

A417 Missing Link
TR010056

6.6 Statement of Statutory Nuisance

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A417 Missing Link

Development Consent Order 202[x]

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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 (the “2008 Act”) for a Development Consent Order (DCO). If made, the DCO would grant consent for the A417 The Missing Link (the “scheme”). A detailed description of the scheme can be found in Environmental Statement (ES) Chapter 2 The Project (Document Reference 6.2).
- 1.1.2 This Statement comprises part of the suite of DCO 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 (the “2009 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 DCO Application documents, it is informed by and should be read alongside the other DCO Application documents, particularly the ES (Document Reference 6.2).
- 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 1990 Act (EPA) are predicted to arise on this scheme.

1.2 Scheme overview

- 1.2.1 The A417/A419 is a strategic route between Gloucester and Swindon that provides an important link between the Midlands/North and South of England. The route is an alternative to the M5/M4 route via Bristol. The section of the A417 near Birdlip, known as the ‘Missing Link’, forms the only section of single carriageway along the route and is located in the Cotswolds Area of Outstanding Natural Beauty (AONB).
- 1.2.2 In 2014, the Department for Transport announced its five-year investment programme for making improvements to the strategic road network across England. This scheme is one of more than 100 schemes identified as part of the first Road Investment Strategy 2015-2020^[i]. Funding for delivery of the scheme has been confirmed within the second Road Investment Strategy^[ii], which covers the period between 2020 and 2025 and was published on 11 March 2020.
- 1.2.3 This scheme to upgrade this section of the A417 to dual carriageway, in a way that is sensitive to the surrounding AONB, would help unlock Gloucestershire’s

^[i] Department for Transport (March 2015), Road investment strategy: 2015 to 2020, accessed 29 January 2020, <https://www.gov.uk/government/publications/road-investment-strategy-for-the-2015-to-2020-road-period>

^[ii] Department for Transport (March 2020), Road investment strategy: 2020 to 2025, accessed 11 March 2020, <https://www.gov.uk/government/publications/road-investment-strategy-2-ris2-2020-to-2025>

potential for growth, support regional plans for more homes and jobs, and improve life in local communities.

1.3 Scheme vision and objectives

- 1.3.1 The scheme vision is for a landscape-led highways improvement scheme that will deliver a safe and resilient free-flowing road whilst conserving and enhancing the special character of the Cotswolds AONB; reconnecting landscape and ecology; bringing about landscape, wildlife and heritage benefits, including enhanced visitors' enjoyment of the area; improving local communities' quality of life; and contributing to the health of the economy and local businesses.
- 1.3.2 In order to deliver this vision, the following scheme objectives have been set:
- **Safe, resilient and efficient network:** to create a high-quality resilient route that helps to resolve traffic problems and achieves reliable journey times between the Thames Valley and West Midlands as well as providing appropriate connections to the local road network.
 - **Improving the natural environment and heritage:** to maximise opportunities for landscape, historic and natural environment enhancement within the Cotswolds AONB and to reduce negative impacts of the proposed scheme on the surrounding environment.
 - **Community & access:** to enhance the quality of life for local residents and visitors by reducing traffic intrusion and pollution, discouraging rat-running through villages and substantially improving public access for the enjoyment of the countryside.
 - **Supporting economic growth:** to facilitate economic growth, benefit local businesses and improve prosperity by the provision of a free-flowing road giving people more reliable local and strategic journeys.

1.4 Scheme description

- 1.4.1 The scheme would provide 3.4 miles (5.5km) of new, rural all-purpose dual carriageway for the A417. The new dual carriageway would connect the Existing A417 Brockworth bypass with the existing dual carriageway A417 south of Cowley. The new dual carriageway would be completed in-line with current trunk road design standards. The section to the west of the existing Air Balloon roundabout would follow the Existing A417 corridor, but to the south and east of the Air Balloon roundabout, the corridor would be offline, away from the existing road corridor.
- 1.4.2 The scheme would include a new crossing near Emma's Grove for walkers, cyclists and horse riders including disabled users, which would accommodate the Cotswold Way National Trail. A new junction would be incorporated at Shab Hill, providing a link from the A417 to the A436 (towards the A40 and Oxford), and to the B4070 (for Birdlip and other local destinations).
- 1.4.3 A new 37m wide multi-purpose crossing would provide essential mitigation for bats and enhancement opportunity of ecology and landscape integration. The public would also further benefit as the crossing would accommodate the Gloucestershire Way and provide an improved visitor experience.
- 1.4.4 A new junction would be included near Cowley, replacing the existing Cowley roundabout, making use of an existing underbridge to provide access to local

destinations. The use of the existing underbridge would allow for all directions of travel to be made.

- 1.4.5 The current A417 between the existing ‘Air Balloon roundabout’ and ‘Cowley roundabout’ would be detrunked for its entire length. Some lengths of the existing road would be converted into a route for walkers, cyclists and horse riders including disabled users. Other sections would be retained as lower-class public roads, maintaining local access for residents. Some of the route would provide Common Land.

1.5 Background

Policy context – National Policy Statement for National Networks

- 1.5.1 Paragraph 4.58 of the National Policy Statement for National Networks (NPSNN) 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.
- 1.5.2 Paragraph 5.81 of the NPSNN 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.
- 1.5.3 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 applications, by the Examining Authority in examining applications and by the Secretary of State in taking decisions on development consent”.*
- 1.5.4 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 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.

Environmental Protection Act 1990 – section 79(1)

- 1.5.5 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”

1.5.6 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; and
- 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.

1.5.7 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.*

2 Potential for breaches of section 79(1) of the Environmental Protection Act 1990

2.1 Potential breaches

2.1.1 This section considers the types of impacts associated with the scheme that could potentially engage one or more of the matters set out in section 79(1) of the EPA. The provisions of section 79(1) of the EPA that could potentially be engaged as a consequence of the scheme either at construction stage or during operation are:

(d) dust arising on business and residential properties;

(fb) artificial light from premises;

(g) noise emitted from premises; or

(ga) noise emitted from or caused by a vehicle, machinery or equipment in the street.

2.1.2 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 this scheme.

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

2.2 Dust arising on business premises (section 79(1)(d) of the EPA)

2.2.1 During the construction phase of the scheme, activities with the potential to generate dust would be undertaken, such as earth moving and demolition. ES Chapter 5 Air Quality (Document Reference 6.2) sets out the qualitative assessment of the impacts of dust nuisance as a result of the construction of the scheme.

2.2.2 As part of this assessment, the potential dust impacts on receptors of varying degrees of sensitivity (i.e. residential and ecological habitats) during the construction phase has been assessed within 200m of the DCO Boundary.

2.2.3 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 summarised within ES Chapter 5 Air Quality (Document Reference 6.2) and are also set out in ES Appendix 2.1 Environmental Management Plan (EMP) (Document Reference 6.4).

2.2.4 No significant dust nuisance is expected as a result of the operation of the scheme as it will not be a significant dust emission source and therefore no mitigation measures are required. In the main air quality assessment, presented in ES Chapter 5 Air Quality (Document Reference 6.2), the assessment finds a net benefit in concentrations of PM₁₀ (which is a constituent of dust). Therefore, as no significant PM₁₀ effects are expected as a result of the operation of the scheme, no dust statutory nuisance is expected.

2.2.5 With the measures described in the ES (Document Reference 6.2) and ES Appendix 2.1 EMP (Document Reference 6.4), 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.

2.3 Artificial light from premises (section 79(1)(fb) of the EPA

- 2.3.1 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.
- 2.3.2 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; or
 - Injure health or be likely to injure health.
- 2.3.3 Statutory nuisance laws do not apply to artificial light from street lights. As such, it is not necessary to address these within this statement; however, it is necessary to address temporary lighting equipment to be used to illuminate the construction tasks.
- 2.3.4 The construction phase of the scheme would require additional temporary lighting. Outside daylight hours, task lighting would be required and where overnight working is dictated by road closure, the area will be generally lit with additional task lighting. Construction compounds will be lit during working hours and will require background lighting for safety and security reasons outside working hours.
- 2.3.5 It is not anticipated that operational nuisance would occur due to the task lighting. All lighting will be directed inwards to minimise impact and will make use of landscape screening to reduce light spill.
- 2.3.6 The majority of construction activity would be undertaken between 07.30 and 18.00 on weekdays; and between 07.30 and 13.00 on Saturdays.
- 2.3.7 With the application of mitigation measures in ES Appendix 2.1 EMP (Document Reference 6.4), 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.

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

- 2.4.1 ES Chapter 11 Noise and Vibration (Document Reference 6.2) details that noise from construction of the scheme has the potential to cause significant noise effects at dwellings and some noise sensitive non-residential locations. This is primarily associated with excavation and earthworks to the area of deep cutting and Shab Hill Junction where this work would be carried out for many months. The degree of impact would vary as the works move along the route and hence would be at varying distances to any give receptor. Vibration impacts are unlikely to be of sufficient duration to give rise to significant effects.
- 2.4.2 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. Gloucestershire County Council, Tewkesbury Borough Council, and Cotswold District Council can exercise these powers prior to or during the works.

- 2.4.3 Section 60 of the 1974 Act relates to ‘Control of Noise on Construction Sites’ and enables local authorities to serve a 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 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.
- 2.4.4 Section 61 of the 1974 Act allows for the main contractor to obtain consent from local authorities regarding the noise and vibration requirements of the works prior to them commencing. It is in the interests of the contractor to apply for consent because once it has been 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.
- 2.4.5 A request was made to Gloucestershire County Council, Tewkesbury Borough Council, and Cotswold District Council to consult on the methodology and any noise and vibration sensitivities within the study area. A response was obtained from Cotswold District Council (CDC), which is the local authority area within which the larger part of the scheme would be, including the major realignment around Birdlip to the west, and Cowley and Coberley to the east.
- 2.4.6 The response noted that for construction noise and vibration, control criteria may be imposed/required in applications under section 61 of the Control of Pollution Act 1974. As detailed within the Consents and Agreements Position Statement (Document Reference 7.2), the Applicant is committed to the submission of applications under section 61 and these will be made to the relevant local authority at least 28 days before the relevant work is due to start, or earlier if reasonably practicable.
- 2.4.7 The Council’s requirements for construction working hours are commonly 8:00-18:00 Monday – Friday and 8:00-13:00 Saturday. Any concessions to these hours for particular activities where out-of-hours work is essential, would be controlled through the Control of Pollution Act 1974 applications. CDC noted in particular that the code of practice to be developed by the Applicant for construction works should include the following considerations:
- i. The parking of vehicles for site operatives and visitors*
 - ii. The loading and unloading of plant and materials*
 - iii. The storage of plant and materials used in constructing the development*
 - iv. The erection and maintenance of security hoarding including decorative displays*
 - v. Wheel washing facilities*
 - vi. Measures to control the emission of dust and dirt during construction*
 - vii. A scheme for recycling/disposing of waste resulting from demolition and construction works*
- 2.4.8 Mitigation measures are outlined in ES Appendix 2.1 EMP (Document Reference 6.4). The EMP would be implemented during construction and includes the following mitigation measures:
- The selection of quiet and low vibration equipment.
 - Review of construction programme and methodology to consider quieter methods (including non-vibratory compaction plant, where required).

- Location of equipment on site, control of working hours (to be set out in the EMP).
- The provision of acoustic enclosures and the use of less intrusive alarms, such as broadband vehicle reversing warnings.
- Screening - for example local screening of equipment, perimeter hoarding or the use of temporary stockpiles.

2.4.9 Adherence to the EMP would ensure that statutory nuisance or noise impacts prejudicial to health under section 79(1)(g) and (ga) of the EPA would be avoided.

2.4.10 This would be achieved by use of Best Practicable Means, public liaison and monitoring (and noise insulation where applicable) to ensure noise impacts are managed and minimised at all times to avoid statutory nuisance.

2.4.11 Although the construction and operation of the scheme has the potential to give rise to both temporary and permanent noise impacts, with the provision of mitigation measures it is considered that no statutory nuisance would arise during construction or operation (see paragraph 2.1.3 regarding operation).

3 Conclusion

3.1.1 This Statement has considered the potential for the scheme to cause a statutory nuisance under the EPA.

3.1.2 The construction and operational activities that have the potential to create a nuisance would be controlled through mitigation as set out in the ES Appendix 2.1 EMP (Document Reference 6.4) which will be developed by the appointed contractor. Mitigation measures are also set out within the following chapters of the ES (Document Reference 6.2):

- Chapter 5: Air Quality
- Chapter 11: Noise and Vibration

3.1.3 The EMP is secured through Requirement 3 in Schedule 2 of the draft DCO (Document Reference 3.1).

3.1.4 With mitigation in place, none of the statutory nuisances identified in section 79(1) of the EPA are predicted to arise during the construction or operation of the scheme.