

Cabinet – 8 February 2017

Black Country Air Quality Supplementary Planning Document (SPD) – Approval for Adoption

Portfolio: Councillor L Jeavons - Deputy Leader and Regeneration

Related portfolios: Councillor C Jones - Clean and Green
Councillor I Robertson - Health

Service: Regeneration and Development

Wards: All

Key decision: Yes

Forward plan: Yes

1. Summary

- 1.1 This report seeks approval to adopt the Black Country Air Quality Supplementary Planning Document (SPD). The SPD set out simplified guidance for dealing with air quality and is aimed at all those involved in the submission and determination of planning applications where air quality needs to be addressed.
- 1.3 The SPD has been prepared jointly by the Black Country Councils. Following Cabinet approval on 3rd February 2016, the SPD was subject to public consultation in Walsall from 29th February to 25th April 2016. This was in addition to an 8 week consultation period in Dudley, Sandwell and Wolverhampton during Monday 15th February to Monday 11th April 2016. During the consultation period a total of 17 representations were received overall which have been incorporated in the final SPD where appropriate. It is understood that Dudley, Sandwell and Wolverhampton Councils have all now adopted the SPD.
- 1.4 Cabinet members have already received a copy of the Document. A copy is also available on the Committee information pages of the Council's website, and has been deposited in political group rooms.

2. Recommendations

- 2.1 That the Black Country Air Quality SPD is approved for adoption.

3. Report detail

- 3.1 Decisions about development can have impacts on health in a number of ways, including in terms of the provision for businesses and for housing (which can affect well-being) as well as in terms of the generation of and/or exposure to pollution. Air quality has been an issue in the West Midlands conurbation for many years, and whilst pollution from industry is controlled through legislation and permitting arrangements in respect of those who generate emissions, there is an important role for the planning system in relation to transport related sources.
- 3.2 Emissions of nitrogen dioxide (NO₂) and particulates – principally from diesel engines – have well established links to adverse human health impacts, and concentrations of NO₂ exceed objectives and limits (set nationally and by the EU) at various places along motorways and major roads in Walsall and across the West Midlands key road corridors.
- 3.3 Councils are legally required to assess and to try to respond to problems of poor air quality. To support this, the Black Country Core Strategy has included policy (Policy ENV8) on 'Air Quality' to require assessments where impacts are likely to arise and to seek to ensure that the occupants of developments (especially health and education facilities and housing) are not exposed to poor air quality. The Metropolitan Authorities within the West Midlands have also taken part in the Government-funded 'Low Emissions Towns and Cities Programme', which has produced research and good practice guidance as to how planning policy might be applied to try to help respond to issues of poor air quality arising from road transport.
- 3.4 The SPD has been prepared to rationalise existing approaches, reflecting the good practice guidance and applying the Core Strategy policy on air quality. It explains how legal and policy requirements might be met to provide a basis for the application of a range of mitigation measures that should be as consistent, robust and effective as possible. The document is aimed at all those involved in the submission and determination of planning applications where relevant air quality issues arise. Following adoption, the Black Country Air Quality Supplementary Planning Document becomes a material consideration in the determination of planning applications.
- 3.5 The SPD provides the following information:
- explains why air quality is important in the Black Country and sets out the existing policy framework;
 - presents the methodology for identifying development proposals where an air quality assessment will be required;
 - identifies the types of development where appropriate air quality mitigation measures will be required to be incorporated, to offset the incremental growth in air quality problems;
 - proposes various options for site specific mitigation to protect future occupiers from poor air and how such measures will be secured and delivered; and.

- sets out instances where on-site mitigation is not appropriate and monetary payments to the Local Authority would be required as part of damage costs.

3.6 The SPD has been prepared on a joint basis by the four Black Country Councils. This reflects the fact that air quality issues are not constrained by local authority boundaries, as well as enabling the sharing of scarce resources and the development of the most practical and consistent approach to the issues.

3.7 Following Cabinet approval on 3rd February 2016 the SPD was subject to public consultation from the 29th February to 25th April 2016. Walsall undertook its consultation separately to the 8 week consultation process undertaken by the other 3 Black Country authorities which took place between Monday 15th February to Monday 11th April 2016. This decision by Walsall to undertake a spate consultation process was made in order to minimise the overlap between the SPD consultation and the Site Allocation Document, Town Centre Area Action Plan and the Community Infrastructure Levy Publication Consultation. During the consultation undertaken by Walsall and the other Black Country authorities a total of 17 representations were received. A number of comments made within these representations have been incorporated in the final SPD. Overall the responses were supportive and welcoming of the SPD. There were no substantial issues raised by consultees around the impact of viability or delivery as a result of the requirements which provides some assurance that the SPD will not have a negative impact on the economic prosperity of the borough. A summary of the responses is provided below:

- Welcome the SPD and the joint approach towards the issue as it will provide a consistent approach to planning applications.
- Recognition that this is an issue which needs to be addressed.
- Requests for more consideration of the nature environment as a potential mitigation measure.
- Requests for more promotion of sustainable travel and walking.
- Questioning of why housing would be built next to any motorways or carriageways where exceedances are known.
- Suggestions around the monitoring of emissions and concerns over inconsistency in monitoring across the metropolitan area.
- Requests for clarification on the consultation process for planning applications.
- Requests for text to explain that air quality issues need to be considered in conjunction with other sustainability principles and aims of the planning system.
- Requests for consideration to be given to the positive outcomes from development when looking at schemes with air quality impacts.
- Detailed comments on what is considered a 'sensitive use'.
- Detailed comments requesting clarification around the application of 'damage costs'.

- Detailed comments around the possible impact of the SPD on the HGV industry from the Road Haulage Association.
- Highways England recognised their role in mitigating against poor air quality as a body responsible for providing and maintaining road infrastructure.
- Requests from West Midlands Integrated Transport Authority for stronger links to their policy documents, the West Midlands Emission Framework and forthcoming schemes along with a suggestion that there is need for a more co-ordinated regional approach to air quality.

Further details on the representations along with the Councils' responses to them can be found in the Consultation Statement.

4. Council priorities

- 4.1 In seeking to mitigate poor air quality, the SPD will directly support the 2016 – 2020 Corporate Plan Priority towards *“Lifelong health, wealth and happiness”* and *“Preventing and tackling ill-health”*.
- 4.2 The operation of SPD will need to take account the priorities for ensuring that “the infrastructure of the borough supports business growth and access to work”.

5. Risk management

- 5.1 Failure to have an adopted Air Quality SPD could mean that it is more difficult to address issues of poor air quality through the development process, not least in terms of the health of local residents. The SDP provides transparency and consistency to developers, landowners, and the community regarding the basis for identifying and calculating the air quality impact and mitigation requirements for new developments helping to deliver developments that address air quality issues and should not make air quality worse. In addition, various concerned groups have sought to challenge the UK Government in the Courts over potential failures to meet limits for Air Quality. Failure to meet limits set by the EU could lead to the UK being fined. The Localism Act 2011 enables the Secretary of State to potentially pass such fines on to local authorities, however, as a substantial portion of the air quality issues in the Black Country arise from the motorway network, it is considered that the prospect of local authorities being unilaterally ‘blamed’ should be remote.

6. Financial implications

- 6.1 The adoption of the document will be funded from existing budgets and resources dedicated to the production of Development Plan Documents and other planning documents.
- 6.2 The ability to operate an SPD that provides a clear mechanism for addressing air quality issues might lead to some savings in officer time in the processing of planning applications and in respect of appeals as it is clear from the outset the Council’s approach through the planning application process towards air quality.

7. Legal implications

- 7.1 The Environment Act 1995 Part IV (“the Act”) places a duty on Local Authorities to regulate Air Quality in their areas. Section 82 of the Act requires local authorities to review and assess air quality in their areas. Section 83 requires a Local Authority to designate an Air Quality Management Area where the air quality management objectives are not being achieved or is not likely to be achieved. The air quality management objectives are set out in

the Air Quality (England) Regulations 2000 as amended by the Air Quality (England) (Amendment) Regulations 2002 provide the statutory basis for air quality objectives. Once an area has been designated, Section 84 of the Act requires the Local Authority to carry out an assessment and then to develop an action plan for air quality management.

- 7.2 The whole of Walsall borough is an Air Quality Management Area in respect of nitrogen dioxide emissions, primarily due to vehicle emissions in the M6 corridor and at various points along major classified roads in the borough. An Air Quality Action Plan has been in effect since June 2009. The plan is to be reviewed as a result of the recent work through the Low Emissions Towns and Cities Programme, in light of the Government's recent plans and the Black Country Air Quality SPD. At present, officers seek to ensure that developments do not have significant adverse impacts in terms of air quality and that relevant receptors are not exposed to poor air quality. This is done within the broad framework provided by legislation, policy guidance, the Air Quality Action Plan, the Black Country Core Strategy and both air quality monitoring and modelling undertaken by the Council. The SPD will further support the Council in managing air quality.
- 7.3 The SPD rationalises and clarifies existing requirements. It has been prepared under the provisions of the Planning and Compulsory Purchase Act 2004 (as amended) and the Town and Country Planning (Local Planning)(England) Regulations 2012 (as amended). Following adoption, the Black Country Air Quality SPD would become a material consideration in the determination of planning applications.

8. Property implications

- 8.1 None directly from this report. Some Council property might be affected by poor air quality that will have to be addressed through mitigation measures in any event if/when development proposals might be considered as part of the planning application process. The SPD includes mechanisms to help address such issues.

9. Health and wellbeing implications

- 9.1 Poor air quality can lead to adverse health impacts and even contribute to premature deaths. The SPD refers to estimates of premature deaths in the West Midlands and Black Country that could be attributable to road transport emissions.
- 9.2 Several 'hotspots' across the Black Country (and including places in Walsall) are above 'the limit values' for airborne pollutants set nationally and by the EU. The measures in the SPD seek to mitigate the degree to which new developments might cause or be exposed to high levels of pollution. Such measures need to be combined with other planning policies (including on the location of developments) and additional measures, often being advanced

from/by Government, if they are to have the most beneficial effects. These include Policy ENV8 (Air Quality) of the adopted Black Country Core Strategy (2011), and the West Midlands Good Practice Air Quality Planning Guidance (2014), produced as part of the West Midlands Low Emissions Towns & Cities Programme.

10. Staffing implications

- 10.1 The SPD has been based on work supported by the Government-funded West Midlands Low Emissions Towns and Cities Programme and the preparation of the document has been shared between officers from the four Black Country Councils.
- 10.2 It is the intention that the SPD will help to clarify the requirements and arrangements for work that already has to be undertaken at the planning application stage to identify and calculate the air quality impact and mitigation requirements for new developments. This should help to facilitate the work of the Council's Development Management and Pollution Control functions.

11. Equality implications

- 11.1 The SPD supports the implementation of the measures envisaged in Policy ENV8 (Air Quality) of the Black Country Core Strategy. That plan was adopted following examination which included a sustainability appraisal that incorporated consideration of equality impacts. On this basis none of the local authorities involved considers that a further assessment is necessary. Measures to try to mitigate poor air quality should benefit large numbers of people across the Black Country, particularly those who live near to major roads.

12. Consultation

- 12.1 This report has been prepared jointly between officers from Planning Policy in Regeneration and Development and officers from Pollution Control in Engineering and Transportation. Colleagues from Public Health, Development Management and Transportation and Highways have been consulted and are aware of the content of the SPD.
- 12.2 The SPD was prepared by officers from Dudley, Sandwell, Walsall and Wolverhampton Councils – drawing on advice from officers and consultants employed under the Low Emissions Towns and Cities initiative.
- 12.3 Overall 55 statutory organisations and prescribed bodies were consulted. Specifically within Walsall all ward Councillors were consulted along with around 850 organisations, developers and individuals registered on Walsall's Consultee Database. This is in addition to the 1000 organisations, developers

and individuals included in the combined consultation by the other authorities. The consultation was also publicised by a press release and on the Council's website.

A total of 17 representations were received during the consultation. The comments received and the Councils' responses to them are detailed in the Consultation Statement.

In addition to the external consultation process, the draft SPD was also circulated to relevant internal Council staff inviting comments relating to their particular areas of expertise

Background papers

- *Black Country Air Quality SPD*
(Dudley, Sandwell, Walsall and Wolverhampton Councils - 2016)
- *Screening Statement for Strategic Environmental Assessment*
(Dudley, Sandwell, Walsall and Wolverhampton Councils - 2015)
http://cms.walsall.gov.uk/black_country_air_quality_draft_spd_sea_screening_statement.pdf
- *West Midlands Good Practice Air Quality Planning Guidance*
(West Midlands Low Emissions Towns and Cities Programme - 2014)
http://cms.walsall.gov.uk/index/environment/pollution/air_quality/low_emissions_towns_and_cities_programme.htm
- *Black Country Core Strategy*
(Dudley, Sandwell, Walsall and Wolverhampton Councils – 2011)
<http://blackcountrycorestrategy.dudley.gov.uk/> /
http://cms.walsall.gov.uk/index/environment/planning/planning_policy/local_development_framework/ldf_core_strategy.htm
- *Air quality plan for reducing nitrogen dioxide (NO₂) in West Midlands urban area*
(Department for Environment, Food and Rural Affairs – 2015)
<https://www.gov.uk/government/publications/air-quality-plan-for-reducing-nitrogen-dioxide-no2-in-west-midlands-urban-area-uk0002>)
- *Air Quality – Nitrogen Dioxide Area of Exceedance - 2015*
(http://cms.walsall.gov.uk/index/environment/pollution/air_quality.htm)

Authors

Charis Blythe
Senior Planning Policy Officer
Regeneration and Development
☎ 658023
✉ charis.blythe@Walsall.gov.uk

John Grant
Team Leader, Pollution Control
Engineering and Transportation
☎ 654380
✉ grantj@walsall.gov.uk

Mike Smith
Planning Policy Manager
Regeneration and Development
☎ 658024

✉ Mike-E.Smith@walsall.gov.uk

A handwritten signature in black ink, appearing to be 'SN' or similar, written in a cursive style.

Simon Neilson
Executive Director

30 January 2017

A handwritten signature in black ink, appearing to be 'Lee Jeavons', written in a cursive style.

Councillor Lee Jeavons
Portfolio Holder

30 January 2017