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Friends of the Earth England Wales and Northern Ireland comments on WRs and responses to ExA's first written questions regarding the Application by Highways England M4 Junctions 3 to 12 Smart Motorway

Comments on Highways England WRs

Friends of the Earth comments on section 4 (Environment) of Highways England's Written Representations are as follows:

1. Highways England argues in section 4.6 of its Written Reps that the scheme complies with the EU Air Quality Directive on the basis that it will not delay compliance as there are other areas in the Zone, which have higher concentrations¹. But this misunderstands the law as set out in the recent opinion of Robert MacCracken QC². Air quality limits apply throughout a Zone and an area must not be made even less compliant wherever it is already in breach³.
2. This is not an academic point because Highways England acknowledges that a PCM on the A4 in Greater London is in exceedance of air quality limits⁴ and that the development will make the position worse⁵.
3. In addition, the applicant's written representations do not take account of other instances where it seems levels will be worsened by the development in areas which are already in exceedance – namely Junctions 11 – 10 and Junctions 3 -1⁶. Such an outcome would give rise to further breaches.
4. Highways England refers to the DEFRA consultation on new Air Quality plans but seems to overlook the fact that the baseline compliance dates have changed for the Greater London Urban Area Zone and the South East Zone⁷.
5. We dispute Highways England's claim that the draft DEFRA air quality plan complies with the Supreme Court's judgment in the ClientEarth case⁸. We do not consider that this claim bears scrutiny.

¹ See paragraphs 4.2 and 5.3 of the Written Reps.

² <http://cleanair.london/legal/clean-air-in-london-obtains-qc-opinion-on-air-quality-law-including-at-heathrow/>

³ See paragraph 59 of the Opinion.

⁴ See para 4.2 of its Written Representations

⁵ See para 6.15.5 of the Environmental Statement

⁶ See further para 4.6.1.5 and 4.6.1.6 of Friends of the Earth's Written Representations of 12 October.

⁷ See para 4.6.1.7 of FoE's written reps.

⁸ R (on the application of ClientEarth) v Secretary of State for the Environment, Food and Rural Affairs [2015] UKSC 28

6. Since Friends of the Earth submitted its last written representations, it has become clear that the VW/Auto scandal is deeper than previously thought. There are also serious concerns about the Euro6 real world testing regime and the higher levels of pollution which could be allowed in the future, including beyond 2021, which are relevant for this scheme 9. Friends of the Earth echoes the submissions of Campaign for Better Transport on this issue.
7. In light of the above and given recent policy announcements made by government (see the reversal of exemptions from vehicle excise duty for low carbon vehicles 10), Friends of the Earth calls into question the extent to which the ExA may credibly rely on assumptions set out in the NN NPS concerning expected carbon emissions from the road building programme 11.

- Ends -

9 <http://www.transportenvironment.org/press/governments-double-and-delay-air-pollution-limits-diesel-cars>

10 <http://www.ft.com/cms/s/0/82e7bb26-256b-11e5-9c4e-a775d2b173ca.html#axzz3qeBN7l4K>

11 National Networks NPS – para 5.18.