

# Planning Alert

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## Air Quality - increasingly a threat to development?

The High Court has recently upheld an Inspector's decision to refuse planning permission for 140 new homes in Newington, Kent due to an identified adverse effect on Air Quality Management Areas (AQMAs).

The development was close to two designated AQMAs, both of which suffered from high NO<sub>2</sub> concentrations. CPRE had argued at the public inquiry that the appeal should be dismissed due to its failure to mitigate the adverse effects on these areas. The developer had proposed a fund, calculated in accordance with the DEFRA damage cost analysis model, but the Inspector found there was no evidence that the indicative mitigation measures to reduce private petrol and diesel vehicles (and thereby reduce NO<sub>2</sub> emissions) would be effective. Accordingly planning permission was refused and the Inspector's decision to do so was challenged.

In upholding the decision the Court found that the Inspector did not have to assume that local air quality would improve by any particular amount or within any particular timeframe. The financial contribution had not been shown that it would translate into actual measures likely to reduce the use of petrol or diesel vehicles, and thus reduce NO<sub>2</sub> emissions. Furthermore the provisions of the new national draft Air Quality Plan had not been published and the Inspector was entitled to consider the evidence presented and did not simply have to assume that the UK would become compliant with the Directive.

The decision highlights a dilemma for developers where adverse impacts on air quality are identified. In these cases it will still be sensible to use the DEFRA damage cost model to calculate a financial mitigation contribution, but thought must be given to demonstrating how such a financial contribution will translate into actual practical measures that will reduce NO<sub>2</sub> emissions. One possible practical measure, for example, could be the funding of electric charging ports for electric vehicles but this will need to be backed up with evidence from other projects showing the likely percentage shift to electric vehicles as a result of this provision. It was this evidence that had been lacking in the unsuccessful appeal.

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