

4 The regulatory framework: legislation, policies, standards and guidance

The following is a brief critical review of the legislation and public policies at central and local government levels that relate to this study and an indication of the range of possible policy responses. A fuller background exploration of the regulatory framework and sources of guidance is given in Background paper 3.

National policies, regulations and statutory guidance

- 4.1 Government policies with regards to improving the sustainability of the built environment have focused primarily on improving the efficiency of new buildings. These represent only 1.5% of the total building stock in any one year, nationally.¹ In Soho it is almost certainly far less.
- 4.2 A series of measures have been brought in to address the sustainability of the existing building stock but these are largely small scale, indirect, fragmented and long-term in their impact and primarily focused on residential buildings. The current framework of policy and guidance at the national level is complex, multi-layered and often confusing. It is targeted at particular sectors and ill-adapted to the needs of owners and tenants in a historic, mixed use, central area such as Soho.
- 4.3 In the 1970s, Government subsidies in the form of local renovation grants helped to transform inner neighbourhoods in many of our cities, bringing to an end the wholesale replacement of run-down but still viable historic housing stock. Many of these neighbourhoods are now valued (and gentrified) conservation areas. These grants helped kick-start the housing association movement, which now provides the mainstay of affordable housing in our cities. In continental Europe, particularly in Germany, direct Federal and State government subsidies are having a similar impact in improving the energy and resource efficiency of existing buildings and stimulating micro-generation and the alternative energy industry.
- 4.4 By contrast, the UK Government has chosen a route of 'accelerating' the response to climate change by using market forces through a gradualist, 'stick and carrot' approach. The subsidies that are available are relatively small compared with other EU countries. These have been managed by a range of agencies. Awareness of their existence, though probably now growing with increasing publicity, has been limited and, as a result, take-up has often been small.

Energy Performance Certificates

- 4.5 Energy Performance Certificates will shortly be required on all buildings for sale or rent. In homes for sale, they are included within the Home Information Pack (HIP). From January 2009, EPCs will be required on all non-domestic buildings and will be valid for 10 years.
- 4.6 According to the Department for Communities and Local Government guidance, 'an Energy Performance Certificate is intended to inform potential buyers or tenants about the energy performance of a building, so they can consider energy efficiency as part of their investment or business decision to buy or occupy that building.'²

1. 1% for dwellings, 2% for non-residential buildings. Roger Harrabin, BBC Environmental Correspondent suggests 1% homes are replaced a year and 2% of offices (Harrabin, R. 2006).

2. Department for Communities and Local Government. 2008.

- 4.7 There is no requirement for buildings to achieve any particular EPC rating. At present, efficiency in energy use and carbon emissions is constrained only by Part L of the Building Regulations as it impacts on new buildings and alterations to existing buildings as noted below.
- 4.8 The intention is to rely on market pressures on building owners to augment regulation to improve the thermal performance of their properties.³ EPCs are a response to the EU Directive on the Energy Performance of Buildings. The type of EPC required depends on whether the building is being sold or let in parts or as a whole, whether it is divided into separate parts, whether it has shared or communal parts and whether it has common or separate heating systems. As many of the buildings in Soho are in multiple occupancy, these provisions will be essential.

Building Regulations

- 4.9 The Building Regulations govern the construction of all new buildings and most works carried out on existing buildings including where there is a change of use. They are the most direct way in which the Government can influence the energy performance of buildings and resulting carbon emissions.
- 4.10 Under the Building Regulations all new buildings have to meet defined target emission rates and this is easier to achieve with new buildings. Part L was revised in 2006 and set maximum carbon dioxide emissions for whole buildings, applying to new buildings and to renovation of existing buildings, with a total surface area over 1,000m².
- 4.11 The Building Regulations Part L states that the need to conserve the special characteristics of historic buildings should be recognised. Historic buildings include listed buildings, buildings situated in conservation areas, and other buildings of local architectural and historic interest. It notes that the advice of the local authority's conservation officer should be taken into account in achieving an 'appropriate balance between historic building conservation and energy conservation'. The interpretation of regulations with regard to historic buildings by building control bodies is guided by English Heritage's Interim Guidance Note on Building Regulations and Historic Buildings (2004).
- 4.12 English Heritage supports energy conservation with the proviso that this does not compromise the character and appearance of historic buildings. It notes in its guidance that some historic buildings should not be altered but, while many can be improved in terms of energy performance, this will probably not be to the standards of Part L of the Building Regulations.

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Parliamentary Committee recommendations

- 4.13 While Government policy is beyond the scope of this study, we make reference to the following Parliamentary Committee reports as they reflect a cross party perspective on the current challenges to the national policy framework that strongly influences and constrains action at the local level.
- 4.14 The Parliamentary All Party Urban Development Group has recently published its report: *Greening UK Cities' Buildings: Improving the energy efficiency of our offices, shops and factories*. It includes the following recommendations:
- Better coordination of government agencies. Too many departments have a stake in the energy efficiency agenda. A single central government unit could act as a 'one stop shop'.

3. See Section 4.10. EPCs, unlike Building Regulations Part L, will be applied to all buildings regardless of size and will be tied to the cycle of selling or letting, which is likely to be more frequent than major improvement works requiring Building Regulations approval.

- Clear advice for owners and occupiers on how to make easy savings.
- Lead by example, a green government estate.
- Establish a single measurement framework for non-domestic buildings. It is crucial to have a standard measurement system, and a set of comparable benchmarks for non-domestic buildings in Britain.
- Extend DEC's to privately-owned commercial buildings. Display Energy Certificates (DEC's) measure the actual operational use of energy – but are currently only required for large public buildings.
- Raise energy efficiency standards using building regulations.
- Ensure effective enforcement of regulation.
- Examine the fiscal consequences and effectiveness of incentives/grants related to improvements in energy efficiency.

4.15 The House of Commons all-party Communities and Local Government Committee, in its seventh report published on 2 April, *Existing Housing and Climate Change*⁴, makes 28 recommendations on measures to address the energy efficiency of existing stock of 23 million homes in England and Wales. Some of these apply to the residential properties like those in Soho and the West End as a whole. Others could be adapted to the non-residential building stock. Among the recommendations, the parliamentary committee calls for the Government to:

- Introduce a Code for Existing Homes to match the Code for Sustainable Homes, with minimum standards for all housing stock including considering how it could be implemented in houses in multiple occupation.
- Seek to spread the uptake of the Landlord's Energy Saving Allowance.
- Address the anomaly in differential VAT rates on new-build and refurbishment which sometimes makes it cheaper to demolish a property and rebuild rather than refurbish it.
- Reduce stamp duty on home-buyers who act on the recommendations of the Energy Performance Certificates within a given period.
- Look for more entry points to disseminate EPCs, other than when a property is marketed for sale or rent.
- Encourage the mortgage industry to provide financial incentives such as 'green mortgages' to enact the recommendation for thermal improvements in EPCs.
- Include EPC ratings in advertisements for homes for sale.
- Include information in EPCs on approved builders, installers and engineers (as a mid-term goal).
- Consult with local authorities on how area-based programmes for basic home improvements can be offered across significant sections of the housing stock so that they are carried out more cost-effectively.
- Support the rapid introduction of the new Green Homes Service nationally, as a one stop source of information and for it to provide information on competent suppliers and installers and monitor and report on the works carried out.
- Roll out the installation of smart meters nationally as soon as possible.

4. In Conclusions and Recommendation. p47. House of Commons, Communities and Local Government Committee. 2008.

- Investigate the potential for subsidising feed-in tariffs to encourage the uptake of home microgeneration technologies.
 - Make an early assessment of skills deficits in planning and in the construction and retrofitting industries.
- 4.16 As the report states: ‘the bulk of our housing, however old and leaky it may be, is capable of the kind of improvement that will deliver the necessary reduction in carbon emissions without destroying the visual character that makes it uniquely ours. We need neither a mass demolition programme nor to preserve every pre-1919 building precisely as it was on the day it was built’. This equally applies to the bulk of our non-domestic building stock.

London and Westminster policies

- 4.17 London-wide planning policies apply at the strategic level and, apart from strategic development concerns that affect a small part of north-east Soho affected by the Crossrail proposals, do not directly impact on the potential to implement retrofitting measures. On the whole, the strong environmental sustainability emphasis in the existing London Plan in areas like waste management or the implementation of Combined Heat and Power and the new Mayor’s commitment to green measures are to be welcomed.
- 4.18 However, policies in the London Plan that relate to historic areas make no reference to issues of environmental sustainability, and we urge that Westminster City Council takes up the issue with the new Mayor. The London Plan should be amended to include a clear statement supporting the retrofitting of appropriate sustainability measures as a contribution to the continuing economic and environmental viability of designated conservation areas. We also recommend that Westminster City Council addresses this issue in its new Core Strategy.
- 4.19 Apart from general planning policies, the adopted Westminster Unitary Development Plan and Draft Core Strategy of the Local Development Framework which have a strong environmental component, Westminster’s published policy documents include action plans covering the study area, *Sustainable Buildings*, adopted as Supplementary Planning Guidance in 2003 (SPG), and a series of documents providing general design guidance on conservation areas and listed buildings.
- 4.20 Some of these documents are very effective in their own right. The *Soho and Chinatown Conservation Area Audit* and *Sustainable Buildings* guidance, in particular, are excellent. However, the existing conservation guidance makes little or no reference to sustainability issues and none provide design guidance specific to Soho, or similar historic core areas.
- 4.21 *Sustainable Buildings* covers, in brief, all the technical aspects of retrofitting measures mentioned in this paper, and is a very good starting point for property owners intending to take measures to green existing buildings or develop new sustainable buildings. However, there is no systematic coverage of the challenges to retrofitting sustainability to historic buildings.
- 4.22 Developers of property and owners intending to undertake efforts to green their buildings are faced with a multiplicity of policy documents covering conservation matters and some good, but limited general guidance on making buildings more sustainable.
- 4.23 Additionally, conservation officers have no adopted policies or guidance that relates to the specific area topic of retrofitting in conservation areas and no reason to question or adapt long-established practices. From both sides, there is little incentive to encourage retrofitting in conservation areas.

- 4.24 Even with flexibility and understanding of the possibilities on the part of conservation officers, the perception is that many retrofitting measures are unlikely to be acceptable, and without legislation to force their introduction, they are unlikely to be initiated by property owners, who do not necessarily feel responsible.
- 4.25 Westminster's and Kensington and Chelsea's 'Flagship Home' in Knightsbridge demonstrates what is achievable in a historic residential property. The potential in the usually much deeper and energy hungry commercial properties that are typical in Soho is greater by far.
- 4.26 Overall, the guidance currently available from Westminster City Council and English Heritage on retrofitting, whilst helpful, is insufficient to deal with the large variety of building types within the Soho and Chinatown Conservation Areas. We recommend that Westminster City Council considers producing Supplementary Planning Guidance that bridges the current gap between existing guidance on Sustainable Buildings and the adopted conservation area policies and guidance.

Sustainable urban design guidance

- 4.27 In Chapter 5 of this report we outline how an urban design approach, building on a classification of the different building, street and street block typologies and associated typical building sections, can provide a framework for more detailed and targeted guidance on sustainable refurbishment. Such an approach could ensure that significant measures to improve the sustainability of buildings in Soho could take place whilst maintaining, and enhancing, the historic character of the area.⁵
- 4.28 It would enable building owners and planning officers to establish, at an early date in the development proposals, the opportunities for and constraints upon retrofitting and sustainable refurbishment in particular locations. As well as directing new retrofitting measures, sustainable urban design guidelines could ensure that the existing clutter of retrofitted ductwork and plant to the rear of buildings and across the roofscape is addressed.
- 4.29 There will always be a turnover of buildings in Soho, with new infill developments replacing less valuable existing building stock. We believe that new buildings can enhance the character of the conservation area whilst providing an opportunity for achieving the highest standards of thermal and resource efficiency. The crucial conservation issue here is enhancing and fitting in with the low key, small scale character of most existing buildings.
- 4.30 Urban design guidelines and individual street codes should be devised to ensure that new infill development follows the grain and pattern of nearby development, maintaining or restoring the morphology of the area (as established by the original plot subdivisions) and facilitating a characteristic mix of uses (including residential uses). At the same time, there should be a robust approach to substantial refurbishment projects and new building design and construction, avoiding unnecessary constraints focussing on measures to achieve a high level of environmental sustainability.
- 4.31 Additionally, new infill development could be promoted as sustainability beacons. While any new buildings will need to meet the increasing demands of the Building Regulations, we recommend that Westminster City Council lay down yardsticks in good practice in design for sustainability, building on the Supplementary Planning Guidance already published, but specific to mixed use central areas such as Soho. This would allow such issues to be referred to as part of the planning considerations and

5. An important precedent for the typological approach as applied to housing of different historical periods has been set by English Heritage on its website <www.climatechangeandyourhome.org.uk/live>.

encourage new developments to be exemplary in its design for sustainability and that new interventions address the larger strategic sustainability issues for the area.

- 4.32 Such guidelines could be widened to include adjacent areas, in particular those located within Westminster City Council's Creative Industries Special Policy Area and applied to other similar areas in the city.
- 4.33 We would also suggest that English Heritage further explore the issue of a typological approach to conservation and sustainability with BRE as a matter of urgency, and provide guidance that can better aid conservation officers in making common-sense decisions about retrofitting measures in conservation areas with very mixed building stock and a challenging complexity of built form, as in the case of Soho.
- 4.34 BRE might also develop their existing BREEAM methodology to target the range of building types found in Soho and similar mixed-use, predominantly commercial historic areas, if it can be demonstrated that a substantial market for such a tool exists. Using a typological approach, such a framework could be devised for both new non-residential and existing buildings in such historic areas. This could set standards for exemplary retrofit measures, including benchmark levels of energy and carbon performance.⁶

Area-wide and public realm policies

- 4.35 At present, Westminster's broader planning policies and supplementary local plans like the Soho Action Plan contain a range of commendable proposals relating to waste management, traffic management, pedestrian and cycle movements, legibility and signage, noise and green space and bio-diversity and regeneration and renewal of key parts of Soho. However, these are treated as independent measures led by different departments in the Council.
- 4.36 We suggest that retrofitting environmental sustainability to Soho demands a single, integrated public realm strategy that addresses needs of local residents and businesses in a coherent manner. A public realm plan or strategy should address the larger sustainability issues such as transport, noise and waste management, and legibility and 'wayfinding' issues. This should be viewed in the larger West End context, in particular improving the pedestrian connections between Soho and east Oxford Street to the north, and links though to Theatreland in the south.
- 4.37 The proposed environmental audit should be a key part of informing such a strategy. However, it also should be widened in scope to cover the sustainability of the buildings in the study area, identifying deficiencies and opportunities for retrofitting in areas that are hidden from the public view, particularly at roof level. We suggest a way that this could be done through a sampled, typological approach in Chapter 7.

6. There are currently two schemes under development for a code for non-residential building – BRE and UK Green Building Council. However, if these follow the pattern of the Code for Sustainable Homes, they are more likely to be focused on new rather than existing buildings.