

Air Quality Review
Report of Findings and
Recommendations



Overview and Scrutiny Committee
10 January 2012

1. Background to the Review

1.1 The Scrutiny Committee of Tonbridge and Malling Borough Council has undertaken a review of Air Quality (AQ) prompted by concerns over the onerous reporting regime and the Council's lack of ability to achieve AQ improvements. The review was scoped and the key issues discussed at two meetings of the Scrutiny Panel, held on 5th October 2011 and 2nd November 2011.

1.2 The Review sought to focus on the following key issues:

- Evaluation of the current roles of the borough, district and unitary councils in managing air quality, their responsibilities and the role of partners;
- Gaining an understanding of the national and local picture in respect of air quality and the health impacts associated with poor air quality;
- Gaining an understanding of the pertinent legislation and the range of guidance with which local authorities are expected to comply; and
- Consideration of the practical issues in monitoring, reporting to the Department for Environment, Food and Rural Affairs (DEFRA) and improving air quality, locally.

1.3 At the first panel meeting, evidence was presented by:

Jane Heeley: Chief EHO, Tonbridge and Malling B.C. and
Jacqui Rands: Environmental Protection Team Manager, Tonbridge and Malling B.C.

1.4 At the second review meeting, evidence was presented by:

Alex Dawson: Environmental Protection Manager, Sevenoaks D.C.
John Newington: Senior Pollution Officer, Maidstone B.C.
Steve Wilcock: Environmental Health Manager – Pollution, Maidstone B.C.
Paul Lulham: Strategic Transport and Development Planner, Highways and Transportation, KCC
Rob Smith: Senior Transport Planner, Strategic Transport Delivery, KCC

1.5 Following the two panel meetings, it was resolved to take a number of actions which are detailed in the conclusions to this report.

- 1.6 The purpose of this report is to set out the key issues, conclusions and recommendations resulting from the review.

2 Key Issues

2.1 Health Impacts of Poor Air Quality

Whilst air pollution has declined steadily and significantly in the UK for several decades, the rate of decline for some pollutants, for example, nitrogen dioxide, has slowed in recent years. The health effects of poor air quality are well documented and it is estimated that in the UK the effects of air pollution reduce life expectancy by an average of six months. The Committee on the Medical Effects of Air Pollution (COMEAP) is an advisory committee of independent experts that provides advice to government departments and agencies via the Department of Health's Chief Medical Officer on all matters relating to the effects of air pollution on health. They estimate that the effects of air pollution cost the health service between £9 - £19 billion per annum, which is comparable with the costs of treating obesity.

- 2.2 The pollutants causing the most significant impacts are particulate matter and nitrogen dioxide. Particulate matter arises from diesel engines and wood/coal burning installations (domestic and industrial), and can be formed as a result of reactions between pollutants. These particulates are extremely small and lodge themselves in the lungs, worsening the symptoms of those suffering from heart and lung conditions.
- 2.3 The short term effects of sources of nitrogen dioxide are well established; it causes irritation of the airways and has particularly severe effects for those suffering with asthma, although it is not thought to cause it.

3 Summary of Legislation Relating to Air Quality

- 3.1 The principal statute that establishes duties for councils in respect of Air Quality is the Environment Act 1995 Part IV. This places duties on district and borough councils to periodically review and assess air quality in their area and identify areas in which the outdoor air quality does not meet the national Air Quality Objectives (AQOs). Where exceedances of the AQOs are identified there is a duty on councils to declare Air Quality Management Areas (AQMAs) and subsequently to produce action plans which must set out what measures the council proposes to introduce to "work towards the achievement" of the Air Quality Objectives to improve air quality.

- 3.2 The current AQOs were established at EU level, through the 2008 directive on outdoor ambient air quality, in consultation with health experts to minimise the potential for adverse health impacts of poor air quality. These objectives were made into UK law through the Air Quality Standards Regulations 2010.
- 3.3 The role of councils is heavily prescribed through the DEFRA guidance documents - Local Air Quality Management TG(09) and PG(09) which states that “local authorities are required to take account of this guidance when carrying out any of their duties under or by virtue of Part IV of the Environment Act”, specifically in relation to monitoring, reporting, declaration of AQMAs and developing and implementing action plans.

4. Role of the Borough Council

- 4.1 As the purpose of monitoring air quality is health based, local authorities are only required to monitor in locations where there is ‘relevant’ public exposure i.e. locations where members of the public are likely to be regularly present and are likely to be exposed for a period of time appropriate to the averaging period of the objective e.g. at the facade of houses or buildings such as schools. We should not consider exceedances of the objectives at any location where relevant public exposure would not be realistic.
- 4.2 Routine monitoring for nitrogen dioxide (NO₂) levels is carried out using diffusion tubes and a continuous analyser.
- 4.3 The diffusion tubes are exchanged on a monthly basis, with the tubes that are removed being submitted for analysis to establish the level of NO₂ to which they have been exposed in the last month.
- 4.4 They provide an indication of longer-term average NO₂ concentrations; an indicative comparison with the annual mean Air Quality Strategy Objectives and for highlighting areas of high NO₂ concentration.
- 4.5 The continuous analyser is located within the Tonbridge High Street AQMA measuring the levels of NO₂. The data collected is downloaded twice daily by a contractor who is appointed by the Kent and Medway Air Quality Network. (KAMAQN).
- 4.6 To date, six areas have been identified within the Borough, where the outdoor air quality does not meet the national Air Quality Objectives

and, in accordance with the legislation, six AQMAs have been declared:

- M20
- A20 Larkfield
- A20 Aylesford
- A20 Ditton
- Wateringbury
- Tonbridge High Street

4.7 All six AQMAs have been declared for exceedances of the annual mean objective for NO₂. In addition, the M20 AQMA has been declared for exceedance of the 24 hour mean objective for PM10. As stated in paragraphs 2.2 and 2.3 of this report, the main sources of NO₂ and PM10 are petrol and diesel engines, i.e. transport related.

4.8 This highlights one of the key issues with the current air quality regime in which the Council identifies areas of concern but has no “teeth” to require improvements because responsibility for the road network and transport issues rests with the Highways Agency (HA) and, in TMBC, with KCC Highways and Transportation.

4.9 Through the action planning process, officers have and will continue to engage with officers from the HA and KCC Highways and Transportation to endeavour to move air quality up their agendas.

4.10 KCC’s Local Transport Plan (LTP) 3 was formally adopted in April 2011. It is based on the LTP 3 Guidance and focuses on the development of five themes;

- Growth without Gridlock (45%)
- A Safer and Healthier County (15%)
- Supporting Independence (15%)
- Tackling a Changing Climate (15%)
- Enjoying life in Kent (15%)

The figures in brackets are their budget allocation, as published.

Air Quality as a topic falls under the ‘Protecting Communities’ section within the Safer and Healthier County theme, which also includes sections entitled ‘Safer Roads,’ Active Transport’ and ‘A Safe and Secure Network’.

KCC is committed within LTP3 to continuing to work with the districts to assist in the development of their AQAPs; however in these days of

increased financial constraints, the amount of funding available to support this work, and all the other work required to be undertaken is decreasing/diminishing.

- 4.11 The current draft Air Quality Action Plan is the product of several meetings of the Steering Group, which includes the HA and KHS.
- 4.12 In addition to the monitoring and reporting role prescribed by DEFRA, the EPT plays a proactive role in investigating the potential air quality impacts associated with proposed developments, through the planning process, applying national policies (PPS 23) and local policy (SQ4). The Team assesses both the potential impacts of a significant development on local air quality and the standard of current air quality on the future residents or other receptors in a housing scheme or public building such as a school or hospital. The National Policy Framework is subject to review at present, therefore, until the National Planning Policy Framework is published, there is uncertainty as to whether the current national planning policies will be altered or remain unchanged. On occasion, this work necessitates the use of consultants to verify applicants' air quality impact assessments, which may involve independent traffic modelling, as was the case for the Maidstone Borough Council application for the Kent International Gateway development in 2009/10.

5 The LA Reporting Regime

- 5.1 The Panel was presented with evidence about the current reporting regime, set out in the DEFRA technical guidance, which is based on a 3 year cyclic programme. Every third year local authorities have to prepare and submit an Updating and Screening Assessment (USA), which considers any changes in the district that have occurred in the previous 3 years and have impacted on the local air quality, including the previous 12 months monitoring data.
- 5.2 In the interim years, local authorities have to complete an Annual Progress Report (APR), which is essentially a record of the monitoring data collected in the previous 12 months.
- 5.3 Additionally, if an exceedance of an Air Quality Objective is identified, by the monitoring results, in a locality the Local Authority has to complete a Detailed Assessment (DA), within 12 months. The aim of this DA should be to identify with reasonable certainty whether or not a likely exceedance will occur. If the existence of an exceedance is established, the local authority has to declare an Air Quality Management Area (AQMA). Once the authority has declared an AQMA it has to complete a Further Assessment, within 12 months and produce an Air Quality Action Plan (AQAP) within 12 -18 months, which

requires an annual progress report. It is not unusual for a local authority to prepare at least 2 reports in any one year plus an AQAP update.

- 5.4 The process of preparing these reports is time consuming and can be technical, involving modelling techniques and source apportionment. Consequently many local authorities commission consultants to complete their reports; however, a significant amount of information has to be collated and provided by local authority officers to enable consultants to complete the reports.
- 5.5 The Panel questioned the need for this level of reporting and options for reducing this were discussed, noting that monitoring results are available on the Council's web pages or an Air Quality Network webpage and the rate of change is relatively slow.

6 The Cost of Monitoring and Reporting

- 6.1 The average annual budget of air quality work is in the region of £13.5K per annum. In the last two years it has been approximately £11K (2010) and £15K (2011). This excludes officer time devoted to implementing and managing these activities.
- 6.2 The Panel expressed concern at this level of expenditure, given the limitations of the Council to secure air quality improvements. If the burdens of the reporting system were reduced, this would free up a proportion of the financial resource to concentrate on implementing some of the softer measures in the action plan, for example, potentially providing match funding/contributions to KHS initiatives.

7 EU Fines and the Localism Bill

- 7.1 The AQOs are directly derived from EU Directive 2008/50/EU, which set dates by which the objectives needed to be achieved by Member States. Non compliance with the objective deadline is likely to result in fines being imposed by the EU.
- 7.2 The objectives are being met for all air pollutants in 90 percent of the UK. It is projected that national air quality will fail to meet the objectives for three of the nine pollutants – NO₂, Particulates and Ozone.
- 7.3 The UK has applied for an extension to the deadline for NO₂ and Particulates. An extension has been granted for NO₂; a decision is awaited on the request for an extension for Particulates.

- 7.4 In the recently published Localism Bill, section 31 is entitled “Power to require local or public authorities to make payments in respect of certain EU financial sanctions”. It is possible that Government will pass these fines down to local authorities with AQMAs. However, this suggestion has been challenged by the Environmental Audit Committee, whose latest report on air quality was published in November, 2011. They believe it would be unfair if a blanket approach to transferring EU fines was adopted and are calling for a mechanism for making this transfer proportionate to a local authority’s ability to control air quality.
- 7.5 The Committee stated that they noted the ambiguity about how the responsibility for delivering air quality improvements is divided between local authorities and central government and that much of this responsibility is devolved to local authorities despite the means to achieve improvements being out of their control.

8 Conclusions

- 8.1 The Panel heard some strong evidence that the current reporting regime is overly burdensome and repetitive. This, combined with the fact that many local authorities have little control over air quality, gave cause for concern and the recommendation that officers lobby DEFRA to free up the reporting process and explore alternative solutions to this area of work.

9 Recommendations

- 9.1 It is recommended that the Borough Council writes to DEFRA expressing concern about the burdensome nature of the air quality reporting regime and the lack of statutory powers to achieve air quality improvements, specifically:
- suggesting that the reporting regime be reviewed/reduced, including reducing the frequency that USAs are produced, to every five years and that, in the interim years, DEFRA looks at the Council’s website for the annual monitoring results. The Council would be happy to ensure that the results are presented in a standard format/table;
 - organisations that are identified within the AQAP as a “Lead Authority” for undertaking an action, should be under a legal obligation to report back on their progress for the AQAP Update Report ;

- seek confirmation that borough/district councils are the most appropriate level of authority to be carrying out this extensive monitoring programme; and
 - obtain clarification about the criteria that will be applied to the disposal of EU fines to local authorities.
- 9.2 There may be benefit in joint working initiatives with local authorities with whom we share a boundary, and officers are to initially identify options for joint working with Maidstone Borough Council as our shared border includes the M20, A20, A26 and Forstal Road. The possibility of a joint application for funding from DEFRA will also be investigated.
- 9.3 Officers will review the number of measures in the AQAP with a view to reducing/prioritising them into a small number of achievable/attainable targets.
- 9.4 It is recommended that a letter is written to KCC requesting that they consider any resultant impacts of measures identified in the AQAP on areas where there is not an AQ issue/problem currently and where any might have an adverse affect on other residents.
- 9.5 Local Members should be involved in the process in order to make full use of their local knowledge.
- 9.6 The Borough's two MPs should be included in the correspondence that is produced as a result of this Scrutiny Review.