

**GUILDFORD BOROUGH COUNCIL AND  
SURREY COUNTY COUNCIL**

**GUILDFORD JOINT COMMITTEE**

**DATE:** 12 December 2018

**LEAD  
OFFICER:** Justine Fuller

**SUBJECT:** National Air Quality Plan – approval of Outline Business Case

**AREA(S)  
AFFECTED:** ASH VALE



**SUMMARY OF ISSUE:**

The report seeks approval of the Outline Business Case to implement measures to improve air quality on the A331 (Blackwater Valley Relief Road) and comply with the accompanying Ministerial Direction.

The Blackwater Valley partnership of Guildford Borough Council, Surrey Heath Borough Council, Rushmoor Borough Council, Surrey County Council and Hampshire County Council have jointly prepared the Outline Business Case as they all have an interest in the A331.

**RECOMMENDATIONS:**

**The Guildford Joint Committee is asked to agree that:**

- (i) The Committee endorses the Outline Business Case to date as shown in Appendix 1 and the preferred option of a 50mph speed limit from 70mph on a section of the A331 shown in Appendix 2.
- (ii) Delegate authority to The Director of Community Services, Guildford Borough Council in consultation with the Lead Councillor for Licensing, Environmental Health and Protection and Community Safety (Guildford Borough Council) and the Cabinet Member for Environment and Transport (Surrey County Council) to make any minor amendments and submit the Outline Business Case to the Joint Air Quality Unit by the 31 December 2018.
- (iii) Delegate authority to The Director of Community Services, Guildford Borough Council in consultation with the Lead Councillor for Licensing, Environmental Health and Protection and Community Safety (Guildford Borough Council) and the Cabinet Member for Environment and Transport (Surrey County Council) to make any minor amendments to and submit the Full Business Case to the Joint Air Quality Unit.

**REASONS FOR RECOMMENDATIONS:**

The UK National Plan for tackling roadside nitrogen dioxide concentrations (2017) named Guildford Borough Council along with Rushmoor Borough Council and Surrey Heath Borough Council as needing to undertake a Feasibility Study to explore measures to achieve compliance with the EU limit values for nitrogen dioxide along

part of the A331 (Blackwater Valley Road) in the shortest possible time. The requirement for the Feasibility Study was specified in a Ministerial Direction.

The recommendations help ensure that Guildford Borough Council complies with the Ministerial Direction. Firstly, by complying with guidance issued by the Joint Air Quality Unit that states the Feasibility Study should be approved by the Local Authority and secondly by delegations to ensure the Feasibility Study is submitted by the specified deadlines.

## **1. INTRODUCTION AND BACKGROUND:**

### **Background**

- 1.1 In July 2017 the Government published the National Air Quality Plan for Nitrogen Dioxide (the Plan). The Plan sets out how the Government will ensure compliance with air quality limits in the shortest possible time. In order to achieve this, the Plan identifies roads where an assessment at the national level indicated nitrogen dioxide concentrations would exceed limits and requires the relevant Local Authorities to undertake feasibility studies to be submitted to the Government with a view to implementing measures to ensure compliance is reached as quickly as possible.
- 1.2 The Plan lists the A331 between the A31 and M3 as such a road and the borough councils of Guildford, Rushmoor and Surrey Heath are named in the Plan. The Plan is supported by a legal requirement via a Ministerial Directive served on the three named authorities, and for the work and implementation of measures to achieve annual mean nitrogen dioxide concentrations of no higher than  $40.0\mu\text{g}/\text{m}^3$  to be overseen and funded by the Defra/Department for Transport Joint Air Quality Unit (JAQU).
- 1.3 The Plan identified a straight-line exceedance on a short section of the A331, Blackwater Valley Relief Road, within the Borough of Guildford as having predicted exceedances of the EU Ambient Air Quality Directive limits of Nitrogen Dioxide ( $\text{NO}_2$ ).

### **Blackwater Valley Partnership**

- 1.4 Guildford Borough Council is working collaboratively with Rushmoor Borough Council and Surrey Heath Borough Council, who were also named in the Plan in relation to the A331, along with the respective highways authorities of Surrey and Hampshire County Councils to produce a Feasibility Study to reduce roadside nitrogen dioxide concentrations in the shortest possible time.
- 1.5 A Memorandum of Understanding signed by the five authorities outlines how the Blackwater Valley Group will work in partnership to produce a Feasibility Study to achieve compliance with the Ministerial Direction served on the three Borough Councils.
- 1.6 The Blackwater Valley partnership has both a Technical and Strategic Group which meet regularly. As the A331 meets Junction 4 of the M3, Highways England is also a partner. JAQU provide advice, support and finance the partnership. Membership of the Strategic Group includes both the relevant Director and Lead Councillor for air quality from the five Councils.

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## **Ministerial Direction**

- 1.7 The Direction served under Section 85(5) of the Environment Act 1995 on the 27 July 2017 required the three Authorities to:

“Undertake as part of the UK plan for tackling roadside nitrogen dioxide concentrations 2018, a Feasibility Study in accordance with the HM Treasury’s Green Book approach, to identify the option which will deliver compliance with legal limits for nitrogen dioxide in the area for which the authority is responsible, in the shortest possible time.”

- 1.8 The Direction identifies two specific activities with deadlines. The first part to submit an Initial Plan (Strategic Outline Case) as soon as possible and by the 31 March 2018 at the latest, was completed. The Strategic Outline Case (SOC) produced a short list from a longlist of potential measures to deliver compliance with the legal limits for nitrogen dioxide in the shortest possible time.
- 1.9 To comply with the second requirement of the Direction, a Final Plan (Outline Business Case) must be provided to JAQU as soon as possible and by the 31 December 2018 at the latest. JAQU guidance requires there is formal Member approval of the Final Plan.

## **Early Measures Fund**

- 1.10 The Blackwater Valley Partnership has been awarded a grant of approximately £700,000 from the JAQU Early Measures Fund to implement a scheme to improve air quality on the A331.
- 1.11 Currently vehicles exiting the A331 are caught in congestion on the south eastern approach to Bradford’s roundabout. Queues for west or northbound traffic on the A331 link road are caused by the southbound traffic flow from the A325 having priority at the roundabout. Vehicles are currently queuing back approximately 60 metres from the roundabout in both the AM and PM peak times.
- 1.12 The scheme seeks to reduce queues by creating a third lane on the northern side of the eastern arm of Bradford’s roundabout, within the existing grass verge. The third lane will provide additional capacity for traffic entering the roundabout and wishing to proceed to the west or north, or back to the A331 to the east.
- 1.13 Implementing this scheme will reduce congestion at this location, reducing the amount of time vehicles are idling and improving flows from the northern section of the A331 (identified by DEFRA’s Pollution Climate Mapping (PCM) model which created some of the most persistent predicted NO<sub>2</sub> exceedances in the local area) onto the local highway network.
- 1.14 The scheme will be delivered by Hampshire County Council on behalf of the partnership by 2020 and fully paid for by the JAQU grant.

## **2. ANALYSIS:**

### **Local Air Quality Modelling**

- 2.1 The air quality data in the Plan was based on the Defra’s Pollution Climate Mapping (PCM) Model, which is an umbrella screening tool. Figure 1, in the [www.surreycc.gov.uk/guildford](http://www.surreycc.gov.uk/guildford)

Outline Business Case (Appendix 1) shows the PCM modelled Nitrogen Dioxide exceedances at certain road links along the A331.

- 2.2 The Blackwater Valley partnership undertook an exercise to validate the PCM data using local information including a week long ANPR (automatic number plate recognition) survey to better understand the vehicles using and journeys completed on the A331.
- 2.3 The A331 road link in the Plan within Guildford Borough Council area modelled compliance in 2022 if no actions were taken. Assessment of local data shows in compliance earlier in 2020.
- 2.4 The local air quality modelling work undertaken shows that all sections of the A331 achieve compliance with the annual mean for nitrogen dioxide limit ( $40\mu\text{g}/\text{m}^3$ ) by 2020 with the exception of the section between the Coleford Bridge Road and Frimley junctions. Consequently, the Ministerial Direction requires measures to be implemented that will achieve compliance in the shortest possible time on this section of the A331 Blackwater Valley Relief Road.
- 2.5 The local data also is helpful in identifying the measures to achieve compliance in the shortest possible time.

#### **Benchmark Option – Clean Air Zone**

- 2.6 JAQU guidance states that a Clean Air Zone should be the benchmark option as it considers a Clean Air Zone to be the quickest solution to achieving compliance in the majority of cases. As the A331 is a straight-line exceedance rather than an area such as a town centre, and was built specifically as a bypass to local towns including Aldershot, Ash, Farnborough, Mytchett and Frimley, a clean air zone is likely to cause traffic to divert thereby increasing air pollution in other areas. The Blackwater Valley partnership submitted a technical note to JAQU discounting the default of a Clean Air Zone benchmark in favour of a speed limit reduction. This approach was agreed by JAQU, and the technical note is included in the Outline Business Case.

#### **The preferred measure**

- 2.7 The development of the preferred measure has involved the production of the Feasibility Study, the Strategic Outline Case, the Initial Evidence Submission (which was approved the methodology and results) and now the Outline Business Case. JAQU and consultants have been involved in every decision making stage.
- 2.8 The initial long and shortlist of measures to achieve compliance in the shortest possible time was developed as part of the Strategic Outline Case.
- 2.9 Individual and packages of measures have been constantly under review since this date as local data has become available and as implementation of the measures has been explored and evaluated. This has included options to either close or divert the Blackwater Valley Path away from the A331, but neither of these would meet the requirement to implement measures to achieve compliance as soon as possible. From the long list of options, two are considered to have the potential to achieve compliance, albeit both are subject to some uncertainty (reflected in the concentration ranges presented): a speed limit reduction from 70mph to 60mph, which is forecast to achieve an annual mean of  $39.60 - 40.49 \mu\text{g}/\text{m}^3$  in 2021, and a speed reduction from 70mph to

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50mph, which is forecast to achieve an annual mean of 37.60 – 40.38 µg/m<sup>3</sup> in 2021. Given the uncertainty regarding the likely efficacy of a speed restriction (particularly in the absence of average speed cameras) additional measures, such as Variable Message Signing, are proposed to bring vehicle speeds down and encourage drivers to comply with the 50mph limit.

- 2.10 The group have now identified one single feasible option which is a 50mph speed limit for a stretch of the A331 in the areas of Rushmoor Borough Council and Surrey Heath Borough Council. The stretch of road currently has a speed limit of 70mph. The Blackwater Valley Technical Group consider the preferred measure to be the only solution due to the uniqueness of the straight-line exceedance in this location.
- 2.11 The difficulty with air quality assessments is that they are imprecise: there is at least a 10% margin of error. There is a risk that a 50mph speed limit will not achieve compliance in reality, but that risk is much higher for the 60mph option. Consequently, following advice received from JAQU, the preferred option being put forward in the Outline Business Case is a reduction to 50mph supported by signage. This advice resulted from the judgement delivered in February 2018 following the Client Earth (no. 3) action brought against the Government and Mayor of London stating that there is an obligation on the Government to ensure that the mitigation measures will mean meeting the compliance value limits is not just possible, but likely.
- 2.12 Once the speed limit has been reduced, monitoring will be undertaken coupled with further technical work to assess when compliance will continue to be achieved at higher speeds (i.e. with a speed limit of 70mph). Once JAQU accepts this is the case, another Traffic Regulation Order will be proposed to revert the speed limit on this section of the A331 to 70mph. At the same time, relevant supporting measures will be removed. It is envisaged that this is likely to be around the end of 2023, but will depend on the monitoring results.
- 2.13 The current indicative cost for implementing the measure including implementation, decommissioning, monitoring and evaluation is estimated at £750,000.
- 2.14 The rationale for the proposed measure is detailed within the Outline Business Case along with the reasons for discounting the other long and short list of measures. The measures have been assessed by technical experts from the five Blackwater Valley Partnership Authorities and external Consultants who are also working with other Local Authorities subject to Ministerial Directions.

#### **Guildford involvement after submission of Full Business Case**

- 2.15 The outputs of local modelling indicate that, in the absence of any additional measures (business as usual), compliance with the annual mean nitrogen dioxide EU limit value will be achieved in 2020, for the road link within the area administered by Guildford Borough Council.
- 2.16 The proposed measure to achieve compliance in the shortest possible time is not proposed within the Guildford Borough Council area, as the measure cannot bring forward compliance. The evidence supporting this and the preferred option will be submitted to JAQU as part of the OBC and reviewed by them and a Technical and Delivery Independent Panel to provide assurance.

- 2.17 On submission of the Full Business Case, the Council will seek confirmation from JAQU of compliance with the Ministerial Direction and that the Council is not required to take forward any actions to the implementation phase.

### **3. OPTIONS:**

- 3.1 As a Ministerial Direction has been served on Guildford Borough Council by the Parliamentary Under Secretary of State for the Environment, doing nothing is not an option.
- 3.2 Doing nothing could result in fines from the EU in relation to non-compliance with EU limit values for air quality being passed on from The Secretary of State under the Localism Act 2011. Legal action could also be taken against the Council by parties such as Client Earth.
- 3.3 There are 2 options available after considering the information in this report:
1. Approve the 3 recommendations as shown at the beginning of the report.
  2. Adopt a modified version of the 3 recommendations as shown at the beginning of the report.
- 3.4 To meet the requirements of the Ministerial Direction officers recommend Option 1.
- 3.5 In order to comply with the Ministerial Direction all the Authorities in the Blackwater Valley Partnership have to endorse the Outline Business Case so approving Option 2 is not recommended by officers, as it could prevent submission of the Outline and Full Business Case by the Government deadlines.

### **4. CONSULTATIONS:**

- 4.1 Consultation has taken place with the Blackwater Valley Strategic Working Group which includes senior officers and Lead Members for Air Quality at each of the five Local Authorities in the partnership. All support the option to introduce a 50mph speed limit from 70mph on the specified section of the A331. William Bryans, Strategic Transport, Surrey County Council has been involved in the drafting of the Joint Committee report.
- 4.2 The UK Government is currently facing legal action from the European Union that could result in fines for non-compliance with nitrogen dioxide limits and is taking action to comply.
- 4.3 Guildford Borough Council has been served a Ministerial Direction under Section 85(5) of the Environment Act 1995 requiring the Council to:
- “Undertake as part of the UK plan for tackling roadside nitrogen dioxide concentrations 2018, a Feasibility Study in accordance with the HM Treasury’s Green Book approach, to identify the option which will deliver compliance with legal limits for nitrogen dioxide in the area for which the authority is responsible, in the shortest possible time.”

- 4.4 To comply with the Direction, a Final Plan (Outline Business Case) must be provided to JAQU as soon as possible and by the 31 December 2018 at the latest. Under Section 85(7) of the Environment Act 1995 the Council has a duty to comply with the Direction. The Direction itself does not specify any penalties for non-compliance.
- 4.5 However under Part 2 of the Localism Act 2011 the Secretary of State has a discretionary power to require Local Authorities to contribute to any EU financial sanctions imposed under Article 260(2) of the Treaty of the Functioning of the European Union when the acts of the authority have caused or contributed to the infraction of EU law. The Council is therefore at risk of financial penalty if it does not comply with the Direction.
- 4.6 The Secretary of State has been taken to the High Court a number of times by ClientEarth, a legal environmental charity in relation to compliance with legal limits for nitrogen dioxide. A briefing issued by ClientEarth states that Plans adopted by Local Authorities must meet the tests laid down by the High Court in ClientEarth (NO.2) and any decision by a Local Authority to adopt a plan that does not meet the test could be subject to judicial review.

## **5. FINANCIAL IMPLICATIONS:**

- 5.1 All costs throughout the length of the project including investigation, implementation, monitoring and evaluation are paid for by JAQU funding.
- 5.2 A grant of £50,000 was initially awarded by JAQU in August 2017 under Section 31 of the Local Government Act 2003 to Guildford Borough Council to develop the 'Proposal for a Feasibility Study for a Local Plan'. Surrey Heath Borough Council and Rushmoor Borough Council were similarly both awarded £50,000.
- 5.3 JAQU awarded a further grant payment of £600,000 to Surrey Heath Borough Council under Section 31 of the Local Government Act 2003 in February 2018 to support the development of the joint feasibility study by all three Local Authorities subject to a Ministerial Direction.
- 5.4 All officer time spent in the development of the feasibility study across the Blackwater Valley Partnership is paid for from the grant. The grant spend is monitored by the Technical Working Group with regular reports to JAQU and the Strategic Working Group.
- 5.5 The approximate cost of implementing the measures in the Outline Business Case is estimated at £750,000 and will be implemented subject to approval and full funding from JAQU. The Blackwater Valley Partnership has agreed that Rushmoor Borough Council will be the recipient of the implementation grant and the Section 151 officer for Rushmoor Borough Council has confirmed support of this approach.
- 5.6 The grant requirement will include costs for maintenance, on-going monitoring, decommissioning and reinstatement of the current 70mph speed limit.

## **6. WIDER IMPLICATIONS:**

- 6.1 The potential implications of the proposed action have been considered in relation to the following Council priorities and policies.

<b>Area assessed:</b>	<b>Direct Implications:</b>
Crime and Disorder	No significant implications
Equality and Diversity	No significant implications
Localism (including community involvement and impact)	No significant implications
Sustainability (including Climate Change and Carbon Emissions)	Implications set out below
Corporate Parenting/Looked After Children	No significant implications
Safeguarding responsibilities for vulnerable children and adults	No significant implications
Public Health	Implications set out below
Human Resource/Training and Development	No significant implications

## 6.2 Sustainability implications

There will be a small reduction in carbon emissions as a result of drivers reducing their vehicle speeds along this section of the A331.

## 6.3 Public Health implications

The implementation of the proposed measures to improve air quality will have a positive impact on the health of those using the Blackwater Valley Path and other paths adjacent to this section of the A331.

## **7. CONCLUSION AND RECOMMENDATIONS:**

- 7.1 The Blackwater Valley Partnership have produced an Outline Business Case to meet the requirements of the Ministerial Direction. The Outline Business Case identifies the preferred measure to achieve compliance in the shortest possible time and evidence to support the option.
- 7.2 Officers recommend the Committee support the recommendations detailed at the beginning of the report.

## **8. WHAT HAPPENS NEXT:**

- 8.1 If the Committee approves the recommendations along with Rushmoor Borough Council, Surrey Heath Borough Council and Hampshire County Council, the Outline Business Case will be submitted to JAQU for approval.
- 8.2 If the Outline Business Case is approved by JAQU and a grant is awarded to implement the measures, formal public consultation will begin on the proposed speed reduction and accompanying measures.
- 8.3 The Blackwater Valley Partnership will produce the Full Business Case for JAQU approval. Implementation including procurement of the measures will also commence. It is anticipated that a new Ministerial Direction will be issued to the relevant Borough Councils to deliver the implementation phase.



- 8.4 After submission of the Full Business Case, Guildford Borough Council will have complied with the Ministerial Direction. If JAQU accept the local air quality data presented in the Outline Business Case, Guildford Borough Council would not be part of the implementation phase as the stretch of A331 highway in the Borough will be compliant before any other measure can be implemented. Surrey County Council would remain involved as the Highways Authority for Surrey Heath Borough Council.
- 8.5 The remaining Authorities in the Blackwater Valley partnership would evaluate the measures to ensure they achieve compliance with nitrogen dioxide limits in the shortest possible time.
- 8.6 Further updates will be provided to the Joint Committee after the submission of both the Outline Business Case and the Full Business Case.

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**Consulted:**

Councillor Graham Ellwood, Lead Councillor for Licensing, Environmental Health and Protection and Community Safety, Guildford Borough Council

Councillor Mike Goodman, Cabinet Member for Environment and Transport, Surrey County Council

Philip O'Dwyer, Director of Community Services, Guildford Borough Council

William Bryans, Transport Studies Team Manager, Surrey County Council

**Annexes:**

- Appendix 1 – Blackwater Valley Outline Business Case

**Background papers:**

- Air quality plan for nitrogen dioxide (NO<sub>2</sub>) in UK (2017), Defra, July 2017  
<https://www.gov.uk/government/publications/air-quality-plan-for-nitrogen-dioxide-no2-in-uk-2017>
- Environment Act 1995  
<https://www.legislation.gov.uk/ukpga/1995/25/contents>
- Environment Act 1995 (Feasibility Study for Nitrogen Dioxide Compliance)  
Air Quality Direction 2017  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/746095/air-quality-no2-plan-directions-2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/746095/air-quality-no2-plan-directions-2017.pdf)
- Localism Act 2011  
<http://www.legislation.gov.uk/ukpga/2011/20/contents/enacted>
- What does ClientEarth's legal cases mean for Feasibility Studies for nitrogen dioxide compliance in England <https://www.documents.clientearth.org/wp-content/uploads/library/2018-04-18-legal-test-for-feasibility-studies-ce-en.pdf>

