

Extracts from Air Quality Bulletin November 2013
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PLANNING CHALLENGE

Air knocks back housing

Air quality has featured in a High Court appeal lost by developers against the Government and a district council. The decision to refuse on air quality grounds was 'unimpeachable' said the judge.

Developers William Davis Ltd and Jelson Ltd wanted to build a housing estate but were refused permission by North West Leicestershire District Council on grounds that included air quality.

Policy 36 of the local plan set regional priorities for air quality: "Local development frameworks etc. should contribute to reducing air pollution in the region, and consider the potential effects of new developments and

increased traffic levels on air quality." The proposed site was judged to adversely affect the adjacent Coalville Air Quality Management Area and thus was not sustainable development. Air quality became one ground of the latest appeal by the developer in the High Court against both the planning authority and the Secretary of State.

Arguments included that the Secretary of State:

- Wrongly interpreted the policies in National Planning Policy Framework (NPPF) as requiring him to treat any exceedance in NO₂ levels as a reason for refusal of planning permission;
- Failed to take into account

the mitigation measures offered by the claimants or explain why the condition offered would not secure conformity with approach set out in paragraph 24 of the NPPF;

- Failed to have regard to a material consideration, namely that the planning authority had decided to allocate another nearby site when it was clear that this development would also create an exceedance in NO₂ levels within the AQMA;
- Alternatively, failed to provide any or any adequate reasons as to why exceedance in NO₂ levels was something that counted against the proposal when to his knowledge

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IN BRIEF

LAQM timetable slips

The overwhelmingly large response to Defra's review of the Local Air Quality Management regime has pushed the timetable off course, Parliament has been told.

Defra received over 300 detailed responses and thousands of electronic responses to its plans to dismantle the LAQM regime (AQB September p1) – it had expected about 30. Defra had planned to review the responses and publish its early conclusions this month (November) however this is now expected in the New Year.

The timetable slip was revealed in a Parliamentary

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Decision 'unimpeachable' from p1

alternative development designed to meet the five-year housing land supply shortage had been sanctioned by the council despite the fact that it would lead to such exceedance.

The judgement notes: "The NPPF lists minimising pollution in its core principles of sustainable development. Paragraph 124 states: "Planning policies should sustain compliance with and contribute towards EU limit values or national objectives for pollutants, taking into account the presence of air quality management areas and the cumulative impacts on air quality from individual sites in local areas. Planning decisions should ensure that any new development in AQMAs is

consistent with the local air quality action plan.

"In the light of the EU and domestic law obligations, and the NPPF guidance, the Secretary of State and the Inspector were entitled, and indeed obliged, to consider the impact of the proposed scheme on emission levels and on the adjacent AQMA. There is no foundation for the developers' allegation that they wrongly interpreted the NPPF as requiring them to rule out this scheme because of the exceedance in NO₂ levels, without any consideration of other factors, or that they approached their task so narrowly."

The Secretary of State found that the appeal scheme "would

probably, though not certainly, cause a worsening of air quality in the Coalville air quality management area" and that this "counts against the proposal in the overall planning balance". He confirmed a "precautionary approach" to the issue of air quality.

The appeal judge concluded: "I accept that the issue of air quality was quintessentially an exercise of planning judgment and the conclusions of the Inspector and Secretary of State in this regard are unimpeachable."

The appeal was dismissed.

- William Davis etc v N W Leics etc [2013] EWHC 3058 (Admin) can be viewed on www.bailii.org/ew/cases/EWHC/admin/2013/3058.html

IN BRIEF

Permit freeze

Permit fees for smaller local authority-regulated industrial processes will be frozen again, a consultation proposes.

The paper notes that while wages and local authority costs have risen by 1.53%, the 7.5% year-on-year cuts in local authority funding must have led to efficiency savings by way of reduced overheads.

The consultation relates to the LAPPC and LA-IPPC fees and charges in England and covers 19,000 or so businesses with LAPPC and LA-IPPC permits, such as chipboard and glass manufacture, foundries, and animal renderers, to crematoria, paint manufacture, larger furniture