

Case Study 3. A tool to assess developer S.106 contributions for air quality – Mid Devon Council

Summary

Mid Devon Council have devised a successful formula for securing air quality funding through planning obligations. This was devised following the production of a Supplementary Planning Document (SPD) on Air Quality drawn up as part of its Local Development Framework (LDF).

Contained within the SPD is a formula for assessing developer contributions to the Air Quality Action Plan under different scenarios. As the main impact on air quality is vehicles, the common measure used is trip generation for different uses, by unit or floorspace. This is then directly related to the cost of mitigation. The impact on air quality will be related to the scale of development and trip generation that depends on the use class. Some exclusions/reductions are provided for, such as affordable housing and small dwellings.

Although Mid Devon in effect went out on a limb to produce their own formula, it was widely consulted on and was supported within the council and by important stakeholders such as the environment agency, local and regional developers, landowners and the business community. This now provides a sound and accepted base to assess developer contributions to low emission strategies in Mid Devon. The LES approach has also been vindicated at a recent High Court challenge.

Simon Newcombe, Environmental Protection Officer at Mid Devon, commented:

"By using LES guidelines, we created our own Supplementary Planning Document (SPD). This is used by developers to assess air quality emissions generated on a development site and requires them to contribute to additional mitigation measures in our Action Plan. This work demonstrates that air quality can be important even outside of major urban areas e.g. in small market towns. Proactive AQ officers can make a major difference working in partnership with the planning department".

1. Background

Mid Devon covers a large rural area with a relatively low population (76,000 people). Air quality is largely good across the district, however there are two Air Quality Management Areas: Crediton (2004) and Cullompton (2007). These are historic market towns with high volume of congested traffic on main routes combined with street canyons and residential properties close to the kerb. The district has witnessed relatively large development pressures for new housing and commercial development which has resulted in a growing population.



Developing air quality policy

In 2005 the Council took a decision to develop a robust policy on air quality and development control, following discussions between environmental health and forward planning staff to identify key issues for the emerging LDF. It identified the need for consistent criteria to be able to judge air quality constraints/impacts in relation to new development and a transparent, effective mechanism to secure mitigation measures and/or funding.

2. LES actions

Initially, the Crediton AQMA Action Plan incorporated the requirement to draft new air quality policy and produce a Supplementary Planning Document (SPD). Following the adoption of the AQMA Action Plan in 2006, work started on incorporating air quality policy into the MDDC LDF Core Strategy. The Core Strategy is the key spatial planning policy document for the MDDC area up to 2026 - Adopted in July 2007 following Planning Inspector Examination. Evidence of district air quality issues and policy approach provided in a topic paper on 'Transport & Air Quality'. At the Core Strategy examination, the inspector commented:

"there is a serious air quality problem (in Crediton)...the approach of the Core Strategy to give weight to this concern and explore developer contributions, through policy COR15 (f) and (g) is the appropriate way forward."

Developing the SPD ("Air Quality and Development")

With the appropriate policy 'hooks' in place, development of the SPD started in 2007 and was adopted in May 2008. The SPD was widely consulted upon and has been accepted as a council strategic document. The key components of the SPD are:

- Expansion of the policy framework set out in the Core Strategy;
- Specifying when an Air Quality Assessment (AQA) is required;
- Guidance on content and outcomes of an AQA without being prescriptive over methodology;
- Guidance on assessing significance;
- Setting out a formula for developer air quality contributions under s106 or other planning obligations, initially for the Crediton AQMA but sufficiently flexible to be applied in other circumstances;
- Ability to look at cumulative impacts from smaller developments; and
- Synergy with other policy and initiatives e.g. LTP2 and Climate Change.

Devising the formula

Mid Devon are now using their SPD to calculate developer's contributions of 50% of the cost of measures within their Air Quality Action Plan. The formula for calculating developer contributions was produced in house as a 'unique formula for a standard charge'. It is based on the following principles:

- Needed to be transparent and scaled to reflect the varying impact of different development types (vehicle trip generation);
- Uses known development rates taken from the Core Strategy to gauge specific development types within Crediton area over 10-year period in order to predict who will pay the contributions;
- Contributions will be used directly for implementing AQAP measures;
- The cost of implementing AQAP measures had to be calculated; and
- It provides an approach which can be applied in other circumstances e.g. major developments outside of an AQMA and the emerging Cullompton AQAP.

Box 1 Mid Devon Formula - example

Formula example for retail (non food) development (high cost estimate)						
No. units ¹ 2006-16	Trip generation per day/unit ²	Viability Index	Total vehicle trips	Total vehicle trips requiring payment	Cost (£) ³	Cost per unit (£)
13.5	40.5	0.75	546.75	410	237813	17616

¹ unit = 100 square metres gross floor area (GFA)
² average vehicle trips per day based in national TRICS database
³ calculated by dividing total trips requiring payment (for the development type) by the overall total trips requiring payment for all development types (8837 vehicle trips per day including the total for retail non-food) then multiplying by the 50% high-cost AQAP implementation cost of £5.15m

The SPD states that an Air Quality Assessment (AQA) may be required if any of the following criteria are met:

Mid Devon SPD Air Quality and Development, May 2008

Para 2.2 Air Quality Assessments will be required for developments if either of the criteria are met in the following policy:

Policy AQ1

An Air Quality Assessment may be required if any of the following criteria are met:

- *Retail - Food 0.2 Ha/1000m²*
- *Retail - Non food 0.8 Ha /1000m²*
- *Office (B1) - 0.8 Ha/2500m²*
- *Industry (B2/B8) - 2.0 Ha/6000m²*
- *Residential - 1.0 Ha /75 units*
- *60+ vehicle movements in any hour*

- 1 An assessment may be required if either the site area or gross floor area is exceeded.
2. Any industrial or commercial activity requiring regulation under Pollution Prevention and Control Regulations (PPC) (unless a draft PPC Permit is already in place following a PPC application prior of planning application).
3. Proposals for new developments with 100 parking spaces or more or an increase in existing parking provision of 100 spaces or more.
4. Proposals which significantly alter the composition of traffic such that adverse air quality impacts may arise.
5. Proposals which may result in increased congestion and lower vehicle speeds than is present on the existing network.
6. Proposals for any new developments in areas of air quality objective exceedances within current or potential air quality management areas, where people would be exposed for significant periods of the day.
7. Any other development proposal within or adjacent to an Air Quality Management Area (AQMA) and not listed above which may, in the professional opinion of the officer, be significant in terms of air quality impact and/or may impact on the working of measures detailed in an AQMA Air Quality Action Plan.

Payments are secured by 10-year planning obligations/S106 agreements and are rarely linked to a specific AQAP measure - rather they are linked to the overall AQAP. Minor developments pay at the lower end of the range which enables some capture of cumulative impacts. The Council are able to secure a banded payment (low-high) from major development dependant on the final cost of AQAP implementation. All major developments (and some others) are still required to complete an AQA (SPD criteria have been incorporated into the 1App planning application verification process¹, i.e. are part of the checks that all Development Control departments make when deciding if they can accept and therefore register a planning application. The purpose of incorporating the SPD criteria into the Mid Devon local requirements was to ensure that if a relevant application was submitted without the required AQA it would be rejected (with reasons given) rather than accepted thus leaving little time to secure an assessment, consider the proposals impacts and secure any requirements/mitigation

¹ 1App refers to the name of the national planning application form all Local Planning Authorities must use. There are national minimum validation requirements in addition to local requirements.

measures etc within the application determination window. Having an AQA means that 'above average' polluting schemes can be scrutinised in detail and ensure there are no conflicts with the AQAP.

How LES made a difference?

The LES programme has offered both financial and technical incentives and good support enabling Mid Devon to push forward these relatively innovative policies and requirements into the Council's Allocations and Infrastructure Development Plan Document (DPD). As Simon Newcombe commented:

'Certainly without the programme I don't think we could have integrated as much as we have in the very tight deadline facing us'.

The result has been a clear integration of local AQ and climate change issues reflected by strong policies requiring all new major developments to come forward with LES approaches and ultimately deliver a reduced AQ and climate change impact. Without a developer demonstrating this adequately the Council now has a clear remit to reject masterplans and/or specific applications. The Allocations and Infrastructure DPD has now finished consultation and is almost ready for submission to the planning inspector. The next step will be an examination of the DPD next year by the Planning Inspector leading to formal adoption of the document and the requirements therein.

3. Outcomes

The formula has been successful in obtaining £1.2-2m contributions from Tesco and over £100,000 other contributions since its introduction in 2008. The Council are now using this formula for other areas/ circumstances outside of Crediton, e.g. the emerging Cullompton AQAP, and for major development outside the AQMAs (especially where a pro-rata contributions required for different development types or phases/applications).

The new Tesco store is due to open early in 2010 and is based in Wellparks, Exeter Road, Crediton – in an area with poor air quality due to the high levels of harmful emissions from road traffic. Crediton was declared an Air Quality Management Area in June 2006 due to high levels of Nitrogen Dioxide (NO₂) and Particulate Matter (PM₁₀). It is expected that the development will generate traffic and congestion leading to air pollution and increased emissions of Carbon Dioxide, a major contributor towards climate change.

4. Lessons learned

Success factors

- One of the main drivers was the consistent culture of communication and joint-working between Environmental Health and Forward/DC Planners supported and encouraged by the respective service managers. Early engagement and consultation between AQ officers and planners was vital as part of the emerging LDF. This



partnership approach was able to take advantage of the opportunity provided by the new LDF system to develop new AQ and planning policy;

- The Council had strived hard to maintain a high profile of AQ issues internally, with elected members and externally which helped support the SPD development and adoption;
- Made good use of national guidance and context, looked at what others were doing in SPD's or similar planning policy documents;
- If you have the right policy 'hooks' in the Core Strategy, it enables the detailed policies such within and SPD or DPD documents to be put in place. Having good planning policies/SPD is crucial to enable development control to properly take account of air quality;

Barriers/ challenges

Whilst there was plenty of guidance on doing AQ Assessments and some guidance on examining significance, there was very little guidance on formulas to calculate developer contributions were available. Where other LA's had produced a £ figure for developer contributions there was little or no justification/reasoning. The Council had to start from scratch in this respect.

Future development of the tool

The Council are looking at applying/updating the SPD and formula in new policy developments e.g. Community Infrastructure Levy (CIL). MDDC are also a pilot authority for a project to incorporate a joint assessment of climate change impact, low carbon technology and low emission strategy potential for residential development allocation sites.

High court challenge

The Council has successfully challenged a Planning Inspector's decision in the High Court, using LES in conjunction with their SPD. The Council initially refused to grant planning permission for a commercial development in Crediton on grounds unconnected to air quality issues. This decision was later overturned on appeal by a Planning Inspector who also told the developer they did not have to conform with the Mid Devon SPD which contains a requirement to contribute towards Air Quality Action Plan measures. This is despite the SPD being a formally adopted document at the time the appeal was heard. The Action Plan sets out LES measures to ensure that the operation of a site, including any additional road traffic arising, are not detrimental to health or the wider environment through pollution. The Council challenged the Planning Inspector's decision to overturn their initial refusal and waive the SPD requirements via a legal challenge to the Secretary of State in the High Court. The judge ruled that the Planning Inspector had acted unreasonably and had failed to carry out his legal duties correctly. The judge also ruled that the Planning Inspector had failed to understand the SPD policy and costs were awarded to the council.

Simon Newcombe, Environmental Protection Officer at Mid Devon District Council, commented:

"We were concerned as the Planning Inspector failed to take account of the SPD it potentially undermined our whole policy approach and we felt we had to take the unusual step of challenging the Planning Inspector's decision. Our SPD is an adopted strategic document and all future major developments in the area will now incorporate low emission strategies, sustainable energy and carbon footprinting. We are very happy that a complex legal challenge has ultimately resulted in a very high legal vindication of our approach."

For more information: see [website] or contact Simon Newcombe, T: 01884 244615, E: snewcombe@middevon.gov.uk

Resources: Mid Devon SPD on Air Quality and Development
http://www.middevon.gov.uk/media/pdf/j/1/Air_Quality_SPD.pdf

Related planning document including Planning Inspectors Core Strategy Examination Report, SPD adoption statement etc available at:

<http://www.middevon.gov.uk/index.cfm?articleid=1885>