

Environment, Development and Transport

Report title:	Consultation by the Ministry of Housing, Communities & Local Government and the Department for Business, Energy & Industrial Strategy on Planning and Shale Gas
Date of meeting:	12 October 2018
Responsible Chief Officer:	Tom McCabe – Executive Director, Community and Environmental Services
Strategic impact Norfolk County Council is the Minerals Planning Authority of Norfolk.	

Executive summary

This Ministry of Housing, Communities & Local Government (MHCLG) is currently consulting on proposals to extend permitted development rights to the sinking of boreholes in association with exploration for shale gas. If implemented it would mean that developers would no longer need to apply for planning permission from the relevant minerals planning authority. At the same time the Department for Business, Energy, & Industrial Strategy (BEIS) is consulting on proposals that would make proposals for shale gas production Nationally Significant Infrastructure Projects. As such applications for planning permission would be determined by the Secretary of State.

Recommendations:

The Committee is recommended to:

Agree to respond to the above consultations in line with the comments listed in Appendix A and Appendix B attached to this report.

1. Proposal

- 1.1. The BEIS consultation document seeks views on the criteria that should be used for inclusion of shale gas production under the nationally significant infrastructure regime. Potential criteria which it is suggested could be used alone or in combination are listed below ;
 - Number of production wells required
 - Quantity of Recoverable gas
 - Gas Production Rates
 - Local or National Grid connection implications
 - Scale of Associated Equipment required
- 1.2. The consultation is also seeking views on the timing of the change from the current regime to the implementation of criteria for inclusion of shale gas production schemes as NSIP's
- 1.3. With regards to the introduction of permitted development rights it is proposed to limit them to the exploration phase of shale gas developments and for the activity permitted to be restricted to core sampling that does not involve hydraulic fracturing in itself.

- 1.4. The current proposal lists a number of areas where permitted development rights would not apply
- Areas of Outstanding Natural Beauty
 - National Parks
 - The Broads
 - World Heritage Sites
 - Sites of Special Scientific Interest
 - Scheduled Ancient Monuments
 - Conservation areas
 - Sites of archaeological interest
 - Safety hazard sites
 - Military explosive areas
 - Land safeguarded for aviation or defence purposes
 - Protected groundwater source

2. Evidence

- 2.1. The Government announced its intention to consult on these proposals back in May 2018 through two ministerial statements. In doing so it pre-empted the publication of the findings of the inquiry by the Communities and Local Government Committee which, among other matters looked at the way in which planning applications for such developments should be addressed. Owing to the timing of the consultation it was not possible to bring the matter before the Committee, instead the matter was dealt with by the delegations procedure. A copy of the delegated report and response to the Committee can be found as appendices to this report.
- 2.2. The Authority's response to the previous consultation, highlighted the general lack of public support for hydraulic fracturing and suggested that any changes to the planning process that removed decision making from local level would be likely to exacerbate this. This was subsequently endorsed by the committee in their findings.
- 2.3. The Committee was not convinced that an individual fracking operation would be of such a physical scale or its contribution to the UK's overall energy needs be such so as to be "nationally significant". Furthermore the Committee found that there was little to be gained from bringing fracking NSIP regime and unequivocally recommended that planning applications should not be brought under the NSIP regime and that such a move could be perceived as a significant loss to local decision making.
- 2.4. Although Permitted Development Rights were not specifically identified as a topic for in the Committee's consultation request they nevertheless recommended that "Shale gas development of any type should not be classed as permitted development".

3. Financial Implications

- 3.1. The costs to a minerals planning authority of determining an application for shale gas development at any stage in the process can be significant. A recent case undertaken by the Local Government Association in conjunction with the

Planning Advisory Service identified that staff costs alone ranged from £50,000 to £70,000. In the event of an appeal costs could significantly increase. In previous years MHCLG have made funds available accessible through bids from mineral planning authorities dealing with such applications.

4. Issues, risks and innovation

- 4.1. To date no Petroleum Exploration and Development Licences (PEDL) have been required or granted for areas within Norfolk. As such Norfolk is not required to explicitly plan for shale gas development its Local Plan. Notwithstanding this point and acting upon a recommendation of a member working group on hydraulic fracturing the emerging minerals and waste local plan contains draft policies to direct any future development proposals to the least environmentally sensitive areas.

5. Background

- 5.1. The Planning Act 2008 created a planning process for “Nationally Significant Infrastructure Projects” (NSIPs) in fields of development including energy, water, waste water, road, rail, and hazardous waste disposal. For projects falling within the definition of an NSIP the process detailed in the 2008 Act is the only route for obtaining planning consent. In which case the decision to grant permission rests with the relevant Secretary of State.
- 5.2. The County Council as the minerals planning authority for Norfolk would be the main planning authority and expected to play a key role in the public examination of any proposal, preparing local impact reports and collating evidence. In the event that consent was granted for an operation then the county could expect to have responsibility for monitoring the development, ensuring compliance with any restrictions placed on the consent, and determining any schemes that the develop needs to submit post decision, for which the authority would receive a statutory fee of £116 per submission.
- 5.3. Experience of NSIP projects to date suggest that there are often numerous complex issues that are left to be resolved through the discharge of requirements attached to a development consent order. This means that minerals planning authorities may still be left with significant volumes of work without having had any say as to the principle of development. The limited funding to deliver the work potentially adding salt to the wounds.
- 5.4. Permitted development rights are in effect a national grant of planning permission. The rights are set out in Town and Country Planning (General Permitted Development) (England) Order 2015. Historically they have been used to grant permission for small scale developments, such as extension to residential properties and changes of use between offices, shops and other high street uses.
- 5.5. Oil and gas development, like other mineral uses, is a temporary land use, although it can often take place over a long period of time. For planning and other regulatory purposes oil and gas development is broken down into three stages, of exploration, appraisal and production which are followed by decommissioning, restoration and aftercare. Planning permission is required for all three stages.
- Exploration; typically lasts for a period between 3-6 months and in development terms involves the construction of pads and rigs associated with core sampling geophysical and seismic investigations.
 - Assessment; 6 months to 2 years, will include more drilling operations including hydraulic fracturing operations to test flow rates.
 - Production; Up to 20 years will require larger well pads and possible fields of well pads. Significant well drilling operations plus the development of infrastructure such as pipelines, storage and gas and waste water treatment facilities.

- 5.6. In addition to the three stages of shale gas development there will be a period of decommissioning, restorations and aftercare to return the site to a previously agreed use. Depending upon the findings of the explorations and assessments stages this could occur at any stage in the process.

Officer Contact

If you have any questions about matters contained in this paper or want to see copies of any assessments, eg equality impact assessment, please get in touch with:

Officer name : Nick Johnson

Tel No. : 228940

Email address : Nick.johnson@norfolk.gov.uk



If you need this report in large print, audio, braille, alternative format or in a different language please contact 0344 800 8020 or 0344 800 8011 (textphone) and we will do our best to help.