Tunbridge Wells Borough

Local Plan

Tunbridge Wells Borough Council

Energy Topic Paper for Pre-Submission Local Plan

February 2021

Tunbridge Wells Borough Council

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1.0 Introduction

1.1 Over the last 45 years, climate change in Kent has largely been in line with UK trends. Average temperatures in the South East have increased more than in the north of the country, and there has been an increase in heavy winter downpours and a decrease in summer rainfall. Other gradual changes which also indicate the impact of climate change have been recorded specifically in Kent. For example:

- earlier emergence dates for butterflies;
- earlier arrival and breeding of bird species that require warmer climates.

1.2 Further information on climate change impacts in Kent can be found in the 2019 Climate Change Risk and Impact Assessment for Kent which identifies the climate risks that will have the greatest impact on its society, economy and environment.

1.3 The challenge that climate change creates for the building sector is set out in the 2018 Committee on Climate Change report. This analysis suggests that overall emissions across the UK building stock needs to fall by at least 20% between 2017 and 2030 to meet the commitments of the Climate Change Act 2008. This is a challenging target given that, after a period of decline, carbon emissions from buildings rose 1% in 2017. Any increase in emissions from new buildings will make the Climate Change Act commitment harder to meet.

1.4 The Borough Council has responded to the climate change challenge in the past with relevant policies within the 2006 Local Plan and the 2010 Core Strategy. However, these are now dated and an update to planning policy is required.

1.5 It is noted that this area of policy is in constant flux. In the past five years, government proposed making changes to legislation that would prevent local authorities requesting higher energy standards in new development. However, in the past 18 months, the publication of important climate change evidence and a refreshed media interest have prompted a 'call for action'. Many local authorities (including Kent and Tunbridge Wells) have now made Declarations of Climate Emergency (view Kent County Council's declaration) (view Tunbridge Wells Borough Council's declaration) and in 2020 Government consulted on plans for a specification for a low energy homes known as the 'Future Homes Standard'. The outcome of this consultation indicated that an update to Building Regulation Part L is expected in 2021 (to be enacted in 2022). For this reason, this Topic Paper will be regularly reviewed to ensure it is in line with the latest guidance.

1.6 The background and implications of these proposed changes are discussed in the Legislation and Policy Context chapter.

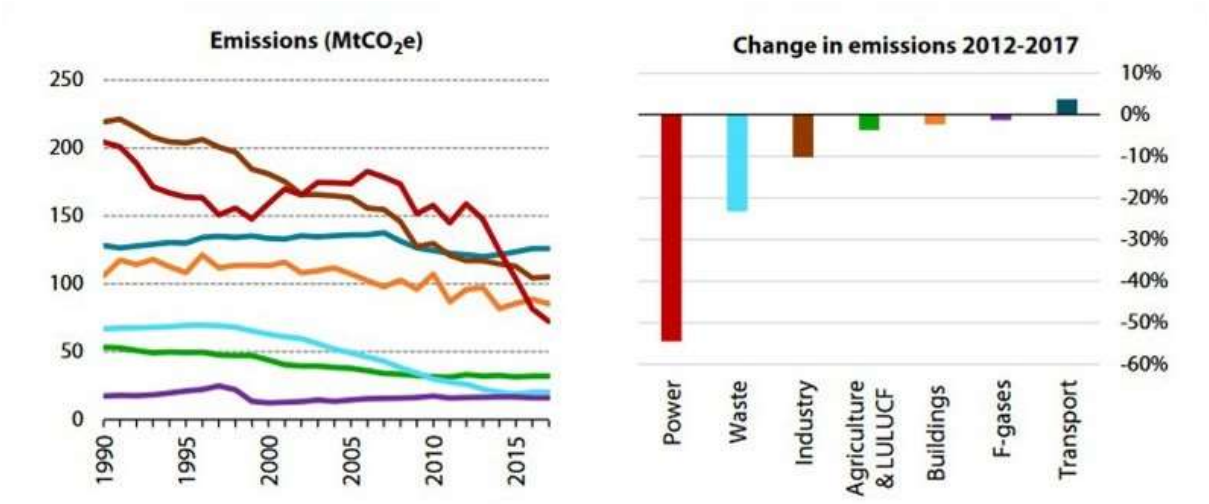
1.7 This aim of this Topic Paper is to provide the background to, and explanation for, how the development management policy for climate change, and more specifically energy reduction, has been determined for the Pre-Submission Local Plan.

2.0 Legislation and Policy Context

The Climate Change Act 2008

2.1 The Climate Change Act 2008 (amended in June 2019) commits the UK to reducing emissions of carbon dioxide and other greenhouse gases to zero by 2050 (view the Climate Change Act). Progress against the 2050 target is measured by legally binding carbon budgets (measured by the Committee on Climate Change) that cap the amount of greenhouse gases that can be emitted over a five-year period

2.2 By 2017, UK greenhouse gas emissions were 43% below 1990 levels, but as Figure 1 shows, this was mostly due to a reduction in emissions from the power, industry, and waste sectors, with all other sectors largely remaining constant.



Source: BEIS (2018) *2017 UK Greenhouse Gas Emissions, Provisional Figures*; BEIS (2018) *2016 UK Greenhouse Gas Emissions, Final Figures.*
Notes: The chart on the right-hand side shows changes in sectoral emissions between 2012 and 2017; buildings emissions in this chart are temperature-adjusted. 2017 emissions are provisional estimates and assume no change in non-CO_2 emissions from 2016.

Figure 1: Emissions reductions 1990-2017 and change in emissions by sector during that period (Committee on Climate Change 2018)

2.3 Although the first three carbon budgets have been or will be met, the fourth budget (2023-27) is not on track. In its 2018 report to Parliament, the Committee on Climate Change had four messages for the Government:

- support simple, low-cost options;
- commit to effective regulation and strict enforcement;
- end the chopping and changing of policy;
- act now to keep long term options open.

2.4 The South2East Local Energy Strategy highlights that the reduction in energy demand needed to meet the 2032 carbon budget is very unlikely to be met by a reduction in energy demand by society in general; i.e. we will need more energy than greenhouse gas emission allowances allow for (Figure 2). Instead, the difference between demand and traditional energy supply will have to be made up by clean (low and zero emission) energy generation at both a national and local scale. This will include existing known technologies such as solar, wind, and energy from waste, but will also need to incorporate more innovative solutions, such as the wider adoption of heat pumps, the wide-scale development of low carbon heat networks and hydrogen as an energy source. An example project is Western Power Distribution's Freedom Project, which is trialling hybrid heating systems that use both a gas boiler and an electric heat pump, alongside an aggregated demand side response control system.

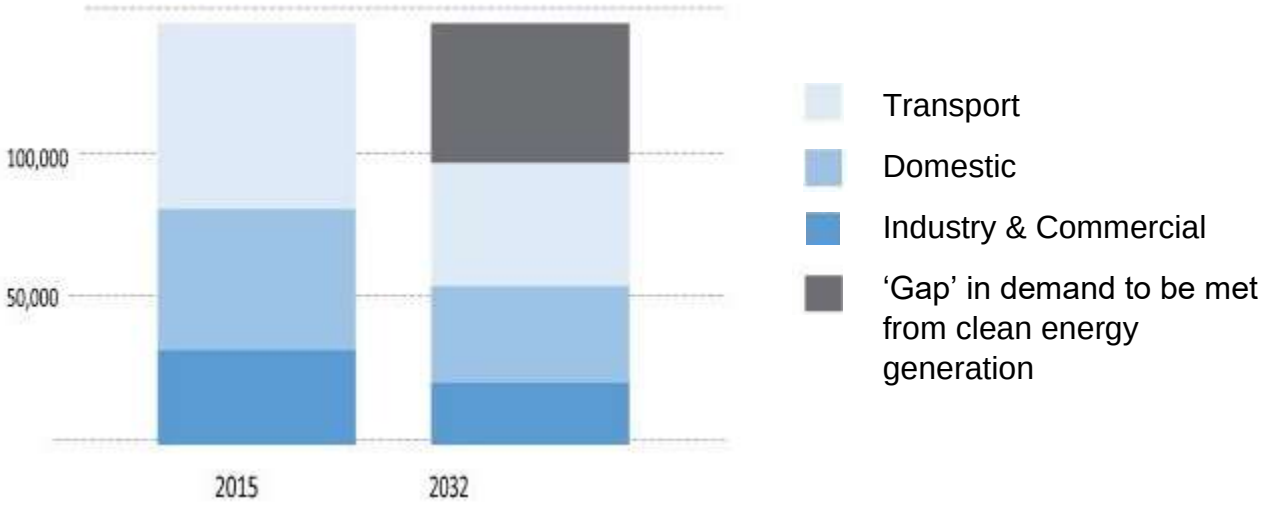


Figure 2: Comparison of 2015 to 2032 energy demand by sector, highlighting energy 'gap' to be met by clean energy (Energy South2East, 2019)

2.5 Although the UK's legally binding target is for reducing emissions to zero by 2050, there is increasing evidence that this will not be soon enough. For example, the Intergovernmental Panel on Climate Change's (IPCC) special report published in 2018 advises applying a limit on global temperatures of 1.5°C above pre industrial levels.

The National Planning Policy Framework

2.6 The National Planning Policy Framework (NPPF), reflects the requirements of the Climate Change Act 2008 in paragraphs 148 and 149 as follows:

*"The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to **radical** reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings;' (emphasis added)*

'Plans should take a proactive approach to mitigating and adapting to climate change, taking into account the long-term implications for flood risk, coastal change, water supply, biodiversity and landscapes, and the risk of overheating from rising temperatures (in line with the objectives and provisions of the Climate Change Act 2008). Policies should support appropriate measures to ensure the future resilience of communities and infrastructure to climate change impacts, such as providing space for physical protection measures, or making provision for the possible future relocation of vulnerable development and infrastructure."

The Planning Act 2008

2.7 Local planning authorities are bound by the legal duty set out in Section 19 of the 2004 Planning and Compulsory Purchase Act, as amended by the 2008 Planning Act, to ensure that, taken as whole, plan policy contributes to the mitigation of, and adaptation to, climate change.

2.8 The legislative framework for the planning system carries forward the UK commitment to tackling climate change. Section 19 of the 2004 Planning and Compulsory Purchase Act, as amended by Section 182 of the Planning Act 2008, states: "*Development plan documents must (taken as a whole) include policies designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change*."

Planning and Energy Act 2008

2.9 Up until 2015, it was common to see local authorities implementing policy derived from the following requirements of section 1 of the Planning and Energy Act 2008, which enabled local authorities to require standards for energy efficiency in new buildings beyond those in the Building Regulations as follows:

1) *"A local planning authority in England may in their development plan documents, a strategic planning panel may in their strategic development plan, and a local planning authority in Wales may in their local development plan, include policies imposing reasonable requirements for—*

a) *a proportion of energy used in development in their area to be energy from renewable sources in the locality of the development;*

b) *a proportion of energy used in development in their area to be low carbon energy from sources in the locality of the development;*

c) *development in their area to comply with energy efficiency standards that exceed the energy requirements of building regulations."*

2.10 Further relevant policy at the time included the commitment made by the coalition government in 2011 to deliver a 'zero carbon homes' policy by 2016.

2.11 However, in early 2015, the Housing Standards Review reported, and Government announced the withdrawal of the Code for Sustainable Homes, except for legacy projects. As a result, a number of changes to existing Building Regulations were introduced, along with new technical optional standards on Access, Water, and Space.

2.12 The reason for this was to effectively make the Building Regulations the sole authority regarding energy efficiency standards for residential development. At the time, the policy for all new homes to be 'zero carbon' from 2016 was still in place and thus the Housing Standards Review did not provide further clarification on energy efficiency standards.

2.13 When the clarification came in a Written Ministerial Statement (WMS) in March 2015, the Government stated that "*local planning authorities...should not set...any additional local technical standards or requirements relating to the construction, internal layout or performance of new dwellings*." The exception was energy performance, where the WMS stated that local authorities would continue to be able to require energy performance standards higher than Building Regulations up to the equivalent of Code for Sustainable Homes Level 4 "*until commencement of amendments to the Planning and Energy Act 2008."*

2.14 These specific amendments to the 2008 Planning and Energy Act were intended to remove the ability of local planning authorities to require energy performance standards for new homes higher than those set in the Building Regulations and were to be enacted at the same time that the Government introduced higher energy performance requirements in 2016, through the Building Regulations. The performance increase was expected to be equivalent to a 19% improvement from the target emission rate of the 2013 edition of the 2010 Building Regulations (Part L) and was also the standard referenced within the aforementioned WMS (i.e. equivalent to Code for Sustainable Homes level 4 energy criteria).

2.15 It appeared as if the changes would be enacted at the same time that Government introduced higher energy performance requirements nationally in 2016.

2.16 However, in July 2015, the Government's Productivity Plan, 'Fixing the Foundations', stated that: "*The government does not intend to proceed with the zero carbon allowable solutions carbon offsetting scheme, or the proposed 2016 increase in on-site energy efficiency standards, but will keep energy efficiency*

standards under review, recognising that existing measures to increase energy efficiency of new buildings should be allowed time to become established."

2.17 This cancellation, or perhaps more accurately, suspension, of the zero carbon homes agenda caused a great deal of confusion and uncertainty amongst the private sectors and local authorities.

2.18 However, despite the intentions listed above, the amendments to the Planning and Energy Act 2008 have **not** been enacted, and the Government has not yet produced a commencement date for repealing these powers. This is despite Section 42 of the Deregulation Act 2015 contained wording to repeal the power for authorities to set energy efficiency standards above Building Regulations (whilst leaving intact the power to require carbon reductions through renewable energy)..

2.19 In addition, the intentions have now been superseded by subsequent political announcements.

2.20 Crucially, in 2018, in its summary response to a consultation on changes to the NPPF (see answer to Q33), the Government has clarified its position on local authorities setting higher energy requirements than those currently contained within Part L of the Building Regulations:

"A number of local authority respondents stated the view that the text in the revised Framework restricted their ability to require energy efficiency standards above Building Regulations. To clarify, the Framework does not prevent local authorities from using their existing powers under the Planning and Energy Act 2008 or other legislation where applicable to set higher ambition. In particular, local authorities are not restricted in their ability to require energy efficiency standards above Building Regulations. The Government remains committed to delivering the clean growth mission to halve the energy usage of new buildings by 2030."

2.21 In other words, local planning authorities still have the power to adopt such standards where they are compliant with other national policy, e.g. there is an evidence base to support it, including viability analysis.

2.22 Following on from this, in winter 2019/2020, Government began the first stage of a consultation process aimed at achieving the 'Future Homes Standard'. This first stage largely consulted on various options for an uplift to Parts L and F of Building Regulations in order to increase the energy efficiency requirements for new homes. It also considered whether it would be appropriate to let Local Planning Authorities continue writing planning policy for Local Plans that required developers to reduce emissions further than Building Regulations required.

2.23 The outcome of this consultation was published in January 2021 and concluded that Local Planning Authorities *would* be able to retain their powers to set their own energy standards in Local Plans. It was also revealed that a path for more energy efficient buildings had been chosen and an uplift to Part L of the Building

Regulations would come into effect in June 2022. The uplift they are proposing is 31% carbon reduction compared to dwellings built to current 2013 standards.

2.24 At the time of writing, the second stage of the two-part consultation concerning non-domestic buildings, the 'Future Building Standard' and overheating in new residential buildings had begun with a closure date of 13 April 2021.

3.0 Energy in Tunbridge Wells borough

3.1 Below is a summary of the current energy consumption and production via renewables within the borough for various sectors. Datasets used to prepare this information are found in Appendix 1.

Energy Consumption

3.2 In 2018, 2,084 GWh of energy was consumed in Tunbridge Wells borough: 28% in the transport sector, 47% in the domestic sector and 25% in the industry and commercial sector (Figure 3).

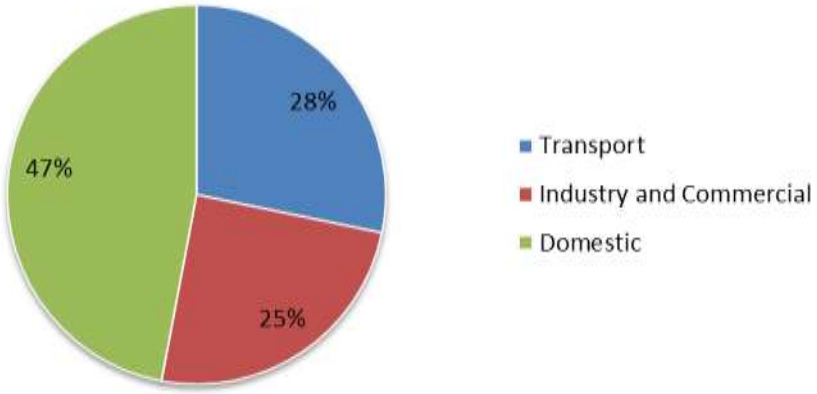


Figure 3: Tunbridge Wells Borough energy consumption by sector in 2016 (BEIS, 2019)

3.3 As a country, we spend £32 billion a year on heat (see DECC (2013) The Future of Heating) and almost three quarters of industrial energy use is to produce heat, often at very high temperatures (see DECC (2013) Estimates of heat use in the United Kingdom in 2013). The Energy South2East Local Energy Strategy (see South East LEP (2019) Energy South2East Local Energy Strategy) states that much of the heat produced in the South East is wasted through discharges into the atmosphere, despite the fact it could be reused in a number of ways. Uses for waste heat include:

- reuse within the same facility for heating or cooling;
- reuse by another end user via a heat network;
- converting waste heat to power.

3.4 This presents a huge opportunity to utilise more efficient technologies and achieve cost savings for the county's businesses and residents alike. In the domestic sector,

high heat consumption is due to the poor energy efficiency of our housing stock, which also contributes to poor housing conditions and fuel poverty (see the Fuel Poverty section below).

Domestic Energy Consumption

3.5 Total energy use in the domestic sector in Tunbridge Wells borough was 903 GWh in 2018. Of this, gas accounted for 65% of consumption; electricity 24%; and petroleum products, manufactured fuels, and coal making up the remaining 11% (Figure 4).

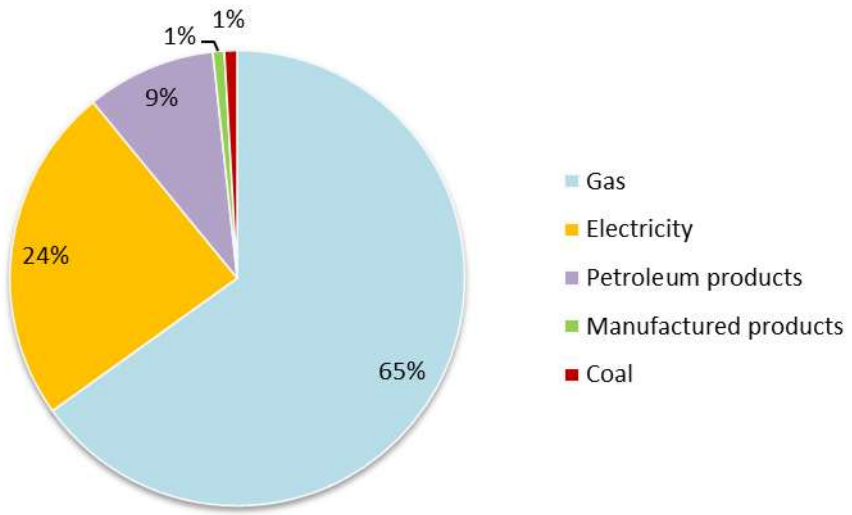


Figure 4: Domestic fuel consumption by fuel type in 2018 (BEIS, 2020)

3.6 Domestic gas consumption in Tunbridge Wells borough fell 17.5% between 2005 and 2018; from 713 GWh in 2005 to 588 GWh in 2018. However, domestic electricity consumption has not undergone the same downward trend, with consumption remaining largely constant in this period (Figure 5).

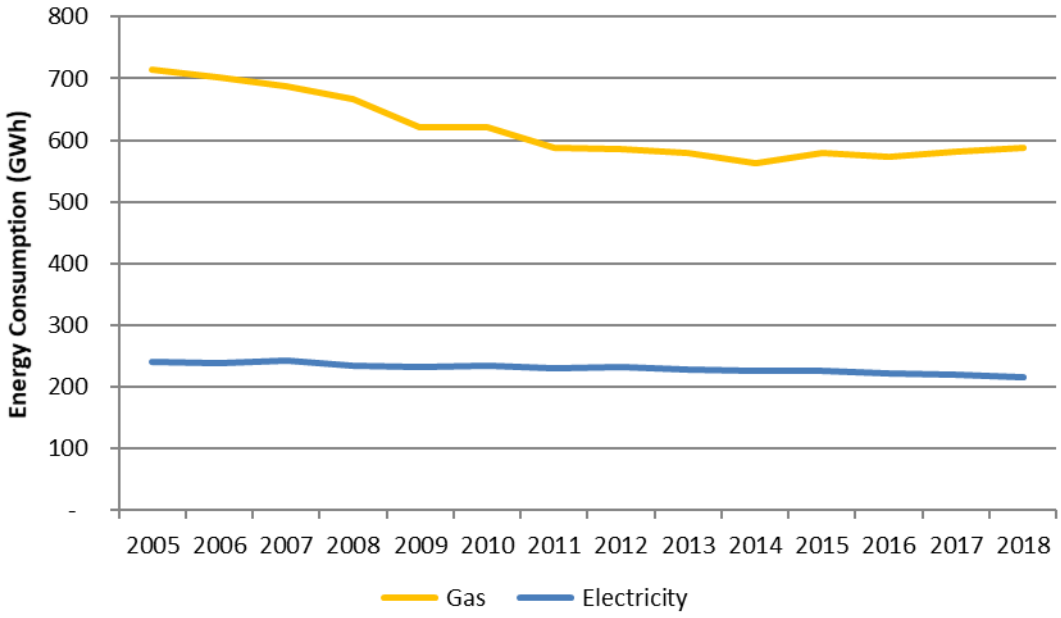


Figure 5: Domestic gas and electricity consumption in Tunbridge Wells Borough (BEIS, 2019)

3.7 The scale of growth forecast in the Pre-Submission Local Plan will lead to greater energy demand (see KCC (2017) Renewable Energy Action Plan: 2017 Update). Without mitigation, this will cause carbon emissions from the domestic sector to rise in line with predictions at county level (Figure 6). To offset this increase in demand there needs to be a significant increase in the use of low or zero emission technologies.

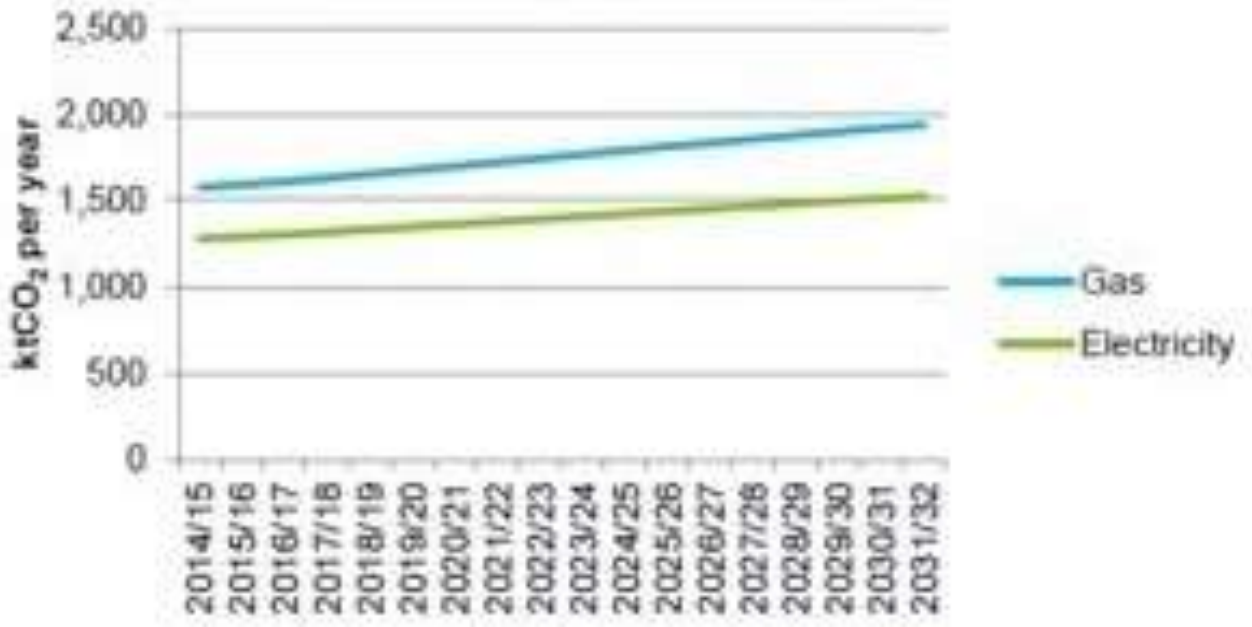


Figure 6: Projected carbon emissions from domestic gas and electricity use in Kent due to forecasted growth (KCC, 2017)

3.8 However, it is important to remember that not all homes in the borough are on the gas network. In 2018, 83 GWh of energy in the domestic sector came from petroleum products (9%), 8 GWh from coal (1%), and 7 GWh from manufactured fuels (1%). See Figure 4.

3.9 The national non-gas grid map, developed for Affordable Warmth Solutions in conjunction with the Department for Business, Energy and Industrial Strategy (BEIS), shows that 38.6% of homes in Tunbridge Wells Borough are off the gas network. This figure is the highest in Kent (Figure 7) (see Non-gas map) and higher than the average of 20% across the Energy South2East Local Energy Strategy area.

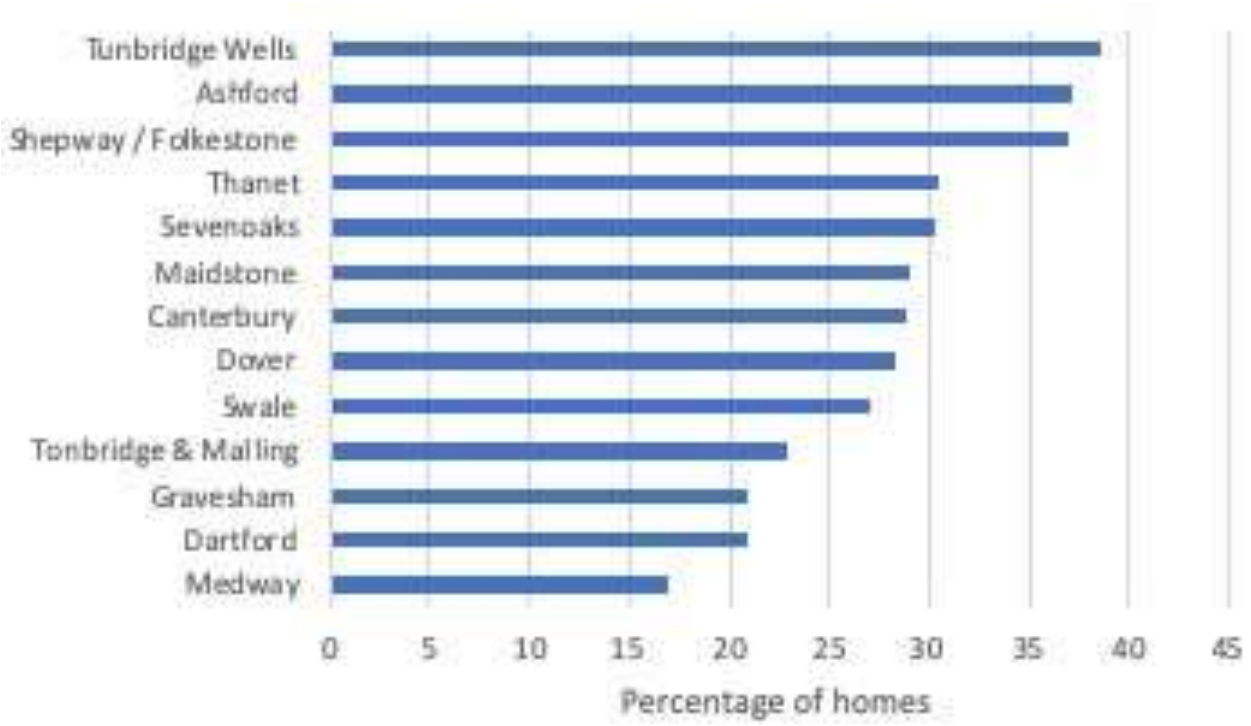


Figure 7: Percentage of homes off the gas grid in Kent and Medway

3.10 Within the lower layer super output areas (LSOA), the areas with the highest proportion of properties experiencing fuel poverty are also the areas that have the highest number of off-gas properties (Figure 8, dark blue). In Tunbridge Wells borough, off-gas grid properties are associated with levels of fuel poverty of between 12 and 13%. These tend to be three-bedroom homes, privately owned or mortgaged with oil fired heating that are on average 500 metres or more away from the mains gas grid.

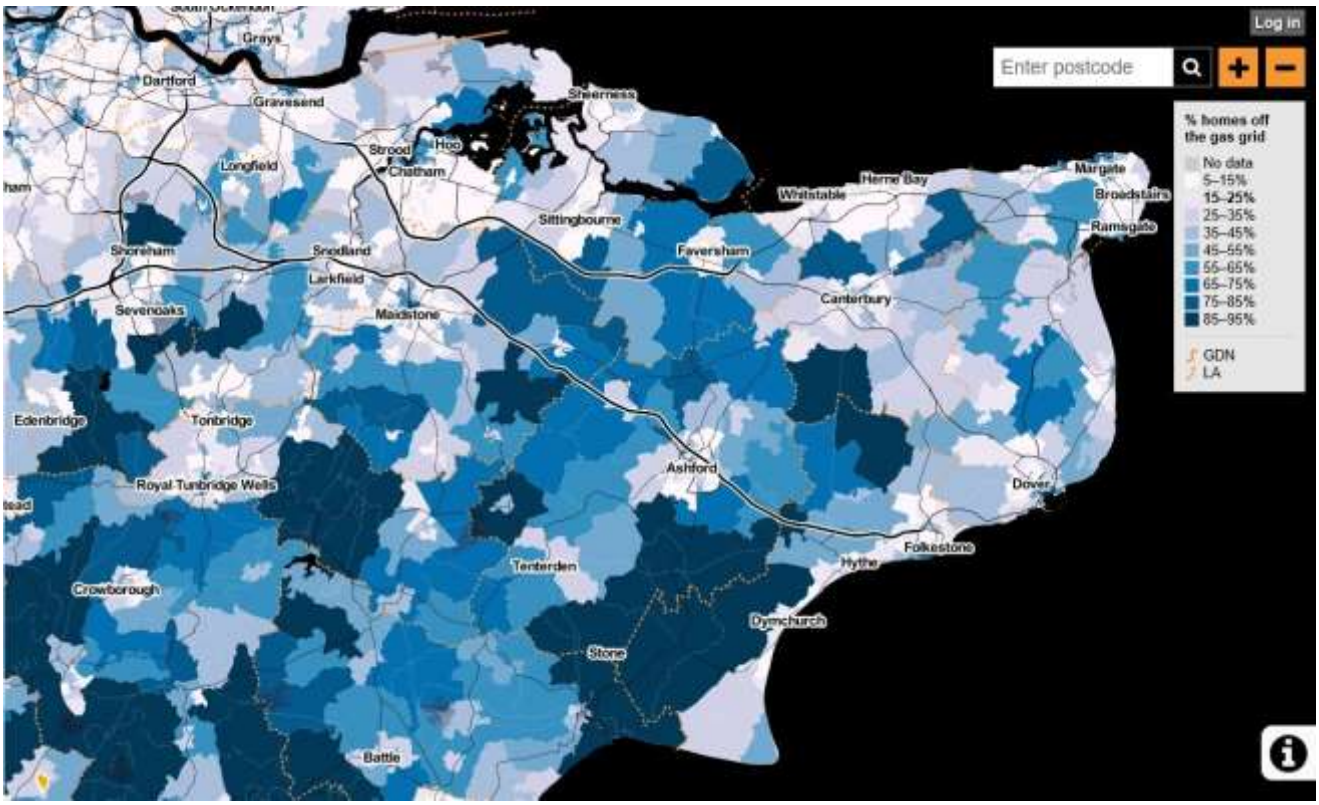


Figure 8: Off gas grid map by lower super output area (LSOA) (nongasmap.org.uk)

3.11 Heating oil produces approximately 25% higher carbon emissions than natural gas (see Energy South2East Local Energy Strategy (2019), which means that emissions from these off-gas homes are also very high. In addition, these homes tend to have poor energy efficiency due to reasons such as being of solid wall construction or having low levels of insulation, and so they use more energy to heat compared to a more energy efficient home.

3.12 Energy Performance Certificates for homes (EPCs) are used to show the energy efficiency of domestic buildings. They give a rating of A to G, with A being the most energy efficient and G being the least energy efficient.

3.13 Within Kent and Medway, 71% of homes had an Energy Performance Certificate issued between 2008 and 2018 (see MHCLG live tables on energy performance of buildings). Of these, 9,583 homes were A-rated (0.1% of all homes with an EPC) and 7,929 homes were G-rated (1.4%). The most common EPC rating was D, at 212,022 homes (39%).

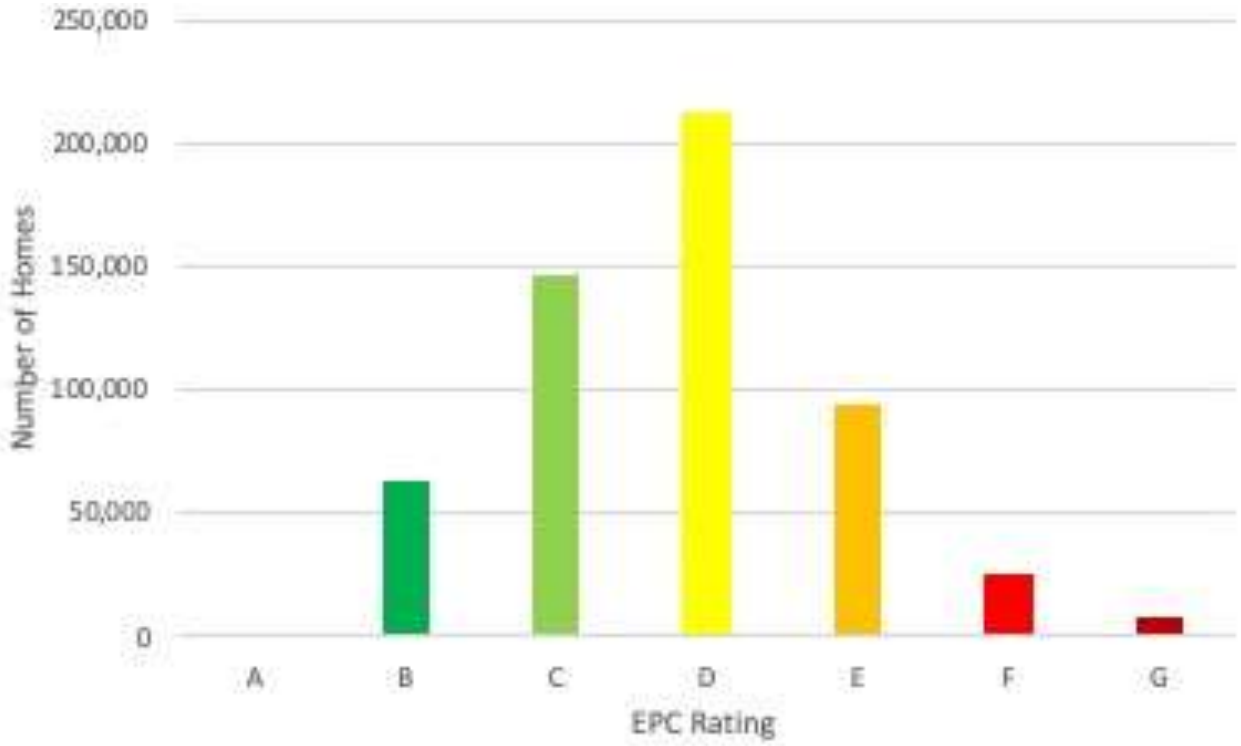


Figure 9: Domestic EPC rating in Kent and Medway (MHCLC, 2018)

3.14 A similar trend is seen in Tunbridge Wells Borough (see Figure 10). In 2020, 11% of new builds were rated as A or B (for energy efficiency). Out of the total dwellings with EPCs in 2020, 3516 dwellings (out of 30,755) received an A or B energy efficiency rating. The majority of dwellings were rated D.

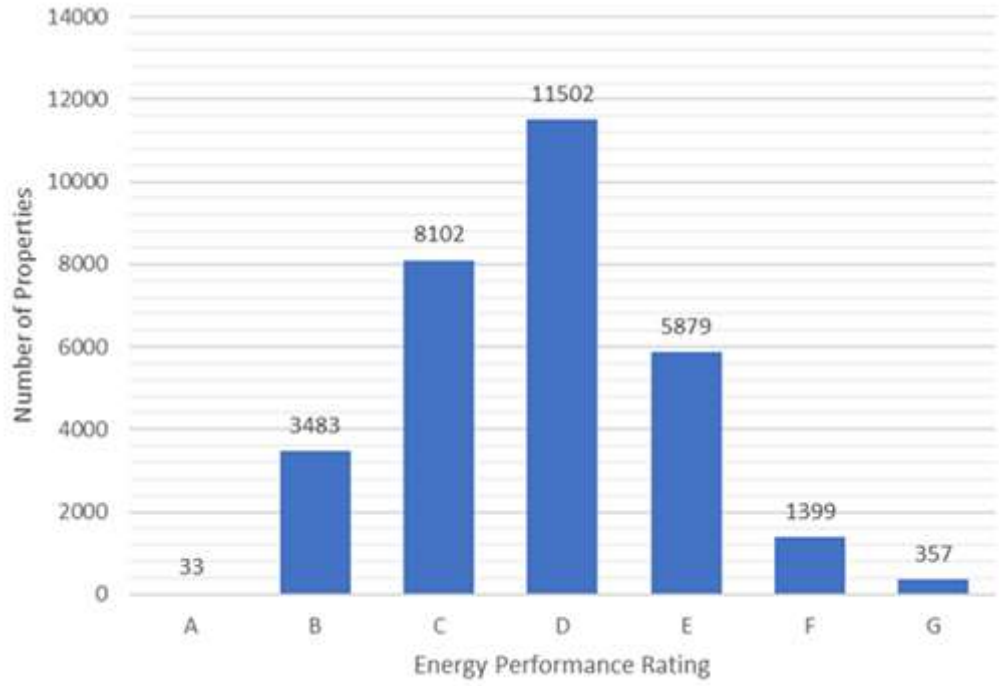


Figure 10: Domestic EPC rating in Tunbridge Wells Borough (2020).

Industrial and Commercial Energy Consumption

3.15 The industrial and commercial sector is significant in Kent and Medway. In 2015/16 there were 38,660 properties paying business rates in Kent and Medway: 31% of these were in retail, 30% industrial, 23% offices and 15% 'other' (Figure 11). Within this, the industrial sector accounts for 52% of floor area, retail accounts for 22%, offices 11% and 'other' 14% (Figure 12).

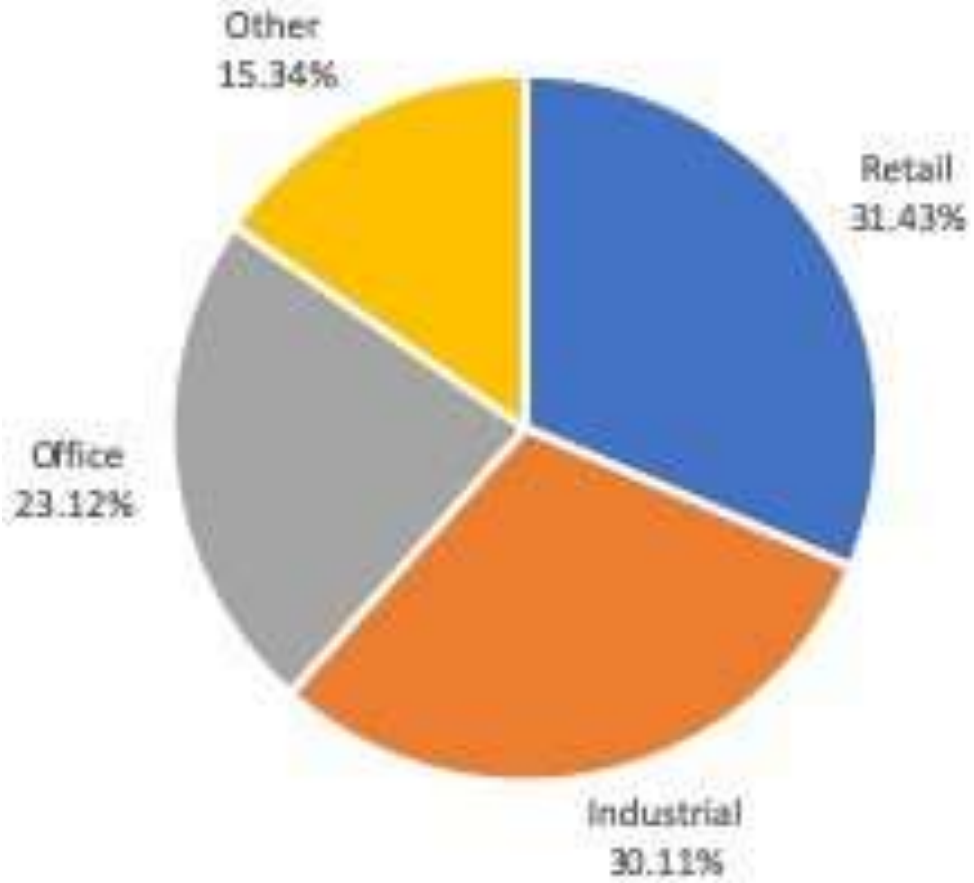


Figure 11: Number of Kent and Medway properties paying business rates in 2015/16 (KCC, 2016)

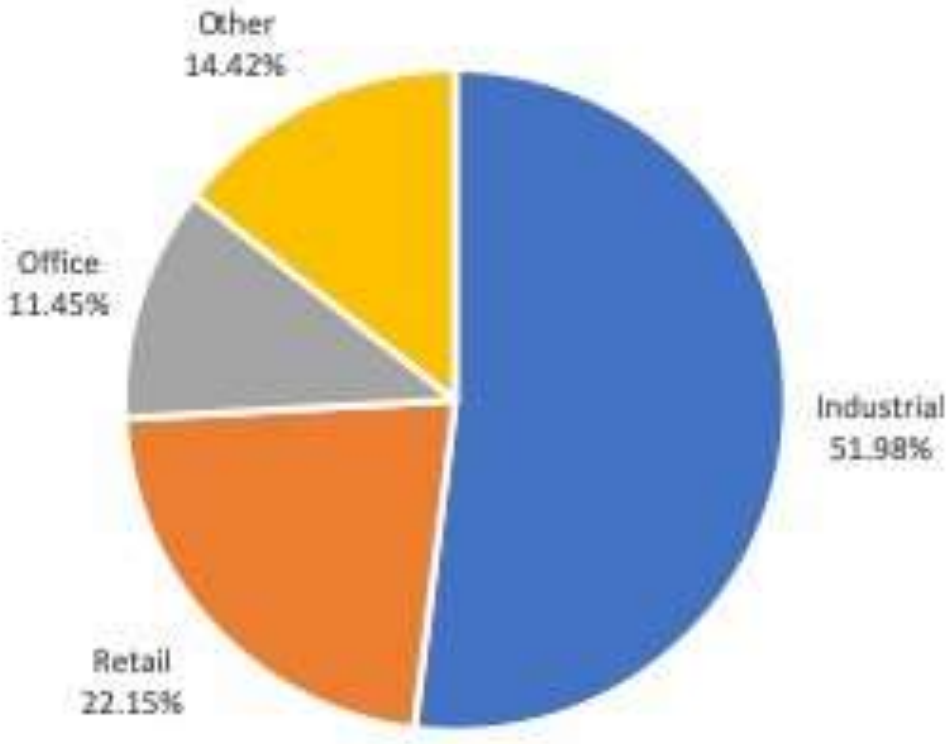


Figure 12: Floor area of Kent and Medway properties paying business rates in 2015/16 (KCC, 2016)

3.16 In Tunbridge Wells borough, total energy consumption in the industrial and commercial sector was 4487 GWh in 208; 25% of all energy consumption. Within this, 32% of the energy used was electricity, 15% gas, 6% petroleum products and 1% coal (Figure 13).

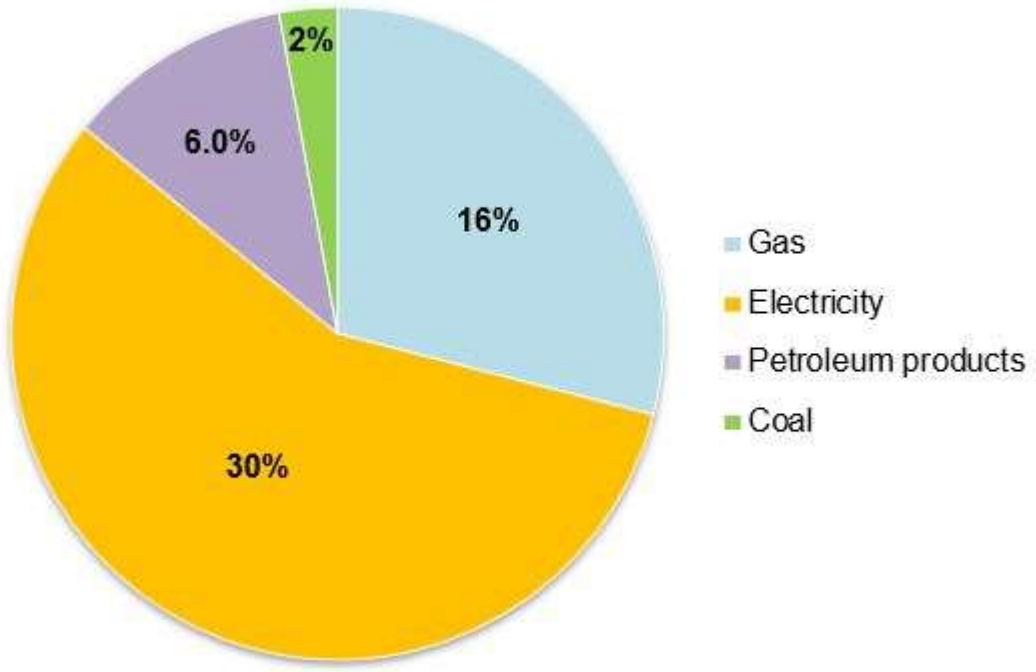


Figure 13: Non-domestic fuel consumption in Tunbridge Wells borough by fuel type (BEIS, 2019)

3.17 Non-domestic gas consumption in Tunbridge Wells borough fell 37.5% between 2005 and 2018, from 221 GWh in 2005 to 138 GWh in 2018 (Figure 14). However, non-domestic electricity consumption has not undergone the same downward trend with consumption fluctuating in this period (Figure 14).

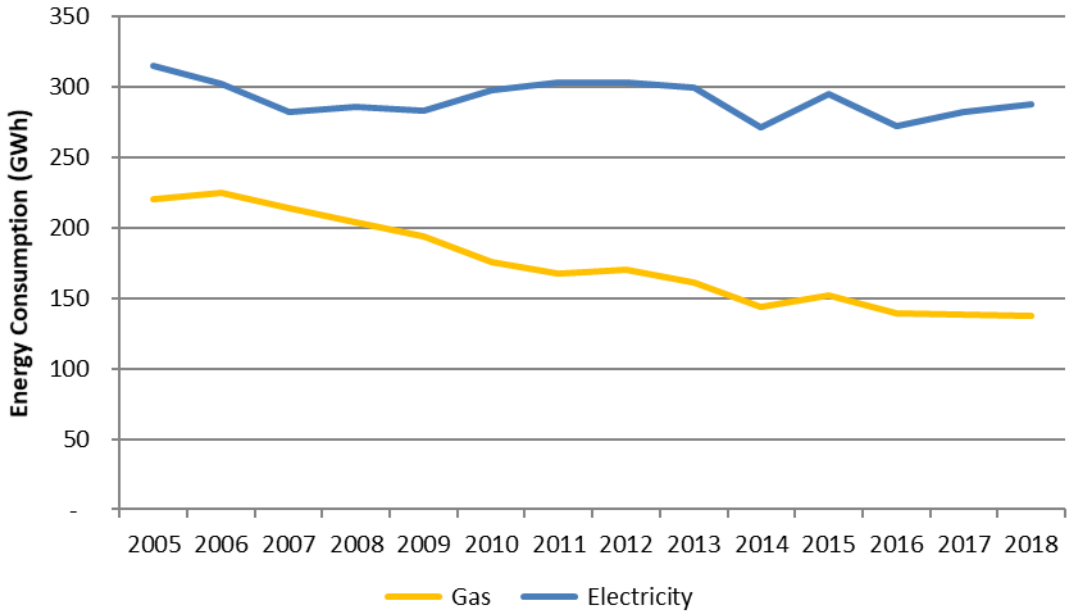


Figure 14: Non-domestic gas and electricity consumption in Tunbridge Wells Borough (BEIS, 2019)

Future Energy Scenarios

3.18 Each year, National Grid publishes Future Energy Scenarios (FES) (see National Grid (2018) Future Energy Scenarios) to identify a range of energy scenarios for the next 30 years and beyond. They look at how much energy we might need, where it could come from and what future changes might mean for the energy industry and their customers.

3.19 The 2018 FES provides a new framework linked to scenarios for the speed and level of decarbonisation (Figure 15). The framework estimates speed by looking at government policy, economics and consumer attitudes, and estimates the level of decarbonisation by looking at how close the production and management of energy is to the end consumer.

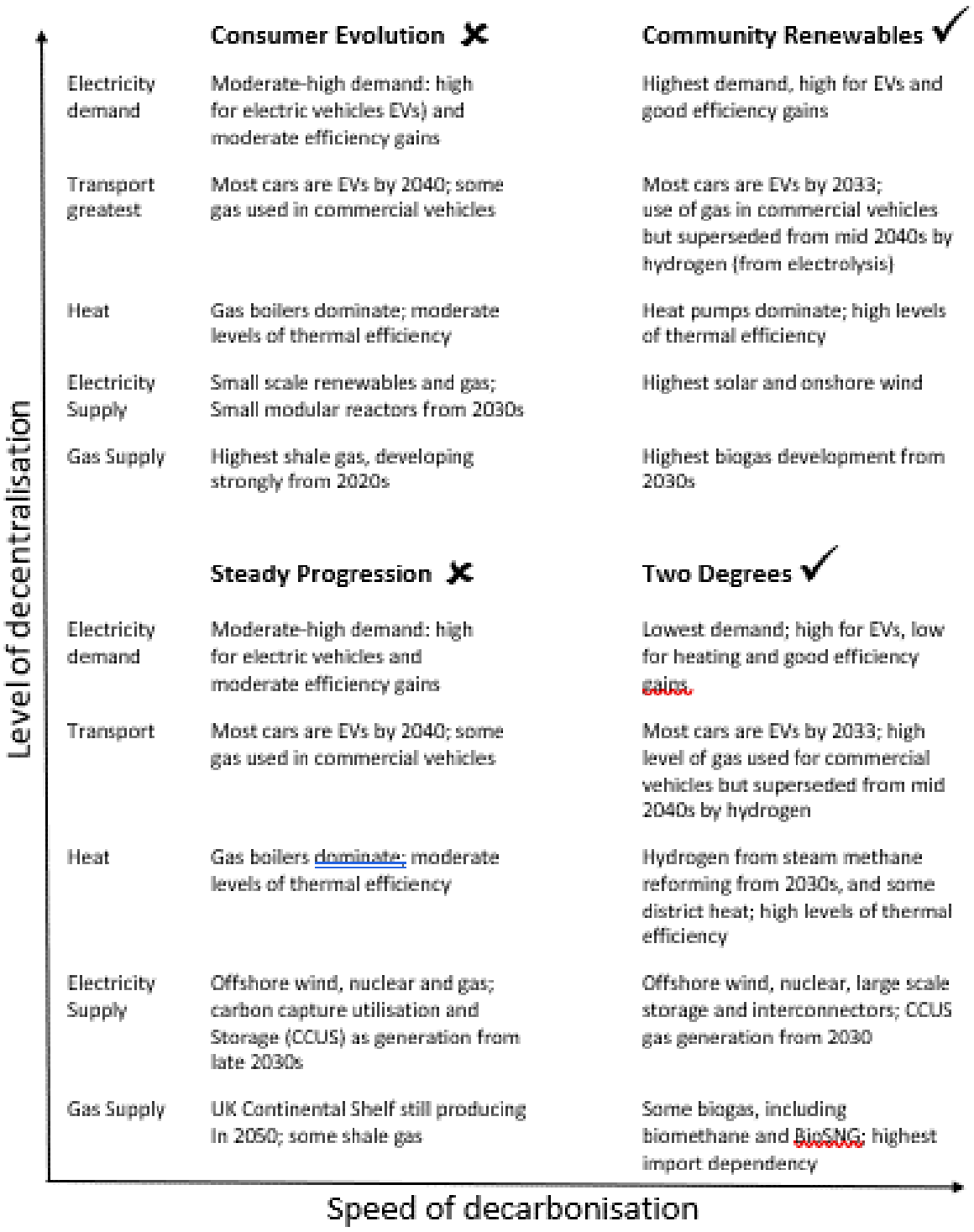


Figure 15: Future Energy Scenario (Source: National Grid, 2018) that do (tick) and do not (cross) meet 2050 national carbon reduction target.

3.20 Of these scenarios, only the Community Renewables and Two Degrees options will deliver the UK's 2050 carbon reduction target. The key messages in the 2018 FES are:

- Energy capacity could double by 2050, with up to 65% of that being locally generated. This changing generation mix will mean new ways to maintain system balance will have to be found;
- Electricity demand is expected to grow significantly by 2050, driven by increased electrification of heating and transport. There could be 36 million electric vehicles by 2040; these could support the rollout of renewables by storing excess low carbon electricity generation;
- Decarbonisation of heat needs to gather pace in the 2020s to meet carbon reduction targets. Up to 60% of homes could be using heat pumps by 2050 and one third of homes could be heated by hydrogen.

3.21 In response to this, the UK government announced in its spring 2019 budget statement that a 'future homes standard' would ensure that new UK homes will be built without fossil fuel heating from 2025. The government also announced new proposals to increase the proportion of biogas in the gas grid, which would help to reduce emissions from the mains gas supply. This signals the start of a phasing out of natural gas for cooking and heating. This will create significant future challenges for house developers and the future of home retrofit, which will need to consider the adoption of new technologies such as heat pumps and heat networks.

3.22 Security of energy supply is also an issue for the future. The UK's electricity and gas supplies come from a diverse range of sources and geographical locations; it is a reliable system, but no system can be entirely risk free. Demand is generally higher in the winter than in the summer: 70% of household gas demand happens between October and March, and on a cold day, peak demand can be three times as much as average consumption (see Ofgem (2018) Energy Security). Approximately half of Britain's gas supplies come from our own North Sea gas fields, the remainder is imported from a variety of sources including pipelines linking us with Europe and liquified natural gas shipped in from around the world.

3.23 In the electricity system, the Capacity Market has been introduced by the Government to ensure security of electricity supply. This is delivered by running annual auctions for capacity contracts, which provide a payment for reliable sources of capacity. However, in November 2018 the EU ruled that the Capacity Market could be in breach of State Aid rules and the mechanism was suspended. In February 2019, following a consultation on proposed technical amendments, the government announced a number of changes that would allow the Capacity Market to be restarted (see BEIS (2019) Capacity Market: outcome of consultation on technical amendments).

3.24 There are significant electricity grid constraints within Kent and Medway making new connections that deliver renewable energy onto the electricity grid increasingly difficult. Innovation is required to overcome this at an infrastructure level. Some work has already begun, with UK Power Networks (UKPN) and National Grid launching a new Active Network Management scheme to boost grid capacity and simplify the connections process for energy generators. However, much more

innovation is needed to ensure renewable energy generation developments can go ahead without significant grid connection charges.

Greenhouse Gas Emissions

3.25 Since 2005, the government has produced annual estimates of carbon dioxide emissions at a local authority level. These are intended as a resource to help the monitoring of efforts to reduce carbon dioxide emissions. The dataset includes all the emissions in the national inventory, excluding aviation, shipping and military transport; for which there is no obvious basis for allocating to local areas.

3.26 Overall, carbon dioxide emissions fell 37% in Tunbridge Wells borough between 2005 and 2018. However, whilst emissions from the industrial and commercial sector, and the domestic sector have fallen over this period (falling 45% and 31% respectively), the transport sector has not followed this trend (Figure 16). The transport sector now accounts for 35% of the borough's emissions, and these emissions have been increasing since 2013.

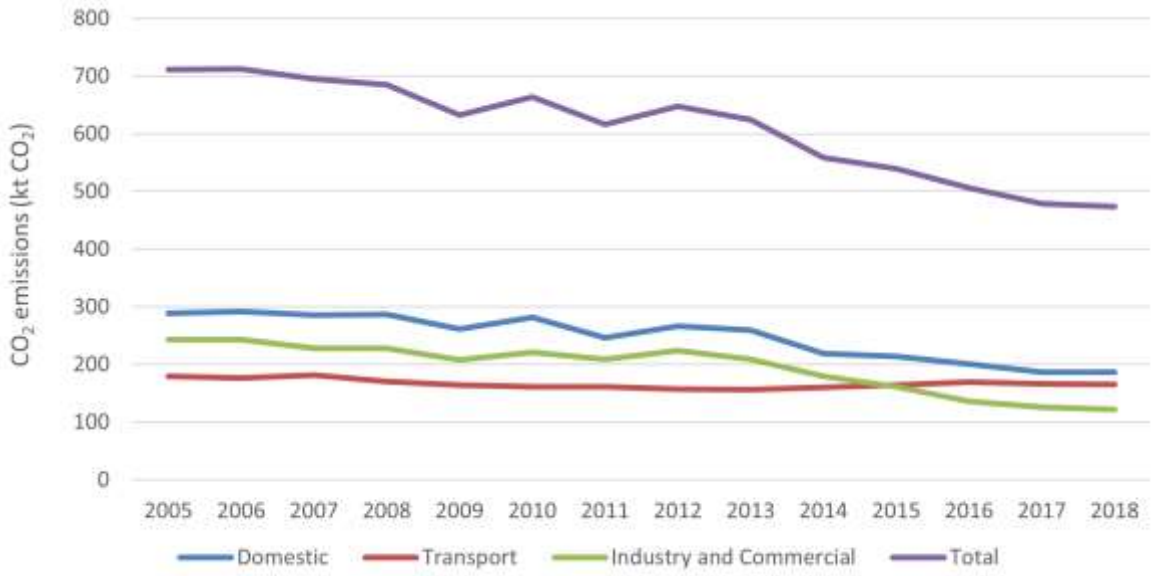


Figure 16: Tunbridge Wells Borough carbon dioxide emission by sector (BEIS, 2020)

3.27 Figure 17 shows the latest sectoral split of carbon emissions for Tunbridge Wells borough. The carbon emissions of these sectors are slightly different to the energy consumption data shown in Figure 3 due to the carbon intensity of the energy sources used.

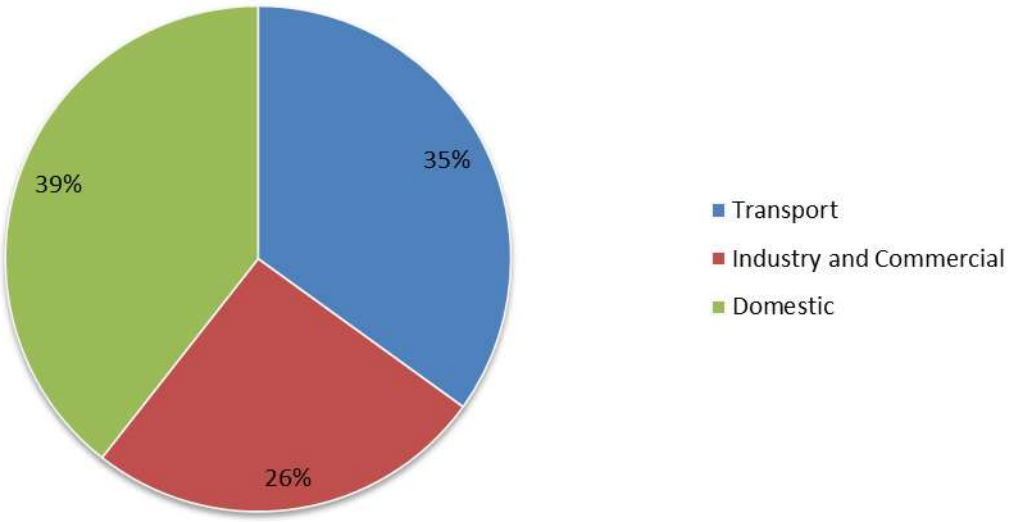


Figure 17: Tunbridge Wells carbon dioxide emissions by sector in 2018 (BEIS, 2020)

3.28 Further analysis of carbon dioxide emissions at a sub-sector level show that in 2018 domestic gas (22%), A-roads (21%), industrial and commercial electricity (15%), minor roads (14%) and domestic electricity (12%) were the largest contributors to total emissions in the borough (Figure 18).

3.29 Indeed, Figure 19 shows that these five sectors have been the dominant sources of emissions since 2005 (albeit to varying degrees).

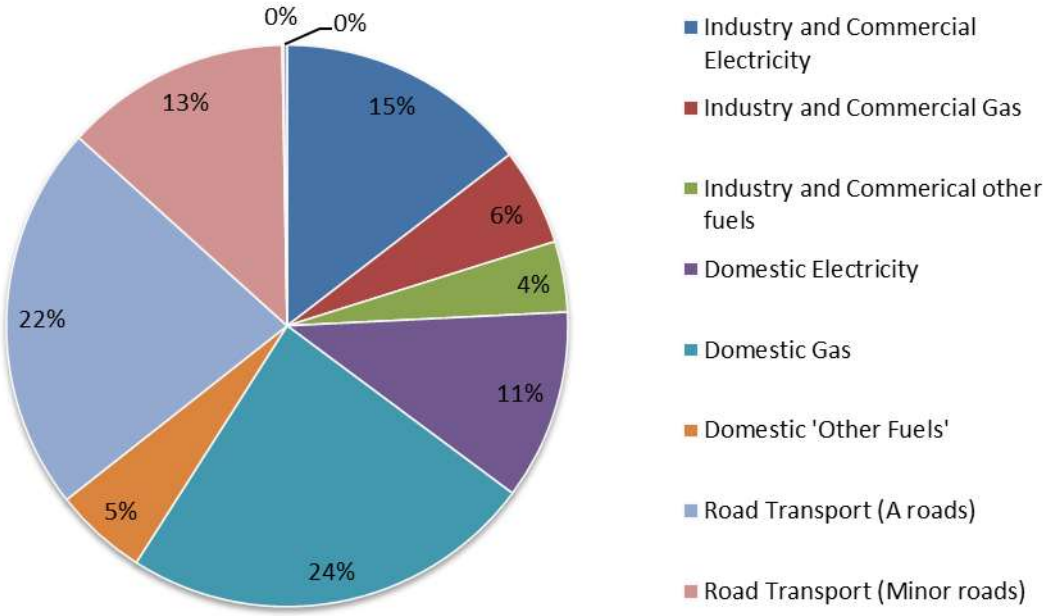


Figure 18: Tunbridge Wells carbon emissions by sub sector in 2018 (BEIS, 2020)

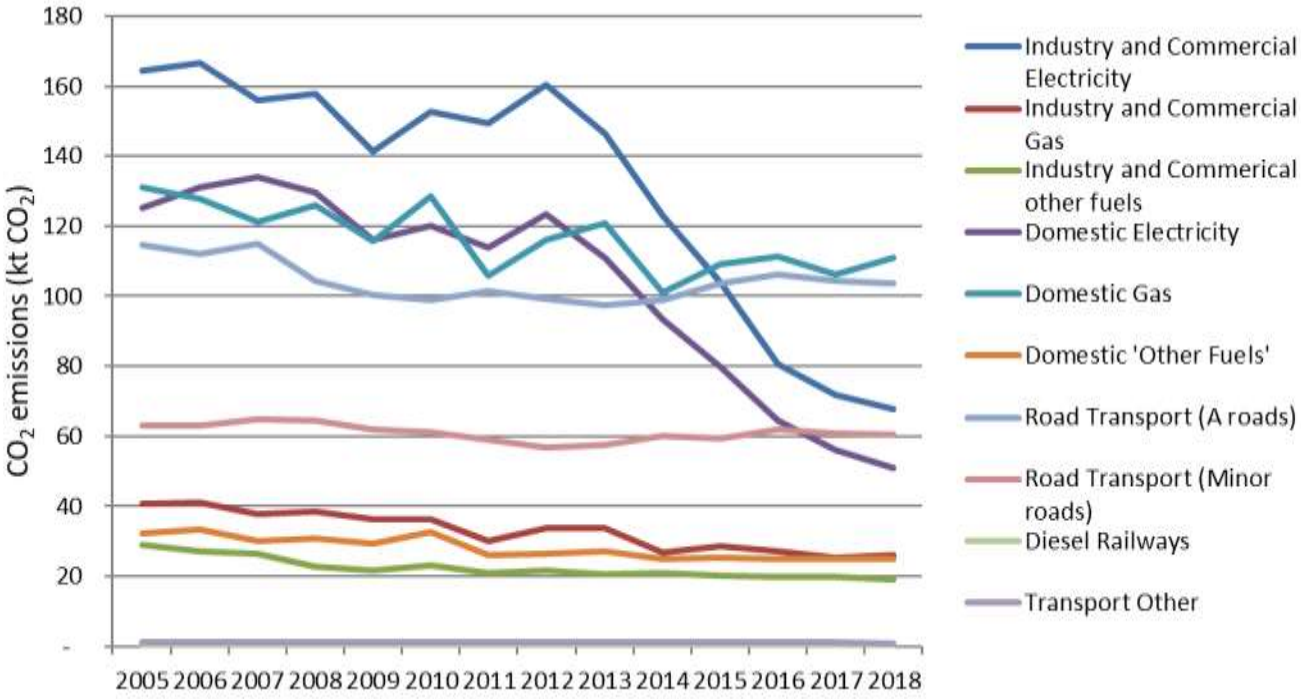


Figure 19: Tunbridge Wells carbon emissions by sub sector from 2005-2018 (BEIS, 2020)

3.30 Carbon dioxide emissions associated with gas and electricity consumption in Tunbridge Wells borough have decreased by approximately 9% and 58% respectively since 2012. The larger reduction associated with electricity emissions can be attributed to differences in the fuel emissions factors whereby the carbon intensity of gas has remained relatively stable, while that of electricity has dropped by nearly 30%, from 0.521 kgCO_2/ kWh to 0.345 kgCO_2/kWh. This is due to the near elimination of the use of coal to produce electricity and an increasing proportion of electricity generated by wind and solar.

Fuel Poverty

3.31 Fuel poverty in England is measured using the 'Low-Income High-Costs' (LIHC) indicator.

3.32 Under this indicator, a household is considered to be in fuel poverty if:

- they have required fuel costs that are above average (the national median level)
- were they to spend that amount, they would be left with a residual income below the official poverty line.

3.33 In 2016, over 72,000 households in Kent and Medway were in fuel poverty (9.6% of households) (see BEIS (2018) Local Authority carbon dioxide emissions). This compares to a fuel poverty rate of 9% across the South East and 11.1% in England (Figure 20).

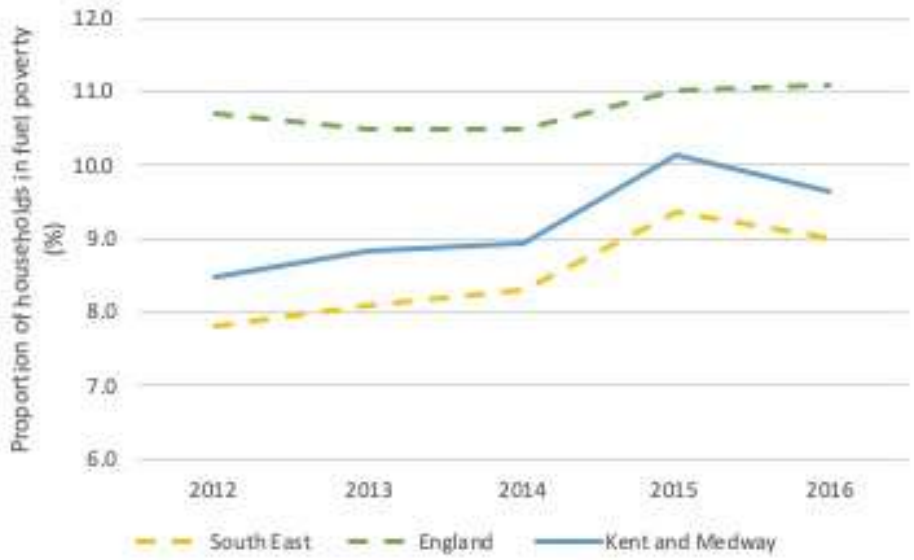


Figure 20: Percentage of household in fuel poverty in Kent and Medway 2012-2016 (BEIS 2018)

3.34 In 2016, fuel poverty increased nationally by 0.1% to 11.1% compared to the previous year. In contrast, fuel poverty in Kent and Medway decreased from 9.9% to 9.6% in the same period, although the number of households in fuel poverty is still higher than its low of 8.5% in 2012.

3.35 Across the borough approximately 9.5% of households are classed as being in fuel poverty. However, this value increases in locations off the gas grid such as Horsmonden, Lamberhurst, and Goudhurst (Figure 21).

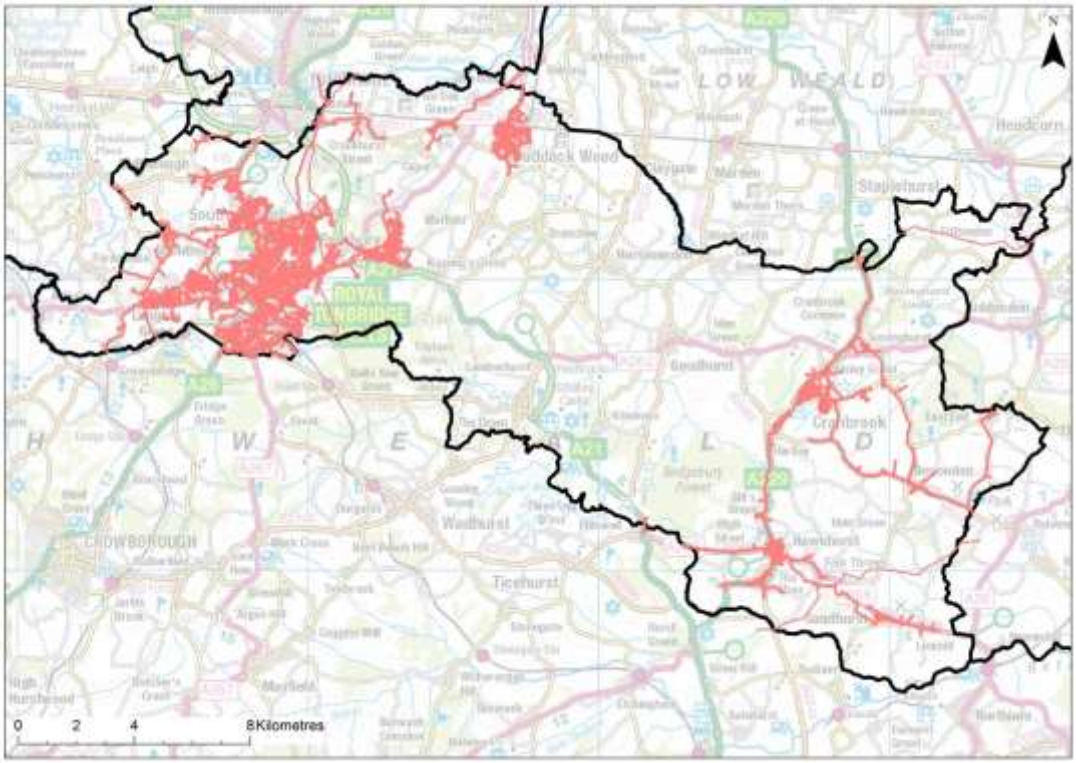


Figure 21: Locations of gas mains in Tunbridge Wells borough

3.36 Resident environmental perception surveys are carried out every two years as part of the monitoring of the Kent Environment Strategy. Data from 600 interviews undertaken in July 2018 has been published. The survey results show that 11% of people struggle to pay their energy bills to some extent, which is slightly higher than the Government figures of 9.6% of fuel poverty for Kent and Medway. The proportion who noted they struggle, is highest amongst those aged 25-44 (15%) and those living in rented accommodation (41%).

3.37 Government data shows that despite a national decline in domestic consumption for electricity (note that this trend is not seen in Tunbridge Wells borough: see Figure 5) and gas, household expenditure on energy is rising (Figure 22).

3.38 The reasons for the decline in consumption are mixed and not thought to be linked solely to the effects of the previous period of recession and then economic growth. Explanations include:

- improvement in the efficiency of electrical appliances including strict EU standards;
- a ban on incandescent light bulbs;
- policies to improve energy security and tackle climate change;
- improvements in boiler efficiency and pipe insulation;
- loft and cavity wall insulation;
- behaviour change during the recession to be more frugal e.g. turning off radiators in unused rooms.

3.39 However, these improvements are inadequate to offset rising prices which are caused by factors such as:

- In the past 15 years, the UK has shifted from being a net exporter to a net importer of gas thus wholesale gas prices are high, rising in tandem with oil prices and also being the main driver for electricity price due to the UK's gas-driven power sector. However, this influence on electricity prices is lessening with time;
- Higher taxes and levies on electricity including support for renewable energy;
- Investments required in the grid e.g. offshore and international connections, repairs and low carbon generation;
- Profit driven energy retailers.

3.40 For these reasons, the UK average standard annual gas and electricity bill has risen by £320 over the last ten years, with the average domestic combined bill in 2018 costing £1,314. Average bills in the South East are slightly higher than the UK average; in 2018 the South East average gas and electricity bills were £66,142 and £6,7043; giving a combined cost of £1,331 (1.29% higher than the UK average). Average costs are lower for those on direct debit (approximately 70% of southeast customers), higher for those on prepayment meters (approximately 10% of

southeast customers) and highest for those on credit meters (approximately 20% of southeast customers).

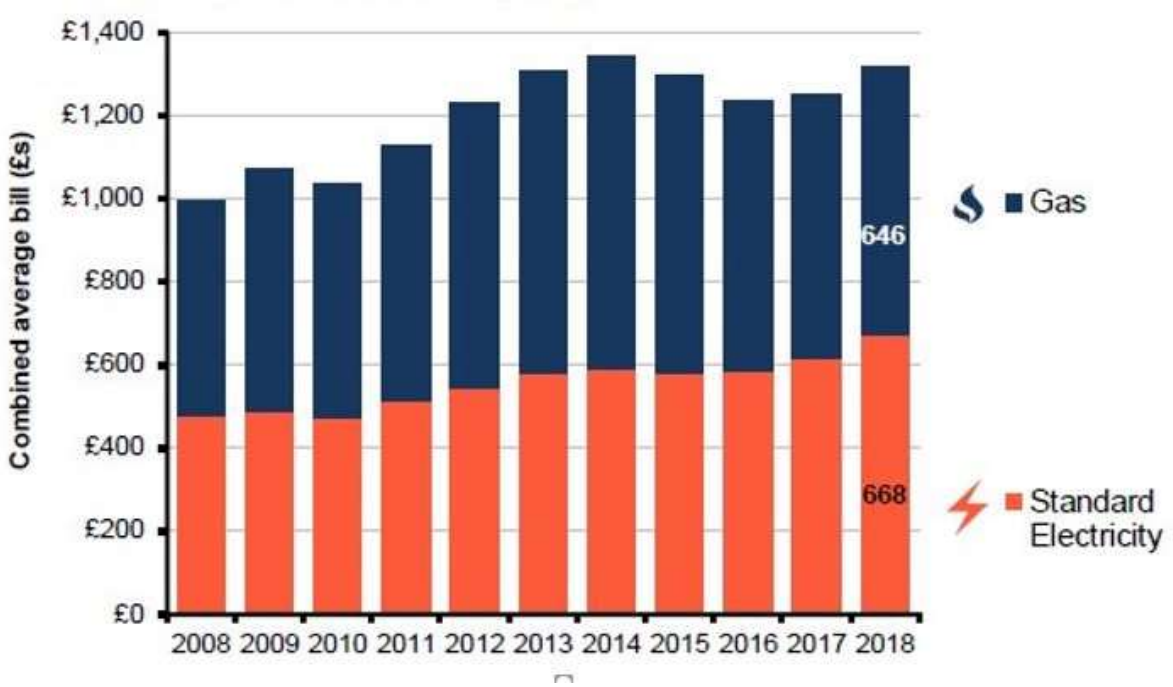


Figure 22: Average standard UK domestic electricity and gas bills 2008-2018 (BEIS, 2019)

3.41 Delivering Affordable Warmth: a fuel poverty strategy for Kent, was published by the Kent Energy Efficiency Partnership in 2016 (see KEEP (2016) Delivering Affordable Warmth). It outlines the actions required to address Fuel Poverty in the county and is delivered in part, through the Kent and Medway Warm Homes Scheme (see Kent and Medway Warm Homes Scheme). Since the scheme began in 2014, Kent and Medway partners have installed over 2,400 energy efficiency measures in over 2,300 homes; helping to save residents £8.8 million over the measures' lifetime. Despite this positive activity, which also includes helping residents switch to cheaper energy tariffs and claim the benefits they are eligible for, the significant rise in annual costs of energy is making it more difficult to lift households out of fuel poverty.

3.42 Fuel poverty often leads to people living in cold, damp homes. This can contribute to increasing the risk of poor health outcomes, as well as increased morbidity and mortality. Public Health England monitors the levels of fuel poverty and excess winter deaths (EWDs) at a national and council level. The number of EWDs depends on the temperature and the level of disease in the population, including the levels of seasonal influenza, and other factors, such as how well-equipped people are to cope with a fall in temperature. Mortality during winter increases more in England and Wales compared to other European countries with colder climates, suggesting that many more deaths could be preventable in England and Wales.

Renewable and Low Carbon Energy

Current Capacity

3.43 In 2017, Kent County Council commissioned an update to the Renewable Energy Action Plan for Kent report which assesses renewable energy capacity and trajectories across the county (see KCC (2017) Renewable Energy Action Plan: 2017 Update). Renewable and combined heat and power (CHP) capacity across Kent has increased significantly in the last five years (Figure 23). The capacity of solar, wind, waste and CHP combined that was active, agreed or under construction was reported as over 1,900 MW (including offshore wind farms), compared with approximately 230 MW in 2012. Most of this increase has been delivered through off-shore wind and solar installations, with wind contributing over 1,100 MW and solar over 550 MW.

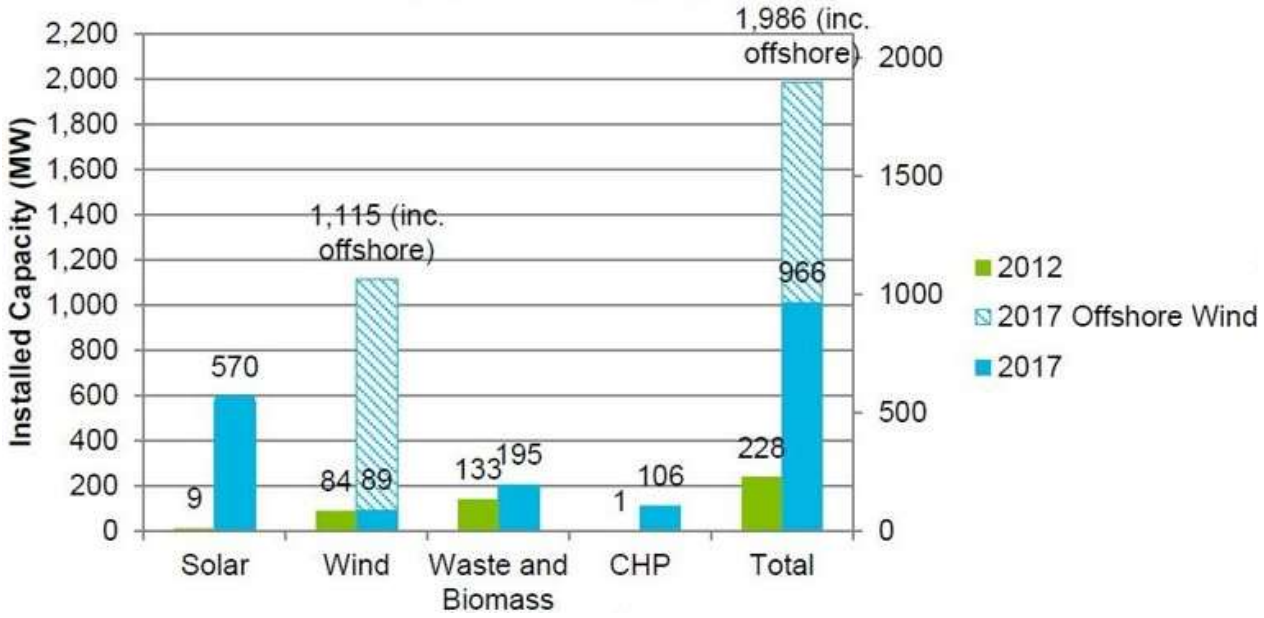


Figure 23: Renewable and CHP capacity in Kent and Medway 2012 vs 2017 for active, agreed and under construction schemes (KCC, 2017)

Solar and wind generation

3.44 The Energy South2East Local Energy Strategy states that solar PV schemes can produce up to 36% more electricity in the South East than elsewhere in the UK. Approximately 80% of the solar generation capacity in Kent and Medway comes from large installations of over 0.5 MW (457 MW). The rest (113 MW) is made up from many smaller scale installations. 91% (1020 MW) of wind energy capacity comes from large offshore installations (>2MW). Large onshore wind installations make up 8% (84 MW) with the rest coming from small scale installations.

3.45 The geographical spread of existing small-scale renewable generation (defined as those <0.5MW, mainly solar and wind) can be seen in Figure 24. Blue indicates high levels of installations, whilst red indicates low levels.

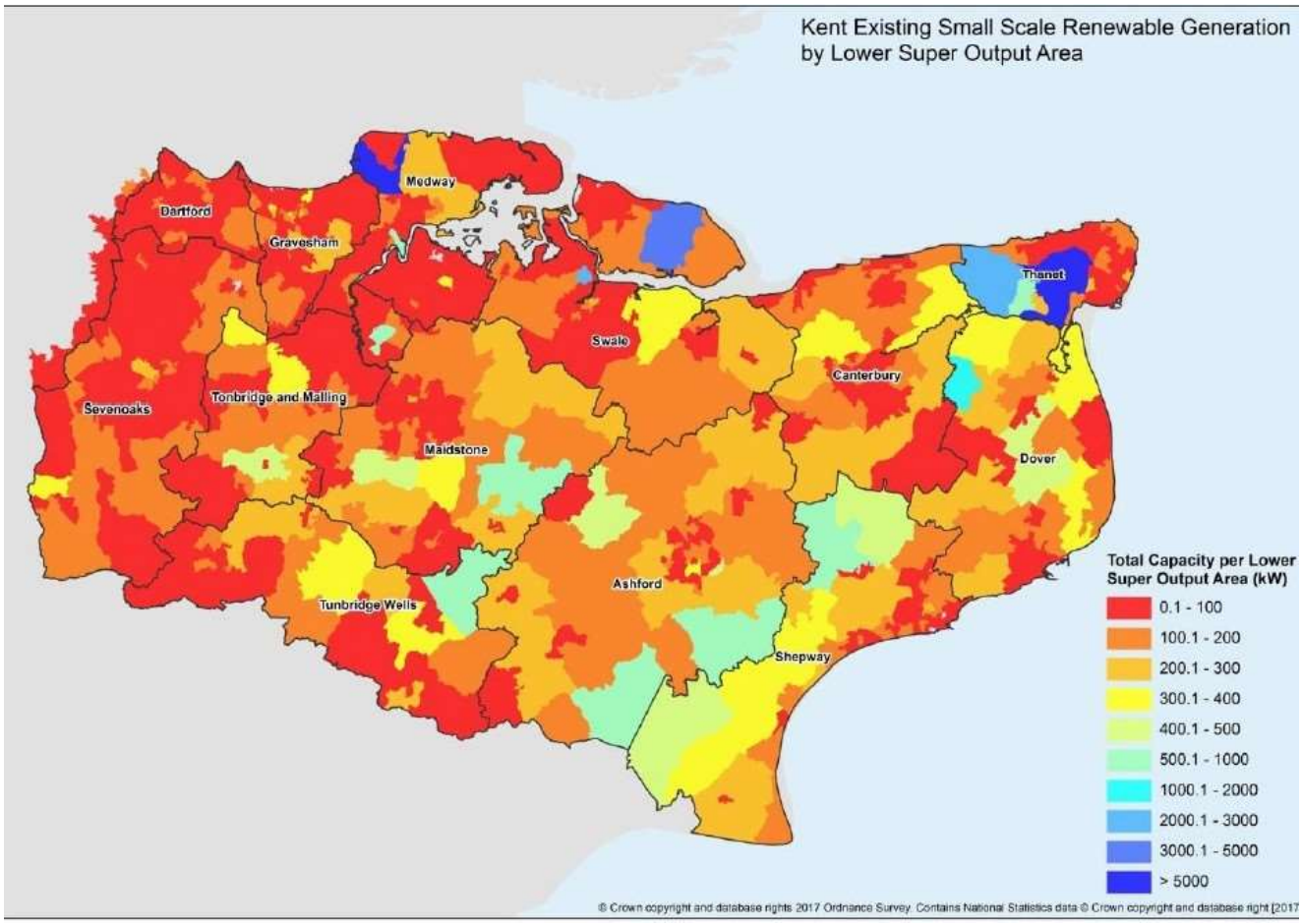


Figure 24: Existing small-scale renewable energy generation in Kent (KCC, 2017)

3.46 Given that so much of the renewable generation in Kent and Medway is large scale, most of the energy generated is fed into the national grid and used across the UK. It is not therefore possible to say what percentage of Kent and Medway's energy needs are directly met by local generation.

3.47 Within Tunbridge Wells borough, two solar farms have been installed near Paddock Wood and Five Oak Green (collectively 30MW). Specialist studies indicate that opportunities to generate wind energy within the borough are limited as the Borough is one of the least windy parts of the UK (see Low Carbon Energy Delivery in Tunbridge Wells Borough (2009) by Delta Energy and Environment Ltd and Renewable Energy for Kent (2012) by AECOM).

Heat Networks

3.48 Heat networks (also known as district heating) supply heat from a central source to consumers via a network of underground pipes carrying hot water. Heat networks

vary in size, from one building to an entire city, and can be supplied by a diverse range of sources including:

- power stations;
- energy from waste (EfW) facilities;
- industrial processes;
- biomass and biogas fuelled boilers and combined heat and power (CHP) plants;
- gas-fired CHP units;
- fuel cells;
- heat pumps;
- geothermal sources;
- electric boilers and even solar thermal arrays.

3.49 Heat networks currently supply around 1% of building's heat demand in the UK. The Government's Clean Growth Strategy (see BEIS (2018) Clean Growth Strategy) estimates that heat networks will meet 17% of heat demand in homes and up to 24% of heat demand in industrial and public-sector buildings by 2050 (see BEIS (2018) Heat Networks Investment Project).

3.50 The South2East Local Energy Strategy proposes that the building and extension of heat networks be encouraged, particularly in new build developments: 'Taking these schemes from concept to commissioning should be a priority for the region since they deliver substantial reductions in emissions and provide good rates of return for investors' (see SE LEP (2019) Energy South2East Local Energy Strategy). The strategy sees a key role for the Greater South East Local Energy Hub in ensuring public and private sectors work together to identify opportunities and overcome any technical or commercial obstacles for the development of heat networks.

3.51 In 2014, a mapping exercise identified 15 areas in Kent and Medway that are likely to be particularly suitable for heat networks (Figure 25) (AECOM/KCC (2014) Heat Networks in Kent and Medway: pre-feasibility study (not published)). Each area was assessed against technical, social, environmental, economic and practical factors. The clusters prioritised following this process were Chatham University, Chatham Hospital, Canterbury Longport, Ashford and Maidstone County Hall. However, potential was seen in other towns such as Tunbridge Wells.

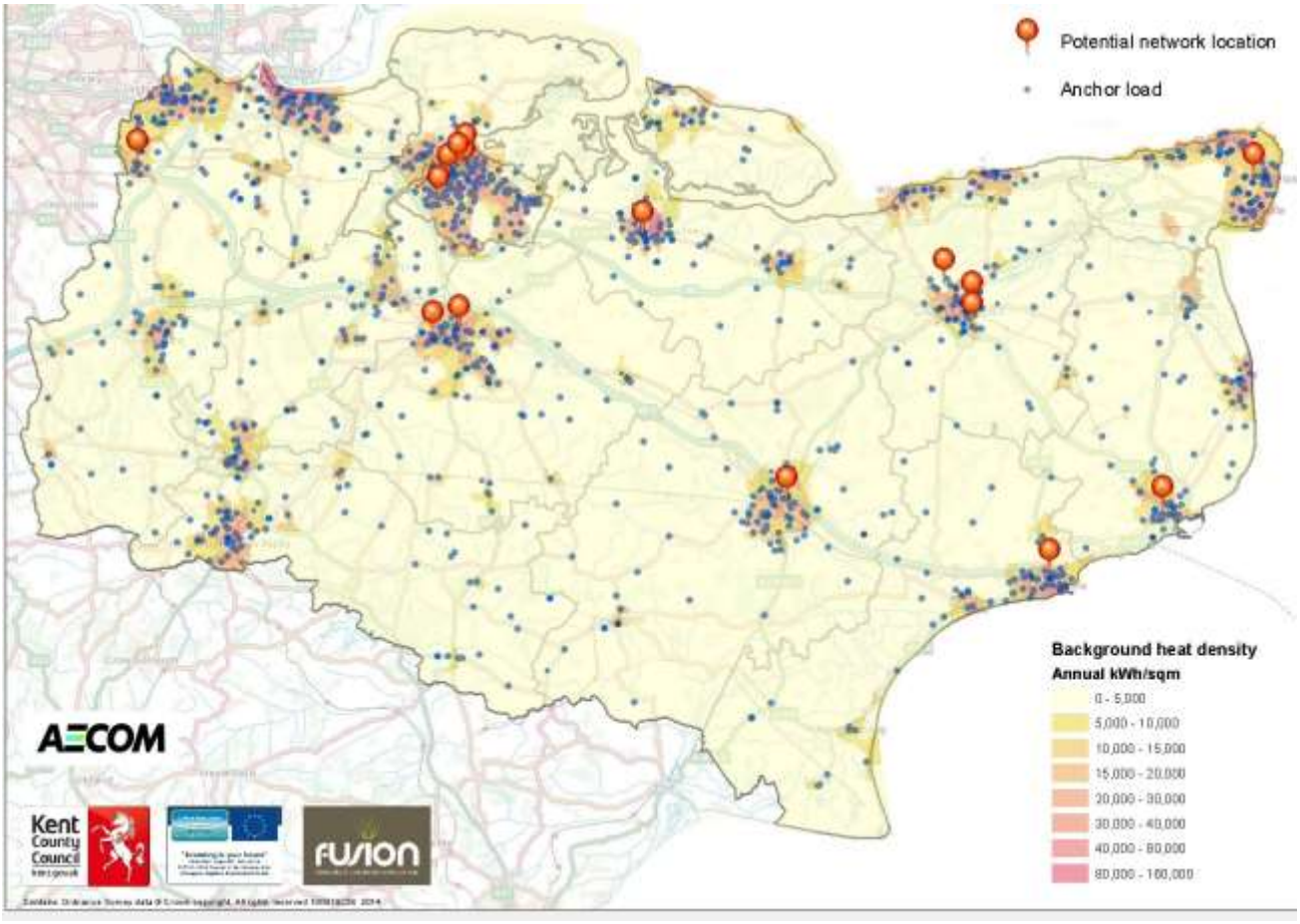


Figure 25: Heat density, anchor loads and potential heat network locations in Kent (KCC, 2014). Tunbridge Wells Borough shown with black line.

Covid-19

3.52 It is noted that the Covid-19 pandemic in 2020 and 2021 will have had an impact on energy consumption, greenhouse gas emissions and fuel poverty levels. The full effect of this impact will be seen when data for this time period is made available by BEIS for analysis.

3.53 As the economy returns to normal, much discussion has been underway about what 'normal' should now look like. In Dec 2020, Government released the Energy White Paper which maps the green recovery needed over the next decade to cut emissions and support new green jobs. Fiscal packages were also made available. It is hoped that this will allow us to transition towards a strong and sustainable clean-energy future.

4.0 Implications for New Planning Policy

Background

4.1 As explained within the Legislation and Policy Context Chapter, the legislative framework for the planning system carries forward the UK commitment to tackling climate change.

4.2 Local planning authorities are bound by the legal duty set out in Section 19 of the 2004 Planning and Compulsory Purchase Act, as amended by the 2008 Planning Act, to ensure that, taken as whole, planning policy contributes to the mitigation of, and adaptation to, climate change. This powerful outcome-focused duty on local planning clearly signals the priority to be given to climate change in plan-making. In discharging this duty, local authorities should consider paragraph 149 of the NPPF and ensure that policies and decisions are in line with the objectives and provisions of the Climate Change Act 2008.

4.3 Specifically, Section 19 of the 2004 Planning and Compulsory Purchase Act, as amended by Section 182 of the Planning Act 2008 states:

"*Development plan documents must (taken as a whole) include policies designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change."*

4.4 In comparison, the NPPF sets guidance that local authorities have to follow to demonstrate, through viability assessments, that higher sustainability standards will not affect housing delivery. Assessments need to be underpinned by a proportionate evidence base that reflects local circumstances.

4.5 The NPPF also explains that plans should be prepared positively in a way that is aspirational but deliverable. This means that policies should be realistic and the total cumulative cost of all relevant policies should not be of a scale that will make development unviable. Key points from the guidance are detailed as follows.

"*Policy requirements, particularly for affordable housing, should be set at a level that allows for sites allocated in the plan to be delivered without the use of further viability assessment at the decision making stage. Where proposals for development accord with all the relevant policies in an up-to-date development plan no viability assessment should be required to accompany the application. Plans should however set out circumstances in which viability assessment at the decision making stage may be required*."

4.6 Where local plan policy which complies with the Section 19 duty of the Planning Act 2008 is challenged by objectors or a planning inspector on the grounds, for example, of viability, it must be made clear how the plan would comply with the legal duty if the policy were to be removed. Whatever new policy may emerge, compliance with the legal duty must logically mean compliance with the targets laid out in the Climate Change Act.

4.7 As confirmed in the Legislation and Policy Context chapter and in the legal advice contained in Appendix 2, local authorities are not restricted in their ability to require energy efficiency standards for new build above Building Regulations as long as such standards are compliant with other national policy e.g. there is an evidence base to support it and viability analysis.

4.8 For these reasons, Tunbridge Wells Borough Council intends to implement an ambitious new energy reduction policy for new buildings that requires energy reductions beyond building regulation requirements in addition to a renewable energy policy. This policy is set out below.

Existing Policy

4.9 At present, the Tunbridge Wells planning authority implements the following energy policy through the Renewable Energy SPD and associated updates (see Renewable Energy SPD):

> Developers must incorporate renewable technology on-site to reduce predicted CO_2 emissions by 10% for all residential developments greater than 10 dwellings (or 0.5 ha and greater if outline) and all non-residential developments greater than 1 ha

4.10 This type of policy in which energy emissions are offset by the incorporation of renewable energy is often called a ‘Merton rule’ policy named after the council that first implemented the policy.

4.11 This policy has been in place in Tunbridge Wells borough since 2007. Since this time, the costs of renewable energy installations have declined considerably, and many local authorities have been successfully implementing more ambitious policies. For these reasons, it is proposed that Tunbridge Wells now implements a higher target of 15%.

4.12 There is currently no policy in place that is designed to reduce the emissions that are associated with the fabric of the building, often known as a ‘fabric first’ policy; for example, the emissions associated with heating the building can be reduced by designing a better insulated building.

4.13 When implementing the energy hierarchy (see Figure 26), fabric first policies must be implemented prior to Merton rule policies.

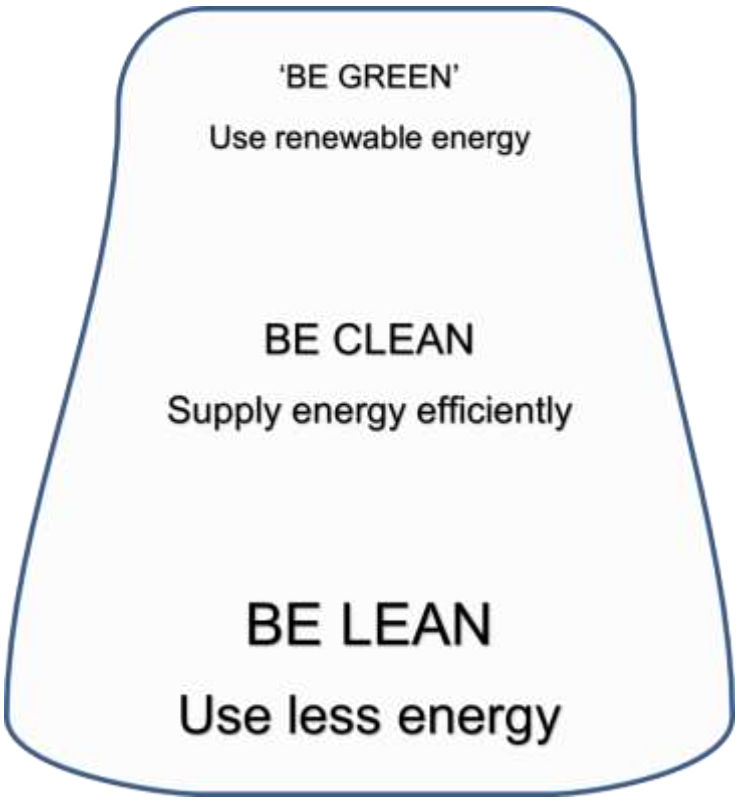


Figure 26: The Energy Hierarchy

New Policy

4.14 To determine what target would be appropriate for a fabric first policy, the Council commissioned a study by Currie and Brown which detailed various policy options and their associated costs for developers (see 'Energy Policy Viability Report')

4.15 The study considered the implications of introducing a wide range of policy options for various dwelling types using both the current and latest upcoming versions of the Government's Standard Assessment Procedure (SAP). The current version is known as SAP 2012 and has been widely used for the past seven years; whereas, the new version, known as SAP 10, includes the most up to date emission factors and, although not yet available for official use, is expected to be introduced in 2021/2022.

4.16 The work undertaken included an opinion survey of local stakeholders including key developers and took into account common building materials and design specific to the borough.

4.17 In terms of a new fabric first target, the study found that 10-20% reductions were possible through fabric improvements. However, it should be noted that the Council's legal advice has confirmed that local planning authorities cannot request more than 19% (equivalent to old Code for Sustainable Homes Level 4). See Legislation and Policy Context.

4.18 For residential buildings, cost uplifts for fabric first policies ranged from 2-5%. It was also noted that building form was critical with energy savings being more challenging for mid floor flats and mid terraces than detached or semi-detached dwellings. In addition, the use of Mechanical Ventilation Heat Recovery technology was critical in order to obtain the higher energy savings. In traditional, naturally ventilated homes currently used in construction, 10% energy savings were possible for all dwelling types.

4.19 For non-domestic buildings, energy savings of 10-15% from fabric first improvements were deemed achievable. The cost uplift for this was expected to be less than 1% with variations being dependent on the building type and use. For example, more substantial energy savings would be possible for buildings with office and retail uses compared with buildings used as schools and hotels.

4.20 In terms of a new renewable energy generation targets, the study concluded that a 15-20% Merton Rule policy would be achievable across all builds with a cost uplift of less than 1% by introducing additional PV or air source heat pumps.

4.21 In combination, the most ambitious fabric first and Merton rule policies (25% fabric first and 20% Merton) were found to result in a cost uplift of between 2-5% for new dwellings with the exact figure dependent on the building type and SAP version used.

4.22 This information was fed into the plan-wide viability assessment and found to be an achievable uplift.

4.23 With consideration of all these findings, the Council determined that a 10% fabric first target would be appropriate in combination with a 15% Merton Rule target. The 10% fabric first target would incorporate all dwelling types and allow developers to utilise existing common construction methods, and the 15% Merton Rule target would avoid the higher 20% target allowing developers an adjustment period before the policy is reviewed and further uplifts are likely in order to meet the council net zero commitment.

4.24 These expectations are proposed to be incorporated into Policy EN 3 of the Pre-Submission Local Plan (Figures 27 and 28) under the subheading ‘Energy Reduction in New Buildings’. As a whole Policy EN 3 provides an all-encompassing approach to climate change mitigation and adaptation.

4.25 Within this policy, as set out below, the term ‘major development’ is defined as follows to reflect the existing Renewable Energy SPD:

Residential development of 10 or more dwellings or Non-residential development of 1 ha or greater

Policy EN 3

Climate Change Mitigation and Adaptation

Subject to all other material considerations, proposals for zero carbon and low emission development, as well as development that allow communities, infrastructure, businesses, and the natural environment to adapt to the impacts of climate change, will be strongly supported.

Energy reduction in new buildings

Proposals for the construction of new buildings are required to incorporate design features that help deliver radical reductions in greenhouse gas emissions, particularly CO_2 emissions, and thus help mitigate climate change impacts. This will be achieved using the measures set out below, unless superseded by national policy or legislation:

1. A 'fabric first' approach in which all development comprising the construction of new buildings is required to reduce operational CO_2 emissions by at least 10% below the Target Emission Rate (TER) as set out in Building Regulations Part L (2013);

2. Requirement for major development comprising the construction of new buildings to reduce operational CO_2 emissions by 15% using renewable energy-generating technology to be installed on site. The 15% reduction will be calculated only after the 'fabric first' approach has been applied.

The 'fabric first' approach should be based upon a consideration of U-values, thermal bridging, air permeability, and thermal mass, and also features that affect lighting and solar gains, such as building orientation and layout.

Renewable energy-generating technology includes photovoltaics, solar hot water, air/ground source heat pumps, wind turbines, hydropower, and biomass boilers*. Low carbon technology presented as an alternative to renewable energy-generating technology, such as Combined Heat and Power (CHP), will be considered on a case-by-case basis, as will emerging new technology. The choice of technology to be installed will have consideration for site constraints such as shading, local air quality, and sensitive features such as the landscape and historic environment.

All energy calculations should be made using recognised calculators such as the Standard Assessment Procedure (SAP) or Home Quality Mark method for residential buildings, or the Simplified Building Energy Model (SBEM) for non-residential buildings. The calculations should include all regulated emissions such as fixed heating, lighting, hot water, and ventilation. Unregulated emissions from appliances such as white goods should be considered wherever possible.

Compliance with this policy should be demonstrated with a design stage Energy Strategy Report (major development) or Energy Statement (minor development), which is revisited during the construction phase to confirm its predictions are still valid and thus help avoid

Figure 27: Proposed policy wording for the Pre-Submission Local Plan (EN 3). Part 1 of 2.

a ‘performance gap’. Both submissions should contain adequate information to demonstrate how the energy hierarchy has been followed and energy reduction targets will be achieved. The level of detail provided should be proportionate to the size of the development.

There may be exceptional circumstances where compliance with this policy would make the development not viable. In each case these circumstances would need to be fully demonstrated to warrant a departure from compliance with this policy.

* using locally sourced fuel and outside of urban areas only. See Policy EN 23: Biomass Technology.

Climate change adaptation

Where relevant, development must incorporate measures that adapt to the impacts of climate change. These could include, but are not limited to, the following measures:

1. Protection, and provision, of well connected green infrastructure (especially trees) that facilitates native species' movements, facilitates sustainable drainage, provides natural shading, and is well adapted to summer drought and increased winter rainfall (refer to Policy EN 14: Green, Grey, and Blue Infrastructure);

2. Reduction in flood risk and provision of infrastructure to protect vulnerable communities and habitats, and minimisation of water consumption. Refer to Policies EN 24: Water Supply, Quality and Conservation, EN 25: Flood Risk, and EN 26: Sustainable Drainage;

3. Reduction in the urban heat island effect by consideration of road and building surface materials and the role of green infrastructure;

4. Support for proposals and associated infrastructure that allow for more resilient forestry and agricultural practices;

5. Buildings designed and built to avoid overheating, especially those for vulnerable users such as hospitals, schools, and elderly care homes, by following the cooling hierarchy.

The latest strategy published by the National Adaptation Programme should be referred to for advice and Dynamic Thermal Modelling should be used where applicable.

Figure 28: Proposed policy wording for the Pre-Submission Local Plan (EN 3). Part 2 of 2.

4.26 This policy is compliant with the Climate Change Act, the NPPF and the Climate Change Planning Practice Guidance. However, updates are expected to be necessary in the near future to reflect:

- Changes to Part L Building Regulations (a 2021 update is expected, with implementation in 2022 that incorporates a 31% carbon reduction, thus superseding the reduction allowed for by this policy);
- Introduction of the 'Future Homes Standard' announced by Government in the 2019 Spring Statement (expected by 2025);
- Assessment of the carbon reduction potential for the Borough by the Council's newly appointed Net Zero Task Force;
- Any other national or local policy updates.

4.27 The above items will be kept under review as the Local Plan progresses.

Appendices

Appendix 1: Data Sources

Title of Dataset	Organisation	Last Updated	Next Updated	Last year of data	Link
Regional and local authority electricity consumption statistics	BEIS	20 December 2020	December 2021	2019	https://www.gov.uk/government/collections/sub-national-electricity-consumption-data
Sub-national total final energy consumption data: Total final energy consumption at regional and local authority level	BEIS	24 September 2020	September 2021	2018	https://www.gov.uk/government/collections/total-final-energy-consumption-at-sub-national-level
Feed-in Tariffs: Solar photovoltaics deployment	BEIS	30 May 2019	End of June 2019	2019 – monthly data release	https://www.gov.uk/government/collections/feed-in-tariff-statistics
Regional Renewable Statistics	BEIS	27 September 2018	End of September 2019	2017	https://www.gov.uk/government/statistics/regional-renewable-statistics
Renewable Energy Planning Data	Department of Energy and Climate Change	16 April 2019	July 2019	2019 (quarterly upload)	https://www.gov.uk/government/collections/renewable-energy-planning-data
Renewable Heat Incentive statistics (domestic and non-domestic)		20 June 2019	July 2019	2019 (monthly release)	https://www.gov.uk/government/collections/renewable-heat-incentive-statistics
UK local authority and regional carbon dioxide emissions national statistics (industry and commercial, transport and domestic)	BEIS	25 June 2020	June 2021	2018	https://www.gov.uk/government/collections/uk-local-authority-and-regional-carbon-dioxide-emissions-national-statistics

Appendix 2: Legal Advice

IN THE MATTER OF:

THE EMERGING TUNBRIDGE WELLS BOROUGH LOCAL PLAN

ENERGY EFFICIENCY POLICIES

ADVICE

1. I am asked by Tunbridge Wells Borough Council 'the Council' to advise on a number of questions related to the legality of incorporating energy efficiency and design measures into its emerging local plan.

2. My instructions have been clearly set out in a note dated 15/1/2019 and this advice should be read in tandem with those instructions. There are 7 questions to answer which I set out below.

Brief Background
3. From the outset, it is useful to distinguish between energy efficiency policies for development and energy supply policies for development. At their broadest, energy efficiency policies are aimed at buildings avoiding wasting energy, and conserving fuel. Energy supply policies typically aim to ensure that a building is powered or heated from a renewable energy source or low carbon energy source.

4. Energy supply policies are not affected by the new system of housing standards that was introduced in 2015.

5. The legislation which enables local planning authorities 'LPAs' to have development plan policies which control energy supply for a development is section 1 of the Planning and Energy Act 2008. This section also enables a development plan policy to require achievement of an energy efficiency standard exceeding the energy requirements of building regulations. Section 1 currently states:

1(1) A local planning authority in England may in their development plan documents.. include policies imposing reasonable requirements for—
(a) a proportion of energy used in development in their area to be energy from renewable sources in the locality of the development;
(b) a proportion of energy used in development in their area to be low carbon energy from sources in the locality of the development;
(c) development in their area to comply with energy efficiency standards that exceed the energy requirements of building regulations.
(2) In subsection (1)(c)—
"energy efficiency standards" means standards for the purpose of furthering energy efficiency that are—
(a) set out or referred to in regulations made by the appropriate national authority under or by virtue of any other enactment (including an enactment passed after the day on which this Act is passed), or
(b)set out or endorsed in national policies or guidance issued by the appropriate national authority;

"energy requirements", in relation to building regulations, means requirements of building regulations in respect of energy performance or conservation of fuel and power.

6. There is an amendment pending to this section[1] which would remove the ability to impose on dwellings (through a local plan policy) an energy efficiency standard higher than building regulations. However, this is not in force yet and there is no date yet set for it to be in force.

7. With section 1 of the Planning and Energy Act in place in 2008, the coalition government then made a commitment in 2011 to deliver a 'zero carbon homes' policy by 2016.

8. In 2015 there was a Housing Standards Review and the issue of a Written Ministerial Statement 'WMS'.

9. The WMS (Planning update March 2015) contained a new approach for the setting of technical standards for new housing. It said

"The new system will comprise new additional optional Building Regulations on water and access, and a new national space standard (hereafter referred to as "the new national technical standards"). This system complements the existing set of Building Regulations, which are mandatory."

10. As a result, local planning authorities could not set any additional local technical standards or requirement relating to the construction, internal layout or performance of new dwellings. As part of this new system the Code for Sustainable Homes was withdrawn. Furthermore, the optional new national technical standards could only be required through any new Local Plan policies if they addressed a clearly evidenced need and where their impact on viability had been considered.

11. On 27 March 2015, NPPG on Housing was amended to include sections on the Optional Technical Standards (accessibility and wheelchair housing standards, water efficiency standards and internal space standards).

12. In July 2015 the Productivity Plan Fixing the Foundations: Creating a More Prosperous Nation was published. It said

"The government does not intend to proceed with the zero carbon Allowable Solutions carbon offsetting scheme, or the proposed 2016 increase in on-site energy efficiency standards, but will keep energy efficiency standards under review, recognising that existing measures to increase energy efficiency of new buildings should be allowed time to become established."
13. In view of the above background question 1 is:

The reason LPAs' powers were removed was because zero carbon homes was fast approaching and an uplift in Building Regulation requirements was planned. Without zero carbon homes or the Building Reg uplift, is the Written Ministerial Statement weakened?

14. In legal terms a Written Ministerial Statement has effect equivalent to policy in the National Planning Policy Framework. It is a statement of government policy. It falls into policy referred to in section 1(2)(b) of the Planning and Energy Act 2008. I would not describe the March 2015 WMS on the energy efficiency issue, precisely as "weakened" but because it details an interim policy

[1] (1A) Subsection (1)(c) does not apply to development in England that consists of the construction or adaptation of buildings to provide dwellings or the carrying out of any work on dwellings".

which was intended to apply for a temporary period, it is arguable that in a plan-making or decision-taking context it should be given slightly less than full weight.

Question 2
Is it still possible for LPAs to require energy performance improvements of 19% better than Building Regulations 2010 (as amended in 2013) for <u>new residential development</u> in the form of policy within the Local Plan?

15. Yes. In respect of energy efficiency standards, the WMS indicates that 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 Building Regulations until commencement of amendments to the Planning and Energy Act 2008 in the Deregulation Bill [now Act] 2015.

16. The relevant amendment is not yet in force, which in practice means that for the time being LPAs can require an energy performance standard equivalent to former Code for Sustainable Homes level 4. The current mandatory Building Regulations Part L 2013 requirement is equivalent to former Code for Sustainable Homes level 3. Level 4 represents a 19% improvement above this in terms of carbon emission reduction (figure found at paragraph 2.3.56 of the Mayor of London's Housing Supplementary Planning Guidance of March 2016).

17. So, if a policy is justified in terms of need and viability then it could be worded along these lines:

"Housing development should achieve at least a 19% improvement in energy performance over the requirements of the Building Regulations (2013)."[2]

18. The WMS applies to new homes of all types and not just new build homes or newly erected homes. It applies to conversions and change of use to residential. DCLG (as was) confirmed this to the Planning Inspectorate.

Question 3
Are there any restrictions on the ability of LPAs to require energy performance improvements of 19% better than Buildings Regs 2010 (as amended in 2013) for new non-residential development in the form of policy within the Local Plan (where viable)?

19. No. The LPA can rely on section 1(1)(c) of the Planning and Energy Act 2008 for new non-residential development: LPAs may in their development plan documents include policies imposing reasonable requirements for development in their area to comply with energy efficient standards that exceed the energy requirements of building regulations.

20. BREEAM sets sustainability standards for non-domestic buildings which are not affected by the WMS.

Question 4:
Are there any restrictions on the ability of LPAs to require energy performance improvements of more than 19% better than Building Regs 2010 (as amended in 2013) for new residential development in the form of policy within the Local Plan (if viable)? For example, could a LPA require that new residential development meet an energy

[2] Or could be expressed as 19% carbon reduction improvement against Part L 2013. See the Brighton & Hove City Plan and the adopted Ipswich Borough Local Plan as referenced in my instructions.

performance improvement of 25% better than Building Regs 2010 (as amended in 2013)?

21. It is not possible for an LPA to require energy performance improvements of more than 19% better than building regulations on new residential dwellings. The WMS prevents this. The cap is 19% or no more than the equivalent of the former Code for Sustainable Homes level 4.

21. Subsection (5) of section 1 of the Planning & Energy Act 2008 states that policies included in development plans by virtue of subsection (1) must not be inconsistent with relevant national polices for England. The WMS is a relevant national policy for England. This is more stringent than the obligation on local planning authorities merely to "have regard" to national policies and advice in respect of local development documents generally pursuant to section 19 (2)(a) of the Planning and Compulsory Purchase Act 2004.

Merton Rule Question 5: The Planning and Energy Act 2008 grants powers to LPAs to require a proportion of energy to come from low and zero carbon energy. This power was unaffected by all of the above proposals. Are there any restrictions on the ability of LPAs to require that a proportion of energy used in a development be energy from renewable or low carbon energy sources? 7

22. The proportion to come from those sources must be reasonable. The policy should not make development unviable. There is no prescribed cap on the percentage of energy to come from those sustainable sources.

Question 6:
Following all the above proposals, are there any restrictions on the ability of LPAs to require that residential development meet design standards (such as BREEAM, Home Mark Quality, CEEQUAL, Building for Life) in the form of policy within the Local Plan (if viable)?

23. The intention of the WMS is to stop local authorities from setting additional technical standards on new homes, other than the technical standards set out in the WMS on water efficiency, access and space. As BREEAM is a technical standard, it should not be applied to housing. Policies that refer to it in relation to domestic conversions are not consistent with national policy.

24. It is a matter of looking in detail at what the particular design standard requires and ensuring that the policy would not be imposing standards relating to the construction or internal layout or performance of a new dwelling. For example, Building for Life assessment does not appear to impose standards relating to the construction or internal layout or performance of a new dwelling.

Question 7:
Following all the above proposals, are there any restrictions on the ability of LPAs to require that non-residential development meet design standards (see list above) in the form of policy within the Local Plan (if viable)?

25. Non-domestic buildings are not affected by the WMS and so BREEAM, for example, could be made via a policy to be a standard which should be met.

Headline Points

26. The key points emerging for plan-making from the WMS, PPG and Productivity Plan are that references to Code for Sustainable Homes, Lifetime Homes Standards and achieving zero

carbon should not be included in any new policies. Furthermore, there is an overriding requirement for policies that expect the higher optional requirements for energy, water or accessibility or for the nationally described space standard to be met to show a clearly evidenced need and to have considered viability.

27. Please contact me if I can help further.

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January 31, 2019 9

IN THE MATTER OF:
THE EMERGING TUNBRIDGE WELLS
BOROUGH LOCAL PLAN:
ENERGY EFFICIENCY POLICIES
****

A D V I C E
****

Tunbridge Wells Borough Council
Ref: Jo Smith, Mid Kent Legal Services

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