
STATUTORY INSTRUMENTS

2020 No. 1148

The West Burton C (Gas Fired Generating Station) Order 2020

PART 3

Operations

Defence to proceedings in respect of statutory nuisance

8.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽¹⁾ (summary proceedings by persons aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (statutory nuisances and inspections therefor) no order is to be made, and no fine is to be imposed, under section 82(2) of that Act if—

(a) the defendant shows that the nuisance—

(i) 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 site), or a consent given under section 61 (prior consent for work on construction site) of the Control of Pollution Act 1974⁽²⁾; or

(ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

(b) the defendant shows that the nuisance—

(i) 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 of noise agreed with the relevant planning authority as described in requirement 22 (control of noise - operation); or

(ii) 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 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. Section 82(1) was amended by section 107 of and Schedule 17 to the Environment Act 1995 (c.25). There are other amendments to this Act which are not relevant to this Order. Section 79(1) was amended by section 120 of and schedule 22 to the Environment Act 1995. There are other amendments to section 79(1) that are not relevant to this Order. Section 82(2) was amended by section 5 of the Noise and Statutory Nuisance Act 1993 (c.40) and section 107 of and schedule 17 to the Environment Act 1995.

(2) 1974 c.40. Section 61 was amended by section 162 of and schedule 24 to the Environmental Protection Act 1990. There are other amendments to this Act which are not relevant to this Order.

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*
