



Could the Latest High Court Ruling on Air Quality Restrict Planning Approval for New Developments?

A recent High Court ruling against Defra's plan to improve nitrogen dioxide (NO₂) concentrations in the UK means greater risk of planning refusal for new developments which increase NO₂ concentrations in the air. This could be through changes in existing transport flows or emissions from heating plant which may diminish local authorities' ability to meet the EU Directive Limit Value for NO₂.

On 21st February 2018, ClientEarth won its 3rd legal challenge against Defra over the UK's plan to improve NO₂ concentrations in the UK. The judgement ruled that Defra's July 2017 plan did not contain sufficient measures to ensure substantive compliance with statutory NO₂ Limit Values in the shortest possible time. The UK Government must now produce a supplementary plan which sets requirements for feasibility studies in 33 Local Authority Areas which do not meet NO₂ Limit Values. Greater London is considered separately and does not form part of Defra's 2017 plan.

The identified 33 Local Authorities

- *Ashfield District Council*
- *City of Bradford Metropolitan District Council*
- *Dudley Metropolitan Borough Council*
- *Oldham Council*
- *Portsmouth City Council*
- *South Gloucestershire Council*
- *Wakefield Metropolitan Borough Council*
- *Basingstoke and Deane Borough Council*
- *Broxbourne Borough Council*
- *Kirklees Council*
- *Oxford City Council*
- *Reading Borough Council*
- *South Tyneside Council*
- *Walsall Council*
- *Blaby District Council*
- *Burnley Borough Council*
- *Leicester City Council*
- *Peterborough City Council*
- *Sandwell Metropolitan Borough Council*
- *Southend-on-Sea Borough Council*
- *City of Wolverhampton Council*
- *Bolsover District Council*
- *Calderdale Metropolitan Borough Council*
- *Liverpool City Council*
- *Plymouth City Council*
- *Sefton Metropolitan Borough Council*
- *Stoke-on-Trent City Council*
- *Bournemouth Borough Council*
- *Cheltenham Borough Council*
- *Newcastle-under-Lyme Borough Council*
- *Poole Borough Council*
- *Solihull Metropolitan Borough Council*
- *Sunderland City Council*

The Local Authorities have until 31st July 2018 to set out their recommended measure(s) in compliance with the relevant statutory NO₂ Limits.

Vehicle emissions (particularly emissions from older diesel vehicles) are the main contributor to NO₂ emissions so the studies will likely aim to: discourage vehicles with poor emissions; promote sustainable transport (such as electric vehicles); encourage alternative transport (such as providing cycle lanes) and improve poor performing road layouts without deteriorating air quality conditions.

How does this relate to planning applications for new developments?

In November 2017, Gladman Developments Limited lost an appeal at the High Court against the refusal of a 330-residential unit development in Kent. This was based on the adverse effect the development would have on the Local Authority's ability to improve air quality conditions in a nearby Air Quality Management Area¹.

There is now the potential that air quality could be a sole reason for planning refusal if a new development increases NO₂ air pollution, delays compliance against the NO₂ Limit Values, and does not consider or promote the measures set out in the forthcoming studies. This includes other relevant guidance to improve local air quality.

It is critical that air quality mitigation is considered at the earliest opportunity in the design of a new development, including how a new development will be operated. Consideration should be given to local plans, to ensure that a new development complies with local guidance.

Waterman's Air Quality Team

Our team of specialist air quality consultants are members of the Institute of Air Quality Management and are part of the All Party Parliamentary Group on Air Pollution. We are involved in supporting and contributing to emerging changes in Central Government Air Quality Legislation. Keeping up to date with the latest technical assessment guidance and mitigation measures in the air quality field is imperative, and our key objective is to continually advance both individual and collective knowledge.

Our air quality team works closely with clients, planners, architects, transport consultants, landscape designers and building services engineers to provide a comprehensive approach to projects. We specialise in assisting developers to obtain consent for a variety of development types and our technical strength allows us to provide effective solutions to planning problems, whilst safeguarding the interests of our clients.

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¹ An Air Quality Management Area (AQMA) is designated where there is public exposure (e.g. residential properties) in areas exceeding the Air Quality Strategy (AQS) Objectives.