
STATUTORY INSTRUMENTS

2017 No. 215

**The North London Heat and Power
Generating Station Order 2017**

Defence to proceedings in respect of statutory nuisance

9.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽¹⁾ (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within section 79(1)(g) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order may be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised 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 sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974⁽²⁾;
- (b) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided;
- (c) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development which is being used in accordance with a scheme of monitoring and attenuation of noise agreed with the relevant planning authority as described in Requirement 17 (control of noise during operational stage) or in accordance with noise levels set out in an environmental permit relating to the operation of the authorised development; or
- (d) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include a statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

(1) 1990 c.43. Subsection (1) of section 79 was amended by section 24 of the London Local Authorities Act 1996 (c.i), section 120 of, paragraphs 1 and 2(a) of Schedule 17 to, paragraph 89 of Schedule 22 to, and Schedule 24 to the Environment Act 2005 (c.25), section 101 of the Clean Neighbourhoods and Environment Act 2005 (c.16) and section 2 of the Noise and Statutory Nuisance Act 1993 (c.40). Section 82 was amended by section 107 of and paragraphs 1 and 6 of Schedule 17 to, the Environment Act 1995 (c.25), section 5 of the Noise and Statutory Nuisance Act 1993 (c.40), and section 103 of the Clean Neighbourhoods and Environment Act 2005 (c.16). There are other amendments to this Act which are not relevant to this Order.

(2) 1974 c.40. Section 61(9) was amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c.25). There are other amendments to this Act which are not relevant to this Order.