

M5 Junction 10 Improvements Scheme

Statement of Statutory Nuisance

TR010063 – APP 6.16

Regulation 5 (2) (f)

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6.15 Statement of Statutory Nuisance

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Document accessibility

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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 Gloucestershire County Council (GCC) (“the Applicant”) to the Planning Inspectorate (“the Inspectorate”) under section 37 of the Planning Act 2008 (“the Act”) for a Development Consent Order (DCO). If made, the DCO would grant consent for the M5 Junction 10 Improvements Scheme (“the Scheme”). A description of the Scheme can be found in Chapter 2 of the Environmental Statement (ES) (application document TR010063 – APP 6.2).
- 1.1.2. This Statement is prepared pursuant to the requirements of Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (APFP Regulations) and states “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. This Statement forms part of a suite of DCO application documents. It is informed by those documents and should be read alongside them. This Statement in particular refers to sections of the ES which contain detailed information on the assessment and mitigation of impacts.

2. The Scheme

2.1. Scheme overview

- 2.1.1. Gloucestershire faces significant challenges to achieve its vision for economic growth. The Joint Core Strategy (JCS) is a partnership between Gloucester City Council, Cheltenham Borough Council (CBC) and Tewkesbury Borough Council (TBC) which sets out a strategic planning framework for the three areas. The Adopted JCS 2011-2031 is a coordinated strategic development plan, adopted in December 2017, which shows how the region will develop and includes a shared spatial vision targeting 35,175 new homes and 39,500 new jobs by 2031. Major development of new housing (c.9,000 homes) and employment land is proposed in the JCS in strategic and safeguarded allocations to the west and north-west of Cheltenham, these being: West Cheltenham (Golden Valley); North West Cheltenham (Elms Park); and safeguard land to the west and the north-west of Cheltenham. The West Cheltenham development, in turn, is linked to wider economic investment, including a government supported cyber business park (Cyber Central UK) adjacent to the Government Communications Headquarters (GCHQ) site in west Cheltenham.
- 2.1.2. The existing M5 Junction 10 only provides access and egress to and from the north, with no connectivity to M5 south; this causes existing traffic to cross Cheltenham through various routes to access and leave the M5 from the south using other M5 junctions. This contributes significantly to existing traffic flows across Cheltenham, with significant congestion at peak times. To unlock the housing and job opportunities, a highway network is needed that has the capacity to accommodate the increased traffic it will generate, within a sustainable transport context.
- 2.1.3. Upgrading M5 Junction 10 to an all movements junction has been identified as a key infrastructure requirement to enable the housing and economic development proposed by the JCS and supported in the Gloucestershire Local Enterprise Partnership's (GFirst LEP) Strategic Economic Plan and the transport network sought by GCC in the adopted Gloucestershire Local Transport Plan. Improvements to M5 J10 are critical to maintaining the safe and efficient operation of the junction; and enabling the planned development and economic growth.
- 2.1.4. A bid was submitted in March 2019 to Homes England to the Housing Infrastructure Fund (HIF), wherein an investment case was made for the following infrastructure improvements. Funding was successfully awarded by Homes England in March 2020 for:
- Element 1: Improvements to Junction 10 on the M5 and a new road linking Junction 10 to west Cheltenham.
 - Element 2: A38/A4019 Junction Improvements at Coombe Hill.
 - Element 3: A4019 widening, east of Junction 10.
 - Element 4: An upgrade to Arle Court Park and Ride.
- 2.1.5. Elements 1 and 3 comprise the M5 Junction 10 Improvements Scheme (the Scheme). The upgrade to Arle Court Park and Ride (now known as the Arle Court Transport Hub) (Element 4) and the junction improvements at Coombe Hill (Element 2) were included as part of the package of improvements funded by Homes England. As they do not form part of the proposed improvement of M5 Junction 10, and are located some distance from the junction, GCC (Applicant) has decided to take these two elements forward as separate packages of work in order to accelerate the programme for these elements.

2.2. Scheme description

- 2.2.1. The Scheme under consideration herein comprises the following elements which are, or

are related to, changes to the strategic road network and together make up the Scheme:

- An all-movements junction at M5 Junction 10 (Scheme element 1).
- A new West Cheltenham Link Road east of Junction 10 from the A4019 to the B4634 (Scheme element 2).
- Widening of the A4019 to the east of Junction 10, including a bus lane on the A4019 eastbound carriageway from the West Cheltenham Fire Station to the Gallagher Junction (Scheme element 3).

2.2.2. Further information on each of these elements, and details of the Scheme objectives can be found in Chapter 2 (The Scheme - application document TR010063 – APP 6.2). Detailed figures showing the Scheme are provided in the General Arrangement Plans (application document TR010063 – APP 2.9).

3. Policy and statutory context

Policy Context - National Policy Statement for National Networks

- 3.1.1. Paragraph 4.58 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 Environmental Protection Act 1990 and how they may be mitigated or limited. This is so that the Examining Authority can recommend appropriate requirements that the Secretary of State might include in any subsequent order granting development consent.
- 3.1.2. 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.
- 3.1.3. 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”.
- 3.1.4. 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.

Environmental Protection Act 1990 – section 79(1)

- 3.1.5. Section 79(1) of the EPA states the following matters as constituting statutory nuisances in both England and Wales:
- (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; and*
 - (h) *any other matter declared by any enactment to be a statutory nuisance.*

- 3.1.6. Section 79 also contains other exceptions and definitions in relation to 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.
- 3.1.7. 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.
 - 'noise' includes vibration.
 - '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.
 - '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.
 - "smoke" includes soot, ash, grit and gritty particles emitted in smoke.
 - 'street' means a highway and any other road, footway, square or court that is for the time being open to the public.

4. Potential for breaches of section 79(1)

4.1. Introduction

- 4.1.1. The provisions of section 79(1) of the EPA 1990 that could potentially be engaged as a consequence of the Scheme are:
- (d) dust, steam, smell or effluvia 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.
- 4.1.2. The paragraphs (a), (b), (c), (e), (f), (fa) and (h) have been scoped out as the nature of the Scheme is such that they will not be engaged.
- 4.1.3. This Statement concludes that the only matters comprised in section 79(1) of the EPA 1990 which may potentially be engaged as a consequence of the Scheme are:
- d) relating to air quality, specifically dust.
 - fb) relating to artificial light.
 - g) and ga) relating to noise (which for the Scheme, includes vibration).
- 4.1.4. Section 79(6A) (a) of the EPA 1990 provides that traffic noise is excluded from the consideration of nuisance. Accordingly, traffic noise is not relevant to the consideration of section 79(1)(g) and (ga) and is not mentioned further.
- 4.1.5. Each of these categories of statutory nuisance, which are potentially engaged by the Scheme are considered below.

4.2. Dust

Construction stage

- 4.2.1. There is limited potential for the following matters covered in section 79(1) of the EPA 1990 to arise during construction:
- d) any dust, steam, smell or other effluvia.
- 4.2.2. There is the potential for fugitive dust emissions from construction site vehicles and plant to be generated during the construction of the Scheme. The potential for these nuisances and appropriate mitigation measures are covered in Chapter 5 - Air Quality of the ES (application document TR010063 – APP 6.3).
- 4.2.3. Potential fugitive dust emissions would be avoided or reduced to prevent statutory nuisance through measures captured in the Environmental Management Plan (1st iteration) (EMP 1st iteration) (application document TR010063 – APP 7.3) and the Register of Environmental Actions and Commitments (REAC) (application document TR010063 – APP 7.4) and implemented by the Principal Contractor.

Operational stage

- 4.2.4. As outlined in Chapter 5 - Air Quality (application document TR010063 – APP 6.3),

emissions to air from road traffic associated with the operational phase of the Scheme would be limited as detailed in the quantitative assessment undertaken for the ES. Impacts of road traffic emissions are unlikely to lead to exceedances of air quality objectives specified under the UK Air Quality Strategy or relevant air quality regulations that would lead to significant adverse effects. Accordingly, no nuisance is expected to arise.

Mitigation

- 4.2.5. Measures for mitigating the generation of dust on construction sites will include (as outlined in the REAC, application document TR010063 – APP 7.4):
- Burning of any waste or other materials on site will not be permitted for any reasons.
 - Clearing or damping down roadways and other areas on-site.
 - Road sweeping/washing, where required.
 - Screening, enclosure, spraying (or other dust controls) of spoil stockpiles, rubble or construction materials close to sensitive receptors.
 - Stockpiled materials and generators would be placed so as to minimise potential impact on nearby sensitive receptors due to local weather conditions.
 - Sheeting of lorries carrying soil and other dust sources.
 - Enforcement of speed limits on all site roadways.
 - Any complaint related to dust (or mud on roads) would be taken seriously and investigated. In addition, a log would be kept of any complaints raised against the site.
- 4.2.6. Mitigation measures to control dust during construction would be specified within contract documentation and are incorporated into the EMP (2nd iteration).
- 4.2.7. The mitigation measures for dust are assessed to be effective in preventing statutory nuisance and prejudice to health from arising.

4.3. Light from premises

Construction stage

- 4.3.1. There is potential for light pollution during construction as identified in the Chapter 9 - Landscape and Visual of the ES (application document TR010063 – APP 6.7) when temporary lighting would be used on site. There would be night time working associated with the works, as detailed in the Transport assessment report (application document TR010063 – APP 7.5).
- 4.3.2. It is anticipated that construction compounds would be lit and light spill from these compounds, including the movement of associated construction vehicles together with general construction activities across the site, will potentially have an impact upon adjacent sensitive receptors as outlined in Chapter 9 - Landscape and Visual (application document TR010063 – APP 6.7), of the ES.
- 4.3.3. The degree of impact upon these receptors would vary based on landform, vegetation cover, distance to works and the type of activity proposed. The lighting impacts from construction activities on these receptors would be temporary, and where distance and intervening vegetation exist to provide a buffer, the impact of these effects would be reduced.
- 4.3.4. The works would be in areas both where lighting is currently present and not present. In the areas that are not lit currently, the temporary construction lighting could cause a nuisance.

Operational stage

- 4.3.5. As street lights are not covered by the laws on statutory nuisance, then no significant operational lighting effects associated with the Scheme that could potentially generate a nuisance issue were identified. All of the new lighting introduced by the Scheme is street lighting.

Mitigation

- 4.3.6. The lighting arrangements for night time working during construction are provided for in the EMP 1st iteration (application document TR010063 – APP 7.3) and measures to mitigate the effects of lighting are detailed below, as outlined in the REAC (application document TR010063 – APP 7.4):
- Requirements to prevent light spill and glare as well as to minimise the usage of lighting, with special care taken in proximity to ecologically sensitive locations.
 - Specifying the types of temporary construction and security lighting to be used, the hours of operation (as part of the agreement of hours of operation of the construction site as a whole).
 - Measures to ensure that construction and security lighting is located and maintained so as to cause minimal effects.
- 4.3.7. The mitigation measures for lighting are assessed to be effective in preventing statutory nuisance and prejudice to health from arising.

4.4. Noise emitted from premises, vehicles, machinery or equipment

Construction stage

- 4.4.1. There is potential for noise and vibration to be generated from construction activities, as described in Chapter 6 - Noise and Vibration of the ES (application document TR010063 – APP 6.4). The potential for environmental effects has been considered and assessed as unlikely to be significant beyond 25m of the works during the day and beyond 75m of the works at night. Appropriate mitigation measures are presented in the Chapter 6 - Noise and Vibration, along with a recommendation to limit night-time and evening construction works where possible. Several of the activities within each phase are transitory in nature, which means that construction noise impacts at many of the properties would only be for a short time.
- 4.4.2. Construction noise and vibration emissions would be avoided or reduced to prevent a statutory nuisance through the implementation of an EMP 2nd iteration prepared by the Principal Contractor in line with the EMP 1st iteration (application document TR010063 – APP 7.3) and REAC (application document TR010063 – APP 7.4).
- 4.4.3. The EMP 2nd iteration will oblige contractors to incorporate measures to minimise noise emissions by best practicable means in accordance with the Control of Pollution Act 1974. A number of noise controls are stated in BS 5228:2009 + A1:2014 Code of Practice for Noise and Vibration Control on Construction and Open Sites that may be used as best practicable means.

Operational stage

- 4.4.4. In Chapter 6 - Noise and Vibration (application document TR010063 – APP 6.4), no significant adverse operation noise effects wholly attributable to the Scheme were predicted that would represent a nuisance under section 79(1)(g) and (ga) of the EPA 1990.

Mitigation

4.4.5. Measures that have been incorporated into the Scheme (as outlined in the REAC, application document TR010063 – APP 7.4) to reduce noise effects during construction include:

- Noise and vibration from construction activities would be minimised wherever possible through the selection of construction methods and equipment that produce lower levels of noise and vibration. Where it is necessary to use equipment or methods that produce higher levels of noise and vibration, appropriate measures would be adopted (e.g., limited times of operation).
- Where possible, construction plant would be turned off when not in use.
- Regular construction plant and vehicle maintenance checks would be undertaken, conforming to the manufacturers or legislative emission standards.
- All construction plant and equipment would be suitably sited, operated and serviced in order to minimise noise and vibration.
- Pneumatic tools would be fitted with an integral silencer and/or purpose-made muffler.
- Enforcement of speed limits on all site roadways.
- HGV transportation movements would be controlled in accordance with the Traffic Management Plan that would be prepared by the Principal Contractor (which is secured through requirement 10 of the draft DCO).
- Good stakeholder communication to ensure that local residents are kept informed about the progress of the construction works and are provided with contact details for the Stakeholder Manager (or other suitable personnel).
- Any complaint related to noise and vibration would be taken seriously and investigated. In addition, a log would be kept of any complaints raised against the site.
- Acoustic fencing would be positioned around the Scheme as necessary.
- Working hours would be restricted to those set out in the EMP (1st iteration) (application document TR010063 – APP 7.3) unless there are specific requirements for works at other times, e.g., abnormal load deliveries.

4.4.6. Noise mitigation measures have been embedded in the design of the Scheme to minimise the potential for noise impacts during the operational phase. These mitigation measures consist of five environmental noise barriers and low noise road surfacing on sections of the road as stated in Chapter 6 - Noise and Vibration of the ES.

4.4.7. It is expected that traffic calming measures will be implemented on Stoke Road in advance of the opening of the Scheme, to mitigate for noise effects to receptors along this road during the operation of the Scheme.

4.4.8. The mitigation measures for noise are assessed to be effective in preventing statutory nuisance and prejudice to health from arising.

4.5. Conclusion

4.5.1. This Statement identifies the matters set out in section 79(1) of the EPA 1990 in respect of statutory nuisances and considers whether the Scheme would engage one or more of those matters on the basis adopted for assessment.

4.5.2. The construction activities that have the potential to create a nuisance would be controlled through compliance with the implementation of the environmental measures identified in the ES and through the EMP which is secured through requirement 3 of the draft DCO. The EMP (2nd iteration) must be substantially in accordance with the EMP (1st iteration) (application document TR010063 – APP 7.3) and reflect the mitigation measures in the

REAC (application document TR010063 – APP 7.4).

- 4.5.3. With the proposed mitigation in place none of the statutory nuisances identified in section 79(1) of the EPA 1990 is predicted to arise during the construction or operation of the Scheme.
- 4.5.4. Whilst this Statement concludes that no statutory nuisance is likely to occur, the Applicant has included in the draft DCO an article which would provide a defence against cases of nuisance under 79(1) (d), (fb), (g) and (ga) in order that the defence can be relied upon in circumstances where a statutory nuisance cannot be avoided.

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