STATUTORY INSTRUMENTS

2015 No. 1561

INFRASTRUCTURE PLANNING

The Preesall Underground Gas Storage Facility Order 2015

Made - - - -	*17th July 2015*
Coming into force - -	*7th August 2015*

An application was made to the former Infrastructure Planning Commission in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009(**1**) for an order under sections 37, 114, 115, 120, 121, 122, 123, 142 and 149A of the Planning Act 2008(**2**) ("the 2008 Act").

The application was examined by a Panel appointed by the Secretary of State pursuant to Chapter 2 of Part 6 of the 2008 Act(**3**), and the examination was carried out in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(**4**) ("the 2010 Rules").

The Panel, having considered the application with the documents that accompanied it, and the representations made and not withdrawn, has, in accordance with section 74 of the 2008 Act(**5**) made a report and recommendation to the Secretary of State.

The Secretary of State refused the application on 9th April 2013, but, pursuant to a judgment of the High Court of Justice ([2013] EWHC 17 (Admin)) dated 17th January 2014, the Secretary of State was required to re-decide the application. The Secretary of State then invited further representations from interested parties in accordance with rule 20(2) of the 2010 Rules.

The Secretary of State, having considered the report and recommendation of the Panel and further representations received (under rule 20(2) of the 2010 Rules and otherwise), and decided the application, has determined to make an Order giving effect to the proposals comprised in the application with modifications.

The Secretary of State, in exercise of the powers conferred by sections 103, 114, 115, 120, 122, 123, 142 and 149A of the 2008 Act, makes the following Order—

(**1**) S.I. 2009/2264, amended by S.I. 2010/439, 602, 2012/635, 2654, 2732, 2013/522, 755.
(**2**) 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) (see S.I. 2013/1124 for transitional provisions).
(**3**) Following the abolition of the Infrastructure Commission on 1st April 2012, a Panel appointed under section 61 of the 2008 Act is treated as if appointed by the Secretary of State by virtue of a direction given by the Secretary of State under section 129 of the Localism Act 2011.
(**4**) S.I. 2010/103, amended by S.I. 2012/635.
(**5**) Section 74 is amended by the Localism Act 2011, Schedule 13 paragraph 29(3) and Schedule 25 paragraph 1.

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Preesall Underground Gas Storage Facility Order 2015 and shall come into force on 7th August 2015.

Interpretation

2.—(1) In this Order—

"the 1961 Act" means the Land Compensation Act 1961(**6**);

"the 1965 Act" means the Compulsory Purchase Act 1965(**7**);

"the 1980 Act" means the Highways Act 1980(**8**);

"the 1990 Act" means the Town and Country Planning Act 1990(**9**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**10**);

"the 2008 Act" means the Planning Act 2008;

"the 2009 Act" means the Marine and Coastal Access Act 2009(**11**);

"access and temporary stopping up plans" means the plans certified as the access and temporary stopping up plans by the Secretary of State for the purposes of this Order;

"approved development plans" mean the plans listed below and certified as the approved development plans by the Secretary of State for the purposes of this Order—

(**6**) 1961 c. 33. Sections 1 and 4 were amended by the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307). Sections 2 and 3 were repealed by that Order. There are other amendments to the 1961 Act which are not relevant to this Order.

(**7**) 1965 c. 56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71). Section 5 was amended by section 67 of the Planning and Compensation Act 1991; section 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 make provisions in respect of interest payable on compensation. Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c. 39). Section 11(1) and sections 31 and 32 were amended, and section 30 was substituted, by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67); sections 11(1) and 31 were also amended by section 14 of, and paragraph 12 of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1). Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c. 15). Section 20 was amended by section 70 of, and paragraph 4 of Schedule 15 to, the Planning and Compensation Act 1991. Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991. Section 125 of the Planning Act 2008 applies Part 1 of the 1965 Act with modifications. There are other amendments to the 1965 Act which are not relevant to this Order.

(**8**) 1980 c. 66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c. 22); section 1(2), (3) and (4) was amended by section 8 of, and paragraph 1 of Schedule 4 to, the Local Government Act 1985 (c. 51); section 1(2A) was inserted, and section 1(3) was amended, by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c. 29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985, by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11), by section 64(1), (2) and (3) of the Transport and Works Act 1992 (c. 42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c. 37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985; and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994. Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c. 15). There are other amendments to the 1980 Act which are not relevant to this Order.

(**9**) 1990 c. 8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008. There are other amendments to the 1990 Act which are not relevant to this Order.

(**10**) 1991 c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c. 26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18). There are other amendments to the 1991 Act which are not relevant to this Order.

(**11**) 2009 c. 23.

A-9000-016 Rev.C (application boundary index plan); A-9100-006 Rev.C (application boundary sheet 1 of 9); A-9100-007 Rev.B (application boundary sheet 2 of 9); A-9100-008 Rev.B (application boundary sheet 3 of 9); A-9100-009 Rev.B (application boundary sheet 4 of 9); A-9100-010 Rev.B (application boundary sheet 5 of 9); A-9100-011 Rev.B (application boundary sheet 6 of 9); A-9100-012 Rev.B (application boundary sheet 7 of 9); A-9100-013 Rev.B (application boundary sheet 8 of 9); A-9100-014 Rev.B (application boundary sheet 9 of 9); A-5000-001 Rev.B (seawater pump station site location plan); A-5000-002 Rev.B (seawater pump station site plan); A-5000-003 Rev.B (seawater pump station ground floor plan); A-5000-004 Rev.B (seawater pump station elevations, cross section); A-6000-001 Rev.B (booster pump station and control centre location plan); A-6000-002 Rev.B (booster pump station site and location plan); A-6000-003 Rev.B (booster pump station ground floor plan and section); A-6000-004 Rev.B (booster pump station elevations); A-7000-001 Rev.B (entrance facilities site and location plans); A-7000-002 Rev.B (entrance facilities proposed barn rebuild); A-7000-003 Rev.B (entrance facilities gatehouse and farmhouse); A-2000-001 Rev.B (compressor station & electrical sub-station locations); A-2000-002 Rev.B (gas compressor compound site plan); A-2000-003 Rev.B (compressor compound floor plans); A-2000-004 Rev.B (gas compressor compound sectional elevations); A-2000-005 Rev.C (gas compressor compound equipment elevations); A-2000-006 Rev.B (gas compressor compound indicative planting); A-1000-001 Rev.C (wellhead compounds location plan); A-1000-030 Rev.B (cavern development); A-9100-015 Rev.C (temporary construction compounds index plan); A-9100-016 Rev.C (temporary construction compounds - sheet 1 of 5); A-9100-017 Rev.B (temporary construction compounds - sheet 2 of 5); A-9100-018 Rev.B (temporary construction compounds - sheet 3 of 5); A-9100-019 Rev.B (temporary construction compounds - sheet 4 of 5); A-9100-020 Rev.B (temporary construction compounds - sheet 5 of 5); MMD-277663-D-DR-00-XX-0100 (proposed access road - sheet 1 of 3); MMD-277663-D-DR-00-XX-0101(proposed access road - sheet 2 of 3); 277663-D-DR-00-XX-0103 (proposed access road - sheet 3 of 3); C.01117.X03 (location of outfall os map); C.01121.X03 (concrete diffuser); A-9000-032 Rev.C (seawall crossing site location plan); 4726/05 Rev.B (proposed sea wall crossing of brine outfall pipe); A-9000-001 Rev.C (master plan overall); A-9000-002 Rev.C (fleetwood master plan); A-9000-003 (Preesall master plan); A-9000-005 Rev.B (master plan/metering station); A9000-014 Rev.C (master site location plan-reference drawing); A-9000-033 Rev.C (nts master plan); A-3000-010 Rev.B (metering station location plan); A-3000-001 Rev.B (plan and elevation metering station); and 14.10-WX40004-02 (landscape and ecological management strategy plan);

"the authorised development" means the development and associated development described in Schedule 1 (authorised development);

"Blackpool Borough Council" means the Blackpool Borough Council whose address is Town Hall, Blackpool, FY1 1AD;

"the book of reference" means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

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

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

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

"deemed Marine Licence" means the marine licence set out in Schedule 7 (deemed licence under the Marine and Coastal Access Act 2009) and deemed by article 35 to have been granted under Part 4 of the 2009 Act, by virtue of section 149A of the 2008 Act;

"environmental statement" means the document certified as the environmental statement by the Secretary of State for the purposes of this Order;

"existing brine cavern" means any brine cavern which existed prior to the making of this Order;

"existing brine well" means any brine well which existed prior to the making of this Order;

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

"geology summary report" means the document entitled the geology summary report and certified as the geology summary report by the Secretary of State for the purposes of this Order;

"Halite Energy Group" means Halite Energy Group Limited (company number 04145789) whose registered office is at Unit 5, St Georges Park, Kirkham, Lancashire, PR4 2EF;

"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 this Order;

"the landscape and ecological management strategy plan" means the document entitled the landscape and ecological management strategy plan with drawing reference 14.10V2-WX40004-02 dated May 2012 and certified as the landscape and ecological management strategy plan by the Secretary of State for the purposes of this Order;

"maintain" includes maintain, inspect, repair, adjust, alter, remove, clear, refurbish, reconstruct, decommission, demolish, replace or improve the authorised development and "maintaining" and "maintenance" shall be construed accordingly;

"MMO" means the Marine Management Organisation created under the 2009 Act or any successor to its statutory functions;

"operational cavern" means an underground cavern created pursuant to the powers contained in this Order and brought into operation for the storage of gas;

"Order land" means the land shown on the land plans which is within the limits of land to be acquired and described in the book of reference;

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

"owner", in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(**12**);

"Preesall halite deposit" means the member of the Kirkham Mudstone formation being a deposit characterised by halite with varying marl content and localised mudstone interbeds, more particularly described and shown as the Preesall Salt on the Geological Survey of Great Britain (England and Wales) Sheet 66, 1:50,000 Series, Solid and Drift Edition, of the British Geological Survey Classification entitled "The Geology of the country around Blackpool" dated 1990 and further described in the accompanying British Geological Survey Sheet Memoir 66;

"Preesall site" means that part of the authorised development situated to the east of the River Wyre and shown shaded green on the Preesall site plan;

"Preesall site plan" means the drawing dated 4th November 2011 and given drawing reference D-9000-032 certified as the Preesall site plan by the Secretary of State for the purposes of this Order;

"relevant planning authority" means Wyre Borough Council and any successors to its function as planning authority for the area in which the land to which the provisions of this Order apply;

(**12**) 1981 c. 67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991. Paragraph 1(5) of Part 1 of Schedule 2 was amended by section 67 of, and paragraph 27(3) of Schedule 9 to, the Coal Industry Act 1994 (c. 21). There are other amendments to this Act which are not relevant to this Order.

"the Requirements" means the requirements set out in Schedule 9 (Requirements);

"solution mining" means the pumping of a leaching solution into the Preesall halite deposit, such that the leaching solution dissolves the halite, thereby forming a void, and is then pumped back to surface as a halite-saturated brine;

"the standard temperature and pressure" means 15 degrees centigrade and 1 bar atmospheric;

"statutory undertaker" means any person falling within section 127(8), 128(5) or 129(2) of the 2008 Act;

"street" means a street within the meaning of section 48 of the 1991 Act(**13**), together with land on the verge of a street or between two carriageways, and includes part of a street;

"street authority", in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

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

"UK marine area" has the same meaning as in section 42 of the 2009 Act(**14**);

"the undertaker" means the person who has the benefit of this Order in accordance with articles 7 and 8;

"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) Save for the definition of the "undertaker", the definitions in paragraph (1) shall not apply to Schedule 7 (deemed licence under the Marine and Coastal Access Act 2009).

(3) The definition of the "undertaker" in paragraph (1) shall not apply to Schedule 8 (protective provisions).

(4) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface.

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

PART 2

WORKS PROVISIONS

CHAPTER 1

Principal powers

Development consent etc. granted by the Order

3.—(1) Subject to the other terms of this Order, including the Requirements and the provisions and conditions of the deemed Marine Licence, the undertaker is granted—

(a) development consent for the authorised development to be carried out within the Order limits; and

(b) consent to use the authorised development for the purpose for which it is designed including use of the cavities to be created for the underground storage of gas.

(**13**) Section 48 is amended by the Local Transport Act 2008 (c. 26), Part 7, section 124(2).
(**14**) 2009 c. 23.