

Tritax Symmetry (Hinckley) Limited

HINCKLEY NATIONAL RAIL FREIGHT INTERCHANGE

The Hinckley National Rail Freight Interchange Development Consent Order

Project reference TR050007

Statutory Nuisance Statement

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1. INTRODUCTION

- 1.1. This statement is submitted as part of an application made by Tritax Symmetry (Hinckley) 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 railway sidings and freight transfer area alongside the two-track railway between Hinckley and Leicester (“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 – 6.3). 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 (referred to as the “Proposed Development”):
 - The demolition of Woodhouse Farm, Hobbs Hayes, Freehold Lodge and the existing bridge over the Leicester to Hinckley railway on Burbage Common Road;
 - new rail infrastructure including points off the existing Leicester to Hinckley railway providing access to a series of parallel sidings at the HNRFI, in which trains would be unloaded, marshalled and loaded;
 - an intermodal freight terminal or ‘Railport’ capable of accommodating up to 16 trains up to 775m in length per day, with hard-surfaced areas for container storage and HGV parking and cranes for the loading and unloading of shipping containers from trains and lorries;
 - up to 850,000 square metres (gross internal area or GIA) of warehousing and ancillary buildings with a total footprint of up to 650,000 square metres and up to 200,000 square metres of mezzanine floorspace, including the potential for some buildings to be directly rail linked if required by occupiers. These buildings might incorporate ancillary data centres to support the requirements of HNRFI occupiers and operators. They will also incorporate roof-mounted photovoltaic arrays with

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

a generation capacity of up to 42.2 megawatts (MW), providing direct electricity supply to the building or exporting power to battery storage in the energy centre;

- an energy centre incorporating an electricity substation connected to the local electricity distribution network, battery storage and a gas-fired combined heat and power plant (designed to be ready for 100% hydrogen in the grid gas supply) with an electrical generation capacity of up to 5 megawatts (MW). Total electricity generation capacity at the Main HNRFI Site is therefore 47.4 MW;
- a lorry park with welfare facilities for drivers and HGV fuelling facilities;
- a site hub building providing office, meeting space and marketing suite for use in connection with the management of the HNRFI and ancillary car parking;
- terrain remodelling, hard and soft landscape works, amenity water features and planting;
- noise attenuation measures, including acoustic barriers up to six metres in height;
- habitat creation and enhancement, and the provision of publicly accessible amenity open space at the south-western extremity of the HNRFI near Burbage Wood and to the south of the proposed A47 Link Road between the railway and the B4668/A47 Leicester Road;
- pedestrian, equestrian and cycle access routes and infrastructure, including a new dedicated route for pedestrians, cyclists and horse riders from a point south of Elmesthorpe to Burbage Common;
- utility compounds, plant and service infrastructure;
- security and safety provisions inside the HNRFI including fencing and lighting;
- drainage works including surface water retention ponds, underground attenuation tanks and swales;
- works to M69 Junction 2 comprising the reconfiguration of the existing roundabout and its approach and exit lanes, the addition of a southbound slip road for traffic joining the M69 motorway and the addition of a northbound slip road for traffic leaving the M69 motorway at Junction 2.
- a new road ('the A47 Link Road') from the modified M69 Junction 2 to the B4668 / A47 Leicester Road with a new bridge over the railway, providing vehicular access to the proposed HNRFI from the strategic highway network. The A47 Link Road will be intended for adoption as a public highway under the Highways Act 1980.
- modifications to several junctions and amendments to Traffic Regulation Orders on the local road network in response to the different traffic flow pattern resulting

partly from the trips generated by the HNRFI development and principally from the change in movements as a result of the M69 Junction 2 upgrade;

- works affecting existing pedestrian level crossings on the Leicester to Hinckley railway at Thorney Fields Farm north-west of Sapcote, at Elmesthorpe and at Outwoods between Burbage and Hinckley. In addition, pedestrian level crossings serving footpaths that connect Burbage Common Road to Earl Shilton and Barwell are proposed for closure with the associated footpaths being diverted;
- off-site (outside the Order Limits) railway infrastructure including signals, signage and electricity connections.

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 vibration².

² Section 79(7) Environmental Protection Act 1990

- 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 unreasonably interferes 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 subsections (c) or (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 street³.

Emissions (S.79(1)(c) and (d))

- 2.1.4. Emissions that could be considered relevant to the Proposed Development are: dust arising from the premises on the Proposed Development during the construction phase, road traffic emissions during the construction phase, and operational-phase road, rail and back-up Combined Heat and Power (CHP) centre exhaust stack emissions. Analysis of the impacts of these emissions are considered in the Chapter 9: *Air Quality* of the ES. This assessment includes any emissions that might come within the scope of s.79.

Construction

- 2.1.5. During the construction of the proposed development, the principal pollutants that may potentially be generated are dust, finer particulate matter and oxides of nitrogen.
- 2.1.6. Chapter 9: *Air Quality* of the ES includes an assessment of the emission impacts during construction. The conclusions in relation to residual effects are contained in paragraphs 9.188 to 9.190.
- 2.1.7. Paragraph 9.202 concludes that with the implementation of a Construction Environmental Management Plan (CEMP) (Document Reference 17.1), the impact of

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".

construction phase dust emissions is considered to be 'not significant' in accordance with IAQM guidance.

- 2.1.8. Paragraph 9.203 concludes that the impact of construction phase road traffic emissions on human receptors was considered to be 'not significant' in accordance with IAQM and EPUK guidance.
- 2.1.9. The Applicant also proposes a Construction Traffic Management Plan (CTMP, document reference 17.6), to address any adverse effects of construction pollution on the local highway network.
- 2.1.10. Therefore, based on the findings of Chapter 9: *Air Quality* along with the mitigation measures proposed, no nuisance related to dust, particulate matter and oxides of nitrogen is anticipated for the Proposed Development.

Operation

- 2.1.11. Chapter 9: *Air Quality* of the ES also considers potential nuisance, in terms of changes to air quality caused by operational-phase activities such as road traffic, rail and back-up CHP centre generation.
- 2.1.12. Paragraph 9.204 concludes that for operational road traffic emissions, the impact on local air quality at human receptors was predicted to be 'negligible' overall and therefore 'not significant' in accordance with IAQM and EPUK guidance.
- 2.1.13. Paragraph 9.208 concludes that, in accordance with Defra guidance, the impacts on local air quality from rail emissions as a result of the operational development are considered to be 'negligible' and 'not significant'.
- 2.1.14. Paragraph 9.209 concludes that the back-up CHP centre would have a 'not significant' effect on pollutant concentrations at human receptors in accordance with IAQM and EPUK guidance.
- 2.1.15. Therefore, as each potential emission generating operational-phase activity is expected to have a 'negligible' and 'not significant' impact on local air quality, the likelihood of statutory nuisance due to emissions during operation is considered to be negligible.

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

- 2.1.16. Section 79(5B) (c) of the EPA 1990 provides that 'railway premises, not being relevant separate railway premises' are excluded from the consideration of lighting nuisance. Accordingly, the following discussion of potential lighting nuisance relates only to relevant separate railway premises when considering s.79(1)(fb).

Construction

- 2.1.17. The assessment of the impact of lighting during construction is set out in Chapter 11: *Landscape and visual effects* of the ES.

2.1.18. 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 (Document Reference 17.1) and the Lighting Strategy (Document Reference 6.2.3.2), which provide further detail in respect of temporary construction lighting. All these documents will be secured as a Requirement of the DCO. The Lighting Strategy includes indicative external lighting design that has been produced to minimise light pollution and complies with relevant policy and guidance. Therefore it is considered that statutory nuisance due to lighting during construction will not arise.

Operation

2.1.19. Details of the potential impacts of lighting on receptors during operation are considered in Appendix 11.1 to Chapter 11: *Landscape and visual effects* of the ES, paragraphs 1.202-1.220.

2.1.20. Appendix 11.1 concludes that the development of a sensitive lighting strategy, which follows key parameters to limit light spill such as maximum heights, directional units and specific light sources, offers an opportunity to mitigate potential impacts from lighting.

2.1.21. The Lighting Strategy (document reference 6.2.3.2) details the proposed lighting strategy across the Proposed Development and will be secured as a Requirement of the DCO. The Lighting Strategy sets out the recommendations, applicable regulations and best practice to be adopted for the Proposed Development. Parameters are provided to limit obtrusive light and light pollution, together with considerations for protection of ecology and the environment. With implementation of the Lighting Strategy, as subject to approval under the DCO Requirement, lighting will be designed and controlled such that statutory nuisance is avoided.

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

2.1.22. 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 caused by a vehicle, machinery or equipment in a street. These are encompassed within the assessment of construction and operational noise residual effects contained in paragraphs 10.342 to 10.349 of Chapter 10: *Noise and Vibration* of the ES.

2.1.23. Notably, Section 79(6A) (a) 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

2.1.24. 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. Chapter 10: *Noise and Vibration* of the ES considers the likely noise and vibration effects of the Proposed Development during its construction.

- 2.1.25. Paragraphs 10.272 to 10.282 of Chapter 10: *Noise and Vibration* of the ES summarise the mitigation for the noise and vibration construction effects. They conclude that any temporary, major adverse effects that could arise without mitigation at the nearest existing Noise Sensitive Receptor (NSR) are to be minimised, where possible, by adopting a best practice approach outlined in the CEMP (Document Reference 17.1).
- 2.1.26. The CEMP (Document Reference 17.1) sets out the requirement to employ Best Practicable Means (BPM) to manage construction-phase noise impacts and provides appropriate mitigation measures based in site specific information, with a requirement for these to be further detailed in phase-specific CEMPs as the project progresses. With appropriate mitigation in place, such as the use of limited construction hours and restricted night-time working, residual effects would be reduced to temporary, moderate adverse at worst for existing NSRs. These are not considered to give rise to a statutory nuisance.

Operation

- 2.1.27. The assessment of the impact of operational noise is contained in paragraphs 10.344 to 10.349 of Chapter 10: *Noise and Vibration* of the ES.
- 2.1.28. The operational phase assessment has considered noise from fixed plant, equipment and break-out noise associated with the Proposed Development, as well as noise associated with Strategic Rail Freight Interchange (SRFI) operations to the Proposed Development site, and the change in noise levels at NSRs due to additional rail movements.
- 2.1.29. For noise associated with SRFI operations, mitigation such as acoustic barriers and noise sensitive site equipment have been proposed, reducing the residual effect to be permanent, minor adverse at worst.
- 2.1.30. Noise level limits have been derived at the nearest NSRs for fixed plant and equipment to achieve. Specific noise level limits from the external plant on the development site can be found in Table 10.48 in Chapter 10: *Noise and Vibration* of the ES. These limits include appropriate corrections for acoustic characteristic, in accordance with BS 4142. With operational noise levels subject to these limits, the resultant effect is likely to be permanent, minor adverse at worst.
- 2.1.31. The predicted noise impact from additional rail movements indicates that there will be, at worst, a permanent, minor adverse effect at NSRs and mitigation is not required.
- 2.1.32. Therefore, with appropriate mitigations in place as outlined in the CEMP (Document Reference 17.1), and in Chapter 10: *Noise and Vibration* of the ES, the likelihood of statutory nuisance due to noise during construction and operation is considered to be negligible.

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 arise from the construction or operation of the Proposed Development.
- 3.3. While 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 where the defendant shows that the nuisance:
 - 3.3.1. relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the DCO development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) of the Control of Pollution Act 1974;
 - 3.3.2. is a consequence of complying with a requirement of the DCO and that it cannot reasonably be avoided;
 - 3.3.3. is a consequence of the construction or maintenance of the authorised DCO development and that it cannot reasonably be avoided; or
 - 3.3.4. relates to premises used by the undertaker for the purposes of or in connection with the maintenance, operation or use of the authorised DCO development and that the nuisance is attributable to the maintenance, operation or use of the authorised development which is being maintained, operated or used in compliance with a requirement of the DCO and that it cannot reasonably be avoided.