
The Norfolk County Council (Norwich Northern Distributor Road (A1067 to A47(T))) Order

5.3 Environmental Protection Act Statement

Planning Act 2008

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

PINS Reference Number: TR010015

Document Reference: 5.3

Regulation Number: 5(2)(f)

Author: Norfolk County Council

Revision	Date	Description
0	8 January 2014	Version for Submission

INTRODUCTION

This document is submitted in relation to the application for a Development Consent Order by Norfolk County Council to the Secretary of State, under the Planning Act 2008.

The application is for the Norfolk County Council (Norwich Northern Distributor Road (A1067 to A47(T))) Order, to grant development consent for the construction of a new highway running west to east, to south, between the A1067 Fakenham Road and the A47 Trunk Road at Postwick, including improvements to the existing highway network, to the north and north east of Norwich.

This document is the Explanatory Memorandum, comprises part of the application documents and is provided as required under Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.

Table of Contents

1	Summary.....	4
2	Introduction.....	5
3	Statutory context.....	6
	3.1 The requirement for this statement.....	6
	3.2 Categories of statutory nuisance.....	6
4	Assessment of matters potentially engaged.....	9
	4.1 Introduction.....	9
	4.2 Dust.....	9
	4.3 Artificial light.....	10
	4.4 Noise.....	11
	4.5 Matters not potentially engaged.....	12
5	Conclusion.....	13
6	Glossary.....	14

1 Summary

- 1.1 This Statement identifies whether the proposals for the Norwich Northern Distributor Road engage one or more of the matters in respect of statutory nuisance set out in section 79(1) of the Environmental Protection Act 1990 (the 1990 Act). Where any such matters could be engaged, the Statement explains how the applicant proposes to mitigate or limit them.
- 1.2 This Statement concludes that the only matters comprised in section 79(1) of the 1990 Act which may, potentially, be engaged as a consequence of the Scheme proposals are:
- 1.2.1 dust impacts arising from construction activities (s. 79(1)(d));
 - 1.2.2 impacts arising from lighting during construction (s. 79(1)(fb)); and,
 - 1.2.3 noise impacts from construction activities (s. 79(1)(g) and (ga)).
- 1.3 The Statement concludes that, with the implementation of mitigation and control measures included in the Environmental Statement (Document 6.1), the Construction Environmental Management Plan (Document 6.2 - Environmental Statement, Volume II, Chapter 23) and the construction methodology (Document 6.2 - Environmental Statement, Volume II, Chapter 2), the project would not give rise to a nuisance or be prejudicial to health.

2 Introduction

- 2.1 This Statement in Respect of Statutory Nuisance (the Statement) accompanies an application by Norfolk County Council (NCC) for development consent under section 37 of the Planning Act 2008 for the Norwich Northern Distributor Road (NDR).
- 2.2 The project, known as the NDR, comprises a predominantly dual carriageway all-purpose strategic distributor road which would link the A1067 Fakenham Road, near Attlebridge, to the A47 Trunk Road at Postwick. On 9 August 2013 the Secretary of State for Transport directed that the NDR and associated matters be treated as development for which development consent is required.
- 2.3 This Statement has been prepared pursuant to regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. In accordance with that regulation, it identifies whether the NDR engages one or more of the matters listed as statutory nuisances in section 79(1) of the Environmental Protection Act 1990 and, if so, how NCC proposes to mitigate or limit those effects.
- 2.4 The Statement has been prepared having regard to the Planning Act *Application Form Guidance* published by the Department for Communities and Local Government in June 2013.
- 2.5 Where relevant, this Statement refers to the Environmental Statement (ES) (Documents 6.1 and 6.2), the Construction Environmental Management Plan (CEMP) (Document 6.2 – ES, Volume II, Chapter 23) and the Construction Methodology (Document 6.2 – ES, Volume II, Chapter 2).

3 Statutory Context

3.1 The requirement for this Statement

3.1.1 Section 37(3)(d) of the Planning Act 2008 requires applications for development consent to be accompanied by documents and information of a prescribed description.

3.1.2 The documents and information are prescribed by the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. Regulation 5(2)(f) provides that an application must be accompanied by:

a statement whether the proposal engages one or more of the matters set out in section 79(1) (statutory nuisances and inspections therefor) of the Environmental Protection Act 1990, and if so how the applicant proposes to mitigate or limit them.

3.2 Categories of statutory nuisance

3.2.1 Section 79(1) of the Environmental Protection Act 1990, as it applies in England and Wales, provides that each of the following matters constitutes a statutory nuisance:

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

3.2.2 Paragraph (h) of section 79(1) incorporates any statutory nuisances contained in other legislation. The Public Health Act 1936 provides that various other matters are statutory nuisances for the purposes of the Environmental Protection Act 1990. However, none of these matters are considered relevant to the NDR scheme.

3.2.3 The remaining sub-sections in section 79 contain exceptions and definitions. The following exceptions are relevant to the NDR:

- (a) subsection 1(c) (fumes or gases emitted from premises) does not apply in relation to premises other than private dwellings (s. 79(4)); and
- (b) subsection 1(ga) (noise caused by a vehicle, machinery or equipment in a street) does not apply to noise made by, amongst other matters, traffic (s. 79(6A)).

3.2.4 The definitions that are relevant to the NDR are:

- (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;
- (i) “road” has the same meaning as in Part IV of the New Roads and Street Works Act 1991;
- (j) “smoke” includes soot, ash, grit and gritty particles emitted in smoke; and
- (k) “street” means a highway and any other road, footway, square or court that is for the time being open to the public.

4 Assessment of matters potentially engaged

4.1 Introduction

4.1.1 The following matters set out in section 79(1) of the Environmental Protection Act 1990 are potentially engaged by the NDR:

- (a) dust impacts that could engage paragraph (d) of section 79(1);
- (b) impacts from artificial light which could engage paragraph (fb) of section 79(1); and
- (c) noise impacts which could engage paragraphs (g) and (ga) of section 79(1).

4.1.2 Each of these impacts is discussed below.

4.2 Dust (section 79(1)(d))

4.2.1 Construction activities can result in temporary effects from dust. 'Dust' is a generic term which usually refers to particulate matter in the size range 1-75 microns in diameter; the most common impacts from dust emissions are soiling and increased ambient PM10 concentrations (Building Research Establishment, 2003).

4.2.2 The distances from the emission source at which significant construction dust effects are likely to occur are dependent on the extent and nature of mitigation measures, the prevailing wind conditions, rainfall and the presence of natural screening by, for example, vegetation or existing physical screening. However, research indicates that effects from construction activities that generate dust are generally limited to within 150-200m of the construction site boundary (Highways Agency, 2007), although guidance issued by the Institute of Air Quality Management requires consideration of effects up to 350m from the construction area boundary (Institute of Air Quality Management, 2011).

Construction phase

4.2.3 Construction work requires the use of a range of site plant, such as excavators, piling equipment, cranes and on site generators. All of these plant have an energy demand and some may result in direct emissions to air from exhausts. The key effects during the construction phase are associated with dust-raising activities related to earthworks, construction and vehicles

tracking. This includes the handling of spoil, loading and unloading of trucks and the movement of the trucks around the construction site and onto the local road network.

- 4.2.4 ES Volume 1, Chapter 4, Section 1.6 (Document 6.1) details the assessment of construction phase activities. There are 63 sensitive receptors located within 20m of the DCO boundary. The significance of dust soiling effects is assessed as slight adverse because all human receptors are considered high risk.

Mitigation

- 4.2.5 The NDR has a number of incorporated mitigation measures for the construction phase which are principally aimed at reducing dust effects from the construction activities and will be included within the Construction Environmental Management Plan (CEMP) (Document 6.2 - ES, Volume 2, Chapter 23). The construction phase will include the mitigation measures presented in Volume 1 Chapter 4 of the ES (Document 6.1) which will reduce the dust risk from each of the sources assessed. The overall significance of effects from construction dust has been determined taking this mitigation into account.

Conclusion

- 4.2.6 Taking into account the mitigation measures described above, the dust impacts arising during the construction phase are not predicted to cause a nuisance or to be prejudicial to health.

Operational phase

- 4.2.7 There are no predicted dust generating activities during operation. There may be routine maintenance to the road which could have the potential to generate dust but these will be small scale and intermittent. The maintenance teams will manage dust using methods similar to those outlined within the CEMP (Document 6.2 - ES, Volume 2, Chapter 23).

Conclusion

- 4.2.8 Taking into account the mitigation measures described above, the dust impacts arising during the operational phase are not predicted to cause a nuisance or be prejudicial to health.

4.3 Artificial light (section 79(1) (fb))

- 4.3.1 During construction there may be a requirement to light site compounds and construction areas at some times of the day, based on a standard 12 hour working day which in winter will include some hours of darkness.
- 4.3.2 Prior to construction, a lighting management plan will be submitted to the local authority to approve acceptable lighting regimes taking account of potential effects on local people. This will be managed through the CEMP and lighting scheme (to be approved by the local authority pursuant to requirements 18 and 19 (Schedule 2 to the Draft Development Consent Order, Document 3.1).
- 4.3.3 During operation, the NDR will not be lit with the exception of the Postwick Hub which already has established lighting.
- 4.3.4 Taking into account the mitigation measures that are set out in the DCO application (the ES in particular), and the management of these through the CEMP, it is considered there the impacts from artificial lighting arising during both the construction and the operational phase will not cause a nuisance or be prejudicial to health.

4.4 Noise (section 79(1)(g) and (ga))

- 4.4.1 This section addresses the potential of noise during construction activities. Noise impacts due to operational traffic would not constitute a statutory nuisance for the purposes of the Environmental Protection Act (see section 79(6A)).
- 4.4.2 Noise levels generated by construction activities are only deemed to be significant if the total noise (pre-construction baseline noise plus construction noise) exceeds the pre-construction baseline noise by 5 dB or more, subject to lower cut-off values of 65 dB (daytime), 55 dB (evening) and 45 dB LAeq (night-time) from construction noise alone; and have a duration of one month or more, unless works of a shorter duration are likely to result in significant impact.
- 4.4.3 The day-time period is defined as 07:00 to 19:00; the evening period as 19:00 to 23:00 and the night-time period as 23:00 to 07:00.
- 4.4.4 Construction noise is predicted in the ES (Document 6.1, Volume I, Chapter 11) to generate temporary significant effects at some locations. Further construction noise calculations will be carried out as further construction-related information becomes available, and the Contractor will be required to

apply for consent under section 61 of the Control of Pollution Act 1974 prior to the commencement of noisy construction activities.

4.4.5 Mitigation methods to reduce the impacts from noise can be found in the CEMP (Document 6.2 - ES, Volume 2, Chapter 23).

4.4.6 Taking into account the mitigation measures described above, it is considered that the noise impacts during both the construction phase will not cause a nuisance or be prejudicial to health.

4.5 Matters not potentially engaged

4.5.1 It is considered that the following matters set out in section 79(1) of the Environmental Protection Act 1990 will not be engaged by the NDR project. Consequently, they have not been discussed further in this Statement:

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

5 CONCLUSION

5.1.1 This Statement identifies whether the matters in respect of statutory nuisance set out in section 79(1) of the Environmental Protection Act 1990 would be engaged by the proposed NDR. Where such matters would be engaged, the Statement sets out how it is proposed to mitigate or limit the nuisance caused.

5.1.2 The Statement concludes that the following matters set out in section 79(1) could potentially be engaged by the NDR project:

- (d) *any dust, steam, smell or other effluvia 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;*
- (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;*

5.1.3 For all of the above matters, the Statement concludes that, with the implementation of mitigation and control measures set out in the ES, the CEMP and the Construction Methodology, the Scheme would not give rise to a nuisance or be prejudicial to health.

6 Glossary

Term	Meaning/Definition
The Application	The Application for the DCO for the NDR
DCO	Development consent order, the type of consent that can be granted by the Secretary of State pursuant to the Planning Act 2008 and for which NCC has applied pursuant to the Application
CEMP	The Construction Environmental Management Plan, a draft of which is provided at Chapter 23 of Volume 2 to the Environmental Statement, Document 6.2
The Order	The Norfolk County Council (Norwich Northern Distributor Road (A47 to A1067(T))) Order, being a Development Consent Order required for the NDR
NCC	Norfolk County Council
NDR	Norwich Northern Distributor Road, the main development for which consent is sought in the Order