

# SLOUGH MULTIFUEL EXTENSION PROJECT

[PINS Ref: EN010129]

## Reports and Statements

### **Statutory Nuisance Statement**

Application Document Reference: [5.3]

APFP Regulations 5(2)(f)

Revision Number: 1.0

Planning Act 2008  
Infrastructure Planning (Applications: Prescribed  
Forms and Procedure) Regulations 2009

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## Executive Summary

This Statutory Nuisance Statement (Statement) has been prepared by AECOM on behalf of SSE Slough Multifuel Limited (the Applicant) in relation to an application for a Development Consent Order (DCO) for the extension of the Slough Multifuel Extension Facility, an energy from waste electricity generating station, including associated development (the 'Proposed Project') on land at Edinburgh Avenue, at the Slough Trading Estate, Slough (hereafter referred to as the 'Proposed Project'). The application is being submitted to the Planning Inspectorate, with the decision whether to grant a DCO being made by the Secretary of State for Business, Energy and Industrial Strategy (Secretary of State) pursuant to the Planning Act 2008.

The Applicant is seeking development consent for an extension to the Consented Development comprising the carrying out of physical works (Work No. 1 at Schedule 1 'Authorised Development' of the draft DCO, Document Ref. 2.1) which will increase the efficiency and gross installed capacity of the extended generating station from just under 50 megawatts (MW) to circa 60MW. The physical works comprised in the extension are 'engineering operations' and therefore 'development' for the purposes of Section 31 of the Planning Act (PA) 2008. It is the extension which is the Nationally Significant Infrastructure Project (NSIP) pursuant to section 14(1)(a) and 15(1) of the PA 2008, and the development forming part of the extension (being the Authorised Development) which requires development consent pursuant to section 31 of the PA 2008. The Consented Development, which was originally consented in June 2017 under 'The Town and Country Planning Act 1990' (the 'TCPA') (Planning Permission Refs. P/00987/051 (being a Section 73 variation of P/00987/024 and P/00987/035) and P/00987/025, P/00987/052 and P/19876/000), is currently being constructed at the Site, is consented and constructed pursuant to the TCPA. It is not an NSIP, nor does it form part of one.

This Statement has been prepared to satisfy Regulation 5(2)(f) of the APFP Regulations, which requires an application for a DCO to 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, and if so how the applicant proposes to mitigate or limit them".

This Statement identifies the relevant matters in Section 79(1) of the Environmental Protection Act 1990 (EPA) and considers whether the general site conditions during all phases of the Proposed Project could cause a statutory nuisance. This Statement sets out appropriate mitigation measures to ensure that the Proposed Project has no significant effects that would give rise to a statutory nuisance. It is therefore demonstrated that no statutory nuisance effects are considered likely to occur.

## 1.0 INTRODUCTION

### 1.1 Introduction

- 1.1.1 This Statutory Nuisance Statement (the Statement) [**Application Document Reference 5.3**] has been prepared by AECOM on behalf of SSE Slough Multifuel Limited (the Applicant) in relation to an application for a Development Consent Order (DCO) for the extension of the consented Slough Multifuel Facility, an energy from waste electricity generating station, including associated development (the 'Proposed Project') on land at Edinburgh Avenue, at the Slough Trading Estate, Slough (hereafter referred to as the 'Proposed Project'). A DCO is required for the extension as it falls within the definition and thresholds for a 'Nationally Significant Infrastructure Project' (a 'NSIP') under Sections 14(1)(a) and 15(1)(2)(a) to (c) of the Planning Act (PA) 2008, being the extension of an onshore electricity generating station in England which, when extended, will have a capacity of more than 50 megawatts ('MW'). The DCO, if made by the Secretary of State (SoS), would be known as 'The Slough Multifuel Extension Order 202[X]' (the 'Order').
- 1.1.2 The Proposed Project is an extension to the Consented Development which was originally consented in June 2017 under 'The Town and Country Planning Act 1990' (the 'TCPA') (Planning Permission Refs. P/00987/051 (being a Section 73 variation of P/00987/024 and P/00987/035) and P/00987/025, P/00987/052 and P/19876/000). It comprises the carrying out of the following physical works (Work No. 1 at Schedule 1 'Authorised Development' of the draft DCO, Document Ref. 2.1) which will increase the efficiency and gross installed capacity of the extended generating station from just under 50MW to circa 60MW:
- a boiler primary air preheating system comprising heat exchanger bundles, pipework, valves, pipe supports, thermal insulation, instrumentation, cabling and containment;
  - a boiler secondary air preheating system comprising heat exchanger bundles, pipework, valves, pipe supports, thermal insulation, instrumentation, cabling and containment; and
  - mechanical modifications to the actuated stream turbine inlet control valve to allow steam capacity to be increased.
- 1.1.3 The physical works comprised in the extension are 'engineering operations' and therefore 'development' for the purposes of Section 31 of the PA 2008.
- 1.1.4 It is the extension which is the NSIP pursuant to section 14(1)(a) and 15(1) of the PA 2008, and the development forming part of the extension (being the Authorised Development) which requires development consent pursuant to section 31 of the PA 2008. The Consented Development is consented and constructed pursuant to the TCPA. It is not an NSIP, nor does it form part of one.
- 1.1.5 Separately, the extended generating station requires an ancillary authorisation to 'operate' at over 50MW pursuant to section 36 of the Electricity Act 1989, and this is included within the DCO.

- 1.1.6 The Proposed Project also includes associated development within the meaning of Section 115(2) of the PA 2008, including temporary construction laydown areas, contractor facilities, vehicle parking and cycle storage facilities.
- 1.1.7 The Proposed Project will not increase the throughput of waste, vehicle movements, emissions, or operating hours at the Slough Multifuel Facility, and will not alter the scale or external appearance of the consented buildings and structures.
- 1.1.8 A more detailed description of the Proposed Project is provided at Schedule 1 'Authorised Development' of the draft DCO and Chapter 2 'Proposed Project' in ES Volume I (Document Ref. 6.2) and the area within which the physical works are to occur are denoted by the hatched area on the Works Plan (Document Ref. 4.3).
- 1.1.9 The Proposed Project Site (the 'Site') lies entirely within the administrative boundary of Slough Borough Council, a unitary authority, and is located either side of Edinburgh Avenue within the Slough Trading Estate (National Grid Reference SU 953 814) approximately 2.5 km north west of Slough Town Centre.
- 1.1.10 The Site extends to approximately 2.8 hectares in area and was acquired by SSE in 2008. It forms part of the original Slough Heat and Power Plant site. The Consented Development is currently being constructed at the Site. Construction of the Consented Development at the Site is well advanced and is currently expected to be completed by Quarter 4 2024.
- 1.1.11 A more detailed description of the Site and its surroundings is provided at Chapter 4 'Existing Site Conditions' of the Environmental Statement ('ES') Volume 1 (Document Ref. 6.2).

## 1.2 Purpose and Structure of this Statement

- 1.2.1 The Statement has been prepared in compliance with Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the APFP Regulations).
- 1.2.2 Regulation 5(2)(f) requires that an application for a DCO must be accompanied by a statement setting out whether the proposal (i.e., the Proposed Project) engages one or more of the matters in section 79(1) (statutory nuisances and inspections therefor) of the Environmental Protection Act 1990 (as amended) (EPA). If any of those matters are engaged, the statement must set out how the applicant proposes to mitigate or limit the effects.
- 1.2.3 The matters in section 79(1) of the EPA which have been identified as relevant in respect of the Proposed Project and which have been considered within the Statement are set out in Table 3.1. The general site conditions during all phases of the Proposed Project have been considered.
- 1.2.4 The Statement should be read alongside other documents submitted as part of the application, particularly:

- the **Environmental Statement (ES) Application Document Reference 6.2**]; and
- the **Construction Environmental Management Plan (CEMP) [Application Document Reference 6.4.4 - Existing CEMP for Consented Development]**.

1.2.5 The Statement is produced in the context of section 158 of the Planning Act 2008 which provides statutory authority for carrying out development or anything else which is authorised by the DCO as a defence against civil or criminal proceedings for nuisance.

1.2.6 The Statement demonstrates that the Proposed Project has no significant effects that would give rise to a statutory nuisance given the minor nature of the works. This is due to the limited duration required for construction (two-months) and the embedded mitigation measures which will be implemented as secured in connection with the Consented Development and the associated Construction Environmental Management Plan (CEMP) (Appendix 2A [**Application Document Reference 6.4.4 - Existing CEMP for Consented Development**]). It is not expected that the construction, operation (and maintenance) and decommissioning of the Proposed Project would cause a statutory nuisance.

1.2.7 Nonetheless, it should be noted that article 10 (Defence to proceedings in respect of statutory nuisance) of the draft Development Consent Order [**Application Document Reference 2.1 - Draft Development Consent Order**] 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 the criteria set out in that article.

1.2.8 The Statement is structured as follows:

- Section 1: Introduction;
- Section 2: Legislative and Policy Context;
- Section 3: Assessment of Significance;
- Section 4: Potential Nuisance Impacts; and
- Section 5: Conclusion

## 2.0 LEGISLATIVE AND POLICY CONTEXT

### 2.1 The APFP Regulations 2009

2.1.1 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, and if so how the applicant proposes to mitigate or limit them*”.

## 2.2 EPA

2.2.1 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 or in Scotland, road;*
- h) *any other matter declared by any enactment to be statutory nuisance.”*

2.2.2 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>.

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



## 2.3 Overarching National Policy Statement for Energy (NPS EN-1)

- 2.3.1 Paragraph 4.14.1 of the Overarching National Policy Statement for Energy (NPS EN-1) states that: *“Section 158 of the Planning Act 2008 confers statutory authority for carrying out development consented to by, 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 a defence for proceedings for nuisance under Part III of the Environmental Protection Act 1990 (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 1990 to inspect its area and take reasonable steps to investigate complaints of statutory nuisance and to serve an abatement notice where satisfied of 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.”*
- 2.3.2 Paragraph 4.14.2 states: *“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”.*

## 2.4 Draft Energy National Policy Statements (NPSs)

- 2.4.1 The Government is currently reviewing and updating the Energy NPSs. It is doing this in order to reflect its policies and strategic approach for the energy system that is set out in the Energy White Paper (December 2020), and to ensure that the planning policy framework enables the delivery of the infrastructure required for the country’s transition to net zero carbon emissions. As part of the Energy NPS review process, the Government published a suite of Draft Energy NPSs for consultation on 6 September 2021. Section 4.14 of Draft Overarching National Policy Statement for Energy (EN-1) (Draft NPS EN-1) sets out the principles for common law nuisance and statutory nuisance. This mirrors Section 4.14 of NPS EN-1, except for some minor amendments to the wording e.g., to reflect revised paragraph numbers in the draft NPS and the Secretary of State being the decision maker.
- 2.4.2 Further details on the draft Energy NPSs can be found in the **Planning Statement [Application Document Reference 5.2- Planning Statement]**.

## 2.5 Assessment of Significance

- 2.5.1 The ES **[Application Documents 6.1 to 6.4]** for the Proposed Project addresses the likelihood of significant effects arising that could constitute a statutory nuisance, as identified in section 79(1) of the EPA.
- 2.5.2 The ES provides an assessment of the potential effects on receptors as negligible, minor, moderate or major. Moderate and major effects are considered to be significant for the purposes of the Environmental Impact Assessment (EIA).
- 2.5.3 Chapter 2: Proposed Project **[Application Document Reference 6.2.2 – ES Chapter 2]** and the Construction Environmental Management Plan (CEMP) **[Application Document Reference 6.4.4 - Existing CEMP for Consented**



**Development]** describes the mitigation measure relevant to, and to be followed by, the Consented Development and the Proposed Project during construction.

- 2.5.4 Operational effects have been assessed within **[Application Documents 6.2 - 6.4]** as being negligible and non-significant. The Proposed Project and Consented Development once operational, will have regulatory controls to adhere to including operational hours.
- 2.5.5 Unless otherwise stated, decommissioning effects are considered to be comparable to or less than those associated with construction of the Proposed Project for the reasons set out in the ES. Specific impact assessments undertaken for the Proposed Project, including those for air quality and noise and vibration, conclude that relevant best practice mitigation measures would be in place during any decommissioning works, and no additional mitigation has been identified as necessary for the decommissioning phase of the Proposed Project.
- 2.5.6 Potential nuisance aspects have been considered in Section 3 and through embedded mitigation, no statutory nuisance effects are considered likely to occur.

### 3.0 POTENTIAL NUISANCE IMPACTS

- 3.1.1 This section discusses the nuisance impacts set out in the EPA 1990 in relation to the Proposed Project and summaries the embedded and additional mitigation measures that will be applied to prevent these.

#### **EPA 1990 Section 79(1) a) Any premises in such a state as to be Prejudicial to Health or a Nuisance.**

- 3.1.2 A defence is not sought or required in respect of this type of nuisance. Nevertheless, it is considered that:
- the EPA describes a potential statutory nuisance to be caused by ‘any premises in such a state as to be prejudicial to health or a nuisance’;
  - statutory nuisance as a result of poor housekeeping or maintenance could only occur if poor levels of housekeeping or maintenance are in place for example; and
  - to minimise the risk of any such statutory nuisance from occurring through poor maintenance or housekeeping, operatives on site will have to adhere to the CEMP during the construction phase of the Proposed Project and all permits will have to be adhered to once operational.

#### **EPA 1990 Section 79(1) 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**

- 3.1.3 No smoke is expected to be generated from the Proposed Project during normal operation. Fumes and gases that may be relevant are considered in the following sections.

##### Construction Phase

- 3.1.4 Construction air emissions are considered in Appendix 8A **[Application Document Reference 6.4.6 – Air Quality Technical Appendix]** and reported in

ES Chapter 8: Air Quality [**Application Document Reference 6.2.8 – ES Chapter 8**]. The study area for construction dust and Non-Road Mobile Machinery (NRMM) emissions has been applied, in line with IAQM guidance (2014), extending up to 350m beyond the Proposed Project Site boundary and 50m from construction traffic route (up to 500m from the Proposed Project Site entrances), for human health receptors.

- 3.1.5 The temperature of the exhaust gases at the point of release to air remains the same as the Consented Development. The Proposed Project does not introduce any new emissions nor change the exhaust gas parameters compared to the future baseline scenario.
- 3.1.6 The potential for NRMM emissions within the Proposed Project Site to result in air quality impacts on local human health is negligible.
- 3.1.7 The application of good practice controls and mitigation via the implementation of the CEMP already employed for the Consented Development, which will also be employed for the Proposed Project, would reduce potential effects at receptors during Construction to a not significant level.

#### Operational Phase

- 3.1.8 The pollutants considered within the assessment of air emissions for the main stack in ES Chapter 8: Air Quality [**Application Document Reference 6.2.8 – ES Chapter 8**], are primarily those prescribed within the Industrial Emissions Directive (IED). These are:
- oxides of nitrogen (NO<sub>x</sub>), expressed as NO<sub>2</sub>;
  - particulate matter (as PM<sub>10</sub> size fraction);
  - carbon monoxide (CO);
  - sulphur dioxide (SO<sub>2</sub>);
  - hydrogen chloride (HCl);
  - hydrogen fluoride (HF);
  - twelve metals (cadmium (Cd), thallium (Tl), mercury (Hg), antimony (Sb), arsenic (As), lead (Pb), chromium (Cr), cobalt (Co), copper (Cu), manganese (Mn), nickel (Ni) and vanadium (V));
  - polychlorinated dibenzo-para-dioxins and polychlorinated dibenzo furans (referred to as dioxins and furans); and
  - volatile organic compounds (VOCs), as a measure of total organic compounds.
- 3.1.9 Emissions of the following pollutants not included within the IED are also considered:
- the Polycyclic Aromatic Hydrocarbons (PAH), benzo[a]pyrene;
  - ammonia (NH<sub>3</sub>); and
  - particulate matter (as PM<sub>2.5</sub> size fraction).

- 3.1.10 Of the pollutants listed above, the primary pollutant of interest in relation to the impacts due to emissions from the Proposed Project is NO<sub>2</sub>.
- 3.1.11 The additional heat recovered will be utilised by the Proposed Project to generate additional electrical power output. The temperature of the exhaust gases at the point of release to air remains the same as the Consented Development. The Proposed Project does not introduce any new emissions nor change the exhaust gas parameters therefore the impact of the Proposed Project at all receptors is no change to long and short term concentrations at all human health and ecological receptors.
- 3.1.12 The effect of the Proposed Project on air quality sensitive receptors from stack emissions is neutral and not significant, in terms of the risk to human health and to sensitive features at designated ecological sites.

**EPA 1990 Section 79(1) d) Any Dust, Steam, Smell or Other Effluvia Arising on Industrial, Trade or Business Premises and Being Prejudicial to Health or a Nuisance, and e) Any Accumulation or Deposit which is Prejudicial to Health or a Nuisance**

- 3.1.13 Emissions of dust and particulates from the construction phase of the Proposed Project will be controlled in accordance with good working practices already in place on the site due to the CEMP which is being adhered to for the construction works associated with the Consented Development. The management of dust and particulates and application of adequate mitigation measures will be enforced through existing embedding measures in the agreed Construction Environmental Management Plan (CEMP), as it is currently for the Consented Development (refer to **Appendix 2A [Application Document Reference 6.4.4 – Existing CEMP for Consented Development]**).
- 3.1.14 Good practice industry measures are already in place for the Consented Development and incorporated into the Consented Development CEMP and will be applicable to the Proposed Project, albeit no new earthworks form part of the Proposed Project. Based on an initial assessment of the area of sensitivity to dust impacts and the likely risk of impacts arising from each of the key construction activities (e.g., construction and trackout of material onto roads) appropriate embedded measures to be implemented during construction that have been identified and are existing measures included within the Consented Development CEMP (refer to **Appendix 2A [Application Document Reference 6.4.4 – Existing CEMP for Consented Development]**). are:
- where appropriate, storage of sand and aggregates in bunded areas and storage of cement powder and fine materials in silos;
  - use of water suppression and regular cleaning to minimise mud on roads;
  - covering of vehicles leaving the construction site that are carrying construction waste materials or spoil;
  - employment of a wheel wash system at site exits;
  - restriction where practicable of the use of unmade road access; and
  - prohibiting open fires on Site.

3.1.15 Good practice measures will also be employed through the existing Consented Development CEMP (refer to **Appendix 2A [Application Document Reference 6.4.4 – Existing CEMP for Consented Development]**). for the siting and operation of NRMM to control associated emissions, including where possible:

- minimising vehicle and plant idling; and
- locating static plant away from sensitive boundaries or receptors, in particular by retaining the existing landscaping around the Site.

*Steam*

3.1.16 The Proposed Project does not introduce any new steam sources onsite or change the intensity or nature of any predicted steam associated with the Consented Development.

*Smells*

3.1.17 The Proposed Project does not introduce any new odour sources onsite or change the intensity or nature of any predicted odour associated with the Consented Development.

**EPA 1990 Section 79(1) f) Any Animal Kept in Such a Place or Manner as to be Prejudicial to Health or a Nuisance**

3.1.18 A defence is not sought or required in respect of this type of nuisance.

**EPA 1990 Section 79(1) fa) Any Insects Emanating from Premises so as to be prejudicial to Health or a Nuisance**

3.1.19 A defence is not sought or required in respect of this type of nuisance.

**EPA 1990 Section 79(1) fb) Artificial Light Emitted from Premises so as to be Prejudicial to Health or a Nuisance**

3.1.20 No lighting strategy is required for the Proposed Project as it will utilise the lighting strategy associated with the Consented Development which has been designed in accordance with relevant standards.

3.1.21 The external lighting scheme in place for the Consented Development have been designed to provide safe working conditions in all areas of the Proposed Project.

3.1.22 Artificial light is not expected to cause a statutory nuisance.

**EPA 190 Section 79(1) g) Noise Emitted from Premises so as to be Prejudicial to Health or a Nuisance, and h) Noise that is Prejudicial to Health or a Nuisance and is Emitted from or Caused by a Vehicle, Machinery or Equipment in a Street**

3.1.23 The Proposed Project does not require any new or different construction plant than has already been considered and assessed for the Consented Development. Consequently, construction noise will not be any different from that assessed for the Consented Development. ES Chapter 9: Noise and Vibration [**Application Document Reference 6.2.9 – ES Chapter 9**]. concludes effects are negligible and not significant.

**EPA 1990 Section 70(1) h) Any Other MATTER Declared by any Enactment to be a Statutory Nuisance**

3.1.24 A defence is not sought or required as no other matters are considered to be a potential statutory nuisance associated with the construction, operation (and maintenance) or decommissioning of the Proposed Project.

## **4.0 CONCLUSIONS**

- 4.1.1 For the reasons explained above and with the mitigation measures described in place it is considered that the construction, operation (and maintenance), and decommissioning phases of the project will not give rise to impacts from the site condition which would constitute a statutory nuisance under section 79(1) (a) or (e).
- 4.1.2 In line with Regulation 5(2)(f) of the APFP Regulations, this Statement has identified whether the Proposed Project has engaged one or more of the matters set out in Section 79(1) of the EPA, and thus considered whether the Proposed Project would cause a statutory nuisance.
- 4.1.3 The matters in the EPA that has been engaged by the Proposed Project is general site conditions during all phases of the Proposed Project. The design and embedded mitigation measures associated with the CEMP will prevent impacts which have a potential to result in statutory nuisance under section 79 of the EPA. The CEMP is the only requirement required for the Proposed Project.
- 4.1.4 It is not expected that the construction, operation (and maintenance) and decommissioning of the Proposed Project would cause a statutory nuisance.