

A47 Wansford to Sutton Dualling

Scheme Number: TR010039

Volume 6

6.7 Statement Relating to Statutory Nuisance

APFP Regulation 5(2)(a)

Planning Act 2008

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

July 2021

Infrastructure Planning

Planning Act 2008

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

A47 Wansford to Sutton
Development Consent Order 202[x]

6.7 STATEMENT RELATING TO STATUTORY NUISANCE

Regulation Number:	Regulation 5(2)(a)
Planning Inspectorate Scheme Reference	TR010039
Application Document Reference	6.7
BIM Document Reference	PCF STAGE 3 HE551494-GTY-LSI-000-RP-TR-00001 P01.01
Author:	A47 Wansford to Sutton Dualling Project Team, Highways England

Version	Date	Status of Version
Rev 0	July / 2021	Application Issue

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1 INTRODUCTION

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 (PA2008) for a Development Consent Order (DCO). If made, the DCO would grant consent for the A47 Wansford to Sutton Scheme (the "Scheme"). A description of the Scheme can be found in Chapter 2, The Proposed Scheme of the Environmental Statement (ES) (**TR010039/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 (**TR010039/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 Networks National Policy Statement

- 2.1.1 Paragraphs 4.57 to 4.59 of the National Networks National Policy Statement (NPSNN)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 NPSNN 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 NPSNN 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 NPSNN 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 Act 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 premises and being prejudicial to health or a nuisance;*

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/npsnn-web.pdf Access August 2018.

(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 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), 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 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 Premises

3.1.4 Section 5.6 of Chapter 5 (Air Quality) of the ES (TR010039/APP/6.1) notes that the dust risk potential for the Scheme was classified as large due to the nature of the works involving major bypass and motorway junction improvements (as defined in DMRB LA 105).

3.1.5 The construction dust assessment (Section 5.9 of ES Chapter 5 Air Quality) concluded there are no significant effects with the Proposed Scheme for human and ecological receptors.

3.1.6 The assessment has been used to inform the best practice mitigation measures in the Environmental Management Plan (EMP (TR010039/APP/7.5)). The Record of Environmental Actions and Commitments, within the EMP includes Commitments N1, the production of a Construction Noise and Dust Management Plan. The EMP is secured by Requirement 4 to the Draft DCO (TR010039/APP/3.1).

3.1.7 With the measures set out in the EMP (TR010040/APP/7.5) in place, the impact of construction dust is considered highly unlikely to trigger a significant air quality effect. Therefore, in accordance with LA 105, no significant effects on sensitive receptors have been identified.

3.1.8 Accordingly, construction works would not emit dust that would be prejudicial to health or and therefore would not give rise any statutory nuisance under the Act.

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; and
 - 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; and
 - 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 It is expected that the majority of construction works would normally take place between 07.00 – 19.00 Monday to Friday and 07.00 – 19.00 on Saturday. There may be exceptions to these hours for oversized deliveries, and junction tie-ins. There are likely to be extended working hours in the summer months to take advantage of the daylight or weather. Any works undertaken out-with the hours stated above or works required during hours of darkness will be agreed with the local planning authority.
- 3.1.14 Lighting would be managed in compliance with the EMP (TR010039/APP/7.5), in order to reduce light disturbance for sensitive receptors. 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.
- 3.1.15 Due to the limited duration of any night-time works and the application of mitigation measures, it was considered that no statutory nuisance would arise during construction.
- 3.1.16 Accordingly, the impacts of lighting during construction would not generate a nuisance and 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

- 3.1.17 Section 11.8 of ES Chapter 11, Noise and Vibration (**TR010039/APP/6.1**) identifies potential noise impacts during construction.
- 3.1.18 While the ES does identify some potentially large changes in noise for some receptors (e.g. temporary construction noise disturbance at properties close to the Scheme) in reality, this is unlikely to happen in the same area, affecting the same receptors for a prolonged period of time.
- 3.1.19 Section 11.9 of ES Chapter 11 Noise and Vibration (**TR010039/APP/6.1**) outlines mitigation measures for construction noise and vibration. The majority of these measures are considered good practice measures which local authorities would be likely to require as part of a 'best practice approach'.
- 3.1.20 The best practice mitigation measures are set out in the EMP (**TR010039/APP/7.5**). The Record of Environmental Actions and Commitments, within the EMP, includes Commitments NV1 – NV3, NV1 being the production of a Construction Noise and Dust Management Plan. The EMP is secured by Requirement 4 to the Draft DCO (**TR010039/APP/3.1**).
- 3.1.21 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. Peterborough City Council can exercise these powers prior to or during the works.
- 3.1.22 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.
- 3.1.23 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.
- 3.1.24 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.
- 3.1.25 With the implementation of 'best practice approach' mitigation measures, and the application of the measures set out in the EMP (**TR010039/APP/7.5**), any construction noise impact would be minimised. Despite this, it is possible that significant construction noise levels would likely occur for short durations.
- 3.1.26 However, with the provision of mitigation measures, and through agreement with Peterborough City Council on matters including construction noise levels and hours of work, it is considered that no statutory nuisance associated with the Scheme would arise during construction.

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 activities that have the potential to create a nuisance would be controlled through the implementation of the EMP (**TR010039/APP/7.5**), as noted in the ES.
- 4.1.3 The construction and operational activities that have the potential to create a nuisance would be controlled through the mitigation set out in the EMP. Mitigation measures are also set out within ES Chapter 5 Air Quality and ES Chapter 11 Noise and Vibration (**TR010039/APP/6.1**) and the 'Record of Environmental Actions and Commitments' set out in the EMP (**TR010039/APP/7.5**). The EMP is secured through Requirement 4 to the Draft DCO (**TR010039/APP/3.1**).
- 4.1.4 With mitigation in place, plus engagement with Peterborough City Council and people living and working in the vicinity of the construction site, any construction noise impact would be minimised and none of the statutory nuisances identified in section 79(1) of the Act are predicted to arise during construction or operation of the Scheme.