Briefing Note

30/03/15

The abolition of
The Code for Sustainable Homes

On Wednesday 25th March 2015 a *Written Ministerial Statement* was issued which sets out the conclusions to the government's Housing Standards Review. The Statement was timed to coincide with completion of the passage through Parliament of the *Deregulation Bill 2015* which we understand will shortly receive Royal Assent.

Key points

- The changes take immediate effect;
- The CSH is now withdrawn but "legacy" assessments can be completed;
- Planning consents can no longer require compliance with the CSH;
- Powers over construction, internal layout and performance are removed;
- Limited powers only over water, energy, access and space;
- Energy targets limited to CSH level 4;
- Water targets limited to CSH level 4;
- A new Approved Document Part Q on security;
- Powers relating to renewable energy and communal heating retained;
- 2011-2015 HCA funded affordable housing must still be CSH certified;
- 2015-2018 HCA funding round does NOT require CSH certification;
- Non-residential development is not affected so BREEAM can still be imposed.

Although not automatically retrospective the changes appear to remove the Planning basis for requiring CSH compliance and certification, from which we infer that there is no reason why extant consents cannot be amended to remove CSH conditions or S106 obligations.

More details

The Statement makes it clear that from the date the Deregulation Bill 2015 is given Royal Assent, the government's policy is that planning permissions should not be granted requiring, or subject to conditions requiring, compliance with any technical housing standards other than for those areas where authorities have existing policies on access, internal space, or water or energy efficiency.

Where there is an existing plan policy which references the Code for Sustainable Homes, or where there are existing specific equivalent policies on water or energy efficiency, authorities may continue to apply a requirement for a water efficiency standard equivalent to a forthcoming new *national technical standard*, or in the case of energy, a standard consistent with the policy set out in the following paragraph concerning energy performance.

For the specific issue of energy performance, local planning authorities will continue to be able to set and apply policies in their Local Plans which require compliance with energy performance standards that exceed the energy requirements of the Building Regulations until commencement of amendments to the Planning and Energy Act 2008 contained in the Deregulation Bill 2015. This is expected to happen alongside the introduction of the zero carbon homes policy in late 2016. The government has stated that, "… from then, the energy performance requirements in Building Regulations will be set at a level equivalent to the (outgoing) Code for Sustainable Homes Level 4. Until the amendment is commenced, we would expect local planning authorities to take this statement of the government's intention into account in applying existing policies and not set conditions with requirements above a Code level 4 equivalent."

This Statement does not modify the National Planning Policy Framework policy that allows authorities to require the connection of new housing developments to low carbon infrastructure such as district heating networks or to require that a certain proportion of the energy required for a development to be obtained from local renewable energy sources.

The effects of this announcement will be far-reaching and while some aspects remain unclear we believe that the main changes will be as follows:

For new Planning applications:

- In respect of dwellings and with the exception of the items listed below, the authority can no longer impose a requirement for CSH compliance or for any other *local* technical requirements relating to the construction, internal layout or performance;
- The only technical requirements that can be applied are the forthcoming *national technical standards* for energy, water, access and internal space (more details below);
- Until 30th September 2015, if there is a local policy requiring CSH compliance this can be used to impose the energy and water standards that currently equate to the CSH mandatory requirements for "Level 4" in sections Ene1 and Wat1;
- The standards for access and internal space are different to the CSH being a linked set of requirements that are similar to parts of LTH and the London housing space standards;
- From 1st October 2015 the new *national technical standards* will take the place of the CSH standards, but can only be applied where there is a relevant current Local Plan policy;
- The changes appear to reduce the impact of the emissions saving policy of The London Plan 2011: this is because CSH Level 4 requires a reduction in emissions on residential schemes of just 19% compared to a current London Plan requirement of 35% (referenced to a 2013 baseline);
- Policies requiring a percentage of energy to be obtained from local renewables, and the provision of or a connection to a communal or district heating system, remain in place;
- These changes will dramatically reduce the scope of matters that fall with the competence of authorities as many have policies that have expanded to cover a whole range of issue that relate to the construction, internal layout and performance of dwellings – these policies must now be dis-applied;
- The Statement further makes it clear that authorities must ensure that technical detail that is no longer necessary is not required to support planning applications;

- The restriction of the scope of matters that are within the "competence" of the authorities would appear to also substantially impinge on the GLA SPGs on "Sustainable design and construction" and "Housing" as these documents contain many requirements that relate to the construction, internal layout or performance of dwellings – at this stage the impact on these documents is unclear, particularly for mixed use developments where theoretically, at least, some requirements could still apply to the non-residential elements of developments;
- We understand that HCA funded affordable housing in the 2011 to 2015 programme does require to be certified to CSH Level 4, but have been able to confirm that the 2015 to 2018 funding programme expressly excludes CSH compliance as a funding requirement;
- Where, under their new reduced competence the authority does wish to impose requirements for Energy and Water performance it is possible that it will impose a Planning Condition to secure this. While there is as yet no indication of how this might be handled, if previous practice is followed (i.e. the requirement to submit CSH "Post Construction" certificates) the Condition is likely to contain a requirement to submit some form of evidence to demonstrate compliance. The *Housing Standards Review* suggested that the Building Control Body might pick up the responsibility for ensuring compliance but there is no indication that this is being taken forwards.
- In the absence of any other formal arrangement we presume that each authority will determine its own evidence requirements, and further, that it may be sensible, during the usual post-decision negotiations, to agree clear arrangements for how this will be done, to avoid any subsequent delay;
- The changes do not apply to non-residential developments so policies on BREEAM compliance can still be applied, and it is likely that the energy targets for mixed use schemes would be set at an intermediate level proportional to the respective emissions from the residential and non-residential uses.

For existing consents:

- The exact legal position will vary from project to project and expert planning advice should always be sought;
- In that these changes remove the planning basis for requiring CSH compliance or assessment it would appear that it will be possible for existing consents to benefit from them if appropriate applications are made to the authority;
- Where CSH compliance and certification is secured by a Planning Condition it may be possible to submit either a S.73 (MMA) or a S.96A (NMA) application to have the Condition removed. This would be on the basis that the Planning grounds for the Condition no longer exist. If this was proposed, it is likely that the authority would want to replace the Condition with one which secured the Energy and Water performance as per the forthcoming *national technical standards.*
- Where CSH compliance and certification is secured by a S106 agreement, the applicant would need to apply to the LPA to re-negotiate the agreement. If this was proposed, it is again likely that the authority would want the revised agreement to contain clauses that delivered the Energy and Water performance as per the forthcoming *national technical standards.*

These notes are issued in good faith but in all cases expert advice should be sought. The notes summarise our current understanding of the situation but may be subject to change as more information is published – particularly with regard to GLA policy – and further clarifications will be issued in due course.