

# **A46 Coventry Junctions (Walsgrave) Scheme Number: TR010066**

## **6.6 Statement Relating to Statutory Nuisance**

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A46 Coventry Junctions (Walsgrave)  
Development Consent Order 20[x]

STATEMENT RELATING TO STATUTORY NUISANCE

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Author	A46 Coventry Junctions (Walsgrave) Project Team, National Highways

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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”) under section 37 of the Planning Act 2008 for a Development Consent Order (DCO). If made, the DCO would grant consent for the A46 Coventry Junctions (Walsgrave) (the “Scheme”). A detailed description of the Scheme can be found in Environmental Statement (ES) Chapter 2 (The Scheme) (**TR010066/APP/6.1**).
- 1.1.2 This Statement comprises part of the 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:
- “...a statement whether the proposal engages one or more of the matters set out in section 79(1) (statutory nuisances and inspections thereof) of the Environmental Protection Act 1990, and if so how the applicant proposes to mitigate or limit them”.*
- 1.1.3 As this Statement is part of the Application Documents, it is informed by and should be read alongside the other application documents (particularly the ES (**TR010066/APP/6.1**)).
- 1.1.4 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.
- 1.1.5 The content of the Statement has been informed by the following assessments:
- a) ES Chapter 5 (Air Quality) (**TR010066/APP/6.1**).
  - b) ES Chapter 7 (Landscape and Visual Effects) (**TR010066/APP/6.1**).
  - c) ES Chapter 11 (Noise and Vibration) (**TR010066/APP/6.1**).
- 1.1.6 The Statement has also taken account of the embedded and essential mitigation measures presented in the First Iteration Environmental Management Plan (EMP) (**TR010066/APP/6.5**).

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## 2 Background

### 2.1 Policy Context

#### National Networks National Policy Statement

- 2.1.1 Paragraphs 4.55 to 4.56 of the National Networks National Policy Statement (NPS NN) (May 2024) 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 section 79(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.
- 2.1.2 Paragraph 5.123 of the NPS NN 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.
- 2.1.3 Paragraph 5.124 of the NPS NN states *“The Secretary of State should be satisfied that all reasonable steps have been taken, and will be taken, to minimise any detrimental impact on amenity from emissions of odour, dust, steam, smoke and artificial light. This includes the impact of light pollution from artificial light on local amenity, landscapes and protected species and habitats, using directed light when necessary.”* And paragraph 5.124 states: *If development consent is granted for a project, the Secretary of State should consider whether there is a justification for all of the authorised project (including any associated development) being covered by a defence of statutory authority against nuisance claims. If the Secretary of State cannot conclude that this is justified, then the defence should be disapplied, in whole or in part, through a provision in the Development Consent Order.*

### 2.2 Environmental Protection Act 1990 – Section 79(1)

- 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.

*“(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 or Section 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 *Section 79 contains other exceptions and definitions in respect of statutory nuisance. The particular exceptions of relevance to the Scheme are:*

- Section 79(4) – clarifies that subsection 1(c) (fumes or gases emitted from premises) does not apply in relation to premises other than private dwellings;*
- Section 79(6A) – clarifies that subsection (1)(ga) (noise emitted by a vehicle or machinery in a street) does not apply to noise made by traffic but could apply to construction vehicles or plant.*

2.2.3 *Definitions are set out in section 79(7), 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;*

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*“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.*

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### 3 Potential Breaches of Section 79(1) of the Environmental Protection Act 1990

#### 3.1 Potential Breaches

- 3.1.1 The only matters prescribed in Section 79(1) of the EPA that could be potentially engaged as a consequence of the Scheme either at construction stage or during operation are:

*(d) dust arising on business and;*

*(fb) artificial light from premises;*

*(g) noise emitted from premises; or*

*(ga) noise 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 this Scheme.

- 3.1.3 It is also noted 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 premises

- 3.2.1 During the construction phase of the Scheme dust generating activities potentially will be carried out, such as earth moving and demolition. ES Chapter 5 (Air Quality) (**TR010066/APP/6.1**) sets out the qualitative assessment of the impacts of dust nuisance as a result of construction of the Scheme.

- 3.2.2 As part of the assessment, the potential dust impacts on receptors of varying degrees of sensitivity (e.g.: residential and/or commercial properties) during the construction phase has been assessed within 200m of any construction works and compound areas.

- 3.2.3 Effective management to control emissions of dust is a well-defined practice for construction and demolition. The mitigation measures to limit the impact would be applied to all sites where dust producing activities would take place. The methods of dust suppression would follow current construction and demolition site best practice. These construction mitigation measures are detailed within ES Chapter 5 (Air Quality) (**TR010066/APP/6.1**) and are also set out in the First Iteration EMP (**TR010066/APP/6.5**). A Second Iteration EMP will be developed to be implemented during construction and secured by Requirement 4 of the draft DCO
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**(TR010066/APP/3.1).**

- 3.2.4 The dust risk potential for the project was classified as 'high' as the Scheme principally comprises a large junction upgrade on the A46 strategic road link, however with the application of best practice construction mitigation measures, as defined in the Scheme's First Iteration EMP (**TR010066/APP/6.5**), there will be no likely significant air quality effect on local air quality associated with construction dust.
- 3.2.5 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.
- 3.2.6 With regards to particulate matter (PM<sub>10</sub>), in line with the Design Manual for Roads and Bridges (DMRB) LA 105, as there are no exceedances of the PM<sub>10</sub> annual mean objective in the base year, there is no requirement to model PM<sub>10</sub> concentrations in the Do-Minimum (DM) (without Scheme) and Do-Something (DS) (with Scheme) 2028 scenarios. Therefore, PM<sub>10</sub> was scoped out of further assessment, with no likely significant effect for human health.
- 3.2.7 Therefore, as no significant PM<sub>10</sub> effects are expected as a result of the operation of the Scheme, and no dust statutory nuisance is expected.
- 3.2.8 With the measures described in the ES (**TR010066/APP/6.1**) and the First Iteration EMP (**TR010066/APP/6.5**), 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.

### **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 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; and
  - injure health or be likely to injure health.
- 3.3.3 Statutory nuisance laws do not apply to artificial light from:
- airports
  - harbours

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- 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 As street lights are not covered by the laws on statutory nuisance, it is not necessary to address these within this Statement; however it is necessary to address temporary lighting equipment to be used to illuminate the construction tasks.

3.3.5 The majority of construction activity would be undertaken between 07:00 and 19:00 on weekdays; and between 07:00 and 14:00 on Saturdays. During those working hours, there will be the requirement for artificial lighting of construction areas when it gets dark.

3.3.6 Some works cannot be completed within the daytime traffic management phasing. These works will need to be undertaken under night-time or weekend closures. These activities include:

- Traffic management installation and phase changes
- Construction of temporary carriageway widening
- New carriageway tie ins on the A46 and B4082
- Resurfacing works
- Road marking installation
- Central reserve construction
- Installation of signalised pedestrian crossing on the B4082
- Installation of the new overbridge deck

3.3.7 Impacts from artificial lighting will be mitigated as outlined in the Register of

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Environmental Actions and Commitments (REAC) (Annex A of the First Iteration EMP (TR010066/APP/6.5)).

- 3.3.8 Lighting shall be at the minimum luminosity necessary and use low energy consumption fittings. Lighting shall comply with the Institute of Lighting Professionals Guidance Notes for the Reduction of Obtrusive Light GN016 and the provisions of BS 5489 Code of practice for the design of road lighting, where applicable.
- 3.3.9 Lighting will be directional and positioned sympathetically to minimise light spill.
- 3.3.10 Where construction lighting is required, it would be limited in duration and where feasible directed away from sensitive receptors.
- 3.3.11 The only sensitive receptors determined that may be affected by artificial lighting are species and habitats. Human receptors including residential properties and businesses have not been determined as sensitive receptors to artificial lighting during the construction of the Scheme. Apart from Hungerley Hall Farm, there are no properties contiguous with the Scheme boundary.
- 3.3.12 The potential effects of lighting have been identified as part of a landscape and visual impact assessment reported in ES Chapter 7 (Landscape and Visual Effects) (TR010066/APP/6.1), and the ES Appendix 7.5 (Lighting Assessment) (TR010066/APP/6.3), which also details the methodology followed.
- 3.3.13 With the application of mitigation measures in the First Iteration EMP (TR010066/APP/6.5), it is considered that no statutory nuisance would arise during construction, nor would it be prejudicial to health under Section 79(1)(fb) of the EPA.

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

- 3.4.1 ES Chapter 11 Noise and Vibration (TR010066/APP/6.1) details that noise from construction of the Scheme is not predicted to result in any significant adverse residual effects.
- 3.4.2 Section 60 of the 1974 Act relates to 'Control of Noise on Construction Sites' and enables local authorities to serve a notice of its requirements to control site noise and vibration on the person(s) deemed to be responsible for carrying out the works. The notice allows local authorities to specify methods, plant or machinery used for the works, specify hours during which the construction work can be carried out, and specify the level of noise and vibration that can be emitted by the works.
- 3.4.3 Local Authorities have powers for controlling noise and vibration from construction sites through the "1974 Act" and the EPA. Warwickshire County

Council, Coventry City Council and Rugby Borough Council can exercise these powers prior to or during the works.

3.4.4 Consultation with both Rugby Borough Council and Coventry City Council was undertaken in December 2023 in response to necessary changes to the proposed baseline survey methodology (the survey changes are detailed in ES Appendix 11.3 (TR010066/APP/6.3)). The response from Rugby Borough Council indicated that they accepted the change in methodology for the baseline survey. No response was received from Coventry City Council in regard to this enquiry.

3.4.5 At this time Rugby Borough Council also made an additional comment in relation to another receptor within the boundary of Coombe Pool:

Comment	Response
<i>"Although more distant as a receptor, there are residential properties to the south east of the junction within the Coombe Abbey area – the measuring points you have should however be sufficient to predict noise levels that may affect them and there are greater concentrations of residential properties closer to the site"</i> (Rugby Borough Council)	The measurement positions will be used in the verification of the noise model which in turn will enable the determination of the noise levels at receptors. It is confirmed that the noise assessment includes the residential receptor within the boundaries of Coombe Pool.

3.4.6 Night-time or weekend works will be required at some stage, such as, road tie-ins and traffic management. Any night working would be between 19:00 and 07:00. There may be exceptions to these hours for oversized deliveries, and junction tie-ins. These will need to be considered in further detail as construction methods are refined and proposals for night-time work discussed and agreed with the environmental health department at the local authority.

3.4.7 The construction information has been reviewed and assessed to determine the risk of a significant effect occurring, in accordance with DMRB LA 111. Where the risk of a likely significant effect is identified, monitoring and further detailed assessment works will be required by the Principal Contractor, in discussion with the local authority to agree the final plant proposals and work durations.

3.4.8 Section 61 of the 1974 Act allows for the main contractor to obtain consent from local authorities regarding the noise and vibration requirements of the works prior to them commencing. It is in the interests of the contractor to apply for consent because once it has been granted local authorities cannot take action under Section 60 of the 1974 Act or Section 80 of the EPA, so long as the consent remains in force and the contractor complies with its terms.

~~3.4.9 The design interventions and mitigation measures that have been introduced to~~

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reduce the potential for significant effects due to noise and vibration from the construction and operation of the Scheme are presented in Section 11.1 of the ES Chapter 11 (Noise and Vibration) (**TR010066/APP/6.1**)

3.4.10 Mitigation measures in this section are secured in by the First Iteration EMP (**TR010066/APP/6.5**) and are in line with the aims and associated actions of NPS NN as detailed in DMRB LA 111 Table E/1.3

3.4.11 Examples of noise mitigation measures proposed include (but are not restricted to):

- Construction works will take place mainly during the daytime. Construction works outside of the normal construction hours of 07:00-19:00 weekday and 07:00- 13:00 on Saturdays shall be minimised as far as practicable, as detailed in the First Iteration EMP (**TR010066/APP/6.5**).
- Mitigation measures in the form of temporary noise barriers shall be provided where it is safe to do so.
- Use equipment that is fitted with silencers or mufflers where available.
- Materials to be lowered instead of dropped from height.
- Sections of the A46 carriageway within the Order Limits A46 shall be surfaced with a low-noise road surface where applicable.

### **3.5 Environmental Management Plan**

3.5.1 The mitigation measures outlined are in the First Iteration EMP (**TR010066/APP/6.5**).

3.5.2 Specific management plans have been prepared, at this stage, for the Scheme in outline format, the following (which relate to statutory nuisance):

- EMP Appendix B.1 Outline Construction Air Quality and Dust Management Plan
- EMP Appendix B.2 Outline Construction Noise and Vibration Management Plan
- EMP Appendix B.4 Outline Landscape and Ecology Management Plan
- EMP Appendix B.5 Outline Construction Communication Strategy

3.5.3 A Second Iteration EMP would be developed from the First Iteration EMP (**TR010066/APP/6.5**) for implementation during construction and include the following (which relate to statutory nuisance):

- Construction Noise and Dust Management Plan

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- Construction Air Quality and Vibration Management Plan
  - Landscape and Ecology Management Plan (LEMP)

3.5.4 Adherence to the EMPs would ensure that statutory nuisance or noise impacts prejudicial to health under Section 79(1)(g) and (ga) of the EPA would be avoided.

3.5.5 No statutory nuisance would arise during operation of the Scheme due to the information provided within the ES documents (**TR010066/APP/6.1**) and adherence to the EMPs (**TR010066/APP/6.5**).

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## 4 Conclusion

- 4.1.1 This Statement has considered the potential for the Scheme to cause a statutory nuisance under the EPA.
- 4.1.2 The construction and operational activities that have the potential to create a nuisance would be controlled through mitigation as set out in the First Iteration EMP (**TR010066/APP/6.5**). Mitigation measures are also set out within the following chapters of the ES (**TR010066/APP/6.1**):
- Chapter 5: Air Quality
  - Chapter 6: Cultural Heritage
  - Chapter 7: Landscape and Visual effects
  - Chapter 8: Biodiversity
  - Chapter 9: Geology and Soils
  - Chapter 10: Material Assets and Waste
  - Chapter 11: Noise and Vibration
  - Chapter 12: Population and Human Health
  - Chapter 13: Road Drainage and the Water Environment
  - Chapter 14: Climate
  - Chapter 15: Combined and Cumulative Effects
- 4.1.3 The First Iteration EMP would be developed into a Second Iteration EMP for each part for implementation during construction and is secured through Requirement 4 of the draft DCO (**TR010066/APP/3.1**). A Third Iteration EMP will be submitted and approved by the Secretary of State following consultation, secured through Requirement 5 of the draft DCO (**TR010066/APP/3.1**).
- 4.1.4 With mitigation in place, none of the statutory nuisances identified in Section 79(1) of the EPA are predicted to arise during the construction or operation of the Scheme.