



Gatwick Airport Northern Runway Project

Statement of Statutory Nuisance

Book 7

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1 Executive Summary

- 1.1.1 This Statement of Statutory Nuisance relates to the application made by Gatwick Airport Limited ("GAL") to the Secretary of State via PINS under section 37 of the Planning Act 2008 (Ref 1.1). The application is for development consent to enable dual runway operations through altering the existing northern runway at Gatwick Airport, lifting the current restrictions on the use of the northern runway and providing a range of infrastructure and facilities to allow increased airport passenger numbers and aircraft operations including works to the surface access highways leading to the airport.
- 1.1.2 The requirement for a Statement of Statutory Nuisance is set out in regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (Ref 1.2) which state that the application must be accompanied by *'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'*.
- 1.1.3 The Project has the potential to engage one or more of the matters set out in section 79(1) of the Environmental Protection Act 1990 (the "Act") (Ref 1.3) during the construction and operation of the Project, as a result of:
- smoke emitted from premises so as to be prejudicial to health or a nuisance (section 79(1)(b));
 - any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance (section 79(1)(d));
 - any accumulation or deposit which is prejudicial to health or a nuisance (section 79(1)(e));
 - any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance (section 79(1)(fa));
 - artificial light emitted from premises so as to be prejudicial to health or a nuisance (section 79(1)(fb)); and
 - noise emitted from premises so as to be prejudicial to health or a nuisance (section 79(1)(g)), although by virtue of section 79(6), only noise other than aircraft noise, or noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street (section 79(1)(ga)).
- 1.1.4 Taking into account the environmental mitigation measures and controls set out in the **Environmental Statement** ("ES") (Doc Ref. 5.1), none of the matters of statutory nuisance addressed by the Act are predicted to arise.

2 Introduction

- 2.1.1 This Statement of Statutory Nuisance relates to the application made by GAL to the Secretary of State via PINS under section 37 of the Planning Act 2008. The application is for development consent to enable dual runway operations through altering the existing northern runway at Gatwick Airport, lifting the current restrictions on the use of the northern runway and providing a range of infrastructure and facilities to allow increased airport passenger numbers and aircraft operations including works to the surface access highways leading to the airport (the "Project").
- 2.1.2 A detailed description of the Project can be found in **ES Chapter 5: Project Description** (Doc Ref. 5.1). A description of the proposed works for which a development consent order is sought can be found in Schedule 1 of the **Draft Development Consent Order** (Doc Ref. 2.1).
- 2.1.3 In preparing this statement, GAL has had regard to the former Department for Communities and Local Government's 'Planning Act 2008: Application form guidance' (June 2023) (Ref 1.4), the Airports National Policy Statement ("ANPS") (Ref 1.5) and the National Policy Statement for National Networks¹ ("NNNPS") (Ref 1.6), specifically:
- *'Section 158 of the Planning Act 2008 provides a defence of statutory authority in civil or criminal proceedings for nuisance. Such a defence is also available in respect of anything else authorised by an order granting development consent. The defence does not extinguish the local authority's duties under Part III of the Environmental Protection Act 1990 to inspect its area and take reasonable steps to investigate complaints of statutory nuisance and to serve an abatement notice where satisfied of its existence, likely occurrence or recurrence.'* (paragraphs 4.60 ANPS and 4.57 NNNPS).
 - *'During the examination of an application for development consent for infrastructure covered under the Airports NPS, possible sources of nuisance under section 79(1) of the Environmental Protection Act 1990 and under sections 76 and 77 of the Civil Aviation Act 1982 should be considered by the Examining Authority. The Examining Authority should also consider how those sources of nuisance might be mitigated or limited so they can recommend appropriate requirements that the Secretary of State might include in any subsequent order granting development consent.'* (paragraph 4.61 ANPS).
 - *'It is very important that during the examination of a nationally significant infrastructure project, possible sources of nuisance under section 79(1) of the 1990 Act, and how they may be mitigated or limited are considered by the Examining Authority so they can recommend appropriate requirements that the Secretary of State might include in any subsequent order granting development consent. More information on the consideration of possible sources of nuisance is at paragraphs 5.81-5.89'* (paragraph 4.58 NNNPS).
 - *'The defence of statutory authority is subject to any contrary provision made by the Secretary of State in any particular case by an order granting development consent (section 158(3) of the Planning Act)'* (paragraphs 4.62 ANPS and 4.59 NNNPS).

¹ We note that a draft National Policy Statement for National Networks was published for consultation in March 2023 (Ref 1.7). We do not consider the draft updates materially change the underlying policy relevant to this Statement (as quoted in this section of the Statement); however, and in any case, in accordance with the transitional provisions contained in paragraph 1.16 of that draft, any application accepted for examination before designation of the 2023 amendments should continue to be determined in accordance with the 2015 version of the NNNPS.

- 2.1.4 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 Environmental Impact Assessment reported in the **ES** (Doc Ref. 5.1).

3 Assessment of Statutory Nuisances

3.1. Section 79(1) Environmental Protection Act 1990

3.1.1 Section 79 of the Act contains definitions and exemptions in respect of statutory nuisance. Extracted below is the relevant text of section 79(1) of the Act which sets out in detail the matters which constitute statutory nuisances for the purpose of Part III of the Act:

'(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 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;

(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 below or sections 80 and 80A below and, where a complaint of a 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.'

3.1.2 Importantly, the matters outlined in section 79(1) are subject to subsections 79(4) and (5B) to (6A), which provide respectively that:

- section 79(1)(c) 'fumes or gases emitted from premises so as to be prejudicial to health or a nuisance' does not apply in relation to premises other than private dwellings;

- section 79(1)(fb) ‘artificial light emitted from premises so as to be prejudicial to health or a nuisance’ does not apply to light emitted from an airport;
- section 79(1)(g) ‘noise emitted from premises so as to be prejudicial to health or a nuisance’ does not apply to noise caused by aircraft other than model aircraft; and
- section 79(1)(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’ does not apply to noise made by traffic.

3.2. Potential breaches of section 79(1) Environmental Protection Act 1990

3.2.1 Considering the nature of the Project, the only matters prescribed by section 79(1) of the Act that could potentially be engaged and considered relevant as a consequence of the construction or operation of the Project, are:

- smoke emitted from premises so as to be prejudicial to health or a nuisance (section 79(1)(b));
- any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance (section 79(1)(d));
- any accumulation or deposit which is prejudicial to health or a nuisance (section 79(1)(e));
- any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance (section 79(1)(fa));
- artificial light emitted from premises so as to be prejudicial to health or a nuisance (section 79(1)(fb)); and
noise emitted from premises so as to be prejudicial to health or a nuisance (section 79(1)(g)), although by virtue of section 79(6) only noise other than aircraft noise, or noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street (section 79(1)(ga)).

3.2.2 Potential sources of statutory nuisance that are not considered applicable to the Project and are not considered further within this Statement are identified in Table 3.2.1. As the table explains, these have been identified either on the basis that there is no realistic potential for these nuisances to arise during any stage of the Project, or on the basis that one of the exceptions provided for in subsections 79(1A) to (6A) of the Act applies.

Table 3.2.1: Scoped out sources of statutory nuisance

Nuisance in section 79(1)	Reason for scoping out of assessment
(a) any premises in such a state as to be prejudicial to health or a nuisance	There are no premises on the Project site in such a state that would be prejudicial to health or a nuisance.
(c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance	Section 79(4) of the Act provides that this does not apply in relation to premises other than private dwellings. The Project does not involve the emission of any fumes or gases from private dwellings.
(f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance	No animals will be kept on-site as part of the Project.

(h) any other matter declared by any enactment to be a statutory nuisance	There are no other matters relating to the Project which could be considered to be a statutory nuisance.
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3.3. Section 79(1)(b): smoke emitted from premises so as to be prejudicial to health or a nuisance

- 3.3.1 The only place where smoke is likely to be emitted from premises is from the fire training ground. The fire training ground is currently located in the western part of the airfield, to the north of the existing northern runway, and includes a fire training rig, control centre, compartment fire training complex, road traffic collision mock-up area, classrooms, underground water storage, water tower and deluge system. The facility allows for rescue and firefighting training to ensure maintenance of competency and skills for GAL's own rescue and firefighting service.
- 3.3.2 The fire training rig is gas powered and therefore does not produce smoke during standard training programme. However, during training it is likely that smoke will be generated due to fire simulation exercises by burning different materials. These activities are controlled activities and managed under standard operating procedures and to date these activities have been carried out by GAL without complaint from the public or any intervention from the relevant planning authority.
- 3.3.3 As part of the Project, the fire training ground would be relocated/consolidated within an area in the northern part of its existing location. The fire training ground would continue to be used in the same manner as the current operation and would continue to be managed and operated by GAL. The location of the fire training ground is not adjacent to any residential receptors and any smoke generated is likely to be quickly blown away due to the openness of the area.
- 3.3.4 **ES Chapter 13: Air Quality** (Doc Ref. 5.1) and **ES Chapter 18: Health and Wellbeing** (Doc Ref. 5.1) do not identify any significant adverse effects from the operation of the fire training ground. Therefore, it is concluded that there would be no smoke emitted that would constitute a statutory nuisance.

3.4. Section 79(1)(d): any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance

- 3.4.1 **ES Chapter 13: Air Quality** (Doc Ref. 5.1) considers and assesses dust, odour, particulate matter emissions and changes to emissions during construction and operation of the Project. It also includes a separate construction dust assessment for each element of the Project following Institute of Air Quality Management (IAQM) guidance.
- 3.4.2 During operation changes to emissions from combustion plant, vehicles and mobile equipment, emissions as a result of car park provisions, from the Central Area Recycling Enclosure (CARE) facility and from fire training and engine testing were all considered within the scope of assessment. In addition, a qualitative odour assessment of operational scenarios was also carried out.
- 3.4.3 With the implementation of the dust control measures set out in **ES Appendix 13.8.1: Air Quality Construction Phase Mitigation** (Doc Ref. 5.3) and **ES Appendix 5.3.2: Code of Construction Practice** (Doc Ref. 5.3), effects of construction related dust would not be significant, and therefore would be unlikely to result in a statutory nuisance.

- 3.4.4 **ES Chapter 18: Health and Wellbeing** (Doc Ref. 5.1) also considers changes in annual average concentrations of air pollutants. While there would be incremental increases in exposure to the changes predicted, the absolute level of change is low and concentrations remain within statutory air quality objective thresholds set to be protective of health, including vulnerable groups. The level of change is unlikely to measurably affect population health outcomes. Quantitative analysis of health outcomes supports this conclusion.
- 3.4.5 With respect to odour, assessment within **ES Chapter 13: Air Quality** (Doc Ref. 5.1) determined that it was possible the local communities may experience occasional, short-term odour under specific weather conditions as a result of increased airport activity. The number of odour complaints is considered likely to remain at a limited level due to the low frequency of the necessary meteorological conditions and the medium odour source potential. Based on this, the odour effect is considered to be not significant, and therefore would be unlikely to result in a statutory nuisance.
- 3.4.6 A number of environmental mitigation and enhancement measures have been incorporated into the development proposals to reduce the potential for impacts on air quality and in order to avoid or reduce effects of odours from the airport. These include measures adopted to mitigate and monitor dust and emissions during construction and operation. These mitigation and enhancement measures are detailed in **ES Appendix 13.8.1: Air Quality Construction Phase Mitigation** (Doc Ref. 5.3); **ES Appendix 5.3.2: Code of Construction Practice** (Doc Ref. 5.3), **ES Appendix 5.4.2: Carbon Action Plan** (Doc Ref. 5.3) and the **ES Appendix 5.4.1: Surface Access Commitments** (Doc Ref. 5.3).
- 3.4.7 As outlined in **ES Chapter 13: Air Quality** (Doc Ref. 5.1), there would be no significant effects during either the construction or operation of the Project, and as such no statutory nuisance would be expected. Based on above and conclusions reported in **ES Chapter 18: Health and Wellbeing** (Doc Ref. 5.1), the Project and its activities would not constitute a statutory nuisance.
- 3.5. Section 79(1)(e): any accumulation or deposit which is prejudicial to health or a nuisance**
- 3.5.1 Key construction activities and the process will be facilitated by temporary construction compounds and storage areas and will include stockpiling of excavated and demolished material. It is the intention of the Project to maximise the reuse of materials and minimize the amount of material sent for off-site disposal. The cut/fill balance is considered throughout the Project design and reported within **ES Chapter 5: Project Description** (Doc Ref. 5.1) and in the **ES Appendix 5.3.2: CoCP Annex 5 - Construction Resources and Waste Management Plan** (Doc Ref. 5.3).
- 3.5.2 The Construction Resources and Waste Management Plan provides details on likely waste disposal volumes and the capacity of existing infrastructure provides details of procedures to be adopted during construction, which will include any measures required to protect members of the public, together with the relevant documentation to be provided by the Remediation Contractor. This will be implemented through the **ES Appendix 5.3.2: Code of Construction Practice** (Doc Ref. 5.3).
- 3.5.3 Within **ES Appendix 5.3.2: CoCP Annex 5 – Construction Resources and Waste Management Plan** (Doc Ref. 5.3) a Construction Materials Management Plan has been prepared to document the management of soils on the site and include a risk assessment procedure to demonstrate the soils do not present a risk to human health or the environment. The Construction

Materials Management Plan has been undertaken in accordance with the CL:AIRE Code of Practice (CL:AIRE, 2011).

3.5.4 Prior to construction stages the Principal Contractor(s) will develop and implement appropriate measures to control the risk of pollution due to construction works, materials and extreme weather events. The measures will consider the risk of pollution from construction activities and present pro-active management practices to ensure that any pollution that may occur is minimised, controlled, reported to the relevant parties and remediated. These measures will be based on details provided in **ES Appendix 5.3.2: Code of Construction Practice** (Doc Ref. 5.3).

3.5.5 All activities stated above will be regulated under appropriate Environmental Permits. Therefore, based on the above information and assessment, the Project and its activities relating to accumulation or deposit of materials would not constitute a statutory nuisance.

3.6. Section 79(1)(fa): any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance

3.6.1 Although there is potential for the attenuation ponds and attenuation storage 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.

3.6.2 The potential for infectious diseases risk to increase indirectly due to the establishment of foreign vectors, such as non-endemic mosquito species, close to the airport is also a port health issue and has been considered in **ES Chapter 18: Health and Wellbeing** (Doc Ref. 5.1). This issue is responded to with regular surveillance activities by Crawley Borough Council in and around the airport. The potential for vectors to establish is partially probabilistic (i.e. a function of aircraft numbers), but is more strongly linked to favourable habitat availability.

3.6.3 The driver for increased risk is habitat and climate change related, rather than due to additional aircraft movements associated with the Project. GAL would continue to support Crawley Borough Council in their statutory port health duties in this regard, including reviewing any changes in the frequency and location of mosquito monitoring (e.g. the removal of Pond A and inclusion of new underground storage at car park Y for surface water drainage would change the habitat availability). Due to the appropriate scaling of such activities, there is unlikely to be a change in the level of indirect infectious disease risk due to the Project.

3.6.4 GAL will scale support for port health activities as required in relation to the Project to ensure continued compliance with relevant statutory requirements. Based on above factors it is unlikely that issue of insects would constitute a statutory nuisance.

3.7. Section 79(1)(fb): artificial light emitted from premises so as to be prejudicial to health or a nuisance

3.7.1 Section 79(5B) of the Act provides that this nuisance does not apply to artificial light emitted from an airport and therefore this has not been considered further. However, artificial light emitted due to highway improvements and construction works and its effects on health has been considered in below sections.

3.7.2 **ES Appendix 5.2.2: Operational Lighting Framework** (Doc Ref. 5.3) has been prepared for the Project, which takes into account the Guidance Notes for the Reduction of Obtrusive Light

(Institute of Lighting Professionals, 2011). The document provides an overarching creative and technical framework for exterior lighting associated with the Project.

- 3.7.3 **ES Chapter 8: Landscape, Townscape and Visual Resources** (Doc Ref. 5.1) considers the impacts of artificial lighting and **ES Chapter 18: Health and Wellbeing** (Doc Ref. 5.1) considers changes in community exposure to night lighting due to the Project changes. The findings of the assessment state that the transitory night lighting for construction activities would be a very low level of change to very few people. It also states that while there will be some greater exposure to the community from highway related lighting effects in operational years following vegetation clearance, these would be low due to existing wider skyglow effect and remaining effects would reduce over time as new planting matures.
- 3.7.4 On the basis of the above and mitigation measures identified in the Operational Lighting Framework it is considered that artificial lighting for the Project would not constitute a statutory nuisance.
- 3.8. **Section 79(1)(g)-(ga): noise emitted from premises so as to be prejudicial to health or a nuisance or noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street**
- 3.8.1 Section 79(6) of the Act provides that subsection (1)(g) does not apply to noise caused by aircraft other than model aircraft. Noise arising from aircraft associated with the Project is therefore excluded. In addition, section 79(6A) of the Act provides that subsection (1)(ga) does not apply to noise made by traffic (amongst other things). Therefore, noise arising from traffic associated with the Project has also been excluded.
- 3.8.2 The potential for noise emitted from or caused by a vehicle, machinery or equipment in a street during construction and operation and noise from premises has been covered in **ES Chapter 14: Noise and Vibration** (Doc Ref 5.1).
- 3.8.3 As outlined in **ES Chapter 14: Noise and Vibration** (Doc Ref. 5.1), much of the construction work on the airfield would be required to be undertaken at night. The assessment identified properties, which are likely to experience construction and ground noise associated with the Project and appropriate mitigation measures have been identified for these affected properties. Vibration was also considered as part of the assessment and results indicate that it is unlikely to give rise to significant effects.
- 3.8.4 Appropriate mitigation measures for noise are detailed in **ES Appendix 5.3.2: Code of Construction Practice** (Doc Ref. 5.3) and discussed in section 14.9 of the **ES Chapter 14: Noise and Vibration** (Doc Ref. 5.1). These include measures to minimise disturbance from construction activities as far as reasonably practicable using the Best Practicable Means. In addition, noise insulation would be offered to qualifying properties experiencing significant levels of construction noise within their dwellings. Other mitigation measures identified to reduce noise levels of construction, including quieter methods of working, reducing plant noise levels for night works near sensitive areas, and use of noise barriers and screening, and will be secured through the Code of Construction Practice and the requirements therein to apply to the local authority to seek a Section 61 consent to carry out the noisy works. The Section 61 application process requires the contractor to make an application to the local authority giving details of the proposed method of working, and the noise mitigation measures proposed to reduce and minimise noise disturbance. The local authorities will vet the contractor's proposed methods of working to ensure

the Best Practicable Means to minimise noise and vibration are adopted, before granting the consent to work.

- 3.8.5 This approach to managing noise impacts is commonly adopted on major infrastructure projects in the UK, including the use of Section 61 applications. Indeed, GAL's contractors undertaking works to construct a new Rapid Exit Taxiway in 2023 applied to Crawley Borough Council for a Section 61 consent that was granted.
- 3.8.6 For the operational phase of the airport ground noise has been modelled and assessed and the scheme has been developed to include 8m high bunds and 10m high noise barriers to mitigate ground noise. Noise Insulation would also be available if necessary to mitigate effects. To assess noise from fixed plant associated with the new airport facilities a separation distance matrix has been prepared for the 43 nearest noise assessment locations (detailed at Table 5.1.1 within **ES Appendix 14.9.6: Ground Noise Baseline Report** (Doc Ref. 5.3)) and the 31 new fixed plant locations. Appropriate noise design standards have been set for each based on the baseline noise levels measured in the surrounding area. The matrix shows that the fixed ground noise sources are all a minimum of 200m from the nearest assessment location. It is considered that given the relatively large separation distances, meeting the derived noise limits will be readily achievable through good acoustic design and no significant effects are expected. **ES Chapter 14: Noise and Vibration** (Doc Ref. 5.1) identifies no significant construction or operational ground and fixed plant noise effects that would constitute a statutory nuisance as a result of the Project.
- 3.8.7 **ES Chapter 18: Health and Wellbeing** (Doc Ref. 5.1) considers the effect of noise on population health. The assessment conclusion reflects that although construction noise is an issue of concern to communities and the scientific literature indicates a clear association between elevated and sustained noise disturbance and reduced health outcome, the changes would result in a very limited effect in the local health baseline. The commitment to insulate dwellings affected above the Significant Observed Adverse Effect Level (SOAEL), and the use of the Section 61 application process, keeps construction noise within limits intended to safeguard health. The temporary and localised construction noise effects would, at most, have a marginal effect on health inequalities and are not expected to affect the delivery of health policy.
- 3.8.8 Therefore, adherence to best practicable means and the availability of the statutory defences means that no statutory nuisance or noise impacts prejudicial to health are expected as a result of the construction or operation of the Project.

4 Conclusion

- 4.1.1 This Statement of Statutory Nuisance considers whether the Project engages any of the matters set out in section 79(1) of the Act. It considers the findings of the Environmental Impact Assessment in the ES in respect of the impacts that could give rise to statutory nuisance resulting from the construction and operation of the Project.
- 4.1.2 Taking into account the reasons stated in this Statement and the proposed environmental mitigation measures set out in the ES, none of the statutory nuisances identified in section 79(1) of the Act are predicted to arise during the construction or operation of the Project.

5 References

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