



CABINET - 16 OCTOBER 2018

**RESPONSE TO CONSULTATION ON PERMITTED DEVELOPMENT
FOR SHALE GAS EXPLORATION AND INCLUSION OF SHALE GAS
PRODUCTION PROJECTS IN THE NATIONALLY SIGNIFICANT
INFRASTRUCTURE PROJECT REGIME**

REPORT OF THE CHIEF EXECUTIVE

PART A

Purpose of the Report

1. The purpose of this report is to seek the Cabinet's approval for the County Council's response to two consultation documents issued by the Ministry of Housing, Communities and Local Government (MHCLG) and the Department for Business, Energy and Industrial Strategy (BEIS) relating to shale gas exploration and production.

Recommendation

2. It is recommended that the responses set out in Appendices A and B to this report be approved for submission to the Ministry of Housing, Communities and Local Government and the Department for Business, Energy and Industrial Strategy respectively as the views of the County Council.

Reasons for Recommendation

3. The Government considers that onshore shale gas production has the potential to play a major role in securing energy supplies and creating economic benefits for the UK and in May 2018 Written Ministerial Statements announced measures to facilitate timely decisions on shale gas planning applications and support Mineral Planning Authorities. These two consultations offer an opportunity for the County Council to comment on the Government's proposals for
 - a. changing the process for making decisions on shale gas developments, including granting planning permission through a permitted development right to some non-hydraulic fracturing shale gas exploration development; and
 - b. taking decisions on applications for shale gas production away from the County Council and placing them with the Secretary of State for the Department of Business, Energy and Industrial Strategy through the National Infrastructure Planning regime.

Timetable for Decisions (including Scrutiny)

4. Subject to approval by the Cabinet, the Council's responses will be submitted to the BEIS and MHCLG before the deadline of 25 October 2018.

Policy Framework and Previous Decisions

5. The responsibility for dealing with planning applications for shale gas development currently lies with Mineral Planning Authorities (MPAs), which are generally County Councils. Planning applications for exploration, appraisal and production of shale gas must be made to the MPA within whose area the proposed development lies. The MPA is responsible for making the decision in the first instance although, as is the case with all local authority planning decisions, the applicant has a right of appeal to the MHCLG in the event of refusal.

Resource Implications

6. There are no direct resource implications arising from this report. The Director of Law and Governance has been consulted on the content of this report.

Circulation under the Local Issues Alert Procedure

7. None.

Officers to Contact

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PART B

Background

8. The Government believes that domestic onshore gas production, including shale gas has the potential to play a major role in further securing UK energy supplies and creating economic benefits locally and nationally, including new jobs. It considers that the UK is approaching an important moment in the exploration stage of shale gas extraction. The industry is in the initial stages of exploration as it seeks to gather information on the potential recoverable volumes, flow rates or number of wells/well-sites required for shale gas resources to be economically viable in the UK. No shale gas wells have yet been appraised by flow testing gas to the surface and no commercially active sites are in operation yet.
9. Natural gas still makes up around a third of UK energy usage and every scenario proposed by the Committee on Climate Change, setting out how the UK could meet its legally-binding 2050 emissions reduction target, includes demand for natural gas. The UK has gone from being a net exporter of gas in 2003 to importing over half (53%) of gas supplies in 2017 and estimates suggest the UK could be importing 72% of its gas by 2030.
10. Written Ministerial Statements on energy and planning policy made on 17 May 2018 reiterated the Government's view that there are potentially substantial benefits from the safe and sustainable exploration and development of onshore shale gas resources. The statement announced a range of measures to facilitate timely decisions on shale gas planning applications and support Mineral Planning Authorities, including:
 - Holding an early stage consultation, in summer 2018, on the principle of whether non-hydraulic fracturing shale exploration development should be granted planning permission through a **permitted development right**;
 - Consulting, in summer 2018, on the criteria required to trigger the **inclusion of shale production projects into the Nationally Significant Infrastructure Projects (NSIP) regime**.
11. These two consultations have now been published –
 - A. To seek views on the principle of whether non-hydraulic fracturing shale gas exploration development should be granted planning permission through a permitted development right, and in particular the circumstances in which it would be appropriate (any permitted development right would not apply to the appraisal and production operations of shale gas extraction), and;
 - B. To seek views on the potential timing and the criteria for major shale gas production projects to be included in the Nationally Significant Infrastructure Project (NSIP) regime. The industry is still in the

exploration stage in the UK and this initial consultation is focused on preparing for a potential future production phase.

The proposed responses are attached as Appendices A and B and a summary of the issues is given below.

A. Permitted Development for Shale Gas Exploration

12. The Government states, in the consultation document that it is committed to making planning decisions faster and fairer for all those affected by new development, and to ensuring that local communities are fully involved in planning decisions that affect them.
13. Recent decisions on shale exploration planning applications have been processed slowly against a statutory time frame of 16 weeks where an Environmental Impact Assessment is required. Where there has been agreement with the developer on time extensions for consideration of applications, some have taken up to 83 weeks for decision. The Government is committed to helping to ensure every planning application is dealt with as quickly as possible.
14. Permitted development rights are a national grant of planning permission. The Government considers that they provide a simpler, more certain route to encourage development and speed up the planning system, and reduce the burden on developers and local planning authorities by removing the need for planning applications.
15. Permitted development only covers the planning aspects of the development. It does not remove requirements under other regimes (e.g. environmental licencing and permitting or environmental legislation).
16. Some permitted development rights are subject to a requirement to seek the prior approval of the local planning authority for certain planning matters before carrying out development.
17. Any developments that would be permitted through any potential permitted development right for non-hydraulic fracturing shale gas exploration, would still be required to receive the appropriate consents from the three regulators (the Environment Agency, the Health and Safety Executive and the Oil and Gas Authority) before development can proceed.
18. The exploratory phase of oil and gas extraction seeks to acquire geological data to establish whether hydrocarbons are present, which in the case of shale gas may involve drilling an exploration well, and conducting seismic surveys. This is then followed by an appraisal (testing) stage, and then a production stage.
19. It is proposed that any permitted development right for exploratory shale drilling would only apply to shale gas exploration (not the later stages of appraisal or production), and for non-hydraulic fracturing operations to take core samples

for testing purposes. Hydraulic fracturing involves the injection of fluids for the purpose of fracturing the shale rock structure to release gas and the Government consider that it would not be appropriate for it to allow this under its permitted development rights proposal. It would therefore be necessary for legislation to define exactly what development is permitted. Where hydraulic fracturing is intended for testing purposes, planning permission from the mineral planning authority would be required.

20. Although some types of mineral exploration involving drilling of boreholes and seismic surveys are currently permitted development, until 2016 all exploration for onshore oil and gas was specifically excluded from benefitting from these rights and required planning permission. In April 2016 legislation was amended to allow for development consisting of the drilling of boreholes for the purpose of carrying out ground water monitoring and seismic monitoring which is preparatory to potential petroleum exploration (which includes shale gas) for up to 28 days. These permitted development rights are subject to restrictions and conditions. This consultation paper proposes to extend these permitted development rights to non-hydraulic fracturing shale gas exploration. Given the similarities between onshore exploration for shale gas and that for other types of petroleum there is an inconsistency in considering one to be acceptable in principle for dealing with as permitted development and the other not.
21. The Government recognises the need to have regard to legally protected environmental sites. It is proposed that areas such as Sites of Special Scientific Interest, conservation areas, National Parks etc. would be excluded from the permitted development rights and consultees are asked for views on which areas should be excluded. Additionally, by law, development which is likely to have significant effects on the environment requiring an Environmental Impact Assessment (EIA) would not be permitted development. If the proposed development would fall into Schedule 2 of the EIA Regulations, it would only be permitted where a local planning authority has issued a screening opinion determining that the development is not EIA development, or where the Secretary of State has directed that it is not EIA development, or that the development is exempt from the Environmental Impact Assessment Regulations. A screening opinion would be required where any surface development was 1 hectare or more.
22. The consultation acknowledges that a definition of non-hydraulic fracturing exploration would be required and, due to the scale of shale gas exploration development, any permitted development right would require specific conditions and restrictions to mitigate any potential adverse effects and impacts of the development.
23. Permitted development rights can also require the local planning authority to consult with bodies with a relevant interest in the impact of the development and in the case of shale gas exploration this can include the Environment Agency, the Health and Safety Executive, Highways Agency, Natural England, Historic England, as well as others.

24. The consultation therefore asks what conditions and restrictions would be appropriate for a permitted development right for non-hydraulic shale gas exploration development.
25. Permitted development rights can be subject to a requirement for the developer to seek 'prior approval' from the local planning authority. This means that the local planning authority needs to agree that specified elements of the development as listed in the legislation are acceptable before work can proceed. The matters for prior approval vary depending on the type of development but can involve, for instance, a requirement for public engagement through site or written notices to allow representations from local residents and statutory consultees.
26. For shale gas exploration, local consideration of particular elements of the development may potentially be required to be approved by the relevant mineral planning authority through a prior approval process. These might include transport and highways impact, contamination issues, effect on air quality and noise, visual impacts, the proximity of occupied areas, and setting of the development in the landscape. This could include an element of public consultation.
27. The consultation notes that it is currently unclear as to what impact such permitted development rights would have - or even whether such a right would be effective given the exclusions, limitations and restrictions that it may be subject to. Consistent with other types of development permitted by the planning regime, the Government could seek to monitor and measure success by granting time-limited consent and, subject to a review, decide later whether such rights should be made permanent.
28. A permitted development right for non-hydraulic fracturing shale gas exploration could be applied for 2 years starting from the date at which the secondary legislation implementing these changes comes into force to monitor its effectiveness.

Proposed Response of the County Council

29. In summary, the proposed response at Appendix A expresses concern that the proposal to allow some forms of non-hydraulic fracturing shale gas exploration as permitted development is making a special case for this type of development, which is not consistent with its potential impacts nor with other similar types of development (which would continue to be dealt with through the normal planning permission process). If safeguards and restrictions are built into the permitted development rights process as indicated above, the consequence is likely to be an unwieldy piece of legislation which would not contribute significantly to speeding up the process. Furthermore, making shale gas exploration permitted development does not reassure the public, which expects that shale gas development is only permitted when it is environmentally safe and has been subject to local decision-making.

B. Inclusion of Shale Gas Production Projects in the NSIP Regime

30. Under the current planning regime shale gas proposals are subject to the following process before development can take place:
 - i. Obtain a Petroleum Exploration and Development Licence issued by the Oil and Gas Authority which covers the total area for onshore extraction of hydrocarbons;
 - ii. Obtain planning permission (under the Town and Country Planning Act 1990) from the Minerals Planning Authority for that area or from the Secretary of State for the Ministry of Housing, Communities and Local Government on appeal or if a planning application is called-in by him for determination; and
 - iii. Receive the relevant permits and approvals from regulators such as the Oil and Gas Authority (OGA), Environment Agency (EA) and Health and Safety Executive (HSE).
31. The regulatory regimes are separate, but complementary, to planning permission. In 2015 the Infrastructure Act introduced a range of further requirements that must be met before an operator can carry out high volume hydraulic fracturing, including assessment of environmental impacts, groundwater monitoring, community benefits and the exclusion of protected areas. The regulations ensure that the risk of seismic activity during hydraulic fracturing is assessed and that operations are monitored to allow action to be taken where necessary.
32. Under the NSIP process a developer must submit a development consent application to the Secretary of State (SoS), as part of which any likely impacts of the proposed development will have been assessed. The SoS will appoint an 'Examining Authority to examine the application, either a single inspector or a panel. The Examining Authority will make a recommendation to the SoS who will decide whether to grant or refuse consent.
33. Local communities and local authorities are encouraged to get involved throughout the NSIP process:
 - i. Pre-application stage - local communities must be consulted on the proposed project at this stage. Before commencing consultation the developer must send a draft consultation strategy (Statement of Community Consultation) to the relevant local authority for comment. Subsequent consultation must be carried out in accordance with this document.
 - ii. Acceptance – All applications must be accompanied by a Consultation Report showing that the applicant has complied with the pre-application consultation requirements and that has had regard to the responses they received. The Planning Inspectorate will consider whether this has been complied with and whether to accept the application for examination.

- iii. Examination - If an application is accepted, members of the public have the opportunity to register their interest and participate in the examination. The host local authority will automatically be an interested party at the examination stage. Local authorities can submit Local Impact Reports which the Examining Authority and SoS must have regard to.
34. The Government considers major shale gas developments which are at the production phase, rather than exploratory or assessment stage, would be most suitable for inclusion in the NSIP regime as these could be of a scale to be considered nationally significant. The current shale gas exploration and appraisal stage projects are of a smaller scale and are more appropriate for consideration under the Town and Country Planning Act 1990 by Mineral Planning Authorities as at present.
 35. Data from the first exploration sites, currently under development, will provide useful evidence and an indication of the viability of the industry. It is likely that data from multiple additional exploration and appraisal wells will be needed to give an indication of the timing on commercialisation and production of shale gas in England.
 36. This consultation seeks views on the potential timing and the criteria for major shale gas production projects to be included in the NSIP regime. As stated above, the industry is still in the exploration stage in the UK and this initial consultation is focused on preparing for a potential future production phase.
 37. Views are sought from industry, regulators and other interested parties on the timing and criteria for including shale gas production projects in the NSIP regime under the Planning Act 2008.
 38. The potential criteria which could determine if a shale gas production project is considered 'nationally significant' are:
 - Number of wells – this will vary depending on the geology and gas properties, however there may be multiple wells from one well-site and potentially multiple wells within a Petroleum Exploration and Development Licence (PEDL);
 - Recoverable Gas - other NSIPs have storage capacity included in the criteria;
 - Gas production – sites can vary in the level of production over a given time despite having similar estimated recoverable volumes. High flow rates for a number of years could be considered nationally significant;
 - Local or National Grid Connection – a production site may require a direct connection to the local gas distribution network or national transmission system, available for homes and businesses;
 - Associated Equipment – various factors could require equipment to be installed on site such as water treatment facilities, microgeneration

plants and other gas processing facilities which when combined could result in an expansive development;

- Shared Infrastructure – where there is more than one well-site operators may develop shared infrastructure, such as road networks, gas/water pipelines and communications/fibre optic cables. Such larger scale projects could be considered nationally significant.

39. The Government is also seeking views on the most appropriate stage in the industry's development for major shale gas production projects to be included in the NSIP regime. For instance, it may be appropriate to have this in place prior to the first production site application, or it may be preferable to reach an as yet undefined level of shale gas exploration and appraisal activity to inform the viability and scale of shale gas production within England.

Proposed Response of the County Council

40. In summary, the proposed response at Appendix B is that for shale gas production development that is genuinely providing infrastructure of national significance then it is appropriate to include it within the NSIP regime, consistent with other development already included. It thus becomes a matter of selecting the appropriate criteria to ensure it is only such nationally significant projects that are dealt with as NSIPs, and to ensure that development which should be dealt with under the normal planning process by the local MPA does not find its way into the NSIP process.

Equality and Human Rights Implications

41. There are no Equality and Human Rights Implications arising from this report.

Background Papers

Ministry of Housing and Local Government: Permitted Development for Shale Gas Exploration - Consultation.

<https://bit.ly/2O2QvhY>

Department for Business, Energy and Industrial Strategy: Inclusion of Shale Gas Production Projects in the Nationally Significant Infrastructure Project Regime - Initial Consultation.

<https://bit.ly/2Ls6GDx>

Appendices

Appendix A – Permitted Development Consultation - Questions and Proposed Responses.

Appendix B – Nationally Significant Infrastructure Projects - Questions and Proposed Responses