

# **M3 Junction 9 Improvement**

**Scheme Number: TR010055**

## **7.6 Statement Relating to Statutory Nuisance**

**APFP Regulation 5(2)(f)**

**Planning Act 2008**

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

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## Infrastructure Planning

Planning Act 2008

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

M3 Junction 9 Improvement  
Development Consent Order 202[x]

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## **7.6 STATEMENT RELATING TO STATUTORY NUISANCE**

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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 National Highways (the Applicant) to the Planning Inspectorate under section 37 of the Planning Act 2008 for a Development Consent Order (DCO). If made, the DCO would grant consent for the M3 Junction 9 Improvement (the Scheme). A detailed description of the Scheme can be found in **Chapter 2 (The Scheme and its Surroundings)** of the **Environmental Statement (ES) (Document Reference 6.1)**.
- 1.1.2 This Statement comprises part of the suite of application documents and is included in the application in compliance with Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the APFP Regulations) which requires:
- “...a statement whether the proposal engages one or more of the matters set out in section 79(1) (statutory nuisances and inspections thereof) 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 is informed by and should be read alongside the other application documents (particularly the **ES (Document Reference 6.1)**).
- 1.1.4 This Statement concludes that, with mitigation measures in place, none of the statutory nuisances identified in Section 79(1) of the Environmental Protection Act 1990 (EPA) are predicted to arise on this Scheme.

## 2 Background

### 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) 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 notes 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 applications, 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 describe these in the ES. Consultation with the relevant local planning authority and where appropriate the Environment Agency about the scope 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 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 Section 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 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

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 purposes 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;*

*“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) of the Environmental Protection Act 1990

#### 3.1 Potential Breaches

- 3.1.1 Section 79(1) (refer to paragraph 2.2.1) sets out those matters which are capable of constituting a statutory nuisance under Part III of EPA 1990.
- 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
  - (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. The Environmental Permits 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 Environmental Permits are outlined in the **Consents and Agreements Position Statement (Document Reference 3.3)**.

#### 3.2 Dust arising on business premises

- 3.2.1 **Chapter 5 (Air Quality) of the ES (Document Reference 6.1)** details the residual air quality impacts as a result of the construction (there would be no operational dust impacts) 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), LA 105 (2019). In accordance with the 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 Environmental Management Plan (EMP) prepared in accordance with a requirement contained in the DCO. A **first iteration Environmental Management Plan (fiEMP) (Document Reference 7.3)** has been submitted as part of the application for Development Consent and includes measures to mitigate against dust. 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 light from premises

- 3.3.1 Section 102 of the Clean Neighborhoods 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.
- 3.3.2 For artificial light to count as a statutory 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
- 3.3.3 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. Where operations need to be undertaken at night, such as resurfacing works, road marking and lifting of gantry and large signs onto concrete bases, temporary lighting would be needed for safety reasons and would be directional to minimise light spill. Temporary lighting would also be needed at the site compound for safety reasons in the mornings and evenings, this would also be directional and minimise light spill.
- 3.3.4 A **fiEMP (Document Reference 7.3)** has been submitted as part of the application for Development Consent and includes measures to mitigate the impacts of artificial lighting during construction.
- 3.3.5 **Chapter 7 (Landscape and Visual)** of the **ES (Document Reference 6.1)** 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 will be limited to subways and underpasses (for safety) and gantries. Lighting will be designed to minimise light spill. This is secured through the description of the authorised development within the **draft DCO (Document Reference 3.1)**.
- 3.3.6 With the application of mitigation measures in the **fiEMP (Document Reference 7.3)** and the **draft DCO (Document Reference 3.1)**, it is considered that no statutory nuisance would arise during construction, nor would it be prejudicial to health under Section 79(1)(fb) of the EPA.

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

- 3.4.1 **Chapter 11 (Noise and Vibration)** of the **ES (Document Reference 6.1)** assesses the effects of the demolition and construction activities on receptors. In the absence of mitigation, some receptors in close proximity to the Scheme are predicted to have significant effects.
- 3.4.2 Mitigation is set out in **Chapter 11 (Noise and Vibration)** of the **ES (Document Reference 6.1)** and secured by the **fiEMP (Document Reference 7.3)** and **Figure 2.3 (Environmental Masterplan)** of the **ES (Document Reference 6.2)**. With mitigation measures in place, noise impacts are 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 **Chapter 13 (Road Drainage and the Water Environment)** of the **ES (Document Reference 6.1)** 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 **Chapter 13 (Road Drainage and the Water Environment)** of the **ES (Document Reference 6.1)** and secured in the **fiEMP (Document Reference 7.3)**. 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 of 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 set out within the **fiEMP (Document Reference 7.3)**, which is provided as part of the application for Development Consent. Under a requirement contained in the DCO, prior to commencement of construction a second iteration EMP 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 EMP.

## 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 1990. Impacts from construction and operational noise and vibration (see **Chapter 11 (Noise and Vibration)** of the **ES (Document Reference 6.1)**), lighting (see **Chapter 7 (Landscape and Visual)** of the **ES (Document Reference 6.1)**), dust (see **Chapter 5 (Air Quality)** of the **ES (Document Reference 6.1)**), and the impact on watercourses (see **Chapter 13 (Road Drainage and the Water Environment)** of the **ES (Document Reference 6.1)**) could, if unmitigated, potentially cause a nuisance. With the implementation of the proposed mitigation outlined within the **fiEMP (Document Reference 7.3)**, secured by Requirement 3 within the **draft DCO (Document Reference 3.1)**, it is considered unlikely that the Scheme would engage any of the matters set out in section 79(1) of the EPA 1990.