STATUTORY INSTRUMENTS

2017 No. 433

INFRASTRUCTURE PLANNING

The Keuper Underground Gas Storage Facility Order 2017

Made - - - -	*15th March 2017*
Coming into force - -	*5th April 2017*

An application under section 37 of the Planning Act 2008(**1**) has been made to the Secretary of State for an order granting development consent.

The application was examined by the Examining Authority which has made a report to the Secretary of State under section 83(1)(b) of the 2008 Act.

The Secretary of State has considered the report and recommendation of the Examining Authority, has taken into account the environmental information in accordance with regulation 3 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(**2**) and has had regard to the documents and matters referred to in section 104(2) of the 2008 Act.

The Secretary of State, having decided the application, has determined to make an order giving effect to the proposals comprised in the application on terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

The Secretary of State, in exercise of the powers conferred by sections 114 and 120 of the 2008 Act, makes the following Order:

PART 1

PRELIMINARY

Citation and Commencement

1. This Order may be cited as the Keuper Underground Gas Storage Facility Order 2017 and comes into force on the 5th April 2017.

(**1**) 2008 c.29; the relevant provisions of the Planning Act 2008 are amended by Chapter 6 of Part 6 of, and schedule 13 to, the Localism Act 2011 (c. 20) and by sections 22-27 of the Growth and Infrastructure Act 2013 (c. 27). Transitional provisions are contained in S.I. 2013/1124.

(**2**) S.I. 2009/2263, amended by S.I. 2012/635 and 2012/787.

Interpretation

2.—(1) Except where contrary provision is made in Schedule 9 (protective provisions), in this Order—

"the 1961 Act" means the Land Compensation Act 1961(**3**);

"the 1965 Act" means the Compulsory Purchase Act 1965(**4**);

"the 1980 Act" means the Highways Act 1980(**5**);

"the 1990 Act" means the Town and Country Planning Act 1990(**6**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**7**);

"the 2008 Act" means the Planning Act 2008(**8**);

"authorised development" means the nationally significant infrastructure project and associated development described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning set out in section 32 of the 2008 Act, and any works carried out pursuant to the requirements;

"the book of reference" means the book of reference revision and the book of reference and land plans clarifications and errata certified by the Secretary of State for the purposes of this Order;

"building" includes any structure or erection or any part of a building, structure or erection;

"Canal & River Trust" means the Canal & River Trust whose address is Navigation Road, Northwich, Cheshire CW8 1BH;

"carriageway" has the same meaning as in the 1980 Act;

"CEMP" means the construction environmental management plan to be submitted and approved pursuant to requirement 3 of Schedule 2;

"Cheshire West and Chester Borough Council" means the Cheshire West and Chester Borough Council whose address is HQ, Nicolas Street, Chester, CH1 2NP;

"commence" means the carrying out of a material operation, as defined in section 155 of the 2008 Act, comprised in or carried out for the purposes of the authorised development and the words "commencement" and "commenced" are to be construed accordingly;

"compulsory acquisition notice" means a notice served in accordance with section 134 of the 2008 Act(**9**);

"draft CEMP" means the document certified as the draft CEMP by the Secretary of State for the purposes of this Order;

"environmental statement" means the documents certified as the environmental statement and the environmental statement clarifications and errata by the Secretary of State for the purposes of this Order;

"gas" has the same meaning as natural gas in section 235 (interpretation) of the 2008 Act;

"Halton Borough Council" means the Halton Borough Council whose address is Municipal Buildings, Kingsway, Widnes, WA8 7QF;

(**3**) 1961 c. 33.
(**4**) 1965 c. 56.
(**5**) 1980 c. 66.
(**6**) 1990 c. 8.
(**7**) 1991 c.22.
(**8**) 2008 c.29; the relevant provisions of the Planning Act 2008 are amended by Chapter 6 of Part 6 of, and schedule 13 to, the Localism Act 2011 (c. 20) and by sections 22-27 of the Growth and Infrastructure Act 2013 (c. 27). Transitional provisions are contained in S.I. 2013/1124.
(**9**) 2008 c.29; section 134 of the Planning Act 2008 has been amended by the Housing and Planning Act 2016 (Compulsory Purchase) (Corresponding Amendments) Regulations 2017 (S.I. 2017/16).

"highway" and "highway authority" have the same meaning as in the 1980 Act;

"the land plans" means the plans certified as the land plans by the Secretary of State for the purposes of the Order;

"the landscaping plans" means the plans certified as the landscaping plans by the Secretary of State for the purposes of the Order;

"local highway authority" has the same meaning as in section 329(1) of the 1980 Act;

"maintain" includes inspect, repair, adjust, alter, remove, reconstruct or replace the authorised development, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement, or vary the authorised development as described in Schedule 1, and any derivative of "maintain" must be construed accordingly;

"main river" has the meaning in section 113(1) Water Resources Act 1991(**10**);

"Manchester Ship Canal Company Ltd" means the Manchester Ship Canal Limited (Company registration number 07438096) whose registered address is Maritime Centre, Port of Liverpool, Liverpool, Merseyside L21 1LA;

"National Grid Gas" means National Grid Gas plc (Company registration number 02006000) or any successor company performing the same functions;

"Order land" means the land described as plots 1.01 to 5.01 in the book of reference as shown on the land plans;

"Order limits" means the limits shown on the works plans within which the authorised development must be carried out;

"owner" in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(**11**);

"relevant planning authority" means Cheshire West and Chester Borough Council in relation to land within its administrative area and Halton Borough Council in relation to land within its administrative area and any successors to their functions as planning authority for the area in which the land to which the provisions of this Order apply, and "relevant planning authorities" means both of them severally;

"requirements" means the requirements set out in Schedule 2 (requirements);

"the routing plan" means the plan certified by the Secretary of State as the routing plan for the purposes of this Order;

"the seismic survey report" means the document certified as the seismic survey report by the Secretary of State for the purposes of this Order;

"statutory undertaker" means any person falling within section 127(8), of the 2008 Act and a public communications provider as defined in section 151(1) of the Communications Act 2003(**12**);

"the statutory undertakers' apparatus plan" means the plan certified by the Secretary of State as the statutory undertakers' apparatus plan for the purposes of this Order;

"street" means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

"street authority" has the same meaning as in Part 3 of the 1991 Act;

(**10**) 1991 c. 57; the definition of "main river" was amended by the Water Act 2014 (c. 21), s.59.
(**11**) 1981 c. 67; section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34).
(**12**) 2003 c. 21.

"street works and access plan" means the plan certified as the street works and access plan by the Secretary of State for the purposes of this Order;

"the tribunal" means the Lands Chamber of the Upper Tribunal;

"undertaker" subject to article 7, means Keuper Gas Storage Limited (company registration number 08850140) whose registered office is at Runcorn Site HQ, South Parade, PO Box 9, Runcorn, Cheshire, WA7 4JE;

"watercourse" includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

"the works plans" means the plans certified as the works plans by the Secretary of State for the purposes of this Order.

(2) All distances, directions and lengths referred to in this Order and in any document referred to in this Order are approximate and distances between points on a work comprised in the authorised development must be taken to be measured along that work.

PART 2

PRINCIPAL POWERS

Development consent for authorised development etc.

3.—(1) Subject to the provisions of this Order and to the requirements in Schedule 2, the undertaker is granted development consent for the authorised development, in Schedule 1, to be carried out within the Order limits.

(2) In constructing the authorised development, the undertaker may deviate laterally from the lines or situations shown on the works plans within the limits of the deviation relating to that work shown on those plans.

Maintenance of authorised development

4. The undertaker may at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order provides otherwise.

Authorisation of Use

5.—(1) Subject to the provisions of this Order and to the requirements the undertaker may operate and use the authorised development.

(2) Paragraph (1) does not relieve the undertaker of any requirement to obtain a permit or licence under any legislation that may be required from time to time to authorise the operation of an underground gas storage facility.

Benefit of Order

6.—(1) Subject to article 7 (consent to transfer benefit of Order), the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply where the consent granted by this Order is expressed to be for the benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

Consent to transfer benefit of Order

7.—(1) The undertaker may, with the consent of the Secretary of State–

(a) transfer to another person ("the transferee") any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or

(b) grant to another person ("the lessee") for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order (including any of the numbered works) and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1), references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations (including development consent obligations within the meaning of section 106A of the 1990 Act) as would apply under this Order if those benefits or rights were exercised by the undertaker.

Defence to proceedings in respect of statutory nuisance

8.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(**13**) (summary proceedings by persons aggrieved by statutory nuisances) in relation to a nuisance falling within paragraph (g) of section 79(1) 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:

(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 sites) or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(**14**); 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 and attenuation of noise agreed with the relevant planning authority pursuant to requirement 5; 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.

(**13**) 1990 c. 43; section 82 is amended by section 5 of the Noise and Statutory Nuisance Act 1993 (c. 40), section 106 of and Schedule 17 to the Environment Act 1995 (c. 25) and section 103 of the Clean Neighbourhoods and Environment Act 2005 (c. 16). There are other amendments to this section which are not relevant to this Order.

(**14**) 1974 c. 40; section 61 is amended by Schedule 7 to the Building Act 1984 (c. 55), paragraph 15 of Schedule 15 to the Environmental Protection Act 1990 and Schedule 24 to the Environment Act 1995.