

**Open Report on behalf of Richard Wills  
Executive Director of Environment & Economy**

Report to:	<b>Environment and Economy Scrutiny Committee</b>
Date:	<b>18 September 2018</b>
Subject:	<b>Government Consultations on Planning Applications for Shale Gas Developments</b>

**Summary:**

This report sets out, for the Committee's consideration, responses to two Government consultations in respect to the planning process for shale gas developments. The first consultation by the Ministry of Housing, Communities & Local Government seeks views on the relaxation of planning controls for the exploration of shale gas. The second consultation by the Department for Business, Energy and Industrial Strategy invites comments on a proposal to include shale gas production projects within the Nationally Significant Infrastructure Project (NSIP) regime pursuant to the 2008 Planning Act.

**Actions Required:**

The Environment and Economy Scrutiny Committee is invited to consider and comment on the Government consultations in respect to the planning process for shale gas developments and endorse the submission of the Council's response to the two consultations.

## **1. Background**

The Committee will be aware of the public interest surrounding the emerging shale gas industry in England. If initial exploration is successful shale gas is expected to make a contribution to the ability of the UK to secure a greater amount of its energy needs from its own reserves. A report produced by the British Geological Society identified the potential for significant quantities of gas to be present in shale rock in a number of areas of the UK. One of the potential areas identified includes the 'Gainsborough Trough' which extends into the north-western part of Lincolnshire. Because of the nature of the shale rock and its depth, to exploit the gas from the shale rock requires the use of a technique called hydraulic fracturing which has been named 'unconventional'. This is in contrast to the 'conventional oil and gas reserves' where drilling techniques have been used for many years to exploit oil and gas from geological formations without issue. Committee members will be aware that oil and gas has been recovered from conventional geological formations in Lincolnshire for many years without any significant issues. However, there has

been, and remains public concern about the safety of hydraulic fracking techniques that will be necessary to exploit the shale gas.

In England a number of planning permissions have now been granted to permit exploratory drilling for shale gas. All of these have taken a significant amount of time to get through the planning process. Some of the permissions have been granted by the Minerals Planning Authority and others have been granted by the Secretary of State following a planning appeal.

The Government remains of the view that there are potentially substantial benefits from the safe and sustainable exploration and development of our onshore shale gas resources but is concerned about the time taken for these projects to get through the planning process. On 17th May 2018 a Government written ministerial statement set out a commitment to undertake public consultations on the planning process for shale gas developments.

One consultation is seeking views on the possibility of non-hydraulic fracturing shale exploration being granted planning permission through permitted development. The consultation is currently underway and runs to the 25<sup>th</sup> October 2018.

In the consultation the Government asserts that the UK has world class regulation to ensure that shale gas exploration can take place safely respecting local communities and safeguarding the environment. It is confirmed that any drilling that is permitted via the permitted development regime would still be required to receive the appropriate consents from the Environment Agency, Health and Safety Executive and the Oil and Gas Authority before the development can proceed.

Permitted development rights for development allow the grant of planning permission by the General Permitted Development (England) Order 2015 without the need for a formal planning application. Used proportionally this provides a simpler, more certain route to encourage development and speed up the planning system reducing the burden on developers and local planning authorities by removing the need for a formal planning application.

The Government's proposal is that any permitted development rights would only extend to the exploratory phase of oil and gas extraction which seeks to retrieve geological data to establish whether hydrocarbons are present, which in the case of shale gas may involve drilling an exploration well, and conducting a seismic survey. It is suggested that the following development should be incorporated in the General Permitted Development Order as permitted development.

**"Shale gas exploration, and for non-hydraulic fracturing operations to take core samples for testing purposes but not to allow for the injection of any fluids for the purposes of hydraulic fracturing. The right would not apply to all onshore oil and gas exploration and/or extraction operations.**

The suggested definition of what constitutes non hydraulic fracturing for permitted development purposes is:-

**Boring for natural gas in shale or other strata encased in shale for the purposes of searching for natural gas and associated liquids with a testing period not exceeding 96 hours per section test.**

The consultation sets out a series of questions. These questions and suggested responses for the Committee's consideration are set out in Appendix 1. The Committee will see that these include questions seeking views on the proposed definition of non-hydraulic fracturing for shale gas development and if permitted development rights should apply to non-hydraulic fracturing shale gas development. The third question provides a list of sensitive and military designations and asks if any of these areas should be excluded from the permitted development rights regime. Question 4 relates to the conditions and restrictions that should be imposed on any permitted development rights allowed. Question 5 asks if the process should involve the approval of the Minerals Planning Authority to such matters as transport and highway impacts or noise impacts before the grant of permitted development rights. The sixth question seeks views on if any permission granted should be permanent or restricted to 2 years. The final question relates to any potential impacts on those people with protected characteristics through the Equalities Act 2010.

**The second consultation** is from the Department for Business, Energy and Industrial Strategy (BEIS) and seeks views on the inclusion of shale gas production projects in the NSIP regime. The reason for the consultation is similar to the one above which followed the written Ministerial Statement on 17<sup>th</sup> May 2018 setting out the Government's approach to shale gas developments in the UK.

This consultation seeks views on the potential timing and criteria for major shale gas production projects to be in the NSIP regime. The consultation acknowledges that the shale gas industry is still in the exploration stage in the UK and this consultation is focused on preparing for a potential future production phase.

The consultation confirms that at this stage under the current planning regime any shale gas projects seeking to enter the production phase would need to go through the same permitting and permissions process as other onshore oil and gas production phases.

The consultation sets out in some detail the National planning regime and how this operates. In brief the Planning Act 2008 provides the legal framework for applying for, examining and determining NSIP. The types of developments within the NSIP regime relate to energy, water, waste water, road and rail transport and hazardous waste disposal. For projects falling within the scope of what is defined as a NSIP this becomes the only route for obtaining development consent. The Planning Act 2008 defines the type and scale of infrastructure developments considered to be nationally significant and therefore required to obtain development consent. The final decision for granting development consents rests with the relevant Secretary of State, for shale gas it would be BEIS.

The consultation document then sets out the procedure for determining a NSIP project and the role local communities and local authorities have in the NSIP regime. The document sets out the necessary legislative process that would need to be undertaken to move shale gas production into the NSIP regime. However it is acknowledged that given the very early stages of the shale gas industry until the first exploration sites have been developed it will not be possible to give an indication of the timing on commercialisation and production of shale gas in the UK. However the Government wants to give consideration to the thresholds that can be used to define what constitutes a major shale gas production project to make it eligible for the NSIP regime.

The potential criteria suggested that could be used to determine if a shale gas production project is major are set out below:-

- Number of Wells**
- Recoverable Gas**
- Gas Production**
- Local or National Grid Connection**
- Associated Equipment**
- Shared Infrastructure**

The consultation also seeks views on the timing for inclusion of major shale gas developments into the NSIP regime. It seeks views if this should be prior to the first production sites coming forward or at a yet to be defined stage in the exploration and appraisal activity of shale gas activity which informs the viability and scale of shale gas production in England.

The first question the consultation asks – Do you agree with the proposal to include major shale gas productions projects in the NSIP regime?

The recommended response to this question is no. The next question asks for relevant evidence to support this answer.

The suggested reasoning behind this answer is that at this stage it is far too early to make any assessment as to the scale of the shale gas industry in the UK to be able to determine if the required development would reach the necessary scale to be considered as nationally significant. To date there has been no suggestion that conventional onshore oil and gas production in England should be considered to be part of the NSIP process. To assert that shale gas production should be brought under the NSIP regime without any sound evidence raises suspicion for the reason for doing this. Until evidence is available that demonstrates why shale gas production should be treated differently than conventional oil and gas production then it would be premature to include shale gas production as being eligible for NSIP inclusion.

It will also make matters more difficult for the oil and gas industry as it will be perceived that the decision will be taken remotely from the places and residents who will be subject to the impact of the developments. It is more likely that such projects will be accepted by a local community if the decisions are made locally and by those who will be accountable to the local electorate.

The third question asks if it is considered that shale gas production projects should be brought into the NSIP regime the criteria that should be used to decide what constitutes NSIP status for shale gas production. A list of suggested criteria is provided.

The suggested response is that notwithstanding the Council's view that no shale gas project should be NSIP it is far too early to make any assessment at what level any of the suggested criteria should reach for the development to be considered major. It is not realistic at this time to give any relevant figure or threshold that would have to be reached. The industry has not developed sufficiently yet to understand what the production impacts will be to provide any figures for the suggested criteria.

Question 4 requires evidence to support response to question 3.

Question 5 asks at what stage the change should be introduced. Again notwithstanding the suggested response that the change is not necessary, should it be implemented this should be at a time when the extent of the industry and scale of activities and operation needed to support full production are better known. Before the change is implemented exploration needs to have been undertaken in a number of different locations and the level of infrastructure that would be required for full production identified to provide the evidence to confirm if the change is necessary.

## **2. Conclusion**

A response is provided to both consultations setting out the Council's support the Government's objective that the UK has safe, secure and affordable supplies of energy consistent with the Climate Change Act obligations. The Council has consistently recognised that providing the appropriate environmental requirements can be met there is the potential for further oil and gas exploration across Lincolnshire. The Council also recognise the economic opportunities that successful extraction activity could bring especially given the long established history of conventional oil and gas exploration in Lincolnshire.

The Council supports the need for timely planning decisions whilst also ensuring local communities are fully involved in planning decisions for developments that will impact on them.

The Council also recognise that the work it does as Minerals Planning Authority is part of the UK's world class regulation system that provides confidence and certainty to local communities of the effective way in which both conventional and unconventional oil and gas developments are controlled. As the Minerals Planning Authority for Lincolnshire the Council operate the planning process which is a key part of that regulatory process.

The Council's view is that to move to a process that enables certain activities associated with shale gas development to be classed as permitted development erodes that effective regulatory system and reduces the opportunity for local

community involvement in the process and ultimately confidence in the planning process. To propose permitted development rights for shale gas developments but not for conventional oil and gas developments also reduces public confidence in the process.

In respect of the consultation to include shale gas production in the NSIP regime it is too premature to be promoting this option given that there are some many unknowns about the level of activity associated with full shale gas production. Also taking the decision away from local Mineral Planning Authorities to Central Government will further erode public confidence in the planning process and again raise the question as to why this is being proposed for shale gas development but not for conventional oil and gas developments.

### 3. Consultation

**a) Have Risks and Impact Analysis been carried out?**

No

**b) Risks and Impact Analysis**

Not applicable in this case

### 4. Appendices

These are listed below and attached at the back of the report	
Appendix A	Suggested response to the questions set out in the consultation on permitted development rights

### 5. Background Papers

Document title	Where the document can be viewed
Permitted Development for Shale Gas Exploration	<a href="http://www.gov.uk/mhclg">www.gov.uk/mhclg</a>
Inclusion of Shale Gas Production Projects in the NSIP Regime	<a href="http://www.gov.uk/beis">www.gov.uk/beis</a>

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