



# The London Resort Development Consent Order

BC080001

## Statutory Nuisance Statement

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## Revisions

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## Executive Summary

The Statutory Nuisance Statement provides an account of the potential nuisance implications of the Proposed Development. It describes the measures that have been incorporated into the design to reduce the potential nuisances on the surrounding environment and neighbours to the Proposed Development. This statement sets out the principles described in Section 79(1) of the Environmental Protection Act 1990, (the 1990 Act), with respect to statutory nuisance and should be read alongside the Environmental Statement (ES). This statement refers to specific chapters of the ES which contain detailed information on the assessment and mitigation of impacts.

The ES chapters on terrestrial and freshwater ecology, noise and vibration, air quality and waste and materials contain further information about the potential effects in relation to the topics outlined within this statement. A description of the Proposed Development and the works to be undertaken can be found within Chapter 3: Project Description of the ES (document reference 6.1.3).

The construction and operational activities that have the potential to create a nuisance would be controlled through the design and operation of the Proposed Development and mitigation set out in the Outline Construction Environmental Management Plan (CEMP) (document reference 6.2.3.2) and through an environmental management system once London Resort is operational. The detailed mitigation measures are outlined within the respective chapters of the ES and the outline CEMP. The CEMP will be secured through a requirement of the DCO.

With the mitigation measures in place, it is unlikely that any of the statutory nuisances identified in section 79(1) of the Environmental Protection Act 1990 are predicted to arise during the construction and operation of the London Resort.

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## Glossary

<b>Term</b>	<b>Definition</b>
DCO	Development Consent Order
EPA	Environmental Protection Act
ES	Environmental Statement
LRCH	London Resort Company Holdings Limited
NPS	National Policy Statement

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## Chapter One ◆ Introduction

### INTRODUCTION

- 1.1 The Statutory Nuisance Statement has been prepared to support the application by London Resort Company Holdings Limited (LRCH) for Development Consent Order (DCO) application for the London Resort. The Proposed Development is recognised as a Nationally Significant Infrastructure Project (NSIP) under Part 3 of the Planning Act 2008 (the 2008 Act).
- 1.2 The Statutory Nuisance Statement provides an account of the potential implications of the Proposed Development, and the measures that have been incorporated into the design to reduce the potential nuisances on the surrounding environment and neighbours. This statement sets out the principles described in Section 79(1) of the Environmental Protection Act 1990 (the 1990 Act), with respect to statutory nuisance.
- 1.3 In order for action to be taken with regards to statutory nuisances, the nuisance complained of should either contain a risk to people's health or interfere with a person's legitimate use or enjoyment of land.
- 1.4 Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009 requires a Statement of Statutory Nuisances when an application proposes to engage one or more of the criteria set out in section 79(1) of the 1990 Act. It also requires the applicant to propose how to '*mitigate or limit them*'.
- 1.5 This statement should be read alongside the other application documents, in particular, the Environmental Statement (ES) (Part 6 of the DCO). This statement refers to relevant chapters of the ES which contain detailed information on the assessment and mitigation of impacts.
- 1.6 The ES chapters on terrestrial ecology (document reference 6.1.12), noise and vibration (document reference 6.1.15), air quality (document reference 6.1.16) and waste and materials (document reference 6.1.19) describe further information about the potential effects in relation to the topics outlined within this statement. A description of the Proposed Development and the works to be undertaken can be found within Chapter 3 of the ES (document reference 6.1.3).
- 1.7 The Project Site lies approximately 30 km east-south-east of central London on the south and north banks of the River Thames, in the ceremonial counties of Kent and Essex. For clarity, the section of the Project Site to the south of the River Thames is referred to as the 'Kent Project Site' and that to the north of the river is identified as the 'Essex Project Site'. The term 'Project Site' refers to both the Kent and Essex Project Sites collectively. The 'Order Limits' within which the proposed DCO would apply are shown on the Location Plan (document reference 2.1).

- 1.8 The Kent Project Site occupies much of the Swanscombe Peninsula, formed by a meander in the River Thames, and includes a corridor for transport connections extending generally southwards to the A2(T). It also includes a section of the A2(T) corridor approximately 3.5 km in length between the existing Bean junction to the west (A2(T) / B255) and Pepper Hill (A2(T) / B262) to the east. The Kent Project Site occupies 387.53ha of land in a complex shape.
- 1.9 The Kent Project Site includes land falling within the jurisdiction of Dartford Borough Council (DBC) to the west and Gravesham Borough Council (GBC) to the east. The majority of the Kent Project Site also falls within the Ebbsfleet Garden City, established in April 2015, for which Ebbsfleet Development Corporation (EDC) is the Local Planning Authority.
- 1.10 The High Speed 1 (HS1) line crosses the Kent Project Site along an approximate north-west to south-east axis. The urban areas of Stone, Greenhithe, Ingress Park and Swanscombe lie to the west and south. These are largely residential in character, with commercial uses concentrated on Stone's river frontage. Beyond Greenhithe to the south-west of the Kent Project Site lies Bluewater shopping centre, a significant regional retail destination. To the east of the Kent Project Site lies Northfleet, a neighbourhood of mixed residential and commercial uses.
- 1.11 Across the southern and south-eastern parts of the Swanscombe Peninsula is an extensive industrial area concentrated around Manor Way, Galley Hill and London Road. To the south of the A2(T) the land is more open and rural in character, with small settlements amid farmland and woodland blocks. Most of this area lies in the Metropolitan Green Belt.
- 1.12 The Essex Project Site includes areas of land east of the A1089 Ferry Road and the Tilbury Ferry Terminal, incorporating the London International Cruise Terminal and non-contiguous the Asda roundabout at the junction of the A1089 St Andrews Road / Dock Road, Windrush Road and Thurrock Park Way. The Essex Project Site is 25.54 hectares in area.
- 1.13 The Essex Project Site falls within the jurisdiction of Thurrock Council, a unitary authority. The Essex Project Site lies immediately to the east of the existing port of Tilbury and to the west of Tilbury2, a new port currently under construction. At the south-east corner of the Port lies the Tilbury Ferry Terminal incorporating the London International Cruise Terminal (a grade II\* listed building featuring a floating landing stage and series of bridge structures). The Asda roundabout is located to the north of the port of Tilbury and incorporates highway land.

## Chapter Two ◆ Policy and statutory context

### POLICY

- 2.1 National Policy Statements (NPS) are produced by government and comprise the government’s objectives for the development of nationally significant infrastructure in a particular sector and state. There are no NPSs for business or commercial projects. However, the contents of a number of other NPS establish the principle of overarching issues that can also be associated with a commercial and leisure related development, such as the London Resort. For example, the National Networks NPS (December 2014) sets out the need for, and government’s policies to deliver, the development of nationally significant road and rail network infrastructure in England.
- 2.2 Paragraphs 4.57 to 4.59 of the NPS for National Networks state the importance of considering the possible sources of nuisance under Section 79(1) of the 1990 Act and how they may be mitigated or limited during the examination of a Nationally Significant Infrastructure Project (NSIP) by the Examining Authority, so that any additional requirements to avoid statutory nuisance are included in subsequent orders granting development consent.
- 2.3 Paragraph 5.81 details that the construction and operation of national networks infrastructure has the potential to create a range of emissions such as odour, dust, steam, smoke and artificial light, as well as noise and vibration.
- 2.4 Paragraph 5.82 states
- ‘Because of the potential effects of these emissions and in view of the availability of defence of statutory authority against nuisance claims described previously, it is important that the potential for these impacts is considered by the applicant in their application, by the Examining Authority in examining applications and by the Secretary of State in taking decisions on development consent’.*
- 2.5 Paragraph 5.83 states that
- ‘For nationally significant infrastructure projects of the type covered by this NPS, some impact on amenity for local communities is likely to be unavoidable. Impacts should be kept to a minimum and should be at a level that is acceptable.’*
- 2.6 Paragraphs 5.84 to 5.86 state that where a development is subject to an Environmental Impact Assessment (EIA) the applicant should assess any likely significant effects on amenity from emissions of odour, dust, steam, smoke and artificial light and describe these in the ES. Consultation with the relevant local planning authority and where appropriate the Environment Agency about the scope and methodology of the assessment is advised.

- 2.7 The Prevention of Damage by Pests Act 1949 (the 1949 Act) places a duty on owners and occupiers to keep their land and buildings free of rats and mice and gives local authorities powers to enforce this within their district.

#### **Environmental Protection Act 1990**

- 2.8 Section 79(1) of the 1990 Act describes the matters that constitute a statutory nuisance in England and Wales. This Statutory Nuisance Statement identifies whether the London Resort has the potential to involve one or more of the statutory nuisances described in Section 79(1) and, if that is the case, how it will mitigate or limit the potential nuisance.

- 2.9 Section 79(1) describes the following as matters of statutory nuisances:

*'The following matters constitute "statutory nuisances" for the purposes of this Part, that is to say:*

- (a) any premises in such a state as to be prejudicial to health or a nuisance;*
- (b) smoke emitted from premises so as to be prejudicial to health or a nuisance;*
- (c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;*
- (d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;*
- (e) any accumulation or deposit which is prejudicial to health or a nuisance;*
- (f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;*
- (fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;*
- (fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance;*
- (g) noise emitted from premises so as to be prejudicial to health or a nuisance;*
- (ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street;*
- (h) any other matter declared by any enactment to be a statutory nuisance."*

*and it shall be the duty of every local authority to cause its area to be inspected from time to time to detect any statutory nuisances which ought to be dealt with under section 80 ... or sections 80 and 80A ... and, where a complaint of a statutory nuisance is made to it by a person living within its area, to take such steps as are reasonably practicable to investigate the complaint.”*

2.10 Section 79(1A) states

*‘No matter shall constitute a statutory nuisance to the extent that it consists of, or is caused by, any land being in a contaminated state.’*

2.11 Contaminated state is described in Section 79(1B) as:

*‘Land is in a “contaminated state” for the purposes of subsection (1A) above if, and only if, it is in such a condition, by reason of substances in, on or under the land, that—*

*(a) harm is being caused or there is a possibility of harm being caused; or*

*(b) pollution of controlled waters is being, or is likely to be, caused’.*

2.12 Section 79(3)-(6) also describes the exceptions with respect to statutory nuisances. The exceptions relevant to London Resort are as follows:

- i. *‘Subsection 79(1)(c) [fumes or gases emitted from premises so as to be prejudicial to health or a nuisance] above does not apply in relation to premises other than private dwellings*
- ii. *Subsection 79(1)(fa) [any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance] does not apply to insects that are wild animals included in Schedule 5 to the Wildlife and Countryside Act 1981 (animals which are protected), unless they are included in respect of section 9(5) of that Act only;*
- iii. *Subsection 79(1)(ga) [noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street] above does not apply to noise made—*
  - a. *by traffic’.*

## Chapter Three ◆ Potential breaches

### INTRODUCTION

- 3.1 The following is written in line with the findings from the ES and takes into account the principles described in Section 79(1) of the 1990 Act. It sets out the potential sources of nuisance of the Proposed Development during construction or operation, including artificial light, noise, smoke, fumes or gases, odour, insect/rodent infestations, and accumulation or deposits.

### EMISSIONS

#### Construction

- 3.2 During construction of the Proposed Development there is potential for dust emissions to be generated from site activities and vehicles accessing the Project Site.
- 3.3 A qualitative assessment of the potential for impacts from dust arising during the proposed construction works has been carried out following guidance from the Institute of Air Quality Management and is detailed within Chapter 16 of the ES relating to air quality (document reference 6.1.16). The implementation of recommended mitigation measures would ensure that any dust impacts would be negligible and therefore would not lead to any nuisance.

#### Operation

- 3.4 During the operation of the Proposed Development there is potential for odorous emissions from the proposed wastewater treatment works (WWTW) at the Kent Project Site. An assessment of the potential for odour nuisance owing to the WWTW has therefore been carried out within Chapter 16 of the ES (document reference 6.1.16), and it is considered that with best practice measures implemented to mitigate any potential odorous emissions, subject to final plant design, the WWTW would be unlikely to lead to any odour nuisance.

### ARTIFICIAL LIGHT

- 3.5 Section 79(1) (fb) of the 1990 Act refers to - '*Artificial light emitted from premises so as to be prejudicial to health or a nuisance*'.
- 3.6 The nature of the Proposed Development would require the use of external artificial lighting as an essential element to progress the construction and operation of the Proposed Development.



## Construction

- 3.7 Requirements for the artificial lighting during construction period are addressed within the DCO application to ensure suitable mitigation measures are adhered to for the emission of artificial light during the construction phases. These can be found within the Artificial Lighting Environmental Impact Assessment (document reference 6.2.12.11).
- 3.8 The relevant considerations and coordination's for artificial lighting shall be addressed for areas within direct proximity to the waterways with the Port of London Authority.
- 3.9 With mitigation, it is not anticipated that artificial lighting would be a cause of nuisance; however, it is expected that there will be an increase in the external illumination levels within the area.

## Operation

- 3.10 The use of artificial lighting is an essential component in the operation of the Proposed Development. Whilst an increase in the levels of illumination and visible brightness are expected, the natural surrounding and perimeter waterways shall be maintained with lower levels of illumination.
- 3.11 The Lighting Statement (document reference 7.10) provides outline parameters and principles for the external artificial lighting strategy with consideration of the likely impact of the Proposed Development.
- 3.12 The lighting strategy shall adhere to the outline Lighting Statement (document reference 7.10) and be developed in line with the lighting impact assessment to ensure, no nuisance is expected in regard to artificial lighting during operation.

## NOISE

- 3.13 In order for noise to constitute a statutory nuisance it must:
- Unreasonably and substantially interfere with the use or enjoyment of a home or other premise; or
  - Injure health or be likely to injure health.
- 3.14 Statutory nuisance laws do not apply to road traffic, although they do apply to vehicles in the street (for example, music from car stereos).
- 3.15 Chapter 15 of the ES (document reference 6.1.15) provides an assessment of noise and vibration associated with the Proposed Development during construction and operational phases.
- 3.16 The assessment considers the potential noise impact significance at noise-sensitive receivers, deemed to be where noise or vibration has the potential to have a negative

impact on humans, wildlife (or ecologically sensitive sites) including residential properties, schools, healthcare facilities and care homes in the vicinity of the Project Site.

### Construction

- 3.17 The DCO application provides an assessment of the potential noise impact of the Proposed Development during the various construction phases between 2023 and 2029. Construction work operations are usually characterised by temporary increases in ambient noise levels which may result in short-term disturbance to nearby receptors.
- 3.18 Using typical sound power level data and industry standard criteria, respectively set out in Annex C and Annex E of BS 5228-1:2009+A1 2014, rating noise levels from fixed plant have been assessed at sensitive receivers using BS4142:2014+A1:2019 principles.
- 3.19 Dwellings within proximity to the Kent Project Site boundary are expected to be affected to a degree during construction activities, due to the short distance to the works and the characteristics of construction noise making it more readily discernible against the existing noise climate. Noise from construction around the Essex Project Site is likely to be insignificant against the existing background noise levels and noise character of the local area as an industrial and port location.
- 3.20 The impact of construction noise can be limited by the hours during which noisy works is allowed. The application assumes construction hours of work on Monday to Friday of 08:00 to 18:00 and Saturday 08:00 to 13:00. Any alterations to this schedule will likely require prior agreement with local planning authorities. By avoiding noisy works during evening and night-time (respectively between 19:00-23:00 and 23:00-0700) adverse impacts through sleep disturbances will be avoided.
- 3.21 The application includes a number of site-specific measures aimed at reducing the potential impact from construction noise. These are included in ES Chapter 15: *Noise and Vibration* (document reference 6.1.15). The ES provides the noise modelling assessments in which minimum permissible distances for plant operation sites and maximum numbers of specific plant units are specified. Noise contour zoning maps from the construction noise propagation studies indicate the existing noise sensitive receivers around the boundary of the Proposed Development, which will be more prone to construction disturbance.
- 3.22 Best Practicable Means (BPM) noise mitigation measures are also proposed in the ES (document reference 6.1.15). The application of BPM measures such as screening, effective community liaison, appropriate use and selection of equipment and effective planning of deliveries should help avoid noise impacts that constitute a statutory nuisance.

### Operation

- 3.23 The ES chapter (document reference 6.1.15) contains noise impact assessments focused on the operation of the Proposed Development. The impact of the following sources against the existing noise climate were investigated:

- (a) Increased traffic volumes due to visitors attending the Proposed Development;
- (b) Noise from rides, including the shouts / screams of visitors;
- (c) Noise from the Proposed Developments fixed plant compounds.

3.24 As noted previously, statutory nuisance laws do not apply to road traffic and therefore (a) is excluded from the assessment in this Statutory Nuisance Statement.

3.25 The impact due to the operation of visitor attractions (so called 'Ride and Scream' noise) has been assessed by comparing  $L_{AF,max}$  levels against the existing background noise climate around the Kent Project Site (taken to be the lowest  $L_{A90,15min}$  noise level measured on site). Based on an  $L_{AF,max}$  noise level threshold 5 dB below this existing background noise climate, the assessment (provided in full in the ES (document reference 6.1.15) indicated the following:

- Gate One rides should not produce  $L_{AF,max}$  levels in excess of the 43 dB(A) threshold at noise-sensitive receivers. Compliance with these levels would ensure statutory nuisances with regards to operation noise is unlikely.
- Ride and Scream noise is not expected to propagate across the River Thames into Thurrock, with  $L_{AF,max}$  noise levels shown to be below the threshold level.
- The locations of noise-sensitive receptors where Ride and Scream noise is likely to be audible from Gate Two rides (typically the residential amenity spaces in a direct line of site to the rides) are tabled in the ES (document reference 6.1.15).
- Firework displays are not proposed at the London Resort with artificial lighting shows being used as an alternative.
- The ES (document reference 6.1.15) sets limits on noise levels at noise sensitive receivers located near to proposed plant compound locations. The design levels set for the plant compounds are determined using industry standard BS4142:2014 methodology to impose a high degree of protection to noise sensitive receivers. It is unlikely that noise impact significance constituting as a statutory nuisance will occur due to the operation of fixed London Resort plant compounds.

## INSECTS/RODENT INFESTATIONS

3.26 Section 79(1)(fa) of the 1990 Act states that

*'any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance'.*

3.27 The London Resort has proposals with the potential to attract rodents and insects, including, waste storage and food preparation areas. However, these will be sufficiently managed using best practice regulations. Following waste management measures set out

in the following section “*Accumulation or Deposits*” it is expected that waste is unlikely to attract an infestation of insects or rodents.

- 3.28 The Prevention of Damage by Pests Act 1949 (the 1949 Act) places a duty on owners and occupiers to keep their land and buildings free of rats and mice and gives local authorities powers to enforce this within their district.
- 3.29 Control measures to minimise the risk of infestation in the proposal include waste being managed to ensure no overspill with covered waste and recycling receptors and regular transportation off-site. Also, litter bins on-site will be covered, and a litter free culture will be developed to ensure pest attractors are kept to the absolute minimum. Tunnels will be regularly inspected for any build-up of litter or waste and signs of rodents. In addition, where water is present within the Resort, it will be designed to maintain a flow, avoiding stagnation.
- 3.30 It is not anticipated that infestations would be a cause of nuisance with the control measures described.

## ACCUMULATION OR DEPOSITS

### Construction

- 3.31 Temporary on-site storage of waste is required during the construction period. There is a risk of odour and pest nuisance if improper management and storage of waste is carried out. As detailed in the Outline Construction Waste Management Plan (document reference 6.2.19.2), waste will be segregated into different streams for recycling and further treatment. Suitable management of construction waste, including regular collections, is expected mitigate the risk of odour and pest nuisance.
- 3.32 Waste collections during construction may cause noise and air nuisance, such as fumes in the immediate area. To mitigate this, services vehicles will carry out waste collections at appropriate times so to minimise disturbance to nearby residents or guests.

### Operation

- 3.33 Operational waste will be temporarily stored on-site before being collected for treatment off-site. Detail of appropriate storage is included in the Outline Operational Waste Management Strategy (document reference 6.2.19.1). Improper storage of waste, particularly organic waste, can result in odours, pests and vermin issues. Excessive accumulation of waste will be avoided by regular waste collections by the appointed waste contractor. Other mitigation which will prevent nuisance issues include sealed storage, regular cleaning of waste storage areas, and segregation of waste streams. The risk of nuisance after mitigation measures such as these is expected to be minimal.

## Chapter 4 ◆ Conclusions

### CONCLUSIONS

- 4.1 This Statutory Nuisance Statement considers the potential for matters set out in section 79(1) of the 1990 Act and whether these could arise at the Proposed Development.
- 4.2 The construction activities that have the potential to create a nuisance would be controlled through the design and operation of the Proposed Development and mitigation set out in the outline Construction Environmental Management Plan (CEMP) (document reference 6.2.3.2). The CEMP will be secured through a requirement of the DCO. The detailed operational mitigation measures are outlined within the respective chapters of the ES.
- 4.3 With the mitigation measures in place, it is predicted that the statutory nuisances identified in Section 79(1) of the 1990 Act are unlikely to arise during the construction and operation of the Proposed Development.