

# A303 Sparkford to Ilchester Dualling Scheme TR010036

## 6.5 Statement of Statutory Nuisance

APFP Regulation 5(2)(a)  
Planning Act 2008

Infrastructure Planning (Applications: Prescribed  
Forms and Procedure) Regulations 2009  
July 2018



Infrastructure Planning

Planning Act 2008

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

**A303 Sparkford to Ilchester Dualling  
Scheme**

Development Consent Order 201[X]

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**Statement of Statutory Nuisance**

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<b>Planning Inspectorate Scheme Reference:</b>	TR010036
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# 1 Introduction

## 1.1 Overview of the scheme

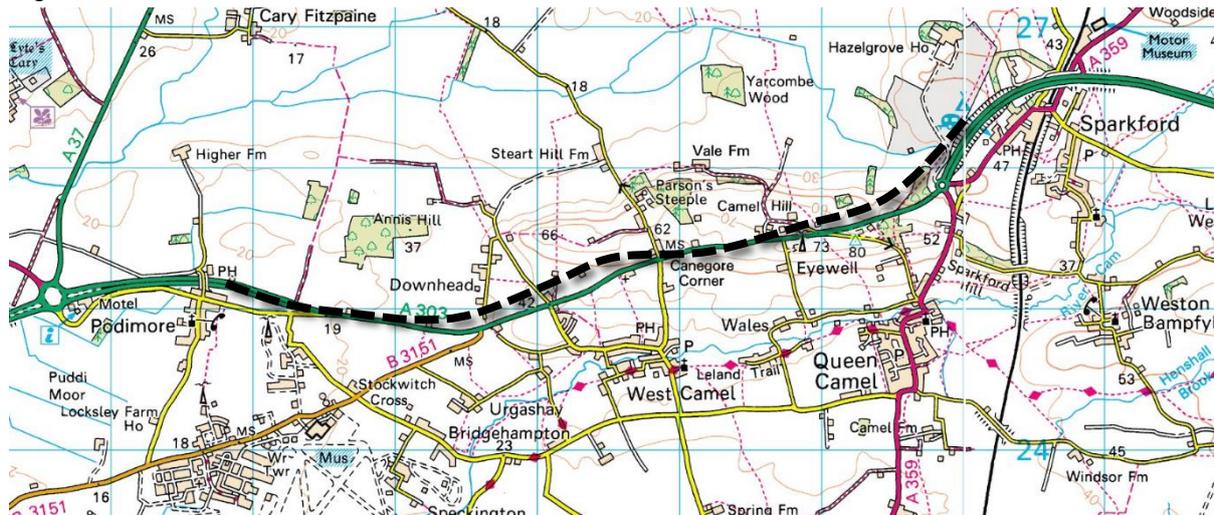
### Existing corridor

- 1.1.1 The existing A303 forms part of the Strategic Road Network (SRN) and a strategic link between the south west and the rest of the south, south-east and London. The A303 corridor comprises multiple road standards, including dual carriageway, single-carriageway, and single-carriageway sections with overtaking lanes. Speed limits also vary between 40mph and 70mph, depending on the character of the road and its surroundings.

### Existing road

- 1.1.2 The section of the existing A303 that is being upgraded as part of this scheme commences at the eastern limits of the existing dual carriageway of Podimore Bypass. Travelling east, the road reaches the junction with the B3151 before bearing north-east and rising upwards through Canegore Corner to reach the crest of Camel Hill at Eyewell. This section of the road is characterised by a single lane road, with double white lines negating overtaking and subject to a 50mph speed limit. There are several priority junctions along the route giving access to the settlements of Queen Camel and West Camel to the south and Downhead to the north, as well as several farm accesses and parking laybys.
- 1.1.3 From the crest of Camel Hill, the road descends to meet the roundabout at the western limit of the dual carriageway of Sparkford Bypass (Hazlegrove Roundabout). This section comprises 2 lanes in the westbound direction, 1 lane in the eastbound direction and is also subject to a 50mph speed limit. Hazlegrove Roundabout forms a junction between the A303 and the A359 which runs south through Queen Camel and north-east through Sparkford. The roundabout also provides access to a service station, and to a school at Hazlegrove House.
- 1.1.4 The section of the existing A303 that is being upgraded is 5.6 kilometres long.
- 1.1.5 The line of the proposed route, illustrating the extents of the scheme are shown on Figure 1.1. Figure 1.1 of Volume 6.2 (**document reference TR010036/APP/6.2**) of the Environmental Statement (ES) shows the proposed red line boundary for the scheme.

Figure 1.1: Scheme extents



Source: Mott MacDonald Sweco Joint Venture

## Scheme proposals

1.1.6 The scheme is to provide a continuous dual carriageway linking the Podimore Bypass and the Sparkford Bypass. The scheme would involve the removal of at-grade junctions and direct accesses. The proposed Hazlegrove Junction would be constructed to grade-separated standards and Downhead Junction and Camel Cross Junction would be constructed to compact grade-separated standards, as illustrated on Figures 2.6, Figure 2.7 and Figure 2.8 of Volume 6.2 (**document reference TR010036/APP/6.2**) of the ES.

1.1.7 The speed limit for the highway once open would be 70 miles per hour and the area of the proposed scheme within the red line boundary is 117 hectares.

1.1.8 A detailed description of the scheme is provided within Chapter 2 The Scheme (**document reference TR010036/APP/6.1**).

## 1.2 Scope of this statement

1.2.1 This statement comprises 1 of the Development Consent Order (DCO) application documents. This statement is included in the application to comply with the requirements of Regulation 5(2)(f) of the *Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009*, section 5 (2)(f) of which requires:

1.2.2 “...a statement 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”.

1.2.3 This statement identifies the matters set out in Section 79 of the *Environmental Protection Act 1990* in respect to statutory nuisances and considers whether the proposed scheme would involve 1 or more of those matters. Where the scheme

may provoke any of these matters, this statement sets out its proposals for mitigating or limiting them.

- 1.2.4 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 ES.

## 2 Section 79 – Environmental Protection Act 1990

### 2.1 Policy context

- 2.1.1 Paragraphs 4.57 to 4.59 of the *National Policy Statement for National Networks* (NPSNN)<sup>1</sup> states 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 in 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 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 described 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 Matters which constitute a statutory nuisance

- 2.2.1 The following text is an extract from Section 79 of the *Environmental Protection Act 1990* which sets 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 1990 Act] that is to say –*
- (a) any premises in such a state as to be prejudicial to health or a nuisance.*
  - (b) smoke emitting from premises so as to be prejudicial to health or a nuisance.*

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<sup>1</sup> Department for Transport (2014) *National Policy Statement for National Networks* [online] available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/387223/npsnn-web.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/387223/npsnn-web.pdf) (last accessed June 2018).

(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.

(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 or Sections 80 and 80A below and, where a complaint of 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 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 or (ga) noise emitted from or caused by a vehicle, machinery or equipment in a street.
- 2.2.4 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 Act) and is therefore not relevant to the scheme.
- 2.2.5 It is also noted that statutory nuisance under category (ga) does not apply to traffic (as noted in Section 79 (6(A)) of the Act), but would apply to noise generated by construction vehicles, plant and machinery.

## 2.3 Dust arising at sensitive receptors

- 2.3.1 In the ES, Chapter 5 Air Quality (**document reference TR010036/APP/6.1**) details that a qualitative assessment of the impacts of dust nuisance arising during construction has been undertaken, using guidance set out in paragraph 3.45 of DMRB Volume 11 Section 3, Part 1 – *Air Quality* (HA207/07)<sup>2</sup>. This approach and the findings from the assessment have been discussed and

<sup>2</sup> Highways England (2007) Design Manual for Roads and Bridges Volume 11 Section 3 Part 1 HA 207/07 *Air Quality* [online] available at: <http://www.standardsforhighways.co.uk/ha/standards/dmrb/vol11/section3/ha20707.pdf> (last accessed April 2018).

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agreed with the Environmental Health Officers at South Somerset District Council.

- 2.3.2 During the construction phase of the scheme there would be potentially dust generating activities, such as earth moving and demolition. The distances from the emission source at which significant construction dust effects are likely to occur are dependent on the extent and nature of mitigation measures, the prevailing wind conditions, rainfall and the presence of screening. However, research indicates that effects from construction activities that generate dust are generally limited to within 150 - 200 metres of the construction site boundary
- 2.3.3 The construction dust assessment study area therefore considered sensitive receptors within a 200 metre buffer around any construction works and compound areas (see ES Chapter 5 Air Quality, **document reference TR010036/APP/6.1**). A total of 171 high sensitivity (residential) receptors are located within this 200 metre buffer which are distributed across the scheme extent, with higher densities of receptors near Podimore, Downhead, Plowage Lane and Sparkford (see Figure 5.1, in **document reference TR010036/APP/6.2**).
- 2.3.4 Effective management to control emissions of dust is a well defined practice for construction and demolition. The mitigation measures to limit the impact would be applied at all sites where dust producing activities would be taking place. The methods of dust suppression would follow current construction and demolition site best practice. These construction mitigation measures are detailed within Chapter 5, Air Quality, of the Environmental Statement (**document reference TR010036/APP/6.1**). These measures are secured in the **Outline Environmental Management Plan (OEMP)** (**document reference TR010036/APP/6.7**) as per requirement 3(1) of the DCO, to be developed into a full Construction Environmental Management Plan (CEMP) by the appointed contractor.
- 2.3.5 These mitigation measures would minimise construction dust effects so that there is unlikely to be a significant dust nuisance from construction activities associated with the scheme, nor would any nuisance be prejudicial to health under Section 79(1)(d) of the *Environmental Protection Act 1990*.
- 2.3.6 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 ES Chapter 5 Air Quality, **document reference TR010036/APP/6.1**, concentrations of PM<sub>10</sub> (which is a constituent of dust) were well below the objectives and any increases at sensitive receptors were imperceptible. Therefore, as no significant PM<sub>10</sub> effects are expected as a result of the scheme, no dust statutory nuisance is expected.
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## 2.4 Artificial light emitted from premises

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

2.4.2 For the artificial light to count as a statutory nuisance it must do 1 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

2.4.3 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

2.4.4 As street lights are not covered by the laws on statutory nuisance, it is not necessary to address these within this document, however it is necessary to address lighting equipment used to illuminate the construction tasks.

2.4.5 There are construction activities that would require night time working. These include the installation / removal of a temporary bridge, temporary traffic management, and works associated with the eastern tie-in, western tie-in, and at pinch points, as detailed in Chapter 2 The Scheme, (**document reference TR010036/APP/6.1**). Temporary site lighting would be provided to enable the safety and security of the construction sites.

2.4.6 Temporary site lighting would be provided to enable the safety and security of the construction site. The lighting would be at the minimum lumen output necessary for effective task lighting and use low energy consumption fittings. Where possible, lighting would be activated by motion sensors to prevent unnecessary usage. It would comply with the Institution of Lighting

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Professionals *Guidance Notes for the Reduction of Obtrusive Light* GN01<sup>3</sup> and the relevant provisions of BS 5489 Part 1, *Code of practice for the design of road lighting, Lighting of roads and public amenity areas*<sup>4</sup>, where applicable.

- 2.4.7 Construction lighting would also be designed, positioned and directed so as not to unnecessarily intrude on adjacent buildings, other land uses to prevent unnecessary disturbance, interference with local residents or passing motorists.
- 2.4.8 With the application of mitigation measures included in the **OEMP (document reference TR010036/APP/6.7)**, it is considered that no statutory nuisance would arise during construction as a result of temporary lighting.

## 2.5 Noise emitted from premises or caused by a vehicle, machinery or equipment

- 2.5.1 In the ES, Chapter 11 Noise and Vibration (**document reference TR010036/APP/6.1**) details that noise from the construction of the scheme has the potential to directly affect sensitive receptors along the route for the duration of the works. Effects would be restricted to areas where the existing baseline noise levels currently experienced by receptors are exceeded by construction noise.
- 2.5.2 The local authority has powers for controlling noise and vibration from construction sites through the *Control of Pollution Act 1974* and the *Environmental Protection Act 1990*. South Somerset District Council can exercise these powers prior to or during the works.
- 2.5.3 Section 60 of the *Control of Pollution Act 1974* 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.
- 2.5.4 Section 61 of the *Control of Pollution Act 1974* allows for the main contractors 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 *Control of Pollution Act*

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<sup>3</sup> Institute of Lighting Professionals (2011) *Guidance notes for the reduction of obtrusive lights* [online] available at: <https://www.theilp.org.uk/documents/obtrusive-light/> (last accessed May 2018).

<sup>4</sup> British Standards Institution (2013) BS 5489, Code of practice for the design of road lighting. *Lighting of roads and public amenity areas* [online] available at: <https://shop.bsigroup.com/ProductDetail/?pid=00000000030217237> (last accessed May 2018).

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1974 or Section 80 of the *Environmental Protection Act 1990*, so long as the consent remains in force and the contractor complies with its terms.

- 2.5.1 An Environmental Health Officer (EHO) from South Somerset District Council was contacted on 22 March 2018 in order to agree on a methodology as set out in BS5228-1 for noise and BS5228-2 for vibration and the proposed LOAEL and SOAEL values to be used for the construction noise and vibration assessment. The EHO confirmed that they did not have any comments or amendment suggestions to the proposed methodology.
- 2.5.2 For the proposed scheme, requirements outlined in the OEMP (**document reference TR010036/APP/6.7**) (to be developed into a full CEMP by the appointed Contractor), which includes recommendations of BS 5228 Code of practice for noise and vibration control on construction and open sites parts 1 and 2<sup>5</sup>, would be implemented, including the following:
- The main contractors would assess, consider and implement Best Practicable Means (BPM) at all times in order to control noise and vibration from the works.
  - The main contractors would need to obtain consents from South Somerset District Council under Section 61 of the *Control of Pollution Act 1974* for the proposed construction works, excluding non-intrusive surveys.
- 2.5.3 Adherence with the CEMP would ensure that statutory nuisance or noise impacts prejudicial to health under Section 79(1)(g) and (ga) of the *Environmental Protection Act 1990* would be avoided.

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<sup>5</sup> British Standards Institution (2009) of BS 5228 *Code of practice for noise and vibration control on construction and open sites parts 1 and 2* [online] available at: <https://shop.bsigroup.com/ProductDetail/?pid=00000000030258086> (last accessed May 2018).

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### 3 Conclusions

- 3.1.1 This statement has considered the potential for the proposed A303 Sparkford to Ilchester Dualling scheme to cause a statutory nuisance under Section 79(1) of the *Environmental Protection Act 1990*.
- 3.1.2 The construction activities that have the potential to create a nuisance would be controlled through mitigation as prescribed in the Construction Environmental Management Plan (CEMP). Mitigation measures are currently detailed within Chapter 5 Air Quality, Chapter 7 Landscape, and Chapter 11 Noise and Vibration, (**document reference TR010036/APP/6.1**) and secured through requirement 3(1) of the DCO within the **Outline Environmental Management Plan (OEMP) (document reference TR010036/APP/6.7)**.
- 3.1.3 The potential nuisance created through operational lighting would be reduced prior to construction of the scheme, minimising the impact of road lighting through careful placement where such a system was deemed essential. The use of modern, controllable light sources with good cut-off properties, coupled with dynamic systems of operation, would reduce the effect of lighting on the surrounding environment.
- 3.1.4 With mitigation in place, none of the statutory nuisances identified in Section 79(1) of the *Environmental Protection Act 1990* are predicted to arise.