

Policy Briefing: Why planners need to know about air quality policy

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With air pollution receiving greater attention, planners need to give increasing consideration to the issue, says Justine Thornton QC.



Q. Why has air pollution been in the news recently?

A. This may be partly due to national newspaper campaigns, high-profile court cases and the proposal for a third runway at Heathrow. Ultimately, public attention is probably driven by the recent emergence of a general consensus on the science, namely that air pollution is a serious threat to public health, especially to children and the elderly.

On government figures, 23,500 people will die an early death in the UK every year as a result of exposure to nitrogen dioxide.

Q. Why is the issue of air pollution important for planners?

A. Local authority planners have a pivotal role in helping improve air quality. Guidance from the Department for Environment, Food and Rural Affairs states that local authorities' planning and air quality functions "should be carried out in close cooperation". The National Planning Policy Framework requires local authorities to take account of air pollution in local plans and when determining planning applications.

The Planning Practice Guidance (PPG) gives planners determining applications discretion to examine air quality impacts if a proposed development is likely to detrimentally impact on existing air quality strategies or breach EU legislation. This could capture development that adds to the cumulative effect on local air quality or a single development with a significant impact. According to the PPG, planners should do an initial assessment of the scheme's impact on local air quality, considering, for example, whether it will create traffic or whether new homes will expose more people to existing poor air quality. If air quality concerns arise, developers may be required to prepare mitigation measures, which could involve amending design, layout and transport proposals. If the air quality impacts are still unacceptable following mitigation, permission should be refused.

Q. Are there any changes to air quality policy that will affect local authority planners?

A. A developing aspect of local authority controls are "clean air zones". As part of its national air quality plan to reduce illegal air pollution, the government had proposed the creation of such zones in five cities by 2020, where authorities would have new powers to charge polluting vehicles to enter. Following last autumn's High Court victory by environmental activists ClientEarth, the government has to draw up an even tougher plan by July 2017. It has yet to set out more detail on the new plan and it remains to be seen whether clean air zones will be extended across the UK. The government has made it clear that the presence of such a zone will be a relevant consideration in planning decisions. Developments in or near the zones could therefore be required to meet heightened air quality standards. Local authorities should keep an eye out for the draft plan in April.

Q. What implications could efforts to improve air quality have on major infrastructure projects?

A. It is likely to mean that major infrastructure projects will face greater scrutiny of air quality impacts and the potential for legal challenge. This is already proving to be the case for Heathrow's proposed third runway. Heathrow is a major hotspot for exceedances of nitrogen dioxide and air pollution is looming large in objections to the scheme. Part of the challenge to the decision to include a proposal for a third Heathrow runway in the draft airports National Policy Statement focused on air pollution. The High Court struck out the challenge on technical grounds in January. However, it seems unlikely that this is the end of the litigation road for Heathrow.

Q. Could Brexit have any impact on UK policy around air quality?

A. Brexit looks likely to have an impact. While the government has indicated it will entrench current EU law into UK law, this will not necessarily cover any future ratcheting up of standards by the EU. I am not convinced the UK courts would have been as tough

on the government in the Clientearth case had it not been for the EU. Without the EU, political interests or competing pressures, such as from car manufacturers, may water down tough air quality measures. However, ClientEarth is pushing for a new act of Parliament to plug gaps left by Brexit.

Justine Thornton QC is a barrister at 39 Essex Street

Key points

- Local authorities have a central role in improving air quality, with the NPPF requiring them to consider air pollution in plan-making and decision-making.
- A recent High Court judgement requires the government to draw up a tougher air quality plan by July 2017, which could oblige developers and authorities to meet higher air quality standards.
- Major infrastructure projects could now face greater scrutiny of air quality impacts and potential for legal challenge.