

A46 Newark Bypass

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6.7 Environmental Statement Statement Relating to Statutory Nuisances

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A46 Newark Bypass

Development Consent Order 202[x]

ENVIRONMENTAL STATEMENT
STATEMENT RELATING TO STATUTORY NUISANCES

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1 Introduction

1.1 Purpose of this document

- 1.1.1 This Statement Relating to Statutory Nuisance (this Statement) relates to an application made by National Highways (the Applicant) to the Secretary of State for Transport via the Planning Inspectorate (the Inspectorate) for a Development Consent Order (DCO). If made, the DCO would grant consent for the A46 Newark Bypass (the Scheme). A detailed description of the Scheme can be found in Chapter 2 (The Scheme) the Environmental Statement (ES) [APP-046].
- 1.1.2 This Statement is made up of a suite of 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' (June 2013 and in compliance with Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, (the "2009 Regulations") which requires:
- 1.1.3 *"...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 As this Statement is part of the application documents, it is informed and should be read alongside the other application documents, in particular the ES [contained in Volume 6.1].
- 1.1.5 This Statement concludes that, with mitigation measures in place, none of the statutory nuisances identified in section 79(1) of the Environmental Protection Act 1990 ("EPA") are predicted to arise on this Scheme.

2 Background

2.1 Policy Context - National Policy Statement for National Networks

- 2.1.1 The National Policy Statement for National Networks (NPSNN) sets out the policy which the Scheme should comply with. It is also the basis for informing a judgement on the impacts of a scheme, for example whether the Scheme is consistent with the needs of the NPSNN. Compliance of the Scheme with the 2015 NPSNN is detailed within the NPSNN (2015) Accordance Tables [REP6-016].
- 2.1.2 At the time of the DCO application submission in April 2024, a Draft NPSNN (2024) Accordance Table [APP-192] was submitted with the application which summarised compliance of the Scheme with the draft NPSNN. This was because, even though the NPSNN 2024 was still in draft at that time (having been published for consultation in March 2023), it was still capable of constituting a material consideration in the Secretary of State's decision on the Application. As the 2024 NPSNN was designated on 24 May 2024, the Draft NPSNN (2024) Accordance Table [APP-192] has been superseded by the NPSNN (2024) Accordance Table [REP5-032], which assesses the Scheme against the designated 2024 NPSNN. The application for development consent for the Scheme was accepted for examination on 23 May 2024. As set out in the transitional provisions of the 2024 NPSNN (paragraphs 1.16 and 1.17), the 2015 NPSNN has effect for any application for development consent accepted for examination prior to 24 May 2024 and will inform decisions made by the Secretary of State in relation to those applications. However, it is noted that the 2024 NPSNN may still be an important consideration for the Secretary of State for Transport when determining whether to consent the DCO for this Scheme. Therefore, the NPSNN (2024) Accordance Tables [REP5-032] summarised compliance of the Scheme with the 2024 NPSNN.
- 2.1.3 The policies of relevance to statutory nuisance within the 2015 NPSNN, and detail on how they have been addressed in this assessment, are provided below.
- 2.1.4 Paragraphs 4.57 to 4.59 of the 2015 NPSNN state that it is very 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 any additional requirements to avoid statutory nuisance are included in the subsequent order granting development consent.

- 2.1.5 Paragraph 5.81 of the 2015 NPSNN 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.
- 2.1.6 Paragraph 5.82 of the 2015 NPSNN 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 consents”*.
- 2.1.7 Paragraphs 5.84 to 5.86 of the 2015 NPSNN 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 ES [contained in Volume 6.1]. Consultation with relevant local planning authorities and, where appropriate, the Environment Agency about the scope of the assessment is advised.

2.2 Environmental Protection Act 1990

- 2.2.1 The following text is an extract from section 79(1) of the EPA which sets out those matters which constitute a statutory nuisance in England and Wales:
- 2.2.2 *“(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."

2.2.3 Section 79 of the EPA contains other exceptions and definitions in respect of statutory nuisance. The particular exceptions of relevance to the Scheme are:

- 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*

2.2.4 Definitions are set out in section 79(7) of the EPA and include the following relevant terms:

"dust" does not include dust emitted from a chimney as an ingredient of smoke;

"fumes" means any airborne solid matter smaller than dust;

"gas" includes vapour and moisture precipitated from vapour;

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

"noise" includes vibration;

"prejudicial to health" means injurious, or likely to cause injury, to health;

"premises" includes land and... any vessel;

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

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

3 Potential breaches of s79(1) of the EPA 1990

3.1 Potential breaches

- 3.1.1 The only matters prescribed in s79(1) of the EPA that could be potentially engaged as a consequence of the Scheme during construction or operation are:
- (d) dust arising on business and residential properties so as to be 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; 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.*
- 3.1.2 It is noted that statutory nuisance category (c) (emission of fumes and gases) applies only to private dwellings (as noted in section 79(4) of the EPA) and is therefore not relevant to the Scheme.
- 3.1.3 It is also noted that that statutory nuisance category (ga) does not apply to traffic (as noted in section 79(6A) of the EPA), but would apply to noise generated by construction vehicles, plant and machinery.

3.2 Dust arising on business and residential properties

Construction dust

- 3.2.1 During the construction phase of the Scheme dust generating activities would potentially be carried out such as earth moving and demolition, as set out in Section 2.6 of Chapter 2 (The Scheme) of the ES [APP-046]. Such impacts associated with dust generating activities are considered in Section 5.9 of Chapter 5 (Air Quality) of the ES [REP5-073], which sets out the qualitative assessment of potential dust effects as a result of construction of the Scheme.
- 3.2.2 The distances from the emission source at which construction dust effects may occur are dependent on the extent and nature of mitigation measures, the prevailing wind conditions, rainfall and the presence of screening. However, in accordance with the Design Manual for Roads and Bridges (DMRB) LA 105 Air Quality¹, effects

¹ This is the relevant standard and guidance for assessing, mitigating (where necessary) and reporting effects of motorway and all-purpose trunk roads in the United Kingdom on air quality

from construction activities that generate dust are generally limited to within 200 metres of the construction site boundary. Therefore, the assessment has considered any activities likely to generate dust to within 200 metres of any construction works and compound areas.

- 3.2.3 The Scheme would also introduce new emission sources with the potential to generate dust including PM₁₀ in the form of site plant, traffic from construction vehicles and the implementation of traffic management measures during construction. However, no significant effects are predicted from such emissions, as detailed in Chapter 5 (Air Quality) of the ES [REP5-073].
- 3.2.4 Effective management to control emissions of dust is a well-defined practice for construction and demolition. The mitigation measures to limit impacts would be applied at all sites where dust producing activities would be taking place. The methods of dust suppression would follow current construction and demolition site best practice and would include measures such as water spraying during cutting / grinding operations, damping down dry surfaces during dry conditions and switching off vehicle engines and plant motors when not in use. Construction mitigation measures associated with dust suppression are detailed in full within Chapter 5 (Air Quality) of the ES [REP5-073]. These measures are secured in the First Iteration Environmental Management Plan (EMP) [REP6-012] and the Register of Environmental Actions and Commitments (REAC) contained within it. The First Iteration EMP [REP6-012] would be developed into a Second Iteration EMP by the Principal Contractor for approval by the Secretary of State for Transport, in consultation with the relevant planning authorities before the start of construction. The Second Iteration EMP would be implemented during construction.
- 3.2.5 With the measures described in the ES [contained in Volume 6.1] and secured in the First Iteration EMP [REP6-012] dust during construction would be controlled and would not give rise to any nuisance, nor would it be prejudicial to health under section 79(1)(d) of the EPA.

Operational dust

- 3.2.6 No significant dust nuisance is expected as a result of the operation of the Scheme as it will not be a significant dust emission source and therefore no mitigation measures are required. In Chapter 5 (Air Quality) of the ES [REP5-073], concentrations of PM₁₀ and PM_{2.5} (which are constituents of dust associated with vehicle emissions) are predicted to be well below the relevant air quality objectives. Therefore, as no significant PM₁₀ and PM_{2.5} effects are expected as a result of the Scheme in operation, no statutory dust nuisance is expected.

3.3 Artificial light from premises

- 3.3.1 Section 102 of the Clean Neighbourhoods and Environment Act 2005, amends section 79 of the EPA to include artificial light emitted from premises, where the latter is defined as including land.
- 3.3.2 For the artificial light to count as a statutory nuisance it must do one of the following:
- unreasonably and substantially interfere with the use or enjoyment of a home or other premises.
 - injure health or be likely to injure health.
- 3.3.3 Statutory nuisance laws do not apply to artificial light from:
- airports
 - harbours
 - railway premises
 - tramway premises
 - bus stations
 - public transport operating centres
 - goods vehicle operating centres
 - lighthouses
 - prisons
 - defence premises like army bases
 - premises occupied by visiting armed forces
 - street lights
- 3.3.4 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 ES [APP-051], which also details the methodology followed. The assessment has considered the extent of lighting already visible within the night sky from visual receptors affording views towards the Scheme; and how new sources of light introduced during construction and operation of the Scheme may affect their visual amenity.

Construction lighting

- 3.3.5 The majority of construction activity would be undertaken between 07:00 and 18:00 on weekdays, and between 07:00 and 13:00 on Saturdays, as secured in the Table 3-2 REAC of the First Iteration EMP [REP6-012] Reference G2. During those working hours, there would likely be no requirement for artificial lighting during construction, except during the autumn and winter potentially.
- 3.3.6 There are construction activities that would require night time working. Temporary site lighting would be provided to enable the safety and security of the construction site during times of darkness.

The activities requiring night-time working or potentially working in darkness and therefore associated lighting include:

- Pavement and road marking works at the tie-ins between the new and existing pavement during night time road closures. Locations include; Farndon Roundabout, Cattle Market Roundabout, Brownhills Junction and the link road tie-in to the existing A46, Friendly Farmer Roundabout and Winthorpe Roundabout.
- Installation of bridge beams during night closures of the A46 using a crane located adjacent to the bridge abutments to lift beams either from the A46 carriageway or adjacent to the bridge working areas.
- A series of overnight weekend railway possessions to construct the bridge elements adjacent to or over the railway lines.
- Removal of cantilever gantry between Winthorpe Roundabout and Friendly Farmer Roundabout.
- Installation of new gantries at Winthorpe Roundabout and on the southbound carriageway of the A46 to the north of Winthorpe roundabout.
- Night-time lane closures and full closure of the A1 northbound to construct the works access into the bridge fabrication area. Full weekend closure of the A1 (Friday night to Sunday afternoon) to install the A1 bridge deck.
- Online sections of the Scheme would require night-time working to facilitate traffic management installation and removal.
- Task lighting at the main site compound and road work recovery areas.

3.3.7 Temporary site lighting at compounds and for the works activities would be provided to enable the safety and security of the construction site. Mitigation measures to limit associated impacts with lighting would include:

- The lighting would be at the minimum lumen output necessary for effective task lighting and use low energy consumption fittings.
- Where possible, lighting would be activated by motion sensors to prevent unnecessary usage. It would comply with the Institution of Lighting Professionals Guidance Notes for the Reduction of Obtrusive Light GN013 and the relevant provisions of BS 5489 Part 1, Code of practice for the design of road lighting, Lighting of roads and public amenity areas, where applicable.
- Construction lighting would also be designed, positioned and directed so as not to unnecessarily intrude on adjacent buildings, other land uses to prevent unnecessary disturbance, interference with local residents or passing motorists.

3.3.8 These measures are secured in the First Iteration EMP [REP6-012] and Table 3-2 REAC contained within it. The First Iteration EMP would be developed into a Second Iteration EMP by the Principal Contractor for approval by the Secretary of State for Transport, in consultation with the relevant planning authorities before the start of construction. The Second Iteration EMP would to be implemented during construction.

- 3.3.9 With the application of mitigation measures included in the First Iteration EMP [REP6-012], it is considered that no statutory nuisance would arise during construction as a result of temporary lighting, nor would it be prejudicial to health under s79(1)(fb) of the EPA.

Operational lighting

- 3.3.10 As detailed in Chapter 2 (The Scheme) of the ES [APP-046], road lighting incorporated into the design of the Scheme reflects the level of safety required for road users. Lighting would be installed or modified at the following locations across the Scheme:
- Farndon Roundabout.
 - Cattle Market Junction.
 - Brownhills and Friendly Farmer Junctions including the slip roads into the Esso service station.
 - Winthorpe Roundabout.
 - The single carriageway link between Friendly Farmer and Winthorpe.
- 3.3.11 The requirements for road lighting at these locations has been determined based on increasing safety for all road users, the design of which has sought to minimise adverse impacts and effects on biodiversity, the existing landscape and visibility from nearby properties and dwellings after dark and the setting of features associated with the historic environment.
- 3.3.12 Street/road lighting and light from vehicle headlights are not specifically exempted in s79(5B) of the EPA, but because these would not be located on 'premises', they do not fall within the scope of the definition covering statutory nuisance. Therefore no statutory nuisance under s79(1)(fb) is expected to arise as a result of artificial lighting during operation.

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

Construction noise

- 3.4.1 Chapter 11 (Noise and Vibration) of the ES [APP-053] presents a construction noise and vibration assessment which confirms the potential for construction of the Scheme to affect sensitive receptors along the route for the duration of the works if no mitigation measures are introduced. Effects would be restricted to areas where the existing baseline noise levels currently experienced by receptors are exceeded by construction noise.

- 3.4.2 The noise and vibration assessment methodology reported in Section 11.7 of Chapter 11 (Noise and Vibration) of the ES [APP-053] as set out in DMRB LA 111² (and BS 5228 Part 1 and Part 2, for noise vibration respectively) was discussed with an Environmental Health Officer (EHO) from Newark & Sherwood District Council on 14 September 2022. The EHO confirmed that they did not have any comments on, amendments to or suggestions in relation to the proposed methodology.
- 3.4.3 For the Scheme, mitigation measures secured in the First Iteration EMP [REP6-012], which includes recommendations of BS 5228 Code of practice for noise and vibration control on construction and open sites, would be implemented, including the following:
- The Principal Contractor would assess, consider and implement best practicable means (BPM) at all times in order to control noise and vibration from the works. The application of such measures would include the selection of the most appropriate method and plant for the job, adequate maintenance of plant, optimum siting of stationary plant, local screening and the education of the workforce. Restrictions may also be placed on early/late delivery times.
 - The Principal Contractor would need to obtain consents from Newark & Sherwood District Council under Section 61 of the Control of Pollution Act 1974 for the construction works, excluding non-intrusive surveys.
- 3.4.4 In addition to these measures, the local authority (Newark and Sherwood District Council) has powers for controlling noise and vibration from construction sites through the Control of Pollution Act 1974 and the EPA. Newark & Sherwood District Council can exercise these powers prior to or during the works.
- 3.4.5 Section 60 of the Control of Pollution Act 1974 relates to 'Control of Noise on Construction Sites' and enables the local authority to serve a notice of its requirements for the control of site noise and vibration on the person(s) deemed to be responsible for, or carrying out, the works. The notice allows the local authority to specify methods, plant or machinery to be used for the works, hours during which the construction work can be carried out, and the level of noise and vibration that can be emitted by the works.
- 3.4.6 Section 61 of the Control of Pollution Act 1974 allows the main contractor to obtain consent from the local authority regarding the noise and vibration requirements of the works prior to them commencing. It is in the interest of the contractor to apply for consent because once it has been granted the local authority cannot take action under Section 60 of the Control of Pollution Act 1974 or

² This is the relevant standard and guidance for assessing, mitigating (where necessary) and reporting effects of motorway and all-purpose trunk roads in the United Kingdom on noise and vibration.

Section 80 of the EPA, so long as the consent remains in force and the contractor complies with its terms.

- 3.4.7 These measures would be developed into a Second Iteration Environmental Management Plan by the Principal Contractor for approval by the Secretary of State for Transport, in consultation with the relevant planning authorities before the start of construction. The Second Iteration EMP would be implemented during construction. Adherence with the measures set out in the First Iteration EMP [REP6-012] would ensure that any statutory nuisance or noise impacts prejudicial to health under Section 79(1)(g) and (ga) of the EPA would be avoided during construction of the Scheme.

Operational noise

- 3.4.8 Chapter 11 (Noise and Vibration) of the ES [APP-053] presents the assessment of operational noise assessment resulting from the Scheme. The assessment concludes that embedded mitigation is needed for the Scheme. This includes the provision of landscape earthworks, noise barriers and bridge safety parapets as necessary. These measures are secured and detailed in full in the First Iteration EMP [REP6-012] (and Table 3-2 REAC contained within it) and are also shown on Figure 2.3 (Environmental Masterplan) of the ES Figures [AS-026]. The First Iteration EMP would be developed into a Second Iteration EMP by the Principal Contractor for approval by the Secretary of State for Transport, in consultation with the relevant planning authorities before the start of construction. The Second Iteration EMP would be implemented during construction.
- 3.4.9 As s79(6A) of the EPA confirms that noise made by traffic does not constitute a statutory nuisance, the operation of the Scheme is unlikely to give rise to a statutory nuisance under s79(1)(g) or (ga) of the EPA.

4 Summary

- 4.1.1 This Statement has considered the potential for the Scheme to cause a statutory nuisance under the EPA. 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.
- 4.1.2 These works will be controlled through the design of the Scheme, as described in Chapter 2 (The Scheme) of the ES [APP-046], and through the application of mitigation measures set out in the First Iteration EMP [REP6-012].
- 4.1.3 With these measures in place, none of the statutory nuisances identified in section 79(1) of the EPA are predicted to arise during the construction and operation of the Scheme.