

M60/M62/M66 Simister Island Interchange

TR010064

6.8 STATEMENT OF STATUTORY NUISANCE

APFP Regulation 5(2)(f)

Planning Act 2008

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

Infrastructure Planning

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

M60/M62/M66 Simister Island Interchange
Development Consent Order 202[]

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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 (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 improvements to the M60/M62/M66 Simister Island Interchange (the “Scheme”). A detailed description of the Scheme can be found in Chapter 2, The Scheme of the Environmental Statement (TR010064/APP/6.1).
- 1.1.2 This Statement comprises part of the suite of application documents and is included in the DCO application in accordance with the Department for Communities and Local Government (now Department for Levelling Up, Housing and Communities (DLUHC)) 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 application documents, it is informed by and should be read alongside the other application documents (particularly the Environmental Statement (TR010064/APP/6.1)).
- 1.1.4 This Statement concludes that, with the mitigation measures secured by the DCO in place (including those measures embedded within the Scheme design), none of the statutory nuisances identified in Section 79(1) of the Environmental Protection Act 1990 (“EPA”) are predicted to arise in undertaking 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”) (Department of Transport, December 2014) state that it is very important that, during the examination of a Nationally Significant Infrastructure Project (“NSIP”), the Examining Authority considers the possible sources of nuisance under section 79(1) of the EPA and how they may be mitigated or limited. This is so that any additional requirements to avoid statutory nuisance are included in the subsequent order granting development consent.
- 2.1.2 Paragraph 5.81 of the NPS NN notes that the construction and operation of national networks infrastructure has the potential to create a range of emissions such as odour, dust, steam, smoke and artificial light, as well as noise and vibration.
- 2.1.3 Paragraph 5.82 of the NPS NN states *“Because of the potential effects of these emissions and in view of the availability of the defence of statutory authority against nuisance claims described previously, it is important that the potential for these impacts is considered by the applicant in their applications, by the Examining Authority in examining applications and by the Secretary of State in taking decisions on development consent”*.
- 2.1.4 Paragraphs 5.84 to 5.86 of the NPS NN 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 and methodology of the assessment is advised.
- 2.1.5 The Government published a draft NPS NN for consultation in March 2023 (DfT, 2023) which concluded in June 2023. The draft NPS NN has not currently been designated, therefore this Statement continues to reference the designated 2014 NPS NN, as it remains the relevant Government policy. However, the draft NPS NN is potentially capable of being an important and relevant consideration in the decision-making process.
- 2.1.6 Detailed assessment of Scheme’s accordancy with the NPS NN has been undertaken and can be found in the NPS NN Accordance Table (TR010064/APP/7.2). A detailed assessment of the Scheme’s accordancy with the draft NPS NN has also been undertaken and can be found in the Draft NPS NN Accordance Table (TR010064/APP/7.3).

2.2 Environmental Protection Act 1990 – Section 79(1)

2.2.1 Section 79(1) of the EPA sets out those matters which constitute a statutory nuisance in England and Wales as follows:

“(1).....the following matters constitute “statutory nuisances” for the purposes of this Part [of the 1990 Act] that is to say –

“(a) any premises in such a state as to be prejudicial to health or a nuisance;

(b) smoke emitted from premises so as to be prejudicial to health or a nuisance;

(c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;

(d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;

(e) any accumulation or deposit which is prejudicial to health or a nuisance;

(f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;

(fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;

(fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance;

(g) noise emitted from premises so as to be prejudicial to health or a nuisance;

(ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street or in Scotland, road; and

(h) any other matter declared by any enactment to be a statutory nuisance;

and it shall be the duty of every local authority to cause its area to be inspected from time to time to detect any statutory nuisances which ought to be dealt with under Section 80 or Section 80A below and, where a complaint of statutory nuisance is made to it by a person living within its area, to take such steps as are reasonably practicable to investigate the complaint”

2.2.2 Section 79 contains other exceptions and definitions in respect of statutory nuisance. The exceptions of relevance to the Scheme are:

- Section 79(4) – clarifies that subsection 1(c) (fumes or gases emitted from premises) does not apply in relation to premises other than private dwellings;

- Section 79(6A) – clarifies that subsection (1)(ga) (noise emitted by a vehicle or machinery in a street) does not apply to noise made by traffic but could apply to construction vehicles or plant.

2.2.3 Definitions are set out in section 79(7), and include the following relevant terms:

“dust” does not include dust emitted from a chimney as an ingredient of smoke;

“fumes” means any airborne solid matter smaller than dust;

“gas” includes vapour and moisture precipitated from vapour;

“industrial, trade or business premises” means premises used for any industrial, trade or business purposes or premises not so used on which matter is burnt in connection with any industrial, trade or business process, and premises are used for industrial purposes where they are used for the purposes of any treatment or process as well as where they are used for the purposes of manufacturing;

“noise” includes vibration;

“prejudicial to health” means injurious, or likely to cause injury, to health;

“premises” includes land and... any vessel;

“private dwelling” means any building, or part of a building, used or intended to be used, as a dwelling;

“street” means a highway and any other road, footway, square or court that is for the time being open to the public.

3 Potential for Breaches of Section 79(1) of the Environmental Protection Act 1990

3.1 Potential Breaches

3.1.1 The only matters prescribed in Section 79(1) of the EPA that could be potentially engaged because of the Scheme either at the construction stage or during its operation are:

(a) any premises in such a state 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;

(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;

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 Scheme.

3.1.2 It is also noted that statutory nuisance category (ga) (noise) 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 during construction of the Scheme.

3.2 Dust Arising on Business Premises

3.2.1 During the construction phase of the Scheme, dust generating activities would potentially be carried out, such as earth moving and demolition. Chapter 5: Air Quality of the Environmental Statement (TR010064/APP/6.1) sets out the qualitative assessment of the impacts of dust nuisance as a result of construction of the Scheme.

3.2.2 As part of the above assessment, the potential dust impacts on receptors of varying degrees of sensitivity (e.g. residential and commercial

properties) during the construction phase has been assessed within 200m of any construction works and compound areas.

- 3.2.3 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 detailed within Chapter 5: Air Quality of the Environmental Statement (TR010064/APP/6.1) and are also set out in the First Iteration Environmental Management Plan (“EMP”) (TR010064/APP/6.5). A Second Iteration EMP would be developed from the First Iteration EMP to be implemented during construction of the Scheme.
- 3.2.4 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. In the main air quality assessment, presented in Chapter 5: Air Quality of the Environmental Statement (TR010064/APP/6.1) there is assessed to be an imperceptible increase 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.
- 3.2.5 With the measures described in the Environmental Statement (TR010064/APP/6.1) and the First Iteration EMP (TR010064/APP/6.5), 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.

3.3 Artificial Light from Premises

- 3.3.1 Section 102 of the Clean Neighbourhoods and Environment Act 2005 amended 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; or
 - injure health or be likely to injure health.
- 3.3.3 Statutory nuisance laws in section 79 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, it is not necessary to address these within this Statement; however, it is necessary to address temporary lighting equipment used to illuminate construction tasks.
- 3.3.5 The majority of construction activity would be undertaken between 07:00 and 19:00 on weekdays; and between 07:00 and 13:00 on Saturdays. During those working hours, there may be a requirement during winter months and specific tasks for lighting of construction areas for safety requirements during dim daytime conditions. In addition, there may be an hour before or after these times for site set up and close down this would include activities such as deliveries, movement to place of work and general preparation works, but would not involve operation of plant or machinery).
- 3.3.6 During the summer months, hours of working may be extended to 07:00 to 21:00 hours in order to take advantage of longer daylight hours. Work undertaken outside standard working hours, as well as on bank holidays, is considered off-peak working. There are certain exceptions where night-time, weekend, or public holiday working would be required.
- 3.3.7 Saturday off peak working hours would be 13.00 to 18.00. Sunday and public holiday off peak working hours would be between 07.00 to 21.00.
- 3.3.8 Night working is required for the Scheme. Working hours would be 18:00 to 07:30 Monday to Friday and 18:00 to 07:30 on Saturdays. Sundays and public holidays would be between 21.00 to 07.00. Construction activities are likely to include, site clearance, utility diversions, traffic management, earthworks, drainage, pavement and white lining, demolition and installation of gantries.
- 3.3.9 Potential nuisance from artificial lighting will be mitigated using light-spill screens and directional lighting ensuring orientation of floodlights is away from sensitive receptors.
- 3.3.10 With the application of mitigation measures in the First Iteration EMP (TR010064/APP/6.5), it is considered that no statutory nuisance would arise during construction, nor would it be prejudicial to health under Section 79(1)(fb) of the EPA.

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

- 3.4.1 Chapter 11: Noise and Vibration of the Environmental Statement (TR010064/APP/6.1) details that noise from construction of the Scheme has the potential to adversely affect different sensitive receptors at different times during construction.
- 3.4.2 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. Bury Metropolitan Borough Council (“BMBC”) (the local authority for the area in which the Scheme is located) can exercise these powers prior to or during the works.
- 3.4.3 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.
- 3.4.4 Section 61 of the 1974 Act provides 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.
- 3.4.5 BMBC’s Environmental Health Officer will be contacted by the contractor following Detailed Design to agree the methodology on noise and vibration in line with BS5228-1 (Noise) and BS5228-2 (Vibration). Suggestions and comments made about the methodology will be taken into consideration.
- 3.4.6 The mitigation measures outlined in the First Iteration EMP (TR010064/APP/6.5) would be implemented during construction and include the following:
- Site management teams shall employ best practice and consider the timing, duration and phasing of construction activities to cause minimum nuisance to sensitive receptors where practicable and reasonable.
 - Seeded bunds may be used to provide noise screening around the perimeter of the temporary works and construction areas.
 - All ancillary plant such as generators, compressors and pumps will be positioned so as to cause minimum noise disturbance. If necessary, acoustic barriers or enclosures will be provided, where appropriate.

Consideration shall be given to the site establishment to ensure that low noise generators are used where reasonably practical.

- Working methods will be developed specific to the area and will consider use of equipment and methods of operations to minimise noise.
- Where reasonably practical fabrication of materials will be undertaken off-site.
- All plant and machinery in intermittent use will be shut down in intervening periods between work or throttled down to a minimum.
- Proper use of plant with respect to minimising noise emissions with regular maintenance will be undertaken.
- Minimising the drop height of materials into hoppers, lorries or other plant.
- Use of less intrusive alarms on vehicles, for example broadband vehicle reversing warnings.
- Community liaison team engagement to ensure local residents are kept informed of upcoming works.

3.4.7 Adherence to the Second Iteration EMP during construction would mean the Scheme is unlikely to give rise to a statutory nuisance or noise impacts prejudicial to health under Section 79(1)(g) and (ga) of the EPA would be avoided.

3.4.8 Further, operation of the Scheme is considered unlikely to give rise to a statutory nuisance, so no statutory nuisance would arise under Section 79(1)(g) and (ga) of the EPA as identified in Chapter 11 Noise and Vibration of the Environmental Statement (TR010064/APP/6.1).

4 Conclusion

- 4.1.1 This Statement has considered the potential for the Scheme to cause a statutory nuisance under the EPA.
- 4.1.2 The construction and operational activities that have the potential to create a nuisance would be controlled through mitigation as set out in the First Iteration EMP (TR010064/APP/6.5) which will be developed into the Second Iteration EMP for implementation during construction of the Scheme. Mitigation measures are also set out within the following chapters of the Environmental Statement (TR010064/APP/6.1): Chapter 5 Air Quality, Chapter 7 Landscape and Visual and Chapter 11 Noise and Vibration. The First Iteration EMP is secured through the draft DCO (TR010064/APP/3.1).
- 4.1.3 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.