

# **ACCESS TO JUSTICE IN ENVIRONMENTAL DECISION MAKING**

## **Local citizens of Wyre demand effective right to appeal decision to develop underground gas storage in Preesall, Lancashire, UK.**

### SUMMARY

In July 2015 a Development Consent Order (DCO) was granted to Halite Energy Group Ltd to inject gas into, store gas in, and extract gas from 19 underground salt caverns in Preesall, Lancashire, UK. The caverns are to be situated less than half a mile from the local village of Preesall and Knott End, including residential areas, and close to the heavily populated area of Fleetwood. This is despite significant local opposition at all stages of the planning process over the last 13 years and despite the fact that serious concerns remain about the geology, safety, and the environmental impact.

After the DCO was approved local people have not had any effective way of appealing the decision. The only option was judicial review over a short six week time-period, on restricted grounds, that was too expensive for local communities. This is in contravention of the right to access to justice in environmental decision-making whereby procedure should be "fair, equitable, timely and not prohibitively expensive".

The petitioners urge European leaders to look at access to justice in environmental decisions that affect communities, particularly where they would have to live with hazardous substances and their environmental impacts. Local people deserve a way to appeal that they can access without the financial and other resources that energy development companies have at their disposal.

### REVERSAL OF DENIAL OF DEVELOPMENT CONSENT

Planning permission for underground gas storage in Preesall has been rejected at every level, including by two Secretaries of State, since an initial application in 2003, due to concerns inter alia about the geology of the site, the effect on the environment, the safety, and that the perceived benefits would not outweigh the impact on the local community.

However, Halite brought a judicial review against the decision of the then Secretary of State Ed Davey to block the application in 2013 and the present Secretary of State, Amber Rudd, was required to re-examine the application. The Secretary herself was not able to do it, as her brother works for the company involved, so Lord Nick Bourne was appointed to undertake the task in May 2015. A Development Consent Order (DCO) was consequently passed, after a short time period, in July 2015, to the complete shock of local people given the long history of the scheme being rejected by planning authorities at every level.

### IMPACT ON THE LOCAL COMMUNITY

There was and remains cross party opposition to the scheme from all local MPs. The plan has met with significant local opposition from the outset and throughout the planning process. In the decision of July 2015, the representative of the Secretary of State indeed notes that 10,800 residents objected to the Development (there is a total population of approximately 100,000 people in Wyre).

The main reasons given for the decision to pass the DCO were the national need for gas storage and the creation of small numbers of local jobs. It was also concluded that there would be no major environmental effect on the Wyre Estuary and Morecambe Bay.

The local community rejects these assumptions. Local people know the land better than anyone, and the fact that there have been at least ten major incidents of subsidence in the land due to previous mining operations, that there are concerns of dangerous chemicals in the caverns due to previous use by ICI, and that the proposed area is between two geological fault lines, means that the community is not convinced that the proposal is safe, that the land will cope and there will not be any gas migration. The amount of gas that will be able to be stored in the caverns is also in doubt and has changed considerably from earlier proposals due to uncertain geology.

The decision also does not look at the number of job losses and other damaging effects on the community due to compulsory purchase, loss of farming, safety fears, effects on tourism and walking and people's enjoyment of nature, and the effect of increased traffic and construction work on rural roads particularly during the eight-year construction period.

In terms of the environment, local people are concerned about the destruction of habitats including for geese and newts, as well as brine discharge directly into the sea - Morecambe Bay SPA and the Wyre Estuary SSSI which are protected under national and EU legislation.

#### DENIAL OF THE COMMUNITY'S RIGHT TO ACCESS JUSTICE

It seems that appealing development consent orders for underground gas storage are weighed in favour of companies who have financial backers, access to funds and legal expertise at the ready and who can appeal every refusal for 13 years until they get the decision they want.

Despite their grave concerns, and the fact that local inhabitants are the ones who know the land best, who know it is not suitable and who have to live with the impacts of this decision, the only option that the local community had to appeal this final decision was a judicial review. A judicial review would have enabled us to appeal how the decision was taken but not the decision itself. There was a very short time period of 6 weeks for appeal and the costs of putting in an appeal were prohibitive for local people with no access to influential backers or time to fundraise to challenge what was a quick and unexpected decision for the whole community.

This is in contravention of the UK's obligations under the Aarhus Convention as well as EU Environmental Impact Assessment Directive. According to the Aarhus Convention, individuals have the right to access to justice in environmental decision-making. The procedure should be "fair, equitable, timely and not prohibitively expensive". However, the UK has transposed the Aarhus Convention by relying on existing judicial review procedures, which means in many cases as in Preesall, local communities are not able to get their day in court ("judicial review") on anything but legal grounds (disagreeing with a proposal is not sufficient grounds for a challenge). The costs associated with the judicial review are also impossible for local communities to cover. In addition, people who bring a legal challenge unsuccessfully might face having to pay the costs of the winner, which could be even more substantial.

Meanwhile, the UK government has trumpeted its policy of localism – empowering local communities and making planning more democratic. There have also been specific provisions introduced to ensure that local communities have the final say in onshore wind power developments. This however does not apply in nationally important infrastructure project, such as

underground gas storage, potentially linked to the government's policy on gas which it has described as "central" to an energy secure future.

The residents of Preesall and Wyre now find themselves in the absurd situation of being able to have a final say in any onshore wind farm development that may be proposed in the area, but having no effective ability to appeal a decision to store 19 caverns of a hazardous substance, in land local people know to be unstable, that will have a significant impact on the environment and their communities, less than half a mile from their homes.

The current judicial review process is unfair to local people. We believe that local people should have an effective right to appeal. We urge European leaders to look into what rights local people should have when unwanted and environmentally dangerous schemes are planned near their homes. We believe that for environmentally dangerous projects such as this, local people should have their say. A right to judicial review is not worth the paper it is written on if only energy companies can afford it.

Attachments:

Annex 1: Full text of the petition.

Annex 2: Decision Letter from Secretary of State dated 17th July 2015. Details of Judicial Review possibilities are in the Annex attached on page 27.

Section 118 of the 2008 Planning Act can be found here:

<http://www.legislation.gov.uk/ukpga/2008/29/section/118>