

# A63 Castle Street Improvement, Hull

Scheme Number: TR010016

6.5 Statement of Statutory Nuisance

APFP Regulation 5(2)(f)

Planning Act 2008

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



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Infrastructure Planning

Planning Act 2008

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

**A63 (Castle Street Improvement, Hull)  
Development Consent Order 20[ ]**

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**STATEMENT OF STATUTORY NUISANCE**

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## **A63 Castle Street Improvement, Hull**

### **Statement of Statutory Nuisance**

**TR010016/APP/6.6**  
**HE14508-MMSJV-EGN-S0-RP-00081**  
**13 September 2018**

# A63 Castle Street Improvement, Hull

## Statement of statutory nuisance

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# 1. Introduction

## 1.1 Purpose of this document

- 1.1.1 This Statement of Statutory Nuisance (this “Statement”) relates to an application made by Highways England (the “Applicant”) to the Planning Inspectorate (the “Inspectorate”) under section 37 of the Planning Act 2008 (the “2008 Act”) for a Development Consent Order (DCO). If made, the DCO would grant consent for the Applicant to undertake the A63 Castle Street Improvement, Hull (the “Scheme”). A detailed description of the Scheme can be found in the Environmental Statement (ES) (**Application Document Reference: TR010016/APP/6.1**).
- 1.1.2 This Statement comprises part of the suite of application documents and is included in the application in accordance with the Department for Communities and Local Government guidance ‘Planning Act 2008: Application Form Guidance’ (June 2013) and in compliance with Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the “2009 Regulations”) which requires:
- “...a statement whether the proposal engages one or more of the matters set out in section 79(1) (statutory nuisances and inspections thereof) of the Environmental Protection Act 1990, and if so how the applicant proposes to mitigate or limit them”*
- 1.1.3 As this Statement is part of the application documents, it is informed by and should be read alongside the other application documents. In particular, this Statement should be read alongside the ES.
- 1.1.4 This Statement concludes that, with mitigation measure in place, none of the statutory nuisances identified in section 79(1) of the 1990 Act are predicted to arise on this Scheme.



## 2. Section 79(1) – Environmental Protection Act 1990

2.1.1 The following text is an extract from Section 79(1) of the 1990 Act which sets out those matters which constitute a statutory nuisance in England and Wales.

*“(1) ... the following matters constitute "statutory nuisances" for the purposes of this Part [of the 1990 Act] that is to say –*

- (a) any premises in such a state as to be prejudicial to health or a nuisance;*
- (b) smoke emitting 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 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 or Sections 80 and 80A below and, where a complaint of 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. Potential Breaches of Section 79(1) – Environmental Protection Act 1990

### 3.1 Potential breaches

3.1.1 The only matters prescribed in Section 79(1) of the 1990 Act that could be potentially engaged as a consequence of the Scheme either at construction stage or during operation are:

- (d) dust arising on business and residential properties;
- (fb) artificial light from premises;
- (g) noise emitted from premises; or
- (ga) noise emitted from or caused by a vehicle, machinery or equipment in a street.

### 3.2 Dust arising on businesses and residential properties

- 3.2.1 **Chapter 6** Air Quality of the ES (**Application Document Reference: TR010016/APP/6.1**) details that a qualitative assessment of the impacts of dust nuisance arising during construction has been undertaken, using guidance set out in paragraph 3.45 of the Design Manual for Roads and Bridges (DMRB) Volume 11 Section 3, Part 1 – Air Quality (HA207/07).
- 3.2.2 During the construction phase of the Scheme there would potentially be dust generating activities, such as earth moving and demolition. The distances from the emission source at which significant construction dust effects are likely to occur are dependent on the extent and nature of mitigation measures, the prevailing wind conditions, rainfall and the presence of screening. However, research indicates that effects from construction activities that generate dust are generally limited to within 150 – 200m of the construction site boundary.
- 3.2.3 The construction dust assessment study area therefore considered sensitive features within 200m of any construction works and compound areas. A mixture of receptors with varying degrees of sensitivity (e.g. residential and commercial) are located within this 200m zone which are distributed across the Scheme extent. These are shown on, Figure 6.2 Construction Phase: Construction dust study area of the ES (**Application Document Reference: TR010016/APP/6.2**).
- 3.2.4 Effective management to control emissions of dust is a well defined practice for construction and demolition. The mitigation measures to limit the impact would be applied at all sites where dust producing activities would be taking place. The methods of dust suppression would follow current construction and demolition site best practice. These construction mitigation measures are detailed within **Chapter 6**, Air Quality of the ES. These measures are secured in the Outline Environmental

Management Plan (OEMP) (**Application Document Reference: TR010016/APP/7.3**) as per requirement 4(1) of the DCO, to be developed into a full Construction Environmental Management Plan (CEMP) by the appointed contractor.

3.2.5 These mitigation measures would minimise construction dust effects so that there is unlikely to be a significant dust nuisance from construction activities associated with the Scheme, nor would any nuisance be prejudicial to health under Section 79(1)(d) of the Environmental Protection Act 1990.

3.2.6 No significant dust nuisance is expected as a result of the operation of the Scheme and therefore no mitigation measures for dust are required during operation. This is because during operation, the Scheme will not be a significant dust emission source. In the main air quality assessment, presented in **Chapter 6** Air Quality of the ES, concentrations of PM<sub>10</sub> (which is a constituent of dust) were well below the objectives. Therefore, as no significant PM<sub>10</sub> effects are expected as a result of the Scheme, no dust statutory nuisance is expected.

### 3.3 Artificial light from premises

3.3.1 Section 102 of the Clean Neighbourhoods and Environment Act 2005, amends Section 79 of the Environmental Protection Act 1990 to include artificial light emitted from premises, where the latter is defined as including land.

3.3.2 For the artificial light to count as a statutory nuisance it must do one of the following:

- unreasonably and substantially interfere with the use or enjoyment of a home or other premises
- injure health or be likely to injure health

3.3.3 Statutory nuisance laws do not apply to artificial light from:

- airports
- harbours
- railway premises
- tramway premises
- bus stations
- public transport operating centres
- goods vehicle operating centres
- lighthouses

- prisons
- defence premises like army bases
- premises occupied by visiting armed forces
- street lights

3.3.4 As street lights are not covered by the laws on statutory nuisance, it is not necessary to address these within this Statement, however it is necessary to address lighting equipment used to illuminate the construction activities.

3.3.5 There are construction activities that would require night time working within the urban environment. These include the construction and installation of Porter Street Bridge and Princes Quay Bridge, temporary traffic management and associated works as detailed in **Chapter 2** The Scheme of the ES, (**Application Document Reference: TR010016/APP/6.1**). Temporary site lighting would be provided to enable the safety and security of the construction sites.

3.3.6 The lighting would be at the minimum lumen output necessary for effective task lighting and use low energy consumption fittings. Where possible, lighting would be activated by motion sensors to prevent unnecessary usage. Lighting would comply with the Institution of Lighting Professionals Guidance Notes for the Reduction of Obtrusive Light GN013 and the relevant provisions of BS 5489 Part 1, Code of practice for the design of road lighting, Lighting of roads and public amenity areas 4, where applicable.

3.3.7 Construction lighting would also be designed, positioned and directed so as not to unnecessarily intrude on adjacent buildings, cause unnecessary disturbance to other land uses or interfere with local residents or passing motorists.

3.3.8 With the application of mitigation measures included in the OEMP (**Application Document Reference: TR010016/APP/7.3**), it is considered that no statutory nuisance would arise during construction as a result of temporary lighting.

### **3.4 Noise emitted from premises or caused by a vehicle, machinery or equipment**

3.4.1 **Chapter 7** Noise and Vibration (**Application Document Reference: TR010016/APP/6.1**) details that noise from the construction of the Scheme has the potential to directly affect sensitive receptors along the route for the duration of the works.

3.4.2 The local authority has powers for controlling noise and vibration from construction sites through the Control of Pollution Act 1974 and the Environmental Protection Act 1990. Hull City Council (HCC) can exercise these powers prior to or during the works.

- 3.4.3 Section 60 of the Control of Pollution Act 1974 relates to 'Control of Noise on Construction Sites' and enables the local authority to serve a notice of its requirements for the control of site noise and vibration on the person(s) deemed to be responsible for or carrying out the works. The notice allows the local authority to specify methods, plant or machinery used for the works, specify hours during which the construction work can be carried out, and specify the level of noise and vibration that may be emitted by the works.
- 3.4.4 Section 61 of the Control of Pollution Act 1974 allows for the main contractor to obtain consent from the local authority regarding the noise and vibration requirements of the works prior to them commencing. Once it has been granted, the local authority cannot take action under Section 60 of the Control of Pollution Act 1974 or Section 80 of the Environmental Protection Act 1990, so long as the consent remains in force and the contractor complies with its terms.
- 3.4.5 An Environmental Health Officer (EHO) from HCC was contacted on 26 January 2018 in order to agree on the methodology for the assessment of construction noise and vibration as set out in BS 5228 'Code of practice for noise and vibration control on construction and open sites – Part 1: Noise' and 'Part 2: Vibration' (2009+A1:2014). The EHO confirmed that they did not have any comments or suggested amendments to the proposed methodology. It was also recommended that the Contractor engages with the EHO of HCC from an early stage in order to informally agree working methods and mitigation measures.
- 3.4.6 For the proposed Scheme, requirements outlined in the OEMP (**Application Document Reference: TR010016/APP/7.3**) which are to be developed into a full CEMP by the appointed Contractor include:
- Best practicable means for the control of noise and vibration to be applied at all times as described in Section 79(9) of the Environmental Protection Act 1990 to reduce noise to a minimum.
  - Procedures for noise control and the assessment of site noise shall be in accordance with BS 5228 'Code of practice for noise and vibration control on construction and open sites – Part 1: Noise' (2009+A1:2014).
- 3.4.7 Adherence with the CEMP would ensure that statutory nuisance or noise impacts prejudicial to health under Section 79(1)(g) and Section 79(1)(ga) of the Environmental Protection Act 1990 would be avoided.

## 4. Conclusion

- 4.1.1 This Statement has considered the potential for the proposed Scheme to cause a statutory nuisance under section 79(1) of the 1990 Act.
- 4.1.2 The construction activities that have the potential to create a nuisance would be controlled through the implementation of a CEMP. The OEMP has been submitted with this application (**Application Document Reference: TR010016/APP/6.1**).
- 4.1.3 This Statement concludes that, with mitigation measure in place, none of the statutory nuisances identified in section 79(1) of the Act are predicted to arise on this Scheme.