

A428 Black Cat to Caxton Gibbet improvements

TR010044

Volume 6

6.6 Statutory Nuisances Statement

Planning Act 2008

Regulation 5(2)(f)

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

26 February 2021

Infrastructure Planning

Planning Act 2008

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

**A428 Black Cat to Caxton Gibbet
improvements**
Development Consent Order 202[]

Statutory Nuisances Statement

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1 Statutory nuisances statement

1.1 Purpose of this document

- 1.1.1 This Statutory Nuisances Statement (the Statement) relates to an application made by Highways England to the Planning Inspectorate under s37 of the *Planning Act 2008* (Ref 5-1) for a Development Consent Order (DCO).
- 1.1.2 If made, the DCO will grant consent for the A428 Black Cat to Caxton Gibbet improvements (the Scheme). A detailed description of the Scheme is presented in **Chapter 2, The Scheme** of the Environmental Statement [TR010044/APP/6.1].
- 1.1.3 This Statement comprises part of the suite of DCO application documents and is included in the application in accordance with the Department for Communities and Local Government (now Ministry of Housing, Communities & Local Government) guidance *Planning Act 2008: Application form guidance* (Ref 5-1), and in compliance with Regulation 5(2)(f) of the *Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009* (Ref 5-3), which requires:
- “...a statement whether the proposal engages one or more of the matters set out in section 79(1) (statutory nuisances and inspections therefor) of the Environmental Protection Act 1990, and if so how the applicant proposes to mitigate or limit them”.*
- 1.1.4 The content of the Statement has been informed by the following assessments:
- Chapter 5, Air quality** of the Environmental Statement [TR010044/APP/6.1].
 - Chapter 7, Landscape and visual effects**, of the Environmental Statement [TR010044/APP/6.1].
 - Chapter 11, Noise and vibration**, of the Environmental Statement [TR010044/APP/6.1].
- 1.1.5 The Statement has also taken account of the embedded and essential mitigation measures presented in the:
- First Iteration Environmental Management Plan (EMP) [TR010044/APP/6.8].
 - Schedule of Mitigation [TR010044/APP/6.9].

2 Legislation and planning policy

2.2 Environmental Protection Act 1990

2.2.1 S79(1) of the EPA (Ref 5-5) sets out the following matters which constitute a statutory nuisance in England:

“(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 or in Scotland, road; and

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

and it shall be the duty of every local authority to cause its area to be inspected from time to time to detect any statutory nuisances which ought to be dealt with under Section 80 below or sections 80 and 80A below and, where a complaint of 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.”

- 2.2.2 Relevantly, the EPA (Ref 5-5) contains the following exceptions in respect of statutory nuisance:
- S79(4) – which clarifies that subsection 1(c) (fumes or gases emitted from premises) does not apply in relation to premises other than private dwellings.
 - S79(6A) – which clarifies that subsection 1(ga) (noise emitted by a vehicle or machinery in a street) does not apply to noise made by traffic.
- 2.2.3 Definitions within s79(7) of the EPA (Ref 5-5) include the following terms that relate to statutory nuisance matters:
- “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.

2.1 National Policy Statements

National Policy Statement for National Networks

- 2.1.2 Paragraphs 4.57 to 4.59 of the *National Policy Statement for National Networks* (Ref 5-4) (NPSNN) concern statutory nuisance and state that it is important that, during the examination of a Nationally Significant Infrastructure Project (NSIP), the Examining Authority considers the possible sources of nuisance under s79(1) of the *Environmental Protection Act* (Ref 5-5) (EPA) and how they may be mitigated or limited. This is so that any additional requirements to avoid statutory nuisance are included in the subsequent Order granting development consent.
- 2.1.3 Paragraph 5.81 of the NPSNN (Ref 5-4) notes that the construction and operation of national networks infrastructure has the potential to create a range of emissions such as odour, dust, steam, smoke and artificial light, as well as noise and vibration.

- 2.1.4 Paragraph 5.82 of the NPSNN (Ref 5-4) states *“Because of the potential effects of these emissions and in view of the availability of the defence of statutory authority against nuisance claims described previously, it is important that the potential for these impacts is considered by the applicant in their applications, by the Examining Authority in examining applications and by the Secretary of State in taking decisions on development consent”*.
- 2.1.5 Paragraphs 5.84 to 5.86 of the NPSNN (Ref 5-4) state that where a development is subject to an Environmental Impact Assessment, the applicant should assess any likely significant effects on amenity from emissions of odour, dust, steam, smoke and artificial light and describe these in the Environmental Statement. Consultation with relevant local planning authorities and, where appropriate, the Environment Agency about the scope of the assessment is advised.

Overarching National Policy Statement for Energy (EN-1)

- 2.1.6 Paragraphs 4.14.1 to 4.14.3 of the *Overarching National Policy Statement for Energy (EN-1)* (Ref 5-6) concern statutory nuisance and state that it is very important that, at the application stage of an energy NSIP, possible sources of nuisance under s79(1) of the EPA (Ref 5-5) and how they may be mitigated or limited are considered so that appropriate requirements can be included in any subsequent Order granting development consent.
- 2.1.7 Paragraph 5.6.1 of EN-1 (Ref 5-6) notes that during the construction, operation and decommissioning of energy infrastructure there is potential for the release of a range of emissions such as odour, dust, steam, smoke, artificial light and infestation of insects, all of which have the potential to have a detrimental impact on amenity or cause a common law nuisance or statutory nuisance.
- 2.1.8 Paragraph 5.6.2 of EN-1 (Ref 5-6) states *“Because of the potential effects of these emissions and infestation, and in view of the availability of the defence of statutory authority against nuisance claims... it is important that the potential for these impacts is considered...”*.
- 2.1.9 Paragraph 5.6.3 of EN-1 (Ref 5-6) acknowledges that *“For energy NSIPs of the type covered by this NPS, some impact on amenity for local communities is likely to be unavoidable. The aim should be to keep impacts to a minimum, and at a level that is acceptable”*.
- 2.1.10 Paragraph 5.11.1 of EN-1 (Ref 5-6) states that *“Excessive noise can have wide-ranging impacts on the quality of human life, health (for example owing to annoyance or sleep disturbance) and use and enjoyment of areas of value such as quiet places and areas with high landscape quality.”*.
- 2.1.11 Paragraph 5.11.4 of EN-1 (Ref 5-6) sets out the requirements for noise assessments where noise impacts are likely to arise from the construction and operation of an energy NSIP.

National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4)

- 2.1.12 Although the *National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4)* (Ref 5-7) does not contain specific requirements in relation to nuisance, reference is made in paragraph 2.20.1 of EN-4 (Ref 5-7) to the generic considerations for noise and vibration impacts contained in EN-1 (Ref 5-6).
- 2.1.13 Additionally, paragraph 2.20.1 of EN-4 (Ref 5-7) identifies that a number of specific considerations apply to the noise and vibration impacts of gas pipelines during the pre-construction and construction stages of such developments.

3 Potential breaches of s79(1) of the Environmental Protection Act 1990

3.1 Potential breaches

- 3.1.1 The following matters prescribed in s79(1) of the EPA (Ref 5-5) have been identified as being potentially engaged as a consequence of construction or operation of the Scheme:

(d) dust arising on business and residential properties so as to be prejudicial to health or a nuisance;

(fb) artificial light 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; or

(ga) noise emitted from or caused by a vehicle, machinery or equipment in the street.

- 3.1.2 Matters relating to noise emissions from premises or those caused by a vehicle, machinery or equipment have been assessed collectively in this Statement.

- 3.1.3 As s79(4) and s79(6A) of the EPA (Ref 5-5) confirm that traffic-sourced fumes, gases and noise are not considered to be statutory nuisances, this Statement does not consider these potential emission sources.

- 3.1.4 Each of the identified categories of statutory nuisance potentially engaged by the Scheme is described below.

3.2 Dust arising on business premises and residential properties

- 3.2.1 **Chapter 5, Air quality** of the Environmental Statement [TR010044/APP/6.1] details the methodology and findings of the air quality assessment, which has identified the likely sources and effects of dust nuisance on sensitive receptors resulting from the construction and operation of the Scheme.

- 3.2.2 Receptors sensitive to dust include humans occupying or visiting, amongst others, residential dwellings, gardens, schools, hospitals and public open spaces, and also include designated habitats.

Potential dust nuisance during construction

- 3.2.3 During the construction phase of the Scheme, dust generating activities such as earth moving, and demolition would be carried out using non-road mobile machinery.
- 3.2.4 Such activities can affect the amenity of residential occupants and business occupiers and can lead to complaints regarding dust nuisance, if not adequately mitigated.

- 3.2.5 The effective management and control of dust arising from construction and demolition activities would be delivered through conventional and well-established practices. A comprehensive suite of standard and best-practice dust reduction, control and management measures have been identified as part of the assessment to mitigate and limit the possibility of nuisance. A framework of these measures is presented in the First Iteration EMP [TR010044/APP/6.8] and the Schedule of Mitigation [TR010044/APP/6.9], and these would be developed by the Principal Contractor for approval by the Secretary of State for Transport, in consultation with the relevant local authorities prior to the commencement of construction.
- 3.2.6 Combinations of mitigation measures would be applied, as required, to construction sites and working areas where dust generating activities are planned to be undertaken. Such measures include undertaking regular site inspections, imposing construction vehicle speed limits, damping down of construction sites, and the careful planning of construction site layouts to locate dust-generating activities away from residential properties and business premises where possible.
- 3.2.7 The assessment of effects on local air quality has concluded that construction of the Scheme would not result in significant effects.
- 3.2.8 Accordingly, construction of the Scheme is unlikely to give rise to a statutory nuisance under s79(1)(d) of the EPA (Ref 5-5).

Potential dust nuisance during operation

- 3.2.9 In relation to PM₁₀ and PM_{2.5} (constituents of dust associated with vehicle emissions), the assessment of potential dust nuisance during operation of the Scheme identified that the:
- a. Annual mean concentrations of PM₁₀ are predicted to be below the 40µg/m³ annual mean PM₁₀ objective at all receptors in the base year, with the maximum predicted concentration of PM₁₀ being 30.6µg/m³ at the receptors assessed.
 - b. Annual mean concentrations of PM_{2.5} are predicted to be below the 25µg/m³ annual mean PM_{2.5} objective at all receptors in the base year, with the maximum predicted concentration of PM₁₀ being 24.3µg/m³ at the receptors assessed.
- 3.2.10 Based on the base year predictions, there was no requirement to model PM₁₀ or PM_{2.5} in the opening year of the Scheme as there would be no risk to the achievement of air quality thresholds.
- 3.2.11 As no significant PM₁₀ or PM_{2.5} effects are predicted during operation, no dust nuisance is expected to arise on receptors during operation of the Scheme and no mitigation measures to minimise or control operational effects are therefore required.
- 3.2.12 Accordingly, operation of the Scheme is therefore unlikely to give rise to a statutory nuisance under s79(1)(d) of the EPA (Ref 5-5).

3.3 Artificial light from premises

- 3.3.1 Local authorities are required to investigate complaints about artificial light from premises if the light could constitute a statutory nuisance, as defined under s79(1)(fb) of the EPA (Ref 5-5).
- 3.3.2 For artificial light to count as a statutory nuisance it must either unreasonably and substantially interfere with the use or enjoyment of a home or other premises, or injure health or be likely to injure health.
- 3.3.3 The potential effects of lighting have been identified as part of a landscape and visual effects assessment reported in **Chapter 7, Landscape and visual effects** of the Environmental Statement [TR010044/APP/6.1], which also details the methodology followed.
- 3.3.4 The assessment has considered the extent of lighting already visible within the night sky in available views and how new sources of light introduced during construction and operation of the Scheme may affect the visual amenity of human receptors.

Potential artificial light nuisance during construction

- 3.3.5 The assessment has recorded that the principal sources of artificial lighting that are currently visible within the landscape include street lamps, car park lighting, infrastructure related with commercial and industrial uses, and vehicles travelling on the existing road network.
- 3.3.6 Temporary sources of artificial lighting that would be introduced by the Scheme during construction include lighting of construction compounds and works areas, and light emitted from construction vehicle headlights and plant operating off the road network (i.e. within construction working areas).
- 3.3.7 The majority of construction activity on the Scheme is planned to be carried out between the core hours of 07:00 and 18:00 on weekdays; and between the hours of 07:00 and 13:00 on Saturdays. Exceptions to these hours may be required to accommodate certain elements of the Scheme.
- 3.3.8 **Chapter 2, The Scheme** of the Environmental Statement [TR010044/APP/6.1] identifies that construction would require the use of temporary lighting to provide lighting provision for construction compounds and working areas in winter months, and during any works that may be required outside of the core hours.
- 3.3.9 The assessment has identified that lighting of the construction compounds and works would intrude into the open landscape and would be in contrast to the relatively dark character associated with the local landscape, but acknowledges that in certain locations this would be set within the context of existing sources of lighting.

- 3.3.10 During construction, the artificial lighting of construction areas would be kept to a minimum by the Principal Contractor and confined to locations where lighting is required for safe working practices. Where lighting is required, mitigation measures would be employed by the Principal Contractor during construction to minimise light spill, a framework of which is presented in the First iteration EMP [TR010044/APP/6.8] and the Schedule of Mitigation [TR010044/APP/6.9]. These framework measures would be developed by the Principal Contractor for approval by the Secretary of State for Transport, in consultation with the relevant local authorities prior to the commencement of construction.
- 3.3.11 Mitigation measures include keeping construction lighting to the minimum luminosity necessary for safe working within construction compounds and working areas, and directing and positioning this sympathetically, and where possible, fitting it with motion sensors to minimise the duration of potential light spill in night time views.
- 3.3.12 For human receptors that are likely to be exposed to artificial lighting in connection with construction of the Scheme, with the adoption of the identified mitigation measures it is not envisaged that such lighting would impact on health of those receptors nor unreasonably or substantially interfere with the use or enjoyment of a home or other premises.
- 3.3.13 Accordingly, no statutory nuisance under s79(1)(b) of the EPA (Ref 5-5) is expected to arise during construction of the Scheme as a result of artificial lighting.

Potential artificial light nuisance during operation

- 3.3.14 Sources of artificial light that would be introduced by the Scheme include street lighting (lighting columns) and light from vehicle headlights.
- 3.3.15 Street lighting is not specifically exempted in s79(5B) of the EPA (Ref 5-5), but because this would not be located on 'premises' it does not fall within the scope of the definition covering statutory nuisance. Accordingly, this Statement does not examine street lighting associated with the operation of the Scheme.
- 3.3.16 Similarly, light from vehicle headlights is not specifically exempted in s79(5B) of the EPA (Ref 5-5). but as this would not be located on 'premises', this type of lighting source does not fall within the scope of the definition covering statutory nuisance. Accordingly, this Statement does not examine light from vehicle headlights associated with the operation of the Scheme.

Noise emitted from premises or caused by a vehicle, machinery or equipment

- 3.4.1 **Chapter 11, Noise and vibration** of the Environmental Statement [TR010044/APP/6.1] details the methodology and findings of the noise and vibration assessment, which has identified the likely sources of noise and its effects on noise sensitive receptors resulting from the construction and operation of the Scheme.

- 3.4.2 Receptors sensitive to noise and vibration include humans occupying or visiting, amongst others, dwellings, medical facilities, education facilities, public rights of way and community facilities.

Potential noise nuisance during construction

- 3.4.3 The assessment has considered the effects of construction noise and vibration at a representative selection of receptors in close proximity to the works. This has involved an evaluation of the effects of noise and vibration sources including construction plant, machinery and equipment associated with site compounds, borrow pits and working areas.
- 3.4.4 The assessment has identified that noise and vibration effects are likely on a number of receptors in proximity to construction works and those in proximity to certain routes on the road network that are forecast to carry increased numbers of construction vehicles during the works.
- 3.4.5 A comprehensive suite of noise reduction, control and management measures have been identified as part of the assessment to mitigate and limit the possibility of noise nuisance, a framework of which is presented in the First Iteration EMP [TR010044/APP/6.8] and the Schedule of Mitigation [TR010044/APP/6.9].
- 3.4.6 These measures would be developed by the Principal Contractor for approval by the Secretary of State for Transport, in consultation with the host authorities for the Scheme (i.e. Bedford Borough Council, Central Bedfordshire Council, Huntingdonshire District Council and South Cambridgeshire District Council) prior to the commencement of construction.
- 3.4.7 Combinations of mitigation measures would be applied, as required, at construction sites and working areas where noise generating activities are planned to be undertaken. Example measures include the use of localised solid site hoarding (barriers) to shield properties from construction noise, undertaking noise surveys to demonstrate compliance during the works, and employing best practicable means (as defined under s72 of the *Control of Pollution Act 1974* (Ref 5-8) (COPA) and s79 of the EPA (Ref 5-5)).
- 3.4.8 In addition to these mitigation measures, the host authorities have powers to control noise and vibration from construction sites through the COPA (Ref 5-8) and the EPA (Ref 5-5).
- 3.4.9 S60 of the COPA (Ref 5-8) relates to 'Control of Noise on Construction Sites'. This would enable the host authorities to exercise powers, where required, prior to undertaking, or during, construction works on the Scheme by serving a notice on the person(s) deemed to be responsible for carrying out the works. The notice would stipulate the requirements to control site noise and vibration such that potential statutory noise nuisance can be avoided, and would include details of: the methods, plant and machinery to be used; the hours during which construction work can be carried out; and the level of noise and vibration that can be emitted by the works.

- 3.4.10 As S61 of the COPA (Ref 5-8) would allow the Principal Contractor to obtain consent from local authorities regarding the noise and vibration requirements of the works prior to them commencing, it would be in their interest to apply for consent as, once granted, local authorities cannot take action under s60 of the COPA (Ref 5-8) or s80 of the EPA (Ref 5-5), so long as the consent remains in force and its terms are complied with.
- 3.4.11 Although temporary significant adverse effects have been predicted within the assessment, taking into account: the effectiveness of mitigation measures; the transient nature of noise generating activities; and the powers afforded to the local authorities in relation to avoiding potential statutory nuisance through the use of notices, construction of the Scheme is unlikely to be prejudicial to the health of, or cause a nuisance to, noise sensitive receptors.
- 3.4.12 Accordingly, the Scheme is unlikely to give rise to a statutory nuisance under s79(1)(g) or (ga) of the EPA (Ref 5-5).

Potential noise nuisance during operation

- 3.4.13 As s79(6A) of the EPA (Ref 5-5) confirms that noise emitted by traffic does not constitute a statutory nuisance, noise derived from vehicles travelling on new and modified roads during operation of the Scheme is not considered in this Statement.
- 3.4.14 Accordingly, operation of the Scheme is therefore unlikely to give rise to a statutory nuisance under s79(1)(g) or (ga) of the EPA (Ref 5-5).

4 Summary

- 4.2.1 This Statement has considered the potential for the Scheme to cause a statutory nuisance under the EPA (Ref 5-5).
- 4.2.2 Works associated with the construction and operational phases of the Scheme have the potential to create statutory nuisance in respect of dust, artificial lighting, and noise and vibration.
- 4.2.3 These works will be controlled through the design of the Scheme, as described in **Chapter 2, The Scheme** of the Environmental Statement [TR010044/APP/6.1] and through the application of the embedded and essential mitigation measures set out in the First Iteration EMP [TR010044/APP/6.8] and the Schedule of Mitigation [TR010044/APP/6.9].
- 4.2.4 With these measures in place, none of the statutory nuisances identified in s79(1) of the EPA (Ref 5-5) are predicted to arise during the construction and operation of the Scheme.

5 References

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