

Kirklees Local Plan Examination

Stage 3 – Policy hearings

MATTERS, ISSUES AND QUESTIONS (MIQs)

Council Response

Matter 23 - Environmental protection policies

- 1.1 This statement sets out the council's responses in relation to the Inspector's matters and issues Matter 23 – Environmental protection policies. All of the documents referred to in this statement are referenced within the statement.
- 1.2 The modifications proposed in this document have been provided to assist with the discussions at the hearings for this matter and have not been subject to sustainability appraisal testing or public consultation. Should it be necessary to make any of the modifications these will be added to the full schedule of modifications to the Local Plan which will be made available for comment and subject to sustainability appraisal at a later stage of the Examination in Public, subject to the delegated powers agreed by the council's Cabinet.

Issue - Does the Plan set out positively prepared policies for environmental protection, which are justified, effective and consistent with national policy?

[Policies PLP 51 – 53]

- a) **Do sections 1 and 2 in Policy PLP 51 provide a clear and effective framework for addressing air quality issues arising from new development schemes? How will 'unacceptable effects' and 'nuisance' be measured? When and from what types of scheme will air quality assessments be sought?**
- 1.3 The Council considers that sections 1 and 2 in Policy PLP 51 provide a clear and effective framework for addressing air quality issues arising from new development schemes. These sections of the policy have been stress tested by a number of scenarios to ascertain their effectiveness in achieving their objective of protecting health. The policy provides a framework which is compliant with the National Planning Policy Framework (NPPF) (NE1) and is future proof in the event of a significant change to national policy, as current policy wording is not used.
- 1.4 Policy PLP 51 allows for the assessment of development proposals, for their impact on local air quality. Where that impact is assessed to be negative, policy allows for the identification of sustainable mitigation measures to offset the negative impact to a neutral or positive one. If no sustainable mitigation measures can be identified or implemented then the development should not be permitted.
- 1.5 'Unacceptable effects (or impact)' and 'unsafe levels' would be measured against criteria set out in planning guidance documents in accordance with our Air Quality Action Plan. Currently that planning guidance is the West Yorkshire Low Emission Strategy 2016 to 2021 (WYLES) (CR26), which forms part of the Local Air Quality Management (LAQM) framework.
- 1.6 The WYLES (CR26) and its Technical Planning Guidance (CR22), was formally adopted by Kirklees Council in December 2016. The WYLES (CR26) and its guidance,

provides for a comprehensive method of classifying development sizes and types, assessing the impact and stipulating the type and scope of the technical assessments and mitigation measure proposals which would be required.

- 1.7 The WYLES (CR26) uses an approach where developments are classified due to their anticipated impact on local air quality and classified into minor, medium and major developments; which will determine what reports and mitigation will be required. It moves away from an approach where developments are assessed on their predicted effect on Air Quality Management Areas (AQMAs) and is a positive and proactive approach taking all developments which have the potential to impact on air quality not just the ones in urban areas where the air quality is already poor.
- 1.8 Impact will be classified based on the size of the development, where the development size is minor then minor mitigation will be required without the technical assessment of actual emission or effect on local air quality. For major developments the increase will be measured by a technical assessment of the likely impact on air quality and will be determined by modelling performed by a competent person using accepted current guidance. The technical assessment will be undertaken at the instruction and expense of the developer.
- 1.9 Competence will be assessed by the Local Planning Authority, on a case by case basis, and will be based on compliance of the report with national guidance produced by the Department for the Environment, Food and Rural Affairs (DEFRA) for technical reports and the qualifications and experience of the author.
- 1.10 The LAQM framework is the collection of legislation (primary and secondary), National Policy and Guidance which governs and guides local authorities in their actions with regard to air quality. The LAQM is the UK Government's response to complying with part of the EU Directives on Air Quality. They currently consist of:
 - The Environment Act 1995, Part IV (NE29);
 - Air Quality (England) Regulations 2000 (as amended);
 - LAQM Policy Guidance for England (PG16), DEFRA 2016;
 - LAQM Technical Guidance (TG16), DEFRA 2016; and
 - Other specific technical guidance published by DEFRA and available on the LAQM Support Website (laqm.defra.gov.uk)
- 1.11 The Council would consider a modification to Policy PLP 51, that the reference to 'nuisance' should be removed. This was added in error and it is not appropriate measure of air quality, it refers to air pollution in general. Also new national and regional guidance has been published since the Publication Draft Local Plan, in particular the WYLES; modifications to the policy text would be consistent with the methodology in the WYLES.
- 1.12 The Council would consider a modification to Policy PLP 51 and that the reference to 'unsafe levels' should be removed and reference only be made to an increase in levels, as this would be consistent with the methodology in the Council's proposed Action Plans and the existing planning guidance WYLES. It is considered that if development control decisions are limited to increases to unsafe levels this would exclude developments outside of our urban areas, where the air quality is already at or close to the objectives. The Council has the objective to bring about air quality improvements throughout the district by positive, proactive and proportionate mitigation on all development where there will be an impact on local air pollution.

1.13 The Council would consider a modification to the justification text relating to this policy, as since the Publication Draft Local Plan was published an updated Local Air Quality Management Annual Status Report (June 2016) has been made available (September 2016). This Report identifies 7 new Air Quality Management Areas (AQMAs); a Cabinet decision to declare these was made on 30 October 2017. Also new national and regional guidance has been published, in particular the WYLES, modifications to the text would be consistent with the WYLES.

Proposed Modifications:

Page	Relevant part of the Plan	Tracked change	Reason for change
176	Policy PLP 51 Protection and Improvement of Air Quality Section 1	Delete and add text: <i>“Development will be expected to demonstrate that it is not likely to result, directly or indirectly, in an increase in air pollution which would <u>have an unacceptable impact on</u> unacceptably affect or cause a nuisance to the natural and built environment or to people.”</i>	Error
176	Policy PLP 51 Protection and Improvement of Air Quality Section 2	Delete and add text: <i>“Proposals that have the potential to increase local air pollution either individually or cumulatively must be accompanied by evidence to show that the impact of the development has been assessed in accordance with the relevant guidance. Development which has the potential to cause levels of local air pollution to increase, to unsafe levels must incorporate sustainable mitigation measures that reduce <u>the level of this impact.</u> to a safe level. If sustainable measures cannot be introduced the development will not be permitted.</i>	New evidence and for clarification
177	Para 18.4	Delete and add text: <i>“A variety of air pollutants can effect <u>affect</u> human health and the environment. In most areas of Europe, these pollutants are principally the products of combustion from space heating, power generation or from motor vehicle traffic. Generally if you are young and in a good state of health, moderate air pollution levels are unlikely to have any serious short term effects. However, elevated levels and/or long term exposure to air pollution can lead to more serious symptoms and conditions affecting human health. This mainly affects the respiratory systems, but can also lead to more serious conditions such as heart disease and cancer. It also causes damage to plants and animals, affecting <u>effecting</u> biodiversity and crop yields.”</i>	Correction
177	Para 18.5	Delete and add text: <i>“The Air Quality Strategy for England, Scotland, Wales and Northern Ireland sets out UK air quality standards and objectives for reducing levels of health-</i>	New evidence and for clarification

		<p><u>threatening pollutants, mainly in the form of gases such as carbon monoxide, lead, nitrogen dioxide, sulphur dioxide and fine dust particles. Pollution limits are set out in the form of National Air Quality Objectives (NAQOs). These objectives are written into law by the Environment Act 1995 and accompanying regulations as well as the Policy, Guidance and Strategy documents produced by the Department for Environment, Food and Rural Affairs (DEFRA) as part of the Local Air Quality Management (LAQM) system and National Governments compliance with the European Union Directives on Air Quality. These pollutants are mainly in the form of gases such as nitrogen dioxide, carbon monoxide, lead, sulphur dioxide and fine dust particles. These pollutants have the potential to cause ill health and should be managed where possible before they reach the Air Quality Objective limit.”</u></p>	
177	Para 18.6	<p>Delete and add text: <u>“The West Yorkshire Low Emissions Strategy (WYLES) has been developed through collaboration between the West Yorkshire local authorities (Bradford MDC, Calderdale MBC, Kirklees MDC, Leeds CC and Wakefield MDC); West Yorkshire Combined Authority (WYCA) and Public Health England (PHE), with each organisation having an input and contributing to the content of the Strategy. The five local authorities in West Yorkshire have been working towards a single Low Emission Strategy for West Yorkshire. The Strategy outlines what the key challenges are in relation to air quality within West Yorkshire and how, together, we can deliver cleaner air for all to create a healthier place for people to live, work and visit. It considers a number of areas such as economic and transport plans, changes in energy production and use, land-use planning, supporting walking and cycling and tackling transport emissions. looks at a number of areas such as buses, taxis, procurement, freight operations and it has produced a planning guidance document. Technical guidance has been produced, Air Quality and Emissions Technical Planning Guidance, this document forms part of the overarching WYLES with a vision of “Delivering Cleaner Air for all in West Yorkshire”. This guidance is aimed at helping planning authorities’ deliver National Air Quality Objectives (NAQO) through cost effective service planning brought about by joint working and individual policies set out in each authority’s Local Plan. aims to achieve consistency across West Yorkshire when responding to planning</u></p>	New evidence

		<i>consultations in relation to air quality. It looks to promote sustainable development by introducing the concept of developers monetising the damage caused from their developments to local air quality and to spend the equivalent sums on mitigation measures to improve air quality, thus making the development more sustainable.”</i>	
177	Para 18.7	Add text: “Part IV of the Environment Act 1995 requires local authorities to review and assess air quality in their area. If any standards are being exceeded or are unlikely to be met by the required date, then that area should be designated an Air Quality Management Area (AQMA) and the local authority must draw up and implement an action plan aimed at reducing levels of the pollutant. In many areas, traffic is likely to be the main contributor to excessive levels of pollution. <u>Action Planning is the crucial part of managing Air Quality in areas which are being affected by poor Air Quality. The WYLES and development control is critical to the measures set out within action plans.</u> ”	New evidence and for clarification
177	Para 18.9	Delete and add text: “Kirklees has an Air Quality Strategy and <u>annually reviews local has reviewed its air quality and publishes a Local Air Quality Management Annual Status Report. To date Kirklees has declared two nine AQMAs, where the levels of pollution are considered to be too high to allow new development unless improvements can be secured. These are as follows:</u> <u>Bradley Road/Leeds Road, Huddersfield</u> <u>Birchcliffe, Huddersfield</u> <u>Outlane, Huddersfield</u> <u>Edgerton, Huddersfield</u> <u>Huddersfield Town Centre</u> <u>Birkenshaw, Bradford</u> <u>Eastborough, Dewsbury</u> <u>Heckmondwike</u> <u>Scout Hill, Dewsbury</u> <u>Action Plans have been implemented, for the two AQMAs in Bradley Road/Leeds Road, Huddersfield and Scout Hill, Dewsbury.</u> ”	New evidence and for clarification
		Add new paragraph (18.10): “ <u>The AQMAs within Kirklees are likely to change on an annual basis, as a result of the ongoing monitoring of local air quality. Kirklees Council currently have Action Plans in place, for the two AQMAs in Bradley Road/Leeds Road, Huddersfield and Scout Hill, Dewsbury. New action plans are being prepared for the remaining AQMAs and for the district. Action plans, will be made available on the Kirklees website:</u>	New evidence and for clarification

		https://www.kirklees.gov.uk/beta/crime-and-safety/air-pollution.aspx	
177	Para 18.10	Delete and add text (18.11): <i>“Eight<u>Two</u> further Areas of Concern have also been identified, where monitoring of levels on nitrogen dioxide appear to indicate that the annual average for nitrogen dioxide may be exceeded. These areas are: as follows: Thornton Lodge and <u>Lindley Moor Road, Huddersfield</u> <u>Huddersfield Town Centre</u> <u>Birchencliffe</u> <u>Birkenshaw</u> <u>Edgerton</u> <u>Liversedge</u> <u>Outlane</u> <u>Eastborough</u>”</i>	New evidence and for clarification
	Para 18.11	Delete and add text (18.12): <i>“All of these Areas of Concern appear to potentially have elevated levels of nitrogen dioxide from road traffic. Detailed assessments of these areas are currently being carried out. <u>Areas of Concern are monitored annually; the outcomes of this monitoring</u> These assessments could lead to the introduction of further AQMAs. <u>Up to date information on AQMAs can be found on the Kirklees website:</u> https://www.kirklees.gov.uk/beta/crime-and-safety/air-pollution.aspx”</i>	New evidence and for clarification
178		Add text: <i>“<u>Kirklees Air Quality Annual Status Report 2016</u> <u>West Yorkshire Low Emissions Strategy 2016 to 2021</u> <u>Air Quality (England) Regulations 2000</u> <u>Local Air Quality Management Policy Guidance for England (PG16), DEFRA 2016</u> <u>Local Air Quality Management Technical Guidance (TG16), DEFRA 2016</u>”</i>	New evidence

b) What are the implications arising from the Air Quality Directive? Should the Directive be referenced in Policy PLP 51 and/or the supporting text?

1.14 The EU Air Quality Directive (NE32) and its forbears are derived from the World Health Organisation (WHO) publications on Clean Air and are transposed into UK Law by the Environment Act 1995 (NE29) and the Air Quality (England) Regulations 2000 (as amended). The emission limits posed by the EU Directive are the same as the UK National Air Quality Objectives (NAQO) and these objectives are repeated throughout policy and guidance documents within LAQM, specifically Annex A of LAQM Policy Guidance for England.

1.15 This Policy focuses on the UK approach rather than referencing the overarching EU framework. The EU Directive places obligations on National Governments to comply with the limits and obligations in the Directive, the UK approach is to devolve the responsibility to local authorities and local authorities are accountable to National Government. The UK Government requires local authorities to take steps through

declaration of Air Quality Management Areas (AQMAs) and the creation of Action Plans for those areas where the National Air Quality Objectives (NAQOs) are not met.

- 1.16 Paragraph 124 of the NPPF (NE1) provides a framework for the development of local plans and policies, policies should sustain compliance with and contribute towards EU limit values or national objectives for pollutants. Planning decisions should ensure that any new development in AQMAs is consistent with the local air quality action plan. Policy PLP 51 is consistent with this guidance as it provides a clear and effective framework for addressing air quality issues arising from new development schemes.
- 1.17 The EU Air Quality Directive forms part of the Local Plan evidence base. The supporting text of the policy discusses the Environment Act 1995 (NE29) and the documents which make up the LAQM framework which is the UK policy and framework in implementing the EU Directive.