



West Midlands
Interchange

Four Ashes Ltd

THE WEST MIDLANDS RAIL FREIGHT INTERCHANGE ORDER 201X

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

Regulation 5(2)(f)

STATUTORY NUISANCE STATEMENT

DOCUMENT 5.2

Eversheds Sutherland (International) LLP and Ramboll

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1. Introduction

- 1.1 This statement is submitted as part of an application made by Four Ashes Limited (“the Applicant”) to the Planning Inspectorate under Section 37 of the Planning Act 2008 (as amended) for a Development Consent Order (“DCO”) to authorise the construction, operation and maintenance of a rail freight interchange (including warehousing and associated highway works) on land west of Junction 12 of the M6 motorway, immediately south of the A5 trunk road in southern Staffordshire (“the Application”).
- 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 6.2). 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 following¹:
- 1.4.1 An intermodal freight terminal with direct connections to the West Coast Main Line, capable of accommodating up to 10 trains per day and trains of up to 775m long, including container storage, heavy goods vehicle parking, rail control building and staff facilities;
 - 1.4.2 Up to 743,200 square metres (gross internal area) of rail served warehousing and ancillary service buildings;
 - 1.4.3 New road infrastructure and works to the existing road infrastructure;
 - 1.4.4 Demolition and alterations to existing structures and earthworks to create development plots and landscape zones;
 - 1.4.5 Reconfiguring and burying of electricity pylons and cables; and
 - 1.4.6 Strategic landscaping and open space, including alterations to public rights of way and the creation of new ecological enhancement areas and publicly accessible open areas.

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

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 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.

1.7 The matters under section 79(1) which are potentially engaged by the proposed development are nuisance caused by emissions, artificial light and

noise. For the purposes of section 79(1), 'noise' the definition of 'noise' includes vibration².

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); and

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 street³.

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

Construction

2.2.1 During the construction of the proposed development, the principal pollutants that may potentially be generated are dust and particulate matter.

2.2.2 Chapter 7 (Air Quality) of the ES considers the likely air quality effects of the proposed development during its construction. The ES concludes that, with mitigation, the residual effects of dust emissions arising from construction works will be negligible to slight adverse, but temporary and short term in nature. A negligible effect is determined in relation to emissions from construction traffic.

2.2.3 The Applicant proposes to control dust emissions through employing best practice dust management techniques delivered through a Dust Management Plan as part of the Demolition and Construction

² Section 79(7) Environmental Protection Act 1990

³ 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". However, road traffic noise is excluded from consideration by virtue of section 79(6A)(a) of the EPA 1990.

Environmental Management Plan (“DCEMP”) (to be based on the principles of the Outline Demolition and Construction Environmental Management Plan (“ODCEMP”) - Technical Appendix 2.3 of the ES). This is secured by a Requirement in the DCO.

- 2.2.4 Therefore, based on the mitigation measures proposed and that construction contractors adopt Best Practicable Means (“BPM”), no nuisance related to dust or particles is anticipated from the construction of the proposed development.

Operation

- 2.2.5 The nature of the development once constructed will not incorporate any significant sources of dust, steam, smell or other effluvia to be either prejudicial to health or a nuisance.

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

Construction

- 2.3.1 Artificial light pollution may be emitted from various activities to be carried out during the construction period of the proposed development.
- 2.3.2 The DCO contains a Requirement to submit and comply with a DCEMP in respect of each phase of development. These plans will secure appropriate mitigation of light during construction. The DCEMPs are required to comply with the principles outlined in the ODCEMP.
- 2.3.3 Therefore, based on the mitigation measures proposed and that construction contractors adopt BPM, no nuisance is anticipated in respect of lighting of the proposed development during the construction phase.

Operation

- 2.3.4 The nature of the proposed development is such that the use of external artificial lighting will be essential for the loading and unloading of rail freight, roadways, car parking, amenity, safety and security. It should be noted however that railway premises are expressly excluded from section 79(1)(fb) by virtue of section 79(5B). With regard to the remainder of the proposed development (being the

warehousing elements) the level, quantity and quality of lighting will be controlled through the implementation of the lighting scheme, secured via DCO Requirement.

- 2.3.5 The lighting strategy and lighting impact assessment (ES Technical Appendix 12.8), considers the likely effects of the proposed development upon landscape and visual amenity during its operation with regards to lighting.
 - 2.3.6 The lighting scheme is required to comply with the principles outlined in the lighting strategy and lighting impact assessment.
- 2.4 Therefore, based on the mitigation measures proposed, no nuisance is anticipated in respect of lighting of the proposed development during the operational phase.

2.5 **Noise (S.79(1)(g) and (ga))**

- 2.6 The elements of the assessment which are relevant to s79(1) are those relating to noise emitted from premises (which includes land) and those caused by a vehicle, machinery or equipment in a street. These elements are encompassed within the assessment of construction and operational noise impacts contained in Chapter 13 of the ES.
- 2.7 Notably, s79(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 s79(1)(g) and (ga) and is not mentioned below.

Construction

- 2.7.1 Noise may be generated from various activities to be carried out during the construction period of the proposed development. A range of plant and machinery will be used during the construction of each phase. Chapter 13 (Noise) of the ES considers the likely noise and vibration effects of the proposed development during its construction.
- 2.7.2 The ES concludes that, with mitigation, the residual effects of noise and vibration arising from construction works will be moderate to major adverse, but temporary and short term in nature.
- 2.7.3 An ODCEMP has been prepared to support the ES (Technical Appendix 2.3 of the ES). The DCO contains a Requirement to submit and comply with a DCEMP in respect of each phase of development.

These plans will secure appropriate mitigation and monitoring of noise during construction. The DCCEMPs are required to comply with the principles outlined in the ODCEMP.

- 2.7.4 The Applicant will require the construction contractor to control noise and vibration by adopting typical construction best practice and BPM (as described in the Control of Pollution Act 1974) in the selection and use of plant and methods to minimise noise and vibration generated at source. Mitigation measures include screening, noise limits for out-of-hours work, the use of quieter or silenced plant wherever possible and proper maintenance of vehicles and equipment.
- 2.7.5 Therefore, based on the mitigation measures proposed and that construction contractors adopt BPM, no noise nuisance is anticipated from the construction of the proposed development.

Operation

- 2.7.6 The ES concludes that, with mitigation, the residual effects of noise arising from operation of the proposed development will be moderate adverse, permanent and long term in nature. No significant effects are anticipated with respect to vibration.
- 2.7.7 The design of the proposed development includes noise mitigation measures such as earth bunds throughout the site, and the provision of a bespoke noise insulation scheme. Such measures are secured by the Requirements in the DCO and a s.106 Agreement (Development Consent Obligation).
- 2.7.8 Therefore, based on the proposed mitigation measures and reasonable working practices that will be adopted by on-site operators, no noise nuisance is anticipated from the operation of the proposed development.

3. Conclusion

- 3.1 This statement reports the conclusions of the ES in respect of the potential statutory nuisance resulting from the construction and operation of the proposed development.
- 3.2 In respect of each category of potential statutory nuisance, due to the proposed mitigation detailed in the ES and secured by the DCO, it is considered that no

statutory nuisance will result from the construction or operation 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.