

# murdering the merton rule?

Proposals to either repeal or drastically amend the Planning and Energy Act and its 'Merton Rule' provisions are short-sighted and irresponsible, says **Adrian Hewitt**



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Companies – and individuals – have invested in renewable technologies, 'believing that the cross-party political commitment provided a sustainable framework for their investment'

In November 2011 CIBSE (the Chartered Institution of Building Services Engineers) held an entertaining debate that posed the question 'Death to the Merton Rule – should we kill or encourage it?'. I was asked to speak for the defence, and in my summing up I advised against shooting the Merton Rule<sup>1</sup> horse before there was complete confidence that the frisky young Code for Sustainable Homes colt was able to pull the renewables wagon. Well, now it seems that the current Housing Standards Review aims to repeal (or significantly mangle) both the Planning and Energy Act 2008 (which enables local planning authorities in England and Wales to adopt policies like the Merton Rule, requiring the use of renewable energy in new developments beyond the requirements of the Building Regulations) and the Code for Sustainable Homes.

The main argument against the provisions of the Planning and Energy Act is that such policies confuse the housebuilders, and that if they are to successfully deliver new homes it would be better to have a 'level playing field' of Building Regulations. However, this 'level playing field' will destroy any landscape of innovation, which would be vulnerable to persistent lobbying from the housebuilding and

property sectors. With respect to sustainability and renewable energy, a 'level playing field' would become a featureless expanse, disengaged from local communities and emasculating their democratically elected local representatives.

In developing the Merton Rule in 2003 we used the power of planning precisely because the Building Regulations were failing to keep up with the collective ambition to address climate change. Planning became part of the topography of the emerging sustainability agenda, and reducing these ambitions to a single bottom-line mechanism is a retrograde step that reverts to a less enlightened mind-set.

Anyway, the definition of 'level playing field' has to be questioned when geographical and socio-economic factors are considered: what can be built depends on *where* it's going to be built. In short, the financial bottom line for building in Guildford is very different from that in parts of Liverpool. However, planning has the flexibility to respond to these differing circumstances – whereas the Building Regulations are indiscriminate. Furthermore, development appraisals are carried out at the planning stage and not at construction when the Building Regulations are addressed, so any financial implications of renewable

energy or other carbon dioxide emission reduction measures must be decided on at the planning phase.

It is true that for Merton Rule supporters there is the uncomfortable truth that the spirit of the Rule was at times hijacked by those wanting to drive carbon dioxide reduction targets too hard (or at least in too complex a way), and there are legitimate arguments for revising the Code for Sustainable Homes. But there is no evidence that the Merton Rule ever retarded home-building; and from day one it was always subject to extensive scrutiny.

Every adopting local planning authority had to examine the viability of both the policy and its practical implementation. Because of this, the Rule was robust, and over the years proved to be an effective and adaptable way of delivering renewable/low-carbon infrastructure. In fact, it's the only secure way of doing so at the moment. It looked for a while as if the Feed-In Tariff (FiT) and the Renewable Heat Incentive (RHI) might drive the renewables industry, but after the drastic cuts in the FiT and endless delays in the RHI, this clearly isn't the case – and the threat to the Code for Sustainable Homes means that local planning authorities won't get their renewable generation that way either.

### Investment and political trust

Before the Merton Rule was introduced there wasn't much more than a renewable energy cottage industry, employing only a handful of people. But after 2003 a lively economy developed across a range of sectors. The Rule was enthusiastically adopted by local planning authorities across the UK, with no party political association attached. Early adopters included Conservative Bromley, Lib Dem North Devon, and Labour Oldham. In 2006 the new Conservative administration in Merton clearly understood the rationale behind the Rule and fully supported its continued implementation. And despite some inevitable politicking, this cross-party consensus was reinforced by the fact that the Planning and Energy Act was introduced by the influential Conservative MP Michael Fallon in 2008.

The core rationale behind the Merton Rule was that it was a stimulus for architects and engineers to get their heads around designing and building more energy-efficient buildings – because doing so was the way to keep down the capital cost of renewables. A CIBSE conference in 2006 called 'Getting to 10%' was followed up by an event in 2008 entitled 'Going beyond 10%' – this was just one of the many examples of the collective commitment to break out into the new territory.

The renewables industry demonstrated great enterprise and commitment in embracing renewables. Heating and electrical contractors expanded, creating

jobs and growth. Local authority and private consultancy planners were trained in how to formulate and assess energy strategies. Universities amended their curricula accordingly, and institutes and organisations such as the Royal Institute of British Architects, CIBSE, the TCPA, and the Royal Town Planning Institute responded to emerging professional development needs.

Thousands of companies and individuals have invested in this new landscape, believing that the cross-party political commitment for it – underpinned by the Planning and Energy Act – provided a sustainable framework for their investment. But now all that investment may be for nothing. Shooting the Merton Rule horse and burying with it ten years of knowledge, skill and investment would be unforgivably short-sighted and irresponsible.

Sacrificing this example of the power of planning on the altar of deregulation sets an unsettling precedent – and it also raises some awkward political questions:

- A key rationale of the Planning and Energy Act was to provide a mechanism for local councils to progress renewable energy until such time that an alternative mechanism was securely in place, i.e. the Code for Sustainable Homes. But if the Act and the Code are both scrapped (or seriously amended), then were the objectives of the Act flawed in the first place – and with hindsight was its introduction a mistake?
- Councillors of all parties adopted the Merton Rule precisely because it enabled them to achieve their ambitions through local democracy. So does repealing the Act emasculate their position as local councillors and call their judgement into question?
- If you are a motivated resident or community group, planning is an essential tool for getting things done at a local level. So isn't repealing the Act at odds with the localism agenda?

We made the case for the Merton Rule over several years, and it is wearying to find myself fighting the same battles with the same arguments and logic a decade later. If the Government goes ahead and pulls the trigger, it will feel like an insult to the planning profession – and that cannot be a good thing!

- **Adrian Hewitt**, formerly responsible for implementing the Merton Rule at the London Borough of Merton, is Director of Emergence Ltd. The views expressed are personal.

### Note

- 1 The Merton Rule, as developed and adopted by the London Borough of Merton, requires new commercial buildings of over 1,000 square metres in area to generate at least 10% of their energy needs from on-site renewable energy generation.