



Inspector Laura Graham BSC MA MRTPI
Brighton & Hove City Plan, Part 1 Examination in Public
c/o Programme Officer
Claire Hugh-Jones
6 Brading Road
Brighton
BN2 3PD

12 May, 2015

Dear Miss Graham,

Implications of Supreme Court Judgment on air pollution on the City Plan

On behalf of Brighton & Hove Friends of the Earth (BHFOE) I would like to request that you consider the implications of the recent Supreme Court Judgement on ClientEarth vs Defra (regarding air pollution), dated 29 April, 2015¹, for the City Plan when reviewing the responses to the latest consultation.

BHFOE raised this issue in its submission² on the proposed modifications to the City Plan but now believes that greater weight should be given to this issue with the latest Supreme Court ruling, made since the start of this most recent consultation. BHFOE believes that where there is reference to air pollution within the City Plan, the wording needs to be re-examined to ensure it conforms to the ruling and will bring about compliance with the Directive³ in “as short as time as possible”⁴. BHFOE does not believe that the current wording supports this requirement.

The wording often used in the City Plan is:

“Ensure new development proposals take into account impact on local air quality and that improvements and/ or mitigation are sought wherever possible.”

¹ Supreme Court Judgment on ClientEarth vs Defra, 29 April 2015 -

<https://www.supremecourt.uk/cases/docs/uksc-2012-0179-judgment.pdf>

² See BHFOE submission, 16 December, 2014 on Proposed Modifications – see comments on PM014 & PM017 in particular, but also applies to PM025, PM033, PM044, PM051, PM052, PM061, PM062, PM105

³ European Union law, Directive 2008/50/EC

⁴ Paragraphs 15 & 16, page 7, paragraph 27, page 12 and paragraph 33, page 14, Supreme Court Judgment on ClientEarth vs Defra, 29 April 2015 - <https://www.supremecourt.uk/cases/docs/uksc-2012-0179-judgment.pdf>

BHFOE believes that this wording potentially allows new development to come forward which would make air pollution worse. Even if action is taken to reduce the increase in air pollution arising from a development, the development would be still potentially illegal as it would delay the area coming into compliance. The new wording should be something like:

“Ensure new development proposals, including their transport and wider impacts, have a neutral or positive impact on local air quality.”

Alongside the direct mention of air pollution within the City Plan, consideration also needs to be given to the impact of large development proposals and the cumulative impact of smaller development proposals, both within, or near, an Air Quality Management Area. By their very nature, both types of development could encourage more road traffic to pass through areas with illegal levels of air pollution, extending the time that it takes for those areas to become compliant. This again is likely to be illegal.

This does not exclude development taking place since a development which can be brought in alongside improvements in services or infrastructure could lead to an overall neutral or even positive impact on road traffic levels and hence air pollution. However, a development based on car parking and only pays lip service to walking, cycling and public transport probably won't.

I trust that this is clear but should you require any further information please do not hesitate to get in touch.

Yours sincerely,

Chris Todd

Planning & Transport Campaigner

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