



Stonestreet Green Solar

Statutory Nuisance Statement

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APFP Regulation 5(2)(f)

Planning Act 2008

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



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1 Executive Summary

This Statutory Nuisance Statement has been prepared on behalf of EPL 001 Limited ('the Applicant') in relation to the Development Consent Order ('DCO') application for Stonestreet Green Solar ('the Project') submitted to the Planning Inspectorate, with the decision whether to grant a DCO being made by the Secretary of State for Energy Security and Net Zero ('Secretary of State') pursuant to the Planning Act 2008.

The Applicant is seeking development consent for the construction, operation, maintenance, and decommissioning of solar photovoltaic ('PV') arrays and energy storage, together with associated infrastructure and an underground cable connection to the existing National Grid Sellindge Substation.

The Project 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 Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 ('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"*.

The matters in section 79(1) of the Environmental Protection Act 1990 ('EPA') that have been considered within this Statement are the condition of the premises, dust, artificial light, and noise and vibration. This Statement sets out appropriate mitigation measures to ensure that the 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.

2 Introduction

2.1.1 This Statutory Nuisance Statement ('Statement') has been prepared on behalf of EPL 001 Limited ('the Applicant') in relation to the Development Consent Order ('DCO') application for Stonestreet Green Solar ('the Project').

2.2 The Project

2.2.1 The Project comprises the construction, operation, maintenance, and decommissioning of solar photovoltaic ('PV') arrays and energy storage, together with associated infrastructure and an underground cable connection to the existing National Grid Sellindge Substation.

2.2.2 The Project will include a generating station (incorporating solar arrays) with a total capacity exceeding 50 megawatts ('MW'). The agreed grid connection for the Project will allow the export and import of up to 99.9 MW of electricity to the grid. The Project will connect to the existing National Grid Sellindge Substation via a new 132 kilovolt ('kV') substation constructed as part of the Project and cable connection under the Network Rail and High Speed 1 ('HS1') railway.

2.2.3 The location of the Project is shown on **ES Volume 3, Figure 1.1: Site Location Plan (Doc Ref. 5.3)**. The Project will be located within the Order limits (the land shown on the **Works Plans (Doc Ref. 2.3)** within which the Project can be carried out). The Order limits plan is provided as **ES Volume 3, Figure 1.2: Order Limits (Doc Ref. 5.3)**. Land within the Order limits is known as the 'Site'.

2.2.4 A more detailed description of the Project is provided in **ES Volume 2, Chapter 3: Project Description (Doc Ref. 5.2)**.

2.3 Purpose of the Statutory Nuisance Statement

2.3.1 This 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, which requires applications for development consent to be accompanied by a statement to confirm whether the proposal engages any of the matters set out in section 79(1) of the Environmental Protection Act 1990 ('EPA') and if so how they will be mitigated or limited.

2.3.2 A statutory nuisance, as defined in the House of Commons Briefing Paper on Nuisance Complaints² is a nuisance which "*must unreasonably and substantially interfere with the use or enjoyment of a home of other premises, or injure health or be likely to injure health*". A one-off event would not usually be considered a nuisance; rather an activity must be "*ongoing or repeated*".

2.3.3 This Statement confirms that the Project does not give rise to statutory nuisance and that any matters that have the potential to do so have been assessed and

mitigated, with appropriate controls included in the **Draft Development Consent Order ('DCO') (Doc Ref. 3.1)**.

- 2.3.4 Nonetheless, article 10 (defence to proceedings in respect of statutory nuisance) of the **Draft DCO (Doc Ref. 3.1)** contains a provision that would provide a defence to proceedings in respect of statutory nuisance (in respect of 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.
- 2.3.5 This Statement is informed by and should be read alongside the other DCO Application documents, in particular the **Environmental Statement (Doc Ref. 5.1-5.4)** and the management plans (within Book 7).

2.4 Structure

- 2.4.1 This Statutory Nuisance Statement is structured as follows:
- **Section 3** provides an overview of the legislative and policy context;
 - **Section 4** considers the potential for relevant statutory nuisance to arise in relation to the Project;
 - **Section 5** sets out the matters considered and the proposed mitigation measures; and
 - **Section 6** provides the conclusion in relation to statutory nuisance.

3 Legislative and Policy Context

3.1 The APFP Regulations

- 3.1.1 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”.

3.2 Environmental Protection Act 1990

- 3.2.1 Section 79(1) of the EPA³ sets out 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 a statutory nuisance;”

- 3.2.2 The local authority is required by the EPA to detect statutory nuisances and where satisfied that a statutory nuisance exists, or is likely to occur or recur, to serve an

abatement notice under section 80 requiring the nuisance to be abated, prohibited or restricted.

3.3 Planning Act 2008

3.3.1 Section 158(1) of the Planning Act 2008⁴ confers statutory authority for:

“(a) carrying out development for which consent is granted by an order granting development consent;

(b) doing anything else authorised by an order granting development consent.”

3.3.2 This therefore limits the scope for enforcing statutory nuisances in relation to DCOs.

3.4 National Policy Statement

3.4.1 Paragraphs 4.15.1 to 4.15.4 of the Overarching National Policy Statement for Energy (EN-1) ('NPS EN-1')⁵, which came into force on 17 January 2024, state 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 (EPA) (statutory nuisance) but only to the extent that the nuisance is the inevitable consequence of what has been authorised.

The defence does not extinguish the local authority’s duties under Part III of the EPA 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.”

3.4.2 Paragraph 4.15.5 of NPS EN-1 states that:

“At the application stage of an energy NSIP, possible sources of nuisance under section 79(1) of the EPA 1990 and how they may be mitigated or limited should be identified by the applicant so that appropriate requirements can be included in any subsequent order granting development consent”.

3.4.3 Paragraph 4.15.6 of NPS EN-1 states that the Secretary of State should consider possible sources of nuisance and how they may be mitigated or limited, so that *“appropriate requirements can be included in any subsequent order granting development consent”.*

4 Potential for Statutory Nuisance

4.1 Potential for Statutory Nuisance

4.1.1 The provisions of section 79(1) of the EPA that could potentially be engaged as a consequence of the Project have been reviewed, taking into account the assessment reported in the **Environmental Statement (Doc Ref. 5.1-5.4)** accompanying this DCO Application, which assesses the likelihood of significant effects arising from the Project that could constitute a statutory nuisance.

4.1.2 Table 1 below sets out the matters identified in section 79(1) of the EPA and whether these are considered further in this Statement.

Table 1: Matters set out in section 79(1) of the EPA

Matter listed in section 79(1) of the EPA	Is the matter engaged by the Project?
(a) any premises in such a state as to be prejudicial to health or a nuisance	This matter is considered in this Statement below.
(b) smoke emitted from premises so as to be prejudicial to health or a nuisance	No smoke is expected to be generated from the Project; therefore, this is not considered further within this 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 Project is not anticipated to have any 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 in this Statement below.
(f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance	The Project will not keep any animals in such a place or manner as to be prejudicial to health or a nuisance and therefore this is not considered further in the Statement.

Matter listed in section 79(1) of the EPA	Is the matter engaged by the Project?
(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 Project 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 in this Statement below.
(g) noise emitted from premises so as to be prejudicial to health or a nuisance	This matter is considered in this Statement below.
(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	This matter is considered in this Statement below.
(h) any other matter declared by any enactment to be a statutory nuisance	No other matters are considered to be a potential statutory nuisance associated with the construction, operation (and maintenance) or decommissioning of the Project.

5 Matters Considered and Proposed Mitigation Measures

5.1 Condition of the premises – Sections 79(1)(a) and (e) of the EPA

5.1.1 This section considers the risk of the condition of the premises causing a statutory nuisance.

5.1.2 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”*.

5.1.3 In line with section 79(7) of the EPA, for the purposes of this Statement, ‘the premises’ is considered to mean the land within the Order limits of the Project.

Construction and Decommissioning

5.1.4 The construction of the Project will include, but is not limited to, the following activities:

- site preparation works, site clearance and earthworks.
- installation of PV Panels and mounting structures;
- installation of Inverter Stations and Battery Energy Storage System (‘BESS’) Units (including BESS fire risk mitigation infrastructure);
- construction of the Project Substation and works to Sellindge Substation;
- installation of fencing and security measures such as CCTV;
- installation of cables (including trenching and horizontal directional drilling);
- installation of bridge crossings;
- works to provide site access;
- construction of compound areas;
- installation of the internal haulage road;
- landscaping and planting; and

5.1.5 Once complete and prior to operation of the Project, testing and commissioning of the equipment will be carried out.

5.1.6 Following the operational lifetime of the Project, all built infrastructure will be removed from the Site (with the exception of elements of Work No. 4 that are within Sellindge Substation, any repairs, upgrades or replacements of/to the existing bridge / drain crossings, PRow footbridges and highway improvements) and

recycled or disposed of in accordance with good practice, market conditions and available technologies for recycling/reprocessing at that time. Further details on waste are provided within **ES Volume 2, Chapter 16: Other Topics (Doc Ref. 5.2)**.

- 5.1.7 The construction and decommissioning works have the potential to create minor pollution incidents and also create general waste which can constitute a nuisance under the EPA.
- 5.1.8 Various construction control mechanisms are proposed to mitigate these potential nuisances. An overview of the relevant mitigation measures and how they are secured is provided in the **Mitigation Schedule (Doc Ref. 7.7)**. The management plans for the Project have been informed by the environmental impact assessment ('EIA') to guide the construction and decommissioning processes through environmental controls which promote good practice and avoid significant adverse effects. The measures secured in the management plans have been embedded into the design of the Project and are assumed to have been implemented for the purposes of the EIA.
- 5.1.9 Control mechanisms proposed for the construction phase include core working hours, traffic and access management, site security, fire prevention and emergency procedures. These measures are set out in the **Outline Construction Environmental Management Plan ('CEMP') (Doc Ref. 7.8)**.
- 5.1.10 Pursuant to a requirement in the **Draft DCO (Doc Ref. 3.1)**, no phase of the authorised development may commence until a CEMP for that phase has been approved by Ashford Borough Council. The CEMP(s) must be in accordance with the **Outline CEMP (Doc Ref. 7.8)**.
- 5.1.11 For decommissioning, similar controls are set out in the **Outline Decommissioning Environmental Management Plan ('DEMP') (Doc Ref. 7.12)**. Pursuant to a requirement in the **Draft DCO (Doc Ref. 3.1)**, prior to commencement of any decommissioning works for any part of the authorised development, a DEMP for that part must be approved by Ashford Borough Council. The DEMP(s) must be in accordance with the **Outline DEMP (Doc Ref. 7.12)**.
- 5.1.12 Plans to deal with accidental pollution will be included within the detailed CEMP(s) and detailed DEMP(s) in accordance with the **Outline CEMP (Doc Ref. 7.8)** and the **Outline DEMP (Doc Ref. 7.12)**. Any necessary equipment (e.g. spillage kits) will be held on-site and all site personnel will be trained in their use.
- 5.1.13 In order to control the waste generated during 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.
- 5.1.14 The principles of the Outline Site Waste Management Plan in the **Outline CEMP (Doc Ref. 7.8)** and the **Outline DEMP (Doc Ref. 7.12)** will be incorporated into the detailed CEMP(s) and DEMP(s). 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.

- 5.1.15 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) of the EPA.

Operation

- 5.1.16 It is considered that the operation of the Project 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.
- 5.1.17 During the 40-year operational phase the activities on-Site will be limited and are expected to amount to maintenance and servicing of plant and equipment (including fire mitigation infrastructure), habitat and vegetation management, and monitoring to ensure effective operation of the Project.
- 5.1.18 There will be a need for periodic replacement of Project infrastructure over the operating lifetime of the Project but no wholesale replacement of PV panels is proposed.
- 5.1.19 Along the Cable Route Corridor, operational activity will consist of routine inspections and any reactive maintenance such as where a cable has been damaged.
- 5.1.20 The **Outline Operational Management Plan ('OMP') (Doc Ref. 7.11)** includes design and other mitigation measures to prevent or reduce potential adverse environment effects relevant to operation and maintenance, monitoring and reporting. It describes the framework of measures that will be implemented in the detailed OMP. The detailed OMP must be in accordance with the **Outline OMP (Doc Ref. 7.11)** as secured by a requirement in the **Draft DCO (Doc Ref. 3.1)**.
- 5.1.21 This phase of the Project will not give rise to impacts which would constitute a statutory nuisance under section 79(1)(a) or (e) of the EPA.

Conclusion

- 5.1.22 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 a statutory nuisance under section 79(1)(a) or (e) of the EPA.

5.2 Air emissions (dust) – Section 79(1)(d) of the EPA

- 5.2.1 Section 79(1)(d) of the EPA 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"*.
- 5.2.2 An air quality assessment was scoped out of the ES (in accordance with the **EIA Scoping Opinion (ES Volume 4, Appendix 1.2 (Doc Ref. 5.4))**) on the basis that the number of anticipated movements are below the threshold criteria requiring an assessment of significant effects as detailed in Institute of Air Quality Management

guidance⁶ (i.e. 100 HGV Average Annual Daily Traffic ('AADT') movements). The **Outline CEMP (Doc Ref. 7.8)**, the **Outline DEMP (Doc Ref. 7.12)**, the **Outline Construction Traffic Management Plan ('CTMP') (Doc Ref. 7.9)** and the **Outline Decommissioning Traffic Management Plan ('DTMP') (Doc Ref. 7.13)** have been submitted with the DCO Application to ensure impacts on receptors are minimised.

Construction and Decommissioning

5.2.3 Construction activities that have the potential to generate air quality impacts include:

- site clearance and preparation;
- preparation of temporary access / egress to the Site and internal access roads;
- earthworks;
- materials handling, storage, stockpiling, spillage and disposal;
- movement of vehicles and construction traffic to, from and within the Order limits including excavators and dumper trucks); and
- site landscaping works.

5.2.4 Decommissioning activities that have the potential to generate air quality impacts include:

- preparation of temporary access / egress to the Site and internal access roads
- reprofiling;
- decommissioning of foundations;
- materials handling, storage, stockpiling, spillage and disposal;
- movement of vehicles and decommissioning traffic to, from and within the Order limits ; and
- site landscaping after completion.

5.2.5 The **Outline CEMP (Doc Ref. 7.8)** and **Outline DEMP (Doc Ref. 7.12)** provide an Outline Air Quality and Dust Management Plan ('AQDMP') which secures appropriate measures in line with IAQM dust guidance⁷.

5.2.6 The Outline AQDMP (within the **Outline CEMP (Doc Ref. 7.8)** and **Outline DEMP (Doc Ref. 7.12)**) is intended to be used by Project staff and contractors on a day-to-day basis. The nominated person, normally the Works Manager, in conjunction with the Environmental Manager / Representative will be responsible for the management, control and implementation of the detailed AQDMP onsite.

5.2.7 Scheduled monitoring of environmental performance and formal compliance auditing will be conducted throughout construction/decommissioning activities. The frequency of Site inspections should be increased when activities with a high potential to produce dust are being carried out and during prolonged dry or windy conditions.

- 5.2.8 The **Outline CTMP (Doc Ref. 7.9)** and **Outline DTMP (Doc Ref. 7.13)** include measures to control construction/decommissioning traffic routing, minimise construction/decommissioning traffic and disruption on public highways.
- 5.2.9 It is considered that with the above measures in place, the construction and decommissioning phases of the Project will not give rise to a statutory nuisance under section 79(1)(d) of the EPA.

Operation

- 5.2.10 Once operational, the Project will generate no more than 2 x two-way trips per day. This is not expected to induce significant changes to traffic flows on the road network.
- 5.2.11 The operation of the Project is not anticipated to have a significant impact on local air quality. The effect on air quality during this phase will be negligible.
- 5.2.12 No likely significant effects on air quality are therefore predicted during the operational phase of the Project.
- 5.2.13 It is considered that this phase of the Project will not give rise to a statutory nuisance under section 79(1)(d) of the EPA.

Conclusion

- 5.2.14 For the reasons explained above and with implementation of the above mitigation measures, the Project will not give rise to impacts that would constitute a statutory nuisance under section 79(1)(d) of the EPA.

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

- 5.3.1 Section 79(1)(fb) of the EPA provides that the following constitutes a statutory nuisance: *“artificial light emitted from premises so as to be prejudicial to health or a nuisance”*.
- 5.3.2 Department for Environment, Food and Rural Affairs ('DEFRA')⁸ guidance states that for artificial light to count as 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.. 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.
- 5.3.3 The effects of glint and glare are not covered by statutory nuisance legislation, which does not cover natural light. These effects are however assessed within **ES Volume 2, Chapter 16: Other Topics (Doc Ref. 5.2)** and **ES Volume 4, Appendix 16.1: Solar Photovoltaic Glint and Glare Study (Doc Ref. 5.4)**, which identify no likely significant residual glint and glare effects from the Project.

Construction and Decommissioning

- 5.3.4 During the construction and decommissioning phases, temporary lighting will be required where natural light is unable to reach and during working hours in winter months, but in all cases will be managed to avoid significant adverse effects.
- 5.3.5 Full details on temporary construction/decommissioning lighting requirements and positions will be outlined within the detailed CEMP(s) and DEMP(s). In determining any temporary construction/decommissioning lighting arrangements for the Site, due consideration will be given by the Principal Contractor to residents and other sensitive receptors that may experience disturbance from the light.
- 5.3.6 In accordance with the **Outline CEMP (Doc Ref. 7.8)** and the **Outline DEMP (Doc Ref. 7.12)**, all construction and decommissioning lighting will incorporate the following measures to prevent or reduce the impact on human and ecological receptors:
- As far as is practical, lighting must be directed away from residential and ecological sensitive areas;
 - Lighting should always be positioned to prevent glare;
 - Luminaires used around the perimeter of the Site will be mounted within the Site boundary, so that the main photometric distribution of the luminaire is towards Site works, thereby keeping all light within the boundary and preventing artificial light spill;
 - Wherever possible consideration will be given to minimise the need for lighting in areas of ecology habitat or in areas situated directly adjacent to ecology habitat. Should health and safety require artificial lighting to these areas all luminaires will be directed away from the habitat area;
 - Wherever possible and subject to landscape design, natural and solid screen perimeters will be included to reduce obtrusive light to adjacent sensitive areas and light will be extinguished when not in use;
 - Wherever possible, all artificial lighting used during the construction/decommissioning phase will be directed below the horizontal to prevent unwanted upward light;
 - When not in use all artificial lighting used for construction/decommissioning will be extinguished;
 - Modern, high efficiency lamps and luminaires will be employed to ensure energy efficient; and
 - Illuminance levels will be designed in accordance with BS EN 12464-2: 2014 and CIE 129; No area will be over lit.

Operational

- 5.3.7 During operation, no part of the Project (with the exception of the Sellindge Substation Extension) will be continuously lit. Lighting will be limited to emergency and overnight maintenance lighting only at Inverter Stations, Intermediate Substations and the Project Substation. If required to be used, lighting will be directed within the Order limits away from sensitive receptors and will include

features to reduce light spill beyond the areas required to be lit. Lighting in relation to the Sellindge Substation Extension is assumed to be consistent with the lighting approach for the existing Sellindge Substation infrastructure and would not result in a material change to the baseline position within Sellindge Substation.

- 5.3.8 Lighting is controlled by the **Outline OMP (Doc Ref. 7.11)**. A sensitive lighting scheme will be developed as part of the final design of the Project ensuring inward distribution of light and avoiding light spill onto existing boundary features, and utilised only in the locations required at that time to avoid any impacts to the surrounding area. Details of lighting are to be submitted pursuant to a requirement in the **Draft DCO (Doc Ref. 3.1)**.

Conclusion

- 5.3.9 For the reasons explained above and with the implementation of the above mitigation measures, the Project will not give rise to impacts that would constitute a statutory nuisance under section 79(1)(fb) of the EPA.

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

- 5.4.1 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 a street”*.

- 5.4.2 The elements relevant to section 79(1) of the EPA 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) and is not considered further.

- 5.4.3 DEFRA⁹ guidance states that for noise to count as 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.

- 5.4.4 An assessment of noise impacts was undertaken as part of the EIA and reported in **ES Volume 2, Chapter 14: Noise (Doc Ref. 5.2)**. The chapter assessed the significance of potential noise effects during the construction, operational and decommissioning phases. It concludes that, with appropriate mitigation, there would be no likely significant noise effects in EIA terms. Effects from vibration were scoped out of the assessment in accordance with the **EIA Scoping Opinion (ES Volume 4, Appendix 1.2 (Doc Ref. 5.4))**.

Construction and Decommissioning

- 5.4.5 **ES Volume 2, Chapter 14: Noise (Doc Ref. 5.2)** identifies the key sources of noise from the construction activities as being the installation of the ground mounted solar photovoltaic generating station, the balance of system and BESS, the Project Substation, the Sellindge Substation Connection, Associated Works and

Construction and Decommissioning Works. The chapter states that noise impacts generated by the Project during its decommissioning phase will be similar in scale and nature to the construction phase.

- 5.4.6 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 high construction noise levels experienced at a receptor would be of a limited short-term and temporary duration. 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. Measures to control noise and vibration will be adopted. Best practicable means ('BPM') will be applied during construction/decommissioning works at all times to minimise noise (including vibration) at neighbouring residential properties and other sensitive receptors as set out in the **Outline CEMP (Doc Ref. 7.8)** and the **Outline DEMP (Doc Ref. 7.12)**.
- 5.4.7 The **Outline CEMP (Doc Ref. 7.8)** and **Outline DEMP (Doc Ref. 7.12)** include the commitment to utilise low vibration piling rigs at any location identified within 30m of a sensitive receptor, and for hydraulic bursting to be used to remove concrete at any location identified within 30m of a sensitive receptor. In addition, the **Outline CEMP (Doc Ref. 7.8)** and **Outline DEMP (Doc Ref. 7.12)** require appropriate monitoring and communication to be undertaken where the use of excavators is required within 50m of residential properties.
- 5.4.8 Suitable monitoring will be in place to monitor the noise during construction and decommissioning as set out in the **Outline CEMP (Doc Ref. 7.8)** and the **Outline DEMP (Doc Ref. 7.12)**. Methods and frequency of this monitoring will be confirmed within the detailed CEMPs and DEMPs.

Operation

- 5.4.9 Once operational, the primary sources of noise from the Project will be from the Project Substation, Inverter Stations (including BESS Units) and Intermediate Substations.
- 5.4.10 The Project incorporates measures such as distancing of noise sources away from sensitive receptors and locating the Project Substation away from large concentrations of receptors and close to the existing noise sources of the railway and M20 motorway. Acoustic barriers are also proposed at the Project Substation and Inverter Stations (including BESS Units) and are secured by the **Design Principles (Doc Ref. 7.5)**.
- 5.4.11 Works during the operational phase will be undertaken in accordance with measures set out in the **Outline OMP (Doc Ref. 7.11)**. A detailed OMP will instruct on-Site teams on maintenance schedules, what observations must be performed and how to manage any non-typical situations related to noise. Observations should include an experienced member of staff checking for changes in noise from plant which can be an indication of a fault with either the audible equipment or in the wider system.

- 5.4.12 Where any plant is seen to develop a fault or otherwise emits non-typical noise, maintenance will be undertaken as soon as reasonably practical as secured via the **Outline OMP (Doc Ref. 7.11)**.
- 5.4.13 The detailed OMP, which must be in accordance with the **Outline OMP (Doc Ref. 7.11)**, will set out a complaints procedure for members of the public to report noise disturbance at residential properties. Where a complaint due to noise is received by the operators, an inspection should be conducted to ensure all equipment is working correctly.
- 5.4.14 An Operational Noise Mitigation and Monitoring Scheme ('ONMMS') will be prepared prior to the operation of noise generating infrastructure. The ONMMS will provide details of the plant specification and noise mitigation measures and monitoring procedures. The ONMMS will demonstrate that, with those noise mitigation measures and monitoring procedures in place, the authorised development is not likely to result in any materially new or materially different noise effects from those assessed within **ES Volume 2, Chapter 14: Noise (Doc Ref. 5.2)**. The ONMMS is secured by a requirement in the **Draft DCO (Doc Ref: 3.1)**.

Conclusion

- 5.4.15 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 2, Chapter 14: Noise (Doc Ref. 5.2)** during the construction, operation (and maintenance) and decommissioning phases of the Project.
- 5.4.16 The Project will not give rise to impacts that would constitute a statutory nuisance under section 79(1)(g) or (ga) of the EPA.

6 Conclusion

- 6.1.1 This Statement has been prepared to fulfil the requirements of Regulation 5(2)(f) of the APFP Regulations. This Statement has identified whether the Project has engaged one or more of the matters set out in section 79(1) of the EPA, and thus considered whether the Project would cause a statutory nuisance.
- 6.1.2 The matters in the EPA that have been engaged by the Project are the condition of the premises, dust, artificial light, and noise and vibration. The assessment of the potential for these matters to result in statutory nuisance has considered the conclusions of the relevant assessments reported in the ES. The embedded and additional mitigation measures identified in the ES will prevent impacts which have a potential to result in statutory nuisance under section 79(1) of the EPA. These measures are secured by the **Draft DCO (Doc Ref. 3.1)**.
- 6.1.3 It is not expected that the construction, operation (and maintenance) or decommissioning of the Project would cause a statutory nuisance.

References

- ¹ *Infrastructure Planning (Applications: Forms and Procedure) Regulations 2009*. Available at: <https://www.legislation.gov.uk/ukxi/2009/2264/regulation/5/made> (accessed 14 May 2024).
- ² E. Ares a. A. Adcock, "Nuisance Complaints" Parliamentary Briefing Paper No. CBP 8040, 6 March 2018. [Online]. Available: <https://researchbriefings.files.parliament.uk/documents/CBP-8040/CBP-8040.pdf>. Accessed 14 May 2024
- ³ *Environmental Protection Act 1990*. Available at: <https://www.legislation.gov.uk/ukpga/1990/43/section/79> (accessed 14 May 2024).
- ⁴ *Planning Act 2008*. Available at: <https://www.legislation.gov.uk/ukpga/2008/29/section/158> (accessed 14 May 2024).
- ⁵ *Department for Energy Security and Net Zero (2023). Overarching National Policy Statement for Energy (EN-1)*. Available at: <https://assets.publishing.service.gov.uk/media/655dc190d03a8d001207fe33/overarching-nps-for-energy-en1.pdf> (accessed 14 May 2024).
- ⁶ *Institute of Air Quality Management (2017). Land Use Planning and Development Control: Planning for Air Quality' guidance*. [REDACTED] (accessed 28 April 2024).
- ⁷ *Institute of Air Quality Management (2024). Guidance on the assessment of dust from demolition and construction*. [REDACTED] (accessed 28 April 2024).
- ⁸ Department for Environment, Food & Rural Affairs "Artificial light nuisances: how councils deal with complaints," 7 April 2015. [Online]. Available: <https://www.gov.uk/guidance/artificial-light-nuisances-how-councils-deal-with-complaints> (Accessed 14 May 2024).
- ⁹ Department for Environment, Food & Rural Affairs "Noise nuisances: how councils deal with complaints," 21 December 2017. [Online]. Available: <https://www.gov.uk/guidance/noise-nuisances-how-councils-deal-with-complaints> (Accessed 14 May 2024).