

West Burton Solar Project

Statutory Nuisance Statement

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Issue Sheet

**Report Prepared for: West Burton Solar Project Ltd.
DCO Submission**

Statutory Nuisance Statement

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1 Introduction

1.1 Background

- 1.1.1 This Statement has been prepared to support an application (the 'Application') for a Development Consent Order (DCO) to be submitted under Section 37 of the Planning Act 2008 ('the Act') to the Secretary of State for the Department for Energy Security and Net Zero.
- 1.1.2 The Scheme comprises the construction, operation, maintenance and decommissioning of a solar photovoltaic (PV) electricity generating facility and Energy Storage Facility with a total capacity exceeding 50 MW (the Energy Storage Facility, for the purposes of the Application, is assumed to employ battery technology and therefore referred to as a 'Battery Energy Storage System' or 'BESS' throughout this Application). The solar array Sites, associated substations and BESS are to be connected to the National Grid at a substation at West Burton Power Station. Further details on the Scheme are provided in Chapter 4 of the Environmental Statement (ES), Scheme Description **[EN010132/APP/WB6.2.4]**, which accompanies the Application.
- 1.1.3 This Statutory Nuisance Statement ('the Statement') has been prepared on behalf of West Burton Solar Project Limited ('the Applicant') and sets out appropriate mitigation measures to ensure that the West Burton Solar Project (hereafter referred to as 'the Scheme') has no significant effects that would give rise to a statutory nuisance. It is not anticipated that the construction, operation (and maintenance) and decommissioning of the Scheme would cause statutory nuisance.

1.2 Purpose and Structure of this Statement

- 1.2.1 As the Scheme will generate over 50MW of electricity it is defined as a Nationally Significant Infrastructure Project (NSIP) under 14(1)(a) and 15(2) of the Act and is therefore required to be authorised by a DCO.
- 1.2.2 The Scheme is considered to be 'EIA development' as defined by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended in 2018) (the 'EIA Regulations') requiring an Environmental Impact Assessment.
- 1.2.3 As such this Statement has been prepared to satisfy Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended) (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".
- 1.2.4 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, waste, artificial light, and noise and vibration, during all phases of the Scheme.

- 1.2.5 The Statement should be read alongside other documents submitted as part of the application, particularly:
- The Environmental Statement **[EN010132/APP/WB6.2]**; and
 - Outline Construction Environmental Management Plan (OCEMP) **[EN010132/APP/WB7.1]**.
- 1.2.6 The Statement is produced in accordance with 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.
- 1.2.7 The Statement sets out appropriate mitigation measures to ensure that the Scheme has no significant effects that would give rise to a statutory nuisance.
- 1.2.8 Article 7 (Defence to proceedings in respect of statutory nuisance) of the Draft Development Consent Order **[EN010132/APP/WB3.1]** submitted with 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 the criteria set out in that article.
- 1.2.9 The Statement is structured as follows:
- Section 1 provides an introduction to the purpose and structure of the statement;
 - Section 2 sets out the relevant planning policy context under which the Scheme is assessed;
 - Section 3 details the matters which are considered to be a potential statutory nuisance associated with the construction, operation (and maintenance) or decommissioning of the Scheme;
 - Section 4 assesses the risk of the identified matters causing a statutory nuisance; and
 - Section 5 sets out the conclusions of the assessment.

2 Legislative and Policy Context

2.1 Policy Context

2.1.1 The relevant planning policy for this Statement is set out in the following national policy statements:

- National Policy Statement EN-1 (adopted); and
- National Policy Statement EN-1 (emerging).

2.1.2 National Policy Statement for Energy EN-1 (adopted), states at paragraph 4.14.1 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.”

2.1.3 Paragraph 4.14.2 goes on to state 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 [Secretary of State] so that appropriate requirements can be included in any subsequent order granting development consent”.

2.1.4 The Government is currently reviewing and updating the National Policy Statements for Energy Infrastructure to provide consistency with the policies and strategic approach for the energy system set out within 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.

2.1.5 The Government, as part of its review of the National Policy Statements for Energy Infrastructure, published a suite of Draft National Policy Statements for consultation from 6th September 2021 to 29th November 2021. At the time of writing, the adoption of the draft statements is awaited.

2.1.6 Paragraph 4.14 of Draft Overarching National Policy Statement for Energy (EN-1) sets out the principles for common law nuisance and statutory nuisance. This corresponds with Paragraph 4.14 of NPS EN-1, apart from for some minor amendments to the wording, such as reflecting revised paragraph numbers in the draft National Policy Statements and the Secretary of State being the decision maker.

- 2.1.7 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”*.
- 2.1.8 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; and*
 - h) *any other matter declared by any enactment to be statutory nuisance.”*
- 2.1.9 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 (Ref.1).

3 Assessment of Significance

3.1 Introduction

3.1.1 The ES [EN010132/APP/WB6.2] accompanying the Application assesses the likelihood of significant effects arising from the Scheme which could constitute a statutory nuisance, as identified in Section 79(1) of the EPA.

3.1.2 Further to the assessment undertaken within the ES, the matters to be addressed, or excluded, within this Statement in accordance with Section 79(1) of the EPA are set out below:

a) any premises in such a state as to be prejudicial to health or a nuisance.

3.1.3 This matter is considered further within this Statement within paragraph 4.1.13 - 4.1.15.

b) smoke emitted from premises so as to be prejudicial to health or a nuisance.

3.1.4 The Scheme is not anticipated to generate smoke and therefore this matter is not considered further within this Statement. With regards to unforeseen emergency situations, namely accidental fire, this is addressed in the Outline Battery Storage Safety Management Plan [EN010132/APP/WB7.9] accompanying the Application.

c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance.

3.1.5 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.

3.1.6 ES Chapter 17: Air Quality [EN010132/APP/WB6.2.17], addresses potential air quality impacts including the matter of dust. Dust is therefore considered further in this Statement. With regards to steam, smell and other effluvia, the Scheme is not anticipated to result in any impacts from these identified matters and therefore these are not considered further within the Statement.

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

3.1.7 ES Chapter 20: Waste [EN010132/APP/WB6.2.20] considers the potential waste generated by the scheme and its impacts. This matter is considered further in this Statement under Section 4.1, 'Condition of Site'.

f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance.

3.1.8 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 as secured within the Outline Operational Environmental Management Plan [EN010132/APP/WB7.14] accompanying the application; 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.

3.1.9 ES Chapter 9: Ecology **[EN010132/APP/WB6.2.9]** assesses that the cessation of intensive arable farming practices (particularly insecticide spraying) and reversion of land within the Scheme to grassland (for at least the lifetime of the West Burton Solar Project), can be expected to result in increased diversity and abundance of invertebrates at the operational Sites. This includes a number of pollinating butterfly and bee species which have been shown to have increased diversity and abundance in solar arrays compared to control plots. Given the large extent of habitat that will likely increase in quality, it concludes that the operational impacts of the development will have beneficial effects on a range of invertebrates.

3.1.10 The Scheme is therefore likely to result in an increase in beneficial pollinating insect species. A significant increase in species that are prejudicial to human health or a nuisance is not anticipated. Therefore, this matter is not considered further within the Statement.

fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance.

3.1.11 ES Chapter 8: Landscape and Visual Effects **[EN010132/APP/WB6.2.8]** assesses the potential impacts of temporary construction lighting and operational security lighting. This matter is considered further in this Statement within Section 4.3.

g) noise emitted from premises so as to be prejudicial to health or a nuisance.

3.1.12 ES Chapter 15: Noise and Vibration **[EN010132/APP/WB6.2.15]** assesses the potential noise impacts of the Scheme. This matter is considered further in this Statement within Section 4.4.

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.

3.1.13 ES Chapter 15: Noise and Vibration **[EN010132/APP/WB6.2.15]** assesses the potential noise impacts of the Scheme. This matter is considered further in this Statement within Section 4.4.

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

3.1.14 Possible Glint and Glare impacts are not considered within this Statement as natural light is not covered within statutory nuisance legislation (notwithstanding, Glint and Glare is assessed in ES Chapter 16: Glint and Glare **[EN010132/APP/WB6.2.16]**).

4 Matters Engaged and Proposed Mitigation Measures

4.1 Condition of the Site

4.1.1 This Section assesses the risk of the condition of the Site causing a statutory nuisance.

4.1.2 The following represents a statutory nuisance:

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

Construction

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

- Site preparation and civil works;
- Solar PV array construction;
- BESS construction;
- Construction of on-site electrical infrastructure;
- Construction of cable routes between the Sites and to the Point of Connection (constructed within the Cable Route Corridor);
- Testing and commissioning; and
- Landscape and habitat creation.

4.1.4 The construction works have the potential to create pollution incidents such as spillages and create litter and general waste which can constitute a nuisance under the EPA.

4.1.5 Construction control mechanisms proposed include core working hours and traffic management, and these measures are set out in the Outline Construction Environmental Management Plan (OCEMP) [EN010132/APP/WB7.1] submitted with the Application. The OCEMP has been informed by the Environmental Impact Assessment (EIA) and will guide the construction process through environmental controls to promote good construction practice and avoid adverse or nuisance causing impacts during the construction phase.

4.1.6 Following the granting of the DCO, a detailed Construction Environmental Management Plan (CEMP) will be prepared, agreed, and approved by the relevant Local Planning Authorities in advance of commencing the enabling works permitted under the DCO. The detailed CEMP will be substantially in accordance with the Outline CEMP.

- 4.1.7 A strategy to deal with accidental pollution will be included within the detailed CEMP prior to commencement of construction. A high-level strategy is identified within Chapter 3 of the OCEMP. 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.
- 4.1.8 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, licensed third party waste facility for recycling or disposal.
- 4.1.9 A Construction Resource Management Plan (CRMP) (secured by the OCEMP **[EN010132/APP/WB7.1]**) 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.
- 4.1.10 All waste to be removed from the Order Limits will be undertaken by fully licensed waste carriers and taken to licensed waste facilities for recycling or disposal.
- 4.1.11 The measures set out in the OCEMP 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 OCEMP will be secured by a Requirement in the DCO.
- 4.1.12 With these measures in place, it is considered that the construction phase of the Scheme will not give rise to impacts which would constitute a statutory nuisance under Section 79(1)(a) or (e) of the EPA.

Operation

- 4.1.13 During the operation of the Scheme, the Solar Farm and associated infrastructure is not considered to result in the 'premises' within the Order limits, being in 'such a state' as to be prejudicial to health or nuisance.
- 4.1.14 During the operational phase, maintenance activity within the Solar Farm Site will be minimal and will be restricted principally to soft landscape 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.
- 4.1.15 Along the Grid Connection Route operational activity will consist of routine inspections (schedule to be determined) and any reactive maintenance such as where a cable has been damaged. The Scheme will not give rise to impacts which would constitute a statutory nuisance under section 79(1) (a) or (e).

Decommissioning

- 4.1.16 During decommissioning, the following components of the Scheme, as referred to by Schedule 1 of the Draft Development Consent Order **[EN010132/APP/WB3.1]** in the locations shown by the Works Plans **[EN010132/APP/WB2.3]** will be removed and recycled or disposed of in accordance with good practice and market conditions at that time:
- ground mounted solar photovoltaic generating station including solar modules fitted to mounting structures, DC electrical cabling, conversion units including inverters, transformers, switchgear, and monitoring and control systems and, electrical and communications cabling within the solar array Sites (Work No.1);
 - Energy storage facility (Work No.2);
 - On-Site substations at each solar farm site (Work No.3);
 - The underground grid connection cable works (Work No.5) will be decommissioned / removed. The associated cable ducting will be left in-situ to avoid unnecessary intrusion. It is possible to remove the cable itself by extracting it at the joint bays from within the ducting, so that the cable can be recycled; and
 - Ancillary infrastructure including fencing, gates, boundary treatment and other means of enclosure, CCTV columns, lighting columns and lighting, cameras, weather stations, communication infrastructure, and perimeter fencing (Work No. 7).
- 4.1.17 As with the construction phase of the Scheme, there is the potential for the decommissioning works to create pollution incidents such as spillages and also create litter and general waste which can constitute a nuisance under the EPA.
- 4.1.18 A detailed Decommissioning Environmental Management Plan (DEMP) will be prepared prior to the commencement of decommissioning. The detailed DEMP will be substantially in accordance with the Outline Decommissioning Statement **[EN010132/APP/WB7.2]** submitted in support of the Application.
- 4.1.19 A strategy to deal with accidental pollution will be included within the detailed DEMP prior to 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.
- 4.1.20 The DEMP will specify the waste streams to be estimated and monitored and goals set with regards to the waste produced during the decommissioning phase.
- 4.1.21 All waste to be removed from the Order Limits will be undertaken by fully licensed waste carriers and taken to licensed waste facilities for recycling or disposal.

4.1.22 The measures set out in the Outline Decommissioning Statement **[EN010132/APP/WB7.2]** 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 Decommissioning Statement will be secured by Requirements in the DCO.

4.1.23 It is considered that these measures will not give rise to impacts which would constitute a statutory nuisance under Section 79(1)(a) or (e) of the EPA, during the decommissioning phase of the Scheme.

Conclusion

4.1.24 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

4.2.1 Section 79(1)(d) of the EPA states that the following constitutes a statutory nuisance:

4.2.2 “any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance”

4.2.3 An Air Quality assessment has been undertaken and is reported in ES Chapter 17: Air Quality **[EN010132/APP/WB6.2.17]**. The chapter assesses 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

4.2.4 Chapter 17: Air Quality of the ES **[EN010132/APP/WB6.2.17]** assesses the impact of construction and decommissioning phases of the Scheme on air quality. The assessment confirms that 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. 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
- Track out (movement of mud and soil out of the site by construction vehicles).

4.2.5 Qualitative Dust Assessments based on relevant industry (Institute of Air Quality Management (IAQM)) guidance have been undertaken for the Sites together with the preparation of Construction Dust Management Plans (CDMPs). They are presented at ES Appendices 17.1-17.3 **[EN010132/APP/WB6.3.17.1-17.3]**. Construction of the scheme will take place over a 24-month period within different parts of the Site (and where a number of those works may overlap with each other).

- 4.2.6 The CDMPs adopt good site practice on controlling dust 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 During Scheme construction, it is anticipated that dust sensitive receptors will potentially experience increased levels of dust and particulate matter which will result in 'low' to 'medium' risk of impacts without implementation of any mitigation and control measures. However, these are predicted to be short-term and temporary impacts. Throughout this period, the potential impacts from construction on air quality will be managed through site-specific mitigation measures set out within the CDMPs. These are included within the OCEMP **[EN010132/APP/WB7.1]** and compliance with the plans will be secured through a Requirement in the DCO. With these mitigation measures in place, the effects from the construction of the Scheme are not predicted to be significant.
- 4.2.8 ES Chapter 17: Air Quality **[EN010132/APP/WB6.2.17]** 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.
- 4.2.9 A detailed Decommissioning Environmental Management Plan (DEMP) will be prepared prior to the commencement of decommissioning and secured by a Requirement in the DCO. The detailed DEMP will be substantially in accordance with the Outline Decommissioning Statement **[EN010132/APP/WB7.2]** supporting the application.
- 4.2.10 The mitigation measures proposed for implementation during the construction phase will be included within the detailed DEMP prior to decommissioning.
- [Operation](#)
- 4.2.11 The operational traffic associated with the Scheme is expected to be very low (less than 1 daily vehicle movement on average). As the Sites are not located within or adjacent to an Air Quality Management Area (AQMA), Chapter 17: Air Quality **[EN010132/APP/WB6.2.17]** concludes that traffic air quality impact can be scoped out, according to the "Indicative criteria for requiring an air quality assessment" in IAQM Guidance of Land-use planning & development control: Planning for air quality, January 2017 (Ref.2).
- 4.2.12 The Scheme does not include any fixed plant which may give rise to emissions, such as Combined Heat and Power (CHP) or boilers, therefore there are no emissions associated with the proposed Scheme and the direct impacts on air quality are determined to be 'imperceptible'.

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 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 Chapter 17: Air Quality [EN010132/APP/WB6.2.17] and ES Chapter 21: Other Environmental Matters [EN010132/APP/WB6.2.21]. No claim is therefore envisaged in respect of a statutory nuisance under section 79(1)(d).

4.3 Artificial Light

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.

Construction and Decommissioning

4.3.3 Construction temporary site lighting, in the form of mobile lighting towers with a power output of 8 kilo volt-amperes (kVAs), will be required in areas where natural lighting is unable to reach (sheltered/confined areas) and during core working hours within winter months. Artificial lighting would be provided to maintain sufficient security and health and safety for the Order limits, whilst adopting the 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. All construction lighting will be deployed in accordance with the following recommendations to prevent or reduce the impact on human and ecological receptors. These mitigation principles are outlined within the OCEMP [EN010132/APP/WB7.1] and Outline Decommissioning Statement [EN010132/APP/WB7.2]:

- 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 Order limits rather than towards the boundaries.

4.3.4 Following the granting of the DCO, the detailed CEMP and DEMP will be prepared, agreed and approved by the relevant Local Planning Authorities in advance of commencing the enabling works permitted under the DCO. Both documents will be

substantially in accordance with the OCEMP **[EN010132/APP/WB7.1]** and Outline Decommissioning Statement **[EN010132/APP/WB7.2]**.

Operation

4.3.5 Lighting will be as detailed in ES Chapter 4: Scheme Description **[EN010132/APP/WB6.2.4]**. During operation, no part of the Scheme will be continuously lit. The use of motion detection security lighting to avoid permanent 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.

4.3.6 Lighting will be directed downward and away from boundaries as proposed for the construction phase lighting. Therefore, there will be no lighting at the perimeter of the Order limits and no potential for a statutory nuisance.

Conclusion

4.3.7 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) of the EPA.

4.4 Noise and Vibration

4.4.1 The following constitute a statutory nuisance in respect of the EPA:

- 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 a street”*.

4.4.2 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.

4.4.3 An assessment of noise and vibration impacts has been undertaken and is reported in ES Chapter 15: Noise and Vibration **[EN010132/APP/WB6.2.15]**. The chapter assesses 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.

4.4.4 The elements relevant to section 79(1)(g) and (ga) 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 79(6A)(a) of the EPA and is not considered further.

Construction and Decommissioning

4.4.5 Chapter 15: Noise and Vibration **[EN010132/APP/WB6.2.15]** predicts construction noise levels at all receptors except for three receptors along the proposed cable route will be within the 65 dB(A) noise level limit. Construction noise and vibration

is also temporary, and the assessment assumes that all construction activities will be happening simultaneously across the Site as this is considered worst-case. Construction activity on the Sites and cable corridor would likely be experienced by limited receptors at any given time as work progresses across the Scheme. Construction activity on Site would likely be experienced by limited receptors at any given time as work progresses across the Proposed Development. Therefore, the residual construction noise and vibration effects of the Scheme are not significant.

4.4.6 Noise and vibration effects during the decommissioning phase of the Scheme will be similar or less than noise effects during the construction phase. Construction and decommissioning noise levels at surrounding receptors will vary depending on the locations and types of works taking place. Occupants of nearby receptors are likely to be more tolerable of these events if they are regularly communicated with, and kept informed of timings and duration of high noise generating events.

4.4.7 Measures to control noise as defined in Annex B of BS 5228-1 and measures to control vibration as defined in Section 8 of BS 5228-2 will be adopted where reasonably practicable during the construction and decommissioning phases.

4.4.8 These measures represent Best Practicable Means (BPM) and are included within the Outline CEMP **[EN010132/APP/WB7.1]** and Outline Decommissioning Statement **[EN010132/APP/WB7.2]**. Examples of BPM that will be implemented during construction and decommissioning works are presented below:

- Unnecessary revving of engines will be avoided, and equipment will be switched off when not in use;
- Appropriate routing of construction traffic on public roads and along access tracks;
- Drop heights of materials will be minimised;
- Plant and vehicles will be sequentially started up rather than all together;
- 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;
- Regular and effective maintenance by trained personnel will be undertaken to keep plant and equipment working to manufacturer's specifications;
- During noisy activities, localised screening of noise generating sources, such as temporary site hoarding should be implemented to minimise any potential impacts on nearby noise sensitive receptors;
- Working hours onsite are likely to be carried out Monday to Friday 07:00 – 18:00 and between 08:00 and 13:30 on Saturdays. However, some activities may be required outside of these times (such as the delivery of abnormal loads, night-time working for cable construction works in public highways or horizontal directional drill activities);

- A construction noise monitoring scheme will be developed and agreed with appropriate stakeholders following appointment of a principal contractor and prior to commencement of construction works through the CEMP, and as part of the discharge of a Requirement imposed on the DCO (and as part of any Section 61 consent application the Control of Pollution Act 1974). The principles of the noise monitoring regime are set out in the Outline CEMP accompanying the DCO application;
- Requirements for monitoring during the decommissioning stages will be set out and agreed through the Decommissioning Environmental Management Plan which will be secured through the Requirements in the DCO (an Outline Decommissioning Statement **[EN010132/APP/WB7.2]** is submitted with the DCO application). The noise monitoring scheme is expected to be similar to that for the construction phase;
- Consideration will also be given to traffic routing, timing, and access points to the DCO Site to minimise noise impacts at existing receptors as detailed construction working methods are developed. Management of Heavy Goods Vehicles (HGV) within the DCO Site and being let onto the highway network will be managed through a Construction Traffic Management Plan (CTMP). The requirement for the CTMP will be secured through a Requirement in the DCO, being substantially in accordance with the Outline Construction Traffic Management Plan **[EN010132/APP/WB6.3.14.2]** submitted in support of the Application; and
- Exceedances of the significant observed adverse effect level (SOAEL) are unlikely to take place due to the fact that BPM will be adopted and secured through the CEMP and DEMP. For example, the use of temporary acoustic barriers can provide approximately 10 dB of noise attenuation which can reduce noise levels to below 65 dB(A) which is the expected daytime noise climate.

Operation

- 4.4.9 An assessment of operational noise was undertaken based on worst-case assessment criteria. Assessments have been undertaken in accordance with the guidance contained within BS 4142 and predicted operational noise levels at the nearest receptors exceed the existing background noise levels in many cases, and as such have been assessed within ES Chapter 15: Noise and Vibration **[EN010132/APP/WB6.2.15]**, as having moderate/major significant effects. As such, mitigation is required to ensure noise levels during the operational phase do not result in significant impacts in accordance with WHO/BS 8233 and IEMA guidance.
- 4.4.10 The results of the assessments have been used to inform the design of development layouts. Where possible, the distance from the nearest residential receptors to the substation and BESS (at West Burton 3) and onsite transformers and inverters has been maximised. Where required, manufacturer-supplied noise mitigation will be installed and noise generating equipment will be enclosed / containerised.

- 4.4.11 Operational phase embedded noise mitigation measures specified within ES Chapter 15: Noise and Vibration **[EN010132/APP/WB6.2.15]** are:
- At West Burton 3, 3.0m high acoustic barriers have been included as part of the design around the BESS and sub-station, of a close boarded construction with a minimum mass per square metre of 10 kg/m²; and
 - At West Burton 3 acoustic louvres providing noise reduction of at least 10 dB will be required for a number of conversion units around the site in identified locations.
- 4.4.12 These measures are secured within the Concept Design Parameters and Principles document **[EN010132/APP/WB7.13]** accompanying the application.
- 4.4.13 With these measures in place and considering the site context, the residual operational noise effects of the Scheme are not significant.
- 4.4.14 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.

Conclusion

- 4.4.15 For the reasons explained above and with the 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 Chapter 15: Noise and Vibration **[EN010132/APP/WB6.2.15]**, and ES Chapter 21: Other Environmental Matters **[EN010132/APP/WB6.2.21]**, during the construction, operation (and maintenance) and decommissioning phases of the Scheme.
- 4.4.16 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) of the EPA.

5 Conclusion

- 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, waste, 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 are secured by requirements contained within the draft DCO.
- 5.1.3 It is not envisaged that the construction, operation (and maintenance) and decommissioning of the Scheme would give rise to any claim in respect of statutory nuisance under Section 79(1) of the EPA.

6 References

- Ref.1 Area, E & Adcock, A Nuisance Complaints (2018). House of Commons Library. Briefing Paper No CBP 8040.
- Ref.2 Institute of Air Quality Management, (2017). Land-Use Planning & Development Control: Planning for Air Quality v1.2.