings, the most suitable way of improving their energy efficiency may be through external wall insulation, which changes the appearance of a building, and may therefore require planning consent. Again, this can drive up the costs and the 'hassle factor' involved with the Green Deal and ECO.

Thus, it will be vital for London Boroughs to develop a strong understanding of the planning policies which may affect the take up of the Green Deal and ECO and potential steps they can take in order to support the delivery of the two schemes across their areas.

In this third and final Briefing Paper from our energy efficiency in London workstream, we set out, with the support of colleagues from legal firm Pinsent Masons LLP, answers to some of the most important questions facing London planners in relation to the Green Deal and ECO.

1. Would most energy efficiency improvements delivered by the Green Deal or ECO require planning permission?

In planning terms, "Development" includes structural alterations or additions to buildings, but does not

¹ Catherine Bottrill, *Homes in Historic Conservation areas in Great Britain: Calculating the proportion of residential dwellings in conservation areas*, Oxford University Environmental Change Institute, 2005, p6

² Centre for Sustainable Energy, *An analysis of hard-to-treat-housing in England*, 2011, p12

generally include works for the maintenance, improvement or alteration of a building if the works only affect the interior of the building or do not materially affect the external appearance of the building. Energy improvements such as glazing and insulation are unlikely to require planning permission. Whilst external works such as solar panels, flues for heating systems or other energy related units are likely to be "permitted development" those permitted development rights do have limits and conditions which would need to be considered on a case by case basis.

In conservation areas and also for Listed Buildings (including the setting of the Listed Building) local planning authorities have a duty to pay special attention to preserving or enhancing the character or appearance of that area or of the building. The local planning authority should therefore be consulted in relation to any works to buildings which are listed, in the curtilage of a Listed Building, or situated in a conservation area.

2. Can London Boroughs extend existing Permitted Development Orders on a local basis or do policy changes need to be enacted at a national level?

Local planning authorities are able to make Local Development Orders (LDOs) permitting types or classes of development within the borough or for specified parts. The Planning Advisory Service (in a paper entitled 'Local Development Orders and Localism') recommends that LDOs could be used to simplify the planning process "for installing infrastructure to implement local initiatives for a low carbon economy". Having an LDO in place would remove the procedural delays of making a planning application.

Local planning authorities however cannot make a LDO allowing development that would affect a Listed Building, although it could make an LDO for a conservation area where such an order permitted development which was in line with the conservation objectives of the area. Given the duty to pay special attention to preserving and enhancing the character of conservation areas, it's questionable whether local planning authorities would use this power to permit development such as the installation of solar panels as part of the Green Deal plan. There may also be possible conflict with the local development plan

policies for that area so any LDO would also have to be mindful of those policies.

3. What particular considerations will Green Deal/ECO measures need to apply to the 600,000 homes in conservation areas?

When considering a planning application within a conservation area, planners are essentially concerned with the effect on amenity and appearance. There is also the issue of Listed Buildings with different grades and so different restrictions as to what works can be carried out to those buildings. As already noted such buildings will require, in addition to planning permission, conservation area consent and/or Listed Building consent if relevant.

The duty on a local planning authority in the exercise of its planning functions in a conservation area is to pay "special attention" "to the desirability of preserving or enhancing the character or appearance of that area". In relation to Listed Buildings, local planning authorities should have "special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses". These are separate criteria in terms of priorities.

4. Would there be a way that Green Deal applications could be fast tracked through the planning system – and again does this have to be set at national level or can this be done locally by London Boroughs. Does the NPPF assist with this in any way?

Time limits for dealing with planning applications are set nationally (Town and Country Planning (Development Management Procedure) (England) Order 2010). Local planning authorities generally have eight weeks to determine planning applications and will require 21 days to publicise applications for minor development.

As long as local authorities carry out the required publicity and consultation, where necessary, there is nothing stopping them from aiming to handle applications more quickly than the eight week target (whether this is achievable in practice is another issue). This of course will always be subject to resource issues

which as we all know is a problem for local planning authorities.

Whilst there is support in the National Planning Policy Framework (NPPF), published in March 2012, for local planning authorities to make timely decisions on applications, there is nothing specifically relevant to assist Green Deal applications.

The Localism Act 2011 does however create a new "neighbourhood planning regime" which provides for the establishment of neighbourhood forums "for the purpose of promoting or improving the social, economic and environmental wellbeing of an area". Neighbourhood forums are able (subject to authorisation by the local authority) to prepare new neighbourhood plans to influence development decisions in their community. Neighbourhood development orders may also remove the need for planning permission.

5. Can London Boroughs set specific carbon reduction targets and does this need to have been done through their local plans, or is there a quick way such targets can be set or a new policy added e.g. similar to the 'Merton Rule' arrangement? In addition, can London Boroughs set minimum energy efficiency standards for buildings undergoing major refurbishment works (as recently proposed at a national level)?

London Boroughs can set targets for carbon reduction and energy efficiency in their planning policies. Policies that are part of its Local Plan need to be supported by an evidence base, and plans should be consistent with the London Plan and will be subject to consultation, sustainability appraisal and approval. Whilst this process may be time consuming, it has the advantage that if targets are part of the local planning authority's development plan they will carry more weight in the consideration of planning applications, whereas if they have not gone through the adoption process, they will be less influential and susceptible to challenge. See also comment at point 7 below re. Building Regulations and the so called "conservatory tax".

6. If the Green Deal plan crosses borough boundaries can anything be done to ensure consistency between those boroughs and their planning policies as they relate to Green Deal plans?

A local planning authority is not required to have planning policies that mirror those of its neighbouring borough. However, the local planning authority will be required to consult adjoining authorities and comply with the "duty to cooperate" with local authorities in the preparation of the local plan for its area. If it was possible to argue that Green Deal plans should be considered a "strategic priority", set out in the NPPF as potentially important to "conservation and enhancement of the natural and historic environment", then the NPPF advises that local planning authorities should "work collaboratively with other bodies to ensure that strategic priorities across local boundaries are properly coordinated and clearly reflected in individual Local Plans". However, we think this would be a very difficult argument to make. The Localism Act 2011 however includes a new duty on local planning authorities to cooperate in relation to sustainable development, i.e. to make decisions about liaising with neighbouring authorities, particularly if preparing development plans and strategies. This could assist in relation to Green Deal consistency across borough boundaries.

7. Building Regulations – these are set nationally but can local authorities set additional requirements over and above these?

Building Regulations are made under the Building Act 1984 and that Act gives the power to make those regulations to the Secretary of State. It is worth noting that proposals have recently closed on consultation for new building regulations to be introduced in 2013 which include requirements for the introduction of energy efficiency requirements when refurbishment/extension works take place (the so called "conservatory tax").

8. Parking charges – can these be set at a local level so that London Boroughs could grant preferential rates to contractors who are carrying out Green Deal works?

Parking charges are set locally, and any change to traffic management orders are subject to extensive consultation and usually approval from the local authority's committee or cabinet. It is of course a hugely controversial issue in most Boroughs, and perhaps there would be some irony to giving preferential treatment to vehicles (and thereby

encouraging greater emissions) in order to help people reduce their energy bill and therefore emissions. Conversely, it would be perverse if the costs of mitigating domestic carbon emissions became prohibitive as a result of parking charges intended, at least in part, to reduce the local carbon footprint.

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