

M25 junction 10/A3 Wisley interchange

TR010030

5.2 Statutory nuisance statement

Regulation 5(2)(f)
Planning Act 2008

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



Infrastructure Planning

Planning Act 2008

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

M25 junction 10/A3 Wisley interchange

The M25 junction 10/A3 Wisley interchange Development Consent Order 202[x]

5.2 STATUTORY NUISANCE STATEMENT

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Executive Summary

This statutory nuisance statement (the Statement) has been produced for the purpose of identifying the matters set out in section 79(1) of the Environmental Protection Act 1990 in respect of statutory nuisances and considers whether the M25 junction 10/A3 Wisley interchange (the Scheme) would engage one or more of those matters. Where any of those matters may be potentially engaged the Statement sets out the proposals for mitigating or limiting them.

This Statement communicates that the only matters comprised in section 79 (1) of the 1990 Act which may, potentially, be engaged as a consequence of the Scheme are s79(1) (b) smoke emitted from premises, (d) dust, steam, smell or effluvia arising on business premises, (fb) artificial light emitted from premises, (g) noise emitted from premises, and (ga) noise emitted from or caused by a vehicle, machinery or equipment in a street.

This Statement concludes that, with the mitigation and control measures proposed in the Environmental Statement (application document TR010030/APP/6.3) which will be captured within the outline Construction Environmental Management Plan (CEMP) (application document TR010030/APP/7.2) and implemented by the Principal Contractor's Construction Environmental Management Plan it is not anticipated that a statutory nuisance will result from the construction or operation of this Scheme.

1. Introduction

1.1 Introduction

- 1.1.1 This Statement relates to an application by Highways England (the Applicant) to the Planning Inspectorate under the Planning Act 2008 for the M25 junction 10/A3 Wisley interchange (the Scheme) Development Consent Order (DCO) which would authorise the construction, operation and maintenance of the Scheme (the Application).
- 1.1.2 Highways England, which is a government company charged with operating, maintaining and improving England's motorways and major A roads, is proposing this Scheme in the context of the Planning Act 2008 to improve, operate and maintain an efficient transport network for England.
- 1.1.3 This document is prepared pursuant to the requirements of Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (APFP Regulations) and states "*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*".
- 1.1.4 There is no legal definition of a statutory nuisance. In order for action to be taken the nuisance complained of should either; contain a risk to people's health or interfere with a person's legitimate use or enjoyment of land.
- 1.1.5 This Statement forms part of a suite of DCO application documents and should be read alongside these and is informed by those documents. This Statement refers to sections of the Environmental Statement (ES) (application document TR010030/APP/6.3) which contain detailed information on the assessment and mitigation of impacts.
- 1.1.6 Section 2 of this document sets out the relevant provisions of the Environmental Protection Act 1990 (EPA 1990) section 79(1). Section 3 gives a summary of the Scheme and section 4 considers the potential for breaches of the provisions.

1.2 Purpose of this Report

- 1.2.1 This Statement provides an explanation of the matters set out in section 79(1) of the EPA 1990 in respect of statutory nuisances, the potential implications of the proposed Scheme and the measures that have been incorporated into the Scheme design to limit any such potential nuisances.
- 1.2.2 The requirement for the Statement is set out in the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 at Regulation 5(2)(f), which states 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 therefore) of the Environmental Protection Act 1990(b), and if so how the applicant proposes to mitigate or limit them*".

2. Environmental Protection Act 1990 (EPA)

2.1 Provisions of the EPA 1990

2.1.1 The following is text from section 79(1) of the EPA 1990 regarding those matters which constitute a statutory nuisance in England and Wales.

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

- (a) any premises in such a state as to be prejudicial to health or a nuisance;
 - (b) smoke emitted from premises so as to be prejudicial to health or a nuisance;
 - (c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;
 - (d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;
 - (e) any accumulation or deposit which is prejudicial to health or a nuisance;
 - (f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;
 - (fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;
 - (fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance;
 - (g) noise emitted from premises so as to be prejudicial to health or a nuisance;
 - (ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street;
 - (h) any other matter declared by any enactment to be a statutory nuisance;
- and it shall be the duty of every local authority to cause its area to be inspected from time to time to detect any statutory nuisances which ought to be dealt with under section 80 ... or sections 80 and 80A....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.”

2.1.2 For the purposes of section 79(1), ‘noise’ the definition includes vibration¹.

2.1.3 The paragraphs (a), (c), (e), (f), (fa) and (h) have been scoped out as the nature of the Scheme is such that they will not be engaged.

2.1.4 This Statement concludes that the only matters comprised in section 79(1) of the EPA 1990, which may potentially be engaged as a consequence of the Scheme are:

- b) and d) relating to air quality;
- fb) relating to artificial light; and
- g) and ga) relating to noise (which for the Scheme, includes vibration).

¹ Section 79(7) Environmental Protection Act 1990

- 2.1.5 Section 79(6A) (a) of the EPA 1990 provides that traffic noise is excluded from the consideration of nuisance. Accordingly, traffic noise is not relevant to the consideration of section 79(1)(g) and (ga) and is not mentioned further.

3. The Scheme

3.1.1 An explanation of the Scheme objectives and a detailed description of the Scheme proposals can be found in the 'Introduction to the Application' (Application document TR010030/APP/1.2).

3.1.2 The key features of the Scheme include:

- A larger, signalised gyratory for M25 junction 10, including free-flow left turn slip roads that bypass the traffic signals;
- Amended and extended slip roads onto and off the M25 and the A3;
- Widening of the A3 to dual-four lanes between Ockham Park junction and M25 junction 10 and between Painshill junction and M25 junction 10;
- Provision of four running lanes on the M25 through junction 10; and
- A comprehensive package of local road, private access and Public Rights of Way changes and additions.

4. Potential Breaches of Section 79(1)

4.1 Introduction

- 4.1.1 Taking account of the Application and the ES (application document TR010030/APP/6.3), the only matters prescribed in section 79(1) of the EPA 1990 that could, potentially, be engaged as a consequence of the proposed Scheme are (b) smoke emitted from premises, (d) dust, steam, smell or effluvia arising on business premises, (fb) artificial light emitted from premises, (g) noise emitted from premises, and (ga) noise emitted from or caused by a vehicle, machinery or equipment in a street.

4.2 Smoke, fumes, gases, dust, etc

Construction stage

- 4.2.1 There is limited potential for the following matters covered in section 79(1) of the EPA 1990 to arise:
- b) smoke emitted from premises and d) any dust, steam, smell or other effluvia.
- 4.2.2 The potential for these nuisances is covered in the air quality chapter (Chapter 5) of the ES (application document TR010030/APP/6.3).
- 4.2.3 There is the potential for fugitive dust and combustion related emissions from construction site vehicles and plant to be generated during the construction of the Scheme. The potential for environmental effects has been considered and appropriate mitigation measures proposed in the air quality chapter of the ES.
- 4.2.4 Potential fugitive dust and on-site combustion related emissions will be avoided or reduced to prevent statutory nuisance through the implementation of the Principal Contractors Construction Environmental Management Plan (CEMP) (application document TR010030/APP/7.2), produced by the Principal Contractor. The CEMP details the controls to prevent the generation of fugitive dust and combustion related emissions.

Operational stage

- 4.2.5 As outlined in the air quality chapter of the ES, emissions to air from road traffic associated with the operational phase of the Scheme will be limited as detailed in the quantitative assessment undertaken for the ES. Impacts of road traffic emissions are unlikely to lead to exceedances of air quality objectives specified under the UK Air Quality Strategy or relevant air quality Regulations that would lead to significant adverse effects. Accordingly, no nuisance is expected to arise.

Mitigation

- 4.2.6 Measures for mitigating the generation of dust on construction sites will include:
- Covering skips to minimise the release of unwanted odour from waste material;
 - Burning of any waste or other materials on site will not be permitted for any reasons;

- Clearing or damping down roadways and other areas on-site;
- Road sweeping/washing, where required;
- Screening, enclosure, spraying (or other dust controls) of spoil stockpiles, rubble or construction materials close to sensitive receptors;
- Stockpiled materials and generators will be placed so as to minimise potential impact on nearby sensitive receptors due to local weather conditions;
- Sheeting of lorries carrying soil and other dust sources.
- Enforcement of speed limits on all site roadways;
- Where possible, engines will be turned off when not in use;
- Regular plant and vehicle maintenance checks conforming to the manufacturers or legislative emission standards;
- Positioning of construction vehicles/plant exhausts at a height to ensure appropriate dispersal of emissions;
- If any vehicles are found to be discharging black and/or noxious fumes, then the use of these vehicles will cease and they will be sent away for repair;
- Any complaint related to dust (or mud on roads) will be taken seriously and investigated. In addition, a log will be kept of any complaints raised against the site; and
- Heavy Goods Vehicles (HGV) transportation movements will be in accordance with the HGV construction traffic movements plan which will be prepared prior to commencement of the works.

4.2.7 Mitigation measures to control dust during construction will be specified within contract documentation and incorporated into the CEMP.

Conclusion

4.2.8 As outlined in the air quality chapter of the ES, emissions to air from road traffic associated with the construction and operational phases of the Scheme will be limited as detailed in the quantitative assessment. Impacts of road traffic emissions are unlikely to lead to exceedances of air quality objectives specified under the UK Air Quality Strategy or relevant air quality Regulations that would lead to significant adverse effects. As such no statutory nuisance is expected.

4.3 Light from premises

Construction stage

4.3.1 There is potential for light pollution during construction as identified in the landscape chapter (Chapter 9) of the ES (application document TR010030/APP/6.3) when temporary lighting would be used on site. There will be night time working associated with the works, as detailed in Chapter 2 of the transport assessment report application (application document TR010030/APP/7.4).

It is anticipated that construction compounds will be lit and light spill from these compounds including the movement of associated construction vehicles together with general construction activities across the site will potentially have an impact upon adjacent sensitive receptors including the following:

- Nutberry Farm;
- properties at Elm Lane;
- Hut Hill Cottage;
- users of RHS Wisley Gardens & Painshill Park & Gardens;
- Foxwarren Cottage;
- Silvermere Lodge;
- Court Close Farm;
- properties on Old Byfleet Road; and
- West Lodge.

The degree of impact upon these receptors will vary based on landform, vegetation cover, distance to works and the type of activity proposed. The lighting impacts from construction activities on these receptors will be temporary, and where distance and intervening vegetation exist to provide a buffer, the impact of these effects would be reduced.

- 4.3.2 In general, the works will be in areas where there are street lights on the A3 and M25 and therefore temporary construction lighting would not be expected to cause significant additional nuisance.

Operational stage

- 4.3.3 No significant operational lighting effects associated with the Scheme that could potentially generate a nuisance issue were identified. It is likely that additional lighting on gantries would increase light levels. As street lights are not covered by the laws on statutory nuisance, it is not necessary to address these within this Statement.

Mitigation

- 4.3.4 The lighting arrangements for night time working would be provided for in the CEMP (application document TR010030/APP/7.2) and measures to mitigate the effects of lighting are detailed below:
- Requirements to prevent light spill and glare as well as to minimise the usage of lighting, with special care taken in proximity to ecologically sensitive locations;
 - Specifying the types of temporary construction and security lighting to be used, the hours of operation (as part of the agreement of hours of operation of the construction site as a whole);
 - Measures to ensure that construction and security lighting is located and maintained so as to cause minimal effects; and
 - Landscaping and planting to screen light from the nearest receptors.

Conclusion

- 4.3.5 No significant lighting effects associated with the Scheme that could potentially generate a nuisance issue were identified.

4.4 Noise emitted from premises

Construction stage

- 4.4.1 There is potential for noise and vibration to be generated from construction activities, as described in the noise and vibration chapter (Chapter 6) of the ES (application document TR010030/APP/6.3). There will be night time working associated with the construction works that also has the potential for increasing noise levels at sensitive receptors. The potential for environmental effects has been considered and appropriate mitigation measures proposed in the Noise and vibration chapter of the ES.
- 4.4.2 Noise and vibration impacts resulting from construction-related traffic were assessed in the noise and vibration chapter of the ES and were unlikely to be significant
- 4.4.3 Construction noise and vibration emissions will be avoided or reduced to prevent a statutory nuisance through the implementation of a CEMP prepared by the Principal Contractor (application document TR010030/APP/7.2).
- 4.4.4 The CEMP will oblige contractors to incorporate measures to minimise noise emissions by best practicable means in accordance with the Control of Pollution Act 1974. A number of noise controls are stated in *BS 5228:2009 + A1:2014 Code of Practice for Noise and Vibration Control on Construction and Open Sites* that may be used as best practicable means.
- 4.4.5 The transport assessment report (application document TR010030/APP/7.4) includes mitigation methods to avoid or reduce noise and vibration impacts associated with construction traffic. They include careful routing of construction traffic away from residential roads as far as possible.

Operational stage

- 4.4.6 In the noise and vibration chapter (Chapter 6) of the ES, no significant adverse operation noise effects wholly attributable to the Scheme were predicted that would represent a nuisance under section 79(1)(g) and (ga) of the EPA 1990.

Mitigation

- 4.4.7 Measures that have been incorporated into the Scheme to reduce noise effects include:
- Noise and vibration from construction activities will be minimised wherever possible through the selection of construction methods and equipment that produce lower levels of noise and vibration. Where it is necessary to use equipment or methods that produce higher levels of noise and vibration, appropriate measures will be adopted (e.g. limited times of operation);
 - Where possible, construction plant will be turned off when not in use;

- Regular construction plant and vehicle maintenance checks will be undertaken, conforming to the manufacturers or legislative emission standards;
- All construction plant and equipment will be suitably sited, operated and serviced in order to minimise noise and vibration;
- Pneumatic tools will be fitted with an integral silencer and/or purpose-made muffler;
- Enforcement of speed limits on all site roadways;
- HGV transportation movements will be controlled in accordance with the transport assessment report (application document TR010030/APP/7.4);
- Good stakeholder communication to ensure that local residents are kept informed about the progress of the construction works and are provided with contact details for the Stakeholder Manager (or other suitable personnel);
- Any complaint related to noise and vibration will be taken seriously and investigated. In addition, a log will be kept of any complaints raised against the site;
- Acoustic fencing will be positioned around the Scheme as necessary; and
- Working hours will be restricted to those set out in the Principal Contractors CEMP (application document TR010030/APP/7.2) and the transport assessment report (application document TR010030/APP/7.4) unless there are specific requirements for works at other times, e.g. abnormal load deliveries.

4.4.8 Noise mitigation measures were embedded in the design of the Scheme to minimise the potential for noise impacts during the operation phase. These mitigation measures consist of lower noise road surfacing and environmental noise barrier as stated in the noise and vibration chapter (Chapter 6) of the ES.

Conclusion

4.4.9 For the reasons explained above and with implementation of the above measures no claim against statutory nuisance is envisaged in respect of noise and vibration.

5. Conclusion

- 5.1.1 This Statement identifies the matters set out in section 79(1) of the EPA 1990 in respect of statutory nuisances and considers whether the Scheme would engage one or more of those matters on the basis adopted for assessment.
- 5.1.2 With the proposed mitigation in place, it is not expected that there would be a breach of section 79(1) of the EPA 1990 during construction or operational activities.
- 5.1.3 The construction activities that have the potential to create a nuisance will be controlled through compliance with the implementation of the environmental measures identified in the ES (application document TR010030/APP/6.3) and through the Principal Contractors CEMP (application document TR010030/APP/7.2) which will include measures that will minimise the potential to cause nuisance.
- 5.1.4 Whilst this Statement concludes that no statutory nuisance is likely to occur, the Applicant has included in the draft DCO an article which would provide a defence against cases of nuisance in order that the defence can be relied upon in circumstances where a statutory nuisance cannot be avoided.

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