

**A66 Northern Trans-Pennine Project
TR010062**

5.5 Statement of Statutory Nuisance

APFP Regulations 5(2)(f)

Planning Act 2008

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

Volume 5

June 2022

Infrastructure Planning

Planning Act 2008

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

A66 Northern Trans-Pennine Project
Development Consent Order 202x

5.5 STATEMENT OF STATUTORY NUISANCE

Regulation Number:	Regulation 5(2)(f)
Planning Inspectorate Scheme Reference	TR010062
Application Document Reference	5.5
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Version	Date	Status of Version
Rev 1	13 June 2022	DCO Application

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1 Introduction

1.1 Purpose of this document

- 1.1.1 This Statement of Statutory Nuisance (this Statement) relates to an application made by National Highways (the Applicant) to the Planning Inspectorate (PINS) on behalf of the Secretary of State under section 37 of the Planning Act 2008 (PA 2008) for a Development Consent Order (DCO) to authorise the A66 Northern Trans-Pennine (NTP) route upgrade (the Project).
- 1.1.2 A detailed description of the Project can be found in the Environmental Statement (ES) Volume 1 Chapter 2: The Project (Application Document 3.2).
- 1.1.3 This Statement comprises part of the suite of DCO Application documents and accompanies 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".*
- 1.1.4 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 (Application Documents 3.2, 3.3 and 3.4)
- 1.1.5 This Statement concludes that, with mitigation measures in place secured by the DCO, none of the statutory nuisances identified in section 79(1) of the Environmental Protection 1990 Act are predicted to arise on the Project.

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 (NPSNN) state the importance of considering the possible sources of nuisance under section 79(1) of the Environmental Protection Act 1990 and how they may be mitigated or limited during the examination of a National Significant Infrastructure Project (NSIP) by the Examining Authority, so that any additional requirements to avoid statutory nuisance are included in subsequent orders granting development consent.
- 2.1.2 Paragraph 5.81 details 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 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 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 Environmental Statement. 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 Section 79(1) Environmental Protection Act 1990

- 2.2.1 This Statement of Statutory Nuisance identifies whether the Project engages one or more of the statutory nuisances, set out in section 79(1) of the Environmental Protection Act (EPA), and if so, how the Applicant proposes to mitigate or limit such nuisances.
- 2.2.2 Section 79(1) of the EPA (as it applies in England) provides that the following matters constitute statutory nuisances:
- (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 any enactment to be a statutory nuisance.

2.2.3 Section 79 contains other exceptions and definitions in respect of statutory nuisance. The particular exceptions of relevance to the Project 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.

2.2.4 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 for breach of section 79(1) of the EPA

3.1 Introduction

- 3.1.1 This section considers the types of impacts associated with the Project that could potentially engage one or more of the matters set out in section 79(1) of the EPA.
- 3.1.2 The provisions of section 79(1) of the EPA that could potentially be engaged are:
- (d) any dust arising on business premises
 - (fb) artificial light emitted from premises
 - (g) noise emitted from premises
 - (ga) noise emitted from or caused by a vehicle, machinery or equipment in a street.
- 3.1.3 As noted above, subsection 79(1)(ga) (noise emitted by a vehicle or machinery in a street) does not apply to noise made or smoke, fumes or gases emitted by traffic. Accordingly, these provisions would not be engaged by the traffic which will use the Project during its operational phase or construction traffic but could be engaged by noise generated by construction vehicles on site, plant and machinery.
- 3.1.4 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 Project.
- 3.1.5 Each of these categories of statutory nuisance potentially engaged by the Project is considered below.

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

- 3.2.1 During the construction phase of the Project there will be dust generating activities, which have the potential to cause nuisance. ES Chapter 5: Air Quality (Application Document 3.2) assesses potential impacts arising from dust generating activities, such as earth moving and demolition, and emissions arising from non-road mobile machinery.
- 3.2.2 As part of this assessment, the potential dust impacts on receptors during the construction phase have been assessed on sensitive human and designated ecological receptors located within 200m of the Order Limits and construction traffic routes.
- 3.2.3 The methodology for the assessment of construction dust is presented within section 5.4 of ES Chapter 5: Air Quality (Application Document 3.2) and the construction phase dust assessment set out in section 5.10 of ES Chapter 5: Air Quality (Application Document 3.2).
- 3.2.4 It concludes that whilst the construction dust risk potential is categorised as large, through the adoption of the mitigation measures proposed, the frequency and intensity of potential dust impacts would be reduced, therefore minimising the risk of significant adverse dust effects.

- 3.2.5 Construction-related traffic also has the potential to adversely affect concentrations of PM₁₀ and PM_{2.5} (which is a constituent of dust) concentrations. However, no exceedances of the Air Quality Objectives (AQO) for these two pollutants are predicted at human receptors during the construction phase.
- 3.2.6 Relevant mitigation measures are secured through the Environmental Management Plan (EMP) (Application Document 2.7). Methods of dust suppression would follow current construction and demolition site practice including measures such as site inspections, traffic routing, screening of activity areas, and planning site layout to ensure dusty activities are located away from receptors.
- 3.2.7 During operation the Project will not be a significant dust source. No significant dust nuisance is therefore expected and no mitigation measures for dust are required. In the air quality assessment presented in section 5.10 of ES Chapter 5: Air Quality (Application Document 3.2) there are no predicted exceedances of the AQO for PM₁₀ and PM_{2.5} at human receptors during the operational phase. Therefore, as no significant PM₁₀ or PM_{2.5} effects are expected as a result of the Project, no dust statutory nuisance is expected.
- 3.2.8 Full details of all measures proposed are included in the EMP (Application Document 2.7).
- 3.2.9 Based on the above summary of potential impacts and with proposed mitigation measures in place, dust during construction and operation will be controlled and will not give rise to any nuisance, nor will it be prejudicial to health under section 79(1)(d) of the EPA.

3.3 Artificial light emitted from premises so as to be prejudicial to health or a nuisance (section 79(1)(fb) of the EPA)

- 3.3.1 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.
- 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
 - prisons

- defence premises like army bases
 - premises occupied by visiting armed forces
 - 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, and impacts of vehicle glare during operation.
- 3.3.5 The construction phase of the Project will introduce additional temporary lighting as a result of the provision of lighting for works compounds and general working areas, as well as task lighting in the event that specific works must take place during hours of darkness. There will also be temporary lighting from construction vehicles on haul routes. Other sources of artificial lighting during operation include variable message signs but on the whole the Project is designed to be unlit.
- 3.3.6 ES Chapter 10: Landscape and Visual Effects (Application Document 3.2) assesses the likely visual and landscape impacts associated with the construction and operational phases of the Project. As part of this assessment, the potential impacts of artificial light on human receptors during the construction and operational phases of the Project have been considered.
- 3.3.7 During construction, there would be lighting impacts associated with vehicle glare on temporary haul roads and the lighting of construction compounds and construction activities.
- 3.3.8 During operation there would be lighting impacts associated with vehicle glare from new alignments or access roads. There would be replacement road lighting at the M6 Junction 40, the A66/ A67 junction at Bowes, and the A1(M) Junction 53 at Scotch Corner. No additional lighting is proposed across the Project.
- 3.3.9 Impacts during construction are temporary and would be mitigated by measures outlined in the EMP (Application Document 2.7). This includes the type of lighting, source and direction, and effective screen fencing around compounds. Materials storage bunds would be placed to mitigate vehicle glare where reasonably practicable.
- 3.3.10 During operation, impacts associated with vehicle glare would be mitigated by planting, bunding and screen fencing. The replacement road lighting would use luminaires that are more efficient, more directional and have less light spill than existing; which would reduce the impact on receptors.
- 3.3.11 Further information on measures proposed are included in the EMP (Application Document 2.7) and Project Design Principles (Application Document 5.11).
- 3.3.12 With the proposed mitigation measures in place, lighting during construction and operation will not give rise to any nuisance, nor will it be prejudicial to health under section 79(1)(d) of the EPA.

3.4 Noise and vibration emitted from premises, or emitted or caused by a vehicle or machinery in a street (section 79(1)(g) and (ga) of the EPA)

- 3.4.1 The project has the potential to generate noise and vibration during construction from the operation of construction plant.
- 3.4.2 ES Chapter 12: Noise and Vibration (Application Document 3.2) assesses the likely noise and vibration impacts associated with construction of the Project. The assessment considers the impacts of construction noise and vibration at sensitive receptors located within the construction study area defined in the ES noise and vibration chapter. The assessment includes noise emissions associated with each phase of construction works.
- 3.4.3 Significant adverse effects from the construction of the Project are predicted, based on a worst-case assessment in which it has been assumed that the construction activities are located at the closest point to each receptor. Furthermore, as the programme of works and duration of each activity cannot currently be finalised, construction impacts have been assessed when construction is at its busiest and closest to receptors. The Principal Contractor will be required to undertake any construction works in line with the principles outlined within the EMP (Application Document 2.7) and the Noise and Vibration Management Plan (Annex B5 Application Document 2.7). Where appropriate, the construction works may be subject to an agreement with the relevant Local Authority under Section 61 of the Control of Pollution Act 1974 (CoPA)¹.
- 3.4.4 The EMP including Noise and Vibration Management Plan (NVMP) (Application Document 2.7) include mitigation measures to control the effects of noise using or including Best Practicable Means (BPM) as defined within Section 72 of CoPA. In addition to the BPM assumed in the ES Chapter 12: Noise and Vibration (Application Document 3.2) and secured in the EMP and NVMP, where residual likely significant effects remain mitigation measures will be reviewed, and where application the following measures will be implemented:
- Screening: Where reasonably practicable and beneficial, temporary acoustic barrier/screens or earth bunds from material excavated from the Project will be placed to provide screening of noise from construction work to nearby receptors during construction. To maximise the mitigation, temporary acoustic barrier/screens will be located as close as possible to the noise source or the receptor.
 - Programme: The final construction program will consider the duration and noise of each activity i.e. a trade-off between the noise level experienced and the time taken to complete the works to lower the noise levels but for a longer duration, and providing periods of respite for particular receptors between phases of the noisier works.
 - Methodology: Where reasonably practicable, alternative methods for reducing noise from construction plant and activities, beyond those

¹ Section 61 of CoPA refers to a process for obtaining consent from the relevant Local Authority for the management of noise and vibration during works.

which are considered BPM, will be implemented. Details of these options are described within Table B.1 of *BS 5228-1* and may include, for example, alterations to plant or selecting alternative plant, further sound reduction materials or acoustic screening at source.

- 3.4.5 Section 60 of CoPA relates to the 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 that can be emitted by the works.
- 3.4.6 As noted in the NVMP, Section 61 of CoPA allows for the main contractor to obtain consent from the local authority regarding noise requirements of the works prior to them commencing. The Principal Contractor will determine whether Section 61 applications are appropriate or required in relation to noise management. If required, applications will be submitted to the applicable Local Authority (noting it may be applicable across several Local Authorities).
- 3.4.7 While significant residual adverse effects are predicted by the assessment, taking into account the worst-case scenario adopted for the assessment, the mitigation measures contained within the EMP and NVMP, and the temporary and transient nature of the noise generating works, the construction of the Project is unlikely to be prejudicial to health or cause a nuisance. Therefore, the Project is unlikely to give rise to a statutory nuisance under section 79(1)(g) or (ga) of the EPA.
- 3.4.8 As noted above, subsection 79(1)(ga) of the EPA (noise emitted by a vehicle or machinery in a street) does not apply to noise made by traffic. As such, it is not considered that noise arising from the operation of the Project will give rise to a statutory nuisance under the EPA.

4 Conclusions

- 4.1.1 This Statement of Statutory Nuisance identifies the matters set out in section 79(1) of the EPA in respect of statutory nuisances and considers whether the Project will engage one or more of those matters.
- 4.1.2 The construction activities that have the potential to create a nuisance will be controlled through the design of the Project and mitigation as set out in the EMP (Application Document 2.7)). Mitigation measures are detailed within ES Chapter 5: Air Quality, ES Chapter 10: Landscape and Visual Effects and ES Chapter 12: Noise and Vibration (Application Document 3.2). The EMP is secured by the DCO.
- 4.1.3 With the proposed mitigation measures 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 Project.