

A19 Downhill Lane Junction Improvement
Scheme Number: TR010024
6.5 Statement on Statutory Nuisances

APFP Regulation 5(2)(f)
Planning Act 2008
Infrastructure Planning (Applications: Prescribed Forms and Procedure)
Regulations 2009

Infrastructure Planning

Planning Act 2008

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

A19 DOWNHILL LANE JUNCTION IMPROVEMENT

The A19 (Downhill Lane Junction Improvement) Development Consent Order 201[]

STATEMENT ON STATUTORY NUISANCES

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1 INTRODUCTION

- 1.1.1 This Statement relating to 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 (PA2008) for a Development Consent Order (DCO). If made, the DCO would grant consent for the A19 Downhill Lane Junction scheme (the "Scheme"). A description of the Scheme can be found in **Chapter 2** of the Environmental Statement (ES) (**Application Document Reference: TR010024/APP/6.1**).
- 1.1.2 This statement comprises part of a suite of application documents and is included in the application in accordance with the Department for Communities and Local Government (now Ministry of Housing, Communities & 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, which requires:
- "...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."*
- 1.1.3 As this statement is part of the application documents, it should be read alongside and is informed by the other application documents. In particular, this statement should be read alongside the ES (**Application Document Reference: TR010024/APP/6.1-6.3**).
- 1.1.4 This Statement concludes that, with mitigation measures in place, none of the statutory nuisances identified under Section 79(1) of the Environmental Protection 1990 Act ("EPA") are predicted to arise on this Scheme.

2 SECTION 79(1), ENVIRONMENTAL PROTECTION ACT 1990

2.1 Policy Context - National Networks National Policy Statement

- 2.1.1 Paragraphs 4.57 to 4.59 of the National Networks National Policy Statement (NNNPS)¹ states 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 and how they may be mitigated or limited. This is so that any additional requirements to avoid statutory nuisance are included in the subsequent order granting development consent.
- 2.1.2 Paragraph 5.81 of the NNNPS states 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 of the NNNPS 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 of the NNNPS states 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 described these in the ES. Consultation with the relevant local planning authority and where appropriate the Environment Agency about the scope and methodology of the assessment is advised.

2.2 Environmental Protection Act 1990 - Section 79(1)

- 2.2.1 The following text is an extract from Section 79(1) of the 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;

¹ Department for Transport (2014) National Policy Statement for National Networks [online] available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/387223/npsnn-web.pdf Access August 2018.

(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."

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

- 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.
- 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.

2.2.3 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 purpose 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; and
- "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), ENVIRONMENTAL PROTECTION ACT 1990

3.1 Potential Breaches

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

(d) dust arising on business premises;

(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.

3.1.2 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.

3.1.3 It is also noted that statutory nuisance under category (ga) does not apply to traffic (as noted in Section 79(6A(a)) of the EPA), but would apply to noise generated by construction vehicles, plant and machinery.

Dust Arising on Business Premises

3.1.4 Section 6.6 of Chapter 6 (Air Quality) of the ES (**Application Document Reference: TR010024/APP/6.1**) notes that, in the absence of mitigation, there is potential for significant impacts on air quality through the generation of nuisance dust during construction of the Scheme; typical sources would be storage piles of soil, dry bare earth on a construction site or traffic using temporary haul roads.

3.1.5 No new dust emission sources compared to existing operational traffic and maintenance activities along the A19 and around Downhill Lane junction are proposed, so there is no new risk of dust related nuisances.

3.1.6 The maximum distance at which dust nuisance may be caused is held to be 200 m. Paragraph 6.6.2 of Volume 1 of the ES states that there are 340 residential and two commercial properties within 200 m of the Scheme which could be affected by dust.

3.1.7 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). Section 6.7 of the ES recommends appropriate mitigation measures for potential dust impacts, with reference to the Construction Environmental Management Plan (CEMP). Further detail on such measures is provided in Appendix 6.6 in Volume 3 of the ES (**Application Document Reference: TR010024/APP/6.3**).

3.1.8 Section 6.8 of the ES then concludes that, with mitigation measures in place, there would be no significant impacts on air quality during the construction works for the Scheme.

3.1.9 Accordingly, construction works would not emit dust that would be prejudicial to health or and therefore would not give rise any statutory nuisance under the Act.

Artificial Light from Premises

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

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

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

3.1.12 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; and
- street lights.

3.1.13 It is considered that the definition of artificial light from premises may extend to temporary lighting equipment associated with construction and therefore it is necessary to address temporary lighting equipment used to illuminate the construction tasks.

3.1.14 It is considered that the only artificial lighting that would be existent during the operational phase of the Scheme would be street lighting. As statutory nuisance laws do not apply to artificial light from street lighting, there would therefore be no statutory nuisance arising during the operational phase.

3.1.15 The majority of construction activity would be undertaken between the hours of 7:30 am to 6 pm on weekdays, and 8 am to 1 pm on Saturdays.

3.1.16 It is possible that there may be a requirement for limited night-time working for certain activities where, for example, they affect the strategic or local road network, although this remains to be confirmed. There would be no extended night-time work.

- 3.1.17 Lighting would be managed in compliance with the CEMP, in order to minimise the adverse effects of site lighting, for example by directing lights towards the working areas and avoiding light-spill. Due to the limited duration of any night-time works and the application of mitigation measures, it was considered that no statutory nuisance would arise during construction.
- 3.1.18 Accordingly, the impacts of lighting during construction would not generate a nuisance and nor would it be prejudicial to health under section 79(1)(fb) of the Act.

Noise Emitted from Premises or Caused by a Vehicle, Machinery or Equipment in a Street

- 3.1.19 Paragraphs 12.6.7 to 12.6.17 and Tables 12-8 and 12-9 of the **ES (Application Document Reference: TR010024/APP/6.1)** identify potential noise impacts during construction. While the ES does identify some potentially large changes in noise for some receptors (e.g. temporary construction noise disturbance at properties close to the Scheme), it is important to note that in most cases these would be of short duration.
- 3.1.20 Paragraphs 12.7.1 to 12.7.5 of the **ES (Application Document Reference: TR010024/APP/6.1)** outline mitigation measures for construction noise and vibration, with reference to British Standard BS 5228: 2009+A1:2014 – Code of Practice for noise and vibration control on construction and open sites, Part 1: Noise and Part 2: Vibration, and to the CEMP. The majority of these measures are considered good practice measures which local authorities would be likely to require as part of a ‘best practice approach’.
- 3.1.21 Local Authorities have powers for controlling noise and vibration from construction sites through the Control of Pollution Act 1974 (the "1974 Act") and the EPA. South Tyneside Council and Sunderland City Council can exercise these powers prior to or during the works.
- 3.1.22 Section 60 of the 1974 Act relates to 'Control of Noise on Construction Sites' and enables local authorities to serve notice of its requirements to control site noise and vibration on the person(s) deemed to be responsible for carrying out the works. The notice allows local authorities to specify methods, plant or machinery to be used for the works, specify hours during which the construction work can be carried out and specify the level of noise and vibration that can be emitted by the works.
- 3.1.23 Section 61 of the 1974 Act allows for the main contractor to obtain consent from the local authorities regarding the noise and vibration requirements of the works prior to them commencing. It's in the interests of the contractor to apply for consent because once it is granted local authorities cannot take action under Section 60 of the 1974 Act or Section 80 of the EPA so long as the consent remains in force and the contractor complies with its terms.
- 3.1.24 It is anticipated that, as part of the CEMP, a scheme of noise and vibration monitoring would be drafted and consulted upon with the Environmental Health Department of South Tyneside Council and Sunderland City Council (the Local Planning Authorities) before being formally approved by the Secretary of State. If required by the Local Authorities, this would contain a schedule of monitoring and agreed noise and vibration limits.

- 3.1.25 Section 79(6A)(a) of the Act sets out that traffic noise is excluded from the consideration of nuisance and therefore there is no case to address for the operation of the Scheme.
- 3.1.26 With the implementation of 'best practice approach' mitigation measures, and the application of a CEMP, any construction noise impact would be minimised; an example of good practice measures include avoiding unnecessary revving of engines, programming works minimise outside normal working hours, using low noise emission plant where possible, developing and maintaining good relations with people living and working in the vicinity of the construction site. Despite this, it is possible that significant construction noise levels would likely occur for short durations.
- 3.1.27 However, with the provision of mitigation measures, and through agreement with South Tyneside Council and Sunderland City Council on matters including construction noise levels and hours of work, it is considered that no statutory nuisance associated with the Scheme would arise during construction.

4 CONCLUSION

- 4.1.1 This Statement has considered the potential for the proposed development to cause a statutory nuisance under Section 79(1) of the EPA.
- 4.1.2 The construction activities that have the potential to create a statutory nuisance would be controlled through the implementation of a CEMP, as noted in the ES.
- 4.1.3 The construction and operational activities that have the potential to create a nuisance would be controlled through the mitigation set out the CEMP. Mitigation measures are also set out within Chapter 6 'Air Quality' and Chapter 12 'Noise and Vibration' and Appendix 1.3 'Register of Environmental Actions and Commitments' of the ES (**Application Document References: TR010024/APP/6.1 and TR010024/APP/6.3**). The CEMP is secured through requirement 4 of the draft DCO (**Application Document Reference: TR010024/APP/3.1**).
- 4.1.4 With mitigation in place, plus engagement with South Tyneside Council, Sunderland City Council and people living and working in the vicinity of the construction site, any construction noise impact would be minimised and none of the statutory nuisances identified in section 79(1) of the Act are predicted to arise during construction or operation of the Scheme.