



## Cabinet 21 November 2012

### Revocation of Air Quality Management Order (Nov12/14)

#### 1. Summary and reasons for recommendation

- 1.1 An Air Quality Management Area was designated, by Order in April 2010, in the vicinity of the Post Office, The Street, Great Barton, following an assessment of nitrogen dioxide levels, which confirmed that there was an exceedence of the annual mean objective for that pollutant.
- 1.2 The Order was designated on the understanding that it was sufficient for residential occupiers alone to be 'exposed' to the pollutants in their home.
- 1.3 Further consideration of the requirements of the Environment Act 1995 and the accompanying Regulations has led officers to question the legitimacy of the designation and the Technical Guidance issued by the Department of Environment, Food and Rural Affairs (DEFRA).
- 1.4 Legal advice has confirmed that the achievement, or otherwise, of the Government's air quality objectives is determined by reference to the quality of the air at locations which are 'situated outside buildings' and 'where members of the public are regularly present', and that the quality of air at the façade of a residential building should not be used as a proxy for the likely annual exposure of members of the public resident in the property.
- 1.5 'Regularly present' (the second limb of the Regulations) for the purposes of an annual mean objective means that people need to be in the area for a cumulative period of six months of the year. Observations of The Street, Great Barton, have confirmed that this criterion has not been met.
- 1.6 As the likely exposure of residential occupiers is not a relevant consideration and that there are no members of the public 'regularly present' in The Street, Great Barton, the Air Quality Management Area should not have been designated and the Order should be revoked.

#### 2. Recommendation

- 2.1 That the Air Quality Management Order 2010/1, The Street, Great Barton, as detailed in Section 4 of Report D206, be revoked.

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### 3. Corporate priorities

3.1 The recommendation meets the following, as contained within the Corporate Plan:

Corporate Priorities:

- (a) *'Working together for strong, healthy and diverse communities'*;
- (b) *'Working together for prosperous and environmentally-responsible communities'*; and
- (c) *'Working together for an efficient council'*.

### 4. Key issues

4.1 Local authorities are required to review and assess local air quality to determine whether the Government's air quality objectives are likely to be achieved (Environment Act 1995, s 82).

4.2 Guidance issued by DEFRA advises that air quality objectives should apply at **the façades of residential properties** and that where these are exceeded an Air Quality Management Area (AQMA) should be designated.

4.3 Measurements of nitrogen dioxide taken at a location representing the façade of residential properties in the vicinity of The Street, Great Barton, have shown that the annual mean level of nitrogen dioxide exceeds the objective level of 40µg/m<sup>3</sup>. Accordingly an Air Quality Management Order was designated on 11 May 2010 on the understanding that it was sufficient for residential occupiers alone to be 'exposed'.

4.4 In developing an action plan to try and mitigate the exceedence, further consideration of the requirements of the Act and accompanying Regulations has led the local authority to question the legitimacy of the designation.

4.5 The Air Quality (England) Regulations 2000 state that the achievement of the objectives shall be determined by reference to the quality of air at locations:

- (a) which are situated outside buildings.....; and
- (b) where members of the public are regularly present.

4.6 Legal advice has confirmed that both these criteria must be satisfied: i.e. that the exceedence of the pollutant must be outside **and** that members of the public must be regularly present.

4.7 The advice that the air quality at the façade of a residential building should be used as a proxy for the likely annual exposure to members of the public resident in the property, and which should lead to a designation of an AQMA where the air quality objective is exceeded, is considered to be erroneous on two counts:

- (a) the achievement of the air quality objectives is by reference to air at outside locations and not inside residential properties; and
- (b) notwithstanding the above, the relationship between internal and external air is not 1:1 and the level of the pollutant outside should not be used as a proxy for the level inside.

- 4.8 The second limb of the regulations requires members of the public to be regularly present in the area where there is an exceedance of the air quality objective. Regularly present for the purposes of an annual mean objective means that people need to be in an area for a cumulative period of six months of the year. Observations of The Street, Great Barton, confirm that this criterion is not met.
- 4.9 The re-evaluation of the review and assessment of air quality in The Street, Great Barton, has confirmed that the annual mean level of nitrogen dioxide outside buildings exceeds  $40\mu\text{g}/\text{m}^3$ , the objective level, but that there are no members of the public regularly present at that location. It is concluded that the Air Quality Management Area should not have been designated and that the Order should be revoked.

## 5. Other options considered

- 5.1 There is only one other option, which would be to retain the Air Quality Management Area (AQMA). Retaining the AQMA would necessitate the local authority carrying out a Further Assessment of the air quality inside the AQMA, and produce an Action Plan detailing proposed actions to improve air quality. Notwithstanding that the requirements of the Regulations to designate an AQMA have not been met, officers have discussed whether there are any actions that can be undertaken to improve air quality with Suffolk County Council, the Highways Authority (the pollutant is a traffic pollutant). It has been concluded that there are no cost effective solutions to reduce pollutant levels.

## 6. Community impact

### 6.1 Crime and disorder impact *(including Section 17 of the Crime and Disorder Act 1998)*

- 6.1.1 The recommendation would have a neutral impact on crime and disorder.

### 6.2 Diversity and equality impact *(including the findings of the Equality Impact Assessment)*

- 6.2.1 The recommendation would not adversely affect the residents of The Street, Great Barton.

### 6.3 Sustainability impact *(including completing a Sustainability Impact Assessment)*

- 6.3.1 The recommendation would have a neutral impact on sustainability.

## 7. Consultation

- 7.1 A consultation of the recommendation to revoke the order has been carried out with the following:

- (a) Department of Environment, Food and Rural Affairs;
- (b) Suffolk County Council;
- (c) The Highways Agency;
- (d) The Environment Agency;
- (e) District and Borough Councils contiguous to the Council's boundary;
- (f) Great Barton Parish Council;

- (g) Borough and County Council Ward Members; and
- (h) residents living inside the Air Quality Management Area.

- 7.2 Responses to the consultation were received from DEFRA, the County Council, the Highways Agency, East Cambridgeshire District Council, the Borough Council's Ward Member and a resident of Great Barton who lives outside the AQMA.
- 7.3 The Highways Agency had no comment on the proposed revocation; the Ward Member requested that monitoring of pollutant levels continues to monitor trends (it will); the resident of Great Barton was concerned about the levels of pollutants inside the Post Office; East Cambridgeshire DC suggested that there may be advantages to keeping the AQMA. Both DEFRA's and the County Council's view was that the AQMA should be retained.
- 7.4 DEFRA does not consider that the Council's 'legalistic and detailed interpretation of the Regulations to be within the spirit of the Regulations or of local air quality management obligations to work in pursuance of air quality objectives and to improve air quality'. It does, however, acknowledge that there may be some ambiguity between the Regulations and the Guidance and it is reviewing the Regulations and Guidance, although it may be some time before this is completed. It also acknowledges that the decision to declare or revoke an AQMA is a local one. Suffolk County Council does not support the Council's interpretation of the Regulations.

**8. Financial and resource implications** *(including asset management implications)*

- 8.1 Revoking the Air Quality Management Order would not have any resource implications.
- 8.2 Retaining the AQMA would require the submission to DEFRA of a Further Assessment Report on air quality inside the AQMA, and an Action Plan detailing those actions that are proposed to improve air quality. This would involve both officer time and the engagement of an air quality consultant to carry out this work, the costs of which have not been determined but are likely to be in the region of £10,000 to £15,000.

**9. Risk/opportunity assessment** *(potential hazards or opportunities affecting corporate, service or project objectives)*

Risk area	Inherent level of risk (before controls)	Controls	Residual risk (after controls)
DEFRA challenge the revocation of the AQMA.	Low	DEFRA have previously indicated that the decision is a local one for the Council to determine	Low
The legislation or the guidance is amended to include locations inside residential properties.	Medium	Monitoring is to continue in Great Barton. If the legislation changes the Order could be 're-declared'.	Low

## **10. Legal and policy implications**

10.1 Local authorities are required to review and assess local air quality to determine whether the Government's air quality objectives are likely to be achieved (Environment Act 1995, s 82). Our legal advice is that, although the annual mean level of nitrogen dioxide objective is exceeded it should not lead to the designation of an Air Quality Management Area as there was no **relevant** exposure (see paragraph 4.7 and 4.8 above).

## **11. Ward affected**

11.1 Great Barton.

## **12. Background papers**

12.1 None.

## **13. Documents attached**

13.1 None.