



Little Crow

Solar Park

Little Crow Solar Park, Scunthorpe

STATEMENT OF STATUTORY NUISANCE

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Eversheds Sutherland LLP
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1. INTRODUCTION AND SUMMARY

- 1.1 This Statement in Respect of Statutory Nuisance (the "Statement") relates to the application by INRG Solar (Little Crow) Limited (the "Applicant") to the Secretary of State under the Planning Act 2008 (as amended) (the "2008 Act") for a Development Consent Order ("DCO").
 - 1.2 The Application is for a DCO for the construction, operation and maintenance, and decommissioning of Little Crow Solar Park, a solar photovoltaic (PV) electricity generating station with a capacity exceeding 50 megawatts peak (MWP). The proposed development is classified as a Nationally Significant Infrastructure Project ("NSIP") under the 2008 Act.
 - 1.3 This Statement should be read alongside other documents submitted as part of the Application, particularly:
 - 1.3.1 the Environmental Statement ("ES") (Document Reference: 6.LC ES - ES CH 6.0 – 6.11); and
 - 1.3.2 the Outline Construction Environmental Management Plan (7. LC TA) (Document Reference: 7.8 LC TA 4.1);
 - 1.3.3 the Outline Construction Environmental Management Plan for Biodiversity (7.LC.TA) (Document Reference: 7.27 LC TA 7.7);1.3.2 and 1.3.3 are together referred to as "Outline CEMPs"
 - 1.3.4 the Outline Landscape and Ecological Management Plan ("Outline LEMP") (7. LC.TA) (Document Reference: 7.28 LC TA 7.8); and the
 - 1.3.5 the Outline Construction Traffic Management Plan ("Outline CTMP") (7.LC.TA) (Document Reference: 7.36 LC TA 9.2).
- 1.4 The ES contains detailed information on the assessment, significance and mitigation of environmental impacts.
- 1.5 The Statement has been prepared in compliance with the requirements of Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the "APFP Regulations") and in accordance with the Department for Communities and Local Government guidance, 'Planning Act 2008: Application Form Guidance, June 2013'.

- 1.6 This Statement identifies whether the proposed development engages one or more of the statutory nuisances, set out in section 79(1) of the Environmental Protection Act 1990 ("the EPA"), and if so, how the Applicant proposes to mitigate or limit such nuisances.
- 1.7 Whilst it is not expected that the construction, operation, maintenance and decommissioning of the proposed development would cause a statutory nuisance, the draft DCO (Document Reference 3.1 LC DCO) accompanying the Application contains a provision that would provide a defence to proceedings in respect of statutory nuisance in respect of sub-paragraph (g) of section 79(1) of the EPA (noise emitted from premises so as to be prejudicial to health or a nuisance), subject to certain criteria.
- 1.8 Section 2 of this Statement sets out the relevant provisions of the EPA and the legislative framework pertinent to statutory nuisance. Section 3 considers the potential for the proposals to give rise to statutory nuisances and it is concluded in Section 4 that it is not expected that there would be a breach of Section 79(1) of the EPA during construction, operation or decommissioning activities.

2. **STATUTORY CONTEXT**

2.1 **The APFP Regulations**

- 2.2 Regulation 5(2)(f) of the APFP Regulations 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, [EPA 1990] and if so how the applicant proposes to mitigate or limit them".

2.3 **National Policy Statement**

- 2.4 Paragraphs 4.14.1-2 of the 'Overarching National Policy Statement for Energy EN-1' states that:

"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 defence for proceedings for nuisance under Part III of the 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 to inspect its area and take reasonable steps to investigate complaints of statutory nuisance and to serve abatement notice where satisfied to 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.

It is very important that, at the application stage of an energy NSIP, possible sources of nuisance under section 79(1) of the 1990 Act and how they may be mitigated or limited are considered by the IPC so that appropriate requirements can be included in any subsequent order granting development consent."

2.5 **EPA**

2.6 Section 79(1) of the EPA (as it applies in England) 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;*
- (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; and*

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

2.7 For the purposes of section 79(1) 'noise' includes vibration.

2.8 For a nuisance to be considered a statutory nuisance it must unreasonably and substantially interfere with the use or enjoyment of a home or other premises, or injure health or be likely to injure health. To be considered a nuisance, an activity must be ongoing or repeated; a one-off event would not usually be considered a nuisance.¹

3. **ASSESSMENT OF ENGAGEMENT**

3.1 The ES (Document Reference: 6. LC ES) for the proposed development addresses the likelihood of significant effects arising that could constitute a statutory nuisance, as identified in section 79(1) of the EPA.

3.2 Matters which are considered to be statutory nuisance under section 79(1) of the EPA are covered within this section or are excluded as outlined in Table 1, depending on the assessment within the ES.

Table 1

EPA section 79(1) Matter	Engaged as a consequence of the project
(a) any premises in such a state as to be prejudicial to health or a nuisance	This matter is considered in this Statement.
(b) smoke emitted from premises so as to be prejudicial to health or a nuisance	No smoke is expected to be generated from the project. This matter is not considered further within this Statement.
(c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance	Section 79(1)(c) only applies to premises which are private dwellings as clarified by section 79(4). This matter is

¹ Ares, E & Adcock, A. Nuisance Complaints (2018). House of Commons Library. Briefing Paper No CBP 8040

	not considered further within this Statement.
(d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance	This matter is considered in this Statement.
(e) any accumulation or deposit which is prejudicial to health or a nuisance	This matter is considered in this Statement.
(f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance	The site is currently agricultural land and will remain in agricultural use, grazing livestock throughout the operational phase of the development. Land managers will continue to comply with good practice guidance for both livestock welfare and the management of agricultural land. This matter is not considered further within this Statement.
(fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance	The nature of the proposed development provides no indication that insects will emanate from the premises or be attracted to it. This matter is not therefore considered further within this Statement.
(fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance	This matter is considered in this Statement.
(g) noise emitted from premises so as to be prejudicial to health or a nuisance	This matter is considered in this Statement.
(ga) noise that is prejudicial to health or a nuisance and is emitted from or	This matter is considered in this Statement.

caused by a vehicle, machinery or equipment in a street	
(h) any other matter declared by any enactment to be a statutory nuisance	No other matters are considered to be a potential statutory nuisance associated with the construction, operation or demolition of the proposed development.

3.3 When the operational phase ends, the proposed development will require decommissioning. The effects of decommissioning are considered to be similar to, or often of a lesser magnitude than, construction effects. The potential for statutory nuisance is also considered to be similar or less than for the construction phase and as such not repeated below.

3.4 Decommissioning and site restoration schemes will be agreed in advance with the local planning authority and will be subject to environmental controls and legislation extant at the time. An Outline Decommissioning Strategy is provided (ES Technical Appendix Document Reference: 7.9 LC TCA 4.2) to give an indication of the likely activities to be undertaken. The decommissioning and site restoration scheme(s) will be secured by requirement in the DCO. Each of the categories of statutory nuisance potentially engaged by the proposals is considered below.

Matters engaged

3.5 **Condition of the Site - sections 79(1) (a) and (e):**

3.5.1 (a) any premises in such a state as to be prejudicial to health or a nuisance; and

3.5.2 (e) any accumulation or deposit which is prejudicial to health or a nuisance

Construction and Decommissioning

3.6 The construction of the proposed development will be undertaken in phases. The types of construction activities include, but are not limited to:

3.6.1 Import of construction materials, plant and equipment to site;

3.6.2 Trenching and installation of electric cabling;

- 3.6.3 Excavation and construction of foundations and access tracks;
 - 3.6.4 Solar panel array construction including pushing-in of mounting structure verticals;
 - 3.6.5 Installation of the security fencing and CCTV;
 - 3.6.6 Construction of the battery energy storage system; and
 - 3.6.7 Construction of the substation.
- 3.7 These 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.
- 3.8 Construction control mechanisms proposed include core working hours and traffic management. The Outline CEMPs ES Technical Appendix 7.LC TA (Document References: 7.8 LC TA 4.1 & 7.27 LC TA 7.7) and the Outline CTMP (ES Technical Appendix 7.LC TA document reference 7.36 LC TA 9.2) have been developed as part of the environmental impact assessment and will guide the construction process through environmental controls in order to promote good construction practice and avoid adverse impacts during the construction phase.
- 3.9 The Outline CEMPs bring together control measures that are commonly included in documents such as pollution prevention techniques and Codes of Construction Practice.
- 3.10 The Outline CTMP provides the strategy for construction traffic routing, site access, site compound and internal routing, vehicle size, number and frequency and proposed mitigation measures.
- 3.11 The measures set out in the Outline CEMPs and Outline CTMP are embedded in the design and the assessment of effects undertaken for the proposed development. The ES assumes that those measures are implemented in full. Compliance with the Outline CEMPs and the Outline CTMP will be secured by requirement in the DCO.
- 3.12 With these measures in place it is considered that the construction and decommissioning phases of the proposed development will not give rise to impacts which would constitute a statutory nuisance under s79(1) (a) or (e).

Operation

- 3.13 During the operational phase, activity on the development site will be minimal and would be restricted principally to vegetation and livestock management (the site will be grazed by sheep), equipment/infrastructure maintenance and servicing including cleaning and replacement of any components that fail, and monitoring to ensure the continued effective operation of the development.
- 3.14 This phase of the project will not give rise to impacts which would constitute a statutory nuisance under s79(1) (a) or (e).

Conclusion

- 3.15 For the reasons explained above and with the mitigation measures described in place it is considered that the construction, operation and decommissioning phases of the proposed development will not give rise to impacts which would constitute a statutory nuisance under s79(1) (a) or (e).
- 3.16 **Air Emissions - section 79(1) (d):**

- 3.16.1 (d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;

Construction and Decommissioning

- 3.17 During construction there is the potential for emissions of dust and particulates due to earthwork activities such as excavation, haulage of materials around site, bund formation and landscaping. The potential for sensitive receptors to be affected by on-site construction activities depends on construction method(s), materials, duration of the construction works, weather conditions and location of works in relation to receptors. There are two farm structures, one at 280 metres and the second at 415 metres from the site boundary. Given the limited number of receptors and the availability of standard controls that are set out in the Outline CEMPs it was agreed that the construction air quality effects could be scoped out of the ES.
- 3.18 The effects on air quality from construction traffic emissions have been predicted to be negligible. This is covered further in the Air Quality Assessment (Document Reference 7.12 LC TA 4.5). No mitigation is considered necessary.
- 3.19 Measures to prevent or minimise the release of dust entering the atmosphere and/or being deposited on nearby receptors are included in the Outline CEMPs ES Technical Appendix 7. LC TA (Document References 7.8 LC TA 4.1 & 7.27 LC TA

7.7). These include such best practice measures as minimising the extent and timing of exposed areas, locating stockpiles away from sensitive receptors, accounting for predominant wind direction, use of water bowsers for dust suppression, covering vehicles carrying dry spoil, provision of wheel washing facilities, and sweeping of public highways where necessary.

Operation

- 3.20 No likely significant effects on air quality are predicted during the operational phase of the project.

Conclusion

- 3.21 For the reasons explained above and with implementation of the above measures no claim is envisaged in respect of a statutory nuisance under s79(1) (d).

3.22 **Artificial Light - section 79(1) (fb)**

- 3.23 A statutory nuisance would exist if artificial light substantially interferes with the well-being, 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

- 3.24 Depending on the time of year, some artificial lighting may be required to facilitate construction. In accordance with the Outline CEMPs, this will be minimised as far as possible, to that required to achieve safe site operations and where used will be directed into the works area to avoid light spill. Careful consideration of the siting of lighting will be undertaken and lighting will be positioned to minimise the spread of light pollution, and ensure that only the immediate work area or compound is lit to avoid any outward light glare.

Operation

- 3.25 No areas of the proposed development will be continuously lit during operation. External lighting will be installed at the substation in case of emergency works during the hours of darkness or when visibility is low but this will not normally be lit.
- 3.26 The likely effect of this will be very limited as there are a small number of properties that would have a view of the proposed development. Spring Wood

Cottage to the north is the only residential property in close proximity to the site that may have potential to gain views of the site. There is limited potential for views of the periphery of settlements at Appleby and along Risby Road to the north, around Worlably Cars Farm to the north east, within the settlements of Scunthorpe to the west (occupants of the high rise residential blocks), and the periphery of Messingham to the south west.

- 3.27 Footpath 214 runs through the site and the effect on users of this path are judged to be significant but temporary and so intermittent as to be negligible. The route will be fenced and the effects of this will be softened with new native hedgerows, offset to allow wide grassy verges on both sides. Aside from the public footpath route through the site there are no other significant effects on visual receptors arising from this proposal.
- 3.28 The Outline LEMP (ES Technical Appendix 7. LC TA (Document Reference: 7.28 LC TA 7.8)) includes landscape planting proposals to screen elements of the proposed development from key receptor locations, e.g. users of footpath 214. These include:
- 3.28.1 native hedgerow planting adjacent to the proposed security fencing alongside the existing footpath (public right of way) and gapping up to create low level screening (3-4 m). These will complement the existing network of hedgerows, and trees;
 - 3.28.2 hedges will be allowed to grow to the full height of the security fencing (approximately 2m high) and will be trimmed on a rotational basis to maintain a tight form (outside the bird nesting season); and
 - 3.28.3 an area has been provided inside the site boundary to allow for future mitigation planting if any of the existing woodland and vegetation which currently provides screening is removed.

Conclusion

- 3.29 Management and maintenance is to be set out in further detail in the Landscape and Ecological Management Plan which will be prepared in accordance with the Outline LEMP and this will be adhered to ensure that planting remains healthy and effective. This is expected to provide a suitable screen to avoid the potential for statutory nuisance under s79(1) (fb).

- 3.30 For the reasons explained above and with implementation of the above measures no claim against statutory nuisance is envisaged in respect of statutory nuisance under s79(1) (fb).
- 3.31 **Noise and Vibration - section 79(1) (g) & (ga):**
- 3.31.1 (g) noise emitted from premises so as to be prejudicial to health or a nuisance; and
- 3.31.2 (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;
- 3.32 If noise is excessive, prolonged or occurs 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.
- 3.33 It was agreed with the Planning Inspectorate that in light of the location and nature of the development and the limited number of nearby receptors that the proposed development was unlikely to give rise to significant noise and vibration impacts during construction or decommissioning.
- 3.34 Operational noise from the development (such as that emitted by battery storage containers or transformers) is not considered to be significant and has to the extent possible been addressed in the design of the proposed development.
- 3.35 The elements relevant to section 79(1) are those relating to noise emitted from premises (which includes land) and from vehicles, machinery and equipment. Traffic noise is specifically excluded from consideration by s79 (6A) (a) and is not considered further.

Construction and Decommissioning

- 3.36 The following activities are those which might have the potential to result in noise effects such as:
- 3.36.1 Construction of tracks and hardstanding areas;
- 3.36.2 Installation of mounting frames;
- 3.36.3 Installation of solar panels;
- 3.36.4 Construction of the battery energy storage system; and

- 3.36.5 Construction of the substation.
- 3.37 The construction activities considered are those with most potential to result in adverse vibratory effects:
- 3.37.1 Installation of mounting structure;
 - 3.37.2 Installation of security fencing; and
 - 3.37.3 Compaction of tracks/hardstanding areas.
- 3.38 The measures set out below will be secured by the Outline CEMPs (Technical Appendix 7. LC TA (Document Reference: 7.8 LC TA 4.1 & 7.27 LC TA 7.7) and implemented as part of the proposed development and as such constitute mitigation 'embedded' in the design of the proposed development:
- 3.38.1 Core working hours are proposed to be between 07.00 until 18.00, Monday to Friday and 08.00 until 13.30 on Saturday unless in cases of emergency or where the works are not audible at the boundary of the Order limits; and
 - 3.38.2 Where practicable, the work programme will be phased, which would help to reduce the combined effects arising from any cumulative noisy operation.
- 3.39 The design and embedded mitigation measures of the proposed development are such that any noise and vibration effects from construction may be dealt with by way of noise impact calculations approved by the local authority in the CEMPs. These are not expected to be significant and were scoped out of the ES because of the location and nature of the development and the limited number of nearby receptors.

Operation

- 3.40 The primary sources of noise from the operational development are the inverters and transformers across the site in the PV array, the substation and the battery energy storage system but these are not judged to be significant.
- 3.41 Even though no significant noise impacts are anticipated, the equipment has still been sited with noise mitigation in mind.

- 3.42 Noise emissions from equipment will be a consideration in the selection of equipment and where possible the quietest available equipment will be installed.
- 3.43 Container units will include built-in acoustic insulation to prevent noise breakout where this is identified as being necessary.
- 3.44 Manufacturer supplied mitigation will be applied where this is identified as being necessary.
- 3.45 It is worth noting that the above mitigation would only be required based on a number of worst case assumptions and in practice they may not be required.
- 3.46 The location and nature of the limited number of nearby receptors mean that no further mitigation is required in respect of operational noise.
- 3.47 With the above measures in place, the operational phase of the proposed development will not give rise to impacts which would constitute a statutory nuisance under s79(1) (g) and (ga).

Decommissioning

- 3.48 Any noise impacts are considered to be less than those generated in relation to construction. Decommissioning will be undertaken in accordance with the Outline Decommissioning Plan Technical Appendix 7.LC TA (document ref 7.9 LC TA 4.2) so that any noise mitigation measures required will be approved in advance by the local planning authority.

Conclusion

- 3.49 For the reasons explained above and with these measures in place, the construction, operation and decommissioning phases of the project will not give rise to impacts which would constitute a statutory nuisance under s79(1) (g) and (ga).

4. CONCLUSION

- 4.1 This Statement has been prepared to fulfil regulation 5(2) (f) of the APFP Regulations. It has considered whether the proposed development would cause a statutory nuisance as set out in s79(1) of the EPA 1990.
- 4.2 Detailed assessments have been undertaken as part of the environmental impact assessment and the Statement reports the conclusions of the ES in relation to

general site condition, air quality, artificial light, noise & vibration during all phases of proposed development.

- 4.3 The embedded design and additional mitigation measures identified within the ES, will prevent impacts which have any potential to result in statutory nuisance under s79(1) of the EPA 1990. These measures are secured by requirements contained in the draft DCO, which cover relevant matters.
- 4.4 It is not expected that there would be a breach of section 79(1) of the EPA 1990 during construction, operation or decommissioning activities.

