

# **A585 Windy Harbour to Skippool Improvement Scheme**

**TR010035**

## **5.3 Statement In Respect of Statutory Nuisance**

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Procedure) Regulations 2009

**A585 Windy Harbour to Skippool  
Improvement Scheme**  
Development Consent Order 201[ ]

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**STATEMENT IN RESPECT OF STATUTORY NUISANCE**

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## **1 EXECUTIVE SUMMARY**

- 1.1.1 This Statement identifies the aspects of the Scheme that engage with Section 79(1) of the Environmental Protection Act 1990 and identifies, where necessary, the mitigation measures that are proposed to minimise the risk of statutory nuisance arising as a result of the Scheme.
- 1.1.2 Where any matters may potentially arise, this Statement sets out the proposals for mitigating or limiting them. It is unlikely that the Scheme would give rise to statutory nuisance during construction or operation due to the mitigation measures and regulatory controls imposed by the requirements of the Development Consent Order and any necessary Environmental Permits.

## **2 STATEMENT IN RESPECT OF STATUTORY NUISANCE**

### **2.1 Introduction**

- 2.1.1 This Statement relating to statutory nuisances (hereafter referred to as the Statement) accompanies the application for Development Consent for the Windy Harbour to Skippool Improvement Scheme (hereafter referred to as the Scheme) and has been prepared in accordance with Section 37 of the Planning Act (PA) 2008 and Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 ("APFP Regulations 2009"). Regard has been had to the Department for Communities and Local Government guidance, 'Planning Act 2008: Application Form Guidance'.
- 2.1.2 The Statement addresses whether the Scheme engages one or more of the matters set out in section 79(1) of the Environmental Protection Act (EPA) 1990 (statutory nuisances and inspections therefor) and, if so, how Highways England proposes to limit the relevant effects. It explains that it is not expected that the construction, operation or maintenance of the Scheme would engage section 79(1) of the EPA 1990 by causing statutory nuisances. In forming this conclusion, Highways England has had regard to the construction and operation activities themselves and the mitigation secured by the requirements attached to the Development Consent Order (DCO). The draft DCO (document reference TR010035/APP/3.1) contains a provision at Article 39 that would provide a defence to proceedings for statutory nuisance should they be initiated against Highways England or its successors as undertakers under the terms of the DCO.
- 2.1.3 As the Statement is part of the application for Development Consent it should be read alongside, and is informed by, other application documents - in particular, the Environmental Statement (ES) (document reference TR010035/APP/6.1-6.17).

### 3 SECTION 79 OF THE ENVIRONMENTAL PROTECTION ACT 1990

3.1.1 Section 79(1) sets out those matters which are capable of constituting a statutory nuisance under Part III of EPA 1990. Those matters are:

- 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.*

3.1.2 Taking the Scheme into account, the only matters prescribed in Section 79 that could, potentially, be engaged as a consequence of the authorised 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; and (h) any other matter declared.

3.1.3 It is noted that:

- a) section 79(1)(c) (emission of fumes and gases), by virtue of section 79(4) of the EPA 1990 applies only to private dwellings and is therefore not engaged by the Scheme;*
- b) section 79(1) (ga) (noise emitted in a street), by virtue of section 79(6(A)) of the EPA 1990 does not apply to traffic, but would apply to construction vehicles and plant, for example.*

3.1.4 For the purposes of EPA 1990, noise includes vibration.

3.1.5 The Scheme would require various separate Environmental Permits (EPs). The EPs would also contain conditions that would ensure that the Scheme operates within the relevant limits as set out in those conditions.

3.1.6 Known EPs are outlined in the Consents and Agreements Position Statement (document reference TR010035/APP/5.5).

### 3.2 **Dust Arising on Business Premises**

- 3.2.1 Chapter 6: Air Quality (document reference TR010035/APP/6.6) of the ES details the residual air quality impacts as a result of the construction and operation of the Scheme and concludes that they are not significant.
- 3.2.2 This assessment includes the impact of dust nuisance which could potentially be caused by the Scheme, which is assessed using the guidance set out in the Design Manual for Roads and Bridges (DMRB), Volume 11, Section 3, Part 1. In accordance with DMRB, the construction phase dust assessment study area constituted a 200m buffer around any construction works.
- 3.2.3 The mitigation required to control emissions of dust is well known, and mitigation measures would be used to limit the impact of dust emissions in all areas of the Scheme where dust producing activities take place. The mitigation in the ES is approached on both a general, and a site-specific level. Mitigation is secured by the Construction Environmental Management Plan (CEMP) prepared in accordance with a requirement contained in the DCO. An Outline CEMP (document reference TR010035/APP/7.2) and Record of Environmental Actions and Commitments (REAC) (document reference TR010035/APP/7.3) have been submitted as part of the application for Development Consent and include measures to mitigate against dust.
- 3.2.4 With mitigation in place, dust emissions would be controlled and would not give rise to any statutory nuisance under the EPA 1990.

### 3.3 **Artificial Lighting**

- 3.3.1 Chapter 9: Landscape (document reference TR010035/APP/6.9) of the ES addresses residual impacts from artificial lighting as a result of operation of the Scheme, which are considered to be not significant. The lighting proposals for the operational Scheme are such that lighting would be limited to junctions only and designed to minimise light spill. On that basis, no further assessment has been carried out, nor mitigation been identified.
- 3.3.2 Construction lighting would be designed to minimise light spill through the use of directional lighting and baffles. The majority of construction work would also be undertaken during daylight hours. However, there are construction activities which would require night time working, for example, tie-in works. Night time working would be kept to a minimum.
- 3.3.3 An Outline CEMP (document reference TR010035/APP/7.2) and REAC (document reference TR010035/APP/7.3) have been submitted as part of the application for Development Consent and include measures to mitigate against artificial lighting during construction.
- 3.3.4 On that basis, the impacts of lighting during both construction and operation would not generate a nuisance, nor would it be prejudicial to health under section 79(1)(fb) of the EPA 1990.

### 3.4 **Noise**

- 3.4.1 Chapter 11: Noise and Vibration (document reference TR010035/APP/6.11) of the ES concludes that the temporary and permanent noise impacts as a result of the construction of the Scheme are assessed as not significant in terms of noise policy.



3.4.2 The mitigation is set out in Chapter 11: Noise and Vibration (document reference TR010035/APP/6.11) and secured by the Outline CEMP (document reference TR010035/APP7.2) and REAC (document reference TR010035/APP/7.3). With mitigation measures in place, noise impacts not expected to generate a nuisance, nor would they be prejudicial to health under section 79(1)(g) or (ga) of the EPA 1990

### 3.5 **Other Statutory Nuisance**

3.5.1 Chapters 12: Road Drainage and the Water Environment (document reference TR010035/APP/6.12) of the ES addresses the temporary impacts to road drainage and the water environment as a result of the construction of the Scheme. The effects are assessed as being not significant. The proposed mitigation measures are set out within Chapters 12: Road Drainage and the Water Environment (document reference TR010035/APP/6.12) and secured in the Outline CEMP (document reference TR010035/APP7.2) and REAC (document reference TR010035/APP/7.3).

3.5.2 With mitigation measures in place, the Scheme would not give rise to any statutory nuisance under section 79(1)(h) of the 1990 Act in respect of section 259 of the Public Health Act 1936, which relates to (a) "any pond, pool, ditch, gutter or watercourse which is so foul or in such a state as to be prejudicial to health" and/or (b) "any part of a watercourse...which is so choked or silted up as to obstruct or impede the proper flow or water".

### 3.6 **Mitigation**

3.6.1 The mitigation to be put in place to ensure that a nuisance does not arise in the ordinary course of events is:

a) the CEMP. An Outline CEMP (document reference TR010035/APP/7.2) and REAC (document reference TR010035/APP/7.3) are provided as part of the application for Development Consent. Under a requirement contained in the DCO, prior to commencement of construction a final CEMP (which incorporated the REAC) must be submitted to and approved by the Secretary of State, following consultation with the relevant planning authority, and construction carried out in accordance with that CEMP; and

b) the further requirements that are contained in Schedule 2 to the DCO.

## **4 CONCLUSIONS**

- 4.1.1 This Statement has considered the potential for the Scheme to cause a statutory nuisance under section 79(1) of the EPA 1990.
- 4.1.2 Impacts from construction and operation noise, vibration, lighting, dust, and the impact on watercourses could, if unmitigated, potentially cause a nuisance. With the implementation of the proposed mitigation, secured by requirements contained in the DCO, it is considered unlikely that the Scheme would engage any of the matters set out in section 79(1) of the EPA 1990.

## 5 ABBREVIATIONS

Abbreviation	Term
APFP	Applications: Prescribed Forms and Procedure
CEMP	Construction Environmental Management Plan
DCO	Development Consent Order
DMRB	Design Manual for Roads and Bridges
EP	Environmental Permit
EPA	Environmental Protection Act
ES	Environmental Statement
PA	Planning Act
REAC	Record of Environmental Actions and Commitments