



RiverOak Strategic Partners

5.2- 14

**Environmental Statement
Volume 14: Statement of
Statutory Nuisance**

TR020002/ APP/ 5.2-14

Project Name:

Manston Airport Development Consent Order

Regulation:

Regulation 5(2)(f) of the Infrastructure Planning
(Applications: Prescribed Forms and Procedure)
Regulations 2009, as amended

Date:

July 2018



Volume 14 Contents

Statement of Statutory Nuisance

MANSTON AIRPORT DEVELOPMENT CONSENT ORDER

TR020002

Statement relating to Statutory Nuisance

Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations, as amended 5(2)(f)

1 Introduction

- 1.1 This document relates to an application made by RiverOak Strategic Partners Ltd to the Planning Inspectorate under Section 37 of the Planning Act 2008. The DCO is for the redevelopment and reopening of Manston Airport (“the Proposed Development”).
- 1.2 The description of the Proposed Development can be found in detail in chapter 3 of the Environmental Statement (“the ES”) (**document reference TR080008/APP/5.2-1**). Schedule 1 of the draft Manston Airport Development Consent Order (**document reference TR080008/APP/2.1**) describes the proposed works for which this application for development consent is sought.
- 1.3 This statement has had due regard to the Department for Communities and Local Government guidance, ‘Planning Act 2008: Nationally significant infrastructure projects – Application form guidance’ and the statement is included in the application to comply with requirements of Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, as amended, the latter of which requires:

“... a statement 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.”

- 1.4 As this statement is part of the application, it should be read alongside and is informed by the other application documents. In particular, this statement should be read alongside the ES (**document reference TR080008/APP/5.2-1 – 5.2-25**).

2 Summary

- 2.1 This statement identifies the matters set out in Section 79(1) of the Environmental Protection Act 1990 (“the Act”) in respect of statutory nuisances and considers whether the Proposed Development would engage one or more of those matters. Where any matters may be potentially engaged the statement sets out its proposals for mitigating or limiting them.
- 2.2 The statement concludes that, with mitigation measures in place, none of the statutory nuisances identified in section 79(1) of the Act are predicted to arise.

3 Section 79(1), Environmental Protection Act 1990

3.1 The following text is an extract from Section 79(1) of the Act which sets out those matters which constitute a statutory nuisance in England and Wales:

(1) "Subject to subsections (1A) to (6A) below, the following matters constitute "statutory nuisances" for the purposes of this Part, that is to say –

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

(b) smoke emitting 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;

(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."

4 Potential breaches of section 79(1), Environmental Protection Act 1990

4.1 We note that by virtue of sections 79(5B) and 79(6), respectively, the following do not apply to airports:

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

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

4.2 Taking the Proposed Development into account, the only matters prescribed in Section 79(1) that could potentially be engaged as a consequence of the authorised development either at construction stage or during operation are:

- 4.2.1 fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;
- 4.2.2 any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;
- 4.2.3 any accumulation or deposit which is prejudicial to health or a nuisance;
- 4.2.4 any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance; and
- 4.2.5 noise emitted from premises so as to be prejudicial to health or nuisance, although by virtue of section 79(6), only as it applies to the airport related business development and not the airport premises.

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

- 4.3 The potential for these nuisances is covered more fully in **Chapter 6: Air Quality** of the **ES (document reference TR020002/APP/5.2-1)**.

Construction phase

- 4.4 As outlined in **Chapter 6: Air Quality (document reference TR020002/APP/5.2-1)**, combustion-related emissions from construction site vehicles and plant would not be significant, and therefore would not constitute a statutory nuisance.

Operation phase

- 4.5 As outlined in **Chapter 6: Air Quality (document reference TR020002/APP/5.2-1)**, operational air quality effects would not be significant, and therefore would not constitute a statutory nuisance.

Embedded environmental measures

- 4.6 Environmental measures that have been incorporated into the development proposals to date in order to avoid, reduce or compensate for potential adverse air quality effects include (but are not limited to):
 - a strict routing agreement for incoming and outgoing Heavy Goods Vehicles (HGVs), avoiding, where possible, peak traffic flow hours in order to reduce congestion and queuing;
 - delivery and dispatch schedules for HGV that avoid, where possible, causing congestion on the local road network and excessive emissions to atmosphere as well as enforcing a “no unnecessary idling” policy for all vehicles on the development site;

- planning of aircraft arrival and departure scheduling to avoid, where possible, over-long idling, taxiing and hold times; and
- planning of aircraft arrival and departure scheduling to avoid, where possible, over-long operation of liquid fossil-fuelled Ground Support Equipment.

Conclusions

4.7 As outlined in **Chapter 6: Air Quality (document reference TR020002/APP/5.2-1)**, there would be no significant effects during either the construction or operational phases with the employment of embedded environmental measures, and as such no statutory nuisance would be expected.

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

4.8 The potential for these nuisances is covered in **Chapter 6: Air Quality** of the **ES (document reference TR020002/APP/5.2-1)**.

Construction phase

4.9 An assessment of dust from the construction phase has been carried out using the risk-based approach recommended by the Institute of Air Quality Management (IAQM), supported by expert judgement. Given the medium and high risk of impacts determined, a range of mitigation measures will be necessary to reduce the actual impact.

4.10 Details of proposed mitigation measures to ensure that there are no significant air quality effects as a result of construction activities are included in the Construction Environmental Management Plan (CEMP) (**Appendix 3.2** of the **ES (document reference TR020002/APP/5.2-6)**). Therefore there would be no statutory nuisance in terms of air quality for the construction phase of the project.

Operation phase

4.11 An assessment of smell (odour) has been undertaken as part of **Appendix 6.4** of the **ES (document reference TR020002/APP/5.2-6)**. The principal potential sources of odour from the Proposed Development are:

4.11.1 fugitive emissions of volatile components of aircraft fuel; and

4.11.2 emissions of products of incomplete combustion from aircraft engines and other vehicles and plant.

4.12 The assessment determined a significant likelihood of odours that would exceed standard H4¹ criterion without further mitigation. In the event of H4 conditions being breached, it is recommended that additional mitigation should be applied to the fuel farm to reduce odours to

¹ H4 criterion refer to boundary odour conditions (or conditions imposed under an Odour Management plan) agreed with the Environment Agency.

an acceptable level. The precise mitigation measures will be developed as part of the fuel farm design and are likely to include vapour recovery and/or a floating roof design.

Embedded environmental measures

- 4.13 Environmental measures that have been incorporated into the development proposals to date in order to avoid, reduce or compensate for potential adverse air quality effects are presented in the CEMP (**Appendix 3.2** of the **ES (document reference TR020002/APP/5.2-6)**). They include but are not limited to:
- 4.13.1 the contractor will produce and implement a Dust Management Plan (DMP); this will include details of measures to identify and reduce the risk, monitoring any dust and identify appropriate clean-up measures including;
 - (a) the use of a wheel wash, covering of all loads entering/leaving the site, and the use of water-assisted dust sweeper(s);
 - (b) locating stockpiles away from site boundary/receptors, covering or damping down stockpiles, stockpile maintenance/management, and removal of materials from site;
 - (c) avoiding the use of diesel or petrol-powered generators and use mains electricity or battery-powered equipment where practicable; ensuring all vehicles switch off engines when stationary - no idling vehicles.
 - 4.13.2 airfield design and operational measures to minimise the amount of time aircraft have engines running on the ground. Use of fixed electrical ground power (FEGP) to minimise engine use at stand. Airfield design to minimise taxi times;
 - 4.13.3 vapour recovery on avgas (aviation spirit) tanks.

Conclusions

- 4.14 As outlined in **Chapter 6: Air Quality (document reference TR020002/APP/5.2-1)**, there would be no significant effects during either the construction or operational phases with the employment of environmental measures, and as such no statutory nuisance would be expected.

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

- 4.15 The potential for these nuisances is covered in **Chapter 8: Freshwater** of the **ES (document reference TR020002/APP/5.2-1)**.

Construction phase

- 4.16 Construction activities of the Proposed Development may result in excavated material and waste, and an accumulation or deposition in watercourses.

- 4.17 Construction phase effects will be avoided by good practice construction measures and an approach to piling agreed following consultation with Southern Water (SW) and the Environment Agency (EA).

Operational phase

- 4.18 Operational phase effects associated with potential spills from the fuel farm have been identified as potentially significant and will require the development of further mitigation measures to be agreed following consultation with SW and the EA. Further details can be found in **Chapter 8: Freshwater** of the **ES (document reference TR020002/APP/5.2-1)**.

Embedded environmental measures

- 4.19 Environmental measures that have been incorporated into the development proposals to date in order to avoid, reduce or compensate for potential adverse freshwater effects are presented in the CEMP (**Appendix 3.2** of the **ES (document reference TR020002/APP/5.2-6)**). They include but are not limited to:

- 4.19.1 site access points will be regularly cleaned to prevent build-up of dust and mud;
- 4.19.2 earth movement will be controlled to reduce the risk of silt combining with the site run-off;
- 4.19.3 properly contained wheel wash facilities will be used (where required) to isolate sediment rich run-off;
- 4.19.4 cut-off ditches and/or geotextile silt-fences will be installed around excavations, exposed ground and stockpiles to prevent the uncontrolled release of sediments from the site;
- 4.19.5 sediment traps will be required on all surface water drains in the surrounding region;
- 4.19.6 silty water abstracted during excavations will be discharged to settlement tanks or siltbusters as appropriate. Cleaned run-off will be discharged through the existing foul sewer drains. If sewer capacity is limited then silty water will need to be stored and removed from the site by tanker and disposed of at a suitably licensed location. A discharge consent for discharge to foul sewer, detailing volumes and rates of discharge will be agreed with SW prior to the commencement of works, if necessary; and
- 4.19.7 stockpiles and material handling areas will be kept as clean as practicable to avoid nuisance from dust. Dusty materials will be dampened down using water sprays in dry weather or covered.

Conclusions

- 4.20 As outlined in **Chapter 8: Freshwater of the ES (document reference TR020002/APP/5.2-1)**, there would be no significant effects during either the construction or operational phases

with the employment of environmental measures, and as such no statutory nuisance would be expected.

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

- 4.21 Although there is potential for the attenuation ponds on site to generate insect nuisance they are unlikely to result in significant quantities of insects so as to cause a nuisance as they are sufficiently far away from receptors. It is therefore considered unlikely that this nuisance would exist.

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

Construction phase

- 4.22 As outlined in **Chapter 12: Noise, of the ES (document reference TR020002/APP/5.2-2)**, noise and vibration from construction would potentially affect residents at areas in the vicinity of the Proposed Development.
- 4.23 Specific requirements of the CEMP (**Appendix 3.2** of the **ES (document reference TR020002/APP/5.2-6)**), as well as the recommendations of BS 5228 Code of practice for noise and vibration control on construction and open sites parts 1 and 2 (BSI, 2014), would be implemented, including the following:

“Contractors will obtain consents from the relevant local authority under Section 61 of the Control of Pollution Act 1974 for the proposed construction works, excluding non-intrusive surveys. Applications will normally be made to the relevant local authority. Best Practicable Means (BPM) will be used to minimise noise and vibration at neighbouring residential properties and other sensitive receptors arising from construction activities.”

- 4.24 As stated in the Act, Section 80, Subsection 9:

“In proceedings for an offence under subsection (4) above in respect of a statutory nuisance falling within paragraph (g) or (ga) of section 79(1) above where the offence consists in contravening requirements imposed by virtue of subsection (1)(a) above it shall be a defence to prove –

(a) that the alleged offence was covered by a notice served under section 60 or a consent given under section 61 or 65 of the Control of Pollution Act 1974 (construction sites, etc)”

- 4.25 Therefore, adherence to the CEMP (**Appendix 3.2** of the **ES (document reference TR020002/APP/5.2-6)**) would provide a defence against statutory noise nuisance, as well as the existing defence in section 158 of the Planning Act 2008.

Operational phase

- 4.26 As outlined in **Chapter 12: Noise of the ES (document reference TR020002/APP/5.2-2)**, noise and vibration from the operation of airport related business development would potentially affect residents at areas in the vicinity of the proposed development.

4.27 The Operational Environmental Management Plan (OEMP) that will be completed at detailed design stage will set out the measures that will be put in place to minimise noise from these premises. Measures will include those set out in **Chapter 12: Noise** of the ES, including:

4.27.1 The Developer will assess industrial and commercial sound at the nearest residential receptor based on the principles set out in BS4142:2014. This methodology requires an assessment of industrial sound against the background level at residential receptors, measured during the detailed design stage. This will ensure that the background level will be established using up-to-date and robust information. The Developer will undertake the following steps to control industrial and commercial sound:

- (a) noise limits and acoustic requirements will be incorporated into contract documents such that they will apply to the design of all the fixed plant that are to be installed and operated as part of the Proposed Development;
- (b) the relevant background levels will be determined and establish jointly with the relevant local authorities;
- (c) fixed plant, including sound attenuation equipment that meets the specification requirements will be procured, installed and commissioned;
- (d) before formal operation of the fixed plant, a standard suite of acceptance tests will be completed as necessary to demonstrate that the operational sound levels achieve the design criteria;
- (e) a landscaped area has been provided between the proposed business park and the houses immediately adjacent to its eastern boundary. This area will be safeguarded in future design iterations in order to protect the residential properties during construction and operation;
- (f) the buildings which will generate the least noise will be located in the most sensitive areas of the site close to existing residential development. Such activities could include offices, parkland/greenspace, attenuation ponds, the museums and associated facilities;
- (g) warehouse buildings shall be orientated such that loading/unloading activities face away from any existing residential dwellings;
- (h) doors or other openings on building facades facing existing residential dwellings shall be minimised or avoided. This is most important for industrial buildings but may also include other buildings where evening, weekend or night time activities occur; and
- (i) internal vehicular routes shall be located away from the most sensitive parts of the site and buildings shall be used to screen road noise from existing residential buildings.

Conclusion

- 4.28 Adherence with the CEMP (**Appendix 3.2** of the **ES (document reference TR020002/APP/5.2-6)**) and the OEMP will ensure that no statutory nuisance or noise impacts prejudicial to health under Section 79(1) (g) and (ga) of the Act are expected as a result of the construction works and operation of the airport related business development.
- 4.29 Section 79(6) of the Act sets out that aircraft noise is excluded from the consideration of nuisance and therefore, this does not need to be addressed in this document.

5 Conclusion

- 5.1 This Statement has considered the potential for the Proposed Development to cause a statutory nuisance under Section 79(1) of the Act.
- 5.2 The construction activities that have the potential to create a nuisance would be controlled through the implementation of a construction environmental plan, as noted in the ES.
- 5.3 With mitigation in place, none of the statutory nuisances identified in section 79(1) of the Act is predicted to arise.

