

Indaver Rivenhall IWMF DCO

Planning Act 2008

Infrastructure Planning (Applications: Prescribed Forms and Procedure)

Regulations 2009

**OTHER DOCUMENTS [PINS Ref:
EN0101038]**

STATEMENT OF STATUTORY NUISANCE

Document Reference: EN0101038/APP/7.3

Revision Number 1.0

APFP Regulation 5(2)(q)

November 2023

Indaver Rivenhall Ltd

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1 Executive Summary

- 1.1 This Statement of Statutory Nuisance relates to the application for development consent made by Indaver Rivenhall Ltd ("the Applicant") to the Secretary of State via PINS under section 37 of the Planning Act 2008 (Ref 1.1). The Application is for development consent to authorise the following works:

Work No.1 – an extension to the existing generating station comprising mechanical modifications to the actuated steam turbine inlet control valves to allow steam capacity to be increased, with the effect that the extended generating station will have a gross installed generating capacity of over 50MW; and

Work No.2 – an extension to the existing generating station comprising the installation and commissioning of unrestricted actuated steam turbine inlet control valves with a capacity of over 50MW, with the effect that the extended generating station will have a gross installed generating capacity of over 50MW.

- 1.2 The requirement for a Statement of Statutory Nuisance is set out in regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (Ref 1.2), which states that the application 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'.
- 1.3 The Proposed Development has the potential to engage one or more of the matters set out in section 79(1) of the Environmental Protection Act 1990 (the "Act") (Ref 1.3) during the construction and operation of the Project, as a result of noise emitted from premises so as to be prejudicial to health or a nuisance (section 79(1)(g)).
- 1.4 Taking into account the environmental mitigation measures and controls set out in the **Environmental Statement ("ES") (Doc Ref. 6.1)**, none of the matters of statutory nuisance addressed by the Act are predicted to arise.

2 Introduction

2.1 This Statement of Statutory Nuisance relates to the application for development consent (“the Application”) made by Indaver Rivenhall Ltd (“the Applicant”) to the Secretary of State via PINS under section 37 of the Planning Act 2008.

2.2 The application is for development consent to authorise the following works:

Work No.1 – an extension to the existing generating station comprising mechanical modifications to the actuated steam turbine inlet control valves to allow steam capacity to be increased, with the effect that the extended generating station will have a gross installed generating capacity of over 50MW; and

Work No.2 – an extension to the existing generating station comprising the installation and commissioning of unrestricted actuated steam turbine inlet control valves with a capacity of over 50MW, with the effect that the extended generating station will have a gross installed generating capacity of over 50MW.

2.3 A detailed description of the Proposed Development can be found in **ES Volume 1, Chapter 3: Proposed Development and Construction (Doc Ref. 6.1)**. A description of the proposed works for which a development consent order is sought can be found in Schedule 1 of the **Draft Development Consent Order (Doc Ref. 3.1)**. The Proposed Development comprises engineering operations to the EfW plant of an Integrated Waste Management Facility (‘IWMF’), permission for which was issued by Essex County Council (Ref. ESS/34/15/BTE) (referred to as the ‘consented IWMF’) and which is under construction by the Applicant. More information can be found in the **Planning Statement (Doc Ref. 7.1)**.

2.4 In preparing this Statement, the Applicant has had regard to the former Department for Communities and Local Government’s ‘Planning Act 2008: Application form guidance’ (June 2013) (Ref 1.4) and the National Policy Statement (“NPS”) for Overarching Energy (EN-1) (Ref 1.5), specifically:

“NPS EN-1, paragraph 4.14.2: “It is very important that, at the application stage of an energy NSIP, possible sources of nuisance under section 79(1) of the 1990 Act and how they may be mitigated or limited are considered by the IPC so that appropriate requirements can be included in any subsequent order granting development consent.”

2.5 The Government is currently reviewing and updating the energy NPSs. This includes NPS EN-1, and the Government published a draft version of the updated NPS EN-1 in April 2023 (“Draft NPS EN-1”) (Ref. 1.6). Paragraph 4.14.5 of the Draft NPS EN-1 has the same effect as the paragraph set out above, though with slightly altered wording to refer to the Secretary of State rather than the IPC.

2.6 This Statement is informed by the other Application documents and should be read alongside the:

- Environmental Impact Assessment reported in the **ES (Doc Ref. 6.1)**; and
- **Planning Statement (Doc Ref. 7.1)**.

3 Assessment of Statutory Nuisances

Section 79(1) Environmental Protection Act 1990

3.1 Section 79 of the Act contains definitions and exemptions in respect of statutory nuisance. Extracted below is the relevant text of section 79(1) of the Act which sets out in detail the matters which constitute statutory nuisances for the purpose of Part III of the Act:

“(1) Subject to subsections (1A) to (6A) below, the following matters constitute “statutory nuisances” for the purposes of this Part, that is to say—

(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;

and it shall be the duty of every local authority to cause its area to be inspected from time to time to detect any statutory nuisances which ought to be dealt with under section 80 below or sections 80 and 80A below and, where a complaint of a statutory nuisance is made to it by a person living within its area, to take such steps as are reasonably practicable to investigate the complaint.”

3.2 Importantly, the matters outlined in section 79(1) are subject to subsections 79(3), (4) and (6A), which provide respectively that:

- section 79(1)(b) '*smoke emitted from premises so as to be prejudicial to health or a nuisance*' does not apply in relation to dark smoke emitted from a chimney of a building or a chimney serving the furnace of a boiler or industrial plant attached to a building or for the time being fixed to or installed on any land or dark smoke emitted otherwise than as mentioned above from industrial or trade premises.
- section 79(1)(c) '*fumes or gases emitted from premises so as to be prejudicial to health or a nuisance*' does not apply in relation to premises other than private dwellings;
- 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 or in Scotland, road*' does not apply to noise made by traffic.

Potential breaches of section 79(1) Environmental Protection Act 1990

3.3 Considering the nature of the Proposed Development, the only matters prescribed by section 79(1) of the Act that could potentially be engaged and considered relevant as a consequence of the construction or operation of the Project is 'noise emitted from premises so as to be prejudicial to health or a nuisance'.

3.4 Potential sources of statutory nuisance that are not considered applicable to the Proposed Development, which are not considered further within this Statement, are identified in Table 3.2.1. As the table explains, these have been identified either on the basis that there is no realistic potential for these nuisances to arise during any stage of the Project, or on the basis that one of the exceptions provided for in subsections 79(1A) to (6A) of the Act applies.

Table 1 - Scoped out sources of statutory nuisance

Nuisance in Section 79(1)	Reason for Scoping Out Assessment
(a) any premises in such a state as to be prejudicial to health or a nuisance	There are no premises on the Project Site in such a state that would be prejudicial to health or a nuisance.
(b) smoke emitted from premises so as to be prejudicial to health or a nuisance	The Proposed Development would not give rise to the emission of smoke.
(c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance	Section 79(4) of the Act provides that this does not apply in relation to premises other than private dwellings. The Project does not involve the emission of any fumes or gases from private dwellings.
(d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance	The consented IWMF has an Environmental Permit (Ref: EPR/FP3335YU/V002, as transferred to the Applicant under EPR/FP3335YU) for air emissions associated with waste incineration, namely steam from the stack. The Proposed Development would not give rise to emissions that differ to those permitted by the aforementioned

	Environmental Permit and would not be prejudicial to health or a nuisance.
(e) any accumulation or deposit which is prejudicial to health or a nuisance	The Proposed Development would not give rise to 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	No animals will be kept on-site as part of the Proposed Development.
(fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance	The consented IWMF involves the processing of various waste streams. These have the potential to attract insects. However, the Proposed Development does not alter the quantum of waste that the IWMF would process each year, and as such would not itself give rise to any insects emanating from the industrial premises that are prejudicial to health or a nuisance.
(fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance	The Proposed Development involves works that would be carried out within the interior of the consented IWMF building and does not propose any new or additional lighting compared to the consented IWMF. The Proposed Development would not emit any artificial light that would 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;	The Proposed Development does not involve any vehicles, machinery or equipment in a street.
(h) any other matter declared by any enactment to be a statutory nuisance	There are no other matters that would give rise to a statutory nuisance declared by any other enactment.

Section 79(1)(g): noise emitted from premises so as to be prejudicial to health

- 3.5 The potential for the Proposed Development to cause noise effects that are different to those caused by the consented IWMF has been considered in **ES Volume 1, Chapter 8: Noise (Doc Ref. 6.1)**. It identifies no significant construction or operational ground and fixed plant noise effects that would constitute a statutory nuisance as a result of the Proposed Development.
- 3.6 Vibration was also considered as part of the assessment. The results indicate that it will not give rise to significant effects.

3.7 Adherence to best practicable means and the availability of the statutory defences means that no statutory nuisance or noise impacts prejudicial to health are expected as a result of the construction or operation of the Proposed Development.

4 Conclusion

- 4.1 This Statement of Statutory Nuisance considers whether the Proposed Development engages any of the matters set out in section 79(1) of the Act. It considers the findings of the Environmental Impact Assessment in the **ES (Doc Ref 6.1)** in respect of the impacts that could give rise to statutory nuisance resulting from the construction and operation of the Proposed Development. Taking into account the reasons stated in this Statement, none of the statutory nuisances identified in section 79(1) of the Act are predicted to arise during the construction or operation of the Proposed Development.

References

Draft Overarching National Policy Statement for Energy (EN-1), published in April 2-23 by the Department for Energy Security and Net Zero

Environmental Protection Act 1990 c.43

Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 No. 2264

Overarching National Policy Statement for Energy (EN-1), published in July 2011 by the former Department of Energy and Climate Change

Planning Act 2008 c.29

Planning Act 2008: application form guidance, published in June 2013 by the former Department for Communities and Local Government

