

**REPORT TO:** Environment and Urban Renewal Policy and Performance Board

**DATE:** 14<sup>th</sup> November 2018

**REPORTING OFFICER:** Strategic Director – Enterprise, Community and Resources

**PORTFOLIO:** Physical Environment

**SUBJECT:** Government Consultations on Shale Gas

**WARDS:** All Wards

## **1.0 PURPOSE OF THE REPORT**

1.1 To inform the Board of the Council's response to the Government's consultations on changes to the regulation of Shale Gas exploitation.

## **2.0 RECOMMENDATION: That the content of this report is noted**

## **3.0 SUPPORTING INFORMATION**

3.1 Two consultations have been undertaken simultaneously by two separate Government Departments. These are as follows:

3.2 Department for Business, Energy and Industrial Strategy (BEIS)  
This consultation sought views from industry, regulators and other parties on the timings and criteria for including shale gas projects in the Nationally Significant Infrastructure Project (NSIP) regime under the Planning Act 2008.

3.3 <https://www.gov.uk/government/consultations/inclusion-of-shale-gas-production-projects-in-the-nationally-significant-infrastructure-project-nsip-regime>

3.4 Ministry of Housing, Communities and Local Government (MHCLG)  
The consultation sought 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.

3.5 <https://www.gov.uk/government/consultations/permitted-development-for-shale-gas-exploration>

- 3.6 Members should note that there are already permitted development rights (meaning Parliament has already granted an England-wide consent for this activity) for mining and minerals exploration and this already covers boreholes, seismic surveys and excavations for minerals exploration.
- 3.7 As both consultation closed on 25 October 2018, it was not possible to report the responses to Board prior to the consultation closing. The respective responses submitted can be found in Appendix 1 and 2 to this report.

#### **4.0 POLICY IMPLICATIONS**

- 4.1 The regulation of shale gas is complex and not generally understood; ultimately environmental matters are for the Environment Agency, through their environmental permits for industrial processes. Gas well integrity / safety is a matter for the Health and Safety Executive (HSE). The Government's Oil and Gas Authority will monitor compliance with the conditions of the terms in the PEDL (Petroleum Exploration and Development Licence. Finally a Hydraulic Fracturing Consent licence is needed from BEIS.
- 4.2 Despite these overlapping regulatory regimes, the only one that involves public consultation is on planning applications, at which point there is an expectation that all aspects will be considered. However, the Government is clear that separate regulatory regimes should not duplicate. To that end, the planning process is essentially concerned with compatibility, in land use terms, of the proposed development with surrounding uses (for example highway safety and amenity issues in terms of visual impact and noise). If anything, the proposals set out in the two consultations make the policies and regulatory regime that applies to this industry even more complex.
- 4.3 As the Council is a Minerals Planning Authority, the Board will be interested in the current national policy context applicable to Shale Gas. The current set of national policies is set out in the National Planning Policy Framework (NPPF) and National Planning Practice Guidance. Members should note the positive language used in national policy (see also Section 9 of this report).
- 4.4 NPPF:  
*Oil, gas and coal exploration and extraction - Paragraph 209. Minerals planning authorities should:*  
*a) recognise the benefits of on-shore oil and gas development, including unconventional hydrocarbons, for the security of energy supplies and supporting the transition to a low-carbon economy; and put in place policies to facilitate their exploration and extraction [emphasis added];*

*b) when planning for on-shore oil and gas development, clearly distinguish between, and plan positively for, the three phases of development [emphasis added] (exploration, appraisal and production), whilst ensuring appropriate monitoring and site restoration is provided for;*

4.5 *Planning Practice Guidance:*  
<https://www.gov.uk/guidance/minerals#planning-for-hydrocarbon-extraction>

## 5.0 FINANCIAL IMPLICATIONS

5.1 No immediate financial implications as the report is for information only.

## 6.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES

There are no implications for the priorities given below as this is a consultation on national policy.

### 6.1 Children & Young People in Halton

### 6.2 Employment, Learning & Skills in Halton

### 6.3 A Healthy Halton

### 6.4 A Safer Halton

### 6.5 Halton's Urban Renewal

## 7.0 RISK ANALYSIS

7.1 The main risks include further changes to Government policy, regulations and legislation.

## 8.0 EQUALITY AND DIVERSITY ISSUES

8.1 This report has no direct implications for equality and diversity issues.

## 9.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

Document	Place of Inspection	Contact Officer
Ministerial Written Statement 17 May 2018 <a href="https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-05-17/HCWS690">https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-05-17/HCWS690</a>	Online	Tim Gibbs
BEIS Guidance on Shale Gas <a href="https://www.gov.uk/government/publications/about-shale-gas-and-hydraulic-fracturing-fracking/developing-shale-oil-and-gas-in-the-uk">https://www.gov.uk/government/publications/about-shale-gas-and-hydraulic-fracturing-fracking/developing-shale-oil-and-gas-in-the-uk</a>	Online	Tim Gibbs

## **APPENDIX 1: DEPARTMENT FOR BUSINESS, ENERGY AND INDUSTRIAL STRATEGY**

### **INCLUSION OF SHALE GAS PRODUCTION PROJECTS IN THE NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECT (NSIP) REGIME**

#### **Q1: Do you agree with the proposal to include major shale gas production in the Nationally Significant Infrastructure Project regime?**

Not at this time.

#### **Q2. Please provide any relevant evidence to support your response to Question 1.**

It is premature to move major shale gas production into the NSIP project regime at the current time because:

- the consultation has not made the case or provided evidence to justify the proposed change and why the existing system of regulating onshore oil and gas cannot continue to be operated;
- the industry in the UK is not sufficiently mature to be able to set reliable thresholds for example on production rate, on-site and associated infrastructure on the basis of successful and commercially viable production;
- the national need for major shale gas production has yet to be established and it is unclear why major shale gas production is to be treated differently to some other onshore oil and gas production techniques;
- the relationship between local control of testing and appraisal and that of major production is not clearly described and there are significant concerns that a move away from localism (to the NSIP regime) could disadvantage the local communities which are impacted;
- Minerals Planning Authorities can refer shale gas production projects to the Secretary of State for BEIS for determination and the Secretary of State for BEIS can decide to direct a major shale gas production project to the NSIP regime and therefore the opportunity for such applications to be determined nationally already exists. This can already be done on a case by case basis in close co-operation with the Minerals Planning Authority.

It may well be that in the future, once shale gas production is a proven industry within the UK context and good industry practice has been established, that there may be a case for a NSIP threshold. However, currently the proposal raises substantial concerns about a lack of local community and Local Authority influence.

#### **Q3. Which criteria should be used to indicate a nationally significant project with regards to shale gas production?**

Whilst we consider it premature at this point as set out in our response to question 2 above, responses have been provided to some of the criteria listed below. This is because there may be circumstances where the scale of the proposed shale gas production project may be better addressed as an NSIP with full involvement of the Minerals Planning Authorities and (local) communities and therefore that a threshold or criteria needs to be set in the future.

(a) Number of individual wells per well-site.

No - the number of wells required that would constitute a major shale gas production development is unknown as there are too many variables in terms of scale of development, potential resource and the productivity of that resource.

- (b) The total number of well sites within the development.  
Not at this time – the above-ground location of well pads is more likely to be governed by land use constraints and infrastructure availability so adopting this criterion alone could encompass quite a wide range of sites.
- (c) Estimated volume of recoverable gas.  
Not at this time. How this could be calculated has not been defined in the consultation documents. There is potential for this to be used in the future when the gas production rates of different geological formations are better understood through for example a larger sample site of appraisal wells, flow tests and sustained production rates. This will need to be informed by evidence and industry practice - industry estimates of potential resource vary widely as does the efficiency of extraction. Potentially to be used in combination with b, d, e and g.
- (d) Estimated production rate.  
This is likely to be a better criterion provided there is sufficient certainty that the flow rates can be maintained over the lifetime of the well as there is often a decay in production rate without intervention (re-drilling and re-fracturing). Potentially to be used in combination with b, c, e and g but not alone.
- (e) Gas connection  
Connection to the national gas network could be a criterion but should not be used alone – see criteria b, c, e and g.
- (f) Associated equipment on-site.  
No – each site should be considered on a case by case basis as this will be widely influenced by local market, land use, infrastructure and market opportunities e.g. gas or electricity offtake, private wire etc. Such matters would be better addressed through the EIA process and thresholds there.
- (g) Shared infrastructure for multiple-well sites.  
Possibly in the future in combination with criteria b, c, d and e but would need to be informed by site-specific production experience and practice in the UK onshore oil and gas context.
- (h) Combination of above criteria  
Possible in the future as set out above.
- (i) Other.  
No suggestions.

**Q4. Please provide any relevant evidence to support your responses to Question 3.**

See above.

**Q5. At what stage should this change be introduced?**

Not at the present time. Whilst it is helpful to proactively explore options to facilitate production to secure energy supplies in England, the shale gas industry is currently not proven or sufficiently mature to justify and provide evidence for an immediate change. The consultation is also very unclear as to how this proposal would relate to commitments and targets to address climate change and re-balance the energy generation mix towards lower carbon and / or renewable sources. A view and further consultation will be needed once the industry has progressed to a sufficiently large scale to be supported by sufficient evidence and good practice to justify any NSIP criteria.

Irrespective of the criteria to be used and the timing of any changes, the Minerals Planning Authorities and (local) communities must be engaged in a meaningful way as part of the NSIP process.

**Q6. Please provide any relevant evidence to support your responses to Question 5.**

It is extremely difficult to separate this consultation from the Housing, Communities and Local Government consultation on permitted development. When the two proposals are considered together it raises a significant concern for Local Authorities and the communities they represent that there is a significant and un-justified move away from localism and local control. Whilst the undertaking to provide a consultation on community participation and engagement in autumn 2018 is welcomed, the proposals should have been released alongside the above consultations.

Furthermore when the two consultations are taken together this results in complication of regulatory processes, which previously should have operated in an integrated manner as follows:

- Exploration stage – permitted development;
- Testing and appraisal – local control via Minerals Planning Authority;
- Production stage – NSIP or local depending on criteria.

Given that the development of such onshore oil and gas technologies are largely an iterative process, this regulatory separation makes operation of an integrated approach more challenging.

There is a widespread local concern that the early adoption of NSIP criteria when the industry has yet to be proven in the UK context is premature and will reduce the ability of local communities and Local Government to influence decisions. The proposal at this time therefore raises concerns in terms of local accountability and an intention to move away from localism.

Irrespective of NSIP – LAs need to be resourced appropriately to be able to response to shale gas development proposals.

See comments in Qu 5. Above in relation to climate change.

## **APPENDIX 2: MINISTRY OF HOUSING, COMMUNITIES AND LOCAL GOVERNMENT CONSULTATION**

### **PERMITTED DEVELOPMENT FOR SHALE GAS EXPLORATION**

#### **General Comment:**

It is extremely difficult to separate this consultation from the Department for Business, Energy and Industrial Strategy consultation on Nationally Significant Infrastructure Projects for shale gas production development. When the two proposals are considered together it raises a significant concern for Local Authorities and the communities they represent that there is a significant and un-justified move away from localism and local control.

This is particularly a concern when the consultation document refers to an intended proposal to strengthen community engagement through consultation (paragraph 7) yet this is not available in time to inform responses to both the NSIP and permitted development (PD) rights consultations. Such an approach does not provide the necessary certainty that local communities require.

It remains premature to consult on PD rights for shale gas exploration for three reasons:

- As set out in paragraph 2, the shale gas industry in the UK is immature and there is little certainty that it will develop at scale; and
- Seismic exploration can take place over very wide areas with a range of constraints and sensitivities that need to be taken into consideration – some of these are seasonal and temporal in nature and Local Authorities may still have legislative responsibilities under other regimes e.g. as a Competent Authority under the Habitats Regulations. This diffuse nature of the seismic survey activity should be referred to in paragraph 19; and
- Whilst the exploration phase generally is likely to have relatively low environmental impacts due to the nature, scale and duration of the activities, inclusion of it as PD raises local community concerns that it could lead to more significant and potentially locally environmentally damaging activities some of which may also have wider ranging implications for climate change.

Paragraph 11 is considered not to be a representative statement as the proposed technology is considered by many to be controversial and the assessment and evidence requirements do need to be considered on a case by case basis. These factors, plus the emerging policy approach, the immature nature of shale gas, and the information submitted by the industry, all contribute significantly to time taken for consent. With increasing applications and local planning and industry experience and awareness it is reasonable to assume that the timescale will reduce for the exploratory phases.

It has yet to be ascertained what decision-taking regime is needed to be fit for the future development of shale. The only way this will be known is when there is sufficient evidence and a representative number of applications have successfully been proven at the production stage to be making a meaningful contribution to the UKs energy mix and energy strategy.

Furthermore, the case for why shale gas as a technology should be treated differently to other onshore oil and gas technologies has yet to be made. This is not

established in the consultation document e.g. paragraph 20. The case remains unproven why shale should be treated differently to other onshore oil and gas developments and possibly other energy generations projects. This is a particular concern within the context of the energy strategy and different technologies to secure energy supply given that shale gas development may be relatively inefficient in terms of energy generation in terms of extraction and generation efficiency and resultant emissions compared to other technologies.

Therefore, it is considered that the grant of PD rights for shale exploration activities is premature and should be reviewed in 2 years with a larger sample of applications and informed by those data.

### **Permitted Development Rights**

Paragraph 17 should refer to the Habitats Regulations and also be clear where the Competent Authority responsibility lies – it is assumed that this will remain with the Minerals / Local Planning Authority and not Ministry of Housing, Communities and Local Government.

#### **Question 1**

- a) Do you agree with this definition to limit permitted development rights to non-hydraulic fracturing shale gas exploration?**

No.

- b) If No, what definition would be appropriate?**

Whilst we do not agree that it should be PD at this time, any definition should be supported by clear evidence to justify the 96-hour time limit and also exclude environmentally sensitive areas – which again should be defined.

#### **Question 2**

##### **Should non-hydraulic fracturing shale gas exploration development be granted planning permission through a permitted development right?**

No – for the reasons already set out in our general comments it should not be granted PD at this time because of the immaturity or embryonic stage of the shale industry within the UK context and the very limited evidence used to justify such a proposal. The PD issue should be revisited when there is a larger evidence base and a sensible review period would be 2 years.

#### **Question 3**

- a) Do you agree that a permitted development right for non-hydraulic fracturing shale gas development would not apply to the following?**

Yes we do but:

- each of those listed should be defined for example there is no clear definition of what sites of archaeology interest constitute and this must be precisely defined
- the list is in-complete. It is a significant omission that European and International nature conservation designations have been excluded from the list as these are particularly environmentally sensitive and could be affected by a range of activities associated with exploration activities. The list should be amended to include the following designations Ramsar sites, Special Areas of Conservation

(SAC) and Special Protection Areas (SPAs). Consideration also must be given to functionally linked habitat associated with these designations.

b) N/A

**c) Are there any other types of land where a permitted development right for non-hydraulic fracturing shale gas exploration development be granted planning permission through a permitted development should not apply**

Yes – see above – Ramsar sites, SACs, SPAs and functionally linked habitat and also National Nature Reserves. This safeguard is necessary even though PEDL licensed areas should exclude these designations as there is still potential for exploration activities to take place within them as part of the process of gathering evidence in relation to the potential resource and geology.

#### **Question 4**

**What conditions and restrictions would be appropriate for a permitted development right non-hydraulic fracturing shale gas exploration development?**

Whilst we consider that it is premature to grant PD rights as set out in the above responses, secondary criteria are also needed for a tier of local constraints and non-statutory designations such as:

- Local nature reserves and local sites (local wildlife and geological sites);
- Priority habitats;
- Ecological network areas such as Nature Improvement Areas;
- Any restrictions or conditions that enable a conclusion of no likely significant effects through the HRA process.

In addition, the PD consultation appears to downplay the extensive spatial area for seismic testing and jumps to an approach which is site-focussed.

#### **Question 5**

**Do you have comments on the potential considerations that a developer should apply to the local planning authority for a determination, before beginning the development**

Yes – see answer to Question 4 and each proposal will need to be considered on a case by case basis given the diversity of potential constraints and special local considerations. This is particularly important as exploration activities can cover large areas.

We are concerned that when the consultation requirements for these local considerations are taken into account this could introduce time-delays that may, in reality be little different in terms of timescale and Local Planning and Mineral Authority consultation requirements and support arrangements than a planning application for exploration. In addition, the proposed approach would also result in an increased financial burden on the local authority resources as any prior approval fee is likely to be less than that for a planning application.

#### **Question 6**

**Should a permitted development right for non-hydraulic fracturing shale gas exploration development only apply for 2 years, or be made permanent?**

As set out we do not consider PD is appropriate. Should Government proceed on this basis it should be restricted to 2 years.

### **Question 7**

**Do you have any views regarding people with protected characteristics as defined in section 149 of the Equality Act 2010?**

No. However, care needs to be exercised that shale gas development does not disadvantage certain communities and groups on the basis of wealth and social deprivation given that these areas are highly likely to have lower land values and therefore potentially lower development costs for the shale industry.

This perceived impact on local communities may however be offset through job and wealth creation potentially. However, current evidence shows the economic benefits of the exploration phase to be very limited and temporary.