

A303 Amesbury to Berwick Down

TR010025

6.5 Statement of Statutory Nuisance

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(Applications: Prescribed Forms and
Procedure) Regulations 2009**

The A303 (Amesbury to Berwick Down)
Development Consent Order 20[**]

STATEMENT OF STATUTORY NUISANCE

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CONTENTS

1	Introduction and Summary	1-1
1.1	Purpose of this document.....	1-1
1.2	The Scheme.....	1-1
1.3	Summary of Conclusions	1-2
2	Policy and Statutory Context	2-1
2.1	Policy Context	2-1
2.2	Section 79(1) Environmental Protection Act 1990.....	2-1
3	Potential for Breaches of Section 79(1) of the Environmental Protection Act 1990	3-1
3.1	Introduction	3-1
3.2	Dust arising on business premises (section 79(1)(d) of the EPA)	3-1
3.3	Artificial light emitted from premises so as to be prejudicial to health or a nuisance (section 79(1)(fb) of the EPA).....	3-2
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)	3-3
4	Conclusion	4-1

1 Introduction and Summary

1.1 Purpose of this document

- 1.1.1 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 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”).
- 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 Environmental Statement (Application Document 6.1).
- 1.1.4 This statement concludes that, with the mitigation measures secured by the Development Consent Order (“DCO”) in place, none of the statutory nuisances identified in section 79 of the EPA is predicted to arise.

1.2 The Scheme

- 1.2.1 The A303 Amesbury to Berwick Down scheme (“the Scheme”) forms part of a programme of improvements for upgrading the A303/A358 corridor, improving this vital connection between the South West and London and the South East and including the upgrade of remaining single carriageway sections on the route to dual carriageway. This investment is stated as a priority project in the National Infrastructure Plan and Government’s commitment is confirmed in the Road Investment Strategy (2015-2020). Subject to achieving an approved DCO, preliminary works are planned to start in 2020 with the main construction works following in 2021, and the Scheme is due to open to traffic in 2026.
- 1.2.2 Objectives for the Scheme have been formulated both to address identified problems and to take advantage of the opportunities that new infrastructure would provide. The objectives are defined by the Department for Transport (“DfT”):
- Transport - To create a high quality reliable route between the South East and the South West that meets the future needs of traffic;
 - Economic Growth - to enable growth in jobs and housing by providing a free flowing and reliable connection between the South East and the South West.
 - Cultural Heritage - To help conserve and enhance the World Heritage Site and to make it easier to reach and explore; and
 - Environment and Community - To improve biodiversity and provide a positive legacy for nearby communities.

- 1.2.3 The objectives would be achieved by providing a high quality, two-lane dual carriageway on the A303 trunk road between Amesbury and Berwick Down in Wiltshire. The Scheme would resolve traffic problems and, at the same time, protect and enhance the Stonehenge, Avebury and Associated Sites World Heritage Site (“WHS”). The Scheme would be approximately 8 miles (13km) long and comprise the following key components:
- a. A northern bypass of Winterbourne Stoke with a viaduct over the River Till valley;
 - b. A new junction between the A303 and A360 to the west of and outside the WHS, replacing the existing Longbarrow roundabout;
 - c. A twin-bore tunnel approximately 2 miles (3.3km) long, past Stonehenge; and
 - d. A new junction between the A303 and A345 at the existing Countess roundabout.

1.3 Summary of Conclusions

- 1.3.1 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 grounds (d) (dust arising on business premises), (fb) (artificial light emitted from premises), (g) (noise emitted from premises) and (ga) (noise emitted from or caused by a vehicle, machinery or equipment in a street) have the potential to be engaged by the construction or operation of the Scheme.
- 1.3.2 The construction and operation activities that have the potential to create a nuisance would be controlled through the design of the Scheme and mitigation as set out in the Outline Environmental Management Plan (“OEMP”) (Environmental Statement Appendix 2.1 (Application Document 6.3)) and the Environmental Statement (Application Document 6.1). Mitigation measures are detailed within Chapter 5 (Air Quality), Chapter 7 (Landscape and Visual Effects) and Chapter 9 (Noise and Vibration) of the Environmental Statement. The OEMP is secured by the draft DCO (Application Document 3.1).
- 1.3.3 With the measures in place, none of the statutory nuisances identified in section 79(1) of the EPA are predicted to arise during the construction or operation of the Scheme.

2 Policy and Statutory Context

2.1 Policy Context

- 2.1.1 Paragraphs 4.57 to 4.59 of the National Policy Statement for National Networks (“NPSNN”) state the importance of considering the possible sources of nuisance under section 79(1) of the Environmental Protection Act 1990 and how they may be mitigated or limited during the examination of a Nationally Significant Infrastructure Project by the Examining Authority, 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.

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 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; and
 - 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), 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 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) 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 or construction traffic but could be engaged by noise generated by construction vehicles on site, plant and machinery.
- 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 construction phase of the Scheme there would be potentially dust generating activities, such as earth moving and demolition. Chapter 5 of the Environmental Statement (Application Document 6.1) assesses the likely air quality impacts associated with the construction and operational phases of the Scheme. It considers potential impacts from the construction phase of the scheme arising from dust generating activities such as earth moving and demolition, and emissions arising from non-road mobile machinery.
- 3.2.2 As part of this assessment, the potential dust impacts on receptors during the construction phase have been assessed on human receptors located within 200m of the Order limits and construction traffic routes.
- 3.2.3 The methodology for the assessment of construction dust and its conclusions are presented within Chapter 5 of the Environmental Statement in section 5.8.3.
- 3.2.4 The construction phase dust assessment is set out in section 5.9 of Chapter 5 of the Environmental Statement. It concludes that the adoption of the suggested mitigation measures would minimise the risk of significant adverse dust effects.

The same conclusion is reached by the Environmental Statement in relation to other emissions.

- 3.2.5 Environmental Statement Appendix 5.4 (Construction Air Quality and Mitigation) (Application Document 6.3) explores the potential mitigation measures that could be applied to the Scheme and the relevant measures are secured through the OEMP (Environmental Statement Appendix 2.2 (Application Document 6.3)). These include measures such as site inspections, vehicle speed limits, screening, and planning site layout to ensure dusty activities are located away from receptors.
- 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 Environmental Statement Chapter 5 Air Quality (Application Document 6.1), there is assessed to be a net benefit in concentrations of PM10 (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 the scheme, no dust statutory nuisance is expected.
- 3.2.7 With the measures described above in place, dust during construction and operation would be controlled and would not give rise to any 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 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.
- 3.3.2 The construction phase of the Scheme would introduce additional temporary lighting, as a result of the provision of lighting for works compounds, the operation of the slurry treatment plant and general working areas in winter months. There would also be temporary lighting from construction vehicles on haul routes. During operation vehicles passing between Berwick Down and the tunnel will introduce additional lighting via their headlights, in combination with vehicles (reduced in volume due to the presence of the Winterbourne Stoke bypass) continuing to use the existing A303 between Winterbourne Stoke and Longbarrow Roundabout. Other sources of artificial lighting during operation include variable message signs but on the whole the Scheme is designed to be unlit, for instance at Longbarrow roundabout and within the WHS.
- 3.3.3 Chapter 7 of the Environmental Statement (Application Document 6.1) assesses the likely visual and landscape impacts associated with the construction and operational phases of the Scheme. As part of this assessment, the potential impacts of artificial light on human receptors during the construction and operational phases of the Scheme have been considered via a night time assessment.

- 3.3.4 During construction, the assessment concludes that there are few receptor locations from which the additional lighting would be perceived, as there are very few residential properties in the vicinity of the proposed scheme, and public rights of way are unlikely to be in use at night. Mitigation measures such as ensuring the lighting is positioned and directed so as not to unnecessarily intrude on adjacent buildings, ecological receptors and other land uses to prevent unnecessary disturbance, interference with local residents, or passing motorists, are secured through the OEMP.
- 3.3.5 During operation, localised glare from vehicles and the variable message signs on the B3083 and the River Till viaduct will be reduced by the dual carriageway at the existing A303 between Winterbourne Stoke and Longbarrow Roundabout being in cutting, bunds, the establishment of the new planting, and the screening at the River Till viaduct. Glare from vehicle headlights on the Countess flyover would also be screened by the acoustic fencing. These matters are secured via the design or the OEMP.
- 3.3.6 Of those receptors who will perceive artificial lighting in connection with construction or operation of the scheme, it is not expected that such lighting will impact on health of the receptors nor unreasonably or substantially interfere with the use or enjoyment of a home or other premises. With the application of mitigation measures included in the OEMP, no statutory nuisance under section 79(1)(fb) would arise during construction or operation 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 construction from the operation of construction plant and during operation through plant associated with the tunnel such as ventilation fans.

Construction

- 3.4.2 Chapter 9 of the Environmental Statement (Application Document 6.1) assesses the likely noise and vibration impacts associated with construction of the Scheme. 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, including site compounds and haul roads within the boundary of the works.
- 3.4.3 Chapter 9 of the Environmental Statement predicts likely significant adverse effects from the construction of the scheme at the closest receptors at Countess roundabout, and a single receptor north of Winterbourne Stoke. The environmental statement notes that noise levels are predicted to exceed the Significant Observed Adverse Effect Level (“SOAEL”) for short periods, in consecutive quarters, during the construction of the bridge and flyover at Countess Junction and the River Till viaduct respectively.
- 3.4.4 The OEMP includes measures to control the effects of noise. Those measures includes the requirement to prepare a noise and vibration management plan that will include details and locations of acoustic screening, measures to

integrate noise management within works method statements and provision for noise insulation or temporary re-housing if appropriate and necessary.

- 3.4.5 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.
- 3.4.6 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.
- 3.4.7 While significant residual adverse effects are predicted by the assessment, taking into account the mitigation and other measures secured in the OEMP, and the temporary and transient nature of the noise generating works, the construction of the scheme is unlikely to be prejudicial to health or cause a nuisance and is unlikely to give rise to a statutory nuisance under section 79(1)(g) or (ga) of the EPA.

Operation

- 3.4.8 The scheme includes a service building related to the operation of the tunnel at each tunnel portal. Both service buildings contain various items of internal plant, plus potentially a range of associated external plant. In addition, ventilation fans would be located at each end of each tunnel.
- 3.4.9 Chapter 9 of the Environmental Statement (Application Document 6.1) assesses the likely noise impacts associated with the service buildings and operation of the associated plant, plus the tunnel fans. The assessment considers the impacts at the closest residential properties to the tunnel portals.
- 3.4.10 Based on the low predicted noise levels from these noise sources, combined with the very occasional use of the tunnel fans, Chapter 9 of the Environmental Statement predicts no potential significant adverse effects from plant associated with the service buildings or the operation of the tunnel fans.
- 3.4.11 The operation of the scheme is therefore unlikely to give rise to a statutory nuisance under section 79(1)(g) 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 The construction and operation activities that have the potential to create a nuisance would be controlled through the design of the Scheme and mitigation as set out in the OEMP (Environmental Statement Appendix 2.2 (Application Document 6.3)). Mitigation measures are detailed within Chapter 5 (Air Quality), Chapter 7 (Landscape and Visual Effects) and Chapter 9 (Noise and Vibration) of the Environmental Statement (Application Document 6.1). The OEMP is secured by the draft DCO (Application Document 3.1).
- 4.1.3 With the measures in place, none of the statutory nuisances identified in section 79(1) of the EPA are predicted to arise during the construction or operation of the Scheme.

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