



# CLEVE HILL SOLAR PARK

## STATEMENT IN RESPECT OF STATUTORY NUISANCE

November 2018  
Revision A

Document Reference: 5.3  
APFP Regulation: 5(2)(f)

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**CLEVE HILL**  
SOLAR PARK



## 1. INTRODUCTION AND SUMMARY

- 1.1 This Statement in Respect of Statutory Nuisance ("the Statement") relates to the application by Cleve Hill Solar Park Ltd ("the Applicant") to the Secretary of State under the Planning Act 2008 (as amended) ("the Act") for a Development Consent Order ("DCO").
- 1.2 The Applicant is a joint venture between Hive Energy Ltd, and Wirsol Energy Ltd.
- 1.3 The Application is for a DCO for the construction, operation and maintenance, and decommissioning of Cleve Hill Solar Park, a solar photovoltaic (PV) array electricity generating facility and electrical storage facility, with a total capacity exceeding 50 megawatts (MW), and an export connection to the National Grid ("the Project"). The Project is classified as a Nationally Significant Infrastructure Project ("NSIP") under the Act.
- 1.4 This Statement should be read alongside other documents submitted as part of the Application, particularly:
  - 1.4.1 the Environmental Statement ("ES") (Document Reference: 6); and
  - 1.4.2 the Outline Construction Environmental Management Plan ("CEMP") (ES Technical Appendix A5.4) (Document Reference: 6.4.5.4).
- 1.5 The ES contains detailed information on the assessment, significance and mitigation of environmental impacts.
- 1.6 The Statement has been prepared in compliance with the requirements of Regulation 5(2) (f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 ("the APFP Regulations") and in accordance with the Department for Communities and Local Government guidance, 'Planning Act 2008: Application Form Guidance, June 2013'.
- 1.7 This Statement identifies whether the proposed Project engages one or more of the statutory nuisances, set out in section 79(1) of the Environmental Protection Act 1990 ("the EPA"), and if so, how the Applicant proposes to mitigate or limit such nuisances.
- 1.8 Whilst it is not expected that the construction, operation, maintenance and decommissioning of the Project would cause a statutory nuisance, the draft DCO (Document Reference 3.1) accompanying the Application contains a provision that would provide a defence to proceedings in respect of statutory nuisance (in respect of sub-paragraph (g) of section 79(1) of the EPA (noise emitted from premises so as to be prejudicial to health or a nuisance), subject to certain criteria.
- 1.9 Section 2 of this Statement sets out the relevant provisions of the EPA and the legislative framework pertinent to statutory nuisance. Section 3 considers the potential for the proposals to give rise to statutory nuisances and it is concluded in Section 4 that it is not expected that there would be a breach of Section 79(1) of the EPA during construction, operational or decommissioning activities.

2. **STATUTORY CONTEXT**

2.1 **The APFP Regulations**

2.2 Regulation 5(2) (f) of the APFP Regulations states that an application for a DCO must be accompanied by

*“a statement whether the proposal engages one or more of the matters set out in section 79(1) (statutory nuisances and inspections therefor) of the Environmental Protection Act 1990, [EPA 1990] and if so how the applicant proposes to mitigate or limit them”.*

2.3 **National Policy Statement**

2.4 Paragraphs 4.14.1-2 of the ‘Overarching National Policy Statement for Energy EN-1’ states that:

*“Section 158 of the Planning Act 2008 confers statutory authority for carrying out development or doing anything else authorised by a development consent order. Such authority is conferred only for the purpose of providing a defence in any civil or criminal proceedings for nuisance. This would include defence for proceedings for nuisance under Part III of the EPA (statutory nuisance) but only to the extent that the nuisance is the inevitable consequence of what has been authorised. The defence does not extinguish the local authority’s duties under Part III of the EPA to inspect its area and take reasonable steps to investigate complaints of statutory nuisance and to serve abatement notice where satisfied to its existence, likely occurrence or recurrence. The defence is not intended to extend to proceedings where the matter is ‘prejudicial to health’ and not a nuisance.*

*It is very important that, at the application stage of an energy NSIP, possible sources of nuisance under section 79(1) of the 1990 Act and how they may be mitigated or limited are considered by the IPC so that appropriate requirements can be included in any subsequent order granting development consent.”*

2.5 **EPA**

2.6 Section 79(1) of the EPA (as it applies in England) provides that the following matters constitute statutory nuisances:

*(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; and*

*(h) any other matter declared by any enactment to be a statutory nuisance.*

2.7 For the purposes of section 79(1) 'noise' includes vibration.

2.8 For a nuisance to be considered a statutory nuisance it must unreasonably and substantially interfere with the use or enjoyment of a home or other premises, or injure health or be likely to injure health. To be considered a nuisance, an activity must be ongoing or repeated; a one-off event would not usually be considered a nuisance.<sup>1</sup>

### 3. ASSESSMENT OF ENGAGEMENT

3.1 The ES (Document Reference: 6) for the Project addresses the likelihood of significant effects arising that could constitute a statutory nuisance, as identified in section 79(1) of the EPA.

3.2 Matters which are considered to be statutory nuisance under section 79(1) of the EPA are covered within this section or are excluded as outlined in Table 1, depending on the assessment within the ES.

**Table 1**

<b>EPA section 79(1) Matter</b>	<b>Engaged as a consequence of the project</b>
(a) any premises in such a state as to be prejudicial to health or a nuisance	This matter is considered in this Statement.
(b) smoke emitted from premises so as to be prejudicial to health or a nuisance	No smoke is expected to be generated from the Project. This matter is not considered further within this Statement.
(c) fumes or gases emitted from premises so as to be prejudicial to	Section 79(1) only applies to private dwellings as clarified by section 79(4).

<sup>1</sup> Ares, E & Adcock, A. Nuisance Complaints (2018). House of Commons Library. Briefing Paper No CBP 8040

health or a nuisance	This matter is not considered further within this Statement.
(d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance	This matter is considered in this Statement.
(e) any accumulation or deposit which is prejudicial to health or a nuisance	This matter is considered in this Statement.
(f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance	Whilst the management of the operational Project may involve livestock grazing, no animals will be kept at the Project. This matter is not considered further within this Statement.
(fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance	The nature of the Project provides no indication that insects will emanate from the premises or be attracted to it. This matter is not therefore considered further within this Statement.
(fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance	This matter is considered in this Statement.
(g) noise emitted from premises so as to be prejudicial to health or a nuisance	This matter is considered in this Statement.
(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	This matter is considered in this Statement.
(h) any other matter declared by any enactment to be a statutory nuisance	No other matters are considered to be a potential statutory nuisance associated with the construction, operation or demolition of the Project.

- 3.3 When the operational phase ends, the Project will require decommissioning. The effects of decommissioning are similar to, or often of a lesser magnitude than, construction effects. The potential for statutory nuisance is also considered to be similar or less than for the construction phase and as such not repeated below.
- 3.4 A Decommissioning Plan will be agreed in advance with the local planning authority and will be subject to environmental controls and legislation extant at the time. An Outline Decommissioning and Restoration Plan is provided as (ES Technical Appendix A5.5 (Document Reference: 6.4.5.5)) to give an indication of the likely activities to be undertaken. The Decommissioning Plan

will be secured by requirement in the DCO. Each of the categories of statutory nuisance potentially engaged by the proposals is considered below.

### **Matters engaged**

#### **3.5 Condition of the Site – sections 79(1) (a) and (e):**

3.5.1 (a) any premises in such a state as to be prejudicial to health or a nuisance; and

3.5.2 (e) any accumulation or deposit which is prejudicial to health or a nuisance

#### Construction and Decommissioning

3.6 The construction the Project will be undertaken in phases. The types of construction activities include, but are not limited to:

- (a) Import of construction materials, plant and equipment to site;
- (b) Construction of the spine road and the flood protection bund;
- (c) Trenching and installation of electric cabling;
- (d) Excavation and construction of foundations;
- (e) Concrete batching;
- (f) Solar PV array construction including piling of module mount verticals; and
- (g) Installation of the substation and energy storage facility.

3.7 These works have the potential to create pollution incidents such as spillages and also create litter and general waste which can constitute a nuisance under the EPA.

3.8 Construction control mechanisms proposed include core working hours, traffic management and the Outline CEMP. An Outline CEMP (ES Technical Appendix A5.4 (Document Reference: 6.4.5.4) has been developed as part of the EIA and will guide the construction process through environmental controls in order to promote good construction practice and avoid adverse impacts during the construction phase.

3.9 The Outline CEMP brings together control measures that are commonly included in documents such as Site Waste Management Plans, Pollution Prevention Plans and Codes of Construction Practice and includes a tabulated executive summary for easy reference during the construction phase.

3.10 The measures set out in the Outline CEMP are embedded in the Project design and the assessment of effects undertaken. The EIA assumes that those measures are implemented in full. Compliance with the Outline CEMP will be secured by requirement in the DCO.

- 3.11 With these measures in place it is considered that the construction and decommissioning phases of the project will not give rise to impacts which would constitute a statutory nuisance under s79(1) (a) or (e).

#### Operation

- 3.12 During the operational phase, activity on the Project site will be minimal and would be restricted principally to vegetation and livestock management (the Project site will be grazed by sheep), equipment/infrastructure maintenance and servicing including cleaning and replacement of any components that fail, and monitoring to ensure the continued effective operation of the Project. The introduction of grazing marsh grasses to the scheme will assist in the integration of the Project to the existing landscape character of the area.
- 3.13 This phase of the project will not give rise to impacts which would constitute a statutory nuisance under s79(1) (a) or (e).

#### Conclusion

- 3.14 For the reasons explained above and with the mitigation measures described in place it is considered that the construction, operation and decommissioning phases of the project will not give rise to impacts which would constitute a statutory nuisance under s79(1) (a) or (e).

3.15 **Air Emissions – section 79(1) (d):**

- 3.15.1 (d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;

#### Construction and Decommissioning

- 3.16 During construction there is the potential for emissions of dust and particulates due to earthwork activities such as excavation, haulage of materials around site, bund formation, landscaping and concrete batching. The potential for sensitive receptors to be affected by on-site construction activities depends on construction method(s), materials, duration of the construction works, weather conditions and location of works in relation to receptors. There are no residential property receptors, which have high sensitivity to dust, within 100 m of construction and earthworks activities, and five within 350 m. The ES concluded that, following mitigation, construction and decommissioning phase dust emissions are predicted to lead to negligible and not significant effects.
- 3.17 The effects on air quality from construction traffic emissions have been predicted to be negligible and no mitigation is considered necessary.
- 3.18 Engine exhaust emissions from off-road vehicles known as 'non-road mobile machinery' ("NRMM") have the potential to affect local air quality. The assessment concluded that emissions from NRMM during construction and decommissioning are predicted to have, at worst, a slight adverse and not significant effect on air quality.
- 3.19 Measures to prevent or minimise the release of dust entering the atmosphere and/or being deposited on nearby receptors are included in the Outline CEMP (ES Technical Appendix A5.4 (Document Reference 6.4.5.4)). These include such best practice measures as minimising the extent and timing of exposed



areas, locating stockpiles away from sensitive receptors, accounting for predominant wind direction, use of water bowsers for dust suppression, covering vehicles carrying dry spoil, provision of wheel washing facilities, and daily visual inspections.

- 3.20 Control measures associated with NRMM include using fuel equivalent to ultra-low sulphur diesel, using equipment complying with current emissions standards, fitting diesel particulate filters, implementation of energy conservation methods, equipment maintenance.

#### Operation

- 3.21 No likely significant effects on air quality are predicted during the operational phase of the Project.

#### Conclusion

- 3.22 For the reasons explained above and with implementation of the above measures no claim against statutory nuisance is envisaged in respect of a statutory nuisance under s79(1) (d).

#### **3.23 Artificial Light – section 79(1) (fb)**

- 3.24 A statutory nuisance would exist if artificial light substantially interferes with the well-being, comfort or enjoyment of an individual's property. Usually this would mean that lights were causing a nuisance on a regular basis. Artificial lights may cause a nuisance if they are not maintained or used properly.

- 3.25 The potential for the effects of Glint and Glare are not covered by statutory nuisance legislation, which does not cover natural light. These effects are however assessed in detail within ES Chapter 17: Miscellaneous.

#### Construction and Decommissioning

- 3.26 Depending on the time of year, some artificial lighting may be required to facilitate construction. In accordance with the Outline CEMP, this will be minimised as far as possible, and where used will be directed into the works area, away from nearby properties. Careful consideration of the siting of lighting will be undertaken and lighting will be positioned to minimise the spread of light pollution, and ensure that only the immediate work area or compound is lit to avoid effects on properties during the construction phase. Lighting will either be controlled by operatives or will have PIR (Passive infra-red) motion sensor activated security and emergency lighting.

#### Operation

- 3.27 Lighting will be used during the operation phase but will be kept to a minimum and is associated with the compound and transformer elements within the solar panel areas. No areas of the Project will be continuously lit during operation. It will be controlled manually by operatives and will have PIR (Passive infra-red) motion sensor activated security and emergency lighting. The lighting will be fixed to the plant itself rather than standalone. Lighting is controlled by the Outline Landscape and Biodiversity Management Plan (ES Technical Appendix A5.2 (Document Reference 6.4.5.2)).

- 3.28 The likely effect of this will be limited as there are no properties that would have a view of the compound. Warm House is situated approximately 174 m to the nearest transformers within the area of solar panels and the properties at Nagden are situated approximately 203 m to the nearest transformer. The effects of these are limited and would be limited to a height of 3 m.
- 3.29 The Outline Landscape and Biodiversity Management Plan (LBMP) (ES Technical Appendix A5.2 (Document Reference: 6.4.5.2)) includes landscape planting proposals to screen elements of the Project from key receptor locations, e.g. nearby residential properties. These include:
- 3.29.1 Hedgerow planting with new trees to create low level screening (3-4 m). These will be located within the southern half of the Project and complement the existing network of hedgerows, and trees;
- 3.29.2 Shelterbelt management to create low level screening (4-9 m) creating a visual screen in the southern part of the Project. This is designed to screen the Project at sensitive locations close to residential receptors whilst retaining distant views to the estuary above the sea wall; and
- 3.29.3 Woodland management to create a dense visual screen between the Project and Warm House between 5 and 25 m high. The role of the proposed woodland planting is to create a visual screen along a section of the southern boundary of the Project site immediately to the north and adjacent to Warm House.

#### Conclusion

- 3.30 All planting will be monitored each year within the first 5 years to ensure that it is fully established and over this time the magnitude of effects and potential for statutory nuisance under s79(1) (fb) is anticipated to reduce.
- 3.31 For the reasons explained above and with implementation of the above measures no claim against statutory nuisance is envisaged in respect of statutory nuisance under s79(1) (fb).
- 3.32 **Noise and Vibration – section 79(1) (g) & (ga):**
- 3.32.1 (g) noise emitted from premises so as to be prejudicial to health or a nuisance; and
- 3.32.2 (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;
- 3.33 If noise is excessive, prolonged or on a regular basis it may constitute a statutory nuisance. A statutory nuisance would exist if noise substantially interfered with the well-being, comfort or enjoyment of an individual's property.
- 3.34 An assessment of noise and vibration impacts was undertaken as part of the EIA and reported in ES Chapter 12: Noise. The chapter assessed the significance of potential noise and vibration effects during the construction, operational and decommissioning phases, and concludes that, with appropriate mitigation, there would be no significant noise or vibration effects in terms of the EIA Regulations.

- 3.35 The elements relevant to section 79(1) are those relating to noise emitted from premises (which includes land) and from vehicles, machinery and equipment in a street. Traffic noise is specifically excluded from consideration by s79 (6A) (a) and is not considered further.

Construction and Decommissioning

- 3.36 The following construction activities are considered to be those with the most potential to result in adverse noise effects:

3.36.1 Construction of tracks and hardstanding areas;

3.36.2 Installation of mounting frames (including piling);

3.36.3 Installation of panels; and

3.36.4 Construction of the electrical compound.

- 3.37 The construction activities considered are those with most potential to result in adverse vibratory effects:

3.37.1 Construction Traffic Vibration;

3.37.2 Piling of PV panel framework; and

3.37.3 Compaction of tracks/hardstanding areas.

- 3.38 The measures set out below will be secured by the Outline CEMP (Technical Appendix A5.4 (Document Reference: 6.4.5.4)) and implemented as part of the Project and as such constitute mitigation 'embedded' in the design of the Project:

3.38.1 Core working hours are proposed to be between 07.00 until 19.00, Monday to Friday and 07.00 until 13.00 on a Saturday (unless in exceptional circumstances where need arises to protect plant, personnel or the environment);

3.38.2 A start-up and close down period for up to an hour before and after the core working hours is proposed. This does not include the operation of plant or machinery likely to cause a disturbance;

3.38.3 Where practicable, the work programme will be phased, which would help to reduce the combined effects arising from several noisy operations; and

3.38.4 Operation of plant or machinery likely to cause disturbance will not be undertaken after 19.00 on weekdays, and after 13.00 on a Saturday, except in an emergency.

- 3.39 The Project design and embedded mitigation measures are such that noise and vibration effects have been found to be not significant at the identified human receptors for all construction activities, and no further mitigation is specifically proposed.

### Operation

- 3.40 The primary sources of noise from the operational Project are the inverters and transformers across the site in the PV array, the substation and the energy storage facility.
- 3.41 The measures set out below were implemented as part of the design, and as such constitute mitigation 'embedded' in the design of the Project, they are secured by requirements in the DCO:
- 3.41.1 A large bund, will be built around the electrical compound, which will significantly reduce noise from the electrical compound at surrounding residential properties;
  - 3.41.2 Where possible, the distance from the nearest residential receptors to the substation and energy storage facility and onsite transformers and string inverters was maximised;
  - 3.41.3 Noise emissions from equipment will be a consideration in the selection of equipment, and where possible the quietest available equipment will be installed;
  - 3.41.4 Where required, manufacturer-supplied noise mitigation will be installed;
  - 3.41.5 Where possible, noise generating equipment will be enclosed / containerised;
  - 3.41.6 An appropriately-sized conductor arrangement will be selected to minimise noise;
  - 3.41.7 Damage to overhead lines will be avoided; and
  - 3.41.8 Conductors will be kept clean and free of surface contaminants during stringing / installation.
- 3.42 Application of the above embedded mitigation measures are secured by requirements in the DCO and will ensure that operational effects are minimised as far as reasonable practicable.
- 3.43 The ES predicted operational noise levels at the nearest receptors would exceed the operational noise limits, and assessed effects as having moderate / major significance. As such further mitigation was identified to ensure noise levels during the operational phase do not result in significant impacts, which are also controlled by requirements in the DCO, including:
- 3.43.1 Relocating some of the noise sources;
  - 3.43.2 Operating according to a structured programme designed to reduce noise at receptor locations (e.g. avoiding two noise sources operating simultaneously);
  - 3.43.3 Selecting plant with lower noise emission ratings than those assessed;

- 3.43.4 Providing noise insulation around the plant i.e. acoustic screening, enclosures etc.;
  - 3.43.5 Orientation of noise emission points away from receptors;
  - 3.43.6 Fitting of manufacturer supplied mitigation i.e. silencers etc.;
  - 3.43.7 Siting noisy equipment behind other site infrastructure e.g. substation building;
  - 3.43.8 Acoustic silencers installed on inlet / extract ventilation;
  - 3.43.9 Cooling fans located within transformer enclosures; and
  - 3.43.10 Container units to include acoustic insulation to prevent noise breakout.
- 3.44 It is worth noting that the assessment is based on a number of worst case assumptions and in practice, many items will be used intermittently, e.g. batteries, which will charge when not full and during peak supply to the grid, and discharging during periods of peak demand on the grid. Overall this is expected to be substantially less than continuous operation.
- 3.45 In order to ensure that such mitigation is implemented and give confidence that it will be effective, prior to the commencement of operation of any phase of the Development, the predictions of operational noise levels will be repeated based on the actual detailed design, specific models of plant and specific mitigation measures. This will be required to show that predicted noise levels are below the relevant rating level noise limit. It is anticipated that this report would be submitted to, and to be agreed by, Swale Borough Council, prior to the commencement of operation.
- 3.46 With these measures in place, the operational phase of the project will not give rise to impacts which would constitute a statutory nuisance under s79(1) (g) and (ga).

#### Conclusion

- 3.47 For the reasons explained above and with these measures in place, the construction, operation and decommissioning phases of the project will not give rise to impacts which would constitute a statutory nuisance under s79(1) (g) and (ga).

#### **4. CONCLUSION**

- 4.1 This Statement has been prepared to fulfil regulation 5(2) (f) of the APFP Regulations. It has considered whether the proposed Project would cause a statutory nuisance as set out in s79(1) of the EPA 1990.
- 4.2 Detailed assessments have been undertaken as part of the EIA and the statement reports the conclusions of the ES in relation to general site condition, air quality, artificial light, noise & vibration and during all phases of Project.
- 4.3 The embedded design and additional mitigation measures identified within the ES, will prevent impacts which have a potential to result in statutory nuisance

under s79(1) of the EPA 1990. These measures are secured by requirements contained in the draft DCO, which cover relevant matters.

- 4.4 It is not expected that there would be a breach of section 79(1) of the EPA 1990 during construction, operational or decommissioning activities.



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