

Tween Bridge Solar Farm

5.4 Statement of Statutory Nuisance

**Planning Act 2008
Infrastructure Planning (Applications: Prescribed Forms
and Procedure) Regulations 2009**

APFP Regulation 5(2)(f)

Document Reference: 5.4

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Revision 1

STATEMENT OF STATUTORY NUISANCE

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1 Introduction

1.1. Introduction

- 1.1.1. This Statement of Statutory Nuisance (the 'Statement') has been prepared on behalf of RWE Renewables UK Solar and Storage Ltd (the 'Applicant') in support of an application for a Development Consent Order (DCO) (the 'DCO Application') for Tween Bridge Solar Farm (the 'Scheme').
- 1.1.2. The DCO Application would provide consent for the Applicant to construct, operate (including maintain) and decommission the Scheme, which is a solar photovoltaic (PV) array electricity generating facility, Battery Energy Storage System (BESS) and associated infrastructure that would allow for the generation of up to 800 megawatts (MW) of electricity. The **Location Plan [Document Reference 2.1]** shows the boundary of the Scheme (the 'Order Limits'), which comprise an area of approximately 1,831 hectares of land located within the administrative areas of the City of Doncaster Council and North Lincolnshire Council.
- 1.1.3. The Scheme is a Nationally Significant Infrastructure Project (NSIP) under the Planning Act 2008 **[Ref. 1]** as it includes infrastructure capable of generating more than 50MW of renewable energy.
- 1.1.4. Further information on the Scheme can be found in **Environmental Statement (ES) Volume 1, Chapter 3: Proposed Development Description [EN010157/APP/6.1]**.

1.2. The Order Limits

- 1.2.1. The Order Limits for the Scheme are defined in the **Draft DCO [Document Reference 3.1]** as "*the limits shown on the land plans and works plans within which the authorised development may be carried out and land acquired or used*". They are described in more detail within the **ES Chapter 3: Site Description, Site Selection and Iterative Design Process [Document Reference 6.1.3]** and shown on **ES Figure 1.2 Land Parcel Plan [Document Reference 6.4.1.2]**.
- 1.2.2. The Scheme encompasses an area of approximately 1,831 hectares and is made up of five Land Parcels (A – E) together with interconnecting cables between the Land Parcels. The grid connection point will be a new 400kV substation to be consented and delivered separately by National Grid. The 400kV connection cable that will be required to connect the Scheme to the National Grid 400kV substation will also be consented and delivered separately, as explained in the **Planning Statement [Document Reference 5.5]**. The Land Parcels are shown in **ES Figure 1.2: Land Parcel Plan [Document Reference 6.4.1.2]**.

1.3. Purpose and Structure of this Statement

- 1.3.1. This Statement has been prepared in compliance with Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the APFP Regulations) **[Ref. 2]**.

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- 1.3.2. Regulation 5(2)(f) requires that an application for a DCO must be accompanied by a statement setting out whether the proposal (i.e. the Scheme) engages one or more of the matters in section 79(1) (statutory nuisances and inspections therefor) of the Environmental Protection Act 1990 (as amended) (EPA) **[Ref. 3]**. If any of those matters are engaged, the Statement must set out how the applicant proposes to mitigate or limit the effects.
- 1.3.3. The matters in section 79(1) of EPA that are considered within this Statement are general site condition, air quality, artificial light, and noise and vibration, during construction, operation (including maintenance) and decommissioning of the Scheme.
- 1.3.4. This Statement should be read alongside other documents submitted as part of the DCO Application, particularly:
- The **Environmental Statement [Document References 6.1–6.4]**;
 - The **Outline Construction Environmental Management Plan (CEMP) [Document Reference 7.1]**;
 - The **Outline Operational Environmental Management Plan (OEMP) [Document Reference 7.2]**;
 - The **Outline Decommissioning Environmental Management Plan (DEMP) [Document Reference 7.3]**; and
 - The **Outline Construction Traffic Management Plan (CTMP) [Document Reference 7.7]**.
- 1.3.5. This Statement is produced in the context that section 158 of Planning Act 2008 **[Ref. 1]** provides statutory authority for carrying out development or anything else which is authorised by the DCO as a defence against civil or criminal proceedings for nuisance. It sets out appropriate mitigation measures to ensure that the Scheme has no significant effects that would give rise to a statutory nuisance.
- 1.3.6. It is therefore demonstrated that no statutory nuisance effects are considered likely to occur. It is not expected that the construction, operation (including maintenance) and decommissioning of the Scheme would cause a statutory nuisance.
- 1.3.7. Nonetheless, it should be noted that article 10 (Defence to proceedings in respect of statutory nuisance) of the **Draft DCO [Document Reference 3.1]** contains a provision that would provide a defence to proceedings in respect of statutory nuisance (in respect of sub-paragraphs (d) (any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance) and (g) (noise emitted from premises so as to be prejudicial to health or a nuisance) of section 79(1) of the EPA **[Ref. 3]**, subject to the criteria set out in that article.
- 1.3.8. This Statement is structured as follows:
- Section 1: Introduction;

- Section 2: Legislative and Policy Context;
- Section 3: Assessment of Significance;
- Section 4: Matters engaged and proposed mitigation measures; and
- Section 5: Conclusion.

2 Legislative and Policy Context

2.1. The APFP Regulations

2.1.1. Regulation 5(2)(f) of the APFP Regulations [Ref. 2] states that an application for a DCO 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 (the EPA), and if so how the applicant proposes to mitigate or limit them”*.

2.2. The EPA

2.2.1. A statutory nuisance, as defined in the House of Commons Briefing Paper on Nuisance Complaints [Ref. 4], is a nuisance which *“must unreasonably and substantially interfere with the use or enjoyment of a home of other premises, or injure health or be likely to injure health”*. A one-off event would not usually be considered a nuisance; rather an activity must be *“ongoing or repeated”*.

2.2.2. Section 79(1) of the EPA [Ref. 3], as it applies in England and Wales, provides that the following matters constitute *“statutory nuisances”*:

- 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;*
 - a. (fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance*
 - b. (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;*

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a. *(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."*

2.3. Overarching National Policy Statement for Energy (NPS EN-1)

2.3.1 Paragraphs 4.15.1 to 4.15.4 of the Overarching National Policy Statement for Energy (NPS EN-1) [Ref. 5] state: *"Section 158 of the Planning Act 2008 confers statutory authority for carrying out development consented to by, or doing anything else authorised by, a development consent order. Such authority is conferred only for the purpose of providing a defence in any civil or criminal proceedings for nuisance. This would include a defence for proceedings for nuisance under Part III of the Environmental Protection Act 1990 (EPA) (statutory nuisance) but only to the extent that the nuisance is the inevitable consequence of what has been authorised. The defence does not extinguish the local authority's duties under Part III of the EPA 1990 to inspect its area and take reasonable steps to investigate complaints of statutory nuisance and to serve an abatement notice where satisfied of its existence, likely occurrence or recurrence. The defence is not intended to extend to proceedings where the matter is prejudicial to health and not a nuisance."*

2.3.2 Paragraph 4.15.5 states: *"At the application stage of an energy NSIP, possible sources of nuisance under section 79(1) of the EPA 1990 and how they may be mitigated or limited should be identified by the applicant so that appropriate requirements can be included in any subsequent order granting development consent"*

2.3.3 Paragraph 4.15.6 reflects that the Secretary of State (SoS) should consider possible sources of nuisance and how they may be mitigated or limited, so that *"appropriate requirements can be included in any subsequent order granting development consent."*

2.3.4 An assessment of the Scheme's compliance with national and local planning policies is provided in the Planning Statement [Document Reference 5.5].

3 Assessment of Significance

3.1. Summary of matters engaged

3.1.1 The ES [Document References 6.1–6.4] addresses the likelihood of significant effects arising that could constitute a statutory nuisance, as identified in section 79(1) of the EPA.

3.1.2 Table 1 outlines each matter stated in section 79(1) of the EPA [Ref. 3] and describes whether this is covered within this Statement, or is excluded, depending on the assessment within the ES.

Table 1: Consideration of matters potentially engaged under section 79(1) of the EPA

EPA Section 79(1) Matter	Is the matter engaged as a consequence of the Scheme?
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<p>a. any premises in such a state as to be prejudicial to health or a nuisance</p>	<p>This matter is considered further in this Statement.</p>
<p>b. smoke emitted from premises so as to be prejudicial to health or a nuisance</p>	<p>No smoke is expected to be generated from the Scheme; therefore, this is not considered further within this Statement. Unplanned, emergency scenarios such as an accidental or technical fire are not considered relevant to this Statement.</p>
<p>c. fumes or gases emitted from premises so as to be prejudicial to health or a nuisance</p>	<p>This matter only applies to private dwellings, as provided for under section 79(4) of the EPA. This matter is therefore not considered further within this Statement.</p>
<p>d. any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance</p>	<p>This matter is considered further in this Statement in relation to dust. The Scheme is not anticipated to have any impact on steam, smell or other effluvia and therefore, those elements are not considered further within this Statement.</p>
<p>e. any accumulation or deposit which is prejudicial to health or a nuisance</p>	<p>This matter is considered further in this Statement.</p>
<p>f. any animal kept in such a place or manner as to be prejudicial to health or a nuisance</p>	<p>The Scheme will not keep any animals in such a place or manner as to be prejudicial to health or a nuisance. Any grazing of livestock will be in accordance with good practice guidance for livestock welfare; therefore, this is not considered further in this Statement.</p>
<p>f. (a) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance</p>	<p>There is no indication that the construction, operation (and maintenance), and decommissioning of the Scheme will emanate any insects nor insects be attracted to it. Therefore, this is not considered further within this Statement.</p>
<p>f. (b) artificial light emitted from premises so as to be prejudicial to health or a nuisance</p>	<p>This matter is considered further in this Statement.</p>
<p>g. noise emitted from premises so as to be prejudicial to health or a nuisance.</p>	<p>This matter is considered further in this Statement.</p>

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g. (a) noise that is prejudicial to health or nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street	This matter is considered further in this Statement.
h. any other matter declared by any enactment to be statutory nuisance	No other matters are considered to be a potential statutory nuisance associated with the construction, operation (and maintenance) or decommissioning of the Scheme.

3.1.3. The matters identified above as requiring further consideration are assessed in the next section of this Statement.

4 Matters engaged and proposed mitigation measures

4.1. Condition of the premises – Sections 79(1)(a) and (e) of the EPA

4.1.1. This section considers the risk of the condition of the Order Limits causing a statutory nuisance. The following constitute a statutory nuisance:

- a) Section 79(1)(a) – *“any premises in such a state as to be prejudicial to health or a nuisance”*.
- b) Section 79(1)(e) – *“any accumulation or deposit which is prejudicial to health or a nuisance”*.

4.1.2. In line with section 79(7) of the EPA [Ref.3], for the purposes of this Statement, ‘the premises’ is considered to mean the land within the Order Limits for the Scheme.

Construction and Decommissioning

4.1.3. The types of construction activities in respect of the Scheme include, but are not limited to:

- solar panel array construction, including mounting;
- construction of the battery energy storage systems;
- construction of the on-site substations;
- trenching and installation of cabling;
- excavation and construction of foundation and access tracks;
- installation of security fencing and CCTV; and

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- landscaping and planting.
- 4.1.4. During decommissioning, all solar infrastructure, including the solar PV modules and on-site supporting equipment, will be recycled or disposed of in accordance with industry best practices at that time. It is anticipated at this stage that underground cabling would be left in-situ to avoid unnecessary ground disturbance. All waste will be disposed of in accordance with the legislation at the time of decommissioning.
- 4.1.5. Any proposals to leave certain infrastructure, for example access tracks, would be discussed and agreed with landowners as part of the decommissioning process. The land used for the solar PV development would be reinstated in accordance with a DEMP. The DEMP will be required to be in accordance with the **Outline DEMP [Document Reference 7.3]** which has been prepared to support the DCO Application.
- 4.1.6. The construction and decommissioning works have the potential to create pollution incidents such as spillages and also create litter and general waste which can constitute a nuisance under the EPA.
- 4.1.7. Construction control mechanisms proposed include core working hours, traffic management, and a range of other measures, which are set out in the **Outline CEMP [Document Reference 7.1]** and **Outline CTMP [Document Reference 7.7]**. These outline management plans have been informed by the Environmental Impact Assessment (EIA) and will guide the construction process through environmental controls in order to promote good construction practice and avoid adverse or nuisance causing impacts during the construction phase.
- 4.1.8. A CEMP and CTMP will be prepared prior to commencing works and must be in accordance with the **Outline CEMP [Document Reference 7.1]** or **Outline CTMP [Document Reference 7.7]** as appropriate and approved by relevant local planning authority. A DEMP will also be prepared prior to the commencement of decommissioning. The DEMP will be in accordance with **Outline DEMP [Document Reference 7.3]** which has been prepared to support the DCO Application.
- 4.1.9. Plans to deal with accidental pollution would be included within the CEMP and DEMP prior to commencement of construction and decommissioning. Any necessary equipment (e.g. spillage kits) would be held on-site and all site personnel would be trained in their use. The Environment Agency would be informed as immediately as is reasonably practicable in the unlikely event of a suspected pollution incident, as set out in the **Outline CEMP [Document Reference 7.1]** and **Outline DEMP [Document Reference 7.3]**.
- 4.1.10. Plans to deal with the management of waste on-site would be included within the CEMP (which requires the preparation of a Site Waste Management Plan) and DEMP (insofar as the measures are relevant to each stage of the Scheme), prepared in accordance with the **Outline CEMP [Document Reference 7.1]** and the **Outline DEMP [Document Reference 7.3]**. The **Outline CEMP** sets out that, in order to control the waste generated during site preparation and construction, the contractor will separate the main waste streams on-site, prior to transporting to an approved, licensed third party waste facility for recycling or disposal. All waste to be removed from the Order Limits will be undertaken by fully licensed waste carriers and taken to licensed waste facilities for recycling or disposal.

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- 4.1.11. The EIA assumes that the measures set out in the **Outline CEMP [Document Reference 7.3]** and **Outline DEMP [Document Reference 7.3]** are implemented in full. Compliance with the Outline CEMP and Outline DEMP is secured by requirements in the **Draft DCO [Document Reference 3.1]**.
- 4.1.12. With these measures in place, it is considered that the construction and decommissioning of the Scheme will not give rise to impacts which would constitute a statutory nuisance under Section 79(1)(a) or (e).

Operation

- 4.1.13. It is considered that the operation of the Scheme in its built form, as a solar farm, with related infrastructure, will not in itself cause the 'premises' within the Order Limits, to be in 'such a state' as to be prejudicial to health or nuisance.
- 4.1.14. During the operational phase, maintenance activity within the Order Limits will be minimal and will be restricted principally to vegetation management, equipment maintenance and servicing, replacement of any components that fail, and monitoring. It is anticipated that maintenance and servicing would include the inspection, removal, reconstruction, refurbishment or replacement of faulty or broken equipment to ensure the continued effective operation of the Scheme.
- 4.1.15. Along cable routes operational activity will consist of routine inspections (schedule to be determined) and any reactive maintenance such as where a cable has been damaged.
- 4.1.16. Operation of the Scheme will not give rise to impacts which would constitute a statutory nuisance under section 79(1) (a) or (e).

Conclusion

- 4.1.17. For the reasons explained above and with the mitigation measures described in place it is considered that the construction, operation (and maintenance), and decommissioning phases of the Scheme will not give rise to impacts from the site condition which would constitute a statutory nuisance under section 79(1) (a) or (e).

4.2. Air emissions – Section 79(1)(d) of the EPA

- 4.2.1. Section 79(1)(d) [Ref. 3] provides that the following constitutes a statutory nuisance – *“any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance”*. As set out in Table 1, this matter is considered further in the section below in relation to dust. The Scheme is not anticipated to have any impact on steam, smell or other effluvia and therefore, those elements are not considered further within this Statement.
- 4.2.2. **ES Chapter 14 Air Quality and Greenhouse Gases [Document Reference 6.2.14]** includes details of the air quality assessment that was undertaken as part of the EIA. The chapter assesses the effect of potential air quality effects during the construction and operational phases, and concludes that, with appropriate mitigation in place, there would be no significant effects.

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Construction

- 4.2.3. **ES Chapter 14 Air Quality and Greenhouse Gases [Document Reference 6.2.14]** assesses the impact of construction and operational phases of the Scheme on air quality. The assessment confirms there is likely to be no significant effect on local air quality during construction or operation given the volume of traffic proposed. During construction, so long as the necessary measures to mitigate amenity dust and particulate matter emissions are implemented, there will also be no significant effect. These measures included within the **Outline CEMP [ENO10157/APP/7.2]** and **Outline CTMP [ENO10157/APP/7.7]**.
- 4.2.4. During construction there is the potential for emissions of dust and particulate matter due to the following activities:
- Earthworks (e.g. soil stripping and excavation);
 - Construction; and
 - Trackout (transport of dust and dirt out of the Order Limits by construction vehicles).
- 4.2.5. Taking into account the scale of the Order Limits and associated construction works, it is considered prudent to adopt the good site practice for controlling dust as outlined within the IAQM's 'Guidance on the assessment of Dust from Demolition and Construction' [**Ref. 6**] document for high-risk sites.
- 4.2.6. These good site practice mitigation measures are incorporated into the **Outline CEMP [Document Reference 7.1]**. These are considered to be embedded mitigation and represent good industry practice that are part of the Scheme.
- 4.2.7. **ES Chapter 14 Air Quality and Greenhouse Gases [Document Reference 6.2.14]** concludes that the dust emission control measures are expected to prevent the occurrence of significant effects arising from dust generation during the construction phase.
- 4.2.8. Examples of the recommended dust mitigation measures that would be implemented during construction and decommissioning works to minimise impacts are set out below in **Table 2** and in the **Outline CEMP [Document Reference 7.1]** and **Outline DEMP [Document Reference 7.3]**.

Table 2: Dust Mitigation Measures

Activity	Mitigation
Communications	<ul style="list-style-type: none">• Develop and implement a stakeholder communications plan that includes community engagement before work commences on Site.• Display the name and contact details of people accountable for air quality and dust issues with respect to

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	<p>the Proposed Development. This may be the environment manager/engineer or the site manager.</p> <ul style="list-style-type: none"> • Display the head or regional office contact information.
Dust Management Plan	<ul style="list-style-type: none"> • Develop and implement a Dust Management Plan (DMP) approved by North Lincolnshire and Doncaster Councils which documents the mitigation measures to be applied, and the procedures for their implementation and management.
Site Management	<ul style="list-style-type: none"> • Record all dust and air quality complaints, identify cause(s), take appropriate measures to reduce emissions in a timely manner, and record the measures taken. • Make the complaints log available to North Lincolnshire and Doncaster Councils when asked. • Record any exceptional incidents that cause dust and/or air emissions, either on- or off-site and the action taken to resolve the situation in the logbook. • Hold regular liaison meetings with other high risk construction sites within 250m of the Order Limits, to ensure plans are co-ordinated and dust and particulate matter emissions are minimised. It is important to understand the interactions of the off-site transport/deliveries which might be using the same strategic road network routes.
Monitoring	<ul style="list-style-type: none"> • Undertake regular on-site and off-site inspection, where receptors (including roads) are nearby, to monitor dust, record inspection results, and make the log available to North Lincolnshire and Doncaster Councils when asked. Monitoring will, where reasonably practicable, include regular dust soiling checks of surfaces such as street furniture, cars and windowsills within 100m of the Order Limits in agreement with the relevant homeowners/landowners. • Carry out regular site inspections to monitor compliance with the CEMP, record inspection results, and make an inspection log available to North Lincolnshire and Doncaster Councils when asked. • Increase the frequency of Site inspections by the person accountable for air quality and dust issues on site when

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	<p>activities with a high potential to produce dust are being carried out and during prolonged dry or windy conditions.</p>
Preparing and maintaining the Site	<ul style="list-style-type: none"> • Plan site layout so that machinery and dust causing activities are located away from sensitive receptors, as far is reasonably necessary. • Erect solid screens or barriers around dusty activities or the Order Limits. • Fully enclose site or specific operations where there is a high potential for dust production and the Site is active for an extensive period. • Avoid runoff of water or mud from the Site. • Keep site fencing, barriers and scaffolding clean using wet methods. • Remove materials that have a potential to produce dust from Site as soon as reasonably practicable, unless being re-used on-site. If they are being re-used on-site, cover as described below. • Cover, seed or fence stockpiles to prevent wind whipping.
Operating vehicle / machinery and sustainable travel	<ul style="list-style-type: none"> • Ensure all vehicles switch off engines when stationary – no idling vehicles. • Avoid the use of diesel- or petrol-powered generators and use mains electricity or battery-powered equipment where practicable • Impose and signpost a maximum speed limit of 10 miles per hour on internal access tracks and work areas. • Produce a Construction Traffic Management Plan to manage the sustainable delivery of goods and materials. • Implement a Travel Plan that supports and encourages sustainable travel.
Construction operations	<ul style="list-style-type: none"> • Only use cutting, grinding or sawing equipment fitted or in conjunction with suitable dust suppression techniques

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	<p>such as water sprays or local extraction, e.g. suitable local exhaust ventilation systems.</p> <ul style="list-style-type: none"> • Ensure an adequate water supply on the Site for effective dust/particulate matter suppression/mitigation, using non-potable water where reasonably practicable and appropriate. • Use enclosed chutes and conveyors and covered skips. • Minimise drop heights from conveyors, loading shovels, hoppers and other loading or handling equipment and use fine water sprays on such equipment wherever appropriate. • Ensure equipment is readily available on site to clean any dry spillages and clean up spillages as soon as reasonably practicable after the event using wet cleaning methods.
Waste Management	<ul style="list-style-type: none"> • Avoid bonfires or burning of waste material.
Measures specific to earthworks	<ul style="list-style-type: none"> • Re-vegetate earthworks and exposed areas/soil stockpiles to stabilise surfaces as soon as practicable. • Use Hessian, mulches or trackifiers where it is not possible to re-vegetate or cover with topsoil, as soon as practicable. • Only remove the cover in stages during work and not all at once.
Measures specific to construction	<ul style="list-style-type: none"> • Avoid scabbling (roughening of concrete surfaces) if reasonably practicable and necessary. • Ensure sand and other aggregates are stored in bunded areas and are not allowed to dry out, unless this is required for a particular process, in which case ensure that appropriate additional control measures are in place. • Ensure bulk cement and other fine powder materials are delivered in enclosed tankers and stored in silos with suitable emission control systems to prevent escape of material and overfilling during delivery.

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	<ul style="list-style-type: none"> • For smaller supplies of fine power materials ensure bags are sealed after use and stored appropriately to prevent dust.
Measures specific to trackout	<ul style="list-style-type: none"> • Use water-assisted dust sweeper(s) on the access and local roads, to remove, as necessary, any material tracked out of the site. This may require the sweeper being continuously in use. • Avoid dry sweeping of large areas. • Ensure vehicles entering and leaving sites are covered to prevent escape of materials during transport. • Inspect on-site haul routes for integrity and instigate necessary repairs to the surface as soon as reasonably practicable. • Record all inspections of haul routes and any subsequent action in a site log book. • Install hard surfaced haul routes, which are regularly damped down with fixed or mobile sprinkler systems or mobile water bowsers, and regularly cleaned. • Implement a wheel washing system (with rumble grids to dislodge accumulated dust and mud prior to leaving the site where reasonably practicable). • Ensure there is an adequate area of hard surfaced road between the wheel wash facility and the site exit, wherever site size and layout permit. • Access gates should be located at least 10m from receptors, where possible.

Operation

- 4.2.9. Once operational it is anticipated that there could be one maintenance trip to the Scheme per month (i.e. a total of two vehicle movements).
- 4.2.10. The operation of the Scheme is therefore not anticipated to have a significant impact on local air quality. The effect on air quality during this phase will therefore be negligible.

Conclusion

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4.2.11. For the reasons explained above and with implementation of the above measures, no significant effects are expected to occur in relation to air quality matters, including in relation to the health or amenity of human receptors.

4.2.12. No claim is therefore envisaged in respect of a statutory nuisance under section 79(1)(d).

4.3. Artificial Light –Section 79(1) (fb) of the EPA

4.3.1. Section 79(1) (fb) [Ref. 3] provides that the following constitutes a statutory nuisance – “*artificial light emitted from premises so as to be prejudicial to health or a nuisance*”.

4.3.2. A statutory nuisance would exist if artificial light substantially interfered with the wellbeing, comfort, or enjoyment of an individual’s property. Usually this would mean that lights were causing a nuisance on a regular basis. Artificial lights may cause a nuisance if they are not maintained or used properly.

Construction and Decommissioning

4.3.3. Construction and decommissioning lighting is controlled by the **Outline CEMP [Document Reference 7.1]** and **Outline DEMP [Document Reference 7.3]**. Temporary construction lighting, in the form of mobile lighting towers, will be required in areas where natural lighting is unable to reach (sheltered/confined areas), and during core construction hours within winter months. Artificial lighting will be provided to maintain sufficient security and health and for the Order Limits, whilst adopting mitigation principles set out in the Outline CEMP and Outline DEMP to avoid excessive glare and minimise spill of light to nearby receptors outside of the Order Limits as far as reasonably practicable.

Operation

4.3.4. Operational lighting is controlled by the **Outline OEMP [Document Reference 7.2]**. This includes that, during the operation (including maintenance) phase, lighting of the on-site substations will be in accordance with health and safety requirements set out by the Health and Safety Executive. Lighting sensors will be implemented for security purposes and lighting will include features designed to reduce light spill beyond the areas required to be lit. During operation (including maintenance), no part of the Scheme will be continuously lit; infrared security lighting will be utilised for operational and security purposes.

4.3.5. Therefore, there will be no continuous lighting at the perimeter of the Order Limits and no potential for a statutory nuisance.

Conclusion

4.3.6. For the reasons explained above and with the implementation of the above mitigation measures, no claim is envisaged in respect of statutory nuisance under Section 79(1) (fb).

4.4. Noise and Vibration –Section 79(1)(g) and (ga) of the EPA.

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- 4.4.1. The following constitute a statutory nuisance:
- a) Section 79 (1) (g) – “noise emitted from premises so as to be prejudicial to health or a nuisance”; and
 - b) Section 79(1) (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”.
- 4.4.2. If noise is excessive, prolonged or on a regular basis it may constitute a statutory nuisance. A statutory nuisance would exist if noise substantially interfered with the well-being, comfort or enjoyment of an individual’s property.
- 4.4.3. An assessment of noise and vibration impacts was undertaken as part of the EIA and reported in **ES Chapter 13: Noise and Vibration [Document Reference 6.2.13]**. The chapter assesses the significance of potential noise and vibration effects during the construction, operation (and maintenance) and decommissioning phases, and concludes that there would be no significant residual noise or vibration effects.
- 4.4.4. The elements relevant to section 79(1) [**Ref. 3**] are those relating to noise emitted from premises (which includes land) and from vehicles, machinery and equipment in a street. Traffic noise is specifically excluded from consideration by section 79 (6A) (a) and is not considered further in this Statement but is assessed in **ES Chapter 13: Noise and Vibration [Document Reference 6.2.13]**.

Construction and Decommissioning

- 4.4.5. Construction and decommissioning noise levels at surrounding receptors will vary depending on the locations and types of works taking place. Due to the variation in work activities and locations across the Scheme, it is considered that any periods of regular high construction noise levels experienced at a receptor would be of limited short-term duration. Occupants of nearby receptors are likely to be more tolerant of these events if they are regularly communicated to and kept informed of the timings and duration of high noise-generating events. **ES Chapter 13: Noise and Vibration [Document Reference 6.2.13]**, details the predicted noise levels and magnitude of impact during the construction phase associated with the Scheme.
- 4.4.6. Measures to control noise and vibration will be adopted. These measures represent Best Practicable Means and are included within the **Outline CEMP [Document Reference 7.1]** and **Outline DEMP [Document Reference 7.3]**. The CEMP will be prepared prior to commencement of construction and the DEMP will be prepared prior to commencement of the decommissioning phase.
- 4.4.7. Examples of Best Practicable Means that would be implemented during construction and decommissioning works to minimise impacts are set out below in **Table 3** and in the **Outline CEMP [Document Reference 7.1]** and **Outline DEMP [Document Reference 7.3]**.

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Table 3: Noise and Vibration Mitigation Measures

Activity	Mitigation
Site Management	<ul style="list-style-type: none"> • Toolbox talks will be carried out by the Principal Contractor to ensure that all members of the workforce are aware of their possible noise impact and of the sensitivities of the vicinity. These will also ensure that Best Practicable Means of control are delivered on the Site. • Best Practicable Means as defined by the Control of Pollution Act 1974 [Ref. 8] will be implemented. • A quiet working ethic will be employed to ensure that all members of the workforce have consideration for the nearby residents. • Shouting and use of radios when entering and leaving the Order Limits Site, and when working within the Order Limits, will be controlled. • Operatives will be briefed not to sound car horns to gain access to the construction compounds. To assist, security will arrange for the Site to be unlocked up to one hour prior to the start of the core construction hours.
Communication	<ul style="list-style-type: none"> • A programme of community liaison will be carried out, including notification of works and details of the complaints process.
Monitoring	<ul style="list-style-type: none"> • Provision of monthly reporting of information to local residents to advise of potential noisy works that are due to take place has been included. • Following implementation of the CEMP and DEMP, targeted monitoring can be undertaken at sensitive receptors during the construction and decommissioning phase. This will be based on the outcomes of further additional detailed construction and decommissioning assessments to be undertaken by the principal contractor, with short term monitoring proposed as a measure to ensure noise levels remain within relevant criteria.
Preparing and maintaining the Site	<ul style="list-style-type: none"> • Provision of lined and sealed acoustic covers for noisy equipment, such as generators and static pumps.

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	<ul style="list-style-type: none"> • All plant, equipment and noise control measures applied to plant and equipment to be maintained in good and efficient working order and operated such that noise emissions are minimised as far as reasonably practicable. • Temporary noise barriers could comprise a well-constructed site hoarding or a proprietary temporary barrier system that can be rapidly installed and modified on-site to screen specific construction activities. In all instances, the hoarding/barrier should be free from gaps, holes, slits or cracks, with no gaps between the barrier and the ground. • Where practicable, temporary enclosures will be used to screen all static or semi-static plant from noise sensitive receptor locations. • As far as is reasonably practicable, the location and orientation of semi-static equipment to be chosen to minimise the noise impact on sensitive receptors.
Operating vehicle / machinery	<ul style="list-style-type: none"> • Directing noise from machinery, including exhausts or engines, away from sensitive locations. • Selection of quietest working equipment available. • Ensuring that regularly maintained and appropriately silenced equipment is used. • Control and limit noise from reversing alarms, using the following hierarchy: • Design the construction compound layouts to limit and avoid the need for the reversing of vehicles and ensure that drivers are familiar with the worksite layout. • Utilise banksmen to avoid the use of reversing alarms. • Where their use is necessary, use reversing alarms incorporating one or more of the features listed in hierarchical order below or any other comparable system: • Highly directional sounders; • Use of broadband signals; • Self-adjusting output sounders;

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	<ul style="list-style-type: none"> • Flashing warning lights; and • Set reversing alarms to the minimum output noise level required for health and safety compliance. • Ensure that each item of equipment complies with the noise limits quoted in The Noise Emission in the Environment by Equipment for use Outdoors Regulations 2001 [Ref. 9]. • Where reasonably practicable to do so, plant and equipment that generates low levels of noise and vibration shall be adopted. • Use of hand-held equipment to carry out the works where practicable in lieu of mechanical means. • All plant, equipment and noise control measures applied to plant and equipment to be maintained in good and efficient working order and operated such that noise emissions are minimised as far as reasonably practicable. • Any plant, equipment or items fitted with noise control equipment found to be defective will not be operated until repaired. • Machines in intermittent use to be shut down or throttled down to a minimum during periods between works. • Ensure that each item of equipment complies with the noise limits quoted in The Noise Emission in the Environment by Equipment for use Outdoors Regulations 2001 or relevant subsequent legislation. • All engine compartments or acoustic enclosures are to be closed whilst engines are running. • Minimising drop heights of materials (i.e. lorry with lifting boom or dumper carefully depositing materials). • The delivery routes set out in the Outline CTMP [Document Reference 7.7] will be communicated to and adhered to by all suppliers.
Construction measures	<ul style="list-style-type: none"> • Adherence to the guidelines set out in The Code of Practice for Noise and Vibration Control on Construction and Open Sites, 2009 [Ref. 10] and subsequent updates.

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	<ul style="list-style-type: none"> • The use of push–press piling methods as the preferred installation approach for solar panel frame supports. • Generators and/or welfare cabins to be switched off at night and not positioned within 30m of trees or structures suitable for roosting bats. If generators and/or welfare cabins are required at night, then they would be positioned at least 10m from linear features such as ditches and hedgerows, which could be used as potential bat flight lines.
Measures specific to decommissioning	<ul style="list-style-type: none"> • Operatives will be briefed not to sound car horns to gain access to the Construction Compounds. To assist, security will arrange for the Site to be unlocked up to one hour prior to the start of the core construction hours.

- 4.4.8. As part of the embedded mitigation for noise, there is a minimum 250m offset to on-site substations from existing residential dwellings where possible to minimise noise impact on the residential receptors during operation.
- 4.4.9. Based on the distances between the Works extents and surrounding receptors to locations where heavy ground works (piling, drilling or vibratory rolling techniques) may take place, it is considered that vibration from construction works experienced at sensitive receptors resulting in a negligible effect and therefore not significant, as identified by **ES Chapter 13: Noise and Vibration [Document Reference 6.2.13]**.
- 4.4.10. There is an expectation that vibration would be controlled through the consideration and selection of appropriate techniques (e.g., the use of a vibratory compaction plant which generates lower levels of vibration). This may dictate the use of smaller plant items which compact material in thinner layers.
- 4.4.11. A detailed construction stage vibration assessment should be undertaken once the appointed contractor's working methods and plant items are known. This should account for both existing receptors and any new, future receptors. From this, specific mitigation measures can be identified. It is considered that reasonable mitigation measures can be implemented to limit potential disturbance. The vibration control measures, determined through the vibration assessment, are detailed in and secured by the **Outline CEMP [Document Reference 7.1]**.
- 4.4.12. Core construction hours will run from 07:00 to 19:00 Monday to Saturday and 09:00 until 13:00 on Sunday. No working would take place outside these hours or Bank Holidays unless necessary and agreed with the relevant planning authority. Employees can travel to and from the Order Limits an hour on either side of these times (i.e. between 06:00 and 07:00, and 19:00 and 20:00) (exceptions may be required for abnormal loads and emergency purposes). Where on-site works are to be conducted outside the core working hours, they will comply with the restrictions pursuant to the

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relevant consenting process. The construction working hours are set out in the **Outline CEMP [Document Reference 7.1]** and the **Outline DEMP [Document Reference 7.3]**.

- 4.4.13. Noise and vibration effects during the decommissioning phase of the Scheme will be similar or less than noise effects during the construction phase. The noise assessment presented within **Chapter 13: Noise and Vibration [Document Reference 6.2.13]** for the construction phase is therefore considered representative (or an overestimate) of the decommissioning phase. As such a separate assessment for noise and vibration from the decommissioning phase is not included.

Operation

- 4.4.14. No major vibration sources will be introduced as part of the Scheme and as such there will be no associated operational vibration effects. No further assessment of operational vibration has been included in **Chapter 13: Noise and Vibration [Document Reference 6.2.13]**.
- 4.4.15. Operation (including maintenance) phase embedded noise mitigation measures include measures such as distancing of on-site substations away from noise sensitive receptors. As no significant operational noise effect have been identified, no additional mitigation is required.

Conclusion

- 4.4.16. For the reasons explained above, no significant effects are expected to occur in relation to noise and vibration matters, including in relation to the health of human receptors, as set out in **Chapter 13: Noise and Vibration [Document Reference 6.2.13]** during the construction, operation (including maintenance), and decommissioning phases of the Scheme.
- 4.4.17. No claim against statutory nuisance in respect of noise and vibration is therefore envisaged in respect of a statutory nuisance under section 79(1)(g) or 79(1)(ga).

5 Conclusion

- 5.1.1. In line with Regulation 5(2)(f) of the APFP Regulations **[Ref. 2]**, this Statement has identified whether the Scheme has engaged one or more of the matters set out in section 79(1) of the EPA **[Ref. 3]**, and thus considered whether the Scheme would cause a statutory nuisance.
- 5.1.2. The matters in the EPA that have been engaged by the Scheme are general site condition, air quality, artificial light, and noise and vibration, during all phases of the Scheme. Measures embedded into the design of the Scheme and secured via relevant management plans will prevent impacts which have a potential to result in statutory nuisance under section 79 of the EPA. These measures are secured by requirements contained within the **Draft DCO [Document Reference 3.1]**.
- 5.1.3. It is not expected that the construction, operation (including maintenance) and decommissioning of the Scheme would cause a statutory nuisance.

References

- Ref. 1:** Planning Act 2008. Available online: <https://www.legislation.gov.uk/ukpga/2008/29/section/14>
- Ref. 2:** Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. Available online: <https://www.legislation.gov.uk/uksi/2009/2264/contents/made>
- Ref. 3:** Environmental Protection Act 1990. Available online: <https://www.legislation.gov.uk/ukpga/1990/43/contents>
- Ref. 4:** E. Ares, A. Adcock (2018). Nuisance Complaints Parliamentary Briefing Paper No CBP 8040. Available online: <https://researchbriefings.files.parliament.uk/documents/CBP-8040/CBP-8040.pdf>
- Ref. 5:** Department for Energy Security and Net Zero (2023). Overarching National Policy Statement for Energy (EN-1). Available online: <https://www.gov.uk/government/publications/overarching-national-policy-statement-for-energy-en-1>
- Ref. 6:** Institute of Air Quality Management (2024). Guidance on the assessment of Dust from Demolition and Construction. Available online: <https://iaqm.co.uk/wp-content/uploads/2013/02/Construction-Dust-Guidance-Jan-2024.pdf>
- Ref. 7:** Institute of Air Quality Management (2018), Guidance on Air Quality Monitoring in the Vicinity of Demolition and Construction Sites. Available online: https://iaqm.co.uk/text/guidance/guidance_monitoring_dust_2018.pdf
- Ref. 8:** Control of Pollution Act 1974. Available online: <https://www.legislation.gov.uk/ukpga/1974/40>
- Ref. 9:** The Noise Emission in the Environment by Equipment for use Outdoors Regulations 2001. Available online: <https://www.legislation.gov.uk/uksi/2001/1701/contents/made>
- Ref. 10:** The Code of Practice for Noise and Vibration Control on Construction and Open Sites 2009.