

A12 Chelmsford to A120 widening scheme

TR010060

6.9 STATEMENT OF STATUTORY NUISANCES

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STATEMENT OF STATUTORY NUISANCES

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1 Executive summary

1.1 Introduction

- 1.1.1 This Statement of Statutory Nuisances accompanies an application made by National Highways to the Secretary of State for Transport under the Planning Act 2008 for a Development Consent Order for the A12 Chelmsford to A120 widening scheme (the proposed scheme). Its purpose is to state whether the proposed scheme engages one or more of the matters listed as statutory nuisances in s79(1) of the Environmental Protection Act 1990 (EPA), and if so, how National Highways proposes to mitigate or limit them.
- 1.1.2 The content of this Statement of Statutory Nuisances has been informed by the Environmental Statement [TR010060/APP/6.1], while taking account of the mitigation measures presented in the first iteration Environmental Management Plan (EMP) [TR010060/APP/6.5] and its Register of Environmental Actions and Commitments (REAC).
- 1.1.3 S79(1) of the EPA lists matters that may constitute a statutory nuisance. The following matters listed in the EPA have been identified as having the potential to be engaged by the proposed scheme:
- ‘(d) any dust ... arising on 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; 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 or road.’*
- 1.1.4 The EPA provides that s79(1)(ga) does not apply to noise made by traffic, which means that the proposed scheme could only engage the matter of noise emitted by a vehicle or machinery in a street during construction.

1.2 Dust arising from the proposed scheme

- 1.2.1 The assessment of effects on local air quality has concluded that, with the adoption of best practice measures to control dust, construction would not result in significant effects in relation to dust, and therefore no statutory nuisance is anticipated.
- 1.2.2 During operation, the assessment identified that concentrations of PM₁₀ and PM_{2.5} (constituents of dust associated with vehicle emissions) are not predicted to exceed the air quality objectives at sensitive receptors. Therefore, no statutory nuisance is anticipated.

1.3 Artificial light from premises

- 1.3.1 Taking into account the context of the existing A12 infrastructure and the predicted effectiveness of proposed mitigation measures for the potential effects of construction lighting, the proposed scheme is considered unlikely to be prejudicial to the health of, or cause a nuisance to, sensitive receptors with respect to construction lighting.
- 1.3.2 As street lighting and vehicle headlights would not be located on 'premises', they do not fall within the scope of the definition covering statutory nuisance. Accordingly, this Statement does not examine street lighting and light from vehicle headlights associated with the operation of the proposed scheme.

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

- 1.4.1 The construction noise assessment has identified that noise and vibration effects are likely on a number of receptors close to construction works and those close to certain routes on the road network that are forecast to carry increased numbers of construction vehicles during the works. 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, constraints on working hours and the powers afforded to the local authorities in relation to avoiding potential statutory nuisance through the use of notices, construction of the proposed scheme is unlikely to be prejudicial to the health of, or cause a nuisance to, noise sensitive receptors. Therefore, no statutory nuisance is anticipated.
- 1.4.2 As the EPA confirms that noise emitted by traffic does not constitute a statutory nuisance, noise derived from vehicles during operation of the proposed scheme is not considered in this Statement.

1.5 Conclusion

- 1.5.1 With implementation of the mitigation measures detailed in the first iteration EMP and the REAC, no statutory nuisances are predicted to arise during the construction and operation of the proposed scheme.

2 Statutory nuisance statement

2.1 Purpose of this document

- 2.1.1 This Statement of Statutory Nuisances (this Statement) relates to an application made by National Highways to the Secretary of State for Transport under s37 of the Planning Act 2008 for a Development Consent Order (DCO).
- 2.1.2 If made, the DCO will grant consent for the A12 Chelmsford to A120 widening scheme (the proposed scheme). A detailed description of the proposed scheme is presented in Chapter 2: The proposed scheme, of the Environmental Statement [TR010060/APP/6.1].
- 2.1.3 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 the Department for Levelling Up, Housing and Communities) guidance Planning Act 2008: Application form guidance (Department for Communities and Local Government, 2013), and in compliance with Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 which requires that the applicant provides:
- ‘...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’.*
- 2.1.4 The content of this Statement has been informed by the following assessments:
- Chapter 6: Air quality, of the Environmental Statement [TR010060/APP/6.1]
 - Chapter 8: Landscape and visual, of the Environmental Statement [TR010060/APP/6.1]
 - Chapter 12: Noise and vibration, of the Environmental Statement [TR010060/APP/6.1]
- 2.1.5 This Statement has also taken account of the embedded mitigation and also essential mitigation measures presented in the:
- First iteration Environmental Management Plan (EMP) [TR010060/APP/6.5]
 - Register of Environmental Actions and Commitments (REAC), contained within the first iteration EMP [TR010060/APP/6.5]

3 Legislation and planning policy

3.1 Environmental Protection Act 1990

3.1.1 S79(1) of the Environmental Protection Act 1990 (EPA) 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 EPA], 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 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.’*

3.1.2 The EPA contains the following exceptions in respect of statutory nuisance:

- a. 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.
- b. 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.

3.1.3 Definitions within s79(7) of the EPA include the following terms that relate to statutory nuisance matters:

- a. ‘Dust’ does not include dust emitted from a chimney as an ingredient of smoke.
- b. ‘Fumes’ means any airborne solid matter smaller than dust.

- c. 'Gas' includes vapour and moisture precipitated from vapour.
- d. '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.
- e. 'Noise' includes vibration.
- f. 'Prejudicial to health' means injurious, or likely to cause injury, to health.
- g. 'Premises' includes land and any vessel.
- h. 'Private dwelling' means any building, or part of a building, used or intended to be used, as a dwelling.
- ii. 'Street' means a highway and any other road, footway, square or court that is for the time being open to the public.

3.2 National Policy Statements

National Networks National Policy Statement

- 3.2.1 Paragraphs 4.57 to 4.59 of the National Networks National Policy Statement (NNNPS) (Department for Transport, 2014) record the defence of statutory authority in civil or criminal proceedings for nuisance that is provided in s158 of the Planning Act 2008 and note that this does not extinguish the duty of a local authority under Part III of the EPA to inspect its area, to take reasonable steps to investigate complaints of statutory nuisance and to serve an abatement notice where satisfied that a statutory nuisance exists or is likely to occur or to recur.
- 3.2.2 The NNNPS advises 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 EPA and how they may be mitigated or limited. This is so that if any additional requirements to avoid statutory nuisance are identified as appropriate, they can be included in the subsequent order granting development consent.
- 3.2.3 Paragraph 5.81 of the NNNPS 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 (advised on in paragraphs 5.186 to 5.200).
- 3.2.4 Paragraph 5.82 of the NNNPS 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 application, by the Examining Authority in examining applications and by the Secretary of State in taking decisions on development consents*'.

3.2.5 Paragraphs 5.84 and 5.86 of the NNNPS 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.

3.2.6 Paragraph 5.85 advises that:

'In particular, the assessment provided by the applicant should describe:

- the type and quantity of emissions;*
- aspects of the development which may give rise to emissions during construction, operation and decommissioning;*
- premises or locations that may be affected by the emissions;*
- effects of the emission on identified premises or locations; and*
- measures to be employed in preventing or mitigating the emissions'*

Overarching National Policy Statement for Energy (EN-1)

3.2.7 The proposed scheme includes the diversion of a high-pressure gas pipeline. This has the potential to result in significant environmental effects and is therefore an NSIP in its own right (but included within the proposed scheme DCO application). As such, the Overarching National Policy Statement for Energy (EN-1) and National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4) (Department of Energy and Climate Change, 2011a; 2011b) are relevant to the gas main diversion.

3.2.8 Paragraphs 4.14.1 to 4.14.3 of the Overarching National Policy Statement for Energy (EN-1) 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 and how they may be mitigated or limited are considered so that appropriate requirements can be included in any subsequent order granting development consent.

3.2.9 Paragraph 5.6.1 of EN-1 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 could have a detrimental impact on amenity or cause a common law nuisance or statutory nuisance.

3.2.10 Paragraph 5.6.2 of EN-1 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 ...'*

3.2.11 Paragraph 5.6.3 of EN-1 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'*.

3.2.12 Paragraph 5.11.1 of EN-1 states, *'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'*.

- 3.2.13 Paragraph 5.11.4 of EN-1 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)

- 3.2.14 Although the National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4) does not contain specific requirements in relation to nuisance, reference is made in paragraph 2.20.1 of EN-4 to the generic considerations for noise and vibration impacts contained in EN-1.
- 3.2.15 Additionally, paragraph 2.20.1 of EN-4 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.

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

4.1 Potential breaches

4.1.1 The following matters prescribed in s79(1) of the EPA have been identified as potentially arising from construction or operation of the proposed scheme:

'(d) dust ... arising on industrial, trade or business premises so as to be prejudicial to health or a nuisance;

(fb) artificial light emanating 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 that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in the street.'

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

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

4.1.4 The matters listed in s79(1) with which the pipeline could engage are only those related to construction activities and not from operation. Therefore, the nature of any nuisances is the same as that for the road NSIP and so the assessments below cover both.

4.1.5 Each of the identified categories of statutory nuisance potentially arising from the proposed scheme is described below.

4.2 Dust arising on industrial, trade or business premises

4.2.1 Chapter 6: Air quality, of the Environmental Statement [TR010060/APP/6.1] details the methodology and findings of the air quality assessment, which has identified likely sources of dust and assessed whether these could give rise to effects to sensitive receptors resulting from the construction and operation of the proposed scheme.

4.2.2 For the purposes of considering statutory nuisance, receptors sensitive to dust include humans occupying or visiting, among others, residential dwellings, schools, hospitals and public open spaces.

Potential dust nuisance during construction

4.2.3 During the construction phase of the proposed scheme, there would be dust-generating activities such as demolition, resurfacing and construction traffic – see Chapter 2: The proposed scheme (Section 2.6: Construction); and Chapter 6: Air quality (Section 6.9: Potential impacts) of the Environmental Statement [TR010060/APP/6.1].

- 4.2.4 Such activities can affect the amenity of residential occupants and business occupiers and can lead to complaints regarding dust nuisance, if not adequately mitigated.
- 4.2.5 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 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 [TR010060/APP/6.5] and its REAC, 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 before the start of construction.
- 4.2.6 The second iteration of the EMP would adopt best practice measures to control fugitive dust. No additional mitigation measures have been integrated into the proposed scheme design on the basis that there would be no significant air quality effects.
- 4.2.7 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 dampening down of surfaces, planning the site layout so that machinery and dust-causing activities occur as far from receptors as practicable, erecting screens or barriers around the dust-causing activities or the site boundary, and the minimising, covering or dampening down of stockpiles to prevent entrainment by wind.
- 4.2.8 The assessment of effects on local air quality has concluded that construction of the proposed scheme would not result in significant effects – see Chapter 6: Air quality (Section 6.11: Assessment of likely significant effects) of the Environmental Statement [TR010060/APP/6.1].
- 4.2.9 Accordingly, construction of the proposed scheme is considered unlikely to give rise to a statutory nuisance under s79(1)(d) of the EPA.

Potential dust nuisance during operation

- 4.2.10 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 proposed scheme identified the following:
- Annual mean concentrations of PM₁₀ are predicted to be below the 40µg/m³ annual mean PM₁₀ objective at all receptors assessed in the Do Something scenario (opening year of 2027), with the maximum predicted concentration of PM₁₀ being 20.4µg/m³ at the receptors assessed.
 - Annual mean concentrations of PM_{2.5} are predicted to be below the 20µg/m³ annual mean PM_{2.5} objective at all receptors in the Do Something scenario (opening year of 2027), with the maximum predicted concentration of PM_{2.5} being 14.2µg/m³ at the receptors assessed
- 4.2.11 These results can be found in Chapter 6: Air quality (Section 6.9: Potential impacts) of the Environmental Statement [TR010060/APP/6.1].

- 4.2.12 Therefore, there are no predicted exceedances of the air quality objective for PM₁₀ or PM_{2.5} in any of the operational modelled scenarios.
- 4.2.13 Accordingly, operation of the proposed scheme is considered unlikely to give rise to a statutory nuisance under s79(1)(d) of the EPA, as reported in Chapter 6: Air quality (Section 6.11: Assessment of likely significant effects) of the Environmental Statement [TR010060/APP/6.1].

4.3 Artificial light from premises

- 4.3.1 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.
- 4.3.2 The potential effects of lighting have been identified as part of a landscape and visual impact assessment reported in Chapter 8: Landscape and visual, of the Environmental Statement [TR010060/APP/6.1], which also details the methodology followed.
- 4.3.3 The assessment has considered how new sources of light introduced during construction and operation of the proposed scheme may affect the visual amenity of human receptors.
- 4.3.4 It is not considered that assessment of effects on the night skies in their own right is required due to the surrounding landscape context – see Chapter 8: Landscape and visual (Section 8.6: Assessment assumptions and limitations) of the Environmental Statement [TR010060/APP/6.1]. This is because the skies are affected by existing light pollution, with none of the night skies within the study area falling within the darkest night-time light pollution category identified on England's Light Pollution and Dark Skies mapping (Campaign to Protect Rural England, 2019). There are also no international dark sky reserves with policy controls to protect darkness, as designated by the International Dark-Sky Association, or Areas of Outstanding Natural Beauty within the study area.

Potential artificial light nuisance during construction

- 4.3.5 The landscape and visual impact assessment (see Chapter 8: Landscape and visual, of the Environmental Statement [TR010060/APP/6.1]) has recorded that the principal sources of artificial light that are currently visible within the landscape include streetlamps, car park lighting, infrastructure related to commercial and industrial uses, and vehicles travelling on the existing road network.
- 4.3.6 Temporary sources of artificial light that would be introduced by the proposed scheme during construction include lighting for 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).
- 4.3.7 The majority of construction activity on the proposed scheme is planned to be carried out between the core hours of 07:30 and 19:00 between Monday and Friday, and 07:30 and 18:00 on Saturday. During the summer months, the working hours could extend to 07:00 to 21:00. Exceptions to these hours may be required to accommodate certain elements of the proposed scheme.

- 4.3.8 Chapter 8: Landscape and visual, of the Environmental Statement (Section 8.9: Potential impacts and Section 8.11: Assessment of likely significant effects) [TR010060/APP/6.1] concludes that construction activities as a whole would potentially result in significant landscape and visual effects, with temporary lighting being a contributing factor. In particular, this would affect open views close to the proposed scheme.
- 4.3.9 Mitigation for potential lighting impacts during construction would include the following (as described in the REAC within the first iteration EMP [TR010060/APP/6.5]):
- Lighting within the construction compounds would be designed to face away from residential property, reducing potential impacts from light spill.
 - Temporary lighting would be of the lowest luminosity necessary for safe delivery of construction tasks and to maintain security within construction compounds and working areas.
 - Environmental bunds, proposed as part of both the construction and permanent works, would be constructed as early as is practicable to provide screening for the construction work.
- 4.3.10 Taking into account the context of the existing A12 infrastructure and the predicted effectiveness of proposed mitigation measures for the effects of construction lighting, the proposed scheme is considered unlikely to be prejudicial to the health of, or cause a nuisance to, sensitive receptors with respect to artificial light during construction.
- 4.3.11 Accordingly, the proposed scheme is considered unlikely to give rise to a statutory nuisance under s79(1)(fb) of the EPA.

Potential artificial light nuisance during operation

- 4.3.12 Sources of artificial light that would be introduced by the proposed scheme include street lighting and light from vehicle headlights.
- 4.3.13 Street lighting is not specifically exempted in s79(5B) of the EPA, 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 proposed scheme.
- 4.3.14 Similarly, light from vehicle headlights is not specifically exempted in s79(5B) of the EPA, 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 proposed scheme.

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

- 4.4.1 Chapter 12: Noise and vibration, of the Environmental Statement [TR010060/APP/6.1] details the methodology and findings of the noise and vibration assessment, which identified the likely sources of noise and its effects on the proposed scheme.

- 4.4.2 Receptors sensitive to noise and vibration include humans occupying or visiting, among others, dwellings, medical facilities, education facilities, public rights of way and community facilities (see Figure 12.2: Noise sensitive receptors, of the Environmental Statement [TR010060/APP/6.2]).

Potential noise nuisance during construction

- 4.4.3 The assessment has considered the effects of construction and vibration at representative receptors close to the works. This has included an evaluation of the effects of noise and vibration sources including construction plant and equipment associated with main compounds, borrow pits, and working areas.
- 4.4.4 The assessment has identified that, during the construction phase, noise and vibration effects are likely on a number of receptors close to construction works and those close to certain routes on the road network that are forecast to carry increased numbers of construction vehicles during the works – see Chapter 12: Noise and vibration (Section 12.9: Potential impacts) of the Environmental Statement [TR010060/APP/6.1].
- 4.4.5 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. These are presented in the REAC within the first iteration of the EMP [TR010060/APP/6.5]. These would be developed by the Principal Contractor for approval by the Secretary of State for Transport, following consultation with the relevant host local authorities (Essex County Council, Chelmsford City Council, Braintree District Council, Maldon District Council and Colchester Borough Council) before the start of construction.
- 4.4.6 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 noise barriers to shield properties from construction noise, undertaking noise monitoring to demonstrate compliance during the works, and employing best practicable means (as defined under s72 of the Control of Pollution Act 1974 (COPA) and s79 of the EPA).
- 4.4.7 In addition to these mitigation measures, the host authorities have powers to control noise and vibration from construction sites through the COPA and the EPA.
- 4.4.8 S60 of the COPA relates to the 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 proposed 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.

- 4.4.9 As s61 of the COPA would allow the Principal Contractor to obtain consent from local authorities regarding the noise and vibration requirements of the works before they begin, it would be in their interest to apply for consent as, once granted, local authorities cannot take action under s60 of the COPA or s80 of the EPA, so long as the consent remains in force and its terms are complied with.
- 4.4.10 The identified likely significant environmental effects from noise and/or vibration during construction would be monitored. Details of the monitoring regime will be included within the second iteration EMP and any required Section 61 consents.
- 4.4.11 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, constraints on working hours and the powers afforded to the local authorities in relation to avoiding potential statutory nuisance through the use of notices, construction of the proposed scheme is unlikely to be prejudicial to the health of, or cause a nuisance to, noise sensitive receptors.
- 4.4.12 Accordingly, the proposed scheme is unlikely to give rise to a statutory nuisance under s79(1)(g) or (ga) of the EPA.

Potential noise nuisance during operation

- 4.4.13 As s79(6A) of the EPA 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 proposed scheme is not considered in this Statement.
- 4.4.14 Accordingly, operation of the proposed scheme is considered unlikely to give rise to a statutory nuisance under s79(1)(g) or (ga) of the EPA.

5 Summary

- 5.1.1 This Statement has considered the potential for the proposed scheme to engage with any of the matters listed as constituting a statutory nuisance under s79(1) of the EPA.
- 5.1.2 Works associated with the construction and operational phases of the proposed scheme could create statutory nuisance in respect of dust, artificial lighting, and noise and vibration.
- 5.1.3 These works will be controlled through the design of the proposed scheme, as described in Chapter 2: The proposed scheme of the Environmental Statement [TR010060/APP/6.1], and through the application of the embedded and essential mitigation measures set out in the first iteration EMP [TR010060/APP/6.5] and REAC.
- 5.1.4 With these measures in place, none of the statutory nuisances identified in s79(1) of the EPA are predicted to arise during the construction and operation of the proposed scheme. All reasonable steps have been taken and will be taken to minimise any detrimental impact on amenity from emissions of dust, artificial light and noise. Therefore, there is no need for any further requirements to be added to the DCO, and all of the proposed scheme should be covered by a defence of statutory authority against nuisance claims – see paragraphs 5.87 to 5.89 of the NNNPS for the advice that this Statement needs to be able to demonstrate compliance with.

Acronyms

Abbreviation	Term
COPA	Control of Pollution Act 1974
DCO	Development Consent Order
EMP	Environmental Management Plan
EN-1	Overarching National Policy Statement for Energy
EN-4	National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines
EPA	Environmental Protection Act 1990
NNNPS	National Networks National Policy Statement
NSIP	Nationally Significant Infrastructure Project
REAC	Register of Environmental Actions and Commitments

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