



Boris Johnson, Mayor of London  
Parking Standards MALP  
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GLA City Hall, post point 18  
The Queen's Walk  
London SE1 2AA

By email: [mayor@london.gov.uk](mailto:mayor@london.gov.uk)

21 June 2015

Dear Boris

### **Public consultation on Draft Minor Alterations to the London Plan – Parking Standards**

Clean Air in London (CAL) welcomes the opportunity to respond to the Great London Authority's (GLA's) consultation on Draft Minor Alterations to the London Plan – Parking Standards (the Consultation). The Consultation can be seen here:

<https://www.london.gov.uk/priorities/planning/london-plan/minor-alterations-to-the-london-plan-2015>

CAL is a voluntary organisation which campaigns to achieve urgently and sustainably full compliance with World Health Organisation (WHO) guidelines for air quality throughout London and elsewhere. Further information about CAL can be found at <http://cleanair.london/>.

CAL is independent of any government funding, has cross party support and a large number of supporters, both individuals in London and organisations. CAL provides a channel for both public concern and expert opinion on air pollution in London. This document provides both general and expert comments in response to the Consultation.

### **Background**

We refer to the recent judgments of the Supreme Court in ClientEarth versus Defra and the Court of Justice of the European Union:

<https://www.supremecourt.uk/cases/uksc-2012-0179.html>

Separately, it is open to the European Commission to pursue infraction proceedings against the UK for exceedances of NO<sub>2</sub> limit values since 2010, including in the Greater London zone, and it commenced this process in February 2014. You will understand that this is wholly separate to the Government's responsibilities to the Supreme Court.

For details:

<http://cleanair.london/hot-topics/europe-at-its-best-takes-legal-action-against-uk-at-its-worst-on-air-pollution/>

You may be aware of guidance published by Environmental Protection UK (EPUK) in 2010. That guidance has been updated by EPUK and the Institute of Air Quality Management<sup>1</sup>. However, neither EPUK's 2010 guidance nor the updated guidance takes account of or correctly states the significance of the very recent legal developments which have clarified the law. For that reason *inter alia* it is our view that the guidance is flawed in important respects.

The legal judgments, letter of clarification previously from the European Commission to CAL (attached), Directive 2008/50/EC on ambient air quality and cleaner air for Europe and prospect of escalating infraction action make clear *inter alia* that: NO<sub>2</sub> limit values must be achieved urgently and 'as soon as possible' to protect public health; limit values are absolute obligations that must be attained irrespective of cost; limit values apply everywhere with three exceptions (see Section A, paragraph 2 of Annex III of Directive 2008/50/EC and the letter of clarification referred to earlier); limit values must not be exceeded once attained; and where air quality is 'good', Article 12 of the directive applies i.e. Member States shall not only maintain the levels below the limit values but also "endeavour to preserve the best ambient air quality compatible with sustainable development".

Further, Article 4(3) of the Treaty of the Functioning of the European Union sets out that:

*"States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the treaties or resulting from the acts of the institutions of the Union."*

All public authorities are subject to this duty.

You will be aware that many roads in London have among the highest illegal levels of NO<sub>2</sub> in the UK with some expected to be breaching the limit values beyond 2030:

<http://www.howpollutedismyroad.org.uk/hotspots.php>

<https://www.gov.uk/government/publications/50-highest-modelled-nitrogen-dioxide-no2-concentrations>

CAL brings particularly to your attention the widespread nature of the breaches of NO<sub>2</sub> limit values i.e. along many roads across London (attached and via link below):

<http://cleanair.london/wp-content/uploads/CAL-264-ULEZ-2020.pdf>

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<sup>1</sup> [http://cleanair.london/wp-content/uploads/CAL-304-EPUK-IAQM-air-quality-planning-guidance\\_Final-130515.pdf](http://cleanair.london/wp-content/uploads/CAL-304-EPUK-IAQM-air-quality-planning-guidance_Final-130515.pdf)

Please see also evidence confirming the link between road transport (including cars) and NO<sub>2</sub> emissions:

<http://cleanair.london/sources/carcinogenic-diesel-exhaust-disclosed-for-every-significant-road-in-london/>

Increasing NO<sub>2</sub> emissions and therefore NO<sub>2</sub> concentrations at any location where limit values apply and NO<sub>2</sub> limit values are breached would be unlawful.

CAL also brings to your attention its analysis and complaint to the European Commission about breaches of air quality laws arising from the suspension of the M4 bus lane:

<http://cleanair.london/legal/government-treats-limit-values-with-contempt-by-m4-bus-lane/>

## Consultation

The Consultation documents state inter alia:

Page 4 of the Integrated Impact Assessment (IIA):

“The reasonable alternative options for this proposed alteration are considered to be:

- **do not** update the London Plan; or
- **include** a policy alteration
  - allow/encourage more flexibility in PTALs 0-1 in outer London (**preferred option**); and
  - allow/encourage more flexibility in more PTAL areas such as 0-2/3 in outer London”

The analysis in Table 4.1 on page 25 states that: the Mayor’s preferred alteration would have a minor negative effect on air quality; and the alternative alteration would have a [major] negative effect. The latter is said to detract ‘significantly’ to the air quality objective (Table 6.1 on page 27).

The IIA correctly identifies that the ‘increased provision of parking is likely to result in at least some additional car journeys’ (Table 4.1 on page 25). These extra journeys would increase local NO<sub>2</sub> emissions and concentrations.

Only the option of ‘Do not update the London Plan’ would improve air quality (minor positive effect).

## CAL’s response

It is apparent from the documents published by the GLA that the two proposed policy alterations to the London Plan would worsen air quality.

Limit values apply everywhere with three exceptions as mentioned above. It is unlawful to worsen air quality breaching limit values and would not be consistent with sustainable development to worsen it where limit values are achieved.

In CAL's opinion both proposed policy alterations would worsen air pollution where limit values are exceeded or likely to be exceeded. **Mitigation measures, such as through the 'implementation of wider London Plan policies' cannot be relied upon to reduce their impact.** Limit values must be attained quickly and cannot thereafter be exceeded. Further, as the Supreme Court judgment and the European Commission's letter of clarification to CAL show, the limit values are absolute requirements and cannot be 'traded' against the Mayor's economic, social or other priorities or actions.

**It is apparent from the documents that both the proposed policy alterations, if approved, would worsen already illegal concentrations of NO<sub>2</sub>. To worsen air quality contradicts the duty under Directive 2008/50/EC and would be unlawful. None of the exceptions to attaining limit values applies. Please therefore reject both policy alterations to amend the London Plan. There can be no other outcome.**

Please contact me if you have any questions or would like more information on any of the points raised in this letter.

CAL would be pleased to give oral evidence to the independent planning inspector at a joint public examination later this year.

Yours sincerely

Simon Birkett  
Founder and Director

## Enclosures

1. Letter of clarification from the European Commission dated 19 February 2014
2. NO<sub>2</sub> concentrations in 2020