

A358 Taunton to Southfields Dualling Scheme

Preliminary Environmental Information Report - Appendix 5.1
Air Quality Legislation, Policy and Guidance

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1 Legislation, policy and guidance

1.1 National legislation

Environment Act 1995

- 1.1.1 Part IV of the *Environment Act 1995* [1] requires the UK government to produce a national air quality strategy (AQS), which contains standards, objectives and measures for improving ambient air quality. The AQS sets out objectives that are maximum ambient concentrations that are not to be exceeded either without exception or with a permitted number of exceedances over a specified timescale.

Air Quality Standard Regulations (amendment) 2016

- 1.1.2 The ambient air quality standards and objectives are given statutory backing in England through the *Air Quality Standard Regulations 2010* [2] and amendments have been made in 2016. The air quality objectives (AQO) and Limit Values (LV) for the protection of human health, vegetation and ecosystems which are applicable to this assessment are presented in Table 1-1.

Table 1-1 Air quality objectives and Limit Values

Pollutant	Averaging period	AQOs and LVs ^(b)	
		Concentration	Maximum number of exceedances allowed per year
Nitrogen dioxide (NO ₂)	Annual mean	40µg/m ³	-
	1-hour mean	200µg/m ³	18
Nitrogen oxides (NO _x) ^(a)	Annual mean	30µg/m ³	-
Particulate matter (PM ₁₀)	Annual mean	40µg/m ³	-
	1-hour mean	50µg/m ³	35

Source: *Air Quality (England) Regulations 2000*

Notes: (a) Designated for the protection of vegetation and ecosystems and referred to as the 'critical level' for NO_x.
(b) The AQO and LVs are the same

- 1.1.3 The AQOs only apply where members of the public are likely to be regularly present for the averaging time of the objective (i.e. where people would be exposed to pollutants). The annual mean objectives apply to all locations where members of the public might be regularly exposed such as building façades of residential properties, schools, hospitals and care homes. The 24-hour mean objective applies to all locations where the annual mean objective would apply, together with hotels and gardens of residential properties. The 1-hour mean objective also applies at these locations and at any outdoor location where a member of the public might reasonably be expected to stay for one hour or more, such as shopping streets, parks and sports grounds, as well as bus stations and railway stations that are not fully enclosed.
- 1.1.4 LVs apply throughout the UK, the UK will achieve compliance when every site listed in the is below the LV. The exceptions to where the LVs apply are, locations that members of the public cannot access or where there is no fixed habitation, for instance, industrial premises.

- 1.1.5 Local authorities have no legal requirement to comply with AQOs. They are however required to demonstrate best efforts to work towards achieving AQOs.
- 1.1.6 Under the Local Air Quality Management (LAQM) regime, local authorities have a duty to make periodic reviews of local air quality against the AQOs. Where a local authority's review and assessment of local air quality indicates that AQOs are not expected to be achieved, local authorities are required to designate an Air Quality Management Area (AQMA). An Air Quality Action Plan (AQAP) must then be formulated, outlining a plan of action to meet AQOs in the AQMA.

1.2 Air quality objectives and limit values

- 1.2.1 Whilst AQOs and LVs are identical in terms of concentrations that are applied, they are different, and it is important to understand how they are interpreted and assessed. Local authorities are required to demonstrate best efforts to achieve the AQOs whereas the UK government has a mandatory requirement to achieve LVs.
- 1.2.2 Reporting against compliance with LVs is undertaken by the Department for Environment, Food and Rural Affairs (Defra) and reported at a zone/agglomeration level. Zones/agglomerations are only compliant when everywhere in the zone is below the LV and this is the basis of Defra's reporting, which is designed to determine what the maximum concentration is in the zone and hence determine the date by which the zone will comply or when it complies with the LV. AQOs are assessed at a much more local level where an AQMA can be designated as a result of exceedance at individual properties.
- 1.2.3 The air quality assessment considers the impacts on both AQOs (i.e. would the proposed scheme lead to a significant impact on air quality at individual properties) and LVs (i.e. would the proposed scheme impact Defra's plans to achieve compliance with the LVs).

1.3 Environmental Protection Act 1990

- 1.3.1 Generally, dust is only a cause of annoyance but when of sufficient scale and frequency it may become a statutory nuisance. The relevant legislation dealing with statutory nuisance is given in Part III of the *Environmental Protection Act 1990* (EPA 1990) [3]. A statutory nuisance in relation to dust and deposits is defined under Section 79 of the EPA 1990 as follows:
- “(d) Any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance.*
- (e) any accumulation or deposit which is prejudicial to health or a nuisance.”*
- 1.3.2 Under the provisions of the EPA 1990, where a local authority is satisfied that a statutory nuisance exists, it is under a mandatory duty to serve an Abatement Notice requiring abatement or cessation of one or more activities deemed to be causing the nuisance. In the absence of any kind of standard, identification of a nuisance is dependent on the professional judgement of the local authority as to whether Best Practical Means (BPM) are being employed to control emissions. If BPM is evident or can be clearly demonstrated, then a particular activity cannot be deemed to be causing a statutory nuisance.

1.4 National Planning Policy Framework

1.4.1 The *National Planning Policy Framework* (NPPF) [4] , published in 2012 and revised in February 2019, sets out the UK government’s planning policies for England and how these are expected to be applied. The NPPF revokes 44 planning documents including: Planning Policy Statement 23: Planning and Pollution Control.

1.4.2 NPPF paragraph 181 considers impacts of developments on air quality:

“Planning policies and decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and Clean Air Zones, and the cumulative impacts from individual sites in local areas. Opportunities to improve air quality or mitigate impacts should be identified, such as through traffic and travel management, and green infrastructure provision and enhancement. So far as possible these opportunities should be considered at the plan-making stage, to ensure a strategic approach and limit the need for issues to be reconsidered when determining individual applications. Planning decisions should ensure that any new development in Air Quality Management Areas and Clean Air Zones is consistent with the local air quality action plan.”

1.4.3 The NPPF therefore requires:

- that consideration of the scheme air quality impacts should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of AQMAs and Clean Air Zones; and
- consideration of opportunities to improve air quality or mitigate impacts, such as through traffic and travel management, and green infrastructure provision and enhancement.

1.4.4 However, the NPPF does not provide guidance on how to come to a judgement on sustaining compliance with the limit values.

1.5 Planning Practice Guidance

1.5.1 Figure 1-1 of this appendix presents a flowchart from the national *Planning Practice Guidance* (PPG) [5] on air quality, which provides guidance on the process a local planning authority might take in considering air quality in planning applications.

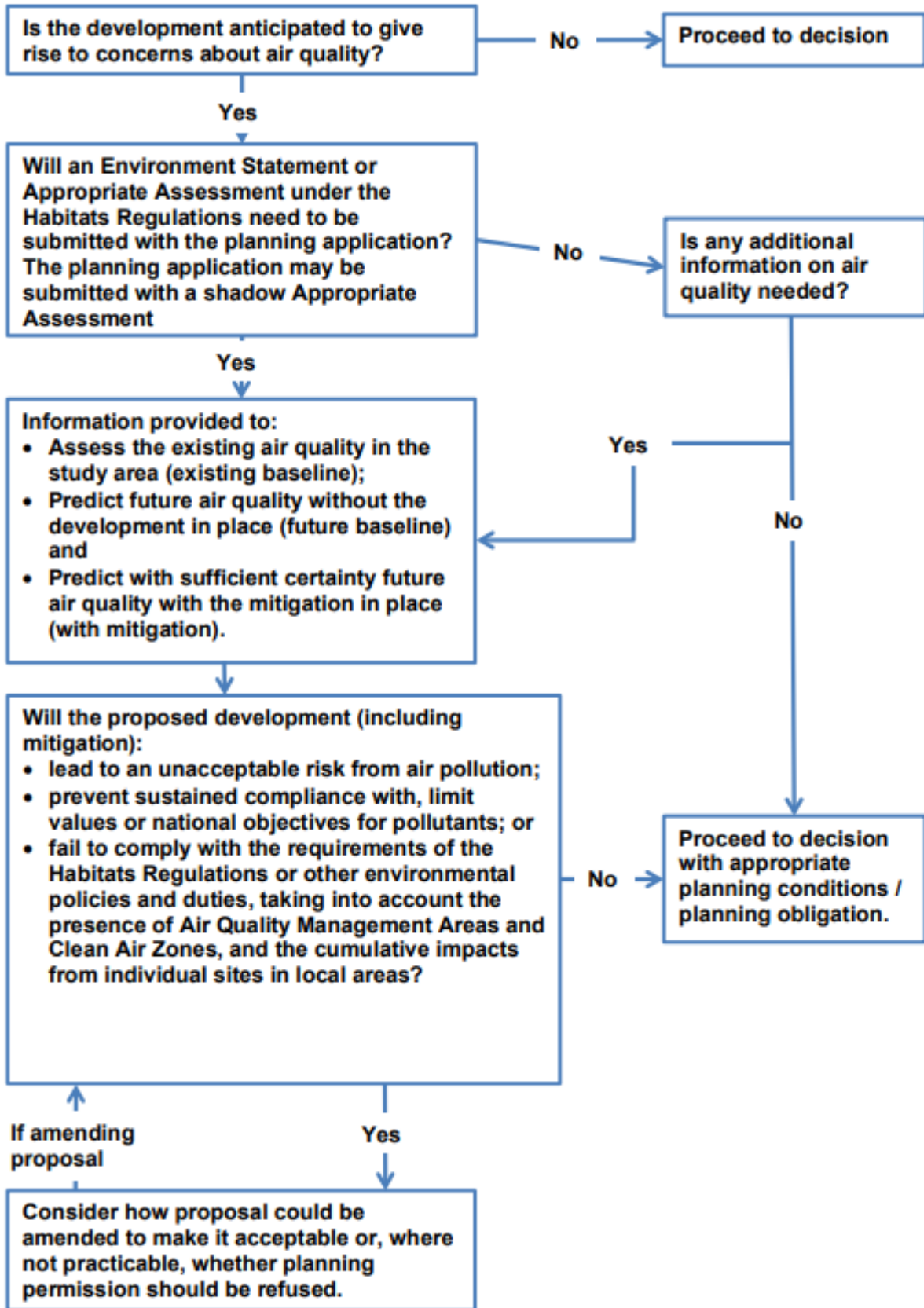


Figure 1-1 PPG flowchart

1.6 National Policy Statement for National Networks

- 1.6.1 The *National Policy Statement for National Networks* (NPSNN) [6] sets out the UK government's policies to deliver the development of Nationally Significant Infrastructure Projects (NSIP) on the national road and rail networks in England. The Secretary of State (SoS) uses the NPSNN as the primary basis for making decisions on development consent applications for national network NSIPs in England.
- 1.6.2 Sections 1.6.3 to 1.6.5 of the NPSNN provide the context of when the decision maker should give substantive consideration to air quality impacts and whether they should recommend refusal.
- 1.6.3 Air quality considerations are likely to be particularly relevant where schemes are proposed:
- Within or adjacent to AQMAs.
 - Where changes are sufficient to bring about the need for a new AQMA or change the size of an existing AQMA; or bring about changes to exceedances of the LVs, or where they may have the potential to impact on nature conservation sites.
- 1.6.4 Further information on areas exceeding AQOs or LVs is available from Defra's Pollution Climate Mapping (PCM) model [7]. This model provides predicted annual mean NO₂ concentrations. The SoS must give air quality considerations substantial weight where, after taking into account mitigation, a project would lead to a significant air quality impact in relation to Environmental Impact Assessment (EIA) and/or where they lead to a deterioration in air quality in a zone/agglomeration.
- 1.6.5 The SoS should refuse consent where, after taking into account mitigation, the air quality impacts of the proposed scheme would:
- result in a zone/agglomeration which is currently reported as being compliant becoming non-compliant; and/or
 - affect the ability of a non-compliant area to achieve compliance within the most recent timescales.

1.7 Dust

- 1.7.1 Dust is the generic term used in *British Standard (BS) 6069 Characterization of air quality, Glossary (Part Two)* [8] to describe particulate matter in the size range 1-75µm (micrometre) in diameter. Under provisions in the EPA 1990 dust nuisance is defined as a statutory nuisance.
- 1.7.2 There are currently no formal standards or guidelines for dust nuisance in the UK. In addition, formal dust deposition standards are not specified. This reflects the uncertainties in dust monitoring technology and the highly subjective relationship between deposition events, surface soiling and the perception of such events as a nuisance. Complaints about excessive dust deposition would have to be investigated by the local authority and any complaint upheld for a statutory nuisance to occur. However, dust deposition is generally managed by suitable on-site practices and mitigation rather than by the determination of statutory nuisance and/or prosecution or enforcement notice(s).

1.8 Regional management and planning policy

Greater Exeter Strategic Plan

- 1.8.1 The *Greater Exeter Strategic Plan* [9] is a joint initiative which is being prepared by the local authorities of East Devon District Council, Exeter City Council, Teignbridge District Council and Mid Devon District Council. The *Draft Policies and Site Options Consultation* document [9] acknowledges that improvements in Exeter's movement and public transport networks can lead to better air quality in Policy GESP30 Movement in Exeter.
- 1.8.2 However, East Devon District Council has recently withdrawn from the *Greater Exeter Strategic Plan*. Discussions are currently ongoing between partner local authorities to consider options for potential future joint planning work.

1.9 Local planning policy

- 1.9.1 The study area for the air quality assessment covers a number of local authority areas. The proposed scheme is located within the administrative areas of Somerset West and Taunton Council and South Somerset Council. However, changes in traffic across the network as a result of the proposed scheme are predicted in surrounding local planning authorities. Planning policy relating to air quality for each of the local planning authorities within the study area are outlined below. These local policies have been taken into account in the air quality assessment for the project.

East Devon Local Plan 2013 to 2031

- 1.9.2 The *East Devon Local Plan 2013 to 2031* [10] was adopted in January 2016. Policy EN14 – Control of Pollution states:

“Permission will not be granted for development which would result in unacceptable levels, either to residents or the wider environment of:

1. *Pollution of the atmosphere by gas or particulates, including smell, fumes, dust, grit, smoke and soot.”*

Exeter City Council Core Strategy

- 1.9.3 The *Exeter City Council Core Strategy* [11] was adopted in February 2012 and forms part of the Exeter City Council Local Plan as a development plan document (DPD). Policy CP11 addresses air quality. It states that:

“Development should be located and designed so as to minimise and if necessary, mitigate against environmental impacts. Within the Air Quality Management Area..., measures to reduce pollution and meet air quality, that are proposed by the Local Transport Plan and the Air Quality Action Plan, will be brought forward”.

Mid Devon Local Plan 2013 – 2033

- 1.9.4 The *Mid Devon Local Plan* [12] was adopted in July 2020. Air quality is addressed in Policy DM 3 Transport and air quality. It states:

“Development proposals that would give rise to significant levels of vehicular movement must be accompanied by an integrated Transport Assessment, Travel Plan, traffic pollution assessment and Low Emission Assessment. The traffic

pollution assessment must consider the impact of traffic-generated nitrogen oxides on environmental assets including protected sites listed in Policy DM 28, and propose mitigation measures where appropriate. The Low Emission Assessment shall include the following:

- a) *Assessment of the impact on existing Air Quality Management Areas, or an impact likely to result in the declaration of an additional Air Quality Management Area, in cases where a demonstrable negative impact on ambient concentrations of air pollutants is considered likely;*
- b) *Modelling of local residual road transport emissions from the development without mitigation measures; and*
- c) *Onsite mitigation measures to reduce negative impacts on local air quality.”*

1.9.5 Air quality is also mentioned as part of a number of policies related to the spatial strategy.

Mid Devon District Council Supplementary Planning Document on Air Quality and Development

1.9.6 The *Mid Devon District Council Supplementary Planning Document (SPD) on Air Quality and Development* [13] was adopted in May 2008. It sets out the policy framework, the development proposals where an air quality assessment is required, provides guidance on the process of air quality assessments and provides suggestions for mitigating impacts which are detrimental to air quality.

Mid Devon Air Quality Action Plan

1.9.7 The most recent *Mid Devon AQAP* [14] was published in 2017 to address exceedances of the annual mean NO₂ objective at the Cullompton AQMA.

1.9.8 Measures proposed to address the exceedances include encouraging alternatives to private vehicle use, promoting low emission transport and proactively engaging stakeholders with responsibility in development of roads, transport and infrastructure to ensure air quality is central to planning and delivery.

Sedgemoor Local Plan 2011 – 2032

1.9.9 The *Sedgemoor Local Plan* [15] was adopted in February 2019. Although air quality is not explicitly mentioned in a policy, policies such as Policy D14 Managing the Transport Impacts of Development states that:

“Development proposals that will have a significant transport impact should...be supported by an appropriate...Air Quality Assessment.”

1.9.10 Policy D13 Sustainable Transport and Movement also mentions that development proposals that reduce congestion will be encouraged and supported. It states that relevant proposals will *“...contribute to reducing adverse environmental issues, including air...pollution”*.

South Somerset Local Plan 2006 – 2028

1.9.11 The *South Somerset Local Plan* [16] was adopted in March 2015. Policy EQ7 Pollution Control mentions air quality. It states:

“New development should not exacerbate air quality problems in existing and potential AQMAs. This should include consideration of the potential impacts of

new developments and increased traffic levels on internationally designated nature conservation sites, and adopt mitigation measures to address these impacts.”

South Somerset Environment Strategy

- 1.9.12 The *South Somerset Environment Strategy* [17] was published in 2019 which sets targets to protect the environment and ecology for the South Somerset District. It mentions the Yeovil AQAP and states their commitment to support the development of a county-wide air quality strategy by Somerset County Council (SCC).

South Somerset Air Quality Action Plan

- 1.9.13 The *Yeovil Air Quality Action Plan* [18] was produced by South Somerset District Council (SDCC) in 2005 to address exceedances of the annual mean NO₂ objective at the Yeovil AQMA. Initiatives to address the exceedances include maximising the capacity of the existing road network, improving public transport, encouraging modal shift and to take air quality into material consideration in local planning decisions.

Somerset County Council Air Quality Strategy

- 1.9.14 A draft version of the *Somerset County Council Air Quality Strategy* [19] was published for public consultation in 2018. The strategy identifies measures to address air quality in Somerset. It includes use of the *Environmental Protection UK (EPUK) guidance* [20] for large developments, increase of PM_{2.5} monitoring in the county, encouraging use of less polluting vehicle types across the county fleet, and developing a website to provide information and guidance to the public. The strategy states that the overriding priority must be to reduce NO₂ pollution in the Henlade, East Reach and Yeovil AQMAs to below the statutory limits. The consultation period has now closed but it is unclear when a final version will be published.

Taunton Deane Local Plan 2004

- 1.9.15 The *Taunton Deane Local Plan* [21] was adopted in 2004. Policy S1 provides criteria to assess against for planning applications where air pollution is mentioned:

“Proposals for development, taking account of any mitigation measures proposed, will be required to meet the following criteria, in addition to any other Development Plan policies which apply in a particular case:

(E) potential air pollution...and other forms of pollution or nuisance which could arise as a result of the development will not harm public health or safety, the amenity of individual dwellings or residential areas or other elements of the local or wider environment”.

Taunton Deane Core Strategy 2011 - 2028

- 1.9.16 The adopted *Taunton Deane Core Strategy* [22] mentions air pollution in Policy DM 1 General Requirements which echoes Policy S1 in the Taunton Deane Local Plan 2004.

Taunton Deane Air Quality Action Plan

- 1.9.17 The *Taunton Deane AQAP* forms part of the local authority's *air quality annual status report (ASR)* [23] and is updated with each annual report. The latest ASR was published in 2021 and addresses exceedances of the annual mean NO₂ objective at the East Reach AQMA and Henlade AQMA.
- 1.9.18 A measure proposed to address the exceedances for the coming year relate to working with "*Highways England to ensure that the implementation of the A358 scheme fits with the Council's existing development policies and leads to improvements in the local environment*". Other initiatives relate to encouraging active travel through pedestrianisation, projects to improve local cycling and walking, and preparing a Local Cycling and Walking Infrastructure Plan.

References

- [1] “Environment Act 1995, Chapter 25, Part IV Air Quality”.
- [2] “Air Quality (England) Regulations,” UK Government, 2000.
- [3] “Environmental Protection Act 1990, Chapter 43, Part III Statutory Nuisances and Clean Air”.
- [4] Ministry of Housing, Communities & Local Government, “National Planning Policy Framework,” 2019.
- [5] Ministry of Housing, Communities & Local Government, “Planning practice guidance (Published on 29 November 2016, last updated 24 June 2021),” MHCLG, London, 2016.
- [6] Department for Transport, “National Networks National Policy Statement,” 2014.
- [7] D. f. E. F. & R. Affairs, *Air Quality Plan for nitrogen dioxide (NO₂) in UK (2017): Zone Plans- Defra, UK,* DEFRA, 2017. [Online]., 2019.
- [8] “British Standard BS 6069 Characterisation of air quality, Glossary (Part two)”.
- [9] Greater Exter Strategic Plan, “Draft Policies and Site Options Consultation,” 2020. [Online]. Available: <https://devoncc.sharepoint.com/sites/PublicDocs/Planning/Planning/Forms/AllItems.aspx?id=%2Fsites%2FPublicDocs%2FPlanning%2FPlanning%2FGESP%2FEvidence%2FDraft%20Policies%20and%20Site%20Options%20Document%2Epdf&parent=%2Fsites%2FPublicDocs%2FPlanning%2FPla>. [Accessed March 2021].
- [10] East Devon District Council, “East Devon Local Plan 2013 to 2031,” 2016. [Online]. Available: <https://eastdevon.gov.uk/media/1772841/local-plan-final-adopted-plan-2016.pdf>. [Accessed March 2021].
- [11] Exeter City Council, “Core Strategy,” 2012. [Online]. Available: <https://exeter.gov.uk/media/1636/adopted-core-strategy.pdf>.
- [12] Mid Devon District Council, “Mid Devon Local Plan 2013 - 2033,” 2020. [Online]. Available: https://www.middevon.gov.uk/media/350631/local-plan-review-final-adopted-version_accessible.pdf. [Accessed March 2021].
- [13] Mid Devon District Council, “Supplementary Planning Document on Air Quality and Development,” 2008. [Online]. Available: https://www.middevon.gov.uk/media/85182/air_quality_spd-adopted.pdf. [Accessed March 2021].
- [14] Mid Devon District Council, “Mid Devon District Council Air Quality Action Plan,” 2017. [Online]. Available: <https://www.middevon.gov.uk/media/345645/aqap-mid-devon-district-council-2017.pdf>. [Accessed March 2021].
- [15] Sedgemoor District Council, “Local Plan 2011 - 2032 - Adoption Version,” 2019. [Online]. Available: [file:///C:/Users/Tiffany.Cheung/Downloads/Local_Plan_2011-2032_-_Adoption_Version%20\(1\).pdf](file:///C:/Users/Tiffany.Cheung/Downloads/Local_Plan_2011-2032_-_Adoption_Version%20(1).pdf). [Accessed March 2021].

- [16] South Somerset District Council, "South Somerset Local Plan (2006 - 2028)," 2015. [Online]. Available: https://www.southsomerset.gov.uk/media/1250/j-plan_pol-website-2018-1-local-plan-local-plan-2006-2028-south_somerset_local_plan_2006-2028_adoption_version_march_2015.pdf. [Accessed March 2021].
- [17] South Somerset District Council, "South Somerset Environment Strategy," 2019. [Online]. Available: <https://www.southsomerset.gov.uk/media/2690/environment-strategy-document-3-final.pdf>. [Accessed March 2021].
- [18] South Somerset District Council, "Yeovil Air Quality Action Plan," 2005. [Online]. Available: <http://wwwold.somerset.gov.uk/EasysiteWeb/GatewayLink.aspx?allid=42148>. [Accessed April 2021].
- [19] Somerset County Council, "Somerset Air Quality Strategy," 2018.
- [20] Environmental Protection UK and Institute of Air Quality Management, "Land-Use Planning & Development Control: Planning for Air Quality," 2017.
- [21] Somerset West and Taunton Council, "Taunton Deane Local Plan 2004," 2004. [Online]. Available: <https://www.somersetwestandtaunton.gov.uk/media/1063/taunton-deane-local-plan.pdf>. [Accessed March 2021].
- [22] Somerset West and Taunton Council, "Taunton Deane Core Strategy 2011 - 2028," 2011. [Online]. Available: <https://www.somersetwestandtaunton.gov.uk/media/1061/adopted-core-strategy-2011-2028.pdf>. [Accessed March 2021].
- [23] Somerset West and Taunton Council, "2020 Air Quality Annual Status Report (ASR)," 2021. [Online]. Available: <https://www.somersetwestandtaunton.gov.uk/media/2601/somerset-west-and-taunton-air-quality-report-2020.pdf>. [Accessed March 2021].
- [24] Exeter City Council, "Exeter City Council Air Quality Action Plan," 2019. [Online]. Available: <https://exeter.gov.uk/media/5046/air-quality-action-plan-2019-2024-final-jy.pdf>.
- [25] Teignbridge District Council, "Teignbridge Local Plan 2013 - 2033," 2014. [Online]. Available: <https://www.teignbridge.gov.uk/media/1669/local-plan-2013-33.pdf>. [Accessed March 2021].
- [26] Mendip District Council, "Mendip District Local Plan 2006 - 2029 Part I: Strategy and Policies," 2014. [Online]. Available: https://www.mendip.gov.uk/media/9073/Adopted-Local-Plan-2014/pdf/Adopted_Local_Plan_2014.pdf?m=637499429807630000. [Accessed March 2021].
- [27] Somerset West and Taunton Council, "Adopted West Somerset Local Plan to 2032," 2015. [Online]. Available: <https://www.somersetwestandtaunton.gov.uk/media/1074/adopted-west-somerset-council-local-plan-to-2032-document.pdf>. [Accessed March 2021].

- [28] Teignbridge District Council, “Air Quality Action Plan,” 2009. [Online]. Available: <https://www.teignbridge.gov.uk/media/2447/air-quality-action-plan.pdf>. [Accessed March 2021].
- [29] West Dorset District Council, “Local Air Quality Management Draft Air Quality Action Plan Dorchester,” 2011. [Online]. Available: <https://www.dorsetcouncil.gov.uk/environmental-health/documents/air-quality-action-plan-2011-dorchester.pdf>. [Accessed March 2021].
- [30] West Dorset District Council, “Local Air Quality Management Chideock Air Quality Action Plan,” 2011. [Online]. Available: <http://aqma.defra.gov.uk/action-plans/WDDC%20AQAP%202008.pdf>. [Accessed March 2021].
- [31] Dorset Council, “West Dorset, Weymouth & Portland Local Plan,” 2015. [Online]. Available: <https://www.dorsetcouncil.gov.uk/planning-buildings-land/planning-policy/west-dorset-and-weymouth-portland/adopted-local-plan/pdfs/alp/west-dorset-weymouth-portland-local-plan-2015.pdf>. [Accessed March 2021].
- [32] “Air Quality (England) Regulations 2000”.