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Our Ref: APP/Q2371/A/05/1183799
APP/HSC/05/07

16 October 2007

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)
PLANNING (HAZARDOUS SUBSTANCES) ACT 1990
APPEALS BY CANATXX GAS STORAGE LIMITED
APPLICATION REFS: 02/04/1415 AND HSC/05/01
LAND AT PREEALL SALTFIELD, STALMINE, WYRE ESTUARY, LANCASHIRE**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Edward A Simpson JP BA(Hons) MRTPI, incorporating the report of the Technical Assessor, Ruth Allington BSc MSc MBA FIMMM CEng FGS CGeol MAE QDR, who held a public local inquiry which closed on 5 May 2006, into your clients' appeals under Section 78 of the Town and Country Planning Act 1990 and Section 21 of the Planning (Hazardous Substances) Act 1990, against the failure of Lancashire County Council to give notice within the prescribed period of decisions on applications for:

a) planning permission for development of a natural gas storage facility including up to 20 well heads to create underground salt caverns by solution mining, the construction of above ground compressor station, a booster pump station, associated pipelines septic tanks and vehicular access track, the construction of brine/seawater/communication pipes below the Wyre Estuary, the construction of a seawater pump station, brine discharge pipeline and associated outfall to the Irish Sea (Appeal 1); and,

b) Hazardous Substances Consent for the underground storage of 2 million tonnes of natural gas and associated facilities including the construction of an above ground compressor station and pipelines (Appeal 2).

2. On 11 July 2005 the planning appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990. The reason for this was that the appeal relates to proposals for a development of major importance having more than local significance and involves the winning and working of minerals. At the same time the

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appeal against the failure to give notice of a decision on the application for Hazardous Substances Consent was considered by the Secretary of State.

3. The Inspector, whose conclusions are reproduced in the Annex to this letter, recommended that the appeals be dismissed and planning permission and Hazardous Substances Consent refused. All paragraph references, unless otherwise stated, refer to the Inspector's report (IR). For the reasons given below, the Secretary of State agrees with the Inspector's conclusions (except where stated) and with his recommendations.

Procedural matters

4. The Secretary of State notes the various amendments made to the proposal as set out in paragraphs IR2.4-2.5. She observes that the description of the proposal was amended to refer to up to 24 wellheads (IR2.4). She also observes that an agreed list of plans which now comprise the applications was submitted (IR2.5). She has determined the application as amended, and considers that no party has been prejudiced by doing so because these amendments were made in response to consultation responses to the previous application and were considered by the planning authority as recorded by the Inspector in IR2.1–2.3.

5. The Secretary of State has, like the Inspector, had regard to the Environmental Statements and Supplementary Environmental Statements which were submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 and in response to further requests for information under Regulation 19 of those Regulations (IR20.1.3). The environmental information provided by the applicant has been taken into account in reaching this decision. The Secretary of State considers that the information provided complies with the above regulations and that sufficient information has been provided for her to assess the environmental impact of the application, except in one respect. Regulation 2(1) of the Regulations sets out what is meant by "environmental statement" (ES) and refers to Parts I and II of Schedule 4. The ES must contain the information contained in Part II, which includes data needed to identify and assess the main effects which the development is likely to have on the environment. The ES must also contain such of the information referred to in Part I of the Schedule as is reasonably required to assess the environmental effects of the development.

6. Paragraph 4 of Part I of the Schedule says that the ES should include "a description of the likely significant effects of the development on the environment, which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the development, resulting from...(c) the emission of pollutants, the creation of nuisance and the elimination of waste". Paragraph 5 requires that there should be "a description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment". In the Secretary of State's view, the ES does not provide sufficient information as to the noise impact of the proposal. Her reasons are set out in paragraph 24 below. For these reasons, the Secretary of State considers that the ES does not provide sufficient information, with regard to noise, to enable her to fully assess the environmental impact of the application. She therefore concludes that the ES is inadequate. However, given her overall conclusion on the case and the reasons for refusing permission, as set out below,

she does not consider that the missing information is significant in her consideration of the case, and does not consider it necessary to seek further information to supplement the Environmental Statement under Regulation 19 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999.

Policy considerations

7. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the Regional Spatial Strategy for the North West (2003) (RSS13), the Joint Lancashire Structure Plan 2001-2016 (2004) (JLSP), the Lancashire Minerals and Waste Local Plan 2006 (2000) (LMWLP), and the Wyre Borough Local Plan (1999) (WBLP). The Secretary of State agrees with the Inspector that relevant development plan policies include those set out in IR4.6, and as set out in the Inspector's conclusions, including RSS policies CZ2B, ER2, ER5, ER8, ER9, RE9, SD8; JLSP policies 23 and 24; LMWLP policies 4, 32, 42, 71 and 72; and WBLP policies SP13 and SP2G.

8. The Panel Report on the Regional Spatial Strategy for North West England ("the North West Plan") was published in May 2007. As this draft RSS has reached an advanced stage, the Secretary of State considers it can be accorded some weight in the determination of these appeals. The emerging Wyre Borough Council local development framework is a material consideration, but as it is at a very early stage in its progress towards adoption, it can be afforded little weight.

9. Material considerations that the Secretary of State has taken into account include Planning Policy Statement (PPS) 1 "*Delivering Sustainable Development*", PPS7 "*Sustainable Development in Rural Areas*", PPS9 "*Biodiversity and Geological Conservation*", Planning Policy Guidance Note (PPG) 13 "*Transport*", and PPG24 "*Planning and Noise*".

10. The Secretary of State has also taken into account the consultation paper on "Planning and Climate Change", the supplement to PPS1, published for consultation in December 2006, but as that document is still in draft and may be subject to change, she affords it little weight.

11. Since the inquiry closed, the Health and Safety Executive has published a consultation document "Proposals for revised policies to address societal risk around onshore non-nuclear major hazard installations". This is a material consideration, but as the document is still at the consultation stage and may be subject to change she affords it little weight. Also, the Secretary of State does not consider that those aspects of the document relevant to these applications raise any new issues that would either affect her decision or require her to refer back to the parties for further representations prior to reaching her decision on the application.

12. Other material considerations include those documents identified by the Inspector in IR4.1, 4.7 and 4.8. Since the inquiry closed, the Department of Trade and Industry has published the Energy White Paper "Meeting the Energy Challenge" (May 2007). This is a material consideration, but the Secretary of State does not consider that, insofar as this document is relevant to these applications, it raises any

new issues that would either affect her decision or require her to refer back to the parties for further representations prior to reaching her decision on the application. The Secretary of State has also taken into account as a material consideration the “Energy Statement of Need for Additional Gas Supply Infrastructure” made on 16 May 2006, and comments on this from interested parties, summaries of which are set out in appendix C of the Inspector’s Report.

Main Issues

13. The Secretary of State agrees with the Inspector that the main issues are those set out in IR1.2 and addressed in the conclusions to his report.

Need, alternatives and principle of development

14. The Secretary of State agrees with the Inspector’s reasoning and conclusions on need, alternatives and principle of development, as set out in IR20.2.1-20.2.24. She agrees that the evidence before the inquiry does not support Protect Wyre Group’s view that there is no need for additional gas storage in the UK (IR20.2.14). She also agrees that the need for additional gas storage will be met primarily by underground gas storage (UGS) (IR20.2.17). She further agrees that while there is an acknowledged need for more UGS, in the context of the uncertainties that underlie the suitability of the geology of the Preesall Salt Field to accommodate the appeal proposal, that national need cannot be extrapolated to mean that there is a specific need for the appeal proposal (IR20.2.24).

Geology, storage technology, mining history

15. The Secretary of State agrees with the Inspector’s reasoning and conclusions on geology, storage technology and mining history, as set out in IR20.3.1-20.3.27, and with his conclusion that the proposal would be contrary to policies 2, 42, 71 and 72 of the LMWLP (IR20.3.13). She agrees that the information provided on the geological, hydrological and mining setting is insufficient at this stage to enable a decision to be made on the feasibility of the principle of the appeal proposal and hence the principle of the proposed land use (IR20.3.12), and that it is a matter of particular concern that the potential impact of subsidence on the proposed pipework or other infrastructure has not been addressed at this stage (IR20.3.15). She also agrees that planning permission should not be granted in advance of design details supported by robust and reliable geological modelling which confirm that there would be no possibility of cavern roof failure affecting Hackensall sewage treatment works, and that this amounts to sufficient justification for a refusal of the appeal proposal at this time (IR20.3.23).

Risk (gas migration/explosion), risk assessment, fear as a material consideration

16. The Secretary of State agrees with the Inspector’s reasoning and conclusions on risk (gas migration/explosion), risk assessment, and fear as a material consideration, as set out in paragraphs IR20.4.1-20.4.30. She agrees that to grant planning permission in advance of a clear understanding and quantified assessment of the level of risk would be contrary to LMWLP policy 2, which indicates that proposals for mineral development will only be permitted where it is demonstrated that all material impacts or other factors leading to loss or damage to amenity which

would adversely affect people, can be eliminated or reduced to acceptable levels (IR20.4.14).

17. She also agrees that reasonable fears and concerns about the proposal can only be assessed on the basis of a comprehensive investigation of the form, nature and permeability of the overburden strata, and that until that information is available, and the true level of risk has been assessed, these fears are a rational response to the proposal and a material consideration (IR20.4.19-20.4.20). The Secretary of State considers that the residents' fears in themselves do not constitute a significant planning objection, as they are based on the failure to provide an adequate risk assessment which she has already taken into account as a significant planning objection. However, this failure to properly address risk does add weight to the residents' fears.

18. She further agrees that as a 'top tier' COMAH site, the HSE would continue to review standards and best practice throughout its life as a UGS facility, and that there is no certainty that, once operational, reassessment of safety standards would not result in the public being excluded from those lengths of the Wyre Way closest to well-heads. This extent of public exclusion would not be acceptable (IR20.4.24) and it is illustrative of the failure to fully assess the risks associated with such a development. The Secretary of State takes the view that the potential consequences of an eventuality which is difficult to predict, being subject to a decision by another body, does not constitute a sufficient ground, on its own, to justify refusing this application now. However, she does consider that the failure to fully assess this and other possible risks of the scheme, does constitute a sufficient reason for refusal.

Sustainability of the working/disposal of mineral salt

19. The Secretary of State agrees with the Inspector's reasoning on the sustainability of the working and disposal of mineral salt as set out in IR20.5.1-20.5.11. She agrees that the proposal does not constitute sustainable mineral development and would be contrary to policy RE9 of the Regional Spatial Strategy and to policy 42 of the LMWLP (IR20.5.12). She also accepts that there is currently no market for this material (IR20.5.10). She also agrees with the Inspector's overall conclusion that conflict with the development plan amounts to an objection to the appeal proposal (IR20.5.12). However, she does not agree that this amounts to a "significant" objection as she considers that the appellants have carried out an adequate assessment of the potential for the beneficial use of brine and the absence of market for this common by-product is not a matter which they can address.

Impact on internationally, nationally and locally designated sites and protected species

20. The Secretary of State agrees with the Inspector's reasoning and conclusions on the impact on internationally, nationally and locally designated sites and protected species, as set out in IR20.6.1-20.6.40. She agrees that it is likely that the proposed additional salt marsh would provide adequate compensation for general subsidence, but that there remains an element of uncertainty (IR20.6.11). She agrees that crown hole subsidence would appear to be irreversible if it did occur (IR20.6.20), and considers therefore that the risk of crown hole subsidence is a significant concern. In the absence of satisfactory evidence enabling her to assess the likelihood of

subsidence occurring, the Secretary of State considers the risk should be accorded substantial weight. She further agrees that the risk of collapse would be contrary to those development plan policies which seek to avoid the detrimental impacts of development, including RSS policies CZ2B, ER2 and ER8; JLSP policies 23 and 24; and LMWLP policies 2, 7 and 24 (IR 20.6.15).

Landscape and visual amenity

21. The Secretary of State agrees with the Inspector's reasoning and conclusions on the impact on landscape and visual amenity, as set out in paragraphs IR20.71-20.7.43. She agrees that the visual harm of the gas compressor station and the booster pump station would be contrary to RSS policy SD8, LMWLP policies 2 and 7, and WBLP policies SP13+14b (IR20.7.24 and IR20.7.27). She further agrees that crown holes resulting from cavern roof collapse would have a seriously detrimental impact on the appearance of the salt marsh, which is a significant visual amenity in its own right. She agrees that visual harm to this area as a result of such a collapse would be unacceptable, would be contrary to JLSP policy 20, LMWLP policies 2, 7 and 72, and policy ENV2 of the WBLP (IR20.7.41), and the risk of this harm would justify a refusal of planning permission (IR20.7.36). In the absence of satisfactory evidence enabling her to assess the likelihood of a collapse occurring, she considers the risk should be accorded substantial weight.

Impact on the Wyre Estuary/Wyre Way and other footpaths

22. The Secretary of State agrees with the Inspector's reasoning and conclusions on the impact on the Wyre Estuary/Wyre Way and other footpaths, as set out in IR20.8.1-20.8.6. She agrees that any failure of a proposed cavern resulting from the proposal in the vicinity of the Wyre Way could result in the severing of this important coastal path, severely restricting public access to and enjoyment of the estuary. She agrees that this would be contrary to LMWLP Policy 32 (IR20.8.5), and considers that in the absence of satisfactory evidence enabling her to assess the likelihood of a collapse occurring, this amounts to an unacceptable risk and a very strong argument against the grant of planning permission

Highway safety and highway impact on amenity

23. The Secretary of State agrees with the Inspector's reasoning and conclusions on the highway impact on amenity, as set out at IR20.9.14-20.9.33. The Secretary of State acknowledges that proposals for improvement of the junction of the A588 with Cemetery Lane/B5377 (IR20.9.2-20.9.13) are not before her for decision. Notwithstanding this, the Secretary of State agrees with the Inspector's reasoning and conclusions on the unacceptability of a mini-roundabout at the junction (IR20.9.2-20.9.7). However, she does not agree with the Inspector's conclusion that the proposed means of access by way of a link road is unacceptable. She accepts the Inspector's assertion that such a means of access is subject to uncertainties (IR20.9.10). However, she considers that it is possible that a suitable condition (or conditions) could be drafted to address the installation, removal and re-establishment of a link road, or the retention of a link road for the duration of the scheme, were this deemed to be appropriate. It appears to the Secretary of State that the Inspector tacitly accepts that such an approach would be possible, as he states that "such an approach could only be justified where there was an otherwise

overriding need for this storage facility” (IR20.9.10). Having reached the conclusion that a means of access by way of link road has not been shown to be impossible or unacceptable, the Secretary of State disagrees with the Inspector that the proposed means of access amounts to a sufficient justification for a refusal of planning permission (IR20.9.13).

Noise impact on areas east and west of the Wyre Estuary

24. The Secretary of State agrees with the Inspector’s reasoning and conclusions on noise impact on areas east and west of the Wyre Estuary, as set out in IR20.10.1-20.10.28. She agrees that the level of night-time disturbance for those caravans at Sportsman’s Caravan Park would be unacceptable and contrary to Policy 2 of the LMWLP and Policies SP2G and SP13 of the WBLP (IR20.10.23). She also agrees that, in the absence of details of levels of noise and tonal characteristics, it is not possible to say that noise relating to gas dryer noise would not exceed background noise levels, nor have a detrimental impact on night-time residential amenity in Staynall (IR20.10.26). She further agrees with the Inspector that there still remain areas of general uncertainty with respect to noise associated with pipeline venting, and, in the absence of any details concerning the decommissioning of the site, it is not known whether that process would also have the potential to generate unacceptable levels of noise (IR20.10.28). These are factors which weigh against the proposal. The Secretary of State also considers that this lack of information means that she cannot accept that sufficient information has been provided for her to assess the environmental impact of the application. She therefore concludes that the ES is inadequate in this respect.

Economic/tourism impact

25. The Secretary of State agrees with the Inspector’s reasoning and conclusions on economic/tourism impact, as set out in IR20.11.1-20.11.6. She agrees that the proposal would be likely to result in a marginal positive benefit, assuming no wider loss due to the presence of the facility discouraging tourists from staying elsewhere in Wyre Borough (IR20.11.4).

Human rights

26. The Secretary of State agrees with the Inspector’s reasoning and conclusions on human rights, as set out in IR20.12.1-20.12.8. The Secretary of State agrees with the Inspector that there is insufficient information available to properly assess whether this is an acceptable location for this type of development to provide justification for affecting the rights of others (IR20.12.8).

Conditions and unilateral undertaking

27. The Secretary of State has noted the Inspector’s assessment of conditions, as set out in IR20.14.1-20.14.63, and considers that the Inspector’s proposed conditions comply with the policy tests in Circular 11/1995. She has considered the Inspector’s assessment of the unilateral undertaking, as set out in IR20.14.64-20.14.75, and whilst she considers its provisions comply with the policy tests set out in Circular 05/2005, she agrees that it is flawed for the reasons given in IR20.14.66-

20.14.70 and she is therefore unable to give that aspect of the unilateral undertaking any weight.

Hazardous Substances Consent (HSC)

28. The Secretary of State agrees with the Inspector's assessment of the principal considerations and preliminary matters with regard to the HSC (appeal 2), as set out in IR20.13.1-20.13.5.

Whether the grant of an HSC at this time would accord with the objectives of the SEVESO II Directive

29. The Secretary of State agrees with the Inspector's reasoning and conclusions on whether the grant of an HSC at this time would accord with the objectives of the SEVESO II Directive, as set out in paragraphs IR20.13.6-20.13.11. She agrees that the proposal neither limits the consequences of accidents for the public, who are encouraged to resort to this area for recreation, nor maintains appropriate distances between establishments and areas of public use (IR20.13.10). She therefore agrees that the proposal would not accord with the objectives of the SEVESO II Directive and that any measures to maintain appropriate distances could only be achieved by the closure of this length of the Wyre Way and that this amounts to sufficient reason to refuse the application for HSC (IR20.13.11).

Whether, in the light of the conclusions drawn with respect to the uncertainty surrounding the capability of the salt deposit at Preesall to accommodate the scale of storage proposed, a meaningful HSC could be granted

30. For the reasons given in IR20.13.12-20.13.16, the Secretary of State agrees that the accuracy and adequacy of the current level of geological knowledge of the site is insufficient to allow the granting of a meaningful HSC, and that this amounts to a further reason justifying a refusal of HSC (IR20.13.16).

Conclusions

31. The Secretary of State agrees with the Inspector's summary of conclusions on Appeal 1, on need, geology, risk, sustainable use of minerals, impact on designated sites and protected species, landscape, impact on Wyre Way, highway impact, noise, the economy, human rights and conditions (IR20.15.1-20.15.28), except with respect to those specific matters identified above in paragraphs 17-18, 19, 20, 21 and 23.

32. The Secretary of State considers that the proposal would not be compliant with the development plan or national planning policies in a number of respects. These include lack of robust geological modelling, inadequate understanding of risk, visual harm, the proposed means of access to the proposal, and uncertainty regarding noise impact.

33. The Secretary of State concludes therefore that the proposal is not in accordance with the development plan or national planning policies. She has taken into account the benefits of the proposal in helping to meet the need for underground gas storage facilities and the marginal positive economic benefit, but concludes that

there are no material considerations of sufficient weight to indicate that she should determine the application other than in accordance with the development plan.

34. With regard to the Hazardous Substances Consent, the Secretary of State considers that the proposal would not accord with the objectives of the SEVESO II Directive, that any measures to maintain appropriate distances could only be achieved by the closure of this length of the Wyre Way, and that this amounts to sufficient reason to refuse the application for HSC. She also considers that the accuracy and adequacy of the current level of geological knowledge of the site is insufficient to allow the granting of a meaningful HSC, and that this amounts to a further reason justifying a refusal of HSC.

Formal Decision

35. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation on Appeal 1. She hereby dismisses the appeal and refuses planning permission for development of a natural gas storage facility including up to 24 wellheads to create underground salt caverns by solution mining; the construction of an above ground compressor station, a booster pump station, associated pipeline, septic tanks and vehicular access track; the construction of brine/seawater/communications pipes beneath the Wyre Estuary; the construction of a seawater pump station, brine discharge pipeline and associated outfall to the Irish Sea, in accordance with application Ref 02/04/1415, dated 18/11/04 (as amended).

36. The Secretary of State also, for the reasons given above, agrees with the Inspector's recommendation on Appeal 2. She hereby dismisses the appeal and refuses Hazardous Substances Consent for the underground storage of 2 million tonnes of natural gas and associated facilities including the construction of an above ground compressor station and pipelines, in accordance with application Ref HSC/05/01 dated 15/04/05.

Right to challenge the decision

37. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court.

38. A copy of this letter has been sent to Lancaster County Council and all parties who appeared at the inquiry.

Yours sincerely,

Maria Stasiak

Authorised by the Secretary of State to sign in that behalf