

MINOR ALTERATIONS TO THE LONDON PLAN

PARKING STANDARDS

EiP 22 October 2015

AIR QUALITY (IN RELATION TO PARKING STANDARDS) POTENTIAL MITIGATION MEASURES

Background

1. On 7 October 2015, the MALPs EiP Inspector requested further information from the Mayor on potential air quality mitigation measures, as set out in the following note:

"It is clear that the issue of air quality is of concern to a number of respondents.

A small negative change in air quality as a consequence of the revised parking standards is acknowledged by the Mayor. However, little detail has been submitted with regard to potential mitigation measures, either at a London-wide or Borough level. There is reference to the Ultra Low Emission Zone but it would be helpful if the Mayor could set out potential mitigation measures; the means of their delivery; the likely consequences of mitigation in terms of improving air quality; and a timescale for their implementation. This will enable me to conclude how much weight I should attach to mitigation.

It would be helpful if the Mayor could provide a written note on the matter before the start of the Hearing sessions".¹

2. This note sets out the Mayor's response to the Inspector's note. As requested, the information is presented by potential mitigation measure, with details provided on means of delivery, air quality consequences (where known) and the timescale for implementation.
3. The Mayor also submits a written legal opinion from Stephen Tromans QC which addresses the lawfulness under EU and UK air quality law of the Mayor's proposed MALP (Parking Standards) changes and concludes that they are lawful. This opinion is attached as an annex to this note.

¹ MALPs EiP Library ref MA/EX/05

http://www.london.gov.uk/sites/default/files/MAEX05_Note_from_Inspector_re_air_quality-in-relation_to_Parking_standards.pdf

Context

4. It is acknowledged that, at a high level, the modelling predicts the proposed Minor Alterations (Parking Standards) could likely result in a small increase in air pollutant emissions. This was assessed using a combination of Transport for London's (TfL) strategic London Transportation Studies (LTS) model and a policy screening spreadsheet tool called the Emissions Assessment Tool (EAT).
5. However, in order to isolate the air pollutant emission impacts of those additional private car trips likely to follow from a relaxation of residential car parking standards in outer London, the assessment did not take into account any air quality mitigations at either a Londonwide or local level that could be delivered alongside the proposed policy change.
6. A summary of the planned and possible measures, and their predicted impact where available, is set out below.

Ultra Low Emission Zone (ULEZ)

7. The Ultra Low Emission Zone (ULEZ) is a Mayoral initiative that will be implemented by Transport for London in 2020 in central London. The boundary of the Zone will be the current Central London Congestion Charging Zone. The scheme has three components:
 - a daily monetary charge for vehicles (including cars) entering the Zone that do not meet specified emission standards, based largely on the latest Euro standards
 - the procurement by TfL of low and zero-emission buses operating on services passing through the Zone. As part of wider measures to reduce bus emissions, and trials of pure electric and hydrogen buses with the aim of moving to zero emissions, ULEZ will result in c 3,900 buses being upgraded by TfL²
 - revised licensing requirements for London's taxis and private hire vehicles which will require all new taxis from 2018 to be zero-emission capable (ZEC), alongside a £65 million fund to encourage the move to ZEC models and remove older more polluting models from service, and that all newer private hire vehicles be ZEC models from 2020.
8. In 2020 the ULEZ is expected to decrease emissions of NO_x by around 50% within the Zone, although its anticipated effects will extend to inner and outer London (see table below). In outer London, ULEZ will deliver benefits, particularly in terms of NO_x, because any trip into the Zone by car will need to be undertaken in a ULEZ-compliant vehicle unless the driver pays a charge. It is expected that the proportion of compliant vehicles in outer London will be 78% in 2020 (a 3% improvement on the

² Comprising 300 single deck buses; 3,100 double deck buses (including 400 Euro V hybrids in central London and 800 New Routemasters); and 400 Euro 5 (single deck and double deck) in outer London retrofitted to be Euro VI compliant

75% baseline), and that the proportion of people living within areas of NO₂ exceedance in outer London is expected to reduce from 2% to 1%.

9. The table below provides estimated impacts of ULEZ on air pollutant emissions across London. It incorporates the impact of revised bus policies such as retrofitting around 400 Euro V buses in outer London to Euro VI.

Emissions Impact in 2020 from ULEZ Proposals

Emission	ULEZ	inner London	outer London	London- wide
CO ₂	-14%	-3%	-0.5%	-2%
NO _x	-49%	-18%	-10%	-14%
PM ₁₀	-11%	-2%	-0.1%	-1%

10. TfL is also working with boroughs to develop proposals for the next phases of ULEZ and the existing Londonwide Low Emission Zone. A formal working group with representatives has been established and meets regularly. Progress will be reported to London Councils later in the year and the papers will be made public.

The Mayor's Air Quality Fund

11. The Mayor has introduced a £20m Mayor's Air Quality Fund to support the boroughs in tackling local air quality hotspots. The first £6m has been allocated to support 42 projects in 29 boroughs, 12 of which are in outer London³. A second round has been launched with £8 million of funding, including trialling Low Emission Neighbourhoods (see below) in eight or nine boroughs. The successful bids will be announced shortly.

Low Emission Neighbourhoods (LENs)

12. In late 2014, TfL produced a Transport Emissions Roadmap (TERM) which set out ways to reduce CO₂ and air pollutants from land-based transport⁴. One of the proposed measures in this document was a programme of Low Emission Neighbourhoods (LENs). A LEN is an area based scheme that includes a package of measures focused on reducing emissions (and promoting sustainable living more generally), delivered by a borough with support from TfL, the GLA and the local community. To help develop and deliver LENs, TfL has produced guidance for developers, communities and local authorities⁵.

³ The outer London boroughs that have received MAQF funding are Enfield, Waltham Forest, Barnet, Harrow, Hillingdon, Hounslow, Croydon, Redbridge, Barking and Dagenham, Ealing, Merton and Havering.

⁴ <http://content.tfl.gov.uk/transport-emissions-roadmap.pdf>

⁵ <http://content.tfl.gov.uk/low-emission-neighbourhoods.pdf>

13. The prime driver for a LEN is a reduction in concentrations and exposure to air pollutants, which could include a transformation in the urban environment and the way the area operates. Whilst LENs can be focused on areas of high exposure to high pollution, the measures identified can be applied elsewhere, including where parking levels are higher.
14. The actions identified in the LENs guidance can contribute to:
- reducing overall vehicle kilometres
 - encouraging the uptake of low-emission vehicles
 - improvement of the urban realm
15. Areas identified as being good locations to implement LENs could include Air Quality Focus Areas (AQFA), or places undergoing significant change, such as opportunity areas or large scale local redevelopment. These locations could be identified as part of an assessment for individual developments, or as part of a borough local development plan.
16. The most effective measures will vary between LENs and will depend on local factors such as the proportion of different land uses and activities, particularly retail, industrial, offices and residential, and the types of roads and traffic in the area.
17. Whilst the Minor Alterations relate to residential parking standards, the measures within a LEN could also be applied to other land uses or operations associated with the development, including deliveries and waste collection.
18. Measures which could be implemented in a LEN, subject to feasibility, are:
- Associated traffic management*
19. Introducing measures to remove through-traffic from roads could include filtered permeability schemes, timed road closures to all motorised traffic and permitted vehicle-only roads that restrict access to residents and vehicles for loading and servicing only. These measures could be put in place initially on a trial basis, using temporary barriers, and the impact on emissions could be monitored.
- Associated parking management*
20. Introducing smarter parking charging could include introducing a variable charge for residential permits according to emissions, with surcharges for older more polluting diesel vehicles. On-street parking charges could also vary according to vehicle emissions, with banding based on Euro standards. There is also potential to vary charging according to parking demand, using on-street sensors.

Localised Low Emission Zone

21. A Localised Low Emission Zone consists of a voluntary agreement that businesses and key trip generators in the area will ensure all their vehicles meet the ULEZ standards (or higher for LENS within the ULEZ).

Freight and servicing

22. Introducing measures to reduce the impact of freight and servicing in the neighbourhood could include the following:
- Freight planning: A neighbourhood wide delivery and servicing plan to reduce overall freight movements and emissions. This would enable both a reduction in the individual freight and servicing requirements for each premise, and also allow for consolidation of deliveries across multiple premises. As part of this, premises could sign up to a neighbourhood wide green procurement code, ensuring suppliers use best practice and low emission vehicles.
 - Priority loading: This could be either the implementation of a booking system for delivery and servicing trips, or provision of restricted loading bays.
 - Restricted loading bays: exclusive use would be given to low or zero emission commercial vehicles, or vehicles undertaking consolidated deliveries serving multiple premises.
 - Delivery booking system: this would allow a reduction in overall capacity for loading and servicing by encouraging the most efficient use of the remaining capacity. Priority booking could be given to low emission vehicles or consolidated delivery vehicles to encourage uptake. Parking sensors could be utilised to monitor and enforce the use of these and support and/or guidance could be provided to freight operators to ensure this resulted in more efficient deliveries.
 - Microconsolidation: Introducing microconsolidation would greatly benefit low emission neighbourhoods. Use of electric vehicles or cycle freight for the last leg of the journey would enable zero emission restrictions to be introduced whilst allowing for freight deliveries. Monitoring will need to be undertaken to ensure that there are overall benefits to consolidation, and that emissions are not simply displaced.

Travel planning

23. Engagement with employers and schools within a LEN is important to its success. Targeted travel planning, with a focus on reducing emissions, can help educate and engage the community as well as influencing behaviour.

Awareness programmes

24. Lack of awareness around air pollution and its causes can impact upon travel behaviour and supporting measures to help people travel more sustainably can help improve local support and buy in to the Low Emission Neighbourhood concept.
25. As part of this it is important that programmes are properly monitored and maintained to ensure their effectiveness. TfL's guidance provides more details on the commitment and responsibilities of local authorities as well as the actions required to develop a LEN.

26. In addition to the specific measures that could be implemented as part of a LEN, there is a range of wider freight work being undertaken by TfL, Boroughs and others. This includes introducing practices to encourage retiming of road freight, consolidation of deliveries and servicing, and generally improve the efficiency of freight operations as well as encouraging cleaner freight vehicles (see below).

Low Emission Commercial Vehicle programme

27. TfL is working with industry and wider stakeholders to:
- increase availability and affordability of viable low emission commercial vehicles and retrofit vehicle technology
 - establish alternative fuel and supply chain infrastructure to support an increase in low emission commercial vehicles
 - increase understanding and inform fleet buying decisions to encourage widespread uptake of low emission commercial vehicles; and
 - encourage public sector planning and procurement activities that support the uptake of low emission commercial vehicles.

Ultra Low Emission Vehicle (ULEV) Delivery Plan

28. The Ultra Low Emission Vehicle (ULEV) Delivery Plan (2015)⁶ sets out the Mayor's vision for London to grow as a sustainable city where ULEVs are the preferred option. The Delivery Plan sets out the role that TfL, boroughs and other stakeholders – including developers – can play in making ULEV the vehicle of choice in London, and should be considered as part of any new development proposals. The Delivery Plan specifies 15 key actions which aim to address challenges currently limiting the uptake of ULEVs in London. These include actions for the short, medium and longer term.
29. The Delivery Plan's vision is *"for London to grow as a sustainable city where ULEVs are the preferred option for all vehicle travel, not only across public transport, but also in other fleets and for private vehicle owners."* The three pillars that are needed to support the uptake of ULEVs are:
- Infrastructure: to give users the confidence to charge up or refuel as needed
 - Vehicles on the roads: public sector procurement/fleets to increase visibility of ULEVs and demonstrate confidence in the technology
 - Marketing and incentives: incentives and policy mechanisms to make ULEVs an attractive alternative to petrol and diesel vehicles.
30. Further details are set out in the Delivery Plan, including: working with car clubs, identifying strategic locations for charging infrastructure, increasing awareness of ULEVs, on-street charging solutions for residents, development of incentives, addressing freight, demonstrating new technologies, preparing for the potential

⁶ <http://content.tfl.gov.uk/ulev-delivery-plan.pdf>

commercialisation of hydrogen transport, testing concepts like ‘geofencing’⁷ and more.

Construction sites

31. The latest version of the London Atmospheric Emissions Inventory estimates that construction and non-road mobile machinery account for around 15% of particulate matter (PM10) and 12% of nitrogen oxide (NOx) emissions. The Mayor’s revised *The control of dust and emissions from construction and demolition* Supplementary Planning Guidance (SPG) and London Plan policies establish a construction equipment (Non Road Mobile Machinery) Low Emission Zone from 2015 to reduce construction emissions.
32. From September 2015, Non Road Mobile Machinery used on major construction sites in London will need to meet certain standards. The standards are stricter within the Central Activities Zone and Canary Wharf. From September 2020 the standards will be tightened again across London. The standards are secured through planning permissions and enforced by the Boroughs. The GLA is undertaking training and has developed a new web-based database to assist with enforcement of the scheme.
33. The SPG also supports the further roll-out of dust suppressants at construction sites and other mitigation measures such as the construction of green walls and careful site management to minimize the creation of dust.

London Plan Policy 7.14 and Air Quality Neutral

34. London Plan Policy 7.14 Improving Air Quality states that all major developments should be ‘air quality neutral’. The Sustainable Design and Construction SPG provides further guidance on how the standard is applied to major developments.
35. To enable the implementation of this policy, emission benchmarks were produced for buildings’ operation and transport across London based on the latest technology (including its effectiveness and viability).
36. The Building Emissions Benchmarks were derived from converting the average energy (gas and oil) consumption for various land uses into NOx and PM10 emissions⁸. A proposed development needs to calculate its potential emissions based on the proposed land uses by area and any NOx and PM10 emitting sources – generally combustion heating sources. If the anticipated emissions are higher than the calculated benchmark, the developer will have to include measures to further reduce emissions, firstly on site, where possible, then off-site.

⁷ Geofences can be used to define a virtual zone around a particular location using Global Positioning Satellite (GPS) technology and can be used to activate the electric mode of a range-extended EV/plug in hybrid (PHEV) when it enters a zero emission zone.

⁸ based on the London Atmospheric Emission Inventory 2008

37. Transport Emissions Benchmarks have been developed based on the average number of car trips by land use⁹, the distance travelled¹⁰ and the average emissions per kilometre travelled¹¹. The emissions benchmarks are expressed in square metres or per dwelling. Therefore where a transport assessment highlights higher emissions than average, the developer will have to off-set NO_x and PM₁₀ emissions.
38. Transport Benchmarks have been developed for outer London, inner London and the Central Activities Zone. Therefore if a development in outer London is assessed as likely to result in an above average number of car trips, mitigation measures will need to be implemented, unless the vehicles making the trips are low or zero emission vehicles or generated by car club vehicles.
39. Developments that do not exceed these transport benchmarks will be considered to avoid any increase in NO_x and PM emissions across London as a whole and therefore be 'air quality neutral'. This aims to avoid any increase in NO_x and PM₁₀ across London whilst ensuring increases in floorspace and housing are not unduly restricted.
40. These are to be considered maximum benchmarks and will be kept under review and will be updated in line with technological and commercial advances. This benchmarking is the first version of the 'air quality neutral' definition. It will be monitored and if required strengthened to ensure it is contributing to limiting increases in air pollution across London.
41. The SPG also include best practice for smaller schemes and emissions benchmarks for small boilers, Combined Heat and Power Plant and biomass boilers. It sets out the requirements for air quality assessments and off-setting measures.

More building retrofit

42. The Mayor's RE:FIT and RE:NEW programmes aim to retrofit a further 175,000 homes, public buildings and schools with energy efficiency measures by 2016. To date the RE:FIT and RE:NEW programmes have saved over 103,000 and 30 tonnes of carbon dioxide, respectively. A conservative assessment estimates the RE:NEW programme has reduced NO_x emissions by 21.4 tonnes across London. Of this, 11.22 tonnes of NO_x emissions were reduced through projects in outer London.

Investing in green infrastructure including green walls

43. The 2010 Mayor of London's Air Quality Strategy suggests that an increased level of urban greening has the potential to achieve local reductions in particulates. Several studies^{12,13} have showed that vegetation has a role to play in capturing air pollutants,

⁹ based on TfL's TRAVL – Trip Assessment Valid for London

¹⁰ using London Travel Demand Surveys

¹¹ using the London Atmospheric Emissions Inventory

¹² <http://content.tfl.gov.uk/role-gi-pmpollution.pdf>

although the effectiveness varies by species. The Mayor's urban greening policies and air quality policies will result in the delivery of more green roofs, roadside vegetation and walls, for example.

44. Whilst areas of Outer London with PTALs 0 and 1 are likely to be well vegetated, this approach can help in areas of London, such as along main roads, where concentrations of air emissions are higher.

Implementation

45. The mitigation measures outlined above which can be implemented through the statutory planning process (ie those that bear on planning policy and the determination of planning applications) can be secured in outer London as follows:

London borough local plans/development plan documents

- the Mayor of London and Transport for London are statutory consultees on draft London borough DPDs
- London borough DPDs must be in general conformity with the policies in the London Plan. Boroughs must request the Mayor's written opinion on the general conformity of all DPDs, and may request his opinion on other LDDs¹⁴. The Mayor's views on DPD general conformity are scrutinised and taken into careful account in local EIPs.

Planning applications

- Transport for London is a statutory consultee on all planning applications impacting on the strategic road network in London
- boroughs must refer applications of potential strategic importance¹⁵ to the Mayor – the Mayor has powers to refuse or take these over for his own determination. The Mayor offers a pre-application advice service¹⁶ for applications of potential strategic importance
- the defined categories of applications of potentially strategic importance are determined by the government and are set out in the Mayor of London Order 2008¹⁷. The referral threshold for residential applications is currently 150 units – however the Chancellor has recently indicated that the Government's intention is to bring this down to 50 units¹⁸. This devolution of planning powers to the Mayor

¹³ http://www.iaqm.co.uk/text/resources/vegetation_mackenzie.pdf

¹⁴ London Planning Statement, Mayor of London May 2014, paragraph 3.2

<http://www.london.gov.uk/sites/default/files/London%20Planning%20Statement%20SPG.pdf>

¹⁵ ibid paragraph 3.8

¹⁶ ibid paragraph 3.25

¹⁷ <http://www.london.gov.uk/sites/default/files/archives/Mayor%2520of%2520London%2520Order%25202008.pdf>

¹⁸ Fixing the Foundations, HM Treasury July 2015, para graph 9.20

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/443897/Productivity_Plan_print.pdf

is being pursued through the Housing and Planning Bill, and a likely subsequent amendment to the Order.

TfL Strategy and Planning / GLA Planning
19 October 2015

attached overleaf as an annex:

Proposed Parking Standards
a written legal opinion from Stephen Tromans QC

28 September 2015

In the matter of
Proposed Parking Standards
Changes to the London Plan

OPINION

1. I am jointly instructed in this matter by Transport for London (TfL) and the Greater London Authority (GLA). It concerns proposed amendments to policies in the London Plan (LP) which are comprised in the Minor Alterations to the London Plan (MALP) and their compatibility, or otherwise, with the requirements of the EU Directive on Ambient Air Quality 2008/50/EC (the Directive).
2. The issue arises because the MALP includes proposed changes to policy on maximum parking standards for new housing development in outer London which may have the effect of increasing traffic and in turn impacting on air quality. Friends of the Earth (FoE) and Clean Air in London (CAIL) have objected to these changes on the ground that they would be unlawful under the Directive.
3. The MALP is coming up for Examination in Public (due to begin on 21 October 2015 with parking standards to be considered on 22 October) and TfL/GLA have requested this Opinion for use in that context.
4. I will deal with the issues in the following order:
 - (1) The LP and MALP generally.
 - (2) The proposed changes to policy on parking standards.
 - (3) The likely impact of such changes.
 - (4) The Directive.
 - (5) The arguments of FoE and CAIL.

(6) Discussion and conclusions.

The LP and MALP

5. I will deal with this only briefly by way of background. The LP is the spatial development strategy for London under Part VIII of the Greater London Authority Act 1999 (the GLAA). Before it is published an examination in public must be held (s. 338). The Mayor is under a duty to review it from time to time (s. 340). The procedure for alteration is set out in the Town and Country Planning (London Spatial Development Strategy) Regulations 2000 No. 1491, which apply in relation to proposals to alter or replace the strategy (reg. 2(1)). There are requirements as to public participation (reg. 7) with special provision for minor alterations (reg. 7(7)). There are provisions for the examination in public of the proposed alterations (reg. 8).
6. By reg. 6 the Mayor is required to have regard to a number of specified matters in formulating the strategy, but these do not include air quality. However, under s. 41(4) and (5) of the GLAA, the Mayor in revising the LP must have regard (among other things) to the effect which the proposed revision would have on the health of persons in Greater London and the need to ensure that the LP is consistent with national policies and with the EU obligations of the UK.
7. The examination of the MALP is subject to para. 182 of the National Planning Policy Framework (NPPF) and will be considered against the test of soundness, which includes whether it enables the delivery of sustainable development in accordance with the policies in the NPPF.
8. Under para. 174 of the NPPF policy on local standards should be set out in the plan, and the likely cumulative impacts on development of all existing and proposed local standards should be assessed. Evidence supporting the assessment should be proportionate, using only appropriate available evidence.
9. Para. 39 of the NPPF says that if setting local parking standards, local planning authorities should take into account the accessibility of the development; the type, mix and use of development; the availability of and opportunities for public transport; local

car ownership levels; and “an overall need to reduce the use of high-emission vehicles”. It may be noted that there are other parts of the NPPF which support or require the adverse impacts of car traffic generated by proposed development to be properly assessed and mitigated. These include para. 32 on transport assessments, para. 35 on location and design of development in terms of promoting sustainable modes of transport, para. 36 on travel plans, and para. 69 on promoting healthy communities.

10. It is important to note that the policy in para. 39 has been supplemented by the Written Statement to Parliament of the then Secretary of State, Sir Eric Pickles MP, on 25 March 2015:¹

“This government is keen to ensure that there is adequate parking provision both in new residential developments and around our town centres and high streets.

The imposition of maximum parking standards under the last administration lead (*sic*) to blocked and congested streets and pavement parking. Arbitrarily restricting new off-street parking spaces does not reduce car use, it just leads to parking misery. It is for this reason that the government abolished national maximum parking standards in 2011. The market is best placed to decide if additional parking spaces should be provided

However, many councils have embedded the last administration’s revoked policies. Following a consultation, we are now amending national planning policy to further support the provision of car parking spaces. Parking standards are covered in paragraph 39 of the National Planning Policy Framework. The following text now needs to be read alongside that paragraph: **“Local planning authorities should only impose local parking standards for residential and non-residential development where there is clear and compelling justification that it is necessary to manage their local road network.”**

11. By para. 120 of the NPPF the effects (including cumulative effects) of pollution on health, and the potential sensitivity of the area to adverse effects from pollution, should be taken into account.
12. By para. 124, planning policies should sustain compliance with and contribute towards EU limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and the cumulative impacts on air quality from individual sites in local areas. It should also be noted that there is clear and detailed guidance in National Planning Practice Guidance on how local planning authorities should address air

¹ <https://www.gov.uk/government/speeches/planning-update-march-2015>

quality, both in the context of local plans, specific development, undertaking air quality assessments, and mitigating impacts (see ID 32-001-20140306).

13. National Planning Practice Guidance ((Paragraph 008 Reference ID: 42-008-20140306) contains the following passage on parking standards:

“Maximum parking standards can lead to poor quality development and congested streets, local planning authorities should seek to ensure parking provision is appropriate to the needs of the development and not reduced below a level that could be considered reasonable.”

14. A Technical Seminar in preparation for the EIP was held on 26 August 2015. At this seminar TfL presented an overview of the proposed changes to parking standards and the evidence on high level impacts and modelling. FoE raised the issue of compliance with EU law, and the Inspector indicated that he would expect to hear discussion on this at the EIP.

15. In September 2015 the Inspector published a draft list of matters to be examined. Matter 2 is parking standards and the relevant questions (c and j) are: whether the evidence in the integrated impact assessment report on parking standards (IIA) is sufficiently robust; whether any of the minor negative impacts referred to in the IIA are of significance in the overall balance of issues; and whether there is any evidence that the proposed approach to parking standards would lead to (i) a negative impact on the number of new dwellings delivered; (ii) a lower quality of urban design; (iii) a decline in air quality; (iv) a reduction in physical activity levels and/or widening of health inequalities; or (v) an increase in car ownership which may have consequences for inner London Boroughs; and if such evidence exists how would the Mayor address these issues?

The proposed changes to policy on parking standards

16. The Consultation Draft on the MALP (May 2015) refers to a letter dated 27 January 2015 from the then Minister of State for Housing and Planning welcoming a review of parking standards in Outer London and restating the Government’s view, namely that more spaces should be provided alongside new homes that families want and need, especially in areas of low public transport connectivity. The Mayor recognised the opportunity to adopt a

more flexible approach in parts of outer London, particularly where public transport connectivity levels are lower.

17. The proposed change (after suggested changes made in August 2015 in response to consultation responses) is essentially that, while maximum parking standards will remain in effect, outer London Boroughs should demonstrate that they have actively considered more generous standards for housing development in areas with low public transport connectivity² (generally PTALs 0-1) and take into account current and projected pressures for on-street parking and their bearing on all road users, as well as the criteria set out in the NPPF para. 39 (see proposed Policy 6.13.E.e).
18. The proposed amendments further state (6.42i) that in developing residential parking standards, outer London Boroughs should take account of residents' dependency on the car in areas with low public transport connectivity and that where appropriate Boroughs should consider higher standards, particularly to avoid generating unacceptable pressure for on-street parking: this may be especially important in "suburban" areas and for areas with family housing. In outer London a more flexible approach to applications may also be acceptable in some limited parts of areas within PTAL 2, in locations where the orientation or levels of public transport mean that a development is particularly dependent on car travel, taking account of the criteria set out in para. 39 of the NPPF (6.42j). Account should be taken of the extent to which public transport might be provided in the future (6.42k). The basic maximum residential car parking standards for suburban areas range from 1-2 spaces depending on PTAL, and for urban areas either 1 or 1.5 spaces depending on PTAL and density.

The likely impact of such changes

19. The IIA (April 2015) assesses the proposed alterations in terms of its environmental, social and economic performance against a series of sustainability objectives. Of particular relevance for this advice is the assessment of the impacts in terms of air quality. The overall assessment is that the proposed alteration would be generally positive for social and economic outcomes but slightly negative for environmental outcomes.

² Public transport access levels (PTALs) are based on walking time from the area to the public transport access point, and the reliability, frequency and level (waiting time) of the service.

However as the proposed alteration only affects a small proportion of the areas where London's housing is to be delivered, both positive and negative effects would be relatively limited.

20. It is also pertinent to note that the IIA does not take into account possible mitigation measures.
21. The IIA notes (para. 3.12) that in considering reasonable options as alternatives to the proposed alterations, one option would be to do nothing (i.e. leave the plan unchanged). However, in that case any more recently published Government guidance on parking standards would have to be considered when the decision-maker determines a planning application.³ It also refers to the Ministerial Statement of the then Secretary of State on 25 March 2015, set out above at para 10 above.
22. The IIA considers three options: the proposed preferred amendment to provide for more flexibility in the areas of worst PTAL scores (0-1); a wider amendment to provide for such flexibility in areas of PTALs scoring 0-2/3 in outer London; and a "do nothing" approach of no change.
23. In terms of health and well-being, the IIA notes that the increased provision in car parking under the preferred amendment is likely to result in at least some additional car journeys and less walking and cycling, though the extent is uncertain. The modelling suggests the increase in car trips over 24 hours would be around 0.8% which is seen as a marginal change and a minor negative effect (Table 4.1, item 3).⁴ The broader amendment would have a slightly more negative effect in increasing car trips, categorised as a negative effect. The do nothing option would have a minor positive effect in air quality and encouraging walking and cycling, but a minor negative effect on the health and well-being of persons with mobility problems.
24. In terms of air quality, again the IIA notes that the increased provision in car parking is likely to result in at least some additional car journeys, though the extent is uncertain. It makes an assumption of a causal effect between more liberal parking provision and car

³ This more recent guidance is summarised at Appendix 2 to the IIA, Table 1, para. 4.1.

⁴ Though there would be also a minor positive effect for those with health issues that are less mobile.

trips. Evidence suggests a marginal increase, though as housing will generally be low density, the number of additional homes and therefore of car journeys will be relatively minor (Table 4.1, item 16). It is also noted that there are wider policies to support alternative forms of travel and low emission vehicles. It is categorised as having a minor negative effect. The wider amendment is categorised as having a negative effect, and the do nothing option as having a minor positive effect.

25. It is also noted that at the local level the change could have more strongly felt effects, especially if there is some traffic congestion, and that this may affect how the outer London Boroughs chose to apply the policy (para. 4.14).
26. I am informed that modelling at this stage of the IIA can only give broad brush results at a borough-wide level. It cannot identify impacts on specific links of road. This could only be undertaken at the stage of a proposal for development at a specific location.

The Directive

27. The relevant requirements of the Directive are in Articles 12 and 13. The relevant pollutant is nitrogen dioxide (NO₂).
28. Article 12 states that in zones where the levels of NO₂ are below the relevant Limit Value, “Member States shall maintain the levels of these pollutants below the Limit Values and shall endeavour to preserve the best ambient air quality, compatible with sustainable development.”
29. Article 13 obliges Member States to ensure that throughout zones, levels of NO₂ in ambient air do not exceed the Limit Values specified in Annex XI from 1 January 2010. Compliance with this requirement is to be assessed in accordance with Annex III. Margins of tolerance laid down in Annex XI shall apply in accordance with Article 22(3) and 23(1).
30. “Limit Values” are defined as levels fixed on the basis of scientific knowledge, with the aim of avoiding, preventing or reducing harmful effects on human health and/or the environment as a whole, to be attained within a given period and not to be exceeded once attained (Article 2(5)).

31. The Limit Values for NO₂ are 200 µg/m³ on a one hourly basis, not to be exceeded more than 18 times per calendar year and 40 µg/m³ on an annual basis. The margin of tolerance in both cases is 50% on 19 July 1999, diminishing by an equal annual percentage to reach 0% by 1 January 2010.
32. Annex III requires assessment at all locations except for the three categories listed at Section A.2(a)-(c) (areas where members of the public do not have access and there is no fixed habitation; factory and industrial premises; and on road carriageways and central reservations to which there is no pedestrian access). The actual siting of sampling points is to be undertaken in accordance with the criteria in Sections B and C. The site selection procedures must be fully documented in accordance with Section D.
33. Article 22(1) allows for Member States to postpone the deadlines specified in Annex XI, but only for a maximum of five years and on condition that an air quality plan under Article 23 is established. That plan is to be supplemented by information listed in Section B of Annex XV demonstrating how conformity will be achieved before the new deadline. These include information on all air pollution abatement measures considered at local, regional or national level, including measures to limit transport emissions through traffic planning and management, and measures to encourage a shift of transport towards less polluting modes (Annex XV, section B.3(d) and (e)).
34. In cases where compliance is postponed, the Member State must ensure that the Limit Value is not exceed by more than the maximum margin of tolerance specified in Annex XI.
35. Under Article 23(1) where pollutants exceed any Limit Value, Member States must ensure that air quality plans are established for the relevant zone or zones. If the relevant attainment deadline has already expired, the plan must set out appropriate measures so that the exceedance period can be kept as short as possible. The plan must incorporate at least the information set out in Section A of Annex XV.
36. Consideration of these provisions involves also considering the decisions of the European Court and Supreme Court in Case C-404/13 R (ClientEarth) v. Secretary of State.⁵ It is

⁵ [2013] UKSC 25; [2015] UKSC 28.

clear that Limit Values are hard and binding requirements. Article 22, as was explained by the Commission in *Client Earth*, was added in 2008 as a limited way of derogating from the requirements of Article 13, subject to significant procedural and substantive requirements and safeguards and supervision by the Commission.⁶ It would extend the period so as to avoid a breach occurring. Article 23, by contrast, applies where a breach has already occurred and is not as such a derogation but rather an “emergency mechanism” to be seen as a specific implementation of the general duty of Member States under Article 4(3) TEU to remedy breaches.⁷

37. The Supreme Court recorded the position regarding non-compliance in the UK and elsewhere in the EU, the fact that the EU had not sanctioned any loosening of the Limit Values, and that formal infringement proceedings had been instigated against the UK in respect of NO₂. It was accepted by the Government that previous air quality plans published in June 2011 would need to be revised to take account of new information and of new measures to address the problems.
38. The CJEU, as the Supreme Court noted, did not directly address the question of whether a Member State is obliged to make an application under Article 22 in the event of non-compliance by the 2010 deadline. The point had in fact become academic, as any extension could only have been until 1 January 2015. The Supreme Court did not decide the issue but appears to have been inclined to follow the suggestion of the Commission that Article 22 is an optional derogation rather than a mandatory requirement (see para. 27). With respect, that seems correct. The UK was not obliged to apply under Article 22, but if it wished to obtain an extension of the deadline beyond 1 January 2010 would have had to do so. Failure to apply means that as from the 2010 deadline the UK was in breach and Article 23 applied. Of course, even if the UK has applied for and been granted an extension, it could not run beyond 1 January 2015.
39. Thus the UK’s obligation is to submit a plan for any non-compliant zone which conforms to Article 23, and setting out measures to keep the period of non-compliance “as short as possible”. The UK is of course already out of time to do this, as the plan should have been submitted no later than 2 years after the end of the year the first exceedance was observed.

⁶ [2015] UKSC 28, paras 11-12.

⁷ [2015] UKSC 28, para 12.

40. The Government in *ClientEarth* had indicated its intention to submit a new plan by December 2015. The Supreme Court accepted however that it is for the national court to impose such order as is necessary to ensure the plan is established and imposed a mandatory order that new plans be prepared within a defined timetable, to end with submission to the Commission by no later than 31 December 2015.
41. The Government published for consultation in September 2015 its proposal for the necessary draft plans. This notes (para. 109) that local authority planning policies should sustain compliance with and contribute towards meeting air quality limit values for pollutants, taking into account the cumulative impacts on air quality from individual sites in local areas (para. 109). In Air Quality Management Areas planning decisions should ensure that any new development is consistent with the local air quality action plan. It also emphasises the importance of encouraging cycling, walking and shifts to cleaner ways of travel (para. 130).
42. The consultation includes Table C1 which details relevant local authority measures within Greater London to achieve the relevant air quality standards. Each borough has put forward a detailed package, which have common features (e.g. encouraging alternative travel modes) but which is specific to each borough.

The arguments of FoE and CAIL

43. In its e-mail of 22 June 2015, to the Mayor, FoE cites the ClientEarth case. It says that air pollution limits are absolute, must be met irrespective of costs, and cannot be averaged across a zone. Article 12 of the Directive imposes a “no deterioration principle” where Limit Values are being met. A new breach must not be caused and an existing breach must not be exacerbated. Because London is not compliant with Limit Values, FoE suggests that any measures conceived of as mitigation to render a development neutral in terms of air quality would have to be discounted as the UK is required to be taking such measures already. It concludes that any amount of worsening of air quality (the amount not being relevant) renders the proposals unsound.

44. In its letter of 21 June 2015 to the Mayor, CAIL also refers to the ClientEarth case and a letter of clarification from the European Commission, and makes the following submissions:

- (1) NO₂ limit values must be achieved urgently and as soon as possible to protect public health;
- (2) Limit values are absolute obligations that must be attained irrespective of cost;
- (3) Limit values apply everywhere with three exceptions;
- (4) Limit values must not be exceeded once attained;
- (5) Where air quality is good, by Art. 12 of the Directive Member States must not only maintain levels below limit values but also endeavour to preserve the best ambient air quality compatible with sustainable development.
- (6) It is unlawful to worsen air quality breaching limit values and would not be consistent with sustainable development to worsen it where limit values are being achieved.
- (7) Mitigation measures, such as through the implementation of London wide policies cannot be relied on to reduce the impact.
- (8) The proposed policy alteration would worsen already illegal concentrations of NO₂. To worsen air quality contradicts the duty under the Directive. None of the exceptions to the duty to attain Limit Values applies.

Discussion

45. Plainly the UK is in breach of Article 13 in respect of a number of areas of London in that Limit Values for NO₂ were exceeded after the relevant date of 1 January 2010, and continue to be exceeded. There is a general obligation under Article 4 of the Treaty on European Union (Lisbon Treaty) to “take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaty or resulting from the acts of the institutions of the Union” and to “refrain from any measure which could jeopardise the attainment of the Union’s objectives”. In the specific context of the Directive, this manifests itself in the Art. 23 obligation to set out in the plan, and take, appropriate measures, to keep the exceedance period “as short as possible”.

46. The Mayor and TfL are plainly parts of the State for this purpose and are subject to these obligations (though of course it is for the Secretary of State to comply with the specific

obligation regarding the plan). Specifically under s. 41(4) and (5) of the GLAA, the Mayor is obliged to have regard to the effect of the proposed revision on the health of persons in Greater London, and the need to ensure that the LP is consistent with national policies and with the EU obligations of the UK.

47. Accordingly, if for example TfL or the Mayor were promoting or considering a project which would generate air pollution which would adversely affect the UK's compliance with the Directive, this would be an important consideration in whether to proceed with the project.
48. However, it cannot simply be assumed (as FoE and CAIL) appear to do, that the proposed change to policy would have that effect.
49. First, it has to be born in mind that what is at issue here is policy. The proposed change contemplates a possible relaxation of parking standards in limited cases. It would be for the relevant London Borough as planning authority to decide whether a more flexible approach should be adopted in its area or in relation to a particular planning application, having regard to all relevant considerations. Those considerations would include potential effect on air quality which would have to be assessed and mitigated as appropriate, having regard to all material factors, including compliance with EU air quality requirements and the implications for human health.
50. Plainly any change to a local plan would have to be considered and assessed in terms of its possible cumulative effect on air quality in accordance with the NPPF and Planning Practice Guidance set out above and as indicated in the Government's proposed draft plan to rectify the UK's breach of the Directive. Similarly under the same requirements, the potential impacts of any specific development which made more liberal provision for parking would have to be considered. It would be possible at that stage to get a much more accurate picture of whether it might impact on air quality standards at link road level. It would also be possible to take proper account of the local situation in terms of public transport provision, measures to encourage walking and cycling and use of lower emission vehicles, etc, in a way which is not possible at the MALP stage.
51. Secondly, even irrespective of the proposed change in policy in the LP, the local planning authority would be obliged to have regard to the national policy set out above in the

NPPF as supplemented by the Ministerial Written Statement and the NPPG. To the extent the LP did not take account of such up to date policy its own weight as a material consideration would be diminished and arguably it would be unsound.

52. Thirdly, even leaving aside these previous two points, it is not clear that the proposed policy change would impact adversely on compliance with the UK's legal obligations under the Directive.
53. If it is assumed that relaxation of parking standards for new development in areas of low public transport connectivity would in some cases result in some households having an additional car, and this would generate some additional trips, the evidence suggests that the numbers would be very modest relative to existing levels of traffic.⁸ This is without considering mitigating measures which might be required in respect of the development (as opposed to London-wide measures) to encourage alternative modes of transport. It is in my view proper to take such specific measures into account in considering what the likely impact of the development will be.
54. Further, in deciding whether it is likely that the modification of the policy will result in a breach of the obligation to keep the exceedance period as short as possible it does not seem to me to be irrelevant to consider the London wide measures such as the ULEZ which will hopefully improve air quality and indeed the measures anticipated by London Boroughs under the September 2015 draft plan. Any likely adverse effects of the policy change should it seems to me be assessed against the background of those projected improvements in considering whether they will result in the period of exceedance not being kept as short as possible.
55. Accordingly, it cannot simply be assumed that the effect of the policy modification would be to cause a Limit Value measured in the relevant locations in accordance with Annex III of the Directive to be breached or would result in compliance with the Limit Value being delayed. The fact that there are continuing breaches of Limit Values at some locations within the zone does not in my view necessarily prohibit any action which might have some adverse impact on air quality generally. That seems to me to be too

⁸ It is also clear from recent research in the study Health Impacts of Cars in London (GLA, September 2015) that many car trips in London are very short distance (less than 5 km and often only 2km or less) and hence may be expected to have effects on air quality largely within the borough.

wide a proposition. Article 13 is concerned with specific exceedances of the Limit Value, measured as concentrations either on the annual basis, or on an hourly basis with a tolerance of up to 18 hours exceedance per year.

56. The other limb of the FoE/CAIL argument is based on the obligation in Article 12 to endeavour to maintain levels of pollutants below the Limit Values and to endeavour to preserve the best ambient air quality, compatible with sustainable development. This of course will be applicable throughout the zone. There is no evidence that the proposed modification will cause levels of NO₂ to exceed the Limit Values as these can only be measured at the local level at specific locations. The obligation to “endeavour” to preserve the best ambient air quality is qualified, so far as this is compatible with sustainable development. This in my view involves balancing the environmental, economic and social considerations, which is what TfL/the Mayor have sought to do in the consultation. This is of course also the paradigm requirement under the NPPF. Whilst the effect of the relaxation on policy on parking standards would be a minor adverse effect on air quality, there would be beneficial social effects in terms of assisting those with mobility problems and in reducing parking problems and related traffic issues. That approach seems to me compatible with Article 12, which plainly does not require that ambient air quality should automatically trump other considerations.

57. The position therefore seems to me to be that Government policy clearly requires that local parking standards should only be imposed where there is clear and compelling justification for them, because of the adverse local effects they can have on parking. The MALP is not proposing that maximum standards should be abolished, merely that outer London Boroughs in areas where public transport connectivity is poor should demonstrate that they have actively considered more generous standards in these areas, taking into account pressures for on-street parking and their bearing on all road users, as well as the criteria set out in para. 39 of the NPPF. Para. 39 of the NPPF includes as one of its bullet points the overall need to reduce the use of high-emission vehicles. The MALP is therefore plainly not suggesting that outer London Boroughs should ignore the implications for air quality of more generous parking standards. Local authorities would have to consider the issue in any event in order to comply with the NPPF and planning practice guidance, as well as their own duties under EU law and the national legislation on air quality. If it was desired to make that more explicit on the fact of the MALP,

reference could be made to considering the implications for air quality or to the relevant provisions of national policy dealing with this, as set out above.

58. In short therefore, relaxation of parking standards may or may not be problematic for air quality at the local level. It will depend on the situation within the Borough and the location and scale of the proposed development. If it is not problematic there is no reason why the London Borough should not relax the standard, as contemplated by national policy, having regard also to considerations such as encouraging more sustainable modes of transport, and more healthy modes such as walking and cycling. If on examination, the relaxation appears to have significant adverse implications for air quality, this would be a material consideration to be considered by the London Borough, and nothing in the MALP precludes that.

59. In my opinion therefore it is not correct to say that approval of the proposed modification of the relevant LP policies on parking standards would be contrary to either EU or UK law.



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28 September 2015

In the matter of
Proposed Parking Standards
Changes to the London Plan

OPINION

STEPHEN TROMANS QC

39 Essex Chambers
London
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Director, Legal
Transport for London

Mr Mike Lancaster