

# A57 Link Roads TR010034

## 5.2 Statement in Respect of Statutory Nuisance

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



Infrastructure Planning

Planning Act 2008

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

**A57 Link Roads**  
Development Consent Order 2021

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**5.2 STATEMENT IN RESPECT OF STATUTORY NUISANCE**

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# 1. Introduction

- 1.1.1 This document is the Statement of Statutory Nuisance for the A57 Link Roads Scheme (previously known as Trans Pennine Upgrade) (hereafter referred to as the ‘Scheme’).
- 1.1.2 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 Scheme. A description of the Scheme can be found in Section 2 of this Statement. The full detailed Scheme description can be found in Chapter 2 of the Environmental Statement (ES) (TR010034/APP/6.3).
- 1.1.3 This Statement of Statutory Nuisance identifies whether the Scheme engages one or more of the statutory nuisances, as set out in section 79(1) of the Environmental Protection Act 1990 (‘the EPA 1990’), and if so, how Highways England proposes to mitigate or limit such nuisances.
- 1.1.4 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’). This Statement of Statutory Nuisance has been prepared taking into account the requirements of the National Policy Statement for National Networks (NPSNN) (Ref 1) that relate to statutory nuisances (e.g. paragraphs 4.57 to 4.59 and paragraphs 5.81 – 5.89) – refer to Section 2.1.
- 1.1.5 This Statement forms part of a suite of DCO application documents. It is informed by those documents and should be read alongside them, in particular this includes:
- Environmental Statement (TR010034/APP/6.3) and associated appendices (TR010034/APP/6.5) and figures (TR010034/APP/6.4)
  - The Environmental Management Plan: First Iteration (EMP: First iteration) (TR010034/APP/7.2)
  - The Register of Environmental Actions and Commitments (REAC) (TR010034/APP/7.3).

## 2. The Scheme

- 2.1.1 Most of the Scheme is located within Mottram in Longdendale, on the eastern edge of the Manchester conurbation adjacent to and within the settlements of Hattersley, Mottram in Longdendale, Hollingworth and Woolley Bridge. The Scheme connects the M67 at the west to the A57 Brookfield Road in the east and crosses through surrounding, predominately pasture, agricultural land within the Harrop Edge and Mottram Moor valley sides and within the River Etherow valley.
- 2.1.2 The Scheme lies mainly within the administrative boundaries of Tameside Metropolitan Borough Council (MBC), up until to the proposed River Etherow Bridge. To the east of this, the Scheme crosses over the boundary with High Peak Borough Council and Derbyshire County Council.
- 2.1.3 A full description of the Scheme can be found in Chapter 2 of the ES (TR010034/APP/6.3).
- 2.1.4 The Scheme includes the following components:
- A new offline bypass of 1.12 miles (1.8 km) of dual carriageway road connecting the M67 Junction 4 to A57(T) Mottram Moor Junction
  - A new offline bypass of 0.81 miles (1.3 km) of single carriageway connecting the A57(T) Mottram Moor to the A57 Woolley Bridge
  - Creation of two new junctions, Mottram Moor Junction and Woolley Bridge Junction and improvement works to the existing M67 Junction 4
  - Creation of five new structures (Old Hall Farm Underpass, Roe Cross Road Overbridge, Mottram Underpass, Carrhouse Lane Underpass and River Etherow Bridge)
  - One main temporary construction compound area, located on agricultural land to the east of the M67 Junction 4
  - Detrunking, including safety measures from the M67 Junction 4 to Mottram Back Moor Junction, to be agreed with Tameside MBC.
  - Safety measures and improvements to the A57 from Mottram Moor Junction to Gun Inn Junction and from Gun Inn Junction to Woolley Bridge Junction, to be agreed with Tameside MBC.

## 3. Policy and Statutory Context

### 3.1 Policy Context

- 3.1.1 Paragraphs 4.57 to 4.59 of the NPS NN state 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 1990 and how they may be mitigated or limited. This is so that any additional requirements to avoid statutory nuisance are included in subsequent orders granting development consent.
- 3.1.2 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.
- 3.1.3 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"*.
- 3.1.4 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. Details regarding consultation activities undertaken during the EIA for the Scheme are detailed in full within the ES (TR010034/APP/6.3).

### 3.2 Environmental Protection Act (EPA) 1990

- 3.2.1 Section 79(1) of the EPA 1990 (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; 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.”*

3.2.2 Section 79 of the EPA 1990 also 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 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.

3.2.3 Definitions are set out in section 79(7) of the EPA 1990, 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.
- '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.

## 4. Potential for breaches of Section 79(1) of the Environmental Protection Act 1990

### 4.1 Introduction

4.1.1 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 1990.

4.1.2 The provisions of section 79(1) of the EPA 1990 that could potentially be engaged 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*

4.1.3 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.

4.1.4 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)

4.1.5 As noted above, subsection 79(1)(ga) (noise emitted by a vehicle or machinery in a street) of the EPA 1990 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 would use the Scheme during its operational phase nor construction traffic, but it could be engaged by noise generated by construction vehicles on site, plant and machinery (during the Scheme construction phase).

4.1.6 Each of these categories of statutory nuisance potentially engaged by the Scheme is considered below.

### 4.2 Dust arising on business premises (section 79(1)(d) of the EPA 1990)

#### 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 to be generated during the construction of the Scheme. The potential for these nuisances and appropriate mitigation measures are covered in the Chapter 5: Air quality of the ES (TR010034/APP/6.3).
- 4.2.3 Potential fugitive dust would be avoided or reduced to prevent statutory nuisance through measures captured in the EMP (TR010034/APP/7.2) and the REAC (TR010034/APP/7.3) and implemented by the appointed Principal Contractor.

#### Operational stage

- 4.2.4 As outlined in Chapter 5: Air quality of the ES (TR010034/APP/6.3), 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 (TR010034/APP/6.3). 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 potentially significant adverse effects. Accordingly, no nuisance is expected to arise.

#### Mitigation

- 4.2.5 Mitigation measures to control dust during construction would be specified within contract documentation and incorporated into the EMP (Second iteration) by the appointed Principal Contractor in accordance with Design Manual for Roads and Bridges (DMRB) LA 120<sup>1</sup> prior to construction of the Scheme. The measures would depend on the intended construction methods and the degree of dust generation of construction activities.
- 4.2.6 If necessary, monitoring parameters and a programme will be established, and the effectiveness of mitigation will be evaluated in line with DMRB LA 105<sup>2</sup>, Table 2.108.1.
- 4.2.7 It is expected that the use of standard industry best practice would mitigate the risk of construction dust impacts in the majority of cases. Such measures may include but not necessarily be limited to:
- Regular water-spraying and sweeping of unpaved and paved roads to minimise dust and remove mud and debris
  - Using wheel washes, shaker bars or rotating bristles for vehicles leaving the site where appropriate to minimise the amount of mud and debris deposited on the public highway
  - Sheeting vehicles carrying dusty materials to prevent materials being blown from the vehicles whilst travelling
  - Enforcing speed limits for vehicles on unmade surfaces and site haul roads to minimise dust entrainment and dispersion
  - Ensuring any temporary site roads are no wider than necessary to minimise their surface area
  - Damping down of surfaces prior to their being worked
  - Storing dusty materials away from site boundaries and in appropriate containment (e.g. sheeting, sacks, barrels, etc.).

<sup>1</sup> Design Manual for Roads and Bridges (DMRB) LA 120: Environmental management plans, Revision 1 (March 2020)

<sup>2</sup> Design Manual for Roads and Bridges (DMRB) LA 105: Air quality, Revision 0 (November 2019)

### **4.3 Artificial light emitted from premises so as to be prejudicial to health or a nuisance (section 79(1)(fb) of the EPA 1990)**

#### Construction stage

- 4.3.1 There is potential for light pollution during construction as identified in the Chapter 7: Landscape and visual effects of the ES (TR010034/APP/6.3) when temporary lighting would be used on site during night-time working associated with the works.
- 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 Chapter 7: Landscape and visual effects of the ES.
- 4.3.3 The potential effects on 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 streetlights on A57 and therefore temporary construction lighting would not be expected to cause significant additional nuisance.

#### Operational stage

- 4.3.5 As outlined in the Chapter 7: Landscape and visual effects of the ES, in line with the assessment criteria in DMRB LA 107 Landscape and visual effects<sup>3</sup>, a night-time assessment was undertaken for landscape and visual receptors which have the potential to be affected by the addition of artificial lighting from lighting columns associated with the Scheme. The assessment considered the 'sight of light' and the effects of light on the character of an area, views and a general quality of life. Overall, it is considered that the likely night-time effects, as a result of increased levels of light, would cause slight damage to the existing night-time character as a result of increases in the sources of light within the landscape. However, no significant operational lighting effects associated with the Scheme that could potentially generate a nuisance issue were identified. As streetlights are not covered by the EPA 1990, it is not necessary to address these within this Statement.

#### Construction mitigation measures

- 4.3.6 Work during hours of darkness would be avoided as far as practicable, and where necessary, directed lighting would be used to minimise light pollution/glare. Lighting levels would be kept to the minimum necessary for security and safety.
- 4.3.7 The lighting design would seek to minimise obtrusive light pollution which can lead to sky glow, glare to road users and other observers and light trespass. The design of the lighting would also consider potential landscape and ecological effects.

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<sup>3</sup> <https://www.standardsforhighways.co.uk/dmrb/search/bc8a371f-2443-4761-af5d-f37d632c5734>

4.3.8 All construction mitigation measures would be secured through the EMP (TR010034/APP/7.2) and REAC (TR010034/APP/7.3).

#### Operational mitigation measures

4.3.9 The Scheme includes embedded mitigation measures incorporated into its design including but not limited to:

- New and replacement planting
- Sensitive lighting design and placement
- Retaining and protecting existing mature trees and hedges wherever possible, maintaining important visual screening and biodiversity habitat.
- Replacing any habitat losses as a minimum to ensure no net loss of biodiversity.
- Retaining natural character and planting local native species.
- Proposed tree planting to provide screening to sensitive receptors.
- Proposed earth contouring environmental bund, false cuttings and integrated planting

4.3.10 Full details on the operation mitigation measures can be found in Chapter 2: The Scheme and Chapter 7: Landscape and Visual effects of the ES.

## **4.4 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 1990)**

### Construction stage

4.4.1 There is potential for noise and vibration to be generated from the construction phase of the Scheme, as described in Chapter 11: Noise and vibration of the ES (TR010034/APP/6.3). The construction works would take place during the daytime, with any periods of night-time working limited to traffic management activities. Therefore, impacts from night-time working would be minimal throughout the construction phase.

4.4.2 Significant adverse effects from daytime construction activities undertaken within the DCO boundary have the potential to arise during the five construction phases. At any point during the construction works, up to six of the 24 representative assessment locations were predicted to experience significant adverse effects. The extent to which these effects materialise is dependent on detailed construction planning with due regard to noise limits described in Chapter 11: Noise and vibration of the ES (TR010034/APP/6.3) and the use of best practicable means throughout the works. No night works are anticipated with the exception of traffic management.

4.4.3 No adverse or significant adverse effects resulting from construction traffic are expected during the construction phase of the Scheme. The closure of Old Hall Lane and partial closure of Old Road during the construction phase has the potential to give rise to adverse impacts on neighbouring roads as traffic is diverted. No significant effects from other road closures, diversions and traffic management are expected.

4.4.4 Significant adverse effects from construction vibration were not predicted at any of the representative assessment locations using the planned construction methods and equipment. Adverse effects were reported at a number of locations however, these would be temporary in nature.

#### Operational stage

4.4.5 Chapter 11: Noise and vibration of the ES (TR010034/APP/6.3) predicts significant adverse noise effects during the operation of the Scheme at a number of sensitive noise receptors. However, as noise from road traffic is exempt from the EPA 1990, operational noise from the Scheme would not represent a nuisance under section 79(1)(g) and (ga) of the EPA 1990.

#### Construction mitigation measures

4.4.6 Appropriate mitigation measures are proposed in Chapter 11: Noise and vibration of the ES (TR010034/APP/6.3). These measures would be secured through the implementation of an EMP (TR010034/APP/7.2) prepared by the appointed Principal Contractor in line with the REAC (TR010034/APP/7.3). Additionally, a further construction noise and vibration assessment will be undertaken during the Detailed Design stage based on a detailed construction programme.

4.4.7 The EMP will oblige the Appointed Principal Contractor 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. The appointed Principal Contractor will have the option to apply for a Section 61 Prior Consent under the Control of Pollution Act 1974 for some or all of construction works, including daytime working and any of the limited activities taking place at night. This should be discussed when engaging with the Local Authorities prior to works commencing.

4.4.8 A Traffic Management Plan (TR010034/APP/7.5) has been submitted with the DCO which sets out how the appointed Principal Contractor will manage the routing of construction traffic and road diversions during the construction phase of the Scheme. The EMP (second iteration) will include a Noise and Vibration Management Plan to control noise and vibration emissions during the construction of the Scheme.

4.4.9 Measures that have been incorporated into the Scheme (as outlined in the REAC, TR010034/APP/7.3) to reduce noise effects during construction, where practicable, include:

- Use of vehicles, plant and equipment that generate lower levels of noise or vibration should be selected over alternatives that produce higher levels of noise or vibration
- All vehicles and plant fitted with effective exhaust silencers which should be maintained in good and efficient working order
- All compressors and generators 'sound reduced' models fitted with properly lined and sealed acoustic covers which should be kept closed whenever the machines are in use

- All ancillary pneumatic percussive tools should be fitted with mufflers or suppressors as recommended by the manufacturers which should be kept in a good state of repair
- Machines in intermittent use shut down when not in use or where this is impracticable, throttled down to a minimum
- The site compound and static machines be sited as far as is practicable from noise sensitive buildings
- Where practicable, plant with directional noise characteristics orientated to minimise noise at nearby properties
- Plant certified to meet the current EU legislation and should be not be louder than the noise levels provided in Annex C and D of BS 5228-1
- Where appropriate, temporary noise barriers or other noise containment measures installed to minimise construction noise levels
- The loading or unloading of vehicles and the movement of equipment or materials undertaken in a manner that minimises noise generation
- Cleaning of concrete mixers to not be undertaken by hammering the drums
- Minimise the need for reversing on site and ensure that broadband reversing alarms are fitted to construction vehicles
- When handling materials, care shown not to drop materials from excessive heights.
- Implementation of a Community Engagement Plan which will ensure that local residents and other affected parties are kept informed of the progress of the works, including when and where the noisiest activities would be taking place and how long they are expected to last

4.4.10 To minimise construction noise level further, the appointed Principal Contractor will undertake the following additional measures:

- When working adjacent to residential areas, quieter engine-powered plant will be sourced. Construction plant with electric engines are new to the UK market - where possible, these will be used to remove the noise from diesel engines. Alternatively, plant using the most up to date diesel engines will be used
- Reduce the level of the working platform used to construction the Mottram Moor Link Road so that the cutting slopes provide additional screening of noise
- Undertaking only one noise-generating operation in sensitive areas at one time.

4.4.11 Where construction noise levels exceed certain threshold noise levels for a time period exceeding 10 days or more in a consecutive 15 day period or any 40 days in a consecutive 6 month period, the Applicant may be required to implement a noise insulation or temporary rehousing as last resort should construction noise become a continuous and significant issue. Thresholds for the implementation of noise insulation and temporary rehousing schemes are detailed in Chapter 11: Noise and vibration of the ES.

### Operational mitigation measures

- 4.4.12 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 design of the cuttings and embankments to maximise screening of noise from the new road, change of alignment of Mottram Moor junction to reduce effects on noise sensitive receptors and low noise road surfacing on sections of the road as stated in the Noise and Vibration chapter of the ES.
- 4.4.13 Permanent environmental noise barriers have been included in the Scheme's design to reduce road traffic noise levels at five locations. The locations, lengths and heights of the environmental noise barriers are described in Chapter 11: Noise and Vibration of the ES and are mapped in the Environmental Master Plan (ES Figure 2.4, TR010034/APP/6.4).
- 4.4.14 Likely significant environmental effects from noise during the operation phase shall be monitored and include:
- Ensuring that embedded and essential mitigation measures for the operational phase are incorporated in the as-built project
  - Where mitigation measures in the Scheme's design are excluded from the as-built project, ensuring that the resultant noise levels are no higher than set out in the Environmental Statement. For example, this could be achieved by using a different noise mitigation strategy compared to the current design
  - Ensuring that the specifications of noise mitigation measures meet design specifications.
- 4.4.15 During the operation phase, routine maintenance of road surfaces is required to avoid noise and vibration impacts from surface discontinuities.

## 5. Conclusion

- 5.1.1 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. It identifies that construction and/or operation of the Scheme has the potential to create statutory nuisance as related to the following:
- (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.*
- 5.1.2 The Scheme construction and operation activities that have the potential to create a nuisance would be controlled through the design of the Scheme and mitigation and control measures as set out in the EMP (Second iteration) (TR010034/APP/7.2) and REAC (TR010034/APP/7.3). Mitigation measures are also set out within Chapter 2: The Scheme, Chapter 5: Air quality, Chapter 7: Landscape and visual effects and Chapter 11: Noise and Vibration of the ES (TR010034/APP/6.3).
- 5.1.3 This statement concludes that, with the mitigation measures secured by the DCO (included those measures embedded within the Scheme design), none of the statutory nuisances identified in section 79 of the EPA are predicted to arise as a result of the Scheme.

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