

# A30 Chiverton to Carland Cross Environmental Statement

**Volume 6 Document Ref 6.4 ES Appendix 5.1  
Air quality- legislation, policy and guidance**

**HA551502-ARP-EAQ-SW-RP-LE-000002**

**C01 | A3**

**22/08/18**

Planning Act 2008  
Infrastructure Planning (Applications: Prescribed Forms and Procedure)  
Regulations 2009 (as amended)  
APFP Regulation 5(2)(a)



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## 5 Appendix 5.1

### 5.1 Legislation, Policy and Guidance

#### European legislation

- 5.1.1 The EU Directive on ambient air quality (2008/50/EC) sets out a range of mandatory Limit Values (LV) for different pollutants including nitrogen dioxide (NO<sub>2</sub>) and particulate matter less than 10 microns (PM<sub>10</sub>) in diameter, the key traffic related pollutants. The Directive consolidated previous air quality directives (apart from the Fourth Daughter Directive), setting Limit Values or Target Values for the concentrations of specific air pollutants and providing a new regulatory framework for particulate matter less than 2.5µm in diameter (PM<sub>2.5</sub>). It also allows Member States to apply to postpone attainment deadlines.
- 5.1.2 Defra assesses and reports annually on compliance with the Limit Values (Table 5-1) to the European Commission. For the purposes of their assessment and reporting, the UK is divided into 43 zones. The status of each zone in relation to a Limit Value is determined in the compliance assessment by the maximum measured or maximum modelled concentrations in the zone. The main pollutants of concern with respect to compliance are NO<sub>2</sub> and PM<sub>10</sub>. The Air Quality (Standards) Regulations 2010 transpose into English law the requirements of Directives 2008/50/EC on ambient air quality.
- 5.1.3 EU Limit Values apply throughout the zones and agglomerations, the zone/agglomerations achieve compliance when everywhere within the zone/agglomeration is below the EU Limit Value. The exceptions to where the EU Limit Values apply are given in Annex III of the Air Quality Directive, they are, locations that members of the public cannot access or where there is no fixed habitation, for instance, industrial premises etc.).

#### National legislation

- 5.1.4 Part IV of the Environment Act (1995) requires the UK Government to produce a National Air Quality Strategy (AQS) which contains standards, objectives and measures for improving ambient air quality. The AQS sets out objectives that are maximum ambient concentrations that are not to be exceeded either without exception or with a permitted number of exceedances over a specified timescale.
- 5.1.5 The ambient air quality standards and objectives are given statutory backing in England through the Air Quality (England) Regulations 2010. The AQS objectives for the protection of human health and applicable to this assessment are presented in Table 5-1.

**Table 5-1 Air Quality Objectives and EU limit values for NO<sub>2</sub> and PM<sub>10</sub>**

<b>Air Quality Objectives and European Directives for the protection of human health</b>					
<b>Air Quality Objectives</b>				<b>EU Limit Values</b>	
<b>Pollutant</b>	<b>Concentration</b>	<b>Averaging period</b>	<b>Compliance date</b>	<b>Concentration</b>	<b>Compliance date</b>
NO <sub>2</sub>	200 µg.m <sup>-3</sup>	1-hour mean (not to be exceeded more than 18 times per year)	31 December 2005	200 µg.m <sup>-3</sup> (18 exceedances)	1 January 2010
	40 µg.m <sup>-3</sup>	annual mean	31 December 2005	40 µg.m <sup>-3</sup>	1 January 2010
PM <sub>10</sub>	50 µg.m <sup>-3</sup>	24-hour mean (not to be exceeded more than 35 times per year)	31 December 2010	50 µg.m <sup>-3</sup> (35 exceedances)	1 January 2005
	40 µg.m <sup>-3</sup>	annual mean	31 December 2004	40 µg.m <sup>-3</sup>	1 January 2005

5.1.6 The Air Quality Objectives only apply where members of the public are likely to be regularly present for the averaging time of the objective (i.e. where people will be exposed to pollutants). The annual mean objectives apply to all locations where members of the public might be regularly exposed; these include building façades of residential properties, schools, hospitals, care homes, etc. The 24-hour mean objective applies to all locations where the annual mean objective would apply, and at hotels and gardens of residential properties. The 1-hour mean objective also applies at these locations and at any outdoor location where a member of the public might reasonably be expected to stay for 1-hour or more, such as shopping streets, parks and sports grounds, as well as bus stations and railway stations that are not fully enclosed.

5.1.7 The AQS objectives and EU Limit Values for the protection of vegetation and ecosystems applicable to this assessment are presented in Table 5-2.

**Table 5-2 Air Quality Objectives and EU Limit Values for the protection of vegetation**

<b>Air Quality Objectives and European Directives for the protection of vegetation and ecosystems</b>					
<b>Air Quality Objectives</b>				<b>EU Limit Values</b>	
<b>Pollutant</b>	<b>Concentration</b>	<b>Averaging period</b>	<b>Compliance date</b>	<b>Concentration</b>	<b>Compliance date</b>
NO <sub>x</sub>	30 µg.m <sup>-3</sup>	Annual mean	31 December 2000	30 µg.m <sup>-3</sup>	19 July 2001

- 5.1.8 Local authorities have no legal requirement to comply with AQS objectives. They are however required to demonstrate best efforts to work towards achieving AQS objectives.
- 5.1.9 Under the Local Air Quality Management (LAQM) regime local authorities have a duty to make periodic reviews of local air quality against the AQS objectives. Where a local authority's review and assessment of local air quality indicates that AQS objectives are not expected to be achieved, local authorities are required to designate an Air Quality Management Area (AQMA). An Air Quality Action Plan (AQAP) must then be formulated, outlining a plan of action to meet AQS objectives in the AQMA.

### **AQs objectives/ EU Limit Values**

- 5.1.10 Whilst the AQS Objectives and EU Limit Values are identical in terms of concentrations that are applied, they are different and it is important to understand how they are interpreted and therefore assessed. Local authorities are required to demonstrate best efforts to achieve the AQS Objectives whereas the UK Government has a mandatory requirement to achieve EU Limit Values.
- 5.1.11 Reporting against compliance with EU Limit Values is undertaken by Defra and reported at a zonal/agglomeration level. Zones/agglomerations only comply when everywhere in the zone is below the EU Limit Value and this is the basis of Defra's reporting, which is designed to determine what the maximum concentration is within the zone and hence determine the date by which the zone will comply with the Limit Value. AQS Objectives are assessed at a much more local level where an AQMA can be designated as a result of exceedance at individual properties.
- 5.1.12 The air quality assessment considers the impacts on both AQS Objectives (does the scheme lead to a significant impact on air quality at individual properties) and EU Limit Values (will the scheme impact Defra's plans to achieve compliance with the Limit Values).

### **Environmental Protection Act 1990**

- 5.1.13 Generally, dust is only a cause of annoyance but when at sufficient scale and frequency it may become a statutory nuisance. The relevant legislation dealing with statutory nuisance is given in Part III of the Environmental Protection Act 1990 (EPA 1990). A statutory nuisance in relation to dust and deposits is defined under Section 79 of the act as follows:
- “(d) Any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance.*
- (e) any accumulation or deposit which is prejudicial to health or a nuisance.”*
- 5.1.14 Under the provisions of the Act, when a local authority is satisfied that a Statutory Nuisance exists, it is under a mandatory duty to serve an Abatement Notice requiring abatement or cessation of one or more activities deemed to be causing the nuisance. In the absence of any kind of standard, identification of a nuisance is dependent on the professional judgment of the local authority as to whether Best Practical Means (BPM) are being employed to control emissions. If BPM is evident or can be clearly demonstrated then a particular activity cannot be deemed to be causing a Statutory Nuisance.

## National Planning Policy Framework

- 5.1.15 The National Planning Policy Framework (NPPF) published in 2018 sets out the Government's planning policies for England and how these are expected to be applied. The NPPF revokes forty four planning documents including: Planning Policy Statement 23: Planning and Pollution Control.
- 5.1.16 Paragraph 181 considers impacts of development on air quality: 'Planning policies and decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and Clean Air Zones, and the cumulative impacts from individual sites in local areas. Opportunities to improve air quality or mitigate impacts should be identified, such as through traffic and travel management, and green infrastructure provision and enhancement. So far as possible these opportunities should be considered at the plan-making stage, to ensure a strategic approach and limit the need for issues to be reconsidered when determining individual applications. Planning decisions should ensure that any new development in Air Quality Management Areas and Clean Air Zones is consistent with the local air quality action plan. '
- 5.1.17 The NPPF therefore requires:
- Consideration of the scheme air quality impacts should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and Clean Air Zones; and
  - Consideration of opportunities to improve air quality or mitigate impacts, such as through traffic and travel management, and green infrastructure provision and enhancement.

## National Planning Practice Guidance

- 5.1.18 Figure 5-1 presents the National Planning Practice Guidance NPPG flowchart which provides guidance on the process for reviewing planning applications.



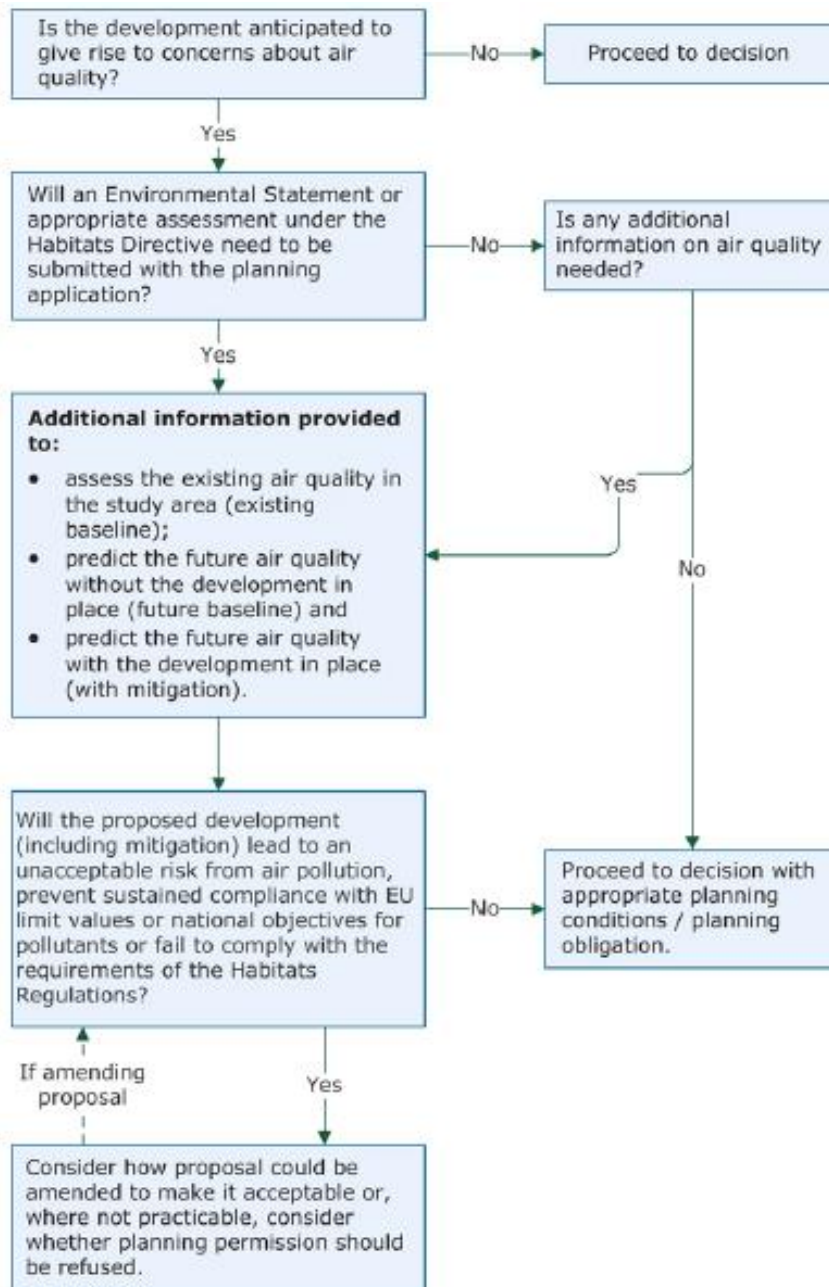


Figure 5-1 National Planning Practice Guidance (NPPG) flowchart

### National Networks National Policy Statement

- 5.1.19 The National Networks National Policy Statement<sup>1</sup> (NN NPS) sets out the Government's policies to deliver the development of Nationally Significant Infrastructure Projects (NSIPs) on the national road and rail networks in England. The Secretary of State (SoS) uses the NN NPS as the primary basis for making decisions on development consent applications for national networks NSIPs in England.
- 5.1.20 Sections 5.1.22-5.1.25 below provide the context for when the decision maker should give substantive consideration to air quality impacts; whether they should recommend refusal is also detailed below.

<sup>1</sup> Available at: <https://www.gov.uk/government/publications/national-policy-statement-for-national-networks>

- 5.1.21 Air quality considerations are likely to be particularly relevant where schemes are proposed:
- Within or adjacent to Air Quality Management Areas (AQMA); and
  - Where changes are sufficient to bring about the need for a new AQMA or change the size of an existing AQMA; or bring about changes to exceedances of the Limit Values, or where they may have the potential to impact on nature conservation sites.
- 5.1.22 Further information on areas exceeding UK AQS objective or EU limit value thresholds is available from Defra's PCM model. This model provides predicted annual mean NO<sub>2</sub> concentrations. The SoS must give air quality considerations substantial weight where, after taking into account mitigation, a project would lead to a significant air quality impact in relation to EIA and / or where they lead to a deterioration in air quality in a zone/agglomeration.
- 5.1.23 The Secretary of State (SoS) should refuse consent where, after taking into account mitigation, the air quality impacts of the scheme will:
- result in a zone/agglomeration which is currently reported as being compliant with the Air Quality Directive becoming non-compliant; or
  - affect the ability of a non-compliant area to achieve compliance within the most recent timescales reported to the European Commission at the time of the decision.

### Dust

- 5.1.24 Dust is the generic term used in *British Standard BS 6069 Characterization of air quality, Glossary (Part Two)* [1] to describe particulate matter in the size range 1–75µm in diameter. Under provisions in the *Environmental Protection Act 1990* dust nuisance is defined as a statutory nuisance.
- 5.1.25 There are currently no formal standards or guidelines for dust nuisance in the UK. In addition, formal dust deposition standards are not specified. This reflects the uncertainties in dust monitoring technology and the highly subjective relationship between deposition events, surface soiling and the perception of such events as a nuisance. Complaints about excessive dust deposition would have to be investigated by the local authority and any complaint upheld for a statutory nuisance to occur. However, dust deposition is generally managed by suitable on-site practices and mitigation rather than by the determination of statutory nuisance and/or prosecution or enforcement notice(s).

### Local Planning Policy

- 5.1.26 The study area of the air quality assessment, as discussed in the air quality chapter, is located in the area of Cornwall Council (CC). Planning Policy relating to air quality developed by CC is outlined below.

### Cornwall Local Plan 2010-2030

- 5.1.27 The Cornwall Local Plan<sup>2</sup> was adopted in 2016 and sets out local planning policy for the area. Relevant policies include:

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<sup>2</sup> Available at: <https://www.cornwall.gov.uk/localplancornwall>

- Objective 8 – *“Promote development that contributes to a healthy and safe population by providing for opportunities for walking and cycling and ensuring the appropriate levels of open space and the protection and improvement of air quality.”*
- Policy 16 Health and Wellbeing – *“Development should:*
  - *1. Protect, and alleviate risk to, people and the environment from unsafe, unhealthy and polluted environments by avoiding or mitigating against harmful impacts and health risks such as air and noise pollution and water and land contamination and potential hazards afforded from future climate change impacts; and*
  - *2. Where it affects Air Quality Management Areas, demonstrate that singularly or cumulatively, it will not cause increased risk to human health from air pollution or exceeding EU standards. Measures proposed to mitigate this should reflect Cornwall’s Air Quality Action Plan and Local Transport Plan and aimed at achieving reduction in pollutant emission and public exposure.”*

5.1.28 It also recognises the risks that air quality poses to human health and morbidity rates. Local planning policy also notes that the main cause of poor air quality is vehicle emissions.

### **Clean Air for Cornwall Strategy**

- 5.1.29 Cornwall Council adopted the Clean Air for Cornwall Strategy<sup>3</sup> in March 2017, which aims to raise awareness air quality problems in Cornwall and provide an integrated approach to improving air quality. The strategy also provides policy, guidance and a framework for development and impact mitigation for those wishing to develop in Cornwall.
- 5.1.30 The strategy explains how CC is working with Highways England to deliver highway improvements in the county and this scheme is listed with other schemes on the existing A30 corridor. The scheme aims to increase capacity and reduce congestion, therefore impacting air quality near the A30 as well as in the wider area by discouraging traffic from passing through urban areas.

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<sup>3</sup> Available at <https://www.cornwall.gov.uk/media/25838697/clean-air-for-cornwall-strategy-2017.pdf>

If you need help accessing this or any other Highways England information, please call **0300 123 5000** and we will help you.

