
STATUTORY INSTRUMENTS

2024 No. 796

The Mallard Pass Solar Farm Order 2024

PART 2

PRINCIPAL POWERS

Defence to proceedings in respect of statutory nuisance

7.—(1) Where proceedings are brought under section 82(1) (summary proceedings by a person aggrieved by statutory nuisance) of the Environmental Protection Act 1990⁽¹⁾ in relation to a nuisance falling within paragraph (g) of section 79(1) (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act no order may be made, and no fine may 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 the authorised development or in connection with the authorised development and that the nuisance is attributable to the construction, maintenance or decommissioning of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), a consent given under section 61 (prior consent for work on construction site) of the Control of Pollution Act 1974, or any document approved under the provisions of Schedule 2 of the Order; or
 - (ii) is a consequence of the construction, maintenance or decommissioning of the authorised development and that it cannot reasonably be avoided; or
- (b) the nuisance is a consequence of the use of the authorised development and that it cannot be reasonably 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 the premises by the undertaker for purposes of the authorised development, or in connection with the authorised development.