

# SILVERTOWN TUNNEL

## 6.6 Statement in Respect of Statutory Nuisance

### TR010021

APFP Regulation 5(2)(f)

Revision 0

Planning Act 2008

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

April 2016

Silvertown Tunnel

Statement in Respect of Statutory Nuisance

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Planning Act 2008

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

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## List of Abbreviations

AQMP	Air Quality Management Plan
BPM	Best Practicable Means
CoCP	Code of Construction Practice
DCO	Development Consent Order
EPA	Environmental Protection Act 1990
HGV	Heavy Goods Vehicle
GLA	Greater London Authority
NVMP	Noise and Vibration Management Plan
TfL	Transport for London

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## Glossary of Terms

Blackwall Tunnel	An existing road tunnel underneath the River Thames in east London, linking the London Borough of Tower Hamlets with the Royal Borough of Greenwich, comprising two bores each with two lanes of traffic.
Cut and Cover	A form of construction usually involving in situ reinforced concrete, where a tunnel is built within an excavation which is undertaken from the ground surface.
Design Manual for Roads and Bridges (DMRB)	A series of 15 volumes that provide official standards, advice notes and other documents relating to the design, assessment and operation of trunk roads, including motorways in the United Kingdom.
Heavy Goods Vehicle (HGV)	European Union term for any vehicle with a gross combination mass of over 3500kg
The Scheme	The construction of a new bored tunnel with cut and cover sections at either end under the River Thames (the Silvertown Tunnel) between the Greenwich peninsula and Silvertown, as well as necessary alterations to the connecting road network and the introduction of user charging at both Silvertown and Blackwall tunnels.
Silvertown Tunnel	Proposed new twin-bore road tunnels under the River Thames from the A1020 in Silvertown to the A102 on Greenwich Peninsula, East London.

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## 1. INTRODUCTION

- 1.1.1 This Statement in Respect of Statutory Nuisance (“the Statement”) relates to the application by Transport for London (“TfL”) to the Secretary of State (through the Planning Inspectorate) under the Planning Act 2008 (as amended) (“the Act”) for a development consent order authorising the Silvertown Tunnel scheme.
- 1.1.2 The Statement has been prepared in compliance with the requirements of Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (“the APFP Regulations”) and in accordance with the Department for Communities and Local Government guidance, ‘Planning Act 2008: Application Form Guidance’.
- 1.1.3 This Statement identifies whether the proposed development engages one or more of the statutory nuisances, set out in section 79(1) of the Environmental Protection Act 1990 (“the EPA”), and if so, how TfL proposes to mitigate or limit such nuisances.
- 1.1.4 This Statement forms part of a suite of Development Consent Order (DCO) application documents and should be read alongside those other documents. The Statement refers to the following documents in particular:
- Environmental Statement (Document Reference: 6.1);
  - Code of Construction Practice (Document Reference: 6.10); and
  - Design Principles (Document Reference: 7.4).
- 1.1.5 Section 2 of this Statement gives a summary of the Scheme. Section 3 sets out the relevant provisions of the EPA. Section 4 considers the potential for the Scheme to give rise to statutory nuisances.

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## 2. THE SCHEME

- 2.1.1 The Scheme would comprise a new dual two-lane connection between the A102 Blackwall Tunnel Approach on Greenwich Peninsula (London Borough of Greenwich) and the Tidal Basin roundabout junction on the A1020 Lower Lea Crossing/Silvertown Way (London Borough of Newham) by means of a twin bore tunnel under the River Thames and associated approach roads. The Silvertown Tunnel would be approximately 1.4km long and would be able to accommodate large vehicles including double-deck buses. The design of the tunnel would include a dedicated bus/coach and Heavy Goods Vehicle (HGV) lane, which would provide opportunities for TfL to provide additional cross-river bus routes. The Boord Street footbridge over the A102 would be replaced with a pedestrian and cycle bridge.
- 2.1.2 New Portal buildings would be located close to each portal at the surface to house the plant and equipment necessary to operate the tunnel, including ventilation equipment.
- 2.1.3 The introduction of free-flow user charging on both the Blackwall and Silvertown Tunnels would serve to manage traffic demand and support the financing of the construction and operation of the Silvertown Tunnel.
- 2.1.4 Main construction works would likely commence in October 2018 and would last approximately four years with the new tunnel opening in 2022/23. The main site construction compound would be located at Silvertown to enable the utilisation, if reasonably practicable, of Thames Wharf to facilitate the removal of excavated material and delivery of materials by river. A secondary work site compound would be located adjacent to the alignment of the proposed cut and cover tunnel on the Greenwich peninsula.

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### 3. STATUTORY CONTEXT

3.1.1 Section 79(1) of the EPA (as it applies in England) provides that the following matters constitute statutory nuisances:

*(a) any premises in such a state as to be prejudicial to health or a nuisance;*

*(b) smoke emitted from premises so as to be prejudicial to health or a nuisance;*

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

*(d) any dust, steam, smell 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;and*

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

3.1.2 An additional category of statutory nuisance has effect in London Boroughs by virtue of section 24 of the London Local Authorities Act 1996, that being:

*79(1)(gb) smoke, fumes or gases emitted from any vehicle, machinery or equipment on a street so as to be prejudicial to health or a nuisance other than from any vehicle, machinery or equipment being used for fire brigade purposes.*

- 3.1.3 As set out above, paragraph (h) of Section 79(1) incorporates any statutory nuisances contained in other legislation. The Public Health Act 1936 provides that various other matters are statutory nuisances for the purposes of the EPA, including the following which are potentially relevant to the Scheme:

*any pond, pool, ditch, gutter or watercourse which is so foul or in such a state as to be prejudicial to health or a nuisance (s.259(1)(a)); and*

*any part of a watercourse, not being a part ordinarily navigated by vessels employed in the carriage of goods by water, which is so choked or silted up as to obstruct or impede the proper flow of water and thereby to cause a nuisance, or give rise to conditions prejudicial to health (s.259(1)(b)).*

- 3.1.4 Section 79 contains other exceptions and definitions in respect of statutory nuisance. The particular exceptions of relevance to the Scheme are:

*subsection 79(1)(c) (fumes or gases emitted from premises) does not apply in relation to premises other than private dwellings (s.79(4)), and as such is not engaged in relation to the Scheme; and*

*subsection 79(1)(ga) (noise emitted from premises) does not apply to noise made by, amongst other matters, traffic, but would apply to construction vehicles and plant (s.79(6A)).*

- 3.1.5 For the purposes of the additional category of statutory nuisance added by section 24 of the London Local Authorities Act 1996 (see paragraph 3.2 above), the following exemption is relevant:

*subsection 79(1)(gb) above does not apply in relation to smoke, fumes or gases emitted from the exhaust system of a vehicle.*

- 3.1.6 Definitions are set out in section 79(7), and include the following relevant terms:

*“dust” does not include dust emitted from a chimney as an ingredient of smoke;*

*“fumes” means any airborne solid matter smaller than dust;*

*“gas” includes vapour and moisture precipitated from vapour;*

*“industrial, trade or business premises” means premises used for any industrial, trade or business purposes or premises not so used on which matter is burnt in connection with any industrial, trade or business process, and premises are used for industrial purposes where they are used for the purposes of any treatment or process as well as where they are used for the purposes of manufacturing;*

*“noise” includes vibration;*

*“prejudicial to health” means injurious, or likely to cause injury, to health;*

*“premises” includes land and ...any vessel”;*

*“private dwelling” means any building, or part of a building, used or intended to be used, as a dwelling;*

*“street” means a highway and any other road, footway, square or court that is for the time being open to the public.*

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## 4. POTENTIAL BREACHES OF SECTION 79(1) OF THE ENVIRONMENTAL PROTECTION ACT 1990

4.1.1 The section considers the types of impacts associated with the Scheme that could potentially engage one or more of the matters set out in Section 79(1) of the EPA.

4.1.2 The provisions of section 79(1) of EPA that could potentially be engaged are:

(d) any dust, steam, smell or other effluvia arising on 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.

4.1.3 The following provisions of the Public Health Act 1936 could potentially be engaged:

*any pond, pool, ditch, gutter or watercourse which is so foul or in such a state as to be prejudicial to health or a nuisance (s.259(1)(a));*

*any part of a watercourse, not being a part ordinarily navigated by vessels employed in the carriage of goods by water, which is so choked or silted up as to obstruct or impede the proper flow of water and thereby to cause a nuisance, or give rise to conditions prejudicial to health (s.259(1)(b)).*

4.1.4 As noted above, the following categories of statutory nuisance:

*subsection 79(1)(ga) (noise emitted from premises)*

*subsection 79(1)(gb) (smoke, fumes or gases emitted from any vehicle, machinery or equipment on a street) as applies in London by virtue of the London Local Authorities Act 1996*

do not apply to noise made or smoke, fumes or gases emitted by traffic. Accordingly, these provisions would not be engaged by the traffic which will use the Scheme during its operational phase.

4.1.5 Each of these categories of statutory nuisance potentially engaged by the Scheme is considered below.

#### **4.2 Dust arising on business premises and/or smoke, fumes or gases emitted from vehicles, machinery or equipment**

4.2.1 Chapter 6 (air quality) of the Environmental Statement assesses the likely air quality impacts of the construction and operation of the Scheme. As part of this assessment, and in accordance with The Greater London Authority (GLA) *Supplementary Planning Guidance on the Control of Dust and Emissions from Construction and Demolition*, the potential dust impacts on receptors during the construction phase have been assessed on human receptors located within 350m of the boundary of the site or within 50m of any route(s) used by construction vehicles on the public highway, up to 500m from the site entrance(s).

4.2.2 The construction dust assessment methodology is detailed in full in Appendix 6A of the Environmental Statement. The residual effects from all construction dust generating activities following implementation of appropriate mitigation measures are assessed as being not significant.

4.2.3 The potential for air quality effects from construction vehicle exhaust emissions has been assessed in accordance with the *Design Manual for Roads and Bridges* criteria. Emissions from plant and machinery have been assessed and are reported as being not significant providing that appropriate mitigation measures are implemented.

4.2.4 Mitigation measures in relation to dust and emissions arising during construction are secured by the Code of Construction Practice ("CoCP") [Document Reference 6.10]. These measures include a requirement for the Contractor to produce an Air Quality Management Plan (AQMP) for each worksite, which must be approved by the relevant planning authority before construction commences.

4.2.5 The CoCP sets out a range of mitigation measures in relation to dust and vehicle and plant emissions that will be included in the AQMP. These measures include:

- plant will comply with the standards in GLA's Supplementary Planning Guidance: Control of Dust and Emissions During Construction and Demolition;
- engines of all vehicles, mobile and fixed plant on site will not be left running/idling unnecessarily;
- using low emission vehicles and plant fitted with catalysts, diesel particulate filters or similar devices;
- using water-assisted dust sweepers on the access and local roads;
- planning site layout so that machinery and dust causing activities are located away from receptors, as far as is possible;
- erecting suitable solid screens or barriers around dusty activities or the site boundary;
- using water as dust suppressant where applicable;
- removing waste materials that have a potential to produce dust from site as soon as practicable; and
- plant will be well maintained, with routine servicing of plant and vehicles to be completed in accordance with the manufacturer's recommendations and records maintained for the work undertaken.

4.2.6 Experience across a range of construction sites has shown that application of best practice mitigation measures would reduce dust impacts to a negligible level (Institute of Air Quality Management, 2014).

4.2.7 With the mitigation described above in place, dust and other emissions during construction would be controlled and would not give rise to any nuisance, nor would they be prejudicial to health under section 79(1)(d) of (gb)<sup>1</sup> of the EPA 1990.

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<sup>1</sup> Applicable in London by virtue of section 24 of the London Local Authorities Act 1996

### **4.3 Artificial light emitted from premises**

#### **Construction**

- 4.3.1 Chapter 15 (townscape and visual) of the Environmental Statement describes the residual impacts from artificial lighting as a result of construction of the Scheme, which are assessed as not significant.
- 4.3.2 The majority of construction work will be undertaken during daylight hours. During those working hours there will be no need for artificial lighting of construction areas. Night time working will be kept to a minimum. Construction site lighting will be located and directed so as not to intrude into occupied residential properties or disturb wildlife on sensitive areas or constitute a road hazard or affect navigation.
- 4.3.3 Where lighting is needed it will be managed in compliance with the CoCP. The CoCP requires that for each worksite a Lighting Management Plan will be prepared by the Contractor in consultation with the relevant planning authority. The Contractor will implement the measures set out in the Lighting Management Plan.
- 4.3.4 The Lighting Management Plan will reflect appropriate industry standard procedures which will be implemented at both work sites. Lighting will be designed, positioned and directed so as not to unnecessarily intrude on adjacent buildings and so as to prevent unnecessary interference with local residents, the DLR, passing motorists, or the navigation lights for air or water traffic and wildlife breeding seasons.
- 4.3.5 As such, the impacts of lighting during construction would not generate a nuisance, nor would it be prejudicial to health under section 79(1)(fb) of the EPA 1990.

#### **Operation**

- 4.3.6 Chapter 15 (townscape and visual) of the Environmental Statement describes the residual impacts from artificial lighting as a result of operation of the Scheme, which are assessed as not significant.
- 4.3.7 As noted in that document, significant night-time visual effects during the operational phase would be prevented by the use of cut-off, directional lighting to limit contribution to the brightening of the night sky above the city, the uncomfortable brightness of lighting when viewed against a dark background, and the spilling of light beyond the area intended to be lit.

- 4.3.8 The Design Principles for the Scheme (Document Reference: 7.4) include a number of principles in respect of lighting. These include:
- Light pollution at sites shall be minimised by means of capped, directional and cowled lighting units; and
  - Wherever possible lighting designs should adhere to TfL's *Streetscape Guidance* and should enhance night-time use, economy and enjoyment and provide safe passage for all users.

4.3.9 As such, the impacts of lighting during the operational phase of the Scheme would not generate a nuisance, nor would they be prejudicial to health under section 79(1)(fb) of the EPA 1990.

#### **4.4 Noise emitted from premises and/or from vehicles, machinery and equipment in a street**

4.4.1 Chapter 14 (noise) of the Environmental Statement concludes that the noise impacts as a result of the construction of the Scheme are assessed as being of slight adverse significance.

4.4.2 Construction noise and proposed mitigation are addressed in the CoCP which accompanies the application. The CoCP requires that a Noise and Vibration Management Plan (NVMP) will be prepared by the Contractor for each worksite to be approved by the relevant planning authority prior to commencing construction.

4.4.3 The NVMP will contain details of the application of Section 61 of the Control of Pollution Act 1974. Where appropriate the Contractor will obtain consents from the relevant local authority under Section 61 of the Control of Pollution Act 1974 (which will include noise and vibration limits where relevant) for the proposed construction works. Any Section 61 consent that is obtained may contain site specific management and mitigation requirements for noise and vibration.

4.4.4 The CoCP specifies that Best Practicable Means (BPM) as defined under Section 72 of the Control of Pollution Act 1974 will be employed during the construction phase and included in the NVMP. The Contractor will be responsible for notifying the local residents of particularly noisy work prior to commencement. The mechanisms for notification will be detailed in a Community Engagement Plan that is required under the CoCP.

4.4.5 During the construction phase, day time and night time noise and vibration monitoring will be undertaken at key sensitive receptors to ensure that the

mitigation measures suggested are working effectively. The location and duration of the monitoring will be set out in the NVMP.

4.4.6 Where appropriate, the noise control measures set out in the NMVP would apply to any works carried out by the Contractor in streets outside the worksites, such as utility diversions or connecting to sewers.

4.4.7 With these mitigation measures in place, noise impacts during construction are not expected to generate a nuisance, nor would they be prejudicial to health under section 79(1)(g) or (ga) of the EPA 1990.

#### **4.5 Statutory nuisances under the Public Health Act 1936**

4.5.1 The Scheme will not give rise to any statutory nuisance under section 79(1)(h) of the 1990 Act in respect of section 259 of the Public Health Act 1936, which relates to (a) "any pond, pool, ditch, gutter or watercourse which is so foul or in such a state as to be prejudicial to health" and/or (b) "any part of a watercourse...which is so choked or silted up as to obstruct or impede the proper flow or water".

4.5.2 Mitigation measures to protect surface water from pollution during construction of the Scheme are set out in the CoCP. In particular, the CoCP requires the Contractor to ensure that the site drainage meets the effluent standards required by the sewerage undertaker, or Environment Agency, as appropriate, and to provide holding or settling tanks, separators, and other measures as may be required. The relevant sections of BS 6031:2009 *Code of Practice for Earthworks* for the general control of site drainage will be followed.

## 5. CONCLUSION

- 5.1.1 This Statement identifies the matters set out in Section 79(1) of the EPA in respect of statutory nuisances and considers whether the proposed application would engage one or more of those matters.
- 5.1.2 With the proposed mitigation in place, as described above, it is not expected that there would be a breach of Section 79(1) of the EPA 1990 during construction or operational activities.
- 5.1.3 The construction activities that have the potential to create a nuisance will be controlled through the CoCP which accompanies the application.