Planning Act 2010 and the Infrastructure Planning (Examination Procedure) Rules 2010

Application by Halite Energy Group for an Underground Gas Storage Facility at Preesall Saltfield, Lancashire.

Final comments on the Development Consent Order (DCO) by Wyre Borough Council

As a consequence of matters raised at the First Issue Specific Hearing on the draft Development Consent Order on 24 July officers of the council were able to reappraise their position in relation to noise issues and whilst discussions between the applicant’s agents and council officers on the issue continued in an effort to resolve the concerns, these had not been resolved at the time of the second Issue Specific Hearing on 22 August. Although a representation on the outstanding DCO issues was presented to the panel, the panel expressed concern that the matter had not been resolved (given the Council’s previously expressed views), and invited the Council to continue negotiation with the applicants to resolve the issues and to submit a formal statement setting out the council’s position in relation to the DCO before the end of the hearing process.

Negotiations have continued and the council’s position is that it now has no further issues with the DCO in respect of noise. The council does, however, still have one issue concerning Arbitration, upon which no agreement has been achieved, and therefore the council wish the panel to consider this. This is set out as Appendix 1 to this report.

Signed
Head of Planning Services

Date: 11/10/12

This report represents the view of the Council and is signed by the Head of Planning Services under the Provisions of Paragraph 5(f)(9) of the Scheme of Delegation (Part 7 of the Council’s Constitution).
### Appendix 1

<table>
<thead>
<tr>
<th>Current Draft DCO</th>
<th>Wyre Borough Council Suggested alterations</th>
<th>Reasons for alteration</th>
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<tr>
<td><strong>Arbitration</strong>&lt;br&gt;41. Any difference or dispute under any provision of this Order (other than a difference or dispute which falls to be determined by the tribunal) shall, unless otherwise provided for in this Order and unless otherwise agreed between the parties, be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers Engineers. 41.1 the arbitrator may award the costs of the dispute resolution in such proportions as he determines but in the absence of an express award to this effect each party to the dispute shall bear its own costs of the dispute resolution.</td>
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<td>The Arbitration clause in paragraph 41 of the draft DCO is considered unacceptable as currently this does not allow for either party to bear their own costs and therefore could result in the Council having to pay costs of both parties which could potentially be substantial notwithstanding acting reasonably. It is considered that it would be reasonable to insert a clause that either party will bear their own costs unless it can be demonstrated that a party has acted unreasonably, and the costs incurred have been as a result of acting unreasonably. In these circumstances the unreasonable party would be responsible for the costs of the other. Therefore we ask that the approach adopted is one that mirrors that taken for planning inquiries. The Council's suggestions ensure that with its more limited resources, it should not be out of pocket as a result of the development, whilst recognising that the exception is that the Council should not be indemnified for unreasonable behaviour. S.63(1) of the 1996 Arbitration Act enables the parties to agree in advance the issue of costs, and s.61(1) provides that any award on costs in an arbitration is made subject to such an agreement.</td>
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