Schedule 4 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011, contains the following clause in relation to what an Environmental Statement should contain;

3. A description of the aspects of the environment likely to be significantly affected by the development, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the interrelationship between the above factors.

For the vast majority of Environmental Statements that are undertaken the potential effects on local air quality are part of the scope as a consequence of potential increases in road traffic emissions as a consequence of the development. A recent legal case could change the way in which local air quality is assessed.

The European Commission has launched legal proceedings against the UK for failing to tackle air pollution, and the Highways Agency (HA) recently announced its intention to introduce temporary speed limits on some sections of motorway. The HA’s move is likely to be the first indication that EU Limit Values (i.e. pollutant concentration limits) are having an impact on UK Government policy. This could eventually have far reaching effects for development and the way in which air quality is assessed in general.

The affected sections of motorways are to become managed motorways, with hard shoulder running and speed restrictions to ease congestion during busy times. The HA’s main intention here is to raise the capacity of the road. Mandatory maximum speed limits would apply between 7am and 7pm, with the suggestion that these are needed to reduce emissions. The good news is that this is promised to be a temporary restriction, and we’ll be able to accelerate back up to 70mph once vehicle emissions fall back.

The problem is that there is contradictory evidence from monitoring and modelling as to what actually happens on managed motorways, and in reality, nobody really knows what the effect on air quality will be. So, we will have to see if the temporary speed limits become fairly permanent.

Whilst motorway speed limits may be an inconvenience for some, EU Limit Values could prove to be much more than that. According to European Law, EU Limit Values cannot be breached and, where exceeded, cannot be made worse. This seems to be behind the HA announcement, and more interestingly, it suggests that the HA have been undertaking modelling to assess compliance against EU Limit Values. To date, it has been Defra’s duty to demonstrate compliance with EU Limit Values. This is based on coarse monitoring and modelling. Whilst fine for reporting to Brussels, this method is not sufficient for indicating at a local level whether EU Limit Values are likely to be breached.

This may have a knock–on effect on how the significance of local air quality effects caused by road traffic is considered within Environment Impact Assessments (EIAs). At present the significance criteria used within EIAs in relation to local air quality is based on the National Air Quality Objectives (NQOs) for nitrogen dioxide and particulates (PM$_{10}$) and is applied to locations where there is the possibility of affecting human beings.

The EU Limit Values do not just apply where there are people (as do Air Quality Strategy Objectives); they effectively apply everywhere. Having to demonstrate compliance with EU Limit Values would significantly alter how air quality assessments are done, making it much more difficult to demonstrate compliance. Where EU Limit Values are breached and there is even the slightest increase in traffic, development would be put at risk.
It is unclear what the Government is going to do about this, or even if it recognises that there is an issue, but there does seem to be change in the air; EU Limit Values can no longer be ignored.

*Graham Harker, Senior Associate – Peter Brett Associates LLP, [gharker@peterbrett.com](mailto:gharker@peterbrett.com), April 2014.*