

Leicester
City Council

CABINET

2nd July 2001

**ENVIRONMENT ACT 1995, PART IV:
REVIEW AND ASSESSMENT OF AIR QUALITY**

Report of the Director of Environment, Development and Commercial Services

1. Purpose of Report and Summary

This Report:

- a) Advises of a successful bid for Supplementary Credit Approval totalling £74,250 to upgrade capability in air quality monitoring and dispersion modelling, and seeks approval for the relevant expenditure.
- b) Updates Members on the use of this funding to implement the review and assessment of air quality within the City's new Air Quality Management Area and identifies the current issues facing the Council.

2. Recommendations

Cabinet is asked to:

- a) Approve expenditure of £74,250 funded by Supplementary Credit Approval, in order to upgrade capability in air quality monitoring and dispersion modelling and carry forward the statutory review and assessment of Air Quality.
- b) Note progress with the current phase of air quality review and assessment, as part of the City Council's ongoing commitment to achieve better air quality.

3. Headline Financial and Legal Implications

The expenditure in the financial year 2001/02 is anticipated to be £74,250, to be funded by Supplementary Credit Approval (SCA) under the DETR's Air Quality Scheme. The original bid for SCA was for £86,750.

This expenditure will assist the City Council fulfil its duty under Section 84 of the Environment Act 1995 to complete a detailed review and assessment of air

quality within the Leicester Air Quality Management Area 2000, within 12 months of designation, i.e. by 29th December 2001.

4. Report

Part IV of the Environment Act 1995 required Leicester City Council to carry out a review and assessment of air quality in its area by the end of 2000. In line with the City Council's outstanding record of commitment to environmental improvement, this was successfully carried out, within the Government's deadline. This was a notable achievement since Leicester was one of the first cities outside Greater London to complete this process and one of very few to complete on time.

Following Cabinet approval on 4th December 2000, an Order was made by the Council designating part of Leicester as an Air Quality Management Area, coming into effect on the 29th December 2000. Once the Order has been made, Section 84 of the Act then imposes the following requirements:

- a) To carry out the next stage of Review and Assessment of Air Quality, focused on the Air Quality Management Area and to report not more than 12 months after designation (i.e. by 29th December 2001).
- b) To prepare a time-based Action Plan to make good any shortfall with respect to the Air Quality Objectives by the exercise of any relevant powers. The Guidance requires the Plan to be consulted on not more than 12 months, and to be in place not more than 18 months, after designation (i.e. by 29th December 2001 and the end of June 2002, respectively).

The aim is to prevent exposure of the people of Leicester to excess levels of atmospheric pollution in the areas identified. Work so far shows that the key issue in the City is undoubtedly motor vehicle emissions.

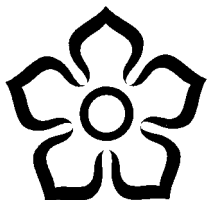
Government estimates suggest that up to 24,000 people die prematurely each year in the UK from the effects of air pollution. There is also growing evidence of the adverse effects of poor air quality on young children. (*The Air Quality Strategy for England Scotland, Wales and Northern Ireland*, January 2001). Control of these harmful emissions will not only achieve local environmental benefits, especially close to the major road network, but will also contribute globally by minimising local outputs of greenhouse gases.

However, these time-scales are particularly challenging because there are important technical issues which remain to be resolved by the DEFRA before aspects of the work can be tackled. Representations have been made to the (*then*) DETR in this respect and further details are given in the Supporting Information appended to this report.

The SCA application submitted to the DETR focused on improving the Council's air quality modelling capabilities and providing a better local understanding of some of the complexities surrounding the monitoring of PM₁₀ particulates.

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SUPPORTING INFORMATION

1. Report

The challenges referred to in the main Report can be detailed as follows:

- a) Certain technical guidance and emissions factors important to the exercise are not yet available from the DETR and it has recently been announced that some will not be available until Autumn 2001. The complex modelling and analysis required cannot be performed in a few weeks, which makes it difficult to achieve the December 2001 statutory deadline for completing this phase of the Review and Assessment of Air Quality.
- b) The Air Quality Action Plan will necessarily be closely interwoven with other Council policies, in particular the Local Transport Plan and Land Use Policies. It will be necessary to carry out a detailed analysis of the extent to which: existing initiatives will deliver the required improvement in air quality; what, if any, shortfall exists; and, what actions would be appropriate and feasible so to deliver.
- c) Even if the Review and Assessment is carried out on the basis suggested by the DETR, the necessary analysis and interdisciplinary consultation is both challenging and demanding in terms of time.

Notwithstanding these considerations, every effort will be made to complete the Review and Assessment and the draft Air Quality Action Plan within the deadline, in line with the Council's previous success in this area. To this end, a Supplementary Credit Approval package was submitted to the DETR for 2001/2 with the aim of expediting the resolution at local level of some of these difficult technical issues.

Additionally, correspondence has taken place with the (*then*) DETR, in which it has been pointed out that the rigid requirement to complete within 12 months in effect penalises the City Council for promptly complying with its legal obligations at the previous stage. It was also suggested that, given the potential policy implications of Stage 4, it was more important to make the best assessment possible rather than to complete within 12 months.

The DETR were further asked what latitude would be permitted, should difficulties arise in completing on time. The written response received from the DETR advises that the City Council should proceed with the level of information that was available since, *"It is unlikely that any new factors would fundamentally alter the conclusions you reach about the effectiveness of local measures to improve air quality."* However, local experience indicates that this may not be the case.

On the issue of the time-scale of the task the DETR state: *"It is the last thing we want for local authorities to delay any actions to improve air quality..."*. The reply also states, *"I cannot at this stage say what "latitude" the DETR are prepared to consider....this will very much depend on the views of Ministers, who are themselves under a duty to comply with and oversee the provisions of Part IV of the Act."*

FINANCIAL, LEGAL AND OTHER IMPLICATIONS

1. Financial Implications

Detailed in the main report.

2. Legal Implications

Where an Order designating an Air Quality Management Area is made under Section 83 (1) of the Environment Act, Section 84 (1) of the Act imposes a duty to carry out a further Review and Assessment of air quality in the designated area. Section 84 (2) (a) requires that a report of the results of this Review and Assessment should be "prepared" not more than twelve months from the date on which the Order comes into effect, i.e. in the case of Leicester City Council, by 29th December 2001.

Section 84 (2) (b) of the Act further requires the City Council to prepare a written "Action Plan" for the achievement of the statutory Air Quality Objectives, using any of the powers exercisable by the authority. There is no deadline prescribed in the Act for publishing the Action Plan, although the Plan must specify time-scales for the implementation of the actions contained in it (Section 84 (3)). Also, the date specified for the achievement of the relevant air quality Objective is 31st December 2005, which obviously drives the timetable of the Plan. (*The Air Quality (England) Regulations 2000, S.I. No. 928*).

Moreover, the statutory Guidance issued under Section 88 (1) of the Act by the DETR *suggests* that the Action Plan should go out to consultation within 9-12 months of the designation of the Air Quality Management Area and should be in place within 12-18 months. Since Section 88 (2) of the Act requires local authorities to "have regard" to Guidance issued under Section 88 (1), there is, in effect, a quasi-statutory requirement to adhere to this timetable. (Local Air Quality Guidance Note LAQM.G1 (00), *Framework for Review and Assessment of Air Quality*). [Background Papers 5, 6]

Informal advice issued by officials of the DETR suggests that it might be acceptable to regard the completion of the draft, pre-consultation "Section 84" Report by 29th December 2001 as sufficient to comply with the Act but definitive legal advice from the DETR is lacking. (*Letter dated 6th March 2001*

from Rupert Furness, Air and Environment Quality Division, DETR to National Environmental Technology Centre, paragraph 17). [Background Papers 8]

A subsequent, written representation to the DETR has produced the response that the duty laid on the Council by Section 84 (2) (a) is "...*absolutely clear*". The response also indicates that any latitude will depend on the views of Ministers. (*Letter dated 16th May 2001 from Rupert Furness, Air and Environment Quality Division, DETR to Leicester City Council*). Obviously, the DETR cannot put themselves in the position of explicitly authorising a breach of statute, so it is necessary to await developments. [Background Papers 10, 11]

It should be noted that the City Council is not under a statutory duty to achieve *compliance* with the statutory air quality Objectives by the specified dates. However, the EC Air Quality Framework Directive and First Daughter Directive (when transposed into UK legislation) will impose such a duty upon the Secretary of State. It is likely that the overall plan for the UK, which that legislation requires *him* to produce, will refer to local authority Air Quality Action Plans. In addition, Section 85 of the Act gives the Secretary of State the power to make Directions to local councils as to the manner in which they discharge their functions under the Act, providing another route by which indirect statutory requirements could be imposed upon the Council. (DETR Consultation Paper – *Proposed regulations transposing the EC Air Quality Framework Directive and 1st Daughter Directive*, February 2001). [Background Papers 4]

4. Other Implications

OTHER IMPLICATIONS	YES/NO	Paragraph References within Supporting Information
Equal Opportunities	No	None specific
Policy	Yes	Supporting information, Section 1
Sustainability and Environmental	Yes	Supporting information, Section 1
Crime and Disorder	No	
Human Rights Act	No	

4. Background Papers – Local Government Act 1972

1. *The Environment Act 1995*, Chapter 25.
2. *The Air Quality (England) Regulations 2000* (S.I.2000 No.928).
3. *The Air Quality Strategy for England Scotland, Wales and Northern Ireland*, (January 2001).
4. *The Leicester City Council Air Quality Management Area Order 2000*, (Council Order No. 11,798, 14th December 2000).
5. DETR Consultation Paper – *Proposed regulations transposing the EC Air Quality Framework Directive and 1st Daughter Directive*, February 2001.
6. DETR Guidance Note LAQM.G1(00) *Framework for Review and Assessment of Air Quality*.
7. DETR Guidance Note LAQM.G2(00) *Developing Local Air Quality Action Plans and Strategies: The Main Considerations*.
8. DETR *Draft guidance to local authorities on the further ("stage 4") assessments of air quality required under section 84 of the Environment Act 1995*.

5. Consultations

Head of Legal Services.

6. Report Author

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