

A417 Missing Link
TR010056

6.4 Environmental Statement
Appendix 5.1 Air Quality Legislation
Policy and Guidance

Planning Act 2008

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

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Infrastructure Planning

Planning Act 2008

**The Infrastructure Planning
(Applications: Prescribed Forms
and Procedure) Regulations 2009**

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Development Consent Order 202[x]

**6.4 Environmental Statement
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Table of Contents

	Pages
1 Legislation policy and guidance	i
1.1 Legislation	i
1.2 Policy	iii
End notes and References	ix

Table of Tables

Table 1-1	Air quality objectives and Limit Values for NO ₂ and PM ₁₀	i
Table 1-2	Air quality objectives and Limit Values for the protection of vegetation and ecosystems	ii

1 Legislation policy and guidance

1.1 Legislation

Environment Act 1995

- 1.1.1 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.

Air Quality Standard Regulations 2010

- 1.1.2 The ambient air quality standards and objectives are given statutory backing in England through the Air Quality Standard Regulations 2010, amended in 2016. The AQS objectives and Limit Values (LVs) for the protection of human health and applicable to this assessment are presented in Table 1-1.

Table 1-1 Air quality objectives and Limit Values for NO₂ and PM₁₀

Air quality objectives and Limit values for the protection of human health			
Air quality objectives			Limit Values
Pollutant	Concentration	Averaging period	Concentration
NO ₂	200 µg/m ³	1-hour mean (not to be exceeded more than 18 times per year)	200 µg/m ³ (18 exceedances)
	40 µg/m ³	annual mean	40 µg/m ³
PM ₁₀	50 µg/m ³	24-hour mean (not to be exceeded more than 35 times per year)	50 µg/m ³ (35 exceedances)
	40 µg/m ³	annual mean	40 µg/m ³

- 1.1.3 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 such as building façades of residential properties, schools, hospitals and care homes. The 24-hour mean objective applies to all locations where the annual mean objective would apply, together with 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 one hour or more, such as shopping streets, parks and sports grounds, as well as bus stations and railway stations that are not fully enclosed.
- 1.1.4 LVs apply throughout the UK. The UK will achieve compliance when every site is below the LV. The exceptions to where the LVs apply are, locations that members of the public cannot access or where there is no fixed habitation, for instance, industrial premises.
- 1.1.5 The AQS objectives and LVs for the protection of vegetation and ecosystems applicable to this assessment are presented in Table 1-2.

Table 1-2 Air quality objectives and Limit Values for the protection of vegetation and ecosystems

Air quality objectives and limit value for the protection of vegetation and ecosystems			
Air quality objectives			Limit values
Pollutant	Concentration	Averaging period	Concentration
NO _x	30 µg.m ⁻³	Annual mean	30 µg.m ⁻³

1.1.6 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.

1.1.7 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/ limit values

1.1.8 Whilst AQS objectives and LVs 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 LVs.

1.1.9 Reporting against compliance with LVs is undertaken by Defra and reported at a zone/agglomeration level. Zones/agglomerations are only compliant when everywhere in the zone is below the LV and this is the basis of Defra's reporting, which is designed to determine what the maximum concentration is in the zone and hence determine the date by which the zone will comply with the LV. AQS objectives are assessed at a much more local level where an AQMA can be designated as a result of exceedance at individual properties.

1.1.10 The air quality assessment considers the impacts on both AQS objectives (would the scheme lead to a significant impact on air quality at individual properties) and LVs (would the scheme impact Defra's plans to achieve compliance with the LVs).

Environmental Protection Act 1990

1.1.11 Generally, dust is only a cause of annoyance but when of 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 EPA 1990 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.

1.1.12 Under the provisions of the EPA 1990, where 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 judgement 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.

1.2 Policy

National Planning Policy Framework (NPPF)

1.2.1 The NPPF, published in 2012 and revised in February 2019, sets out the Government's planning policies for England and how these are expected to be applied. The NPPF revokes 44 planning documents including: Planning Policy Statement 23: Planning and Pollution Control.

1.2.2 Paragraph 181 considers impacts of developments 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.'

1.2.3 The NPPF therefore requires:

- that 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 AQMAs 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 on air quality

1.2.4 The Planning Policy Guidance (PPG) section on Air Quality¹, which was revised in 2019, provides a summary of the air quality issues set out in the NPPF. The assessment includes analysis of the following, in accordance with the PPG:

- The existing air quality in the study area (existing baseline);
- The future air quality without the development in place (future baseline); and
- The future air quality with the development in place (with mitigation).

National Policy Statement for National Networks (NPSNN)

1.2.5 The NPSNN 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 NPSNN as the primary basis for making decisions on development consent applications for national network NSIPs in England.

- 1.2.6 Sections 1.2.7 to 1.2.9 provide the context of when the decision maker should give substantive consideration to air quality impacts and whether they should recommend refusal.
- 1.2.7 Air quality considerations are likely to be particularly relevant where schemes are proposed:
- Within or adjacent to AQMAs; 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.
- 1.2.8 Further information on areas exceeding UK AQS objective or LV thresholds is available from Defra's Pollution Climate Mapping (PCM) model. This model provides predicted annual mean NO₂ 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 Environmental Impact Assessment (EIA) and/or where they lead to a deterioration in air quality in a zone/agglomeration.
- 1.2.9 The SoS should refuse consent where, after taking into account mitigation, the air quality impacts of the proposed scheme will:
- result in a zone/agglomeration which is currently reported as being compliant becoming non-compliant; or
 - affect the ability of a non-compliant area to achieve compliance within the most recent timescales reported at the time of the decision.

Dust

- 1.2.10 Dust is the generic term used in *British Standard BS 6069 Characterization of air quality, Glossary (Part Two)*² to describe particulate matter in the size range 1–75µm in diameter. Under provisions in the EPA 1990 dust nuisance is defined as a statutory nuisance.
- 1.2.11 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).

Regional management and planning policy

Cotswolds AONB Management Plan 2018-2023

- 1.2.12 The management plan acknowledges that air quality may be improved through major development. Policy CE11: Major Development states:

'Any upgrade of the Air Balloon junction should also help to deliver the objectives of the Air Quality Action Plan for this Air Quality Management Area, by reducing nitrogen dioxide levels at the junction.'

Gloucestershire's Local Transport Plan 2015-2031

1.2.13 Gloucestershire County Council (GCC) is responsible for the maintenance and development of the highway network for a number of district councils within the Gloucestershire area.

1.2.14 Policy LTP PD 4.9 Environment of the Local Transport Plan states:

'GCC will work with District Councils to improve air quality, levels of noise pollution and biodiversity loss resulting from traffic on the highway network.'

Joint Core Strategy for Gloucester, Cheltenham and Tewkesbury (JCS) 2011-2031 (December 2017)

1.2.15 The Joint Core Strategy (JCS) is a coordinated development strategy between Tewkesbury Borough Council, Gloucester City Council and Cheltenham Borough Council.

1.2.16 Policy SD3: Sustainable Design and Construction, states:

'Development proposals will demonstrate how they contribute to the aims of sustainability by increasing energy efficiency, minimising waste and avoiding the unnecessary pollution of air, harm to the water environment, and contamination of land or interference in other natural systems.'

Local planning policy

1.2.17 The study area for the air quality assessment covers a number of local authority areas. The scheme is located within the administrative areas of Cotswold District Council and Tewkesbury Borough Council. However, changes in traffic across the network as a result of the scheme are predicted in adjacent planning authorities. Planning policy relating to air quality for each of the local planning authorities within the study area are outlined below. These local policies have been taken into account in the air quality assessment for the project.

Cheltenham Local Plan 2011-2031

1.2.18 The new Cheltenham Plan was adopted in July 2020. It acknowledges that transport choice can have an impact on emissions of pollutants.

1.2.19 Policy BG2 Cotswold Beechwoods Special Area of Conservation Air Quality states:

"Development which is likely to generate additional road traffic emissions to air which are capable of affecting the Cotswold Beechwoods SAC will be screened against the Habitats Regulations Assessment Framework in line with 'Natural England's guidance 'Natural England's approach to advising competent authorities on the assessment of road traffic emissions under the Habitats Regulations (NEA001)'."

Cotswold District Council Local Plan 2011-2031

1.2.20 The Local Plan recognises that air quality is a problem in certain parts of the local authority area and that particular caution will be applied in or close to designated AQMAs.

1.2.21 Policy EN15 Pollution and Contaminated Land, states:

'Development will be permitted that will not result in unacceptable risk to public health or safety, the natural environment or the amenity of existing land uses through:'

a. Pollution of the air, land, surface water, or ground water sources'

Gloucester City Council Draft Local Plan 2016-2031

- 1.2.22 The pre-submission draft Local Plan for 2016-2031 was submitted to the planning inspectorate in November 2020. The draft contains reference to Policy C5: Air quality which specifies that developments must demonstrate compliance with limit values and achieving national objectives for air pollutants.

South Gloucestershire Council Local Plan (Core Strategy) 2006 – 2027

- 1.2.23 The core strategy was adopted in December 2013. Policy CS9 – Managing the Environment and Heritage, focuses on protection and management of the environment. The policy states:

'New development will be expected to: protect land, air and aqueous environments, buildings and people from pollution.'

- 1.2.24 At the time of writing, a new Local Plan is being developed for South Gloucestershire, with phase 1 consultation being undertaken from 27 November 2020 to 1 March 2021. The updated South Gloucestershire Local Plan 2020 will cover the period 2018-2036 and is due to be adopted at the end of 2023.

Stroud District Council Local Plan 2015-2031

- 1.2.25 The Local Plan, adopted in 2015, contains one policy that addresses air quality.

- 1.2.26 ES5 Air quality, states:

'Development proposals which by virtue of their scale, nature or location are likely to exacerbate existing areas of poor air quality, will need to demonstrate that measures can be taken to effectively mitigate emission levels in order to protect public health and wellbeing, environmental quality and amenity. Mitigation measures should demonstrate how they will make a positive contribution to the aims of any Air Quality Strategy for Stroud District.'

Swindon Borough Local Plan 2026

- 1.2.27 The Local Plan was adopted in March 2015 and contains a number of objectives to address issues of pollution and congestion in Swindon.

- 1.2.28 Policy TR1: Sustainable Transport Networks, states:

'The Council will use its planning and transport powers to help reduce the need to travel, and support and encourage the sustainable, safe and efficient movement of people and good within and through the Borough. This will be achieved by:

- *Minimising emissions from transport by:*
 - *Reducing the need to travel*
 - *Promoting sustainable travel choices*
 - *Personal workplace and school travel planning*
 - *Designing the built environment to encourage healthy lifestyles and travel choices.'*

- 1.2.29 Policy EN7: Pollution, focuses on development that leads to emissions of pollutants. The policy states:

'Development that is likely to lead to emissions of pollutants such as noise, light, vibration, smell, fumes, smoke, soot, ash, dust, grit or toxic substances that may adversely affect existing development and vulnerable wildlife habitats, shall only

be permitted where such emissions are controlled to a point where there is no significant loss of amenity for existing land use or habitats.'

Tewkesbury Borough Council Draft Local Plan 2011-2031

- 1.2.30 The draft Local Plan for 2011-2031 was submitted to the Secretary of State in May 2020. The draft contains reference to policies in the Local Transport Plan which are aimed at reducing air pollution and carrying out air quality assessments when it is considered that air quality may be impacted by development. The draft also defers to the Joint Core Strategy for additional air quality related development policy. This is discussed in sections 1.2.15 and 1.2.16.

West Berkshire Core Strategy (2006 – 2026)

- 1.2.31 The Core Strategy forms part of the West Berkshire Local Plan as a development plan document (DPD). Although air quality is not explicitly mentioned in a policy, policies such as Transport (CS 13) mention that 'Development that generates a transport impact will be required to:

...'Minimise the impact of all forms of travel on the environmental and help tackle climate change'

...'Reduce the need to travel'.

West Oxfordshire Local Plan 2031

- 1.2.32 The Local Plan was adopted in September 2018 and provides a framework for planning between 2011 and 2031. Air quality is mentioned as part of Policy OS3: Prudent use of natural resources:

'All development proposals (including new buildings, conversions and the refurbishment of existing building stock) will be required to show consideration of the efficient and prudent use and management of natural resources, including:

... minimising waste and making adequate provision for the re-use and recycling of waste; and causing no deterioration and, where possible, achieving improvements in water or air quality.'

- 1.2.33 One of the transport related objectives (CO16) ensures the District will '*Enable improvement in water and air quality*'.
- 1.2.34 Policy EH8: Environmental protection states '*Where appropriate, development will need to be supported by an air quality assessment*'.

Wiltshire Council Local Plan (Core Strategy) 2026

- 1.2.35 The Core Strategy was adopted in January 2015. Core Policy 55: Air quality, recognises that a key contributor to air quality issues is emissions from transport. It states that:

'Development proposals, which by virtue of their scale, nature or location are likely to exacerbate existing areas of poor air quality, will need to demonstrate that measures can be taken to effectively mitigate emission levels in order to protect public health, environmental quality and amenity. Mitigation measures should demonstrate how they will make a positive contribution to the aims of the Air Quality Strategy for Wiltshire and where relevant, the Wiltshire Air Quality Action Plan.'

- 1.2.36 At the time of writing, the Wiltshire Local Plan is under review, with the draft plan due to be completed towards the end of 2021. The Local Plan review will set out a vision for the future of Wiltshire for the period to 2036.

Cotswold District Council Air Quality Action Plan 2011

- 1.2.37 The most recent Air Quality Action Plan (AQAP) was produced in 2011 to address NO₂ concentrations exceeding the NO₂ annual mean objective at the Air Balloon roundabout/Birdlip AQMA. The AQAP notes that the exceedances occur primarily due to emissions from high levels of heavy goods vehicles (HGVs) using the A417 and the congestion caused at the roundabout.
- 1.2.38 Cotswold District Council has no control over the A417 strategic road therefore the council can only reduce concentrations through working with strategic partners such as Highways England and Gloucestershire Highways Authority and user emissions reduction initiatives. However, as noted in Policy CE11 the improvements at the Air Balloon junction would be supported in the AQAP.

Cheltenham Borough Council Air Quality Action Plan 2014

- 1.2.39 The most recent AQAP for Cheltenham was produced in 2014 to address NO₂ concentrations exceeding the NO₂ annual mean objective in the Cheltenham AQMA.
- 1.2.40 Measures proposed to address the exceedances include improving traffic flows within Cheltenham, travel planning, HGV and large goods vehicle (LGV) restrictions, school and business travel grants to encourage people to use alternative modes of transport during peak hour traffic and other sustainable travel initiatives.

End notes and References

¹ Department for Communities and Local Government (2014). Planning Practices Guidance (PPG), Available at <https://www.gov.uk/guidance/air-quality--3>

² British Standard BS 6069 Characterization of air quality, Glossary (Part two)