

M25 junction 28 improvement scheme TR010029

6.5 Statutory nuisance statement

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

M25 junction 28 scheme Development Consent Order 202[x]

6.5 STATUTORY NUISANCE STATEMENT

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Executive summary

This statement relating to statutory nuisance (the “Statement”) has been produced for the purpose of identifying the matters set out in section 79(1) of the Environmental Protection Act 1990 in respect of statutory nuisances and considers whether the M25 junction 28 improvements scheme (the “Scheme”) would engage one or more of those matters. Where any of those matters may be potentially engaged the Statement sets out the proposals for mitigating or limiting them.

This Statement communicates that the matters comprised in section 79 (1) of the 1990 Act which may, potentially, be engaged as a consequence of the Scheme are:

- (b) smoke emitted from premises,
- (d) dust, steam, smell or effluvia 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.

This Statement concludes that with the mitigation and control measures proposed in the Environmental Statement (ES) (application document TR010029/APP/6.1), which have been captured within the Outline Construction Environmental Management Plan (CEMP) (application document TR010029/APP/7.2) and would be implemented by the Principal Contractor’s CEMP, it is not anticipated that a statutory nuisance would result from the construction or operation of this Scheme.

1. Introduction

- 1.1.1 This Statement relates to an application made by Highways England (the “Applicant”) to the Planning Inspectorate under the Planning Act 2008 for a Development Consent Order (DCO). If made, the DCO which would authorise the construction, operation and maintenance of the M25 junction 28 Scheme (the “Scheme”). A description of the Scheme can be found in Chapter 2 of the Environmental Statement (ES) (application document TR010029/APP/6.1).
- 1.1.2 This Statement is prepared pursuant to the requirements of Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (APFP Regulations) and states “*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 This Statement forms part of a suite of DCO application documents. It is informed by those documents and should be read alongside them. This Statement in particular refers to sections of the ES (application document TR010029/APP/6.1) which contain detailed information on the assessment and mitigation of impacts.

2. Policy and statutory context

2.1 Policy context

- 2.1.1 In paragraphs 4.57 to 4.59 of the National Policy Statement for National Networks (NPS NN) it outlines 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 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 ES.

2.2 Environmental Protection Act 1990 (EPA)

- 2.2.1 The following is text from section 79(1) of the EPA 1990¹ regarding 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 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;

¹ <http://www.legislation.gov.uk/ukpga/1990/43/section/79>

(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;

(h) any other matter declared by any 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....and, where a complaint of a 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 also contains other exceptions and definitions in relation to statutory nuisance. The particular exceptions of relevance to the 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
- ‘noise’ includes vibration
- ‘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
- ‘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
- “smoke” includes soot, ash, grit and gritty particles emitted in smoke
- ‘street’ means a highway and any other road, footway, square or court that is for the time being open to the public

3. The Scheme

3.1.1 The Scheme comprises the following key works elements. These should be read in conjunction with Works plans (application documents TR010029/APP/2.3) and Schedule 1 of the Development Consent Order (application documents TR010029/APP/3.1). Further details are provided in Chapter 2 of the ES (application documents TR010029/APP/6.1):

- Highways works:
 - The creation of a new two lane loop road with hard shoulder, for traffic travelling from the M25 northbound carriageway onto the A12 eastbound carriageway, including the provision of three new bridges (Alder Wood bridge, Duck Wood bridge and Grove bridge) and an underpass (Grove Farm underpass) to carry the new loop road over a proposed access track (Work No. 14).
 - Realignment of the existing A12 eastbound exit (off-slip) road (Work No. 2) to accommodate the new loop road including the provision of a new bridge (Maylands bridge) and the extension of the existing Grove culvert.
 - Improvements to the existing A12 eastbound and westbound carriageways and A12 eastbound entry (on-slip) road (Work Nos. 1, 3 and 4).
 - Realignment of the existing M25 northbound on-slip (Work No. 8).
 - Improvements to the existing junction 28 roundabout, the existing M25 northbound carriageway and the M25 northbound off-slip (Work Nos. 5, 7 and 12).
 - New gantries over the M25 carriageway (Work Nos. 9, 10 and 11).
 - Alterations of existing private access and egresses and the provision of new private means of access to accommodate the new loop road (Work Nos. 13, 14, 15 and 16).
- Earthworks and drainage works:
 - Earthworks including the creation of an environmental bund (Work No 18).
 - Three new attenuation ponds and associated drainage and access roads (Works Nos. 19A, 19B, 20A, 20B, 21A and 21B) and a new drainage outfall pipe (Work No. 22).
- Realignment of watercourses:
 - Realignment of the Weald Brook and the Ingrebourne River (Work Nos. 23A, 23B, 23C and 23D).
- Environmental mitigation:
 - Two new flood compensation areas (Work Nos. 24A and 24B) and the provision of new ecological compensation and mitigation areas (Work Nos. 25 and 26) and two new environmental ponds (Work Nos. 27 and 28).
- Utilities:
 - Diversion of an already underground high pressure gas pipeline and diversion underground of an existing overhead electric line (Work Nos. 29 and 30).

- Accommodation works:
 - Accommodation works to provide replacement facilities for Maylands Golf Course (Work No. 32).

4. Potential breaches of section 79(1)

4.1 Introduction

- 4.1.1 The provisions of section 79(1) of the EPA 1990 that could potentially be engaged as a consequence of the Scheme are:
- (b) smoke emitted from premises
 - (d) dust, steam, smell or effluvia 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
- 4.1.2 The paragraphs (a), (c), (e), (f), (fa) and (h) have been scoped out as the nature of the Scheme is such that they will not be engaged.
- 4.1.3 This Statement concludes that the only matters comprised in section 79(1) of the EPA 1990 which may potentially be engaged as a consequence of the Scheme are:
- b) and d) relating to air quality
 - fb) relating to artificial light
 - g) and ga) relating to noise (which for the Scheme, includes vibration)
- 4.1.4 Section 79(6A) (a) of the EPA 1990 provides that traffic noise is excluded from the consideration of nuisance. Accordingly, traffic noise is not relevant to the consideration of section 79(1)(g) and (ga) and is not mentioned further.
- 4.1.5 Each of these categories of statutory nuisance, which are potentially engaged by the Scheme are considered below.

4.2 Smoke, fumes, gases, dust, etc

Construction stage

- 4.2.1 There is limited potential for the following matters covered in section 79(1) of the EPA 1990 to arise during construction:
- b) smoke emitted from premises
 - d) any dust, steam, smell or other effluvia
- 4.2.2 There is the potential for fugitive dust and combustion related emissions from construction site vehicles and plant to be generated during the construction of the Scheme. The potential for these nuisances and appropriate mitigation measures are covered in the Air Quality chapter (Chapter 5) of the ES (application document TR010029/APP/6.1).
- 4.2.3 Potential fugitive dust and on-site combustion related emissions would be avoided or reduced to prevent statutory nuisance through measures captured in the Outline Construction Environmental Management Plan (CEMP) (application document TR010029/APP/7.2) and the Register of Environmental Actions and Commitments (REAC) (application document TR010029/APP/7.3) and implemented by the Principal Contractor.

Operational stage

4.2.4 As outlined in the Air Quality chapter of the ES, emissions to air from road traffic associated with the operational phase of the Scheme would be limited as detailed in the quantitative assessment undertaken for the ES. Impacts of road traffic emissions are unlikely to lead to exceedances of air quality objectives specified under the UK Air Quality Strategy or relevant air quality regulations that would lead to significant adverse effects. Accordingly, no nuisance is expected to arise.

Mitigation

4.2.5 Measures for mitigating the generation of dust on construction sites will include (as outlined in the REAC, application document TR010029/APP/7.3):

- Covering skips to minimise the release of unwanted odour from waste material.
- Burning of any waste or other materials on site will not be permitted for any reasons.
- Clearing or damping down roadways and other areas on-site.
- Road sweeping/washing, where required.
- Screening, enclosure, spraying (or other dust controls) of spoil stockpiles, rubble or construction materials close to sensitive receptors.
- Stockpiled materials and generators would be placed so as to minimise potential impact on nearby sensitive receptors due to local weather conditions.
- Sheeting of lorries carrying soil and other dust sources.
- Enforcement of speed limits on all site roadways.
- Where possible, engines would be turned off when not in use.
- Regular plant and vehicle maintenance checks conforming to the manufacturers or legislative emission standards.
- Positioning of construction vehicles/plant exhausts at a height to ensure appropriate dispersal of emissions.
- If any vehicles are found to be discharging black and/or noxious fumes, then the use of these vehicles will cease and they would be sent away for repair.
- Any complaint related to dust (or mud on roads) would be taken seriously and investigated. In addition, a log would be kept of any complaints raised against the site.

4.2.6 Mitigation measures to control dust during construction would be specified within contract documentation and incorporated into the CEMP.

4.2.7 In addition, non-road mobile machinery (NRMM) used on the construction site will need to conform with the NRMM standards for Greater London as outlined in the REAC (application document TR010029/APP/7.3).

4.3 Light from premises

Construction stage

- 4.3.1 There is potential for light pollution during construction as identified in the Landscape and Visual chapter (Chapter 9) of the ES (application document TR010029/APP/6.1) when temporary lighting would be used on site. There would be night time working associated with the works, as detailed in the Transport assessment report (application document TR010029/APP/7.4).
- 4.3.2 It is anticipated that construction compounds would be lit and light spill from these compounds, including the movement of associated construction vehicles together with general construction activities across the site, will potentially have an impact upon adjacent sensitive receptors as outlined in the Landscape and Visual Chapter (chapter 9), of the ES.
- 4.3.3 The degree of impact upon these receptors would vary based on landform, vegetation cover, distance to works and the type of activity proposed. The lighting impacts from construction activities on these receptors would be temporary, and where distance and intervening vegetation exist to provide a buffer, the impact of these effects would be reduced.
- 4.3.4 In general, the works would be in areas where there are existing street lights on the M25 and A12, and therefore temporary construction lighting would not be expected to cause significant additional nuisance.

Operational stage

- 4.3.5 No significant operational lighting effects associated with the Scheme that could potentially generate a nuisance issue were identified. It is likely that additional lighting on gantries would increase light levels. As street lights are not covered by the laws on statutory nuisance, it is not necessary to address these within this Statement.

Mitigation

- 4.3.6 The lighting arrangements for night time working during construction would be provided for in the CEMP and measures to mitigate the effects of lighting are detailed below, as outlined in the REAC (application document TR010029/APP/7.3):
- Requirements to prevent light spill and glare as well as to minimise the usage of lighting, with special care taken in proximity to ecologically sensitive locations.
 - Specifying the types of temporary construction and security lighting to be used, the hours of operation (as part of the agreement of hours of operation of the construction site as a whole).
 - Measures to ensure that construction and security lighting is located and maintained so as to cause minimal effects.

4.4 Noise emitted from premises

Construction stage

- 4.4.1 There is potential for noise and vibration to be generated from construction activities, as described in the Noise and Vibration chapter (Chapter 6) of the ES (application document TR010029/APP/6.1). There would be night time working associated with construction works that also has the potential for increasing noise levels at sensitive receptors. The potential for environmental effects has been considered and assessed as unlikely to be significant and appropriate mitigation measures proposed in the Noise and Vibration chapter of the ES.
- 4.4.2 Construction noise and vibration emissions would be avoided or reduced to prevent a statutory nuisance through the implementation of a CEMP prepared by the Principal Contractor in line with the Outline CEMP (application document TR010029/APP/7.2) and REAC (application document TR010029/APP/7.3).
- 4.4.3 The CEMP will oblige contractors to incorporate measures to minimise noise emissions by best practicable means in accordance with the Control of Pollution Act 1974. A number of noise controls are stated in *BS 5228:2009 + A1:2014 Code of Practice for Noise and Vibration Control on Construction and Open Sites* that may be used as best practicable means.

Operational stage

- 4.4.4 In the Noise and Vibration chapter of the ES, no significant adverse operation noise effects wholly attributable to the Scheme were predicted that would represent a nuisance under section 79(1)(g) and (ga) of the EPA 1990.

Mitigation

- 4.4.5 Measures that have been incorporated into the Scheme (as outlined in the REAC, application document TR010029/APP/7.3) to reduce noise effects during construction include:
- Noise and vibration from construction activities would be minimised wherever possible through the selection of construction methods and equipment that produce lower levels of noise and vibration. Where it is necessary to use equipment or methods that produce higher levels of noise and vibration, appropriate measures would be adopted (e.g. limited times of operation).
 - Where possible, construction plant would be turned off when not in use.
 - Regular construction plant and vehicle maintenance checks would be undertaken, conforming to the manufacturers or legislative emission standards.
 - All construction plant and equipment would be suitably sited, operated and serviced in order to minimise noise and vibration.
 - Pneumatic tools would be fitted with an integral silencer and/or purpose-made muffler.
 - Enforcement of speed limits on all site roadways.

- HGV transportation movements would be controlled in accordance with the Traffic Management Plan that would be prepared by the Principal Contractor (which is secured through requirement 10 of the draft DCO, application documents TR010029/APP/3.1).
- Good stakeholder communication to ensure that local residents are kept informed about the progress of the construction works and are provided with contact details for the Stakeholder Manager (or other suitable personnel).
- Any complaint related to noise and vibration would be taken seriously and investigated. In addition, a log would be kept of any complaints raised against the site.
- Acoustic fencing would be positioned around the Scheme as necessary.
- Working hours would be restricted to those set out in the Outline CEMP (application document TR010029/APP/7.2) unless there are specific requirements for works at other times, e.g. abnormal load deliveries.

4.4.6 Noise mitigation measures have been embedded in the design of the Scheme to minimise the potential for noise impacts during the operational phase. These mitigation measures consist of low noise road surfacing on sections of the road as stated in the Noise and Vibration chapter of the ES.

5. Conclusion

- 5.1.1 This Statement identifies the matters set out in section 79(1) of the EPA 1990 in respect of statutory nuisances and considers whether the Scheme would engage one or more of those matters on the basis adopted for assessment.
- 5.1.2 With the proposed mitigation in place, it is not expected that there would be a breach of section 79(1) of the EPA 1990 during the construction or operational phases.
- 5.1.3 The construction activities that have the potential to create a nuisance would be controlled through compliance with the implementation of the environmental measures identified in the ES (application document TR010029/APP/6.1) and through the CEMP which is secured through requirement 4 of the draft DCO (application document TR010029/APP/3.1). The CEMP must be substantially in accordance with the Outline CEMP (application document TR010029/APP/7.2) and reflect the mitigation measures in the REAC (application document TR010029/APP/7.3).
- 5.1.4 Whilst this Statement concludes that no statutory nuisance is likely to occur, the Applicant has included in the draft DCO an article which would provide a defence against cases of nuisance under 79(1)(g) in order that the defence can be relied upon in circumstances where a statutory nuisance cannot be avoided.

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