

# Gate Burton Energy Park

## EN010131

Statutory Nuisance Statement  
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January 2023

APFP Regulation 5(2)(1)  
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 on behalf of Gate Burton Energy Park Limited (the Applicant) in relation to an application for a Development Consent Order (DCO) submitted to the Planning Inspectorate, with the decision whether to grant a DCO to be 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 the construction, operation (including maintenance), and decommissioning of Gate Burton Energy Park (the Scheme), which will deliver electricity to the national electricity transmission network. The Applicant is proposing to install ground mounted solar photovoltaic (PV) panel arrays to generate electrical energy from the sun and combine these with a Battery Energy Storage System (BESS). The Solar and Energy Storage Park, located in Lincolnshire, will connect to Cottam National Grid Substation, near Cottam in Nottinghamshire.

The Scheme is defined as a Nationally Significant Infrastructure Project (NSIP) and will require a DCO from the Secretary of State, due to its generating capacity exceeding 50 megawatts (MW). As such, this Statement has been prepared to satisfy Regulation 5(2)(f) of the APFP 2009, 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.*”

The matters in Section 79(1) of the Environmental Protection Act 1990 (EPA) that have been considered within the Statement are general site condition, air quality, artificial light, and noise and vibration, during all phases of the Scheme. This Statement sets out appropriate mitigation measures to ensure the Scheme 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. Introduction

## 1.1 Introduction

- 1.1.1 This Statutory Nuisance Statement (the Statement) has been prepared on behalf of Gate Burton Energy Park Limited (the 'Applicant') as part of an application for a Development Consent Order (DCO) for Gate Burton Energy Park (hereafter referred to as the 'Scheme').
- 1.1.2 The Scheme is classed as a Nationally Significant Infrastructure Project (NSIP) for the purposes of the Planning Act 2008 and requires an application for a DCO. The application for the DCO is being submitted to the Planning Inspectorate, with the decision on whether to grant a DCO being made by the Secretary of State for Business, Energy and Industrial Strategy (hereafter referred to as the 'Secretary of State') pursuant to the Planning Act 2008.
- 1.1.3 The Application is for the construction, operation (and maintenance), and decommissioning of a solar photovoltaic (PV) electricity generating facility, energy storage facility and export connection to the National Grid. The land within the Order limits is located to the south of Gainsborough, within the administrative areas of Nottinghamshire and Lincolnshire.

## 1.2 Purpose and Structure of this Statement

- 1.2.1 The Statement is part of a suite of documents which must accompany the DCO Application pursuant to Section 55 of the Planning Act 2008 and Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (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 Scheme) 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 that have been considered within the Statement are general site condition, air quality, artificial light, and noise and vibration, during all phases of the Scheme.
- 1.2.4 The Statement should be read alongside other documents submitted as part of the application, particularly:
- **The Environmental Statement (ES) [EN010131/APP/3.1]; and**
  - **The Framework Construction Environmental Management Plan (Framework CEMP) [EN010131/APP/7.3].**
- 1.2.5 The Statement is produced in the context that section 158 of the Planning Act 2008 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 sets out appropriate mitigation measures to ensure that the Scheme 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. It is not expected that the construction, operation (and maintenance) and decommissioning of the Scheme would cause a statutory nuisance.
- 1.2.7 Nonetheless, it should be noted that article 7 (Defence to proceedings in respect of statutory nuisance) of the draft Development Consent Order (DCO) **[EN010131/APP/6.1]** 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: Matters Engaged and Proposed Mitigation Measures; and
  - Section 5: Conclusion.

## 2. Legislative and Policy Context

### 2.1 The AAFP Regulations

2.1.1 Regulation 5(2)(f) of the AAFP 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 (EPA) 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 of 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 inspections emanating from relevant industrial, trade or business premises and being prejudicial to health or 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 a 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>

## 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 that *“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 **[EN010131/APP/2.2]**.

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



## 3. Assessment of Significance

### 3.1 Summary of Matters Engaged

- 3.1.1 The ES [EN010131/APP/3.1] accompanying this DCO application addresses the likelihood of significant effects arising that could constitute a statutory nuisance as identified in Section 79(1) of the EPA.
- 3.1.2 Table 1 outlines each matter stated in Section 79(1) of the EPA and describes whether this is covered within this Statement, or is excluded, depending on the assessment within the ES.

**Table 1 Matters Stated in Section 79(1) of the EPA**

EPA Section 79(1) Matter	Matter engaged as a consequence of the Scheme?
(a) Any premises in such a state to be prejudicial to health or a nuisance	This matter is considered further 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 Scheme; therefore, this is not considered further within the Statement. Unplanned, emergency scenarios, such as an accidental or technical fire are not considered relevant to this Statement
(c) Fumes or gases emitted from premises so as to be prejudicial to health or a nuisance	This matter only applies to private dwellings, as provided for under section 79(4) of the EPA. This matter is therefore not considered further within the 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 further in this Statement in relation to dust. The Scheme is not anticipated to have impact on steam, smell or other effluvia and therefore, those elements are not considered further within the Statement
(e) Any accumulation or deposit which is prejudicial to health or a nuisance	This matter is considered further in this Statement
(f) Any animal kept in such a place or manner as to be prejudicial to health or a nuisance;	The Scheme will not keep any animals in such a place or manner as to be prejudicial to health or a nuisance. Any grazing of livestock will be in accordance with good practice guidance for livestock welfare, therefore, this is not considered further in the Statement
(fa) any insects emanating from relevant industrial, trade, or business premises and being prejudicial to health or a nuisance	There is no indication that the construction, operation (and maintenance), and decommissioning of the Scheme will emanate any insects nor insects be attracted to it. Therefore, this is not considered further within the Statement.
(fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance	This matter is considered further in this Statement
(g) Noise emitted from premises so as to be prejudicial to health or a nuisance;	This matter is considered further in this Statement

**EPA Section 79(1) Matter**

**Matter engaged as a consequence of the Scheme?**

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(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

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This matter is considered further in this Statement

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(h) Any other matter declared by any enactment to be statutory nuisance

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No other matters are considered to be a potential statutory nuisance associated with the construction, operation (and maintenance) or decommissioning of the Scheme.

## 4. Matters Engaged and Proposed Mitigation Measures

### 4.1 Condition of Site – Sections 79(1)(a) and E of the EPA

4.1.1 This section considers the risk of the condition of the site causing a statutory nuisance.

4.1.2 The following constitute a statutory nuisance:

- Section 79(1)(a) – “any premises in such a state as to be prejudicial to health or a nuisance”.
- Section 79(1)(e) – “any accumulation or deposit which is prejudicial to health or a nuisance”.

#### Construction and Decommissioning

4.1.3 The types of construction activities in respect of the Scheme include, but are not limited to:

- Site preparation and civil works;
- Solar PV array construction;
- Construction of onsite electrical infrastructure;
- Construction of cable routes;
- Testing and commissioning; and
- Landscape and habitat creation.

4.1.4 During decommissioning, the following components of the Scheme, as referred to by Schedule 1 of the **Draft Development Consent Order [EN010131/APP/6.1]** in the locations shown by the **Works Plans [EN010131/APP/5.2]** will be removed and recycled or disposed of in accordance with good practice and market conditions at that time:

- Solar PV Array Works Area and related components (Work No.1);
- BESS Compound (Work No.2);
- Substation (Work No.3); and
- Ancillary Infrastructure (Work No. 6).

4.1.5 The construction and decommissioning 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.

4.1.6 Construction control mechanisms proposed include core working hours, traffic management, and these measures are set out in the **Framework CEMP [EN010131/APP/7.3]**. The Framework CEMP has been informed by the Environmental Impact Assessment (EIA) and will guide the construction process through environmental controls in order to promote good construction

practice and avoid adverse or nuisance causing impacts during the construction phase.

- 4.1.7 A detailed CEMP will be prepared following granting of the DCO. It would be in line with the commitments set out by the **Framework CEMP [EN010131/APP/7.3]** and would be agreed with the relevant local planning authorities in advance of starting the enabling works within the Order limits.
- 4.1.8 A detailed Decommissioning Environmental Management Plan (DEMP) will also be prepared prior to the commencement of decommissioning. The detailed DEMP will be in accordance with the **Framework DEMP [EN010131/APP/7.5]**.
- 4.1.9 Plans to deal with accidental pollution would be included within the detailed CEMP and detailed DEMP prior to the commencement of construction and decommissioning. Any necessary equipment (e.g., spillage kits) would be held on-site and all site personnel would be trained in their use. The Environment Agency would be informed immediately in the unlikely event of a suspected pollution incident.
- 4.1.10 In order to control the waste generated during site preparation and construction, the contractor will separate the main waste streams on-site, prior to transport to an approved, licenced third party waste facility for recycling or disposal.
- 4.1.11 A Construction Resource Management Plan (CRMP) (secured by the **Framework CEMP [EN010131/APP/7.3]**) will be prepared by the Contractor, which will specify the waste streams to be estimated and monitored and goals set with regards to the waste produced. The CRMP will be finalised with specific measures to be implemented prior to the start of construction. A Decommissioning Resource Management Plan (DRMP) will also be prepared for the decommissioning period.
- 4.1.12 All waste to be removed from the Order limits will be undertaken by fully licenced waste carriers and taken to licenced waste facilities for recycling and disposal.
- 4.1.13 The measures set out in the **Framework CEMP** and **DEMP** are embedded in the Scheme design and the assessment of effects undertaken. The EIA assumes that those measures are implemented in full. Compliance with the **Framework CEMP** and **DEMP** will be secured by requirements in the DCO.
- 4.1.14 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 Section 79(1)(a) or (e).

## Operation

- 4.1.15 It is considered that the operation of the Scheme in its built form, as a solar farm, with related infrastructure, will not in itself cause the 'premises' within the Order limits, to be in 'such a state' as to be prejudicial to health or nuisance.
- 4.1.16 During the operational phase, maintenance activity within the Solar and Energy Storage Park will be minimal and will be restructured principally to

vegetation management, equipment maintenance and servicing, replacement of any components that fail, and monitoring. It is anticipated that maintenance and servicing would include the inspection, removal, reconstruction, refurbishment or replacement of faulty or broken equipment and adjusting and altering the solar module orientation to ensure the continued effective operation of the Scheme and improve its efficiency.

4.1.17 Along the Grid Connection Corridor, operational activity will consist of route inspections (schedule to be determined) any reactive maintenance such as where a cable has been damaged.

4.1.18 This phase of the Scheme will not give rise to impacts which would constitute a statutory nuisance under section 79(1)(a) or (e).

## Conclusion

4.1.19 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).

## 4.2 Air emissions – Section 79(1)(d) of the EPA

4.2.1 Section 79(d) provides that the following constitutes a statutory nuisance: “*any dust, steam, smell or other effluvia arising on industrial trade or business premises and being prejudicial to health or a nuisance*”.

4.2.2 An Air Quality assessment was undertaken as part of the EIA and reported in **ES Volume 1, Chapter 15: Other Environmental Topics [EN010131/APP/3.1]**. The chapter assessed the significance of potential air quality effects during the construction and decommissioning phases, and concludes that, with appropriate mitigation, there would be no significant effects in terms of the EIA Regulations.

### Construction and Decommissioning

4.2.3 **ES Volume 1, Chapter 15: Other Environmental Topics – Air Quality [EN010131/APP/3.1]** assesses the impact of construction and decommissioning phases of the Scheme on air quality. The assessment confirms there is likely to be no significant impact on local air quality during construction or decommissioning given the volume of traffic proposed and the predicted pollutant concentrations would have a negligible effect on human health and designated ecology sites. During construction there is the potential for emissions of dust and particles due to the following:

- Earthworks (e.g. soil stripping, excavation etc);
- Construction; and
- Trackout (movement of mud and soil out of the site by construction vehicles).

4.2.4 Engine exhaust emissions from construction ‘non-road mobile machinery’ (NRMM) have the potential to affect local air quality. Emissions from NRMM

will be temporary and localised and will be controlled through good-practice mitigation measures, pursuant to the **Framework CEMP [EN010131/APP/7.3]**. For this reason and that no unusual plant or machinery will be used, construction phase NRMM emissions will not be significant and, therefore, these emissions have not been modelled or considered further in the ES.

- 4.2.5 A 'Dust Risk Assessment' (DRA) has been undertaken based on relevant industry (Institute of Air Quality Management (IAQM)) guidance and the findings are presented in **ES Volume 3: Appendix 15-A [EN010131/APP/3.3]**. Construction of the Scheme will likely take place over a number of phases and as such, potential fugitive emissions may be lower than expected for the size of the Order limits when considering the Order limits in reference to the IAQM guidance.
- 4.2.6 Taking into account the scale of the Order limits and associated construction works, it is considered prudent to adopt the good site practice for controlling dust as outlined within the IAQM's 'Guidance on the assessment of Dust from Demolition and Construction' document for high risk sites. These measures represent good industry practice and are therefore embedded within the Scheme design.
- 4.2.7 These good site practice mitigation measures are incorporated into the **Framework CEMP [EN010131/APP/7.3]**. These are also presented in Table 2 and
- 4.2.8 Table 3 below. These are considered to be embedded mitigation and represent good industry practice that are part of the Scheme design. These mitigation measures will be effectively implemented meaning that no significant dust effects resulting from excavation and construction activities are anticipated beyond the Order limits.
- 4.2.9 The DRA (**ES Volume 3: Appendix 15-A [EN010131/APP/3.3]**) concludes that the adequate implementation of good industry practice measures is expected to prevent the occurrence of significant impacts arising from dust generation during the construction phase.
- 4.2.10 ES Volume 1, Chapter 15: Other Environmental Topics – Air Quality **[EN010131/APP/3.1]** sets out that decommissioning is expected to generate similar (if not slightly lower) effects to those anticipated during the construction phase, and therefore the mitigation measures proposed for implementation during the construction phase will be appropriate for application to decommissioning. It concludes that impacts on local air quality as a result of dust generation during decommissioning are considered to be negligible and not significant. The Framework DEMP **[EN010131/APP/7.5]** includes measures to the same effect as those contained in the Framework CEMP **[EN010131/APP/7.3]** and summarised in Table 3.

**Table 2 Dust Mitigation Measures**

Activity	Mitigation Measure
Communications	Develop and implement a stakeholder communications plan that includes community engagement before work commences on-site

Activity	Mitigation Measure
	<p>Display the name and contact details of person(s) accountable for air quality and dust issues on the Site. This may be the environment manager/engineer or the site manager.</p> <hr/> <p>Display the head or regional office contact information</p> <hr/> <p>Develop and implement a Dust Management Plan (DMP), which may include measures to control other emissions, approved by the Local Authority. The level of detail will depend on the risk and should include as a minimum the highly recommended measures in this document. The desirable measures should be included as appropriate for the site. The DMP will need to include monitoring of dust deposition, dust flux, real-time PM<sub>10</sub> continuous monitoring and/or visual inspections.</p>
Site Management	<p>Record all dust and air quality complaints, identify cause(s), take appropriate measures to reduce emissions in a timely manner, and record the measures taken.</p> <hr/> <p>Make the complaints log available to the local authority when asked</p> <hr/> <p>Record any exceptional incidents that cause dust and/or air emissions, either on-site or offsite, and the action taken to resolve the situation in the logbook.</p> <hr/> <p>Hold regular liaison meetings with other high-risk construction sites within 500m of the Site (if applicable), to ensure plans are co-ordinated and dust and particulate matter emissions are minimised. It is important to understand the interactions of the off-site transport/deliveries which might be using the same strategic road network routes.</p> <hr/> <p>Carry out regular site inspections to monitor compliance with the DMP, record inspection results, and make an inspection log available to the local authority when asked</p> <hr/> <p>Increase the frequency of site inspections by the person accountable for air quality and dust issues on-site when activities with a high potential to produce dust are being carried out and during prolonged dry or windy conditions.</p> <hr/> <p>Agree dust deposition, dust flux, or real-time PM<sub>10</sub> continuous monitoring locations with the Local Authority. Where possible commence baseline monitoring at least three months before work commences on-site or, if it a large site, before work on a phase commences. Further guidance is provided by IAQM on monitoring during demolition, earthworks and construction.</p>
Preparing and Maintaining the Site	<p>Plan site layout so that machinery and dust causing activities are located away from receptors, as far as is possible.</p> <hr/> <p>Erect solid screens or barriers around dusty activities that are at least as high as any stockpiles on-site where stockpiles (if required) are within 100m of receptors.</p> <hr/> <p>Fully enclose site or specific operations where there is a high potential for dust production and the site is active for an extensive period where operations are within 100m of receptors.</p> <hr/> <p>Avoid site runoff of water or mud.</p> <hr/> <p>Keep site fencing, barriers and scaffolding clean using wet methods.</p> <hr/> <p>Remove materials that have a potential to produce dust from the Site as soon as possible, unless being re-used on-site. If they are being re-used on-site cover as described below.</p> <hr/> <p>Cover, seed or fence stockpiles to prevent wind whipping.</p> <hr/> <p>Ensure all vehicles switch off engines when stationary - no idling vehicles.</p>

Activity	Mitigation Measure
Operating Vehicles / Machinery and Sustainable Travel	Ensure all diesel- or petrol-powered generators are fully maintained and used for the minimum periods only. Transition to mains electricity or battery powered equipment where practicable.
	Impose and signpost a maximum-speed-limit of 15mph on surfaced and 10mph on unsurfaced haul roads and work areas (if long haul routes are required these speeds may be increased with suitable additional control measures provided, subject to the approval of the nominated undertaker and with the agreement of the local authority, where appropriate)
	Produce a Construction Logistics Plan to manage the sustainable delivery of goods and materials
	Implement a Travel Plan that supports and encourages sustainable travel (public transport, cycling, walking, and car-sharing)
Operations	Only use cutting, grinding or sawing equipment fitted or in conjunction with suitable dust suppression techniques such as water sprays or local extraction, e.g.: suitable local exhaust ventilation systems.
	Ensure an adequate water supply on the site for effective dust/particulate matter suppression/mitigation, using non-potable water where possible and appropriate
	Ensure equipment is readily available on-site to clean any dry spillages and clean up spillages as soon as reasonably practicable after the event using wet cleaning methods.
Waste Management	Avoid bonfires and burning of waste materials.

**Table 3 Activity Specific Mitigation Measures**

Activity	Mitigation Measure
Earthworks	Re-vegetate earthworks and exposed areas/soil stockpiles to stabilise surfaces as soon as practicable
	Use Hessian, mulches or tackifiers where it is not possible to re-vegetate or cover with topsoil, as soon as practicable
	Only remove the cover in small areas during work and not all at once
Construction	Avoid scabbling (roughening of concrete surfaces) if possible
	Ensure sand and other aggregates are stored in bunded areas and are not allowed to dry out, unless this is required for a particular process, in which case ensure that appropriate additional control measures are in place.
	Ensure bulk cement and other fine powder materials are delivered in enclosed tankers and stored in silos with suitable emission control systems to prevent escape of material and overfilling during delivery.
	For smaller supplies of fine powder materials ensure bags are sealed after use and stored appropriately to prevent dust.
Trackout	Use water-assisted dust sweeper(s) on the access and local roads, to remove, as necessary, any material tracked out of the site. This may require the sweeper being continuously in use.
	Avoid dry sweeping of large areas.
	Ensure vehicles entering and leaving site are covered to prevent escape of materials during transport



Activity	Mitigation Measure
	Inspect on-site haul routes for integrity and instigate necessary repairs to the surface as soon as reasonably practicable.
	Record all inspections of haul routes and any subsequent action in a site logbook.
	Install hard surfaced haul routes, which are regularly damped down with fixed or mobile sprinkler systems, or mobile water bowsers and regularly cleaned.
	Implement a wheel washing system (with rumble grids to dislodge accumulated dust and mud prior to leaving the site where reasonably practicable).
	Ensure there is an adequate area of hard surfaced road between the wheel wash facility and the site exit, wherever site size and layout permits.
	Access gates to be located at least 10m from receptors where possible.

## Operation

- 4.2.11 The Scheme is estimated to support 14 permanent (on-site) operational jobs. Traffic generation from operational staff is not expected to induce significant changes to traffic flows on the local road networks.
- 4.2.12 The operation of the Scheme is therefore not anticipated to have a significant impact on local air quality. The effect on air quality during this phase will therefore be negligible.
- 4.2.13 No likely significant effects on air quality are therefore predicted during the operational phase of the Scheme.

## Conclusion

- 4.2.14 For the reasons explained above and with the implementation of the above measures, no significant effects are expected to occur in relation to air quality matters in EIA terms, including in relation to the health of human receptors, as set out in **ES Volume 1, Chapter 14: Human Health** and **Chapter 15: Other Environmental Topics – Air Quality [EN010131/APP/3.1]**.
- 4.2.15 No claim is therefore envisaged in respect of a statutory nuisance under section 79(1)(d).

## 4.3 Artificial Light – Section 79(1)(fb) of the EPA

- 4.3.1 Section 79(1)(fb) provides that the following constitutes a statutory nuisance, “*artificial light emitted from premises so as to be prejudicial to health or a nuisance*”.
- 4.3.2 A statutory nuisance would exist if artificial light substantially interferes with the wellbeing, 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.
- 4.3.3 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 Volume 1, Chapter 15: Other Environmental**

**Topics [EN010131/APP/3.1]**, and no significant effects are identified, with embedded mitigation measures taken into account.

## Construction and Decommissioning

- 4.3.4 Construction temporary lighting, in the form of mobile lighting towers with a power output of 8 kilo volt-amperes (kVAs), may be required during core working hours within winter months.
- 4.3.5 Artificial lighting will be provided to maintain sufficient security and health and safety for the construction site, whilst adopting mitigation principles to avoid excessive glare, and minimise spill of light to nearby receptors (including ecology and residents), outside of the Order limits as far as reasonably practicable.
- 4.3.6 In accordance with the **Framework CEMP [EN010131/APP/7.3]**, all construction and decommissioning lighting will incorporate the following measures to prevent or reduce the impact on human and ecological receptors:
- The use of lighting will be minimised to that required for safe site operations;
  - Lighting will utilise directional fittings to minimise outward light spill and glare (e.g., via the use of light hoods/cowls which direct light below the horizontal plane, preferably at an angle greater than 20° from horizontal); and
  - Lighting will be directed towards the middle of the construction site rather than towards the boundaries.

## Operation

- 4.3.7 During operation, no part of the Scheme will be continuously lit. Lighting is controlled by the **Framework OEMP [EN010131/APP/7.4]**. The use of motion detection security lighting will be utilised, and a sensitive lighting scheme will be developed ensuring inward distribution of light and avoiding light spill on to existing boundary features.
- 4.3.8 Lighting will be directed downward and away from boundaries. Therefore, there will be no lighting at the perimeter of the Order limits and no potential for a statutory nuisance.

## Conclusion

- 4.3.9 For the reasons explained above and with the implementation of the above mitigation measures, no claim is envisaged in respect of statutory nuisance under Section 79(1)(fb).

## 4.4 Noise and Vibration – Section 79(1)(g) and (ga) of the EPA

- 4.4.1 The following constitute a statutory nuisance:
- Section 79(1)(g) – “*noise emitted from premises so as to be prejudicial to health or a nuisance*”; and

- Section 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 street”.
- 4.4.2 If noise is excessive, prolonged or on a regular basis it may be 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.
- 4.4.3 Local Authorities have a duty to investigate and, if necessary, take enforcement against noise or vibration emissions that are identified as a statutory nuisance. Section 80 of the EPA identifies Best Practicable Means (BPM), as defined in Section 72 of the Control of Pollution Act 1974, as a basis for defence against enforcement action. Section 82 provides for individuals to seek for abatement action to be taken by a magistrate’s court against noise nuisance.
- 4.4.4 An assessment of noise and vibration impacts was undertaken as part of the EIA and reported in **ES Volume 1, Chapter 11: Noise and Vibration [EN010131/APP/3.1]**. 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.
- 4.4.5 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 section(6A)(a) and is not considered further.

### Construction and Decommissioning

- 4.4.6 Construction and decommissioning noise levels at surrounding receptors will vary depending on the locations and types of works taking place. Due to the variation in work activities and locations across the Scheme, it is considered that any periods of regular construction noise levels experienced at a receptor would be of a limited short-term duration (i.e. less than one month). Occupants of nearby receptors are likely to be more tolerable of these events if they are regularly communicated to, and kept informed of timings and duration of high noise generating events.
- 4.4.7 Measures to control noise and vibration will be adopted. These measures represent Best Practicable Means and are included as embedded mitigation within the **Framework CEMP [EN010131/APP/7.3]** and **Framework DEMP [EN010131/APP/7.5]**. The detailed CEMP will be prepared prior to construction and the detailed DEMP will be prepared prior to the decommissioning phase as outlined in **ES Volume 1, Chapter 2: The Scheme [EN010131/APP/3.1]**.
- 4.4.8 The Construction contractor will follow BPM to minimise the noise impact upon the local sensitive receptors. These are likely to involve the following as appropriate:
- Ensuring that all appropriate processes, procedures and measures are in place to minimise noise before works begin and throughout the construction/decommissioning programme;

- All contractors to be made familiar with current legislation and the guidance in BS 5228 (Parts 1 and 2) which should form a prerequisite of their appointment;
  - Ensuring that, where reasonably practicable, noise and vibration is controlled at source (e.g., the selection of inherently quiet plant and low vibration equipment), review of the construction/decommissioning programme and methodology to consider quieter methods, consideration of the location of equipment on-site and control of working hours;
  - Use of modern plant, complying with applicable UK noise emission requirements;
  - Hydraulic techniques for breaking concrete or rocks to be used in preference to percussive techniques, where reasonably practicable;
  - Drop heights of materials will be minimised;
  - Plant and vehicles will be sequentially started up rather than all together;
  - Off-site prefabrication where reasonably practicable;
  - Use of screening locally around significant noise producing plant and activities;
  - Regular and effective maintenance by trained personnel will be undertaken to keep plant and equipment working to manufacturer's specifications;
  - All construction/decommissioning plant and equipment to be properly maintained, silenced where appropriate, operated to prevent excessive noise and switched off when not in use;
  - Loading and unloading of vehicles, dismantling of site equipment or moving equipment or materials around the Order limits to be conducted in such a manner as to minimise noise generation, as far as reasonably practicable;
  - All vehicles used on-site shall incorporate reversing warning devices as opposed to the typical tonal reversing alarms to minimise noise disturbance where reasonably practicable;
  - Provision of information to the relevant local authority and local residents to advise of potential noisy works that are due to take place;
  - Unnecessary revving of engines will be avoided, and equipment will be switched off when not in use; and
  - Plant will always be used in accordance with manufacturers' instructions. Care will be taken to site equipment away from noise-sensitive areas. Where possible, loading and unloading will also be carried out away from such areas.
- 4.4.9 A construction noise mitigation and monitoring scheme shall be developed and agreed with appropriate stakeholders prior to the commencement of construction works, as set out in the **Framework CEMP [EN010131/APP/7.3]**. Noise monitoring will also be undertaken during the decommissioning stages, as described in the **Framework DEMP [EN010131/APP/7.5]**.
- 4.4.10 Based on the distances between the Order limits and surrounding receptors to locations where heavy ground works (excavation, push piling) may take place. It is considered that vibration from construction works experienced at sensitive receptors will be below the Lowest Observable Adverse Effect Level (LOAEL) and therefore not significant, as identified in **ES Volume 1, Chapter 11: Noise and Vibration [EN010131/APP/3.1]**.

- 4.4.11 Construction working hours on the Solar and Energy Storage Park will run from 07:00 to 19:00 Monday to Friday, and Saturday 09:00-13:00 in the summer, and 08:00 to 18:00 Monday to Friday and Saturday 09:00 – 13:00 during the winter months. Where on-site works are to be conducted outside the core working hours, they will comply with the restrictions stated in **Framework CEMP [EN010131/APP/7.3]** any other restrictions agreed with the relevant planning authorities.
- 4.4.12 Noise and vibration effects during the decommissioning phase of the Scheme will be similar or less than noise effects during the construction phase. The noise assessment presented within the ES for the construction phase is therefore considered representative (or an overestimate) of the decommissioning phase. As such, a separate assessment for noise and vibration from the decommissioning phase is not included.

## Operation

- 4.4.13 As stated in the Scoping Report (**ES Volume 3: Appendix 1-A [EN010131/APP/3.3]**), and confirmed by the Planning Inspectorate (PINS) in the Scoping Opinion (**ES Volume 3: Appendix 1-B [EN010131/APP/3.3]**), no major vibration sources are envisaged to be introduced as part of the Scheme and as such there will be no associated operational vibration effects. No further assessment of operational vibration has been included in the ES.
- 4.4.14 Operational phase embedded noise mitigation measures include the following:
- Plant Selection;
  - Design layout to minimise noise at receptors, including:
    - Locating the BESS compound in an area away from large concentrations of receptors such that noise emissions from the ESS are less impactful;
    - Location and orientation of inverters and transformers
  - Transformers may be standalone units or pre-assembled with inverters and switchgear to form a single contained unit (i.e. enclosed).
- 4.4.15 This approach to noise mitigation for the operational phase is considered to represent adoption of BPM.

## Conclusion

- 4.4.16 For the reasons explained above and with these mitigation measures in place, no significant effects are expected to occur in relation to noise and vibration matters in EIA terms, including in relation to the health of human receptors, as set out in **ES Volume 1, Chapter 11: Noise and Vibration** and **Chapter 14: Human Health and Wellbeing [EN010131/APP/3.1]** during the construction, operation (and maintenance) and decommissioning phases of the Scheme.
- 4.4.17 As BPM has been adopted for the construction and operational phases of the Proposed Development, no claim against statutory nuisance in respect of noise and vibration is therefore envisaged in respect of a statutory nuisance under section 79(1)(g) or (ga).

## 5. Conclusion

### 5.1 Potential for Nuisance

- 5.1.1 In line with Regulation 5(2)(f) of the APFP Regulations, this Statement has identified whether the Scheme has engaged one or more of the matters set out in Section 79(1) of the EPA, and thus considered whether the Scheme would cause a statutory nuisance.
- 5.1.2 The matters in the EPA that have been engaged by the Scheme are general site condition, air quality, artificial light, and noise and vibration, during all phases of the Scheme. The embedded design and additional mitigation measures identified in the ES will prevent impacts which have a potential to result in statutory nuisance under section 79 of the EPA. These measures are secured by requirements contained within the draft DCO.
- 5.1.3 It is not expected that the construction, operation (and maintenance) and decommissioning of the Scheme would cause a statutory nuisance.