



Department for
Business, Energy
& Industrial Strategy

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Dear Sirs

PLANNING ACT 2008

APPLICATION FOR THE KEUPER UNDERGROUND GAS STORAGE FACILITY DEVELOPMENT CONSENT ORDER

I. Introduction

1.1 I am directed by the Secretary of State for Business, Energy and Industrial Strategy (“the Secretary of State”) to advise you that consideration has been given to the report dated 15 December 2016 of the Examining Authority (“the ExA”), Jonathan Green, who conducted an examination into the application (“the Application”) dated 24 November 2015 by Keuper Gas Storage Limited (“the Applicant”) for a Development Consent Order (“the Order”) under section 37 of the Planning Act 2008 (“the 2008 Act”) for the Keuper Underground Gas Storage Facility (“the Development”).

1.2 The Order, as applied for, would grant development consent for the construction and operation of a new underground gas storage facility made up of up to 19 underground gas storage cavities with the capacity to store a working gas volume of approximately 500 million standard cubic metres (mcm) with an import and export capacity of up to 34 mcm per day at Holford Brinefield in Cheshire.

1.3 The Application was received in full by the Planning Inspectorate on 24 November 2015. It was accepted for examination on 22 December 2015 and the Examination was completed on 16 September 2016.

1.4 In order to create the Development, two sets of infrastructure are required. The first is an extension and, in part, upgrade of partner company, INOVYN Enterprises Limited’s existing brine and water infrastructure to provide the necessary solution mining to create the proposed underground salt cavities. The second set of infrastructure, the gas infrastructure, is required to facilitate the storage and transmission of gas to and from the Development and the National Transmission System. In summary, the Development would be at 4 separate areas and include:

- up to 19 underground gas storage cavities of up to 100 metres diameter by up to 130 metres deep formed by solution mining within a depth range of 450 metres and 850 metres below ground level at the main development site at Holford Brinefield;
- up to 19 gated access wellhead compounds each connecting the wellhead to the underground cavity and containing equipment required during drilling, solution mining, gas conversion and gas storage;
- a series of pipelines for the transport of water, brine, nitrogen and natural gas with connections to existing water, brine and gas networks;
- solution mining compound for the collection and processing of brine during the solution mining phase of the project;
- a network of underground electrical power and communication cables;
- internal site access road network;
- new pumping tank and new surge vessel installed within the brine purification plant at the existing Lostock works;
- a pipebridge and walkway at the Runcorn site;
- re-commissioning of the Whitley pumping station for a period of 10 years;
- a fenced compound and connection to National Grid's gas national transmission system high pressure gas pipe adjacent to Kings Street (A530);
- gas processing plant;
- an office, control and maintenance building with car parking space adjacent to the gas processing plant;
- six temporary construction laydown areas, including cabins and car parking;
- two gas marshalling compounds;
- fibre optic cables;
- an electrical compound adjacent to the solution mining compound;
- a 132kV to 33kV electrical substation compound, including pylon;
- 33kV and 11kV overhead and underground electrical supply cables;
- diversion of 11kV and 33kV overhead electrical cables, including the installation of new poles; and
- up to 166 precise level points 3.5 metres in length driven into the ground to monitor any changing underlying ground movements.

1.5 Published alongside this letter on the Planning Inspectorate's website¹ is a copy of the ExA's Report of Findings and Conclusions and Recommendation to the Secretary of State ("the ExA Report"). The ExA's findings and conclusions are set out in chapters 4 to 8 of the ExA Report, and the ExA's summary of conclusions and recommendation is at chapter 9.

¹ <https://infrastructure.planninginspectorate.gov.uk/projects/North%20West/Keuper-Gas-Storage-Project/>

II. Summary of the ExA's Report and Recommendation

2.1 The principal issues considered during the examination on which the ExA has reached conclusions on the case for development consent are set out in the ExA Report under the following broad headings:

- Legal and Policy Context (Chapter 3);
- Issues Arising in Local Impact Reports and Written Representations (Chapter 4);
- The principle of the Development, including need and consideration of alternatives (Chapter 4);
- Environmental Impacts (Chapter 5), including: Geology; Land and Water Quality and Flood Risk; Air Quality; Ecology; Marine Environment; Landscape and Visual Impact; Cultural Impact; Noise and Vibration; Radio Interference; Traffic and Transport; Socio-Economic Characteristics; Holford Gas Storage Limited; Construction Environmental Management Plan; Section 106 agreement; and the Planning Balance;
- Findings and Conclusions in Relation to Habitats Regulations (Chapter 6);
- Compulsory Acquisition and Related Matters (Chapter 7); and
- Draft Development Consent Order and Related Matters (Chapter 8).

2.2 For the reasons set out in the ExA Report, the ExA recommends that “*subject to the signing of a s106 [section 106] agreement, development consent should be given through a DCO [Development Consent Order] in the form attached at appendix D [to the ExA's Report]*” [ER 9.1.12]

III. Summary of the Secretary of State's Decision

3.1 The Secretary of State has decided under section 114 of the 2008 Act to make, with modifications, an Order granting development consent. This letter is a statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and the notice and statement required by regulation 23(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (“2009 Regulations”).

IV. Secretary of State's Consideration of the Application

4.1 The Secretary of State has considered the ExA Report and all other material considerations, including late representations received from interested parties after the close of the ExA's examination. The Secretary of State's consideration of the ExA Report and the late representations is set out in the following paragraphs. All numbered references, unless otherwise stated, are to paragraphs of the ExA Report.

4.2 The Secretary of State has had regard to the Local Impact Reports (“LIRs”) submitted by Cheshire West and Cheshire Council (“CWAC”) and Halton Borough Council (“HBC”) [ER 3.7, 4.2.1 - 4.2.2], the Local Development Plans [ER 3.6.1], environmental information as defined in Regulation 2(1) of the 2009 Regulations and to all other matters which are considered to be important and relevant to the Secretary of State’s decision as required by section 104 of the 2008 Act. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

4.3 Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendations of the ExA as set out in the ExA Report, and the reasons for the Secretary of State’s decision are those given by the ExA in support of its conclusions and recommendations.

Need for the Proposed Development

4.4 After having regard to the comments of the ExA set out in Chapter 4 of the Report, and in particular the conclusions on the case for development consent in Chapter 4, the Secretary of State is satisfied that in the absence of any adverse effects which are unacceptable in planning terms, making the Order would be consistent with energy National Policy Statements (“NPS”) EN-1 (the Overarching NPS for Energy) and EN-4 (the NPS for Gas Supply Infrastructure and Gas and Oil Pipelines) and that taken together, these NPSs set out a national need for development of new nationally significant gas storage infrastructure of the type proposed by the Applicant.

Compulsory Acquisition

4.5 The Secretary of State notes that the Applicant is seeking compulsory acquisition powers in order to acquire land and rights considered necessary to construct and operate an underground gas storage facility with associated development.

4.6 The 2008 Act and related case-law and guidance sets out that compulsory acquisition can only be granted if certain conditions are met:

- the land is required for the development to which the consent relates, or is required to facilitate or is incidental to that development;
- there must be a compelling case in the public interest;
- there must be a need for the project to be carried out; and,
- there must be consistency and coherence in the decision-making process;
- all reasonable alternatives to compulsory acquisition have been explored;
- the applicant has a clear idea of how it intends to use the land and can demonstrate that funds are available to pay for the acquisition; and
- the decision maker is satisfied that the purposes stated for the acquisition are legitimate and sufficient to justify the inevitable interference with the human rights of those affected.

4.7 The Secretary of State notes the ExA’s examination and consideration of the case for compulsory acquisition [ER 7.3 & 7.4], including the objections in respect of the four separate farms affected by the acquisition of land and rights [ER 7.3.24 – 7.3.51 & ER 7.4.1 – 7.4.9]. In particular, the Secretary of State notes the geological constraints in

relation to layout of the cavities and associated infrastructure and view of the ExA that the project has been designed to minimise the land required [ER 7.4.5]. The ExA's view that the farmland is required for the proposed development of the cavities at each of the four farms and that there is a compelling case in the public interest for the farmland to be acquired compulsorily is also noted [ER 7.4.6 & ER 7.5.5]. The Secretary of State further notes the ExA's view that the use of compulsory acquisition powers to acquire rights over part of the Brownhayes Farm access road is required to facilitate the development [ER 7.4.9 & ER 7.5.6]. The Secretary of State's consideration of compulsory acquisition regarding interference with human rights of those affected is set out separately in paragraph 8.2 below, but concludes that the grant of development consent would not violate any human rights protected by the Human Rights Act 1998. Whilst acknowledging the construction and operation impacts of the proposed development on farming operations and concerns of landowners, the Secretary of State notes the ExA's consideration of the availability and adequacy of funding [ER7.3.17 -7.3.20] and agrees that adequate provision is made in the Order to provide compensation to affected parties [ER 7.5.1 & ER 9.1.10].

4.8 In conclusion, the Secretary of State is satisfied that all the conditions for granting powers of compulsory acquisition set out in paragraph 4.6 above have been met and agrees with the ExA that the case made for the inclusion of compulsory acquisition and temporary possession powers in the Order [ER 7.5.7 & ER 9.1.11].

V. Biodiversity and Habitats

5.1 Regulation 61 of the Conservation of Habitats and Species Regulations 2010 (as amended) and Regulation 25 of the Offshore Marine Conservation Regulations 2007 (collectively known as "the Habitats Regulations") require the Secretary of State to consider whether the Development would be likely, either alone or in-combination with other plans and projects, to have a significant effect on a European site or European offshore marine site as defined in the Habitats Regulations. If likely significant effects cannot be ruled out, then the Secretary of State must undertake an Appropriate Assessment of the implications for the European Site in view of its conservation objectives. In light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the project will not, either on its own or in-combination with other plans and projects, adversely affect the integrity of such a site, unless there are no feasible alternatives or imperative reasons of overriding public interest apply.

5.2 The Convention on Wetlands of International Importance 1972 ("the Ramsar Convention") provides for the listing of wetlands of international importance. These sites are called Ramsar sites. UK Government policy is to afford Ramsar sites in the United Kingdom the same protection as European sites.

5.3 In the case of the Development, three European or Ramsar Sites within 10 kilometres were identified by the Applicant as having the potential to be affected by impacts to air quality from the proposed development's gas processing plant, namely: the West Midland Mosses Special Area of Conservation; Midland Meres and Mosses Phase 1 Ramsar Site; and Midland Meres and Mosses Phase 2 Ramsar Site [ER 6.2.4]. Two European Sites were also identified as having potential to be affected by the proposed Runcorn Outfall through disturbance during its construction or potential effects

of brine discharge once completed, namely Mersey Estuary Special Protection Area and Mersey Estuary Ramsar Site [ER 6.2.5].

5.4. The Secretary of State notes that a Habitats Regulations Screening Assessment confirmed the Applicant's view that there were no likely significant effects on these sites either alone or in combination with other plans or projects. Statutory nature conservation body, Natural England's written representation confirmed that on the basis of the shadow Habitats Regulations Assessment submitted there would be no likely effects on any of the European or international designated sites alone or in combination with other projects. Taking account of the proposed mitigation measures (which would be secured by requirements in the Order and, in respect of brine discharges into the Manchester Ship Canal, the approved operational limits of INOVYN Enterprises Limited's Environmental Permit), it was Natural England's view that the Environmental Statement provided sufficient evidence that the Development would not damage or destroy the notified features of nationally protected sites. The Secretary of State also notes that neither the Environment Agency, relevant Local Planning Authorities nor other interested parties raised additional matters during the Examination or questioned the adequacy of the Applicant's Habitats Regulations Assessment Report or its no likely significant effects on European sites conclusion.

5.5 On the basis of the above and on the basis of the assessment provided, the ExA did not consider it necessary to prepare a Report on the Implications for European Sites.

5.6 In conclusion, the Secretary of State is satisfied that the Development is not likely to have a significant effect on any European Site either alone or in combination with other plans or projects. The Secretary of State is also content that sufficient information has been provided for the Secretary of State to determine that an Appropriate Assessment under the Habitats Regulations is not required.

VI. Other Matters

Section 106 agreement/Late Representations

6.1 Although the section 106 agreement referred to in the ExA's recommendation was not signed at the close of the Examination [ER 5.14], the Secretary of State notes that a late representation from the Applicant's agent, Zyda Law, was received that provided an update on progress. The signed section 106 agreement was subsequently provided to the Secretary of State by CWAC on 15 December 2016. The agreement is also signed by Keuper Gas Storage Limited, INEOS Enterprises Group Limited, INOVYN Enterprises Limited and the London Branch of the Bank of New York Mellon (as "the Mortgagee"). The following offsite measures covered by the agreement, which are conditional on the Development Consent Order being granted and the Commencement of the Order/Development, are:

- i) submission to the CWAC of a scheme for the establishment, membership and terms of reference and frequency of a Local Liaison Group for the life of the project (and unless the Group's closure is otherwise agreed in writing by the Council);
- ii) a Heavy Goods Vehicle Routing Obligation covering: the Approved Route to be agreed by CWAC and observed by Heavy Goods Vehicles; notification to employees, agents, contractors and suppliers; maintenance of a written record

detailing non-compliance and the imposition of appropriate penalties for breaches; and a scheme for highway signage; and
iii) submission to CWAC of a phasing plan to manage and minimise the potential adverse effects of the development being carried out with Phase 3 of the neighbouring Stublach Gas Storage Project, which requires work to cease pending completion of that project.

6.2 Although only submitted in draft during the examination, the Secretary of State notes the ExA was satisfied that the provisions of the proposed section 106 agreement provide additional mitigation for the effects of the Development which fall outside the Order limits, that they are necessary to make the Development acceptable in planning terms, are directly related to the Development and are fairly and reasonably related in scale and kind to the Development [ER 5.14.10]. The Secretary of State sees no reason to disagree with the ExA's view on the need for and acceptability in planning terms of the section 106 agreement.

VII. Modifications to the Order by the Secretary of State

7.1 Paragraph 8.4.17 of the ExA's report identified amendments that he felt should be made to Part 5 of Schedule 9 (protective provisions) to the Order. This included two sub-paragraphs, identified in paragraph 8.4.10 of the Report, which should be inserted into paragraph 63 of that Schedule. These amendments were not included in the draft Development Consent Order provided by the ExA so the Secretary of State has inserted into paragraph 63 of the Development Consent Order, sub-paragraphs (a) and (b) which reflect the position set out in the Report.

Other Drafting Changes

7.2 In addition to the above, the Secretary of State has made various changes to the Order which do not materially alter its effect, including changes to conform with the current practice for statutory instruments (for example, modernisation of language), changes in the interests of clarity and consistency and changes to ensure that the Order has the intended effect.

VIII. General Considerations

Equality Act 2010

8.1 The Equality Act 2010 includes a public sector "general equality duty". This requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Equality Act 2010; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following "protected characteristics": age; gender; gender reassignment; disability; marriage and civil partnerships²; pregnancy and maternity; religion and belief; and race. This matter has been considered by the Secretary of State who has concluded

² In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

that there was no evidence of any harm, lack of respect for equalities, or disregard to equality issues.

Human Rights Act 1998

8.2 The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights by the Development and compulsory acquisition powers. It is noted that infringement of human rights in respect of the Application and use of compulsory acquisition powers is also considered in the ExA's Report [ER 7.3.14-7.3.16]. The ExA notes that the Applicant's Statement of Reasons sets out its view that there were compelling reasons that justify the use of compulsory acquisition powers and justification for the inclusion of temporary possession powers in the Order and consequently there was no infringement of Article 1 of the First Protocol (rights of those whose property is to be compulsorily acquired and whose peaceful enjoyment is to be interfered with). In respect of Article 6 of the Convention, which entitles those affected by compulsory acquisition sought for the Development to a fair and public hearing of their objections, any decision to grant such powers would be subject to judicial review and so there would be no infringement. The proposed compulsory acquisition and temporary possession powers did not extend to residential land or buildings and in the Applicant's view Article 8 of the Convention (protection of private and family life, home and correspondence interests) was not engaged. Notwithstanding this, the Applicant also stated that Article 8 was a qualified right and interference was justified in the interests of public safety or the economic well-being of the country [ER 7.3.16]. The Secretary of State notes that the ExA has concluded in relation to Article 1 of the First Protocol that the interference with the individual rights would be lawful, necessary, proportionate and justified in the public interest. In relation to Article 6, the ExA considers objectors have had the opportunity to present their cases in writing and at the compulsory acquisition hearing held during the Examination. In relation to Article 8, the ExA considers interference is in accordance with the law and is necessary in the economic well-being of the country [ER 7.5.2]. The Secretary of State agrees and therefore also takes the view that the grant of development consent would not violate any human rights protected by the Human Rights Act 1998.

Section 40(1) of the Natural Environment and Rural Communities Act 2006

8.3 The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, must have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent. The Secretary of State is of the view that the ExA Report considers biodiversity sufficiently to accord with this duty.

IX. Secretary of State's conclusions and decision

9.1 For the reasons given in this letter, the Secretary of State considers that there is a compelling case for granting consent. Given the national need for the proposed Development, as set out in the relevant National Policy Statements referred to above, the

Secretary of State does not believe that this is outweighed by the Development's potential adverse local impacts, as mitigated by the proposed terms of the Order.

9.2 The Secretary of State has therefore decided to accept the ExA's recommendation to make the Order granting development consent [ER 9.1.12]. In reaching this decision, the Secretary of State confirms regard has been given to the ExA Report, the LIRs submitted by CWAC and HBC, the representations received from interested parties after the close of the ExA's examination and to all other matters which are considered important and relevant to the Secretary of State's decision as required by section 104 of the 2008 Act. The Secretary of State confirms for the purposes of regulation 3(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 that the environmental information as defined in regulation 2(1) of those Regulations has been taken into consideration.

X. Challenge to decision

10.1 The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

XI. Publicity for decision

11.1 The Secretary of State's decision on this Application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

Yours sincerely

Giles Scott
Head of Energy Infrastructure Planning and Coal Liabilities

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118(i) of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order is published. The decision documents are being published on the date of this letter on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/North%20West/Keuper-Gas-Storage-Project/>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655).