

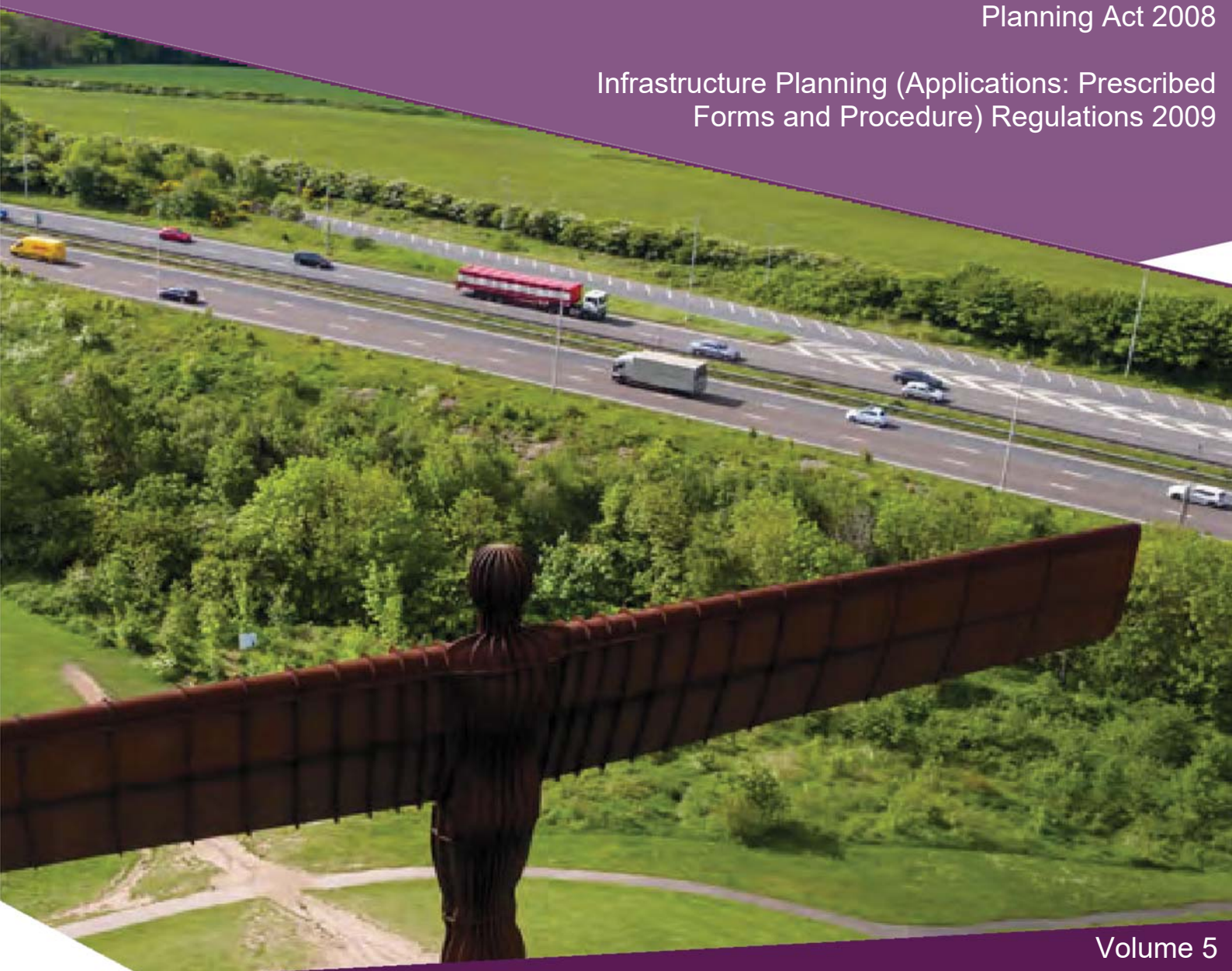
**A1 Birtley to Coal House**

**Scheme Number: TR010031**

**5.2 Statement Relating to Statutory  
Nuisance**

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**

**The A1 Birtley to Coal House  
Development Consent Order 20[xx]**

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**STATEMENT RELATING TO STATUTORY NUISANCE**

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<b>Regulation Reference:</b>	APFP Regulation 5(2)(f)
<b>Planning Inspectorate Scheme Reference</b>	TR010031
<b>Application Document Reference</b>	TR010031/APP/5.2
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## 1 INTRODUCTION AND SUMMARY

### 1.1 Purpose of this Document

- 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 (the “2008 Act”) for a Development Consent Order (DCO). If made, the DCO would grant consent for the A1 Birtley to Coal House (the “Scheme”). A detailed description of the Scheme can be found in **Chapter 2 The Scheme** of the Environment Statement (ES) (**Application Document Reference: TR010031/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 and Local Government) guidance 'Planning Act 2008: Application Form Guidance' (June 2013) and in compliance with Regulation 5(2)(f) of the Infrastructure Planning (Prescribed Forms and Procedure) Regulations 2009 (2009 Regulations) which requires:
- “...a statement whether the proposal engages one or more of the matters set out in section 79(1) (statutory nuisances and inspections thereof) 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 is informed and should be read alongside the other application documents (particularly the ES).
- 1.1.4 This Statement concludes that, statutory nuisances identified in Section 79(1) of the Environmental Protection 1990 Act (EPA 1990) are predicted to arise on the Scheme, however the proposed measures will appropriately mitigate the effects.

## 2 BACKGROUND

### 2.1 Content – National Policy Statement for National Networks

- 2.1.1 Paragraphs 4.57 to 4.59 of the National Policy Statement for National Networks (NNNPS) state that it is very important that, during 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 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 notes 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 availability of the defence of statutory authority against nuisance claims, 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 Paragraph 5.83 also states that although it is likely that some impact on amenity for local communities to be unavoidable, impacts should be kept to a minimum and should be at a level that is acceptable.
- 2.1.5 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 describe these in the ES. Consultation with the relevant local planning authority and where appropriate the Environment Agency about the scope 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 EPA 1990 setting out those matters which constitute a statutory nuisance in England and Wales:
- 2.2.2 *‘(1)...the following matters constitute "statutory nuisances" for the purposes of this Part [of the EPA 1990], 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
- (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 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 below or Sections 80 and 80A below 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.'*

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

- Section 79(4) - clarifies that subsection 1(c) (fumes and 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.

2.2.4 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 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 1990 that could potentially be 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
  - (ga) Noise emitted from or caused by a vehicle, machinery or equipment in a street
- 3.1.2 Statutory nuisance category (c) (emission of fumes and gases) applies only to private dwellings (as noted in Section 79(4) of the EPA 1990) and is therefore not relevant to this Scheme.
- 3.1.3 Statutory nuisance category (ga) does not apply to traffic (as noted in Section 79(6A) of the EPA 1990), but would apply to noise generated by construction, vehicles, plant or machinery.

#### 3.2 Dust Arising on Business Premises

- 3.2.1 During the construction phase of the Scheme dust generating activities potentially would be carried out, such as earth moving and demolition. **Chapter 5 Air Quality** of the ES (**Application Document Reference: TR010031/APP/6.1**) sets out the qualitative assessment of the impacts of dust nuisance as a result of construction of the Scheme.
- 3.2.2 As part of this assessment, the potential dust impacts on receptors of varying degrees of sensitivity (e.g. residential and/or commercial properties) during the construction phase has been assessed within 200m of any construction works and compound areas.
- 3.2.3 Effective management of control emissions of dust is a well-defined practice for construction and demolition. The mitigation measures to limit the impact would be applied to all sites where dust producing activities would take place. The methods of dust suppression would follow current construction and demolition site best practice. These construction mitigation measures are detailed in **Chapter 5 Air Quality** of the ES (**Application Document Reference: TR010031/APP/6.1**) and are also set out in the Outline Construction Environmental Management Plan (Outline CEMP) (**Application Document Reference: TR010031/APP/7.4**). A full CEMP would be developed to be implemented during construction and would be written in accordance with ISO14001.
- 3.2.4 No significant dust nuisance is expected as a result of the operation of the Scheme as it will not be a significant dust emission source and therefore no mitigation measures are required. In the main air quality assessment presented in **Chapter 5 Air Quality** of the ES (**Application Document Reference: TR010031/APP/6.1**) there is assessed to be a negligible increase in concentrations of PM<sub>10</sub> (which is a constituent of dust). Therefore, as no significant PM<sub>10</sub> effects are expected as a result of operation of the Scheme, no dust statutory nuisance is expected.

3.2.5 With the measures described in the ES and Outline CEMP, dust arising during construction 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 1990.

### **3.3 Artificial Light from Premises**

3.3.1 Section 102 of the Clean Neighbourhoods and Environment Act 2005 amends Section 79 of the EPA 1990 to include artificial light emitted from premises, where the latter is defined as including land.

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
- Injure health or be likely to injure health.

3.3.3 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
- Street lights

3.3.4 As street lights are not covered by the laws on statutory nuisance, it is not necessary to address these within this Statement. However, it is necessary to address temporary lighting equipment to be used to illuminate the construction tasks. Any predicted operational nuisance as a result of the Scheme would be street lights only.

3.3.5 The majority of construction works will be carried out during the working hours of 07:00 - 19:00 Mondays to Fridays and 07:30 - 13:00 on Saturday, except for:

- Night-time closures for bridge demolition and installation
  - Any oversize deliveries or deliveries where daytime working would be excessively disruptive to normal traffic operation
  - Junction tie-in works
  - Works required in relation to the East Coast Main Line (ECML)
  - Overnight traffic management measures
  - Cases of emergency
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- As otherwise agreed by the local authority in advance

- 3.3.6 The construction phase will also involve the use of temporary artificial lighting for night time working and works during the hours of darkness, particularly during winter. Further details of the specific tasks (such as the widening of Kingsway Viaduct and the removal of Allerdene Bridge) requiring night time working are provided the ES in **Chapter 11 Noise and Vibration (paragraphs 11.10.13-11.10.15) (Application Document Reference: TR010031/APP/6.1)**.
- 3.3.7 Measures for the management and control of light have been included in the Outline CEMP (**Application Document Reference: TR010031/APP/7.4**), and include switching off construction lighting when not in use, positioning lighting so as not to spill on to adjacent land, sensitive receptors or retained vegetation within the area surrounding the works, directing lighting to minimise light pollution/glare and keeping lighting levels to the minimum necessary for security and safety.
- 3.3.8 With the application of mitigation measures in the Outline CEMP is considered that no statutory nuisance would arise during construction, nor would it be prejudicial to health under Section 79 (1)(b) of the EPA 1990.

### **3.4 Noise Emitted from Premises, or Emitted from or Caused by a Vehicle, Machinery or equipment in a Street**

- 3.4.1 **Chapter 11 Noise and Vibration (Application Document Reference: TR010031/APP/6.1)** of the ES details that noise from construction of the Scheme has the potential to be emitted from the construction site or caused by construction vehicles, machinery or equipment. 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 work activities including:
- NGN Works
  - Site Mobilisation
  - Works on the ECML that are required for the demolition and replacement of Allerdene Bridge.
  - Junction 67 (Coal House) to Allerdene Bridge
  - Allerdene Bridge
  - East of Allerdene Bridge to junction 65 (Birtley)
  - Tie-in works
  - Removal of Allerdene Bridge and approaches
  - Site Demobilisation
- 3.4.2 **Chapter 11 Noise and Vibration** of the ES (**Application Document Reference: TR010031/APP/6.1**) predicts likely significant effects during construction as a result of both construction noise and construction vibration when works are undertaken in close proximity to sensitive receptors however such effects would be short term and temporary. The Outline CEMP (**Application Document Reference: TR010031/APP/6.3**) includes measures to control the effects of noise and vibration.
- 3.4.3 Local Authorities have powers for controlling noise and vibration from construction sites through the Control of Pollution Act 1974 (1974 Act) and the EPA 1990.
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Gateshead Council can exercise these powers prior to or during the works.

- 3.4.4 Section 60 of the 1974 Act relates to '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 and vibration that can be emitted by the works.
- 3.4.5 Section 61 of the 1974 Act allows for the main contractor(s) to obtain consent from the local authority regarding the noise and vibration requirements of the works prior to them commencing. It is 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 1974 Act or Section 80 of the EPA 1990, so long as the consent remains in force and the contractor complies with its terms.
- 3.4.6 As a requirement of the CEMP, a scheme of noise and vibration monitoring in line with BS5228-1 and BS5228-2 would be developed in consultation with Gateshead Council Environmental Health Officer.
- 3.4.7 The mitigation measures outlined in the Outline CEMP (**Application Document Reference: TR010031/APP/7.4**) will be implemented (through the CEMP) during construction and include, but are not limited to, the following:
- All plant brought on to site will comply with the relevant EC/UK noise limits applicable to that equipment or should be no noisier than would be expected based on the noise levels quoted in BS 5228-1. Each plant item will be well maintained and operated in accordance with manufacturers' recommendations and in such a manner as to minimise noise emissions.
  - Electrically powered plant would be preferred, where practicable, to mechanically powered alternatives.
  - The use of sound reduced plant fitted with suitable silencers, or operated within enclosures would be preferred.
  - Pneumatic tools would be fitted with silencers or mufflers.
  - Deliveries to site would be programmed and routed to minimise disturbance to local residents.
  - Items of plant operating intermittently would be shut down in the periods between use.
  - Where feasible, all stationary plant would be located so that the noise effect at receptors is minimised and, if practicable, every item of static plant when in operation would be noise attenuated using methods based on the guidance and advice given in BS 5228-1.
  - Careful selection of construction methods and plant would be implemented and utilised, for example, breaking-out of concrete structures using, where possible, low noise methods such as munching or similar, rather than percussion breaking.
  - Temporary acoustic barriers and other noise containment measures such as screens, sheeting and acoustic hoarding at the site boundary (and where

required around individual plant) would be erected where appropriate to minimise noise breakout and reduce noise levels at potentially affected receptors.

- There would be a considerate and neighbourly approach to relations with local residents, with particular care given to the timing and regularity of works that are undertaken within any one area. For example, appropriate periods of respite will be allowed where the generation of high noise levels is unavoidable at sometimes, e.g. due to the proximity of works.

- 3.4.8 A full list of mitigation measures can be found in the ES, **Chapter 11 Noise and Vibration (Application Document Reference: TR010031/APP/6.1)**.
- 3.4.9 Adherence to the CEMP during construction would ensure that the statutory nuisance or noise impacts prejudicial to health under Section 79(1)(g) and (ga) of the EPA would be avoided.
- 3.4.10 During the operational phase, noise and vibration may be generated by the Scheme as a result of an increase in traffic flows. However, as reported in **Chapter 11 Noise and Vibration** of the ES, beneficial effects overall are anticipated as a result of the new road surface, which will comprise a uniform thin surface course system (TSCS), and the installation of a noise barrier to the south of the A1 and retention and slight alteration to the existing noise barrier at Lady Park. As such the Scheme would not give rise to a statutory nuisance during operation under section 79(1)(g) of the EPA 1990.

## 5 CONCLUSION

- 5.1.1 This Statement has considered the potential for the Scheme to cause a statutory nuisance under the EPA 1990.
- 5.1.2 The construction and operation activities that have the potential to create a nuisance would be controlled through mitigation as set out in the Outline CEMP (**Application Document Reference: TR010031/APP/7.4**) which will be developed into the CEMP by the appointed contractor. Mitigation measures are also set out with the following chapters of the ES (**Application Document Reference: TR010031/APP/6.1**); **Chapter 2 The Scheme**; **Chapter 5 Air Quality**; **Chapter 7 Landscape and Visual**; and **Chapter 11 Noise and Vibration**. The CEMP is secured through requirement 4 of the draft DCO (**Application Document Reference: TR010031/APP/3.1**).
- 5.1.3 With mitigation in place, none of the statutory nuisances identified in Section 79(1) of the EPA 1990 are predicted to arise during the construction and operation of the Scheme.