

A47 North Tuddenham to Easton Dualling

Scheme Number: TR010038

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6.7 Statement Relating to Statutory Nuisance

APFP Regulation 5(2)(f)

Planning Act 2008

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

March 2021

Infrastructure Planning

Planning Act 2008

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

The A47 North Tuddenham to Easton
Development Consent Order 202[x]

STATEMENT RELATING TO STATUTORY NUISANCE

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1 INTRODUCTION

- 1.1.1 This Statement relating to Statutory Nuisance (this "Statement") relates to an application made by Highways England (the "Applicant") to the Secretary of State for Transport via the Planning Inspectorate (the "Inspectorate") under section 37 of the Planning Act 2008 (PA2008) for a Development Consent Order (DCO). If made, the DCO would grant consent for the A47 North Tuddenham to Easton dualling (the "Scheme"). A description of the Scheme can be found in Chapter 2, The Proposed Scheme, of the Environmental Statement (ES) (**TR010038/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 & Local Government) guidance, 'Planning Act 2008: Application Form Guidance' (June 2013) and in compliance with Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, which requires:
- "...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."*
- 1.1.3 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 (**TR010038/APP/6.1**).
- 1.1.4 This Statement concludes that, with mitigation measures in place, none of the statutory nuisances identified under Section 79(1) of the Environmental Protection 1990 Act ("EPA") are predicted to arise on this Scheme.

2 SECTION 79(1), ENVIRONMENTAL PROTECTION ACT 1990

2.1 Policy Context

National Policy Statement for National Networks

- 2.1.1 Paragraphs 4.57 to 4.59 of the National Policy Statement for National Networks (NPS NN)¹ states 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 and how they may be mitigated or limited. This is so that any additional requirements to avoid statutory nuisance are included in the subsequent order granting development consent.
- 2.1.2 Paragraph 5.81 of the NPS NN states 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 NPS NN 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 of the NPS NN 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 ES. 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 Environmental Protection Act 1990 - Section 79(1)

- 2.2.1 The following text is an extract from Section 79(1) of the EPA which sets out 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 emitting 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

¹ 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/npsn-n-web.pdf Access August 2018.

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."

2.2.2 Section 79 of the EPA contains other exceptions and definitions in respect of statutory nuisance. The particular exceptions of relevance to this 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) of the EPA, 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 purpose 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; and
- "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 that could be potentially engaged as a consequence of the Scheme either at construction stage or during operation are:

(d) dust arising on business *and residential 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.

3.1.2 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 EPA) and is therefore not relevant to the Scheme.

3.1.3 It is also noted that statutory nuisance under category (ga) does not apply to traffic (as noted in Section 79(6A(a)) of the EPA), but would apply to noise generated by construction vehicles, plant and machinery.

Dust arising on business and residential premises

3.1.4 During the construction phase of the Scheme dust generating activities would be carried out, such as earth moving and demolition. Chapter 5 (Air Quality) of the ES (**TR010038/APP/6.1**) sets out the qualitative assessment of impacts from dust as a result of construction of the Scheme.

3.1.5 As part of the assessment, the potential dust impacts on receptors of varying degrees of sensitivity (eg. residential and/or commercial receptors) during the construction phase has been assessed within 200 metres² of any construction works and compound areas.

3.1.6 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 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 (**TR010038/APP/6.1**) and are also action AQ1 in Table 3.1 of the Environmental Management Plan (EMP) (**TR010038/APP/7.4**) to be implemented during construction.

3.1.7 No significant dust nuisance is expected as a result of the operation of the Scheme as no significant effects on sensitive receptors have been identified, in accordance with the Design Manual for Roads and Bridges guidance LA 105 Air Quality. Therefore, no mitigation measures are required. In the main air quality assessment presented in Chapter 5 Air Quality of the ES (**TR010038/APP/6.1**), with no exceedances of the PM₁₀ annual mean air quality objectives being reported in the baseline scenario, PM₁₀ (which is a constituent of dust) was not modelled in the Do-Minimum and Do-Something scenarios, in line with Design and Bridges Manual

² As defined in Chapters 5 Air Quality of the Environmental Statement (**TR010038/APP/6.1**)

guidance LA 105 Air Quality. Therefore, as no significant PM₁₀ effects are expected as a result of the operation of the Scheme, no dust statutory nuisance is expected when the Scheme is operational.

- 3.1.8 With the measures described in Chapter 5 (Air Quality) of the ES (TR010038/APP/6.1) and EMP (TR010038/APP/7.4) dust 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.

Artificial light from premises

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

- 3.1.10 For artificial light to count as a 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

- 3.1.11 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

- 3.1.12 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 used to illuminate the construction tasks.

- 3.1.13 Construction operations would largely be undertaken during daylight hours between 07:00 and 19:00 Monday to Saturday and during those hours there would be no requirement for artificial lighting of construction areas. However, the potential for an element of construction lighting to allow for working during times of darkness, particularly during autumn to winter (October to March) when artificial lighting may be required within compounds and around the locations of overbridges and underpasses during the working hours of 07:00 and 19:00.

- 3.1.14 Construction works outside of normal construction hours of 07:00 to 19:00 Monday to Saturdays shall be minimised as far as practicable. Where works outside of these

hours are unavoidable, the Contractor will discuss with the relevant local planning authority (Breckland Council, Broadland District Council or South Norfolk Council) appropriate methods of mitigation that account for the location of works, hours of work and expected duration.

- 3.1.15 Lighting would be managed in compliance with action G2 in Table 3.1 of the EMP (**TR010038/APP/7.4**), in order to reduce light disturbance for sensitive receptors, for example by directing lights towards the working areas and avoiding light-spill. Lighting will be at the minimum luminosity necessary and use low energy consumption fittings. It will comply with the Institute of Lighting Professionals Guidance Notes for the Reduction of Obtrusive Light GN016 and the provisions of BS 5489 Code of practice for the design of road lighting, where applicable.
- 3.1.16 Some isolated residential properties may experience glimpsed views of night-time lighting of compounds, especially those in close proximity to these locations. However, effects due to night-time lighting are expected to be limited.
- 3.1.17 With the application of mitigation measures set out in Chapter 7 (Landscape and Visual) of the ES (**TR010038/APP/6.1**) and the EMP (**TR010038/APP/7.4**) it is considered that the residual effect of artificial lighting during construction would not give rise to statutory nuisance, nor would it be prejudicial to health under section 79(1)(fb) of the Act.

Noise emitted from premises or caused by a vehicle, machinery or equipment in a street

- 3.1.18 Sections 11.10 and 11.13 of Chapter 11 (Noise and Vibration) in the ES (**TR010038/APP/6.1**) set out that noise during construction, with the application of best practice construction methods, monitoring and temporary noise barriers, potential significant noise, vibration or construction traffic noise effects are unlikely at the vast majority of receptors. A significant residual temporary construction noise effect would occur at Acorn Barn due to construction noise from the works at the adjacent drainage basin works if these works exceed 10 days in any 15 day period, or 40 days in any 6 month period. Efforts would be made to programme works to avoid this threshold, while action NV1 in the Table 3.1 of the EMP (**TR010038/APP/7.4**) identifies measures to minimise adverse noise impacts during the construction activities. Furthermore, night-time or weekend works outside the normal working hours (07:00 to 19:00 Monday to Saturday) will be required at some stages, such as the National Grid high pressure gas pipeline diversion, road tie-ins and traffic management. A large number of receptors could experience significant effects due to noise from these night-time or weekend works. The Principal Contractor shall carry out detailed construction noise assessments once further details of the construction methods and durations are defined.
- 3.1.19 Local Authorities have powers for controlling noise and vibration from construction sites through the Control of Pollution Act 1974 (the "1974 Act") and the EPA. Norfolk County Council, Breckland Council, Broadland District Council and South Norfolk Council can exercise these powers prior to or during the works.
- 3.1.20 Section 60 of the 1974 Act relates to 'Control of Noise on Construction Sites' and enables local authorities to serve notice of its requirements to control site noise and vibration on the person(s) deemed to be responsible for carrying out the works. The notice allows local authorities to specify methods, plant or machinery to be 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.

- 3.1.21 Section 61 of the 1974 Act allows for the main contractor to obtain consent from the local authorities regarding the noise and vibration requirements of the works prior to them commencing. It's in the interests of the contractor to apply for consent because once it is granted local authorities cannot take action under Section 60 of the 1974 Act or Section 80 of the EPA so long as the consent remains in force and the contractor complies with its terms.
- 3.1.22 Section 79(6A)(a) of the Act sets out that traffic noise is excluded from the consideration of nuisance and therefore there is no case to address for the operation of the Scheme.
- 3.1.23 The Environmental Health Officer or Environmental Protection Officer for the relevant local authorities has been contacted to agree the methodology on noise and vibration in line with Design Manual for Roads and Bridges guidance LA 111 Noise and vibration. Based on comments received from the Environmental Health Officer at Broadland District Council, Honingham Parish Council were consulted regarding the survey. Due to the consultation with the Parish Council the monitoring locations were amended and incorporated into the baseline noise survey undertaken in September 2020.
- 3.1.24 Best practice measures outlined in action NV1 in Table 3.1 of the EMP (**TR010038/APP.7.4**) would be implemented during construction and include the following:
- Select quieter plant where possible.
 - Ensure equipment is maintained, in good working order, and is used in accordance with the manufacturer's instructions.
 - Use equipment that is fitted with silencers or mufflers.
 - Set time restrictions on certain noisy and vibratory activities such as earthworks and surfacing.
 - Manage deliveries as far as practical to prevent queuing of site traffic, as far as practicable.
 - Do not leave plant running unnecessarily.
 - Plant with highly directional sound emissions shall be angled so that the direction of highest sound emissions does not face towards receptors where possible.
 - Materials to be lowered instead of dropped from height.
 - Alternative reversing warning systems, such as white noise alarms, shall be employed.
 - The Principal Contractor shall promote as far as practical and advise members of the construction team during toolbox talk briefings on quieter working methods.
 - Any fixed plant such as generators shall be positioned at least 20m or another suitable distance, if not practical, from nearest receptor and shall have temporary/mobile noise screens erected around them where possible and necessary.

- 3.1.25 Adherence to the EMP (**TR010038/APP/7.4**) would ensure that statutory nuisance or noise impacts prejudicial to health under Section 79(1)(g) and (ga) of the EPA would be avoided during construction of the Scheme.

4 CONCLUSION

- 4.1.1 This Statement has considered the potential for the Scheme to cause a statutory nuisance under Section 79(1) of the EPA.
- 4.1.2 The construction and operational activities that have the potential to create a nuisance would be controlled through the mitigation set out in the EMP (**TR010038/APP/7.4**). Mitigation measures are also set out within Chapter 5 'Air Quality', Chapter 7 'Landscape and Visual' and Chapter 11 'Noise and Vibration' (**TR010038/APP/6.1**) of the ES. The EMP is secured through requirement 4 of the draft DCO (**TR010038/APP/3.1**).
- 4.1.3 With mitigation in place, none of the statutory nuisances identified in section 79(1) of the Act are predicted to arise during construction or operation of the Scheme.