

A1 in Northumberland: Morpeth to Ellingham

Scheme Number: TR010041

6.15 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

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

The A1 in Northumberland: Morpeth to Ellingham
Development Consent Order 20[xx]

STATEMENT RELATING TO STATUTORY NUISANCE

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Author:	The A1 in Northumberland: Morpeth to Ellingham Project Team, Highways England

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1 INTRODUCTION AND SUMMARY

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 Secretary of State for Transport via 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 proposed DCO would grant consent for the A1 in Northumberland: Morpeth to Ellingham (the Scheme).
- 1.1.2 The Scheme comprises two sections known as Part A: Morpeth to Felton (Part A) and Part B: Alnwick to Ellingham (Part B).
- 1.1.3 A detailed description of the Scheme can be found in **Chapter 2: The Scheme, Volume 1** of the Environment Statement (ES) (**Application Document Reference TR010041/APP/6.1**). Part A and Part B were originally proposed to be the subject of separate applications for DCOs but have now been combined into a single application for a DCO in respect of the Scheme as a whole and this Statement covers the Scheme in its entirety.
- 1.1.4 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 and Local Government) guidance 'Planning Act 2008: Application Form Guidance' (June 2013) and in compliance with Regulation 5(2)(f) of the Infrastructure Planning (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”.*
- 1.1.5 As this Statement is part of the application documents it is informed and should be read alongside the other application documents (particularly the ES).
- 1.1.6 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 (the EPA 1990) are predicted to arise as a result of the 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 examination of a Nationally Significant Infrastructure Project (NSIP), the Examining Authority considers the possible sources of nuisance under section 79(1) of the EPA 1990 and how they may be mitigated or limited. This is so 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 availability of the defence of statutory authority against nuisance claims, 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 Paragraph 5.83 also states that although it is likely that some impact on amenity for local communities is unavoidable, impacts should be kept to a minimum and should be at a level that is acceptable.
- 2.1.5 Paragraphs 5.84 to 5.86 of the NPS NN state 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 1990 setting 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 EPA 1990], 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*
- (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 relevant to the Scheme are:

- a. Section 79(4) - clarifies that subsection 1(c) (fumes and gases emitted from premises) does not apply in relation to premises other than private dwellings.
- b. 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:

- a. “*dust*” does not include dust emitted from a chimney as an ingredient of smoke
- b. “*fumes*” means any airborne solid matter smaller than dust
- c. “*gas*” includes vapour and moisture precipitated from vapour
- d. “*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
- e. “*noise*” includes vibration
- f. “*prejudicial to health*” means injurious, or likely to cause injury, to health
- g. “*premises*” includes land and, [...] any vessel
- h. “*private dwelling*” means any building, or part of a building, used or intended to be used, as a dwelling
- i. “*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 1990 that could potentially be 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

(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 1990) and is therefore not relevant to this Scheme.

3.1.3 It is also noted that statutory nuisance category (ga) does not apply to traffic (as noted in Section 79(6A) of the EPA 1990), but would apply to noise generated by construction, vehicles, plant or machinery.

3.2 Dust Arising on Business Premises

3.2.1 During the construction phase of the Scheme dust generating activities potentially would be carried out, such as earth moving and demolition. **Chapter 5: Air Quality, Volume 2** of this ES (**Application Document Reference: TR010041/APP/6.2**) and **Volume 3** of the ES (**Application Document Reference: TR010041/APP/6.3**) set out the qualitative assessment of the impacts of dust nuisance as a result of construction of Part A and Part B of the Scheme.

3.2.2 The maximum distance at which dust nuisance may be caused is held to be 200 m. As Part A and Part B are approximately 15 km apart, there would therefore be no combined effects:

a. For Part A, **paragraph 5.8.2 of Chapter 5: Air Quality, Volume 2** of the ES (**Application Document Reference: TR010041/APP/6.2**) notes that there are 108 receptors within 200 m of the Order Limits which could be affected by dust.

b. For Part B, **paragraph 5.8.2 of Chapter 5: Air Quality, Volume 3** of the ES (**Application Document Reference: TR010041/APP/6.3**) notes that there are 68 receptors (67 residential premises and the Alnwick Community Fire Station) within 200 m of the Order Limits which could be affected by dust.

3.2.3 Effective management to control dust emissions 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 methods are detailed within **Chapter 5: Air Quality**,

Volume 2 of this ES (**Application Document Reference: TR010041/APP/6.2**), **Chapter 5: Air Quality, Volume 3** of the ES (**Application Document Reference: TR010041/APP/6.3**) and are also set out in the **Outline Construction Environmental Management Plan (Outline CEMP) (Application Document Reference: TR010041/APP/7.3)**. A full CEMP would be developed by the main contractor and implemented during construction.

- 3.2.4 No significant dust nuisance is expected as a result of the operation of the Scheme. In the air quality assessments presented in **Chapter 5: Air Quality, Volume 2** of this ES (**Application Document Reference: TR010041/APP/6.2**) and in **Chapter 5: Air Quality, Volume 3** of the ES (**Application Document Reference: TR010041/APP/6.3**), there is assessed to be an imperceptible increase in annual concentrations of PM₁₀ and PM_{2.5} (which is a constituent of dust). Therefore, as no significant PM₁₀ or PM_{2.5} effects are expected as a result of the operation of the Scheme as a whole, this supports the conclusion that no dust statutory nuisance is expected.
- 3.2.5 With the measures described in **Chapter 5: Air Quality, Volume 2** of this ES (**Application Document Reference: TR010041/APP/6.2**) and **Chapter 5: Air Quality, Volume 3** of the ES (**Application Document Reference: TR010041/APP/6.3**) and the **Outline CEMP (Application Document Reference: TR010041/APP/7.3)**, dust arising during construction would be controlled and would not give rise to nuisance, nor would it be prejudicial to health under Section 79(1)(d) of the EPA 1990.

3.3 Artificial Light from Premises

- 3.3.1 Section 102 of the Clean Neighbourhoods and Environment Act 2005 amends Section 79 of the EPA 1990 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 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

- i. Prisons
- j. Defence premises like army bases
- k. Premises occupied by visiting armed forces
- l. Street lights

- 3.3.4 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 to be used to illuminate the construction tasks.
- 3.3.5 The majority of construction activity would be undertaken between 07:00 and 19:00 Monday to Friday. During these standard working hours, there would be no requirement for artificial lighting of construction areas.
- 3.3.6 Extended hours including weekend, Bank and Public Holiday working, and night time works (which may fall during 'normal working hours', particularly during winter), would be required for some construction operations; Northumberland County Council (NCC) would be notified in advance of these works.
- 3.3.7 The construction phase would also involve the use of temporary artificial lighting for night time working and works during the hours of darkness, particularly during winter. The temporary construction compounds would be lit during hours of darkness for security and welfare use by directional lighting to avoid light spill and disturbance. Night time working would be required for traffic management installation, traffic management switches, carriageway resurfacing, bridge beam installation, statutory diversions, drainage works, and construction of the new River Coquet Bridge (for Part A only).
- 3.3.8 Measures for the management and control of light have been included in the **Outline CEMP (Application Document Reference: TR010041/APP/7.3)**, and includes switching off construction lighting when not in use, positioning lighting so as not to spill on to adjacent land, sensitive receptors or retained vegetation within the area surrounding the works, directing lighting to minimise light pollution/glare and keeping lighting levels to the minimum necessary for security and safety. A suitable lighting strategy would be developed for implementation across the Scheme in accordance with BS5489 Code of Practice for the Design of Road Lighting and best practice guidance on lighting with regards to protected species.
- 3.3.9 With the application of mitigation measures in the **Outline CEMP (Application Document Reference: TR010041/APP/7.3)**, it is considered that no statutory nuisance would arise during construction, nor would it be prejudicial to health under Section 79 (1)(b) of the EPA 1990.

3.4 Noise Emitted from Premises, or Emitted from or Caused by a Vehicle, Machinery or Equipment

- 3.4.1 **Chapter 6: Noise and Vibration, Volume 2** of the ES (**Application Document Reference: TR010041/APP/6.2**) and **Chapter 6: Noise and Vibration, Volume 3** of the ES (**Application Document Reference: TR010041/APP/6.3**) indicates that noise from construction has the potential to adversely affect noise sensitive receptors. However, the mitigation measures specified would minimise the potential noise and vibration impacts as far as practical during construction of the Scheme. As the Scheme covers a large area, noise sensitive receptors would be

affected at different stages of the construction period, but the effects would be short term and temporary. In addition, as Part A and Part B are approximately 15 km apart, there would be no combined effects.

- 3.4.2 The following activities have been considered as part of the construction phase noise and vibration assessment to ensure that the potential effects on sensitive receptors are considered appropriately:
- a. Site Clearance
 - b. Earthworks (including topsoil strip)
 - c. Road Construction
 - d. Bridge Construction
 - e. Compound Operation
 - f. Noise Barrier Construction (Part A only)
 - g. Cycle Path Construction (Part A only)
- 3.4.3 The **Scoping Report** for Part A (**Application Document Reference: TR010041/APP/6.10**) and the **Scoping Report** for Part B (**Application Document Reference: TR010041/APP/6.11**) included a summary of the proposed methodology for the construction noise and vibration assessment. This methodology is used and presented in **Chapter 6: Noise and Vibration, Volume 2** of the ES (**Application Document Reference: TR010041/APP/6.2**) and **Chapter 6: Noise and Vibration, Volume 3** of the ES (**Application Document Reference: TR010041/APP/6.3**) and is in accordance with BS5228-1 (Noise) and BS5228-2 (Vibration). NCC did not raise any objections to the proposed methodology for the construction noise and vibration assessment.
- 3.4.4 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 1990. NCC can exercise these powers prior to or during the works.
- 3.4.5 Section 60 of the 1974 Act 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.
- 3.4.6 Section 61 of the 1974 Act allows for the main contractor(s) 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 main contractor to apply for consent because once it has been granted the local authority cannot take action under Section 60 of the 1974 Act or Section 80 of the EPA 1990, so long as the consent remains in force and the main contractor complies with its terms.
- 3.4.7 The mitigation measures outlined in the **Outline CEMP (Application Document Reference: TR010041/APP/7.3)** to be developed into the CEMP by the main contractor, would be implemented during construction and include the following where applicable:

- a. Use of best practicable means (BPM) at all times.
- b. Guidance given in BS 5228-1 (Section 8 - Control of noise and Annex B - Noise sources, remedies and their effectiveness) will be followed as far as is practicable and advice and training on noise minimisation given to staff during Site induction procedures.
- c. The main contractor would produce and submit an application under Section 61 (s61) of Part III of the 1974 Act to NCC's Environmental Health Department in whose area the works are to take place. Once approved, any conditions applied to the approval shall be complied with.
- d. All relevant plant will comply with permissible noise levels set out in the relevant European Directives.
- e. Each plant item will be well maintained and operated in accordance with manufacturers' recommendations and in such a manner as to minimise noise emissions.
- f. Electrically powered plant will be preferred, where practicable, to mechanically powered alternatives. All mechanically powered plant will also be fitted with suitable silencers, as appropriate.
- g. Items of plant operating intermittently will be shut down in the periods between use.
- h. Where feasible, all stationary plant will be located so that the noise effect at receptors is minimised and, if practicable, every item of static plant when in operation will be sound attenuated using methods based on the guidance and advice given in BS 5228-1.
- i. Careful selection of construction methods and plant will be investigated and utilised.
- j. Regular onsite observation monitoring and checks/audits would be undertaken to ensure that BPM is being employed at all times. The site reviews will be logged and any remedial actions recorded.
- k. Where practicable, works (including deliveries) would be programmed to avoid working outside of normal working hours.
- l. Unless for safety or engineering reasons the number of instances of a particular diversion route in operation would be limited to:
 - Less than 10 days/nights in any 15 consecutive days/nights
 - Less than 40 days/nights in any consecutive 6 month period
- m. The main contractor would liaise with relevant NCC Environmental Health Officers, affected residents and commercial operations to ensure that local people and businesses are kept well informed of the timings and duration of construction works.
- n. Where construction activities are undertaken in the same area in tandem, the cumulative effects of both (or more) will be considered such that the Significant Observed Adverse effect Level (SOAEL) is not exceeded at receptors previously predicted to not exceed SOAEL.

- 3.4.8 **Chapter 6: Noise and Vibration, Volume 2** of the ES (**Application Document Reference: TR010041/APP/6.2**) and **Chapter 6: Noise and Vibration, Volume 3** of the ES (**Application Document Reference: TR010041/APP/6.3**) identifies construction activities for which sensitive receptors are predicted to experience noise levels above the SOAEL (significant observed adverse effect level) where there is the potential for significant noise impacts from construction noise. In order to prevent such impacts, where there are sensitive receptors predicted to experience construction noise levels above the SOAEL, the following additional measures outlined in the **Outline CEMP (Application Document Reference: TR010041/APP/7.3)** would be developed into the CEMP by the main contractor and implemented during construction.
- a. Unless for safety or engineering reasons construction works that cause noise or vibration levels at sensitive receptors above the relevant SOAEL would not exceed the following durations:
 - 10 days/nights in any 15 consecutive days/nights
 - 40 days/nights in any consecutive six months
 - b. If the above durations need to be exceeded, temporary re-housing would be offered to residents for the duration of works.
- 3.4.9 The requirement or otherwise for an offer of temporary re-housing would be determined based upon the outcome of further detailed assessment adopting finalised construction methodology and phasing details. Such an assessment would be provided as part of the CEMP.
- c. The main contractor will develop method statements, monitoring and reporting protocols to demonstrate that:
 - All plant and equipment would be properly maintained and operated in accordance with manufacturers' recommendations. Plant would be inspected on arrival to site.
 - Machines in intermittent use would be shut down in intervening periods of non-use or, where this is impracticable, they would be throttled down to a minimum
 - No vehicles would wait or queue on public highways or in the vicinity of construction compounds with engines running for periods in excess of 10 minutes.
 - d. Temporary acoustic barriers and other noise containment measures such as screens and acoustic hoarding at the Part B Scheme boundary should be erected where appropriate to minimise noise breakout and reduce noise levels at potentially affected receptors.
 - e. Adherence to the CEMP would ensure that statutory nuisance or noise impacts prejudicial to health under Section 79(1)(g) and (ga) of the EPA 1990 would be avoided.
 - f. During the operational phase, noise and vibration may be generated by the Scheme. However, no issues are expected to arise during the operational phase in relation to statutory nuisance as the law does not apply to noise generated by general road traffic.

4 CONCLUSION

- 4.1.1 This Statement has considered the potential for the Scheme to cause a statutory nuisance under the EPA 1990.
- 4.1.2 The construction and operation activities that have the potential to create a nuisance would be controlled through mitigation as set out in the **Outline CEMP (Application Document Reference: TR010041/APP/7.3)** which would be developed into the CEMP by the main contractor. Mitigation measures relevant to statutory nuisance under the EPA 1990 are also set out with the following chapters of the ES:
- a. **Chapter 2: The Scheme, Volume 1** of the ES (**Application Document Reference TR010041/APP/6.1**)
 - b. **Chapter 5: Air Quality, Volume 2** of this ES (**Application Document Reference: TR010041/APP/6.2**) for Part A and **Volume 3** of the ES (**Application Document Reference: TR010041/APP/6.3**) for Part B
 - c. **Chapter 6: Noise and Vibration, Volume 2** of the ES (**Application Document Reference: TR010041/APP/6.2**) for Part A and **Volume 3** of the ES (**Application Document Reference: TR010041/APP/6.3**) for Part B
 - d. **Chapter 7: Landscape and Visual, Volume 2** of the ES (**Application Document Reference: TR010041/APP/6.2**) for Part A and **Volume 3** of the ES (**Application Document Reference: TR010041/APP/6.3**) for Part B
- 4.1.3 The CEMP is secured through requirement 4 of the **draft DCO (Application Document Reference: TR010041/APP/3.1)**.
- 4.1.4 With mitigation in place, none of the statutory nuisances identified in Section 79(1) of the EPA 1990 are predicted to arise during the construction and operation of the Scheme.

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Registered office Bridge House, 1 Walnut Tree Close, Guildford GU1 4LZ

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