

The Lake Lothing (Lowestoft) Third Crossing Order 201[*]



Lake Lothing
**THIRD
CROSSING**

Document 6.6: Statement of Statutory Nuisance

Planning Act 2008

Infrastructure Planning

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

This Statement of Statutory Nuisance relates to an application ('the Application') submitted by Suffolk County Council ('the Council' / 'the Applicant') to the Secretary of State (through the Planning Inspectorate) for a Development Consent Order ('DCO') under the Planning Act 2008.

If made by the Secretary of State, the DCO would grant development consent for the Applicant to construct, operate and maintain a new bascule bridge highway crossing, which would link the areas north and south of Lake Lothing in Lowestoft, and which is referred to in the Application as the Lake Lothing Third Crossing (or 'the Scheme').

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'), and in compliance with relevant guidance.

Contents

PAGE No.

Document Control:	ii
Foreword	iii
Figures	v
Abbreviations	vi
1 Introduction	1
2 Statutory Context	3
3 Potential Breaches of Section 79(1) of the Environmental Protection Act 1990	5
4 Conclusion	9

Figures

Figure 1: Location of the Scheme in Lowestoft..... 2

Abbreviations

BPM	Best Practicable Means
CoCP	Code of Construction Practice
EPA	Environmental Protection Act
IAQM	Institute of Air Quality Management
NMU	Non-Motorised User

1 Introduction

1.1 Description of the Scheme

1.1.1 The Scheme involves the construction, operation and maintenance of a new bascule bridge highway crossing linking the areas north and south of Lake Lothing in Lowestoft, hereafter referred to as the Lake Lothing Third Crossing ("the Scheme").

1.1.2 The Scheme would provide a new single-carriageway road crossing of Lake Lothing, consisting of a multi-span bridge with associated approach roads, and would comprise:

- an opening bascule bridge over the Port of Lowestoft, in Lake Lothing;
- on the north side of Lake Lothing, a bridge over Network Rail's East Suffolk Line, and a reinforced earth embankment joining that bridge, via a new roundabout junction, to the C970 Peto Way, between Rotterdam Road and Barnards Way; and
- on the south side of Lake Lothing, a bridge over the northern end of Riverside Road including the existing access to commercial property (Nexen Lift Trucks) and a reinforced earth embankment (following the alignment of Riverside Road) joining this bridge to a new roundabout junction with the B1531 Waveney Drive.

1.1.3 The Scheme would be approximately 1 kilometre long and would be able to accommodate all types of vehicular traffic as well as non-motorised users ("NMUs"), such as cyclists and pedestrians.

1.1.4 The opening bascule bridge design would allow large vessels to continue to use the Port of Lowestoft.

1.1.5 A new control tower building would be located immediately to the south of Lake Lothing, on the west side of the new highway crossing, to facilitate the operation of the opening section of the new bascule bridge.

1.1.6 The Scheme would also entail:

- the following changes to the existing highway network:
 - the closure of Durban Road to vehicular traffic at its junction with Waveney Drive;
 - the closure of Canning Road at its junction with Riverside Road, and the construction of a replacement road between Riverside Road and Canning Road to the west of the Registry Office; and
 - a new Access Road from Waveney Drive west of Riverside Road, to provide access to property at Riverside Business Park;
 - improvements to Kimberley Road at its junction with Kirkley Run; and
 - part-signalisation of the junction of the B1531 Victoria Road / B1531 Waveney Drive with Kirkley Run;
- the provision of a pontoon for use by recreational vessels, located to the east of the new highway crossing, within the Inner Harbour of Lake Lothing; and

- works to facilitate the construction, operation and maintenance of the Scheme, including the installation of road drainage systems; landscaping and lighting; accommodation works for accesses to premises; the diversion and installation of utility services; and temporary construction sites and access routes.

1.1.7 The works required for the delivery of the Scheme are set out in Schedule 1 to the draft DCO (document reference 3.1), where they are referred to as "the authorised development", with their key component parts being allocated reference numbers, which correspond to the layout of the numbered works as shown on the Works Plans (document reference 2.4). The General Arrangement Plans (document reference 2.2) illustrate the key features of the Scheme.

1.1.8 Figure 1 below provides a diagrammatic representation of the Scheme:



Figure 1: Location of the Scheme in Lowestoft

2 Statutory Context

2.1.1 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 Environmental Protection Act 1990 ("the EPA"), and if so, how the Applicant proposes to mitigate or limit such nuisances.

2.1.2 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; and

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

2.1.3 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)).”

2.1.4 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)).”

2.1.5 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.”

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

3.1 Introduction

3.1.1 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.

3.1.2 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.”

3.1.3 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)).”

3.1.4 As noted above, *subsection 79(1)(ga) (noise emitted from premises)* 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 will use the Scheme during its operational phase.

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 and/or smoke, fumes or gases emitted from vehicles, machinery or equipment

3.2.1 Chapter 8 of the Environmental Statement (document reference 6.1) assesses the likely air quality impacts associated with the construction and operational phases of the Scheme. As part of this assessment, the potential dust impacts on receptors during the construction phase have been assessed on human receptors located within 350m of the Order limits.

3.2.2 The assessment of construction dust has been informed by the Institute of Air Quality Management (IAQM) guidance document Assessment of Dust from Construction and Demolition, 2014 (the “IAQM Guidelines”). A detailed methodology for the assessment of construction dust is included in Appendix 8A to the Environmental Statement and

the conclusions are presented within Chapter 8 of the Environmental Statement in Paragraphs 8.5.1 to 8.5.13. The residual effects from all construction dust generating activities following implementation of appropriate mitigation measures are assessed as being not significant.

3.2.3 Mitigation measures in relation to dust and emissions arising during construction are secured by the interim Code of Construction Practice ("CoCP") which is included in Appendix 5A to the Environmental Statement which must be approved by the Suffolk County Council (as the County Planning Authority) following consultation with Waveney District Council and the Environment Agency.

3.2.4 These mitigation measures include, but are not limited to:

- Dust generating activities (e.g. cutting, grinding and sawing) to be minimised and weather conditions considered prior to conducting potentially dust emitting activities;
- Fine material to not be stockpiled to an excessive height in order to prevent exposure to wind and/or dust nuisance;
- Roads and accesses to be kept clean;
- Where possible, plant to be located away from site boundaries that are close to residential areas;
- Water to be used as a dust suppressant, where applicable;
- Drop heights from excavators to crushing plant to be kept to a minimum;
- Distances from crushing plant to stockpiles to be kept to the minimum practicable to control dust generation associated with the fall of materials;
- Skips to be securely covered;
- Soiling, seeding, planting or sealing of completed earthworks to be completed as soon as reasonably practicable following completion of earthworks;
- Dust suppression and the maintenance of the surface of access routes to be appropriate to avoid dust as far as practicable, taking into account the intended level of trafficking;
- Wheel wash facilities to minimise trackout of dust;
- Material to not be burnt on site; and
- Engines to be switched off when not in operation.

3.2.5 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 the EPA 1990.

3.3 Artificial light

3.3.1 Chapter 10 (townscape and visual impact) of the Environmental Statement (document reference 6.1) describes the impacts from lighting in both the

construction and operational phases of the Scheme. The operational hours are presented in Paragraph 5.6.23 of the Environmental Statement and are:

- Monday to Friday – 07:00 to 19:00; and
- Saturday – 07:00 to 13:00.

3.3.2 Limited 24 hour construction will be required and therefore, it has been identified that there is the potential for lighting to potentially cause a statutory nuisance.

3.3.3 During the construction phase of the Scheme, the assessment has identified that there will be significant visual effects during the construction phase from five Key Viewpoints. However, this assessment identifies that the significant visual effect is attributable to the view of the construction activity, and the associated clutter and plant (including lifting equipment) and is not therefore attributable to the lighting of the construction works.

3.3.4 During the operational phase of the Scheme, the assessment within the Environmental Statement has identified the increased light from highway lighting on the Scheme Bascule Bridge and its approaches as well as feature lighting of the counterweight structure.

3.3.5 The assessment concludes that new lighting is unlikely to significantly increase the perception of lighting in the construction or operational phases and therefore this would not give rise to any nuisance, nor would they be prejudicial to health under section 79(1)(fb) of the EPA 1990.

3.4 Noise and Vibration

3.4.1 Chapter 13 (Noise and Vibration) of the Environmental Statement (document reference 6.1) assesses the likely noise and vibration impacts associated with the construction of the Scheme.

3.4.2 This assessment concludes that, with the inclusion of mitigation measures, noise effects during the construction of the Scheme would be minor for the majority of the time, but with some chance of significant adverse effects, albeit that these would be temporary and short-term.

3.4.3 No significant adverse vibration effects are anticipated during the construction phase of the Scheme; however mitigation measures presented in the noise and vibration chapter should still be adhered to at all times. Furthermore, the change in road traffic noise due to construction related traffic is also predicted to be insignificant.

3.4.4 The interim CoCP, included in Appendix 5A to the Environmental Statement, has been produced to set the framework for the contractor to provide a full CoCP which must be approved by Suffolk County Council (as the County Planning Authority) following consultation with Waveney District Council and the Environment Agency. The full CoCP must provide full details of how, as far as reasonably practicable, the Contractor will seek to control and limit unacceptable noise and vibration when undertaking construction and demolition activities. The interim CoCP includes a number of

mitigation measures that should be adopted throughout the duration of the construction works.

- 3.4.5** The interim CoCP also requires Best Practicable Means (BPM), as defined under Section 72 of the Control of Pollution Act 1974, be employed throughout the duration of the construction works. The Contractor will be responsible for communicating with the local residents the construction details and when noisy works are likely to occur, prior to commencement.
- 3.4.6** Where appropriate, the Contractor will request prior consent from Waveney District Council under Section 61 of the Control of Pollution Act 1974. This consent would include details of the works and the works methods; and proposed noise and vibration control measures that would be implemented during the works. Where a Section 61 is not applied for or consented, Waveney District Council has the means to impose, by serving a Control of Pollution Act Section 60 notice, certain restrictions on working hours, the methods of work and the type of equipment employed to ensure that noise and vibration levels are kept to a minimum. These powers may be exercised either before works start or after they have started.
- 3.4.7** The intention of all of the above, particularly the employment of BPM, is to ensure the construction works are managed and controlled to minimise noise and vibration and therefore to avoid causing a nuisance and noise/vibration levels that are prejudicial to health section 79(1)(g) or (ga) of the EPA 1990.

3.5 Statutory nuisances under the Public Health Act 1936

- 3.5.1** 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".
- 3.5.2** Mitigation measures to protect surface water from pollution during construction of the Scheme are set out in the interim CoCP.

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 With 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.
- 4.1.3 The construction activities that have the potential to create a nuisance will be controlled through the interim CoCP which accompanies the application in Appendix 5A to the Environmental Statement.