

A38 Derby Junctions

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6.11 Statement of Statutory Nuisance

Regulation 5(2)(f)

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Infrastructure Planning (Applications: Prescribed
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**The Infrastructure Planning
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A38 Derby Junctions
Development Consent Order 202[]

Statement of Statutory Nuisance

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1 Introduction and summary

1.1 Purpose of this document

- 1.1.1 This Statement of Statutory Nuisance identifies whether the A38 Derby Junctions scheme (referred to herein as ‘the Scheme’) engages one or more of the statutory nuisances, as set out in section 79(1) of the Environmental Protection Act 1990 (the EPA), and if so, how Highways England proposes to mitigate or limit such nuisances.
- 1.1.2 This Statement of Statutory Nuisance has been prepared in accordance with the requirements of section 37(3)(d) of the Planning Act 2008 and regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (‘the APFP Regulations’). This Statement of Statutory Nuisance has been prepared taking into account the requirements of the National Policy Statement for National Networks (NPSNN) (Department for Transport, 2014) that relate to statutory nuisances (e.g. paragraphs 4.57 to 4.59 and paragraphs 5.81 – 5.89) – refer to Section 2.1.
- 1.1.3 As this statement is part of the Development Consent Order (DCO) application documents, it should be read alongside and is informed by the other application documents. In particular, this statement should be read alongside the Environmental Statement [TR010022/APP/6.1] and associated figures [TR010022/APP/6.2] and appendices [TR010022/APP/6.3], the Outline Environmental Management Plan (OEMP) [TR010022/APP/6.12], as well as the Planning Statement [TR010022/APP/7.2].
- 1.1.4 This statement concludes that, with the mitigation measures secured by the DCO in place (included those measures embedded within the Scheme design), none of the statutory nuisances identified in section 79 of the EPA is predicted to arise.
- 1.1.5 A detailed description of the Scheme and its objectives can be found in Environmental Statement Chapter 2: The Scheme [TR010022/APP/6.1].

1.2 Summary of conclusions

- 1.2.1 This Statement of Statutory Nuisance identifies the matters set out in section 79(1) of the EPA in respect of statutory nuisances and considers whether the Scheme would engage one or more of those matters. It identifies that construction and/or operation of the Scheme has the potential to create statutory nuisance as related to the following:
- (d) (dust arising on business premises).
 - (fb) (artificial light emitted from premises).
 - (g) (noise emitted from premises).
 - (ga) (noise emitted from or caused by a vehicle, machinery or equipment in a street).

- 1.2.2 The Scheme construction and operation activities that have the potential to create a nuisance would be controlled through the design of the Scheme and mitigation measures as set out in the OEMP [TR010022/APP/6.12]. Mitigation measures are also detailed within Environmental Statement Chapter 5: Air Quality, Chapter 7: Landscape and Visual, and Chapter 9: Noise and Vibration [TR010022/APP/6.1]. The OEMP is secured by the draft DCO [TR010022/APP/3.1].
- 1.2.3 With the defined mitigation measures in place, none of the statutory nuisances identified in section 79(1) of the EPA are predicted to arise during Scheme construction or operation.

2 Policy and statutory context

2.1 Policy context

- 2.1.1 Paragraphs 4.57 to 4.59 of the NPSNN state that it is very important that during the examination of a Nationally Significant Infrastructure Project (NSIP), the Examining Authority considers the possible sources of nuisance under section 79(1) of the EPA 1990 and how they may be mitigated or limited. This is so that any additional requirements to avoid statutory nuisance are included in subsequent orders granting development consent.
- 2.1.2 Paragraph 5.81 details that the construction and operation of national networks infrastructure has the potential to create a range of emissions such as odour, dust, steam, smoke and artificial light, as well as noise and vibration.
- 2.1.3 Paragraph 5.82 states: "*Because of the potential effects of these emissions and in view of the availability of the defence of statutory authority against nuisance claims described previously, it is important that the potential for these impacts is considered by the applicant in their application, by the Examining Authority in examining applications and by the Secretary of State in taking decisions on development consent*".
- 2.1.4 Paragraphs 5.84 to 5.86 state that where a development is subject to an Environmental Impact Assessment (EIA), the applicant should assess any likely significant effects on amenity from emissions of odour, dust, steam, smoke and artificial light and describe these in the Environmental Statement. Consultation with the relevant local planning authority, and where appropriate the Environment Agency, about the scope and methodology of the assessment is advised. Details regarding consultation activities undertaken during the EIA for the Scheme are detailed within the Environmental Statement [TR010022/APP/6.1].

2.2 Section 79(1) Environmental Protection Act 1990

- 2.2.1 This Statement of Statutory Nuisance identifies whether the Scheme engages one or more of the statutory nuisances, set out in section 79(1) of the EPA, and if so, how Highways England proposes to mitigate or limit such nuisances.
- 2.2.2 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 a statutory nuisance.

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

- a) Section 79(4): clarifies that subsection 1(c) (fumes or gases emitted from premises) does not apply in relation to premises other than private dwellings.
- b) Section 79(6A): clarifies that subsection (1)(ga) (noise emitted by a vehicle or machinery in a street) does not apply to noise made by traffic, but could apply to construction vehicles or plant.

2.2.4 Definitions are set out in section 79(7) of the EPA, 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.
- '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.

3 Potential for breaches of Section 79(1) of the Environmental Protection Act 1990

3.1 Introduction

3.1.1 This 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.

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

(d) Any dust arising on business premises.

(fb) Artificial light emitted from premises.

(g) Noise emitted from premises.

(ga) Noise emitted from or caused by a vehicle, machinery or equipment in a street.

3.1.3 As noted above, subsection 79(1)(ga) (noise emitted by a vehicle or machinery in a street) of the EPA does not apply to noise made or smoke, fumes or gases emitted by traffic. Accordingly, these provisions would not be engaged by the traffic which would use the Scheme during its operational phase nor construction traffic, but it could be engaged by noise generated by construction vehicles on site, plant and machinery (during the Scheme construction phase).

3.1.4 It is noted that statutory nuisance category (c) (emission of fumes and gases) applies only to private dwellings (as noted in section 79(4) of the EPA) and is, therefore, not relevant to the Scheme.

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

3.2 Dust arising on business premises (section 79(1)(d) of the EPA)

3.2.1 During the Scheme construction phase, dust generating activities would be undertaken. Environmental Statement Chapter 5: Air Quality [TR010022/APP/6.1] assesses the likely air quality impacts associated with the construction and operational phases of the Scheme. It considers potential impacts from the Scheme construction phase arising from dust generating activities such as earthworks, demolition, excavations, material storage, as well as emissions arising from non-road mobile machinery.

3.2.2 As part of this assessment, the potential dust impacts on human receptors located within 200m of the Order limits and construction traffic routes during the construction phase have been assessed. The methodology for the assessment of construction dust and its conclusions are presented within Environmental Statement Chapter 5: Air Quality [TR010022/APP/6.1] (in Sections 5.3 and 5.10 respectively).

- 3.2.3 The construction phase dust assessment concludes that with the adoption of the suggested best practice mitigation measures as detailed in the OEMP [TR010022/APP/6.12], slight adverse dust effects would be experienced by properties closest to the works, thus avoiding significant adverse effects. The same conclusion is reached in relation to other air emissions from non-road mobile machinery.
- 3.2.4 Environmental Statement Chapter 5: Air Quality (Section 5.9) [TR010022/APP/6.1] defines the potential mitigation measures that could be applied to the Scheme, noting that the relevant measures are secured through the OEMP [TR010022/APP/6.12]. These measures include site inspections, vehicle speed limits, screening, and planning the site layout to ensure dusty activities are located away from receptors.
- 3.2.5 No significant dust nuisance is predicted as a result of the operation of the Scheme and therefore no mitigation measures for dust are required during the Scheme operation phase. This is because during operation, the Scheme would not be a significant dust emission source. In the operational air quality impact assessment as presented in Environmental Statement Chapter 5: Air Quality [TR010022/APP/6.1], there is assessed to be an overall net benefit in concentrations of PM₁₀¹ (which is a constituent of dust), with what deteriorations there are proving to be very small. Therefore, as no significant PM₁₀ effects are expected as a result of Scheme operation, statutory nuisance associated with dust is not predicted.
- 3.2.6 With the measures described above in place and detailed in the OEMP [TR010022/APP/6.12], dust during Scheme construction and operation would be controlled and is not predicted to give rise to any statutory nuisance, nor would it be prejudicial to health under section 79(1)(d) of the EPA.
- 3.3 Artificial light emitted from premises so as to be prejudicial to health or a nuisance (section 79(1)(fb) of the EPA)**
- 3.3.1 Statutory nuisance laws relating to artificial light do not apply to street lighting, nor to vehicles lights. As such, this section focuses upon potential statutory nuisance due to artificial light sources during the Scheme construction phase.
- 3.3.2 For 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; or
 - Injure health or be likely to injure health.
- 3.3.3 The Scheme construction phase would introduce temporary lighting, as a result of the provision of lighting for works construction compounds and general working areas in winter months. The main construction compound to the north of Little Eaton junction would be provided with over-night lighting for security purposes. General working areas would be provided with lighting as necessary (principally during winter months) during the defined core working hours (i.e.

¹ PM₁₀ is particulate matter 10 micrometres or less in diameter

07:30 – 18:00 Monday to Friday; 08:00 – 13:00 Saturdays with no working on Sundays and Bank Holidays) as well as during periods of up to one hour before and up to one hour after normal working hours which would be used for start-up and close down of activities. In addition, temporary lighting would be required for a number of activities with limited durations that would be undertaken outside of the core working hours, namely:

- Night-time closures for Markeaton footbridge demolition and installation of the new footbridge.
- Junction and slip road tie-in works.
- Installation of bridge decks.
- Installation of sign gantries.
- Installation of temporary and permanent line markings.
- Overnight traffic management measures; as agreed with the highway authority in advance.
- Any emergency works.
- Works associated with traffic management and signal changes.

3.3.4 There would also be temporary lighting from construction vehicles working within the Scheme construction works areas.

3.3.5 Environmental Statement Chapter 7: Landscape and Visual [TR010022/APP/6.1] assesses the likely visual and landscape impacts associated with Scheme construction. As part of the assessment, the potential impacts of temporary artificial light on human receptors during the Scheme construction phase has been considered.

3.3.6 The assessment indicates that there are very few receptor locations from which additional lighting at the main construction compound to the north of Little Eaton junction would be perceived. Lighting at the main construction compound (and other satellite compounds) would be directional, and positioned sympathetically, to minimise light spill and disturbance to sensitive receptors such that significant effects would be avoided. With regard to temporary lighting of general working areas and during any night-time works, the construction contractor would be required to implement measures that would minimise light spillage and thus minimise impacts upon nearby local residents. Such measures include the use of hoardings to screening working areas, making sure that temporary lighting is directional and positioned sympathetically to minimise light spillage, keeping lighting to a minimum luminosity necessary and making use of low energy consumption fittings, and where appropriate, use lighting that would be activated by motion sensors to prevent unnecessary usage. Such measures would be secured through the OEMP [TR010022/APP/6.12]. Whilst the Scheme construction phase has the potential to result in significant visual effects (refer to Environmental Statement Chapter 7: Landscape and Visual [TR010022/APP/6.1]), with the implementation of the defined construction phase

lighting mitigation measures, significant effects with regard to artificial lighting would be avoided.

3.3.7 With regard to local residents, temporary artificial lighting associated with Scheme construction is not predicted to impact on health of residents nor unreasonably or substantially interfere with the use or enjoyment of homes and other premises.

3.3.8 With the application of mitigation measures included in the OEMP [TR010022/APP/6.12], no statutory nuisance under section 79(1)(fb) of the EPA is predicted to arise during construction of the Scheme as a result of artificial lighting.

3.4 Noise emitted from premises, or emitted or caused by a vehicle or machinery in a street (section 79(1)(g) and (ga) of the EPA)

3.4.1 The Scheme has the potential to generate noise during the construction phase associated with construction machinery operation. Environmental Statement Chapter 9: Noise and Vibration [TR010022/APP/6.1] assesses the likely noise and vibration impacts associated with Scheme construction. The assessment considers the impacts of construction noise and vibration at a selection of residential properties and other sensitive receptors in close proximity to the works.

3.4.2 Environmental Statement Chapter 9: Noise and Vibration [TR010022/APP/6.1] predicts significant adverse construction noise and vibration annoyance effects at the closest properties to the Scheme between Kingsway junction and Kedleston Road junction, at the Ford Farm Mobile Home Park, the northern edge of Breadsall, and adjacent to the floodplain compensation works at Little Eaton junction. At these locations construction noise and/or vibration levels are predicted to exceed the Significant Observed Adverse Effect Level (SOAEL) during some aspects of the works.

3.4.3 The OEMP [TR010022/APP/6.12] defines mitigation measures to be applied by the construction contractor during the Scheme construction phase to control the effects of construction noise and vibration. This includes the need for the contractor to employ Best Practicable Means (BPM) as defined under Section 72 of the Control of Pollution Act 1974 and Section 79 of the EPA 1990, at all times in order to minimise noise and vibration effects. BPM shall consider the recommendations of BS 5228: Code of Practice for Noise and Vibration Control on Construction and Open Sites Parts 1 and 2.

3.4.4 BPM as highlighted in Environmental Statement Chapter 9: Noise and Vibration [TR010022/APP/6.1] include:

- Implementation of a noise insulation and temporary re-housing policy.
- Selection of quiet and low vibration equipment and methodologies.
- Review of the construction programme and methodology to consider low noise and low vibration methods (including non-vibratory compaction plant where required).

- Optimal location of equipment on site to minimise noise disturbance.
- The provision of acoustic enclosures around static plant, where necessary.
- Use of localised temporary site hoardings, where necessary.
- Use of less intrusive alarms, such as broadband vehicle reversing warnings.
- Compliance with working hours as permitted by the draft DCO [TR010022/APP/3.1] (also refer to para. 3.3.3).
- No start-up or shut down of large vibratory rollers (approximately 13 tonnes) within 50m of receptors and medium vibratory rollers (approximately 3.5 tonnes) within 15m of receptors.

3.4.5 As detailed in the OEMP [TR010022/APP/6.12] the contractor would prepare a Noise and Vibration Management Plan that would include details of BPM, locations of acoustic screening, measures to integrate noise management within works method statements and provision for noise insulation and temporary rehousing if appropriate and necessary.

3.4.6 Section 60 of the Control of Pollution Act 1974 relates to the 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 that can be emitted by the works.

3.4.7 Section 61 of the Control of Pollution Act 1974 allows for the main contractor to obtain consent from the local authority regarding noise requirements of the works prior to them commencing. It may be in the interest of the contractor to apply for consent because 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 EPA, so long as the consent remains in force and the contractor complies with its terms. Refer to the Consents and Agreements Position Statement [TR010022/APP/3.3].

3.4.8 While significant residual adverse effects are predicted by the noise and vibration assessment at this stage, taking into account the mitigation and other measures secured in the OEMP [TR010022/APP/6.12], and the temporary and transient nature of the noise and vibration generating works, construction of the Scheme is not predicted to be prejudicial to health or cause a nuisance and is not predicted to give rise to a statutory nuisance under section 79(1)(g) or (ga) of the EPA.

4 Conclusion

- 4.1.1 This Statement of Statutory Nuisance identifies the matters set out in section 79(1) of the EPA in respect of statutory nuisances and considers whether the Scheme would engage one or more of those matters.
- 4.1.2 Scheme construction and operation activities that have the potential to create a nuisance would be controlled through the design of the Scheme (refer to the General Arrangement Scheme Layout Plans in [TR010022/APP/2.5]) and mitigation measures as set out in the OEMP [TR010022/APP/6.12]. Mitigation measures are also detailed within Environmental Statement Chapter 5: Air Quality, Chapter 7: Landscape and Visual, and Chapter 9: Noise and Vibration [TR010022/APP/6.1]. The OEMP is secured by the draft DCO [TR010022/APP/3.1].
- 4.1.3 With these measures in place, none of the statutory nuisances identified in section 79(1) of the EPA are predicted to arise as associated with the Scheme.