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Mr Tim Regester
request-528568-75f7ee65@whatdotheyknow.com

Our ref: FOI2018/22931
16 November 2018

Dear Mr Regester,

REQUEST FOR INFORMATION: AQMA actions undertaken by Babergh District Council

Thank you for your request for information of 25th October about AQMA actions undertaken by Babergh District Council. We have handled your request for documents under the Environmental Information Regulations 2004 (EIRs). Your queries about the status of the AQMA and requirements for action have been handled as routine correspondence. The reasons for this are explained below.

The EIRs apply to requests for environmental information, which is a broad category of information defined in regulation 2 of the EIRs. Public authorities are required to handle requests for environmental information under the EIRs. They give similar access rights to the Freedom of Information Act 2000 (FOIA).

“The UK Plan for Tackling Roadside Nitrogen Dioxide Concentrations” published in 2017 and the supplement to the UK plan for tackling roadside nitrogen which was published 8 October 2018 used the best available evidence and modelling when they were developed. The Plan and accompanying documents set the results of modelling and which areas were identified as needing action and a copy is available from the link below.

<https://www.gov.uk/government/publications/air-quality-plan-for-nitrogen-dioxide-no2-in-uk-2017>

The Plans cover non-compliant road links and as you mentioned, information did not include Babergh District council. Modelling results did not identify Babergh as having road links with NO2 exceedance. There are no documents explaining why this AQMA and corresponding action by the council were omitted. We are therefore writing to advise you that the information that you have requested is not available.

The information is therefore exempt under regulation 12(4)(a) of the EIRs, which relates to information which is not held at the time when an applicant's request is received. Regulation 12(4)(a) is a qualified exception, which usually means that a public authority is required to conduct a public interest test to determine whether or not information should be disclosed or withheld. However, the Information Commissioner's Office (ICO), who is the independent regulator for requests made under the EIRs, takes the view that a public interest test in cases where the information is not held would serve no useful purpose. Therefore, in line with the ICO's view, Defra has not conducted a public interest test in this case.



We recently consulted on our draft Clean Air Strategy where we have committed to give Local Government new legal powers to take decisive action in the most polluted areas through local Clean Air Zones that can lower emissions from a wider range of sources than transport alone:

As mentioned above, the other queries you raised within your correspondence have not been handled as information requests under either the Environmental Information Regulations. The EIRs relate to requests for recorded information only. Requests where an explanation or opinion is sought are not defined as EIR requests and are therefore handled as routine correspondence.

What the status of this AQMA as far as Defra is concerned

The Local Air Quality Management regime requires local authorities to assess air quality against the objectives set in the Air Quality Regulations, and to declare an Air Quality Management Area (AQMA) where there are breaches, and to put in place actions to clean up air. There is a distinction between the methods used for assessing national air quality under the Ambient Air Quality Directive (AQD) for the UK National Plan, and for local assessments under the Local Air Quality Management (LAQM) regime. It is therefore possible for local monitoring to identify an exceedance in NO₂ even though national modelling has not identified an exceedance. This can mean that a local authority not identified in the “The UK Plan for Tackling Roadside Nitrogen Dioxide Concentrations” can still be required to take action under LAQM. The national assessment seeks to represent general exposure and must accord with the location and sampling point requirements in the AQD. Air quality assessments for LAQM focus on targeting local pollution hotspots and so pollutant concentrations are considered at all areas of relevant public exposure within a local area.

Defra is a statutory consultee to air quality Annual Status Reports (ASR) prepared by English local authorities. Babergh District Council declared an AQMA in 2008, for exceedances recorded by local monitoring of the annual mean NO₂ objective in Cross Street, Sudbury. Local authorities report on monitoring data and progress of existing AQMAs in ASRs. Information in the latest ASR (2016 ASR) submitted by Babergh, and reviewed by Defra, show that the Sudbury AQMA remains valid. NO₂ concentrations continue to exceed the objective at selected locations within the AQMA.

What requirements for action are required of Babergh District Council

Every local authority that has an active AQMA is required to provide an Air Quality Action Plan as a means to develop measures that will provide the necessary emissions reductions in air quality objectives within specified timescales in the areas that have been identified as an AQMA. Babergh DC published an Action Plan for the AQMA in 2011. Defra expects local authorities with AQMAs to continually evaluate their Action Plan for effectiveness to ensure that measures are progressing and that measures continue to deliver improvements to air quality.

We attach an annex giving contact details should you be unhappy with the service you have received.

If you have any queries about this letter please contact me.

Yours sincerely

Guy Mawhinney

Information Rights Team

InformationRequests@defra.gsi.gov.uk

Annex

Complaints

If you are unhappy with the service you have received in relation to your request you may make a complaint or appeal against our decision under section 17(7) of the FOIA or under regulation 11 of the EIRs, as applicable, within 40 working days of the date of this letter. Please write to Nick Teall, Head of Information Rights, Seacole Building, 2 Marsham Street, London, SW1P 4DF (email: InformationRequests@defra.gsi.gov.uk) and he will arrange for an internal review of your case. Details of Defra's complaints procedure are on our [website](#).

If you are not content with the outcome of the internal review, section 50 of the FOIA and regulation 18 of the EIRs gives you the right to apply directly to the Information Commissioner's Office (ICO) for a decision. Please note that generally the ICO cannot make a decision unless you have first exhausted Defra's own complaints procedure. The ICO can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF