

HERTFORDSHIRE COUNTY COUNCIL

**PUBLIC HEALTH AND PREVENTION CABINET PANEL
WEDNESDAY, 18 SEPTEMBER 2019 AT 10:00AM**

BROXBOURNE AIR QUALITY PROJECT UPDATE REPORT

Report of the Director of Environment and Infrastructure

Author: - Trevor Brennan, Strategy & Programme Manager,
East Herts & Broxbourne (Tel: 01992 658406)

Executive Member/s: - Phil Bibby, Highways and Environment

Local Member/s: - Paul Mason, Hoddesdon South

1. Purpose of report

- 1.1 To inform Members of the development of the Broxbourne Air Quality Project and agree the establishment of a Hertfordshire County Council / Borough of Broxbourne joint Members Engagement Group.

2. Summary

- 2.1 A Ministerial Directive was issued in October 2018 to Broxbourne Borough Council (BoB) regarding air quality on the southern section of the A10. As a consequence Hertfordshire County Council and BoB were required to develop targeted measures which could bring compliance with air quality standards forward in the shortest possible time. Whilst a series of possible options to address air quality along this section of the A10 were identified, the Department for Environment, Food & Rural Affairs (Defra's) Joint Air Quality Unit (JAQU) have recently advised that they consider the implementation of a Clean Air Zone to be the only realistic option.

3. Recommendations

- 3.1 A report on this item of business will be considered by the Highways & Environment Cabinet Panel on 11 September 2019, is to be noted at the Public Health & Prevention Cabinet on 18 September 2019 and considered at Cabinet on 23 September 2019.

- 3.2 The Highways & Environment Cabinet Panel will be invited to recommend to Cabinet: -

“That Cabinet approves the establishment of a Hertfordshire County Council and Broxbourne Borough Council Joint Members Engagement Group for the Broxbourne Air Quality Project as set out in the report; the Group to report back to the Highways & Environment Cabinet Panel and Cabinet on progress as appropriate.”

4. Background

- 4.1 Following **R (ClientEarth No.3) v Secretary of State for Environment, Food & Rural Affairs, Garnham J**, on the 21 February 2018 judgment, the High Court required the Government to take a direct legal approach with those local authorities responsible for air quality issues relating to roads where there was an exceedance of annual mean EU Limit of 40 $\mu\text{g}/\text{m}^3$ (Micrograms per Cubic Meter of Air) for Nitrogen Dioxide (NO_2). The southern part of the A10 in the Borough of Broxbourne, was identified as part of this process, and BoB was issued with a ministerial direction on 22 March 2018 requiring them to carry out further work to consider actions that could bring forward compliance dates. BoB is therefore *legally* required to undertake actions to address this exceedance in the shortest time possible. Hertfordshire County Council’s legal obligation is as a result of being highway authority and therefore it has a legal requirement to work proactively with BoB to address the air quality exceedance.
- 4.2 As a consequence of ministerial direction, Broxbourne has carried out a detailed study of the A10 road link in question (see Map 1, below), using local modelling data, which gives a much more granular, representative picture of air quality on the road. This Targeted Feasibility Study was submitted to the Government on 31 July 2018, as required by the ministerial direction.

Map 1: Location of Air Quality area in exceedance of annual mean EU Limit of 40 $\mu\text{g}/\text{m}^3$ for NO_2 .



- 4.2 The study identified a much more significant problem, projecting that this stretch of A10 will see emissions that exceed the legal limit until 2028, assuming no further action is taken other than the projected switch to electric vehicle fleets. This was deemed unacceptable by Government and therefore the priority has been to identify options which will address the air quality issues in the shortest time possible.
- 4.4 On the 5 October 2018, BoB was issued with a further ministerial direction requiring it to carry out a more detailed study to identify the most suitable measures to address the exceedance in the shortest time possible. The deadlines for that work included an initial plan by 31 January 2019 (**achieved**) Outline Business Case (OBC) by 31 October 2019 and a Final Business Case (FBC) by March 2020.
- 4.5 The Department for Transport (DfT) and Defra have established a Joint Air Quality Unit (JAQU), with officials from the two Departments working together. The JAQU is continuing to provide funding of the study. A technical working group was set up with BoB and supporting consultants to identify potential measures to bring forward compliance and develop the required business cases.

5. Outline Business Case

- 5.1 The outputs from the Targeted Feasibility Study concluded that the pollution was far worse than originally modelled. A key finding was that the ability to meet air quality compliance with the legal limit would not be achieved before 2028 by the implementation of the measures outlined in the Broxbourne Transport Strategy (which include improvements to sustainable transport and A10 junction improvements) plus speed limit reductions alone (Option A). Instead it identified that the most viable solution in terms of achieving compliance in the shortest time possible would be to implement some form of charging. Initial work looked at the potential for implementing a toll for through traffic on the A10, but Hertfordshire County Council and BoB officers have since been directed by JAQU that a Charging Clean Air Zone (CAZ) is the only realistic option to achieve compliance as quickly as possible (Option B). See Appendix 1, for further details on Options A & B.

- 5.2 Any potential CAZ will mean that a zone within and around the section of the A10 will be created where all commercial and domestic vehicles, other than motorbikes which are not Euro 4 Petrol (i.e. registered before 2005) and Euro 6 Diesel compliant (i.e. registered prior to 2015 /2016 depending on the model) will be charged to enter the zone. The CAZ will involve:
1. A CAZ Signing Strategy will implement a new signing network which will notify drivers on the approach to the zone that a CAZ is in operation, providing information of the charges which are being enforced. 'Countdown' signs will be installed on all approaches to the CAZ, providing drivers with advance information for drivers on how to check if their vehicles comply and the charges for non-compliant vehicles.
 2. A network of Automatic Number Plate Recognition (ANPR) cameras will need to be installed at the intersections where approach roads meet the CAZ boundary, both on the incoming and outgoing roads. This camera network will provide the tool for enforcement of the CAZ, capturing images of the number plates of every vehicle which enters and leaves.
 3. A 'back office' administration system with software to check the number plates against a list of compliant vehicles. The system will also identify those vehicles which are not exempt, check these against payment records and administer fines for non-payment. Hertfordshire County Council and BoB Officers have been informed by JAQU that they are setting up a centralised system to administer CAZ charges.
- 5.3 It is anticipated that the implementation of a CAZ will contribute towards improved air quality, promoting a significant behavioural shift, with many drivers opting for an alternative, more eco-friendly method of transport or vehicle.
- 5.4 These initial options are now subject to a more detailed study of the air quality, economic, capital/revenue costs and network management impacts. The outcomes of these will be subject to review and evaluation by JAQU over the next four months and will be included as part of the submission of the OBC scheduled for the 31 October 2019.
- 5.5 The OBC will include an estimate of the capital/revenue costs for the implementation of the recommended option. This will require some engagement with the market to provide indicative costings and a timeline for the installation of the ANPR equipment and any non-centralised 'back office' administration functions. If the OBC is judged to satisfy the criteria outlined in the ministerial directive, funding will be approved for the final stage of preparing the Full Business Case (FBC); this stage will also include a full public consultation exercise and procurement.

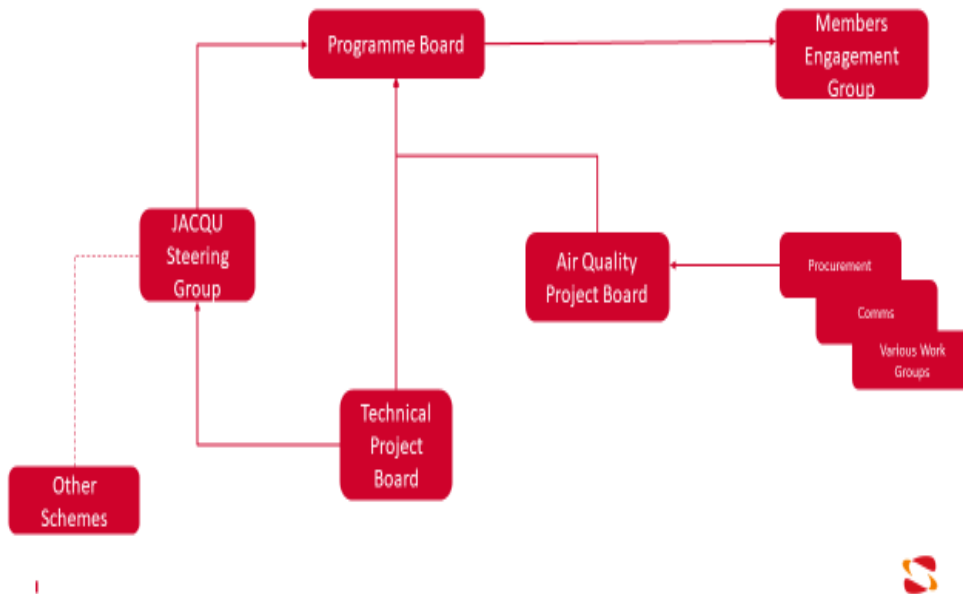
6. Governance

6.1 To deliver the project there is a need to focus resources from both BoB and Hertfordshire County Council to ensure the project objectives and timelines are achieved. This is a complex project with many stakeholder groups and several organisations providing expertise and guidance. A joint workshop was held with JAQU and HCC and BoB were advised on best practice for proceeding with governance. As a result of these discussions , it is proposed to establish the following Governance structure:

1. **Programme Board** (Responsibility for the delivery of the project)
2. **Members Engagement Group** (Membership of portfolio holders and councillors who have a direct interest in the scheme)
3. **Air Quality Board** (Joint working group between the two councils to coordinate resources to produce the OBC/FBC)
4. **Technical Group** (Delivery of the economic and air quality analysis of the proposed scheme scenarios and development of the business cases)
5. **JAQU Steering Group** (Liaison with DEFRA to monitor progress on the BoB compliance with the Ministerial Directive)

6.3 The overall proposed Governance structure is the following diagram:

PROPOSED GOVERNANCE MODEL



- 6.4 The Technical Group and JAQU Steering Group are already in place, it is intended to implement the remaining governance structure with immediate effect.
- 6.5 The proposal for a joint members engagement group was agreed by BoB at an informal cabinet briefing on the 15th July and at a members briefing on 29th July 2019.

7. Public Consultation

- 7.1 Subject to the submission and approval of the OBC, a full public consultation on the proposed adopted option, will be undertaken as part of the FBC. It is anticipated this will occur in late 2019.

8. The Policy Context and Legal Framework

- 8.1 The Borough of Broxbourne has the legal responsibility for air quality issues (EA Act 1995) in the BoB, however, Hertfordshire County Council as Highways Authority is likely to be responsible for implementation of any options, via ministerial decree or request.
- 8.2 Any implementation of a CAZ option will be likely under Section 163 et seq, Part III of the Transport Act 2000 which governs “charging schemes”. Hertfordshire County Council’s Legal Team’s initial advice is set out below:

- I. The Borough of Broxbourne (“BoB”) was issued a Direction by the Secretary of State (“SoS”) on 5 October 2018 requiring BoB to deliver a plan to identify how to bring forward compliance with air quality regulations. The Directive requires that an initial plan must be submitted by 31 January 2019 and a final plan by 31 October 2019. BoB has acknowledged the Direction, and although it is not the highways authority, has confirmed that it will work alongside relevant partners, including Hertfordshire County Council as highway authority for Hertfordshire, to develop a plan to be submitted before the deadline in 2019.
- II. The Air Quality (England) Regulations 2015 set air quality objective levels for three main pollutants including nitrogen dioxide, PM10 and sulphur dioxide. Local authorities have a duty to review the air quality in their district under the Environment Act 1995, as poor air quality has the potential to adversely affect public health. The BoB is required under this law to carry out regular reviews and assessments of air quality in Broxbourne against standards and objectives set out by the National Air Quality Strategy. Where exceedances are considered likely, the local authority must declare an Air Quality Management Area (AQMA) and prepare an Air Quality Action Plan (AQAP) setting out the measures it intends to put in place to facilitate compliance with these objectives and the priority, in putting together a AQAP, must be to identify options which will address the air quality issues as quickly as possible.
- III. Whilst local authorities are not obliged to meet the objectives, they must show that they are working towards them. Where the AQMA designation arises primarily as a result of transport pollution, local authorities in England have the freedom to integrate their action plans into their Local Transport Plans (LTPs). In such cases, the Government will no longer require the production of a separate action plan.
- IV. The primary legislation in respect of air quality is set out in the Environment Act 1995, in sections 41 and 42 in particular. Additionally, air quality objectives are set out in the Air Quality (England) Regulations 2000, as amended by the Air Quality (England) (Amendment) Regulations 2002, and these provide the statutory basis for the air quality objectives under Local Air Quality Management (LAQM) in England.
- V. S.82 Environment Act 1995 provides that every local authority shall review the air quality within its area, both at the present time and the likely future air quality.
- VI. S.83 Environment Act 1995 requires local authorities to designate an AQMA where air quality objectives are not being

achieved, or are not likely to be achieved, as set out in the Air Quality (England) Regulations 2000.

- VII. Once an AQMA has been designated, S.84 Environment Act 1995 requires the local authority to develop an AQAP detailing remedial measures to tackle the problem within the AQMA.
- VIII. There are obligations on both district and county councils within Part IV Environment Act 1995. In summary, the SoS expects district and county councils to work together to develop their content and to ensure that all necessary measures to address air pollution in their local area are included in the AQAPs.
- IX. County councils have a number of obligations under LAQM (set out below) and, in practice, county councils must proactively engage with the relevant district council, in this case BoB, as soon as an air quality issue is identified.
- X. Where a district council is preparing an AQAP, county councils are obliged, under S.86(3) Environment Act 1995 to submit measures related to their functions (in this case as highway authority) to help meet air quality objectives in their local area. These measures will be for inclusion in the AQAP being developed (or Plans that undergo revisions) and should include the timetable for implementation of measures to be adopted.
- XI. Under paragraph 3.1 Air Quality (England) Regulations 2000, submission of these county council proposals should take place within 9 months of first being consulted on the AQAP by the district council. Earlier responses from county councils are encouraged in order not to delay the completion of the Action Planning process.
- XII. County councils are a consultee to AQAPs and under S.86(2) Environment Act 1995 the county council may make recommendations to the district council in relation to any review and assessment of air quality or development or amendment of AQAPs in the local authority area.
- XIII. Under S.84(5) Environment Act 1995 where there is disagreement between the county council and the district council in relation to the content of an AQAP, either the district or the county council can refer the issue to the SoS for Environment Food and Rural Affairs. The SoS may choose to accept or reject the disputed AQAP (with or without modifications) and it may not be finalised until a decision from the SoS has been made.

9. Financial implications

- 9.1 The study and subsequent scheme are to be fully funded by JAQU, via a capital grant to BoB.
- 9.2 This grant will likely be unconditional and will be for the total cost of the scheme. It is not anticipated that there will be any capital funding implications for Hertfordshire County Council or BoB for the implementation of the scheme.
- 9.3 The capital funding from Government is likely to be divided into two funding streams (1) the Implementation Fund and (2) the Clean Air Fund.
- 9.4 The Implementation Fund will provide funding to implement the physical scheme, i.e. a possible CAZ signing and Automatic Number Plate Recognition (ANPR) camera networks and the 'back office' administration system. The Clean Air Fund will provide the funds required to implement a package of mitigation measures to alleviate the impact of the scheme; these measures are proposed to be implemented by the Hertfordshire County Council and BoB to mitigate the impact to the most significantly affected socio-economic groups, because of the implementation of the proposed options.
- 9.5 A number of highways assets will likely be introduced as a result of the implementation of the any proposed CAZ scheme. As such revenue expenditure will be required for the maintenance of these assets, together with ongoing operational costs. A revenue income will be generated by the toll payments and any income will first be used to cover the costs of running the CAZ. The Transport Act 2000 requires any excess revenue that may arise to be re-invested to facilitate the achievement of local transport policies: the money would be invested in transport infrastructure measures to benefit the public and improve air quality, within the area.

10. Equality Impact Assessments (EqIAs)

- 10.1 When considering proposals placed before Members it is important that they are fully aware of, and have themselves rigorously considered the equalities implications of the decision that they are taking.
- 10.2 Rigorous consideration will ensure the proper appreciation of any potential impact of that decision on the County Council's statutory obligations under the Public Sector Equality Duty. As a minimum this requires decision makers to read and carefully consider the content of any Equalities Impact Assessment (EqIA) produced by officers.
- 10.3 The Equality Act 2010 requires the Council when exercising its functions to have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and other conduct prohibited under the Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

and

- (c) foster good relations between persons who share a relevant, protected characteristic and persons who do not share it.

10.4 The protected characteristics under the Equality Act 2010 are age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion and belief, sex and sexual orientation.

10.5 There are potential equality impacts identified arising because of this report. A full EqIA, has been undertaken and agreed with Hertfordshire County Council Equalities Team, a summary statement is set out below and attached as Appendix 2.

“The proposed package of mitigation measures (exemptions, discounts, sunset periods, financial incentives to support business and enhanced infrastructure to support transition to compliant modes of transport) is intended to reduce the impacts of the CAZ on these groups (age, disability, pregnancy and maternity, race, religion or belief, income deprived, those accessing community and taxi based transport) that have been assessed as being impacted upon”

Background Information

- <https://airqualitynews.com/2018/10/05/ministers-issue-direction-for-next-steps-in-no2-plan/>
- Defra Ministerial Directive Environment Act 1995 (Appendix 3 to the report)