

16th October 2018

Wards: All Wards

Government Consultation – Permitted development for shale gas exploration

Report of the City Planning Manager

1. Purpose of the Report and Summary

- 1.1 It is the government's view that there are potentially substantial benefits from the safe and sustainable exploration and development of our onshore shale gas resources. The government also remains committed to making planning decisions faster and fairer for all those affected by new development. The Government is therefore consulting on a proposed change to how decisions are made about schemes for extraction of shale gas.
- 1.2 The Government announced in a joint Written Ministerial Statement on 17 May 2018 the intention to consult on the principle of whether non-hydraulic fracturing shale gas exploration development should be granted planning permission through a permitted development right. A consultation document has been published with a consultation period to end 25th October. This report summarises the issues raised by the consultation and suggests answers to each of the specific questions that the government asks in the document..
- 1.3 The government has also published a consultation on whether to include Shale Gas Production in the Nationally Significant Infrastructure Project regime under the Planning Act 2008. This would relate to large scale production operations and not earlier exploration of appraisal phases.
- 1.4 The report seeks approval of the suggested response to the consultations or requests appropriate amendments to be made; and for the agreed response to be sent to Government.

2. Recommendations

- 2.1 That a copy of the responses set out at Appendix A of this report, plus any further comments made by Committee, be sent to DCLG.

3. Reasons for Recommendations

3.1 The consultation offers an important opportunity for the Council to make its views known on issues related to future decision making in relation to extraction of shale gas.

4. Impact on other Executive Committees (including Area Committees)

4.1 The report seeks agreement on a response to a government consultation and does not at this stage outline an actual change in government policy. As the Minerals Planning Authority for its administrative area any issues relating to change in government policy will impact on Planning Committee decisions rather than other Executive Committees.

5. Background

5.1 Often referred to as 'fracking', Shale Gas extraction has stimulated significant debate and dispute. The Government has issued two documents for consultation. One document seeks 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 when it would be appropriate. The other document seeks views on whether to include **major shale gas production projects in Nationally Significant Project regime**. Both documents are considering changes to the decision making process involved in whether to approve such schemes.

Permitted development rights for non-hydraulic fracturing shale gas exploration development

5.2 Planning Permission is needed if work being carried out meets the statutory definition of development which is set out in section 55 of the Town and Country Planning Act 1990. Development does not in all instances require a planning application to be made for permission to carry out the development. In some circumstances development will be permitted under national permitted development rights as defined by the General Permitted Development Order 2015 (as amended).

5.3 The proposal seek to shift the 'exploration' stage of any shale gas extraction operation to be permitted development. Typically shale gas extraction is characterised as having 4 phases; exploration; appraisal; production; and ultimately decommissioning and restoration. Only the first phase of 'exploration' would be subject to permitted development rights under the government's proposal. All other phases would still be required to obtain planning permission from the relevant mineral planning authority.

- 5.4 The government makes clear that a key problem that it is trying to address is the speed of decisions being made. It is effectively seeking to provide greater flexibility to the exploration phase of the process to allow operators more scope to find gas deposits before then moving towards appraisal and production in any particular area. The definition of what the Government propose could be considered to be permitted development 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 (4 days) per section test.**
- 5.5 While not within the above definition the document refers to 'non-hydraulic fracturing' being the subject of permitted development rights. This process differs from hydraulic in that it does not use a process where a mixture of water, sand and possibly some chemicals are pumped at pressure down a borehole into the rock unit. The Government proposes that schemes involving hydraulic fracturing would still be required to obtain planning permission from the relevant mineral planning authority.
- 5.6 Permitted development rights would take away the need to obtain planning permission from the relevant mineral planning authority. Hull City Council is the Minerals Planning Authority for its administrative area. Permitted development rights can still impose specific conditions and restrictions to mitigate any potential adverse effects and impacts of development. Incorporating these within the nationally prescribed permitted development rights would however standardise the approach, and these would be outlined in the legislation that would create the national permission for development.
- 5.7 It should be noted that Planning Committee recently agreed the East Riding and Hull Joint Minerals Local Plan (JMLP) should be submitted to Government for Examination. Policy EM6 of the JMLP 'Extraction of Shale Gas (Hydraulic Fracturing)' provides conditional support for exploration, appraisal and production phases of gas extraction. The consultation would not therefore be an opportunity to express opposition to shale gas extraction taking place, but to provide views under what framework decisions should be made.

Inclusion of Shale Gas Production in Nationally Significant Infrastructure Project Regime

- 5.8 The Government is also consulting on a proposal to include major shale gas **production** projects in the NSIP regime. This would only apply to larger scale production and not to earlier phases of exploration and appraisal that would typically be small scale.

- 5.9 For projects falling within the Nationally Significant Infrastructure Project, this becomes the only route for obtaining planning 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 from, in the case of energy infrastructure, the SoS for BEIS.
- 5.10 The NSIP regime sets out a prescribed decision making framework considering established need for the project, timescales for examination and determination of applications for a development consent order. While the process is in the hands of the Secretary of State there are opportunities for local communities and local authorities to be involved within the various prescribed stages in the NSIP regime.
- 5.11 The Government makes clear that this is only an initial consultation. Secondary legislation would be required to implement such an approach and this itself would have to be subject to consultation. At this stage it is difficult to be sure of how a nationally significant production phase of shale gas would emerge. Clearly the industry, particularly in the Hull and East Riding area is only in the initial stages of considering potential exploration.
- 5.12 The scale of a project considered to be an NSIP would more than likely preclude it from being developed within the Hull boundary in terms of operational activities above ground. However there could be situations where operations could impact on the city.

6. Issues for Consideration

- 6.1 The main issue raised by the first consultation document is whether the Council feel that it would be appropriate for decisions about exploration for shale gas to be dealt with through the permitted development regime. It is worth noting that it is unlikely that the Council, as Minerals Planning Authority for its area, would receive applications for schemes within the city boundary, but would potentially have interest in schemes proposed in adjoining areas, where there might be concerns over potential impacts. The JMLP makes clear that while it is still unknown whether there is potential for this activity in the Hull and East Riding Area, or if the geology is suitable. It does expect proposals to come forward over the plan period – and these will clearly be for exploration in the shorter term.

- 6.2 The Government seeks views on whether its definition of what permitted development rights would cover is appropriate. (see para 5.4 above) Exploration covers a range of activities including geological mapping, geophysical / seismic investigations and the drilling and investigation of wells and boreholes to assess prospective sites in more detail. The suggested definition does not refer to these wider activities. Ultimately the only way to firmly establish if shale gas is present is to drill a borehole. Fracturing might also be required, whether hydraulic or non-hydraulic. The definition of what would constitute permitted development that is provided in the consultation document does not refer to non-hydraulic fracturing despite this being the mainstay of how the proposal is introduced. Non hydraulic fracturing is not explained in contrast to hydraulic which it is stated would still require planning permission. Clarity is therefore needed to understand what 'boring' for natural gas will involve and how this differs in potential impact as compared to hydraulic fracturing that would still be subject of planning permission. In the absence of this clarification it is difficult to answer the question as to whether non hydraulic fracturing shale gas exploration development be granted planning permission through a permitted development right. As currently defined it would appear difficult to provide clarity of how any activities could be appropriately monitored or enforced should problems arise.
- 6.3 Doubt is also raised by a recently published report prepared for DEFRA in 2015 – 'Potential Air Quality Impacts of Shale Gas Extraction in the UK'. This report questions whether it is possible to determine the effectiveness of UK regulations on mitigating emissions or whether the development of new legislation may be appropriate. This doesn't promote a situation that takes away the ability of the local planning authority to fully assess local air quality impacts.
- 6.4 The Government seeks views on where permitted development rights would not apply. Permitted development rights do exist for certain types of minerals workings including that for petroleum workings. These already exclude provision of permitted development rights in certain defined areas. Of key importance to the city would be development impacting on the Humber Estuary SSSI, as well as the Ground Water Protection Area as defined within the Local Plan, as well as that which could be impacted by any flood events within flood zone 3. It would be appropriate therefore to define these types of sites to ensure permitted development rights do not apply within these areas.
- 6.5 Permitted development could be accompanied by standard conditions that would typically address planning concerns that might otherwise be addressed through a planning application. A question of the consultation is what conditions might be imposed for shale gas exploration. Policy EM6 of the JMLP suggests a number of factors that should be considered necessary to enable support of proposals for shale gas exploration. These could form the basis for any conditions to be attached to any permitted development right to ensure concerns are

addressed.

- 6.6 A condition of any permitted development right can be a requirement that the developer has to seek prior approval from the local planning authority. The consultation asks what considerations a developer should apply to the local planning authority for a determination. Of most likely interest to the city in terms of considerations of elements of the development would be transport and highways impact, contamination issues, air quality and noise impacts, groundwater and other contamination issues, and site restoration. Exploration would still be the subject of full regulatory control of EA, OGA and HSE to ensure operational and environmental safety, although doubts have been sown as to need for new legislation for regulations to be effective. Prior Approval would in any event allow the views of statutory consultees to be aired in this wider context.
 - 6.7 The consultation asks whether the permitted development right should be time limited and only apply for 2 years from when it was implemented. This would be sensible to allow full review of the impacts and outcomes of the approach.
 - 6.8 Ultimately, given issues raised for each of the elements raised, the lack of clarity over the definition of what would constitute permitted development, and the perceived needs for significant controls to be exerted on any permitted development, including need for prior approval, it would appear more sensible to retain the requirement for exploration proposals to seek planning permission.
 - 6.9 The Government is also seeking views on the potential for proposals for larger scale production of shale gas to be determined through the NSIP regime. The Government seeks evidence to justify the response to this question in terms of the principle and of what would be an appropriate threshold for inclusion of a project; and when a change to including projects within the NSIP regime would be appropriate. In the absence of a clear understanding of what would constitute a major shale gas production facility in this area, still only considering potential exploration projects, it is very difficult to be able to evidence a response. It would potentially be better to include all stages of shale extraction within NSIP if that's the direction that Government want to go, however this council considers all planning decisions should be taken locally so would support all shale gas associated developments to require consent locally. Smaller operations could ultimately grow to larger scale production, leading to a mixture of decision making mechanisms from potentially PD to planning application (appraisal and testing) then to NSIP if large scale production considered feasible.
7. Options and Risk Assessment

- 7.1 Committee are being asked to agree a response to the consultation documents published by the Government. The options available are to agree the suggested text in Appendix A; to suggest amendments to the suggested responses, or not to respond.
- 7.2 The risk of not submitting comments is to lose the opportunity to influence the future approach to decision making regarding shale gas extraction proposals. Permitted Development Rights could have an important bearing on the outcome of proposals either within the city boundary or in neighbouring areas where impacts could be wide.
8. Consultation
- 8.1 Detail the relevant consultation that has been undertaken and how this has influenced the recommendations.
9. Comments of the Monitoring Officer(Town Clerk)
- 9.1 The function of making recommendations on government proposals is delegated to the Planning committee and it is appropriate that the Council responds to this consultation. The recommendations in the report are supported
10. Comments of the Section 151 Officer (Director of Finance and Transformation)
- 10.1 The section 151 officer notes the report and has no further comments.
11. Comments of the City Human Resources Manager and compliance with the Equality Duty
- 11.1 There are no staffing or wider human resources implications identified in the report.
12. Comments of Overview and Scrutiny

12.1 This report has not been subject to pre-decision scrutiny. (Ref: Sc5059).

Insert name of Corporate Director

Contact Officer: Roger Gray Telephone No.: 612614

Officer Interests: None

Background Documents: - A list of background documents must be included. These documents are then available (if not exempt) for public inspection.

Implications Matrix

This section must be completed and you must ensure that you have fully considered all potential implications

This matrix provides a simple check list for the things you need to have considered within your report

If there are no implications please state

I have informed and sought advice from HR, Legal, Finance, Overview and Scrutiny and the Climate Change Advisor and any other key stakeholders i.e. Portfolio Holder, relevant Ward Members etc prior to submitting this report for official comments	Yes
I have considered whether this report requests a decision that is outside the Budget and Policy Framework approved by Council	Yes
Value for money considerations have been accounted for within the report	Yes
The report is approved by the relevant City Manager	Yes
I have included any procurement/commercial issues/implications within the report	Yes
I have considered the potential media interest in this report and liaised with the Media Team to ensure that they are briefed to respond to media interest.	Yes
I have included any equalities and diversity implications within the report and where necessary I have completed an Equalities Impact Assessment and the outcomes are included within the report	Yes
Any Health and Safety implications are included within the report	Yes
Any human rights implications are included within the report	Yes
I have included any community safety implications and paid regard to Section 17 of the Crime and Disorder Act within the report	Yes
I have liaised with the Climate Change Advisor and any environmental and climate	Yes

change issues/sustainability implications are included within the report	
I have included information about how this report contributes to the City Plan/ Area priorities within the report	Yes
I have considered the impact on air quality, carried out an appropriate assessment and included any resulting actions or opportunities necessary to improve air quality in the report.	Yes

Appendix A

Responses to Permitted Development consultation questions

Question 1

- a. Do you agree with the definition to limit a permitted development right to non-hydraulic fracturing shale gas exploration.**
- b. If No, what definition would be appropriate?**

No. It is not considered appropriate to make any element of non-hydraulic fracturing permitted development given the large number of environmental constraints that would prevent hydraulic fracturing.

Question 2

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

No. Shale gas exploration can have significant land use implications both in terms of the physical structures used as well as activities taking place on and off site to facilitate exploration. These all raise issues that should be properly addressed through the submission of a planning application.

Question 3

- a. Do you agree that a permitted development right for non-hydraulic fracturing shale gas exploration development would not apply to the supplied list of site types.**
- b. If no, please indicate why**
- c. Are any other types of land where a permitted development right for non-hydraulic fracturing shale gas exploration development should not apply?**

Yes, additional types of sites would include Ramsar sites and sites within Flood Zone 3 as unsure of implications if extraction / exploration facilities flooded

Question 4

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

None as don't consider it is appropriate as permitted development.

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?

If a prior approval approach is taken the above mentioned matters should be included but not sure how the public consultation element would work given this involvement may raise issues not under consideration and could create further conflict and distrust of the planning process.

Question 6

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

It shouldn't apply but if so a 2 year period would seem appropriate.

Question 7

Do you have any views on the potential impact of the matters raised in this consultation on people with protected characteristics as defined in section 19 of the Equalities Act 2010.

No

Response to NSIP consultation questions

Question 1

Do you agree with the proposal to include major shale gas production projects in the Nationally Significant Infrastructure Project regime?

No

Question 2

Please provide any relevant evidence to support you response to question 1

Hull City Council has successfully determined large scale contentious applications; including an 'energy from waste' facility, and development of new port and manufacturing facilities at Green Port Hull. Planning decisions should be taken locally by competent planning authorities.

Questions 3 – 6

These questions relate to details that are not appropriate to answer since the Council do not agree with the principle of major shale gas production projects being included in the NSIP regime.