Fosse Green Energy

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EN010154

7.6 Statutory Nuisance Statement

VOLUME

7

Planning Act 2008 (as amended)

Regulation 5(2)(f)

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

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The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulation 2009 (as amended)

Fosse Green Energy

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7.6 Statutory Nuisance Statement

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1. Introduction

1.1 Background

1.1.1 This Statutory Nuisance Statement (the 'Statement') has been prepared on behalf of Fosse Green Energy Limited (the 'Applicant'), as part of an application for a Development Consent Order (DCO) for Fosse Green Energy (hereafter referred to as the 'Proposed Development').

1.1.2 The Proposed Development will comprise the construction, operation (including maintenance), and decommissioning of ground-mounted solar photovoltaic (PV) arrays. The Proposed Development will also include associated development to support the solar PV arrays. The Proposed Development is made up of the Principal Site and the Cable Corridor. The Principal Site comprises the Solar PV Array Areas containing ground-mounted solar PV panels, on-site Battery Energy Storage System (BESS), and associated infrastructure such as a series of Interconnecting Cable Corridors, internal tracks, inverters, transformers, switchgear, and an Onsite Substation (which will include transformers, switchgear and metering equipment required to facilitate the import and export of electricity to the National Grid). The Principal Site also includes substantial habitat and landscaping enhancement.

1.1.3 The Proposed Development will export and import electricity via the national electricity transmission network via a buried 400 kilovolt (kV) import and export cable circuit, linking the Onsite Substation to the proposed National Grid substation near Navenby, approximately 10km south east of the Principal Site.

1.1.4 A full description of the Proposed Development is included in **Chapter 3: The Proposed Development** of the Environmental Statement (ES) **[EN010154/APP/6.1]**. An overview of the Proposed Development and its environmental impacts is provided in the ES **Non-Technical Summary [EN010154/APP/6.4].**

1.1.5 The site of the Proposed Development (the 'DCO Site') is shown on **Figure 1-2: DCO Site** of the ES **[EN010154/APP/6.2]** and represents the maximum extent of land to be acquired or used for the construction, operation (including maintenance), and decommissioning of the Proposed Development.

1.2 Purpose and Structure of this Statement

1.2.1 The Statement is part of a suite of documents which must accompany the DCO application made pursuant to Section 55 of the Planning Act 2008 (Ref. 1) and Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (APFP Regulations) (Ref. 2).

1.2.2 Regulation 5(2)(f) requires that an application for a DCO must be accompanied by a statement setting out whether the proposal (i.e. the

Proposed Development) engages one or more of the matters in section 79(1) (statutory nuisances and inspections therefor) of the Environmental Protection Act 1990 (as amended) (EPA) (Ref. 3). If any of those matters are engaged, the statement must set out how the application proposes to mitigate or limit the effects.

1.2.3 The matters in section 79(1) of the EPA that have been considered within this Statement during construction, operation and maintenance, and decommissioning of the Proposed Development are:

(a) "*any premises in such a state as to be prejudicial to health or a nuisance*" and (e) *"any accumulation or deposit which is prejudicial to health or a nuisance"* (i.e. condition of site);

(d) "*any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance"* (i.e. air emissions);

(fb) *"artificial light emitted from premises so as to be prejudicial to health or a nuisance"* (i.e. artificial light); and

(g) *"noise emitted from premises so as to be prejudicial to health or a nuisance"* and (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"* (i.e. noise and vibration).

1.2.4 The matters in section 79(1) of the EPA that have not been considered within this Statement are set out and justified within **Table 3-1**.

1.2.5 This Statement should be read alongside other documents submitted as part of the DCO application, particularly:

a. Framework Construction Environmental Management Plan (CEMP) [EN010154/APP/7.7];

b. Framework Operational Environmental Management Plan (OEMP) [EN010154/APP/7.8]; and

c. Framework Decommissioning Environmental Management Plan (DEMP) [EN010154/APP/7.9].

1.2.6 This Statement is produced in the context of section 158 of the Planning Act 2008 which provides statutory authority for carrying out development or anything else which is authorised by the DCO as a defence against civil or criminal proceedings for nuisance.

1.2.7 This Statement sets out appropriate mitigation measures to ensure that the Proposed Development would not give rise to a statutory nuisance. It is therefore demonstrated that no statutory nuisance effects are considered likely to occur. It is not expected that the construction, operation (and maintenance), and decommissioning of the Proposed Development would cause a statutory nuisance.

1.2.8 Nonetheless, it should be noted that article 7 (Defence to proceedings in respect of statutory nuisance) of the **draft DCO [EN010154/APP/3.1]** contains a provision that would provide a defence to proceedings in respect of statutory nuisance (in respect of sub-paragraph (g) of section 79(1) of the EPA (noise emitted from premises so as to be prejudicial to health or a nuisance), subject to the criteria set out in that article).

1.2.9 This Statement is structured as follows:

a. **Section 1:** Introduction (this section);
b. **Section 2:** Legislative and Policy Context;
c. **Section 3:** Assessment of Significance;
d. **Section 5:** Matters Engaged and Proposed Mitigation Measures; and
e. **Section 6:** Conclusion.

2. Legislative and Policy Context

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

2.1.1 Regulation 5(2)(f) of the APFP Regulations (Ref. 2) states that an application for a DCO 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 (EPA), and if so how the applicant proposes to mitigate or limit them*".

2.2 Environmental Protection Act (EPA)

2.2.1 Section 79(1) of the EPA (Ref. 3), 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 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 of 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 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."

2.2.2 For a nuisance to be considered a statutory nuisance, it must unreasonably and substantially interfere with the use or enjoyment of a home or other premises or injure health or be likely to injure health. To be considered a

nuisance, an activity must be ongoing or repeated – a one-off event would not usually be considered a nuisance.

2.3 Overarching National Policy Statement for Energy (NPS EN-1)

2.3.1 The Department for Energy Security and Net Zero (DESZN) published an updated overarching National Policy Statement for Energy (NPS EN-1) in November 2023, which was designated in January 2024. Paragraphs 4.15.1 to 4.15.4 state:

"Section 158 of the Planning Act 2008 confers statutory authority for carrying out development consented to by, or doing anything else authorised by, a development consent order.

Such authority is conferred only for the purpose of providing a defence in any civil or criminal proceedings for nuisance. This would include a defence for proceedings for nuisance under Part III of the Environmental Protection Act 1990 (EPA) (statutory nuisance) but only to the extent that the nuisance is the inevitable consequence of what has been authorised.

The defence does not extinguish the local authority's duties under Part III of the EPA 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.

The defence is not intended to extend to proceedings where the matter is "prejudicial to health" and "not a nuisance."

2.3.2 Paragraph 4.14.5 states *"At the application stage of an energy NSIP, possible sources of nuisance under section 79(1) of the EPA 1990 and how they may be mitigated or limited should be identified by the applicant so that appropriate requirements can be included in any subsequent order granting development consent."*

3. Assessment of Significance

3.1 Summary of Matters Engaged

3.1.1 The ES **[EN010154/APP/6.1]** accompanying this DCO application addresses the likelihood of significant effects arising that could constitute a statutory nuisance as identified in section 79(1) of the EPA.

3.1.2 **Table 3-1** outlines each matter stated in section 79(1) of the EPA and describes whether this is covered within this Statement, or is excluded, depending on the assessment within the ES.

Table 3-1: Matters Stated in Section 79(1) of the EPA

EPA Section 79(1) Matter	Matter engaged as a consequence of the Proposed Development?
(a) any premises in such a state as to be prejudicial to health or a nuisance	This matter is considered further in this Statement (see Section 4.1).
(b) smoke emitted from premises so as to be prejudicial to health or a nuisance	No smoke is expected to be generated from the Proposed Development; therefore, this is not considered further within the Statement. Unplanned, emergency scenarios such as an accidental or technical fire are not considered relevant to this Statement.
(c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance	This matter only applies to private dwellings, as provided for under section 79(4) of the EPA. This matter is therefore not considered further within this Statement.
(d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance	This matter is considered further in this Statement in relation to dust (see Section 4.2). The Proposed Development is not anticipated to have any impact on steam, smell or other effluvia and therefore, those elements are not considered further within this Statement.
(e) any accumulation or deposit which is prejudicial to health or a nuisance	This matter is considered further in this Statement (see Section 4.1).
(f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance	The Proposed Development will not keep any animals in such a place or manner as to be prejudicial to health or a nuisance. Any grazing of livestock will be in accordance with good practice guidance for livestock welfare; therefore, this is not considered further in this Statement.

EPA Section 79(1) Matter	Matter engaged as a consequence of the Proposed Development?
(fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance	There is no indication that the construction, operation (and maintenance), and decommissioning of the Proposed Development will emanate any insects nor insects be attracted to it. Therefore, this is not considered further within this Statement.
(fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance	This matter is considered further in this Statement (see Section 4.3).
(g) noise emitted from premises so as to be prejudicial to health or a nuisance;	This matter is considered further in this Statement (see Section 4.4).
(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	This matter is considered further in this Statement (see Section 4.4)
(h) any other matter declared by any enactment to be statutory nuisance	No other matters are considered to cause a potential statutory nuisance associated with the construction, operation (and maintenance) or decommissioning of the Proposed Development.

4. Matters Engaged and Proposed Mitigation Measures

4.1 Condition of Site – Sections 79(1)(a) and (e) of the EPA

4.1.1 This section considers the risk of the condition of the DCO Site causing a statutory nuisance.

4.1.2 The following constitute a statutory nuisance:

a. Section 79(1)(a) – *"any premises in such a state as to be prejudicial to health or a nuisance".*

b. Section 79(1)(e) – *"any accumulation or deposit which is prejudicial to health or a nuisance".*

Construction and Decommissioning

4.1.3 The types of construction activities in respect of the Proposed Development include, but are not limited to:

a. Site preparation and civil works;

b. Solar PV array construction;

c. Construction of on-site electrical infrastructure;

d. Installation of cables;

e. Testing and commissioning; and

f. Landscape and habitat creation.

4.1.4 When the operational phase ends, the Proposed Development will require decommissioning. All PV panels, mounting poles, on-site cabling, inverters, transformers and concrete foundations to those elements not remaining would be removed from the Principal Site and recycled or disposed of in accordance with good practice and market conditions at that time.

4.1.5 During decommissioning, all infrastructure associated with the Proposed Development will be removed and recycled or disposed of in accordance with good practice and market conditions at that time. This is with the exception of the cabling in the Cable Corridor, which may remain in-situ. The mode of cable decommissioning for the Cable Corridor and interconnecting cables will be dependent upon government policy and best practice at that time. Currently, the most environmentally acceptable option installing cables in ducting and leaving either the ducting or the cables in situ, as this avoids disturbance to overlying land and habitats and to neighbouring communities. Alternatively, the cables (and ducting) can be removed by opening the ground at regular

intervals and pulling the cable through to the extraction point, avoiding the need to open up the entire length of the cable route.

4.1.6 In addition, the future of the Onsite Substation and control buildings would be agreed with the Local Planning Authority prior to commencement of decommissioning. The impact assessment within the **ES [EN010154/APP/6.1]** has been based on the worst-case parameters for each technical topic, as discussed in **Chapter 5: EIA Methodology** of the ES **[EN010154/APP/6.1]**.

4.1.7 The construction and decommissioning works have the potential to create pollution incidents, such as spillages and also create litter and general waste, which can constitute a nuisance under the EPA.

4.1.8 Proposed construction and decommissioning management measures are set out in the **Framework CEMP** submitted alongside the DCO application **[EN010154/APP/7.7]** and **Framework DEMP** submitted alongside the DCO application **[EN010154/APP/7.9]** respectively. The **Framework CEMP [EN010154/APP/7.7]** and **Framework DEMP [EN010154/APP/7.9]** have been informed by the Environmental Impact Assessment (EIA), as reported within the **ES [EN010154/APP/6.1]**, and will guide the construction and decommissioning processes through environmental controls in order to promote good construction and decommissioning practices to avoid adverse or nuisance causing impacts.

4.1.9 A detailed CEMP will be prepared following granting of the DCO. It would be in line with the commitments set out in the **Framework CEMP [EN010154/APP/7.7]** and would be agreed with the relevant local planning authorities.

4.1.10 A detailed DEMP will also be prepared prior to the commencement of decommissioning. The detailed DEMP will be in accordance with the **Framework DEMP [EN010154/APP/7.9]**.

4.1.11 Measures to deal with accidental pollution would be included within the detailed CEMP and detailed DEMP prior to the commencement of construction and decommissioning respectively. Any necessary equipment (e.g., spillage kits) would be held on-site and all site personnel would be trained in their use. The Environment Agency would be informed immediately in the unlikely event of a suspected pollution incident.

4.1.12 To control the waste generated during site preparation and construction, the Contractor will separate the main waste streams on-site, prior to transport to an approved, licenced third party waste facility for recycling or disposal.

4.1.13 A Site Waste Management Plan (SWMP) (secured by the **Framework CEMP [EN010154/APP/7.7]**) will be prepared by the appointed Principal Contractor, which will specify the waste streams to be estimated and monitored and goals set with regards to the waste produced. The SWMP will be finalised with specific measures to be implemented prior to the start of construction. The types, quantities and final destination of waste generated during the

decommissioning phase would be identified, measured and recorded through the DEMP (secured by the **Framework DEMP [EN010154/APP/7.9]**).

4.1.14 All waste to be removed from the DCO Site will be undertaken by fully licenced waste carriers and taken to licenced waste facilities for recycling and disposal. It is not proposed to store waste batteries on site. They will be removed from the containers and taken away straight away, following waste duty of care.

4.1.15 The measures set out in the **Framework CEMP [EN010154/APP/7.7]** and **Framework DEMP [EN010154/APP/7.9]** are embedded in the Proposed Development proposals and the assessment of effects undertaken as relevant. The EIA assumes that those measures are implemented in full. Compliance with the detailed CEMP (substantially in accordance with the **Framework CEMP [EN010154/APP/7.7]**) and detailed DEMP (substantially in accordance with the **Framework DEMP [EN010154/APP/7.9])** will be secured by requirements in the DCO.

4.1.16 With these measures in place, it is considered that construction and decommissioning of the Proposed Development will not give rise to impacts which would constitute a statutory nuisance under section 79(1)(a) or (e) of the EPA.

Operation and Maintenance

4.1.17 It is considered that the operation of the Proposed Development in its built form, as a solar farm, with related infrastructure, will not in itself cause the 'premises' within the DCO Site, to be in 'such a state' as to be prejudicial to health or nuisance.

4.1.18 During operation, maintenance activity within the Principal Site will be limited and restricted principally to vegetation management, equipment maintenance and servicing, replacement of any components that fail, and monitoring. It is anticipated that maintenance and servicing would include the inspection and, if required, renewal and removal, reconstruction, refurbishment or replacement of faulty or broken equipment, but not the removal, reconstruction or replacement of all panels, BESS and associated infrastructure at the same time.

4.1.19 Along the Cable Corridor and in areas of on-site cabling within the Principal Site, operational activity will consist of cable route inspections (schedule to be determined) and any reactive maintenance such as where a cable has been damaged.

4.1.20 All operational activities, including maintenance and servicing, will be undertaken in accordance with the environmental management measures set out within the **Framework OEMP [EN010154/APP/7.8].**

4.1.21 As such, operation and maintenance of the Proposed Development will not give rise to impacts which would constitute a statutory nuisance under section 79(1)(a) or (e) of the EPA.

4.2 Air Emissions – Section 79(1)(d) of the EPA

4.2.1 Section 79(1)(d) provides that the following constitutes a statutory nuisance: "*any dust, steam, smell or other effluvia arising on industrial trade or business premises and being prejudicial to health or a nuisance*".

4.2.2 An air quality assessment has been undertaken as part of the EIA and is reported in **Chapter 14: Other Environmental Topics** of the ES **[EN010154/APP/6.1]**. The assessment considered the significance of potential air quality effects during construction and decommissioning, and concludes that, with appropriate mitigation, there would be no significant effects in terms of the EIA regulations (Ref. 5). There is no potential for likely significant effects on air quality during operation, and as such, an assessment of operational air quality effects was scoped out of the ES, as discussed in **Chapter 14: Other Environmental Topics** of the ES **[EN010154/APP/6.1]**.

Construction and Decommissioning

4.2.3 **Chapter 14: Other Environmental Topics** of the ES **[EN010154/APP/6.1]** assesses the impact of construction and decommissioning of the Proposed Development on air quality. In addition, the assessment is supported by **Appendix 14-B: Dust Risk Assessment** of the ES **[EN010154/APP/6.3]**.

4.2.4 The Proposed Development will not require any demolition during the construction phase. During construction there is the potential for emissions of dust particles due to the following:

a. Earthworks (e.g., soil stripping, excavation etc.);

b. General construction activities (e.g. site preparation, solar PV panel and cable installation); and

c. Trackout (movement of mud and soil out of the DCO Site by construction vehicles).

4.2.5 **Appendix 14-B: Dust Risk Assessment** of the ES **[EN010154/APP/6.3]** has been undertaken based on relevant industry (Institute of Air Quality Management (IAQM)) guidance.

4.2.6 Whilst the DCO Site is not considered to be a 'high risk' site, taking into account the scale of the DCO Site and associated construction works, it is considered prudent to adopt good site practice for controlling dust as outlined with the IAQM's 'Guidance on assessment of Dust from Demolition and Construction' document (Ref. 6) for high risk sites as a precautionary approach. These measures represent good industry practice and are therefore embedded in the Proposed Development proposals.

4.2.7 These good site practice mitigation measures are incorporated into the **Framework CEMP [EN010154/APP/7.7]** and are also presented in **Table 3-2** below. These mitigation measures will be effectively implemented meaning that no significant dust effects resulting from excavation and construction activities are anticipated beyond the DCO Site.

4.2.8 **Chapter 14: Other Environmental Topics** of the ES **[EN010154/APP/6.1]** concludes that the adequate implementation of good industry practice measures is expected to prevent the occurrence of significant effects arising from dust generation during construction. **Chapter 14: Other Environmental Topics** of the ES **[EN010154/APP/6.1]** also sets out that decommissioning is expected to generate similar (if not lower) effects to those anticipated during construction, and therefore the mitigation measures proposed for implementation during construction will be appropriate for decommissioning as well. As such measures presented in **Table 3-2** have also been incorporated within the **Framework DEMP [EN010154/APP/7.9]. Chapter 14: Other Environmental Topics** of the ES **[EN010154/APP/6.1]** concludes that impacts on local air quality because of dust generation during decommissioning are considered to be not significant.

4.2.9 In addition, the assessment confirms that there is likely to be no significant impact on local air quality during construction or decommissioning as a result of increased traffic from the Proposed Development during these phases at all modelled receptors.

4.2.10 The construction and the decommissioning of the Proposed Development are not considered to result in effects that would constitute a statutory nuisance as defined with Section 79(1)(d) of the EPA.

Table 3-2: Mitigation for a High-Risk Site (adapted from IAQM) and Adopted Good Practice Measures

Activity	Mitigation Measure
Communications	Develop and implement a stakeholder communications plan that includes community engagement before work commences on-site.
	Display the name and contact details of person(s) accountable for air quality and dust issues on the DCO Site boundary. This may be the environment manager/engineer or the Site Manager.
	Display the head or regional office contact information.
	Develop and implement a Dust Management Plan (DMP), which may include measures to control other emissions, approved by the Local Authority. The level of detail will depend on the risk and should include as a minimum the highly recommended measures in this document. The desirable measures should be included as appropriate for the DCO Site. The DMP may include monitoring of dust deposition, dust flux, real time PM_{10} continuous monitoring and/or visual inspections.
Site Management	Record all dust and air quality complaints, identify cause(s), take appropriate measures to reduce emissions in a timely manner, and record the measures taken.
	Make the complaints log available to the local authority when asked.
	Record any exceptional incidents that cause dust and/or air emissions, either on- or off-site, and the action taken to resolve the situation in the log book.

Activity	Mitigation Measure
	Hold regular liaison meetings with other high risk construction sites within 500m of the DCO Site boundary, to ensure plans are co-ordinated and dust and particulate matter emissions are minimised. It is important to understand the interactions of the off-site transport/deliveries which might be using the same strategic road network routes.
Monitoring	Undertake daily on-site and off-site visual inspection, where receptors (including roads) are nearby, to monitor dust, record inspection results, and make the log available to the local authority when asked. This should include regular dust soiling checks of surfaces (for example, street furniture) within 100m of the DCO Site Boundary.
	Carry out regular site inspections to monitor compliance with the DMP, record inspection results, and make an inspection log available to the local authority when asked.
	Increase the frequency of site inspections by the person accountable for air quality and dust issues on site when activities with a high potential to produce dust are being carried out and during prolonged dry or windy conditions
Preparing and maintaining the site	Plan site layout so that machinery and dust causing activities are located away from receptors, as far as is practicable.
	Fully enclose site or specific operations where there is a high potential for dust production and the site is active for an extensive period where operations are within 100m of receptors.
	Fully enclose site or specific operations where there is a high potential for dust production and the site is active for an extensive period.
	Avoid site runoff of water or mud.
	Keep site fencing, barriers and scaffolding clean using wet methods.
	Remove materials that have a potential to produce dust from site as soon as possible, unless being re-used on site. If they are being re-used on-site cover as described below.
	Cover, seed or fence stockpiles to prevent wind whipping.
	Ensure all vehicles switch off engines when stationary - no idling vehicles.
	Avoid the use of diesel- or petrol-powered generators and use mains electricity or battery powered equipment where practicable.
	Impose and signpost a maximum-speed-limit of 15mph on surfaced and 10 mph on unsurfaced haul roads and work areas (if long haul routes are required these speeds may be increased with suitable additional control measures provided, subject to the approval of the nominated undertaker and with the agreement of the local authority, where appropriate).

Activity	Mitigation Measure
	Produce a Construction Logistics Plan to manage the sustainable delivery of goods and materials.
	Implement a Travel Plan (in the case of the Proposed Development, within the Construction Traffic Management Plan) that supports and encourages sustainable travel (public transport, cycling, walking, and car-sharing).
	Only use cutting, grinding or sawing equipment fitted or in conjunction with suitable dust suppression techniques such as water sprays or local extraction, e.g. suitable local exhaust ventilation systems.
Operations	Ensure an adequate water supply on the site for effective dust/particulate matter suppression/ mitigation, using non-potable water where possible and appropriate.
	Ensure vehicles are inspected and cleaned as required, prior to accessing the public highway.
	Use enclosed chutes and conveyors and covered skips.
	Minimise drop heights from conveyors, loading shovels, hoppers and other loading or handling equipment and use fine water sprays on such equipment wherever appropriate.
	Ensure equipment is readily available on site to clean any dry spillages and clean up spillages as soon as reasonably practicable after the event using wet cleaning methods.
	Avoid bonfires and burning of waste materials.
Waste management	Ensure effective water suppression is used during demolition operations. Hand held sprays are more effective than hoses attached to equipment as the water can be directed to where it is needed. In addition high volume water suppression systems, manually controlled, can produce fine water droplets that effectively bring the dust particles to the ground.
Earthworks	Use Hessian, mulches or trackifiers where it is not possible to re-vegetate or cover with topsoil, as soon as practicable.
	Only remove the cover in small areas during work and not all at once
	Avoid scabbling (roughening of concrete surfaces) if possible.
Construction	Ensure sand and other aggregates are stored in bunded areas and are not allowed to dry out, unless this is required for a particular process, in which case ensure that appropriate additional control measures are in place.
	Ensure bulk cement and other fine powder materials are delivered in enclosed tankers and stored in silos with suitable emission control systems to prevent escape of material and overfilling during delivery.
	For smaller supplies of fine power materials ensure bags are sealed after use and stored appropriately to prevent dust.
Trackout	Avoid dry sweeping of large areas.

Activity	Mitigation Measure
	Ensure vehicles entering and leaving sites are covered to prevent escape of materials during transport
	Inspect on-site haul routes for integrity and instigate necessary repairs to the surface as soon as reasonably practicable.
	Record all inspections of haul routes and any subsequent action in a site log book.
	Install hard surfaced haul routes, which are regularly damped down with fixed or mobile sprinkler systems, or mobile water bowsers and regularly cleaned.
	Implement a wheel washing system (with rumble grids to dislodge accumulated dust and mud prior to leaving the site where reasonably practicable).
	Ensure there is an adequate area of hard surfaced road between the wheel wash facility and the site exit, wherever site size and layout permits.
	Access gates will be located at least 10m from receptors.

Operation and Maintenance

4.2.11 Traffic generation from operational staff and maintenance work is not expected to induce significant changes to traffic flows on the local road network, as set out in **Chapter 14: Other Environmental Topics** of the ES **[EN010154/APP/6.1]**.

4.2.12 The operation of the Proposed Development does not involve any significant emissions of air pollutants on-site.

4.2.13 No significant effects on local air quality, including through dust generation, are therefore predicted during operation of the Proposed Development. The operation of the Proposed Development would therefore not result in effects that would constitute a statutory nuisance as defined with Section 79(1)(d) of the EPA.

4.3 Artificial Light – Section 79(1)(fb) of the EPA

4.3.1 Section 79(1)(fb) provides that the following constitutes a statutory nuisance, "*artificial light emitted from premises so as to be prejudicial to health or a nuisance*".

4.3.2 A statutory nuisance would exist if artificial light substantially interfered with the wellbeing, comfort, or enjoyment of an individual's property. Usually, this would mean that lights were causing a nuisance on a regular basis. Artificial lights may cause a nuisance if they are not maintained or used properly.

4.3.3 The effects of Glint and Glare are not covered by statutory nuisance legislation, which does not cover natural light. These effects are however assessed within **Chapter 14: Other Environmental Topics** of the ES **[EN010154/APP/6.1]** and **Appendix 14-D: Glint and Glare Assessment** of the ES **[EN010154/APP/6.3]**, and no significant effects are identified following embedded mitigation measures, which comprise planting new vegetation screening.

Construction and Decommissioning

4.3.4 Construction temporary lighting, in the form of task specific and fixed 'general' lighting, may be required during core working hours during months with reduced daylight hours.

4.3.5 Artificial lighting will be provided to maintain sufficient security and health and safety for the construction site, whilst adopting mitigation principles to avoid excessive glare, and minimise spill of light to nearby residential receptors, outside of the DCO Site as far as reasonably practicable.

4.3.6 In accordance with the **Framework CEMP [EN010154/APP/7.7]** and **Framework DEMP [EN010154/APP/7.9]** all construction and decommissioning lighting will incorporate the following measures to prevent or reduce the impact on residential receptors:

a. The use of lighting will be minimised to that required for safe site operations;

b. Lighting will utilise directional fittings to minimise outward light spill and glare (e.g. via the use of light hoods/cowls which direct light below the horizontal plane, preferably at an angle greater than 20° from horizontal); and

c. Lighting will be directed into the DCO Site rather than towards land outside of the DCO Site.

4.3.7 With the above measures in place, it is unlikely that artificial light from temporary construction lighting during construction and decommissioning would interfere with the wellbeing, comfort, or enjoyment of an individual's property. The construction of the decommissioning of the Proposed Development are not considered to result in effects that would constitute a statutory nuisance as defined with Section 79(1)(fb) of the EPA.

Operation and Maintenance

4.3.8 Operational lighting is controlled by the **Framework OEMP [EN010154/APP/7.8]**. During operation:

a. No areas of the Proposed Development will be continuously lit;

b. Operational lighting will be triggered by Passive Infra-red Detector (PID) systems, which will be installed around the perimeter of the Proposed Development;

c. Lighting will be directional with care to minimise potential for light spillage beyond the DCO Site particularly towards neighbouring properties, habitats, highways or waterways;

d. Lights installed will be of the minimum brightness and/or power rating capable of performing the desired function;

e. Light fittings will be used to reduce the amount of light emitted above the horizontal (reduce upward lighting);

f. The lighting of the primary substation will be motion sensor triggered, that would operate from dusk;

g. Low level lighting on specific operational units will be triggered by motion sensors, from dusk;

h. The inward facing CCTV cameras will typically use night-vision technology and will not require additional lighting; and

i. During maintenance (as relevant) the cleaning of the solar PV panels will require tractor mounted lighting, which is similar to that used during night-time arable harvesting operations currently undertaken within the Principal Site.

4.3.9 In line with the above measures, there will be no lighting at the perimeter of the DCO Site and no potential for a statutory nuisance. On this basis, it is unlikely that artificial light during operation of the Proposed Development would interfere with the wellbeing, comfort, or enjoyment of an individual's property. The operation of the Proposed Development is therefore not considered to result in effects that would constitute a statutory nuisance as defined with Section 79(1)(fb) of the EPA.

4.4 Noise and Vibration – Sections 79(1)(g) and (ga) of the EPA

4.4.1 The following constitute a statutory nuisance:

a. Section 79(1)(g) – *"noise emitted from premises so as to be prejudicial to health or a nuisance";* and

b. 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 street"*.

4.4.2 If noise is excessive, prolonged or on a regular basis it may constitute a statutory nuisance. A statutory nuisance would exist where the statutory threshold outlined in paragraph 4.4.1 above is met.

4.4.3 Local Authorities have a duty to investigate and, if necessary, take enforcement against noise or vibration emissions that are identified as a statutory nuisance. Section 80 of the EPA (Ref. 3) identifies Best Practicable Means (BPM), as defined in section 72 of the Control of Pollution Act 1974 (Ref. 5), as a basis for defence against enforcement action in certain circumstances. Section 82 of the EPA provides a mechanism for individuals to

seek abatement action to be taken by a magistrate's court against noise nuisance.

4.4.4 An assessment of noise and vibration impacts was undertaken as part of the EIA and is reported in **Chapter 11: Noise and Vibration** of the ES **[EN010154/APP/6.1]**. The chapter assessed the significance of potential noise and vibration effects during construction, operation and maintenance, and decommissioning, and concludes that, with appropriate mitigation, there would be no significant noise effects in terms of the EIA Regulations (Ref. 5).

4.4.5 With regards to vibration effects, **Chapter 11: Noise and Vibration** of the ES **[EN010154/APP/6.1]** concludes that three properties (R26, R35 and R50, identified as located at 60 m or closer to the Principal Site) may experience temporary exceedances of the Significant Observed Adverse Effect Level (SOAEL), and as such significant vibration effects during construction, if driven piling is undertaken at a distance of 60 m or closer. This is considered to be a precautionary approach to construction vibration which was based on vibration from more substantial piling activities than will be needed for solar panel mounts, and likely to over-estimate vibration levels. If driven piling was to be undertaken, a commitment is included in the **Framework CEMP [EN010154/APP/7.7]** to undertake a construction vibration risk assessment such that significant effects would be avoided. If it is unavoidable that the SOAEL would be exceeded, the risk assessment would focus on limiting the exposure of nearby receptors to levels of vibration exceeding the SOAEL as far as reasonably practicable. It should be noted that, with reference to paragraph 2.2.2, for a nuisance to be considered a statutory nuisance it must ongoing or repeated. The construction relating to any piling works would be transient, whereby any piling within the Principal Site that could occur within 60m or closer to dwellings would only be for a relative short duration (i.e., a day or a few days) and therefore would not be repeated.

4.4.6 The elements relevant to section 79(1) are those relating to noise emitted from premises (which includes land) and from vehicles, machinery and equipment in a street. Traffic noise is specifically excluded from consideration by Section 79 (6A)(a) of the EPA and is not considered further.

Construction and Decommissioning

4.4.7 Construction and decommissioning noise levels at surrounding receptors will vary depending on the locations and types of works taking place. Due to the variation in work activities and locations across the Proposed Development, it is considered that any periods of regular construction noise levels experienced at a receptor would be of a limited duration due to the phased nature of construction (e.g., a few weeks or months, rather than the full duration of the construction period). Occupants of nearby receptors are likely to be more tolerable of these events, if they are regularly communicated to and kept informed of timings and duration of high noise generating events.

4.4.8 Measures to control noise and vibration will be adopted. These measures represent Best Practicable Means (BPM) and are included as embedded

mitigation within the **Framework CEMP [EN010154/APP/7.7]** and **Framework DEMP [EN010154/APP/7.9]**.

4.4.9 The construction and decommissioning contractors will follow BPM to minimise any noise impacts upon local sensitive receptors. These are likely to involve the following, as appropriate:

a. Ensuring that all appropriate processes, procedures and measures are in place to minimise noise before works begin and throughout the construction programme.

b. All contractors to be made familiar with current legislation and the guidance in BS 5228 (Parts 1 (Ref. 8) and 2 (Ref. 9)) which should form a prerequisite of their appointment.

a. Ensuring that, where reasonably practicable, noise and vibration are controlled at source (e.g., the selection of inherently quiet plant and low vibration equipment), review of the construction/decommissioning programme and methodology to consider quieter methods, consideration of the location of equipment on-site and control of working hours.

c. Use of modern plant, complying with applicable UK noise emission requirements.

d. Hydraulic techniques for breaking concrete or rocks to be used in preference to percussive techniques, where reasonably practicable.

e. When piling, use of lower noise piling where reasonably practicable.

f. Off-site pre-fabrication where reasonably practicable.

g. Regular and effective maintenance by trained personnel will be undertaken to keep plant and equipment working to manufacturer's specifications.

b. All construction/decommissioning plant and equipment to be properly maintained, silenced where appropriate, operated to prevent excessive noise and switched off when not in use.

h. Loading and unloading of vehicles, dismantling of site equipment or moving equipment or materials around the DCO Site to be conducted in such a manner as to minimise noise generation, as far as reasonably practicable.

i. All vehicles used on-site shall incorporate broadband reversing warning devices as opposed to the typical tonal reversing alarms to minimise noise disturbance, where reasonably practicable.

j. Appropriate routing of construction traffic on public roads and along access tracks to avoid sensitive areas where practicable (see **Chapter 3: The Proposed Development** of the ES **[EN010154/APP/6.1]**, **Chapter 13: Traffic and Transport** of the ES **[EN010154/APP/6.1]** and the **Framework Construction Traffic Management Plan (CTMP) [EN010154/APP/7.18]**).

k. Unnecessary revving of engines will be avoided, and equipment will be switched off when not in use.

l. Drop heights of materials will be minimised.

m. Plant and vehicles will be sequentially started up rather than all together.

n. Plant will always be used in accordance with manufacturers' instructions. Care will be taken to site equipment away from noise-sensitive areas. Where possible, loading and unloading will also be carried out away from such areas.

o. Any percussive piling works within 400m of residential properties will only occur for two periods of four hours (between 08:00 to 18:00) with at least one hour break between the two periods.

4.4.10 Furthermore, to ensure that no exceedances of the SOAEL would occur at sensitive receptors, additional mitigation measures in the form of temporary, mobile acoustic screening would be implemented, as set out in **Chapter 11: Noise and Vibration** of the ES **[EN010154/APP/6.1]** and the **Framework CEMP [EN010154/APP/7.7]**.

4.4.11 As noted at paragraph 4.4.5, regarding construction vibration, if driven piling was to be undertaken, a commitment is included in the **Framework CEMP [EN010154/APP/7.7]** to undertake a construction vibration risk assessment such that significant effects would be avoided. If it is unavoidable that the SOAEL would be exceeded, the risk assessment would focus on limiting the exposure of nearby receptors to levels of vibration exceeding the SOAEL as far as reasonably practicable.

4.4.12 Core working hours onsite will be 07:00 to19:00 Monday to Friday and 09:00 to 13:00 on Saturday but will be shortened if working would necessitate artificial lighting and therefore the working day may be shorter in the winter months (with the exception of activities such as horizonal directional drilling (HDD) which may require continuous working). There will be no work on a Sunday or Bank Holiday unless crucial to construction (e.g., HDD may require continuous activity etc.) or in an emergency. Core construction working hours are set out in the **Framework CEMP [EN010154/APP/7.7]**.

4.4.13 A construction noise monitoring scheme shall be developed as per requirements of the **Framework CEMP [EN010154/APP/7.7]** submitted alongside the DCO application following appointment of a Principal Contractor and prior to commencement of construction works. Monitoring during the decommissioning phase will be undertaken in accordance with the **Framework DEMP [EN010154/APP/7.9]** submitted with the DCO application.

4.4.14 The effect of noise and vibration on nearby sensitive receptors can be minimised through a good communication strategy. Prior to construction works being undertaken, liaison will be undertaken with occupiers of sensitive receptors that may be adversely affected by construction noise and vibration.

4.4.15 Noise complaints will be monitored and reported to the Applicant for immediate investigation and action. A display board will be installed on-site, and a website

will be set up. These will include contact details for the Community Liaison Officer or alternative with whom nuisance or complaints can be lodged. A logbook of complaints will be prepared and managed by the Site Manager.

4.4.16 The communication strategy and noise complaint system will be secured through the DCO as part of the **Framework CEMP [EN010154/APP/7.7]** and **Framework DEMP [EN010154/APP/7.9]** submitted alongside the DCO.

4.4.17 Where high noise generating works are required to be undertaken outside of core daytime working hours, they will comply with the restrictions stated in the **Framework CEMP [EN010154/APP/7.7]**, and consents will be sought from the relevant local authority under Section 61 of the Control of Pollution Act 1974 (Ref. 7) for the proposed construction works, excluding non-intrusive surveys, as relevant. The Section 61 application will set out the specific method of working, calculations of noise levels at nearby receptors, the actual working hours required, noise monitoring locations, details of communication measures and the mitigation measures implemented to minimise noise and vibration impacts.

4.4.18 As requirements for any potential HDD activities will not be finalised until a Principal Contractor is appointed, a hierarchy of mitigation measures is contained in the **Framework CEMP [EN010154/APP/7.7]** to ensure that significant noise effects do not occur due to potential night-time works, as follows:

a. Where practicable, avoid HDD works within 200m (the distance at which significant effects are predicted at night) of residential receptors (although this will depend on the results of the ground investigation survey);

b. Where HDD activities may occur within 200m of sensitive receptors, the option for open cut cable laying will be explored as an alternative to HDD (this is not viable if HDD is a commitment in specific locations due to stakeholder requests or other environmental issues);

c. Where HDD activities may occur within 200m of sensitive receptors, the timing of the HDD activities will be delayed until after 10am to avoid more sensitive time periods;

d. The potential for the use of quieter equipment than listed in **Appendix 11-D: Construction and Operational Noise Modelling** of the ES **[EN010154/APP/6.3]** will be explored by the Principal Contractor; and

e. Depending on the location, plant and timing of works, temporary acoustic fencing will be installed around the HDD site boundary to screen receptors from noise emission if HDD works are required within 200m of a sensitive receptor. This mitigation could provide 10 dB of attenuation when the noise screen completely hides the sources from the receptor.

4.4.19 Consideration has been given to traffic routing, timing, and access points to the Proposed Development to minimise noise impacts at existing receptors as detailed in **Chapter 13: Traffic and Transport** of the ES **[EN010154/APP/6.1]**. Management of Heavy Goods Vehicles (HGV) on the highway network will be managed through the **Framework CTMP**

[EN010154/APP/7.18], which will be secured through the DCO application. Appropriate routing of construction and decommissioning traffic on public roads and along access tracks will be pursuant to the CTMP.

4.4.20 Noise and vibration effects during decommissioning of the Proposed Development will be similar or less than noise effects during construction. The noise assessment presented within **Chapter 11: Noise and Vibration** of the ES **[EN010154/APP/6.1]** for construction is therefore considered representative (or an overestimate) of decommissioning.

4.4.21 The construction and decommissioning of the Proposed Development are not considered to result in effects that would constitute a statutory nuisance with regards to noise and vibration as defined with Sections 79(1)(g) and 79(1)(ga) of the EPA. As noted in paragraph 4.4.5, the construction relating to any piling works would be transient, whereby any piling within the Principal Site that could occur within 60m or closer to dwellings would only be for a relative short duration (i.e., a day or a few days) and therefore would not be repeated. As such, this does not constitute a statutory nuisance.

Operation and Maintenance

4.4.22 There is not anticipated to be any noticeable impulsive or intermittent characteristics from plant noise emissions experienced at the surrounding receptors. The Proposed Development layout has been optimised to locate inverters as far as practically possible from sensitive receptors where the highest levels of noise were predicted. The illustrative site layout (**Figure 3-2A: Indicative Fixed South Facing Site Layout Plan** of the ES **[EN010154/APP/6.2],** and **Figure 3-2B: Indicative Single Axis Tracker Site Layout Plan** of the ES **[EN010154/APP/6.2]**) has been designed to locate Solar Stations at least 200m from residential properties.

4.4.23 Although the indicative Proposed Development layout has been optimised to minimise noise levels at sensitive receptors, there is a requirement to retain some flexibility on where infrastructure will be located on-site. Consequently, if there is a decision in the future to move noise generating infrastructure closer to sensitive receptors than shown in **Figure 11-1: Receptor and Noise Monitoring Locations** of the ES **[EN010154/APP/6.2]**, the Applicant commits that noise at sensitive receptors will be no higher than the levels presented Table 11-21 of **Chapter 11: Noise and Vibration** of the ES **[EN010154/APP/6.1]**. Modelling will be undertaken at the detailed design phase to confirm the noise levels at sensitive receptors will be no higher than the levels established. The measures to achieve this are discussed in **Chapter 11: Noise and Vibration** of the ES **[EN010154/APP/6.1]** and this commitment will be secured through a requirement of the **draft DCO [EN010154/APP/3.1]**.

4.4.24 Low frequency noise can be very difficult to predict with a high level of certainty and similarly hard to identify and resolve if present. This is because it can be generated by the unexpected interactions between system components and can be amplified by the geometry of the DCO Site and receptor buildings. The issue of low frequency noise will be considered during the detailed design post

consent for the Onsite Substation and eliminated through design or appropriately mitigated through isolation and/ or attenuation measures, where appropriate. This requirement is secured through a requirement in the **draft DCO [EN010154/APP/3.1]**.

4.4.25 As such, **Chapter 11: Noise and Vibration** of the ES **[EN010154/APP/6.1]** concludes that any operational noise effects experienced at sensitive receptors will not be significant. The operation of the Proposed Development is therefore not considered to result in effects that would constitute a statutory nuisance as defined with Sections 79(1)(g) and 79(1)(ga) of the EPA.

5. Conclusion

5.1 Potential for Nuisance

5.1.1 In line with Regulation 5(2)(f) of the APFP Regulations (Ref. 2), this Statement has identified whether the Proposed Development has engaged one or more of the matters set out in Section 79(1) of the EPA (Ref. 3), and thus considered whether the Proposed Development would cause a statutory nuisance.

5.1.2 The matters in the EPA that have been engaged by the Proposed Development are Section 79(1)(a) and (e) - general site condition, Section 79(1)(d) - air emissions, Section 79(1)(fb) - artificial light, and Section 79(1)(g) and (ga) - noise and vibration, during construction, operation and maintenance, and decommissioning of the Proposed Development. The mitigation measures identified in the ES, and as detailed within the **Framework CEMP [EN010154/APP/7.7]**, **Framework OEMP [EN010154/APP/7.8]**, and **Framework DEMP [EN010154/APP/7.9]**, will prevent impacts which have a potential to result in statutory nuisance under section 79 of the EPA. These measures are secured by requirements obtained within the **draft DCO [EN010154/APP/3.1]**.

5.1.3 As such, it is not expected that the construction, operation (and maintenance), and decommissioning of the Proposed Development would cause a statutory nuisance.

6. References

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Ref. 2. HMSO (2009). The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. Available at: https://www.legislation.gov.uk/uksi/2009/2264/contents/made [Accessed 15/02/2024]

Ref. 3. HMSO (1990) Environmental Protection Act 1990. Available at: https://www.legislation.gov.uk/ukpga/1990/43/contents [Accessed 15/02/2024]

Ref. 4. Department for Energy Security and Net Zero (DESNZ) (November 2023). NPS for Renewable Energy Infrastructure (EN-1). Available at: https://www.gov.uk/government/publications/overarching-national-policy-statement-for-energy-en-1 [Accessed 15/02/2024]

Ref. 5. HMSO (2017) The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017. Available at: https://www.legislation.gov.uk/uksi/2017/572/contents [Accessed 15/02/2024]

Ref. 6. Institute of Air Quality Management (IAQM) (2024). Guidance on the assessment of dust from demolition and construction. Institute of Air Quality Management. Available at: https://iaqm.co.uk/wp-content/uploads/2013/02/Construction-Dust-Guidance-Jan-2024.pdf [Accessed 15/02/2024]

Ref. 7. HSMO (1974) Control of Pollution Act 1974. Available at: https://www.legislation.gov.uk/ukpga/1974/40/contents [Accessed 15/02/2024]

Ref. 8. British Standards Institute (2014) BS 5228:2009+A1:2014 – Code of practice for noise and vibration control on construction and open sites.– Part 1: Noise. London: BSI.

Ref. 9. British Standards Institute (2014) BS 5228:2009+A1:2014 – Code of practice for noise and vibration control on construction and open sites.– Part 2: Vibration. London: BSI.