

Briefing for Officers and Members regarding the requirements of Policy DM7.

1.0 Purpose

- 1.1 This briefing note has been prepared in response to a recent appeal decision where the Planning Inspector concluded that imposing the Councils' standard 'water efficiency' condition upon a planning permission would be unreasonable and unenforceable.

2.0 The planning condition

- 2.1 The planning condition is a standard condition imposed upon as a matter of course upon the majority of planning applications that propose residential development. The standard condition is as follows:

No individual dwelling hereby approved shall be occupied until the optional requirement for water consumption (110 litres use per person per day) in Part G of the Building Regulations has been complied with for that dwelling.

- 2.2 The reason for the condition is summarised on decision notices as follows:

Reason: To improve the sustainability of the dwellings in accordance with policy DM7 of the Joint Development Management Policies (2015)

3.0 The appeal

- 3.1 The appeal case was for the construction of 3 dwellings at Stoke by Clare in St Edmundsbury district (appeal reference : APP/E3525/W/18/3197802 – Planning application reference DC/16/2711/FUL).
- 3.2 As is standard practice, the Council provided the planning Inspector with a list of conditions it would wish to be imposed if the appeal were to be allowed (this is always offered without prejudice to the outcome of an appeal).
- 3.3 The Inspector allowed the appeal but chose not to impose the 'water efficiency condition'. The following extract from the appeal decision sets out the Inspectors' consideration:

"Finally, I have also omitted the Council's suggested condition which relates to optional maximum water consumption requirements under the building regulations. This is a matter which would be dealt with under these separate regulatory regulations. Furthermore, as an optional requirement, I do not consider it appropriate to compel this as part of the planning permission. This would fail to meet the tests of reasonableness or enforceability."

4.0 The Planning Policy requirement

- 4.1 The requirement for enhanced water efficiency measures to be secured from new residential development is grounded within policy DM7 (Sustainable Design and Construction) of the Joint Development Management Policies Document (2015).
- 4.2 The supporting text to policy DM7 sets out the context and justification for requiring enhanced water efficiency measures (paragraphs 3.24 and 3.25):
- 4.3 Policy DM7 states (amongst other things):

Proposals for new residential development will be required to demonstrate that either:

- Water consumption is no more than 110 litres per person per day (including external water use) as calculated using the government's (September 2009) Water Efficiency Calculator or such standard that replaces it, or

- No water fitting exceeds the values set out in Table 1 (or any other fittings specification that government issues to supersede this),

4.4 Table 1 referred to by Policy DM7 is as follows:

Water Fitting	National Base Level
WC	6/4 litres dual flush or 4.5 litres single flush
Shower	10 l/min
Bath	185 litres
Basin Taps	6 l/min
Sink Taps	8 l/min
Dishwasher	1.25 l/place setting
Washing Machine	8.17 l/kilogram

*Table 1: fittings-based specification from
DCLG (2014) Housing Standards Review:
Approved Document G: Requirement G2
Water efficiency*

4.5 Policy DM7 gives the applicant a choice about how they can comply with the requirements for enhanced water efficiency. There is no 'opt out'. Applicants normally overlook the policy requirement and when they do, the option to secure 110 litres of water use per person per day is triggered and secured via the standard planning condition. This ensures the decision (to grant planning permission) complies with the requirements of policy DM7 with respect to water efficiency.

5.0 The Building Regulations Requirement

5.1 Water efficiency measures are also required by the Building Regulations. The building regulations set a specific water use standard that is appropriate for all new development proposals. Part G2 of the Regulations requires a maximum of 125 litres per person per day, or 110 litres per person per day (the optional requirement) **“where a condition that the dwelling should meet the optimum requirement is imposed as part of the process of granting planning permission”** (my emphasis).

6.0 Discussion and conclusions

6.1 The Inspectors conclusions that the imposition of a planning condition fails to meet the tests of reasonableness or enforceability are factually incorrect.

6.2 It is appropriate to attach the standard condition onto most planning permissions which approve new housing by virtue of the specific requirements of the Development Plan (through Policy DM7). Although water efficiency measures are ultimately secured and enforced via the Building Regulations, the Regulations require the 'optional requirement' of 110 litres per person per day to be a requirement of planning permission. Policy DM7 sets out the same water use requirement. This is no coincidence and was drafted in this way to ensure that lower water use is secured (via the Building Regulations) as part of the construction of new housing development built in West Suffolk. The requirement is based on sound evidence which has been tested at examination.

6.3 Where applicants have failed to provide evidence to address the second strand of the policy DM7 requirement, it continues to be appropriate to impose the planning condition set out at paragraph 2.1 above. Failure to address water efficiency as part of the consideration of planning applications for new housing development would be contrary to policy DM7 and without proper evidence based justification to set aside the requirement, decisions could be vulnerable to third party challenge.