

Things that Local Authorities can do under 'Business as Usual' to achieve Net Zero

Wed 7th December 2022



Agenda

- Introduction
- Outline of Paper
- Legal and Contractual Issues
- Green Construction
- Q&A
- Conclusion



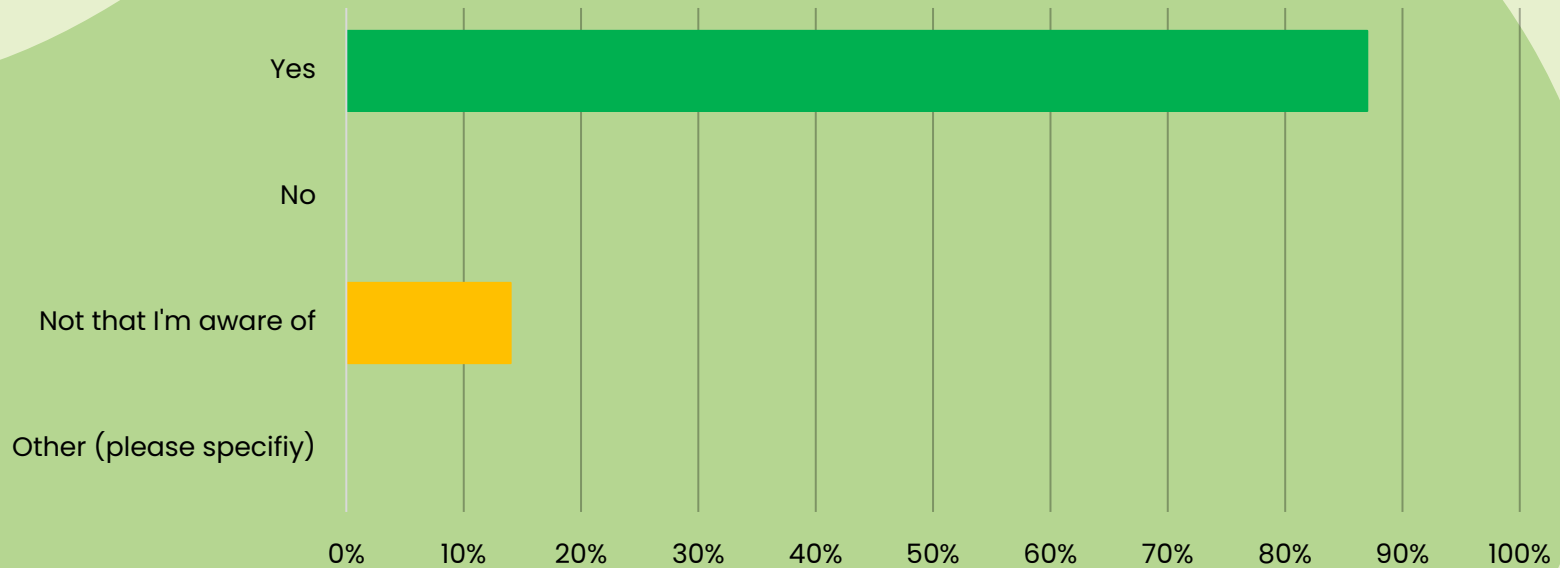


Introduction

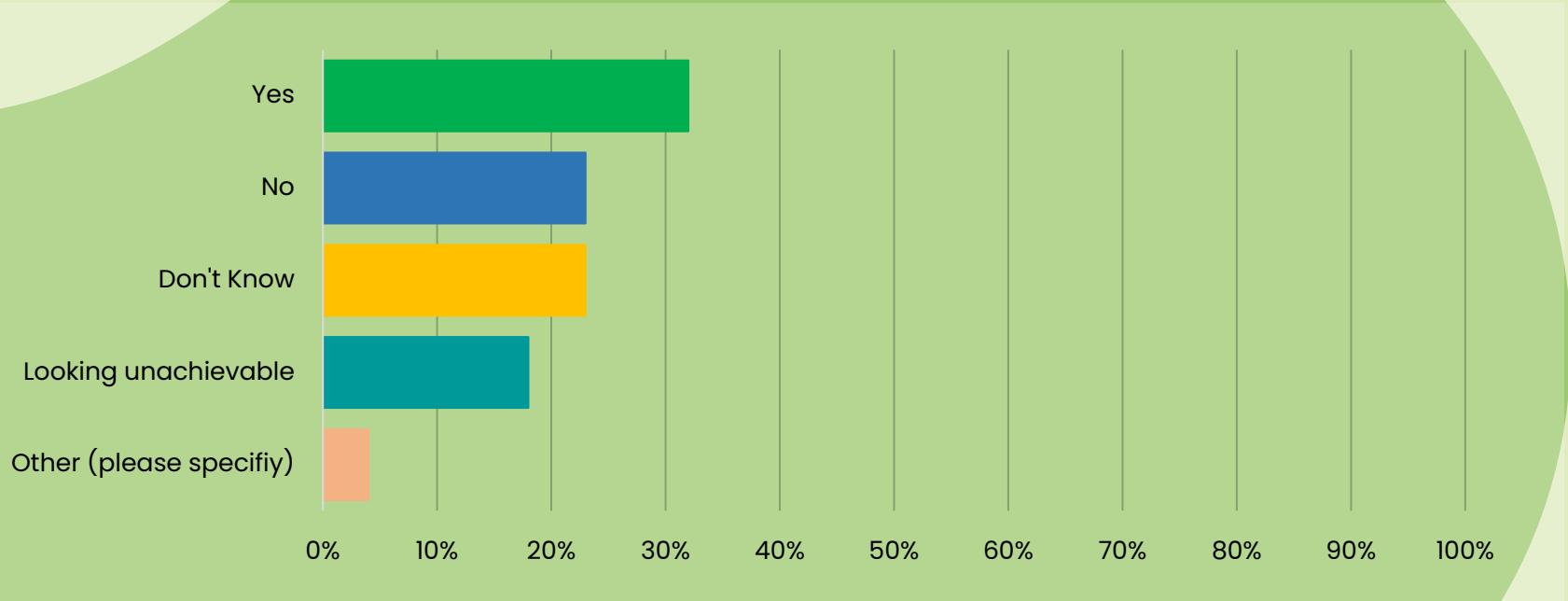
Steve Gummer

Lead Partner on Climate Change and
Energy for Sharpe Pritchard LLP

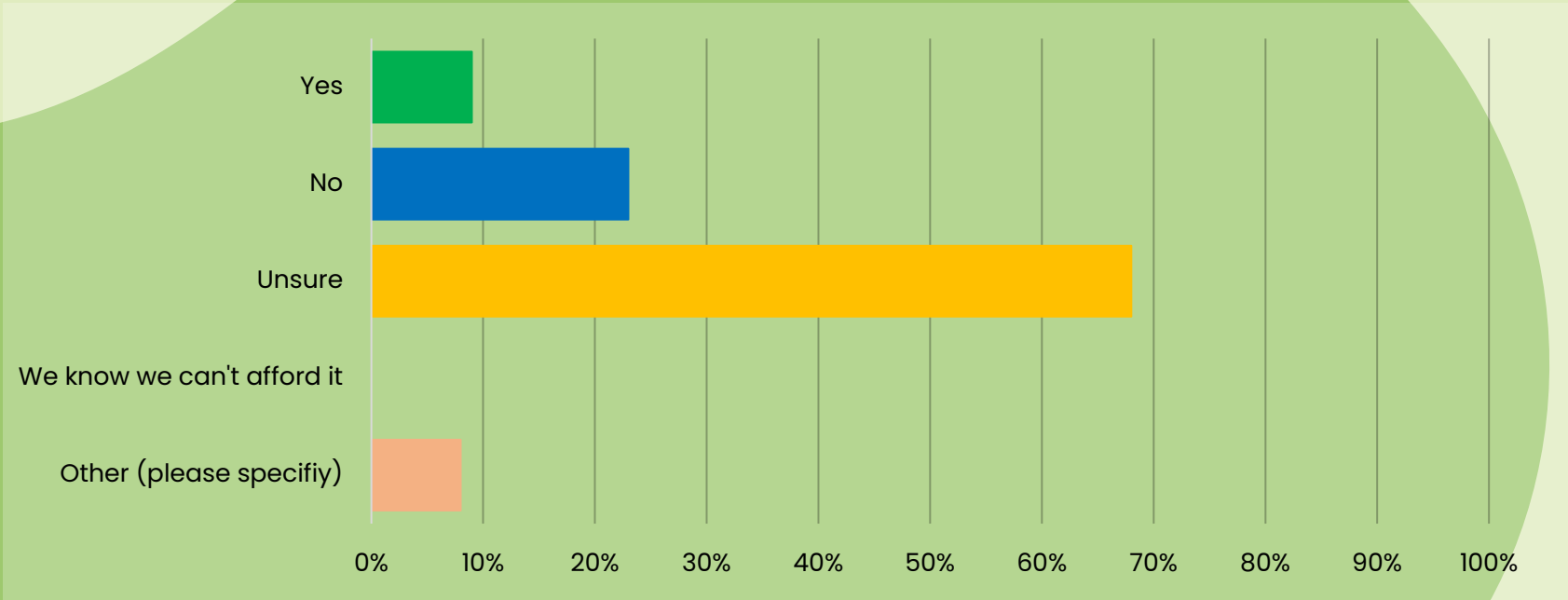
Do you have clear, agreed environmental objectives?



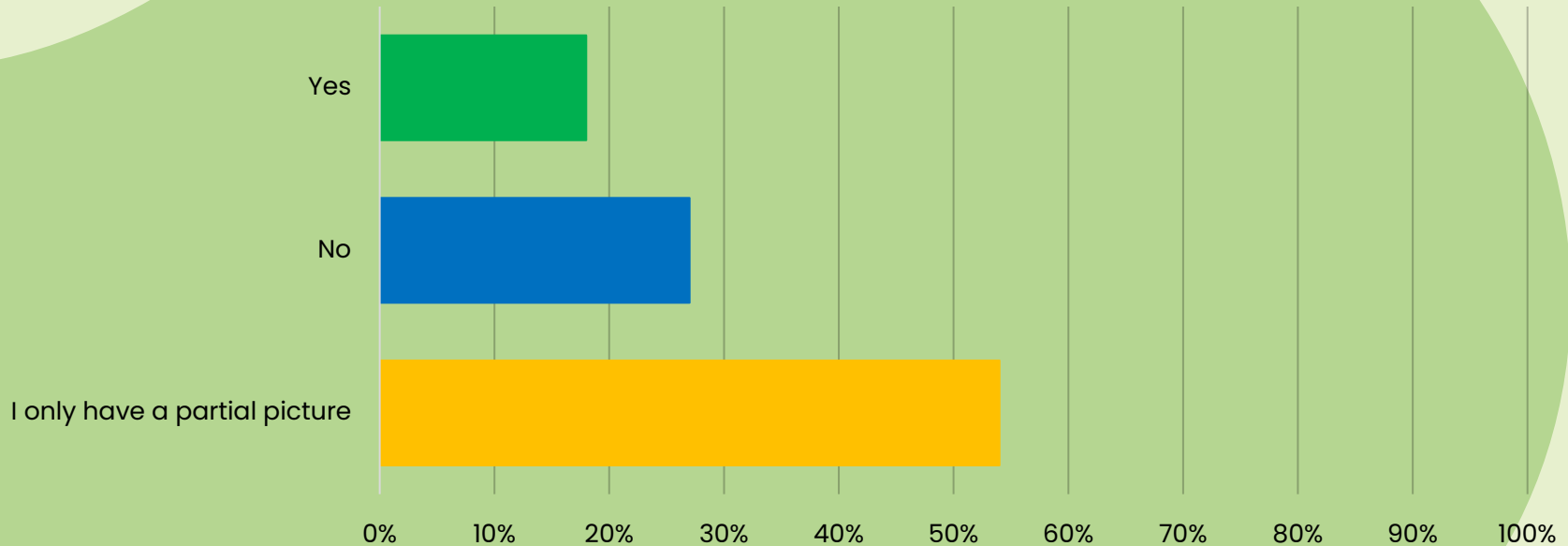
Do you have a clear plan of how you are going to get there and a timetable?



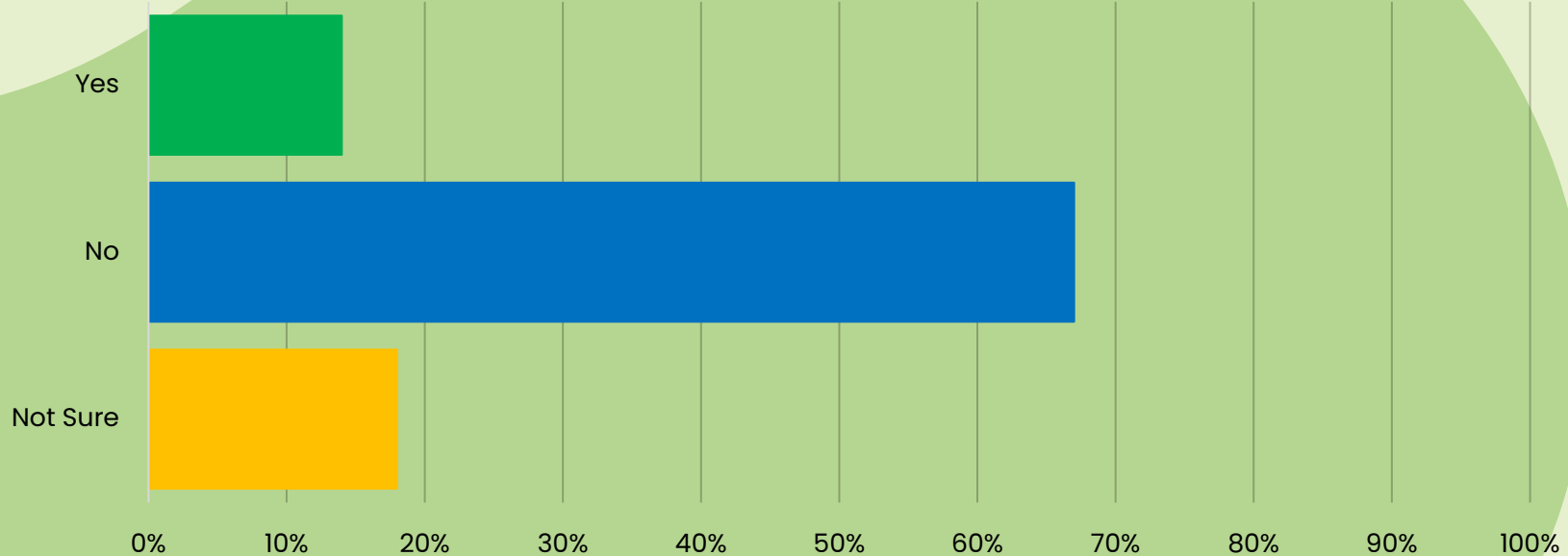
Is there a budget agreed?



Do you understand what the governments expectations for local authorities are with respect to their green aims?



Are you aware of any sharing of best practice between local authorities?



‘Business As Usual’ to achieve net zero

Steve Cirell

Independent Consultant specialising in local
authority renewable energy projects



Introduction & Background

- Welcome to the last webinar of 2022 from the Green Steves
- Lots of focus on large infrastructure projects eg solar farms, battery storage or EV charging points
- But what can be done under business as usual to achieve the same goal?



Strategy

- Local authorities are good at strategy
- But everyone needs to be clear on the corporate priorities
- Do you know what your climate emergency declaration says and the targets?
- Low cost to improve this



Carbon Footprints

- Calculate, publicise, set targets for reduction
- What is included in the carbon footprint?
- Corporate decisions first
- Then changing practices



Wider Area Plans

- A wider pledge on action
- Influence instead of control
- A different leader as a different skill set required
- Analyse your relationships



Reviewing Services

- Review each functional area
- Consider how systems might be changed
- Home working, less travel, rationalization
- Some resources are required for this



Action Plans

- Action plans and strategies
- Awareness of the action plan contents
- Organising work to harmonise
- Climate change, air quality and biodiversity together



Energy Use

- The simplest area of all
- The hierarchy of energy
- All the emphasis on renewable energy
- Biggest bang for your buck here



Offsetting

- More focus now, lots of criticism
- The basic principle
- Nature based solutions as an example
- Areas where action costs nothing



Conclusions

- Sometimes the focus is on large infrastructure projects
- But this is not the only answer
- Do what you can
- Are you doing enough?



Legal and Contractual Issues

Radhika Devesher

Senior Associate Sharpe Pritchard LLP



Is there a legal obligation to achieve Net Zero on LAs?

The Climate Change Act 2008 (CCA)

- Secretary of State has a legal duty to ensure that the UK meets their target of reducing the net UK carbon account by 100% by 2050 compared to 1990 levels
- Applies to the UK as a whole (some sections are specific to England and Wales, Scotland or Northern Ireland)

The Paris Agreement

- Legally binding in so far as signatory countries are required to set a nationally determined contribution (i.e. targets) and re-evaluate this NDC every 5 years. (NDC itself is not legally binding)

What are the sanctions for non-compliance?

- No mechanism in the CCA with which to enforce compliance by public bodies and organisations
- The Paris Agreement does not contain any specific compliance methods
- Primary sanction for any non-compliance would be judicial review

Therefore, no direct legal duty on Local Authorities, however arguable that they play a crucial role.

Compliance with Internal Governance

- Has your Local Authority included a Net Zero Policy?
- If there is no specific Net Zero Policy, is there a Social Value policy which mandates, encourages consideration of aspects including Environmental impact?
- If no, consider taking the initial steps to produce such policy, what will it involve?
- If yes, how does it impact decision-making in your team / department?
 - Must ensure compliance or will be risking challenges to such decisions being made.

Procurement

- **National Procurement Policy Statement (NPPS)**
- **Selection Stage**
 - Central Government mandated under PPN 06/21 to include selection criteria:
 - provide Carbon Reduction Plans which meet certain required standards;
 - confirm their commitment to achieving Net Zero by 2050 for UK operations; and
 - set out the environmental management measures that they have in place during the performance of the contract
 - Local Authorities are not obliged to comply with PPN 06/21, however is nothing stopping them from adopting
- **Award Stage**
 - PPN 06/20 sets out how to take account of social value in the award of central government contracts by using the Social Value Model– encourages taking into account activities that:
 - deliver additional environmental benefits in the performance of the contract including working towards net zero greenhouse gas emissions; and
 - influence staff, suppliers, customers and communities through the delivery of the contract to support environmental protection and improvement
 - Mandated for Central Government, however also provides a useful model for Local Authorities
 - The Social Value Portal's National TOMs Framework Social Value Tool is also a useful model to consider

Specifications

- Has your Local Authority adopted a Net Zero policy which should be considered when drafting specifications?
- Is there a Social Value Policy which includes environmental considerations to be included in Specification when procuring goods / works or services?
- Examples include:
 - Using environmentally friendly techniques and supplies in delivering the contract e.g.:
 - what types of materials must be used;
 - how services must be delivered.
 - Efficient use of equipment and resources, e.g.:
 - travel could be limited and if based on rounds, is the route efficient?
 - Can the number of deliveries be reduced if supplying a number of contract products / services at the same time?
 - Is there a requirement to reduce carbon footprint and record such reduction?
 - Is there a requirement to process and monitor energy and water usage?
 - Is the Contractor required to promote sustainable practices in the community?

Contracts

- **“Contractualise” any green promises made within tenders**
- **Use of contractual measures will help to ensure that the contractor delivers on its promises**
 - Key Performance Indicators
 - Performance targets
 - Performance deductions?
- **Environmental KPIs**
 - Monitor the performance of contractors in delivering on tendered commitments
 - Contractor would incur KPI points for failing to meet a target
 - For each of the indicators, a level of performance is defined, representing the minimum level of service to be provided
- **Remedies for Breach of commitment**
 - Remedies should be the last course of action:
 - *Hold discussions*
 - *Agree revised timescales*
 - *Vary the commitment*
 - Contractual Remedies
 - *Link delivery to Key Performance Indicator*
 - *Liquidated damages?*
 - *Termination?*



Green Construction

Rachel Murray-Smith

Partner for Sharpe Pritchard LLP

Background

What is Green Construction?

- Environmentally friendly, carbon neutral and sustainable practices within the construction industry and the built environment.
- Climate Change Act 2008
 - Reduce by 68% by 2030
 - Reduce by 78% by 2035
 - Net Zero by 2050
- Around 40% of UK carbon emissions are linked to the built environment.
- Around 60% of waste produced in the UK comes from the construction sector.

Construction Playbook

- Updated September 2022.
- Highlights the importance of the construction industry in the UK economy and subsequent importance in achieving green goals.
- Contracting Authorities should set out plans for achieving net zero GHG emissions by or ahead of 2050 for their infrastructure portfolio as part of a Strategic Asset Management Plan.
- Strategic thinking and delivery of projects:
- Refurbishment vs new build
- MMC

The Chancery Lane Project

- Brings together legal professionals to draft clauses and legal resources that can be used in the fight against climate change.
- Each clause drafted can be found on the Project website.
- Recommended as a resource for Contracting Authorities to procure sustainable construction projects in Construction Playbook.
- Net Zero Toolkit

Key Standard Forms

NEC

- Published on 26th July 2022.
- Can be incorporated into main contract and sub-contract forms.
- X29 secondary Option aims to combat 'greenwashing'.
- Key elements
 - Climate Change Requirements
 - Climate Change Plan
 - Non-Mandatory Performance Table
 - Contractor's Proposals

JCT – 2011 published form – key performance indicators

Net Zero Standard

- UK Net Zero Buildings Standard project was launched in May 2022.
- A collaboration of leading industry organisations such as BBP, BRE, the Carbon Trust and more.
- Will set out metrics to evaluate net zero carbon performance against as well as targets and limits.
- Designed for those want to fund and procure a Net Zero Carbon Building or those wanting to show that their building is 'Net Zero'-aligned with an industry-agreed Standard.
- Initially, focus will be on the most common building typologies eg offices, hotels etc.

Any Questions?



Conclusion



Rachel Murray-Smith

Partner
Sharpe Pritchard LLP
rmurray-smith@sharpepritchard.co.uk



Radhika Devesher

Senior Associate,
Sharpe Pritchard LLP
rdevesher@sharpepritchard.co.uk



Stephen Cirell

Independent Consultant
stephencirell@me.com



Steve Gummer

Partner
Sharpe Pritchard LLP
sgummer@sharpepritchard.co.uk

Leading public law solicitors working in partnership with clients across the UK



Commercial



Real Estate,
Planning and
Regeneration



State Aid and
Competition



Data, Privacy and
Information Law



Local
Government



Construction



Corporate Law



Litigation



Employment



Procurement



Infrastructure



Public Law