

PLANNING ACT 2008  
INFRASTRUCTURE PLANNING  
(APPLICATIONS: PRESCRIBED FORMS AND PROCEDURE) REGULATIONS 2009  
REGULATION 5 (2) (q)

## PROPOSED PORT TERMINAL AT FORMER TILBURY POWER STATION

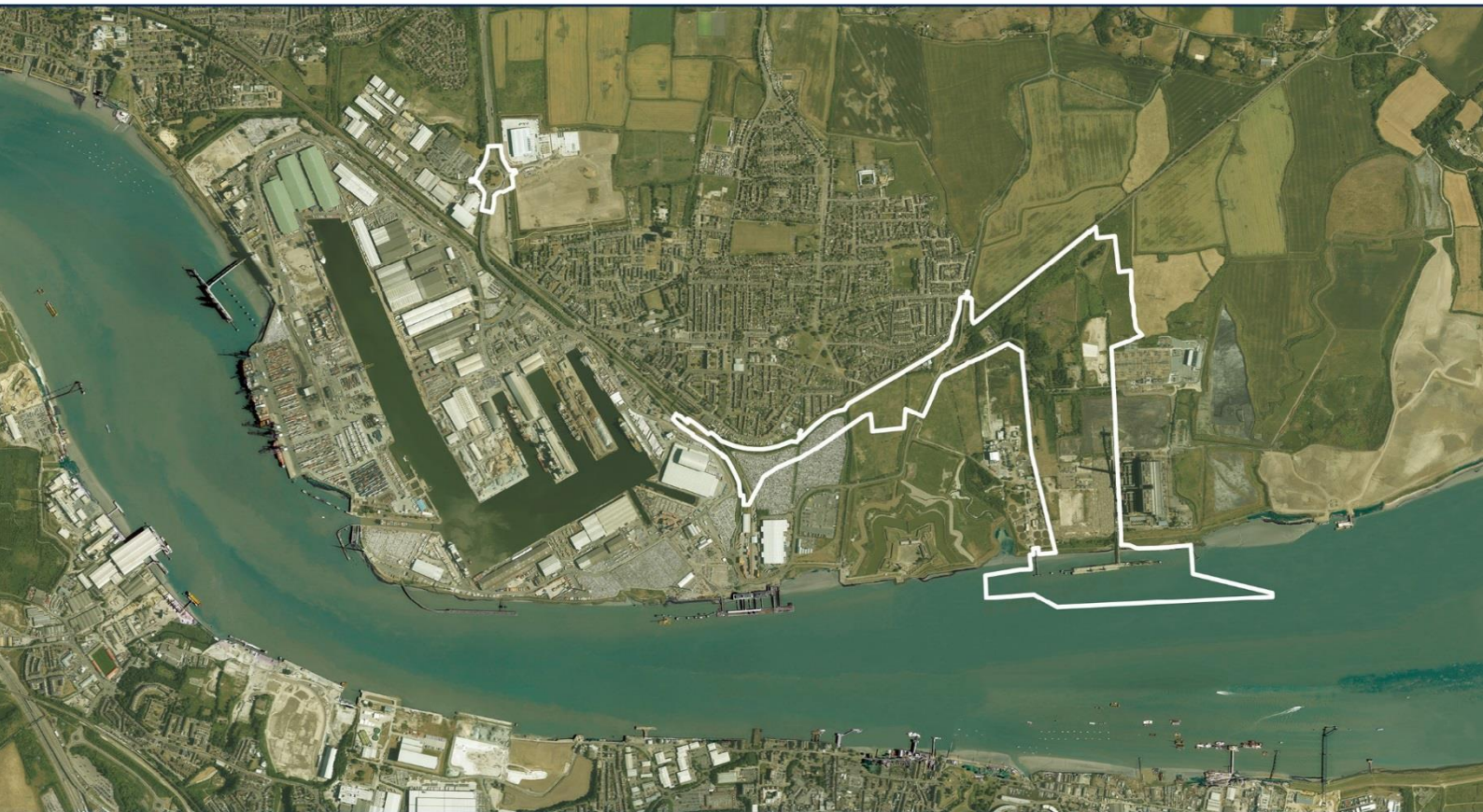
# TILBURY2

TR030003

VOLUME 6

## STATEMENT IN RESPECT OF STATUTORY NUISANCE

DOCUMENT REF: 6.5



## 1 INTRODUCTION

- 1.1 This Statement in Respect of Statutory Nuisance ("the Statement") relates to the application by Port of Tilbury London Limited ("PoTLL") to the Secretary of State (through the Planning Inspectorate) under the Planning Act 2008 (as amended) ("the Act") for a development consent order authorising the construction, operation and maintenance of a proposed new port terminal and associated facilities in Tilbury, Essex ("the proposals").
- 1.2 The Statement has been prepared in compliance with the requirements of Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 ("the APFP Regulations") and in accordance with the Department for Communities and Local Government guidance, 'Planning Act 2008: Application Form Guidance'.
- 1.3 This Statement identifies whether the proposed development engages one or more of the statutory nuisances, set out in section 79(1) of the Environmental Protection Act 1990 ("the EPA"), and if so, how PoTLL proposes to mitigate or limit such nuisances.
- 1.4 This Statement forms part of a suite of Development Consent Order ("DCO") application documents and should be read alongside those other documents. The Statement refers to the following documents in particular:
- 1.4.1 Environmental Statement (Document Reference: 6.1);
  - 1.4.2 Construction Environmental Management Plan ("CEMP") (Document Reference: 6.9); and
  - 1.4.3 Operational Management Plan ("OMP") (Document Reference: 6.10).
- 1.5 Section 2 of this Statement gives a summary of the proposals. Section 3 sets out the relevant provisions of the EPA. Section 4 considers the potential for the proposals to give rise to statutory nuisances.

## 2. THE PROPOSALS

- 2.1 PoTLL is proposing a new port terminal on the north bank of the River Thames at Tilbury, Essex a short distance to the east of its existing Port of Tilbury. The proposed port terminal will be constructed on land that formed the western part of the now redundant Tilbury Power Station and is bounded to the west by a waste water treatment works and to the east by the Tilbury B power station that is presently being demolished. The project is known as "Tilbury2".
- 2.2 The proposed main uses on the site will be a Roll-on/Roll-off (RoRo) terminal and a Construction Materials and Aggregates terminal (the "CMAT"), and associated infrastructure including rail and road facilities and revisions to the existing marine infrastructure. An 'infrastructure corridor' is proposed that will accommodate road and rail links to the existing rail and road network. The CMAT will include stockpiling of construction materials and some processing of aggregates for the production of asphalt and concrete products.
- 2.3 The proposals will require works including, but not limited to:
- 2.3.1 creation of hard surfaced pavements;

- 2.3.2 improvement of and extensions to the existing river jetty including creation of a new RoRo berth;
  - 2.3.3 associated dredging of berth pockets around the proposed and extended jetty and dredging of the approaches to these berth pockets;
  - 2.3.4 new and improved conveyors;
  - 2.3.5 erection of welfare buildings;
  - 2.3.6 erection of a single 10,000 sqm. warehouse
  - 2.3.7 a number of storage and production structures associated with the CMAT;
  - 2.3.8 the construction of a new link road from Ferry Road to Fort Road; and
  - 2.3.9 formation of a rail spur and sidings.
- 2.4 The proposed volumes of import/export of RoRo units for the terminal exceed the threshold of 250,000 units stated in the Act for throughput per annum. The proposals therefore constitute a Nationally Significant Infrastructure Project ("NSIP").

### 3. **STATUTORY CONTEXT**

- 3.1 Section 79(1) of the EPA (as it applies in England) provides that the following matters constitute statutory nuisances:
- (a) any premises in such a state as to be prejudicial to health or a nuisance;*
  - (b) smoke emitted from premises so as to be prejudicial to health or a nuisance;*
  - (c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;*
  - (d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;*
  - (e) any accumulation or deposit which is prejudicial to health or a nuisance;*
  - (f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;*
  - (fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;*
  - (fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance;*
  - (g) noise emitted from premises so as to be prejudicial to health or a nuisance;*
  - (ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street; and*

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

- 3.2 As set out above, paragraph (h) of Section 79(1) incorporates any statutory nuisances contained in other legislation. The Public Health Act 1936 provides that various other matters are statutory nuisances for the purposes of the EPA, including the following which are potentially relevant to the proposals:

*any pond, pool, ditch, gutter or watercourse which is so foul or in such a state as to be prejudicial to health or a nuisance (s.259(1)(a)); and*

*any part of a watercourse, not being a part ordinarily navigated by vessels employed in the carriage of goods by water, which is so choked or silted up as to obstruct or impede the proper flow of water and thereby to cause a nuisance, or give rise to conditions prejudicial to health (s.259(1)(b)).*

- 3.3 Section 79 contains other exceptions and definitions in respect of statutory nuisance. The particular exceptions of relevance to the proposals are:

*subsection 79(1)(c) (fumes or gases emitted from premises) does not apply in relation to premises other than private dwellings (s.79(4));*

*subsection 79(1)(fb) (artificial light emitted from premises) does not apply to artificial light emitted from...harbour premises (s.79(5B)), which the proposals would be during operation; and*

*subsection (1)(ga) above does not apply to noise made...by traffic.*

and as such are not engaged in relation to the proposals.

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

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

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

*“gas” includes vapour and moisture precipitated from vapour;*

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

*“noise” includes vibration;*

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

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

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



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

**4. POTENTIAL BREACHES OF SECTION 79(1) OF THE ENVIRONMENTAL PROTECTION ACT 1990**

4.1 This section considers the types of impacts associated with the proposals that could potentially engage one or more of the matters set out in Section 79(1) of the EPA.

4.2 The provisions of section 79(1) of EPA that could potentially be engaged are:

*(b) smoke 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; and*

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

4.3 The following provisions of section 259 of the Public Health Act 1936 could potentially be engaged:

*(1)(a) any pond, pool, ditch, gutter or watercourse which is so foul or in such a state as to be prejudicial to health or a nuisance;*

*(1)(b) any part of a watercourse, not being a part ordinarily navigated by vessels employed in the carriage of goods by water, which is so choked or silted up as to obstruct or impede the proper flow of water and thereby to cause a nuisance, or give rise to conditions prejudicial to health.*

4.4 As noted above, the following categories of statutory nuisance:

*subsection 79(1)(c) (fumes or gases emitted from premises);*

*subsection 79(1)(fb) (artificial light emitted from premises) during operation; and*

*subsection 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)*

are not engaged by the proposals.

4.5 Each of the categories of statutory nuisance potentially engaged by the proposals are considered below.

**Smoke emitted from premises; Dust arising on business premises and/or smoke, fumes or gases emitted from vehicles, machinery or equipment; Accumulation or deposit which is prejudicial to health or a nuisance**

**Construction**

- 4.6 Chapter 18 (Air Quality) of the Environmental Statement describes the residual impacts from dust and other emissions arising as a result of construction of the proposals, which are assessed as not significant. The methodologies for assessing the potential impacts associated with construction dust and construction vehicle emissions are detailed in Chapter 18 (Air Quality).
- 4.7 Mitigation measures in relation to dust and emissions to air arising during the construction of the proposals are detailed in Chapter 18 (Air Quality) and are secured by the CEMP. The CEMP sets out a range of measures in relation to the control and monitoring of dust and emissions, including such measures as good housekeeping and staff training, mitigation relating to construction vehicle and plant emissions, the preparation and maintenance of the construction site and vehicles, specific requirements in relation to earthworks and construction activities and the prevention of trackout of potentially dusty material on to the public highway by vehicles leaving the construction site.
- 4.8 Any cement batching or crushing/screening plant used during construction of the Tilbury2 site will be required to comply with conditions set within environmental permits (as appropriate), under the Environmental Permitting (England and Wales) Regulations 2016. The design and operation of the facilities will be in accordance with the principles of “Best Available Techniques” (BAT) for preventing or, where that is not practical, reducing emissions to atmosphere such that they are not visible beyond the site boundary.
- 4.9 With the mitigation described within the CEMP in place (compliance with which is secured by a DCO requirement), dust and other emissions during construction would be controlled and would not give rise to any nuisance, nor would they be prejudicial to health under sections 79(1)(b), 79(1)(d) and 79(1)(e) of the EPA.

**Operation**

- 4.10 Chapter 18 (Air Quality) of the Environmental Statement describes the residual impacts from dust and other emissions as a result of the operation of the proposals, which are assessed as not significant.
- 4.11 Mitigation measures in relation to dust and other emissions arising during the operation of the proposals are detailed in Chapter 18 (Air Quality) and are secured by the OMP (compliance with which is secured by way of a DCO requirement). The OMP sets out a range of measures in relation to the control and monitoring of dust and emissions, including the definition of specific staff roles and responsibilities for controlling operational emissions such as good housekeeping, staff training, the maintenance and procurement of low emission technologies, the prevention of trackout of potentially dusty material on to the public highway by vehicles leaving the site and the means of responding to any complaints. Specific mitigation measures in relation to the RoRo and CMAT terminals, which are considered to be the primary sources of

on-site operational emissions, are detailed, along with a dust deposition monitoring protocol.

- 4.12 Individual operators of CMAT processing facilities within the Tilbury2 site will be required to comply with conditions set within environmental permits (as appropriate), under the Environmental Permitting (England and Wales) Regulations 2016. The design and operation of the facilities will be in accordance with the principles of “Best Available Techniques” (BAT) for preventing or, where that is not practical, reducing emissions to atmosphere such that they are not visible beyond the site boundary.
- 4.13 With the mitigation described above in place, particularly as secured in the OMP, dust and other emissions during the operation of the proposals would be controlled and would not give rise to any nuisance, nor would they be prejudicial to health under sections 79(1)(b), 79(1)(d) and 79(1)(e) of the EPA.

### **Artificial light emitted from premises**

#### **Construction**

- 4.14 The majority of construction work in relation to the authorised development will be undertaken during daylight hours as secured in the CEMP (compliance with which is secured by way of a DCO requirement). During those working hours there will be no need for artificial lighting of construction areas. Night time working will be kept to a minimum. Mitigation measures, designed to avoid or reduce the effects during construction of artificial lighting would be implemented in accordance with the CEMP. In particular, chapter 5 of CEMP states that unobtrusive construction lighting should be used where it is practicable to do so. Lighting equipment that is used must also be designed in accordance with Institute of Lighting Professionals (ILP) Guidance Notes for the Reduction of Obtrusive Light GN01:2011.
- 4.15 As such, the impacts of lighting during construction would not generate a nuisance, nor would it be prejudicial to health under section 79(1)(fb) of the EPA 1990.

#### **Operation**

- 4.16 As stated above, as the proposals would constitute harbour premises, this 'head' of nuisance would not be engaged during operation.

### **Noise emitted from premises and/or from vehicles, machinery and equipment in a street**

#### **Construction**

- 4.17 Chapter 17 (Noise and Vibration) of the Environmental Statement describes the residual impacts from noise arising as a result of construction of the proposals, which are assessed as being of temporary, adverse effects, but not significant when mitigation measures are taken into account.
- 4.18 Mitigation measures in relation to noise and vibration arising during the construction of the proposals are detailed in Chapter 17 (Noise and Vibration) and are secured by the CEMP (compliance with which is secured by way of a DCO requirement). The CEMP sets out a range of measures in relation to the

control and monitoring of noise, including restricted working hours, temporary noise barriers and the use of low noise plant.

- 4.19 With these mitigation measures in place, noise impacts during construction of the proposals are not expected to generate a nuisance, nor would they be prejudicial to health under section 79(1)(g) or (ga) of the EPA

### **Operation**

- 4.20 Chapter 17 (Noise and Vibration) of the Environmental Statement describes the residual impacts from noise arising as a result of the operation of the proposals, which are assessed as being of major adverse effect at some residential properties but will not be significant with receptor mitigation applied to the properties.

- 4.21 Mitigation measures in relation to noise and vibration arising during the operation of the proposals are detailed in Chapter 17 (Noise and Vibration) and are secured by the OMP, compliance with which is secured by way of a DCO requirement. The OMP sets out a range of measures in relation to the control and monitoring of noise including the definition of specific staff roles and responsibilities for controlling operational noise, the maintenance and procurement of low noise technologies and responding to any complaints.

- 4.22 In addition to this, a DCO requirement secures the implementation of a noise monitoring and mitigation framework, which includes, amongst other things, a re-assessment of predicted noise impacts arising from the finalised design and operational procedures of the proposals and facilitating offers of scheme mitigation at receptors which are predicted, as a result of the re-assessment, to experience significant effects in respect of noise arising from the operation of the proposals.

- 4.23 With these mitigation measures in place, noise impacts during operation of the proposals are not expected to generate a nuisance, nor would they be prejudicial to health under section 79(1)(g) or (ga) of the EPA.

### **Statutory nuisances under the Public Health Act 1936**

- 4.24 The proposals will not give rise to any statutory nuisance under section 79(1)(h) of the 1990 Act in respect of section 259 of the Public Health Act 1936, which relates to (a) "*any pond, pool, ditch, gutter or watercourse which is so foul or in such a state as to be prejudicial to health*" and/or (b) "*any part of a watercourse...which is so choked or silted up as to obstruct or impede the proper flow of water*".

- 4.25 Mitigation measures to protect surface water from pollution during construction of the proposals are set out in Chapter 16 of ES and in the CEMP. In particular, the CEMP requires:

4.25.1 construction materials brought to site to be controlled such that these are free from contaminated material, so as to avoid potential run-off contamination;

4.25.2 the application of appropriate care to avoid disturbance or rupture of underground services such as sewers, waste water pipes or fuel lines; and



4.25.3 earth moving operations that have potential to give rise to contaminated drainage to be undertaken in compliance with BSI Code of Practice for Earthworks BS6031, 2009<sup>1</sup>.

## 5. **CONCLUSION**

- 5.1 This Statement identifies the matters set out in Section 79(1) of the EPA in respect of statutory nuisances and considers whether the proposed application would engage one or more of those matters.
- 5.2 With the proposed mitigation in place, as described above, it is not expected that there would be a breach of Section 79(1) of the EPA 1990 during construction or operational activities.
- 5.3 The construction activities that have the potential to create a nuisance will be controlled through the CEMP which accompanies the application and compliance with which would be secured by the DCO.

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<sup>1</sup> BSI, 2009 – BS 6031:2009. Code of Practice for Earthworks