



NORTHAMPTON  
**GATEWAY**  
STRATEGIC RAIL FREIGHT INTERCHANGE

## STATUTORY NUISANCE STATEMENT

### DOCUMENT 6.2

The Northampton Gateway Rail Freight Interchange Order 201X

Regulation No: 5 (2) (f)

STATUTORY NUISANCE STATEMENT | MAY 2018

EVERSHEDS SUTHERLAND and OXALIS PLANNING

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ROXHILL



**THE NORTHAMPTON GATEWAY RAIL FREIGHT INTERCHANGE ORDER 201X**

**The Infrastructure Planning (Applications: Prescribed Forms and Procedure)  
Regulations 2009 (as amended)**

**Regulation 5(2)(f)**

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## 1. Introduction

- 1.1 This statement is submitted as part of an application made by Roxhill (Junction 15) Limited (“the Applicant”) to the Planning Inspectorate under Section 37 of the Planning Act 2008 for a Development Consent Order (“DCO”) to authorise the construction, operation and maintenance of a rail freight interchange, warehousing and associated highway works on land near junction 15 of the M1 motorway in Northamptonshire including a new bypass to the north of the village of Roade (“the Application”). The land on which the rail freight interchange and warehousing is to be located is referred to as the “Main Site” and the land on which the proposed bypass is to be located is referred to as “Roade Bypass”.
- 1.2 This document is prepared pursuant to the requirements of Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (“APFP Regulations”) and states *“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”*.
- 1.3 This statement should be read alongside the other Application documents, in particular the Environmental Statement (ES) (Document 5.2). This statement refers to sections of the ES which contain detailed information on the assessment and mitigation of impacts.
- 1.4 The DCO, if granted will authorise development consent for the following<sup>1</sup> (referred to as the “Proposed Development”):
- 1.4.1 An intermodal freight terminal including container storage and HGV parking, rail sidings to serve individual warehouses, and the provision of an aggregates facility as part of the intermodal freight terminal, with the capability to also provide a ‘rapid rail freight’ facility;
  - 1.4.2 Up to 468,000 sq. m. (approximately 5 million sq. ft.) (gross internal area) of warehousing and ancillary buildings, with additional floorspace provided in the form of mezzanines;
  - 1.4.3 A secure, dedicated, HGV parking area of approximately 120 spaces including driver welfare facilities to meet the needs of HGV’s visiting the site or intermodal terminal;
  - 1.4.4 New road infrastructure and works to the existing road network, including the provision of a new access and associated works to the

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<sup>1</sup> Please refer to Schedule 1 of the DCO (Document 3.1) for more detail.

A508, a new bypass to the village of Roade, improvements to Junction 15 and to Junction 15A of the M1 motorway, the A45, and other highway improvements at junctions on the local highway network and related traffic management measures;

1.4.5 Strategic landscaping and tree planting, including diverted public rights of way; and

1.4.6 Earthworks and demolition of existing structures on the main site.

1.5 For England and Wales, section 79(1) of the Environmental Protection Act 1990 states that subject to various exclusions, the following constitute 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;*
- (h) *any other matter declared by any enactment to be a statutory nuisance.*



- 1.6 For the purposes of section 79(1), 'noise' the definition of 'noise' includes vibration<sup>2</sup>.
- 1.7 There is no legal definition of a statutory nuisance. In order for action to be taken the nuisance complained of should either; contain a risk to people's health or interfere with a person's legitimate use or enjoyment of land.
- 1.8 The matters under section 79(1) which are potentially engaged by the Proposed Development are nuisance caused by emissions, artificial light and noise.

## **2. Assessment of the engagement with matters under Section 79(1) Environmental Protection Act 1990**

- 2.1 This section considers the types of impacts which could engage matters under section 79(1):
- 2.1.1 The first is emissions from industrial, trade or business premises which could engage subsection (d);
- 2.1.2 The second is artificial lighting emitted from premises, which could engage subsection (fb);
- 2.1.3 The final category is noise, which could fall under subsection (g) if emitted from premises (which includes land) or subsection (ga) if emitted by a vehicle, machinery or equipment in a street<sup>3</sup>.

### **2.2 Emissions (S.79(1)(d))**

- 2.2.1 The only matter that could be considered relevant to the proposed development is dust arising from the premises on the main site. The Air Quality chapter of the ES (Chapter 9) considers dust emissions during the construction of the proposed development and when it is in operation. This assessment includes any emissions that might come within the scope of s.79.

#### Construction

- 2.2.2 The assessment of the risk of dust during construction is set out in section 9.5 of Chapter 9 of the ES. The conclusions in relation to residual effects are contained in section 9.7. That section concludes that, having regard to the measures proposed in the Construction

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<sup>2</sup> Section 79(7) Environmental Protection Act 1990

<sup>3</sup> Being defined in section 79(7) as a "highway and any other road, footway, square or court that is for the time being open to the public".

Environmental Management Plan (CEMP) (Appendix 2.1 to the ES) there are expected to be no significant nuisance effects (paragraph 9.7.1).

### Operation

- 2.2.3 In terms of operational activities it is only the aggregates terminal which is identified to have any risk of dust and it is expected that after the implementation of best practice measures, the residual risk of dust soiling due to the operation of the aggregates terminal is expected to be negligible (Chapter 9 paragraph 9.7.2). Accordingly no nuisance is expected to arise.
- 2.2.4 In conclusion, no impact from emissions falling within s.79 (1)(d) is therefore anticipated from any aspect of the Proposed Development sufficient to be prejudicial to health or cause an unacceptable interference with the use or enjoyment of land.

## 2.3 **Lighting (S.79(1)(fb))**

### Construction

- 2.3.1 The assessment of the impact of lighting during construction is set out in Chapter 11 of the ES.
- 2.3.2 Construction related effects are temporary by nature, and change over the course of the construction period. The construction lighting effect will be managed as part of the CEMP (ES Appendix 2.1). This contains requirements to prevent light spill and glare as well as to minimise the usage of lighting, with special care taken in proximity to ecologically sensitive locations. The CEMP will specify the types of temporary construction and security lighting to be used, the hours of operation (as part of the agreement of hours of operation of the construction site as a whole), and measures to ensure that construction and security lighting is located and maintained so as to cause minimal effects.
- 2.3.3 Details of the significance of effects on receptors during construction have been determined and are given in Appendix 11.4 to Chapter 11 of the ES, Table A11.4.1. The only significant effect (that is, an effect exceeding minor adverse) is on Milton Malsor properties that have full or partial views of the Main Site and properties on Collingtree Road and Barn Lane that are close to the Main Site boundary. Here, construction lighting effects are predicted to be moderate adverse until

earthworks mounding (bundling) has been formed, whereupon this temporary effect is mitigated.

- 2.3.4 No other significant effects are predicted. Earthworks will form part of the initial phases of work on-site as part of the process of creating the development plateau, and will continue throughout the early phases of construction. Creation of the main earthworks mounding along the western edge of the site, which will deliver screening benefits to receptors to the west of the Main Site, will therefore begin early in the construction process, and hence some screening benefits to mitigate lighting (and other effects of construction) will be provided and maintained throughout. As construction moves from east to west the mounding will increase in both length and height.

### Operation

- 2.3.5 Details of the significance of effects on receptors during operation have been determined and are given in Appendix 11.4 to Chapter 11 of the ES, Table A11.4.2. No significant effects from lighting on the Main Site are predicted. Nineteen properties situated relatively close to the proposed new roundabouts on the Roade Bypass are likely to experience significant (moderate adverse) effects of 'light presence' (light sources appearing in dark views) but not any other type of more pronounced or invasive lighting effect. Furthermore, with the exception of Hyde Farm, the 'light presence' effect will largely disappear as new planting matures. This is a visual effect, not an intrusive effect, and is the result of the change from the current baseline conditions of relatively dark views in certain directions to a context which sees new lighting introduced. Nevertheless, no property will experience the more intrusive adverse effects of nuisance and loss of amenity, such as glare or light spill, as light will be directed downwards to the road surface and will not directly shine towards the properties.
- 2.3.6 Appendix 11.5 to Chapter 11 shows the light spill plot for the Main Site based on the implementation of the Lighting Strategy (Appendix 11.3 to Chapter 11 of the ES). It shows how the light spill on the ground would fall rapidly to negligible levels within a few tens of meters from the perimeter of the Main Site. This is to be expected, as the Lighting Strategy requires that the best lighting technical solutions are employed. No equivalent plot has been prepared for Roade Bypass because road lighting outputs are much less bright, and will be mounted at a lower height than those on the Main Site, creating minimal light spill by comparison. Also, the landscaping and planting

associated with the Bypass will entirely screen all ground level light spill from the nearest residential receptors.

- 2.3.7 No impact from the lighting is therefore anticipated from any aspect of the Proposed Development sufficient to be prejudicial to health or cause an unacceptable interference with the use or enjoyment of land.

## 2.4 **Noise (S.79(1)(g) and (ga))**

- 2.4.1 The elements of the assessment which are relevant to s.79(1) are those relating to noise emitted from premises (which includes land) and those cause by a vehicle, machinery or equipment in a street. These are encompassed within the assessment of construction and operational noise impacts contained in Chapter 8 of the ES.
- 2.4.2 Notably, Section 79(6A) (a) of the EPA 1990 provides that traffic noise is excluded from the consideration of nuisance – accordingly traffic noise is not relevant to the consideration of s.79(1)(g) and (ga) and is not mentioned below.

### Construction

- 2.4.3 The construction period of the Proposed Development will include various activities which may generate noise. A range of plant and machinery will be used during the construction of each phase.
- 2.4.4 Paragraphs 8.6.6 to 8.6.8 of Chapter 8 of the ES summarise the mitigation for the noise and vibration construction effects and conclude that the impacts will be appropriately mitigated.
- 2.4.5 The draft DCO submitted with the Application contains a Requirement to submit and comply with a Construction Environmental Management Plan in respect of each phase of development (“P-CEMP”) (suggested Requirement 12) . These plans will secure appropriate mitigation and monitoring of noise during construction, which would control noise levels to within acceptable limits. The P-CEMPs are required to comply with the CEMP.
- 2.4.6 No noise nuisance is therefore anticipated from the construction of the proposed development.

### Operation

- 2.4.7 Following the completion of the development, any relevant noise impacts would arise from the operational activity on the Main Site. The

assessment of the impact of operational noise is contained in paragraphs 8.5.125 to 8.5.165 of Chapter 8 of the ES. This concludes that no significant adverse effects are expected.

- 2.4.8 No noise impact is therefore anticipated from any relevant aspect of the Proposed Development sufficient to be prejudicial to health or cause an unacceptable interference with the use or enjoyment of land.

### **3. Conclusion**

- 3.1 This statement reports the conclusions of the Environmental Statement in respect of the categories of potential statutory nuisance within s.79(1) of the Environmental Protection Act 1990, arising from the construction and use of the proposed development.
- 3.2 In respect of each relevant category of potential statutory nuisance it is considered that no statutory nuisance will result from the construction or use of the proposed development.
- 3.3 Whilst this statement concludes that no statutory nuisance is likely to occur, the Applicant has included in the draft DCO an article (based on the standard model provisions for DCOs) which would provide a defence against cases of nuisance in order that the defence can be relied upon in circumstances where a statutory nuisance cannot be avoided.