

DECISION ITEM

| REPORT OF | MEETING | DATE | ITEM NO |
|---|--------------------|------------------|---------|
| HEAD OF PLANNING & HOUSING | PLANNING COMMITTEE | 5 SEPTEMBER 2018 | 5 |
| PERMITTED DEVELOPMENT FOR SHALE GAS EXPLORATION - MINISTRY OF HOUSING, COMMUNITIES AND LOCAL GOVERNMENT CONSULTATION | | | |

PUBLIC ITEM

This item is for consideration in the public part of the meeting.

SUMMARY

On 19 July 2018, the Ministry of Housing, Communities and Local Government (MHCLG) launched a consultation exercise to seek views on the principle of granting planning permission for non-hydraulic fracturing shale gas exploration development through a permitted development right.

The consultation covers:

1. Whether to introduce a permitted development right for non- hydraulic fracturing shale gas exploration development
2. Definition of non-hydraulic fracturing shale gas exploration
3. Development not permitted
4. Development conditions and restrictions
5. Prior approval
6. Time-limited or permanent permitted development right
7. Public sector equality duty

It is considered that the scale of development involved in the establishment of shale gas exploration sites is so substantial and the attendant environmental impacts potentially so significant that it would be inappropriate for such development to be controlled through a permitted development right.

The consultation runs alongside a separate consultation from the Department for Business, Energy and Industrial Strategy regarding the Inclusion of Shale Gas Production in the Nationally Significant Infrastructure Project (NSIP) Regime. As the council has already established a position to object to this proposal (Planning Committee 7 March 2018), this parallel consultation is not addressed in paragraphs 17-23 of this report.

RECOMMENDATION

1. That Fylde Council object to the introduction of a permitted development right for non-hydraulic fracturing shale gas exploration and respond to the consultation questionnaire as set out in appendix A.
2. That given the limited opportunity to expand upon the answers to the questions set out in the consultation questionnaire, the Head of Planning and Housing be authorised to write under separate cover to the Ministry of Housing, Communities and Local Government to expand upon the reasoning behind Fylde Council's response as set out in this report.

SUMMARY OF PREVIOUS DECISIONS

None

CORPORATE PRIORITIES

| | |
|--|---|
| Spending your money in the most efficient way to achieve excellent services (Value for Money) | |
| Delivering the services that customers expect of an excellent council (Clean and Green) | |
| Working with all partners (Vibrant Economy) | |
| To make sure Fylde continues to be one of the most desirable places to live (A Great Place to Live) | √ |
| Promoting Fylde as a great destination to visit (A Great Place to Visit) | √ |

REPORT

Background

1. The UK Government considers that domestic onshore gas production, including shale gas, has the potential to play a major role in securing energy supplies and creating economic benefits locally and nationally, including new jobs. As such they believe that there are potentially substantial benefits from the safe and sustainable exploration and development of the UK's onshore shale gas resources.
2. The Government has launched a consultation in order 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 the circumstances in which it would be appropriate. The consultation relates solely to the exploration phase and it is not proposed to extend the permitted development right to the appraisal and production operations of shale gas extraction.
3. Further to this consultation, the Government proposes to strengthen community engagement by consulting on whether developers should be required to conduct pre-application consultation prior to shale gas development. This separate consultation will be launched in autumn 2018.
4. The Government states that it remains committed to making planning decisions faster and fairer for all those affected by new development, and to ensure that local communities are fully involved in planning decisions that affect them. However, recent decisions on shale exploration planning applications remain slow when judged against a statutory time frame of 16 weeks where an Environmental Impact Assessment is required. The consultation advises that, where there has been agreement on time extensions, applications determined by mineral planning authorities have taken up to 83 weeks for decision.
5. 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.
6. Permitted development rights are a national grant of planning permission. They are intended to 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. Since 2013 the Government have brought forward a range of new permitted development rights including change of use of offices, shops and other high street uses and agricultural buildings to residential use, installation of digital communications masts, and increased rights to extend homes and business premises.
7. Permitted development rights are set out in the Town and Country Planning (General Permitted Development) (England) Order 2015. The Order sets out both what is allowed under each permitted development right, and any exclusions, limitations and conditions that apply to comply with the legal duty to mitigate the impact of development granted under permitted development. For example, most permitted development rights are subject to conditions that seek to minimise their impact and to protect local amenity, others are subject to geographic exclusions to ensure environmental protections are maintained in particular areas such as National Parks or Conservation Areas. All however, are subject to clearly defined restrictions to

cover the specific nature and scope of the operation or quantum of development that would benefit from a permitted development right.

8. Where a proposed development does not fall within the permitted development limits, this does not mean that the development is not acceptable and cannot be built, but that an application for planning permission needs to be made in order that the local planning authority can consider all the circumstances of the case.
9. 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.
10. The consultation runs alongside a separate consultation from the Department for Business, Energy and Industrial Strategy regarding the “Inclusion of Shale Gas Production in the Nationally Significant Infrastructure Project (NSIP) Regime”. That review only relates to production phase projects, however, and not exploration or appraisal projects which would continue to be considered under the Town and Country Planning Act 1990. Fylde Council has already established its objection to the inclusion of Shale Gas Production within the NSIP regime.

Proposed definition of non hydraulic

11. 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 a (testing) appraisal stage, and then a production stage.
12. The consultation states that the proposed permitted development right would only apply to shale gas exploration, and for non-hydraulic fracturing operations to take core samples for testing purposes as the Government considers that it would not be appropriate for it 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. To also ensure that no hydraulic fracturing would take place and to ensure that the permitted development right is fit-for-purpose to align with the 2017 Conservative Manifesto commitment, it would be necessary to tightly define in legislation what development is permitted. Any permitted development right for non-hydraulic fracturing shale gas exploration would not be designed to circumvent the regulatory processes currently culminating in the hydraulic fracturing consent provisions.
13. Government proposes that an appropriate definition could be:

‘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’.
14. Where a developer intends to use hydraulic fracturing as part of the operation, or as would be necessary at the appraisal stage, they would be required to obtain planning permission from the relevant mineral planning authority.

Interaction with other legislation

15. The Government states that it remains committed to ensuring that the strongest environmental safeguards are in place. The formulation of any permitted development right will have regard to environmental and site protection laws such as those for Areas of Outstanding Natural Beauty, Scheduled Monuments, conservation areas, Sites of Special Scientific Interest and World Heritage Sites, National Parks or Broads.
16. By law, development which is likely to have significant effects on the environment requiring an Environmental Impact Assessment would not be permitted development. If the proposed development would fall into Schedule 2 of the Environmental Impact Assessment Regulations, it would only be permitted where a local planning authority has issued a screening opinion determining that the development is not Environmental Impact Assessment development, or where the Secretary of State has directed that it is not Environmental Impact Assessment development, or that the development is exempt from the Environmental Impact Assessment Regulations.

Assessment and proposed response

17. Your officers have considered the proposals put forward in the consultation and consider that there are four main areas of concern.

Inappropriate use of a permitted development right to regulate major development

18. When the Town & County Planning Act 1947 effectively nationalised development rights, the concept of permitted development was introduced to prevent minor proposals ‘clogging up’ the decision making process. Over the years (particularly over recent years) the range of developments that may benefit from permitted development has been extended so that certain major developments may now be regarded as permitted development.

The proposal would not result in any reduction in administrative burden

19. The expansion of permitted development rights has removed traditional controls over an extensive range of development. In order to comply with the Environmental Assessment Directive, Government proposes that, in order to be considered permitted development, the local planning authority would need to first carry out an Environmental Impact Screening Assessment and so the introduction of a permitted development right would not result in the complete removal of burden from the authority. The prior approval process for permitted development allows a local planning authority to oversee a very limited series of issues and so does not allow the local planning authority to secure a range of planning requirements on new developments. Under a regime of this nature, the local planning authority would still have to assess the prior approval submission and, again, the administrative burden would not be entirely removed.

Reduced opportunity to consider and mitigate the full range of potential impacts

20. The planning system addresses the complex interrelationship between people and their environments. Accordingly, the scope of planning is concerned not simply with land use, but with broader social, economic and environmental implications for people and places. Whilst the consultation emphasises that shale gas exploration activity 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), these regulators would not consider the wider social, economic or environmental impacts that are controlled through the spatial planning process or the combined impacts of multiple sites coming forward.

Further erosion of public confidence in the planning system

21. The Royal Institute of Chartered Surveyors’ (RICS) review of permitted development¹ found that, of all the evidence gathered for the Review, it was the extent and outcomes of the expansion of permitted development which gave the clearest sense of the weakness of planning in upholding wider public interest in outcomes.
22. Given the controversial nature of planning applications relating to shale gas exploration and extraction, it is considered that the introduction of a permitted development right would further erode the public’s faith in the planning system. If, as stated in the consultation, Government wish to “ensure that local communities are fully involved in planning decisions that affect them” it is considered that this should be carried out through the submission of a full planning application that would allow all material planning considerations to be taken into consideration.

Conclusions

23. The performance regime for development management is focused on the speed of processing, which has come to be seen as the key determinant of success. Additional tests on the number of appeals upheld against an authority are designed to drive conformity with national policy. There is no performance indicator for sustainable development or community participation and it is considered that the effectiveness and success of the planning system cannot be measured simply by reference to the length of time taken to determine planning applications.
24. The Government states that it remains committed to ensuring that the strongest environmental safeguards are in place to regulate shale gas exploration. It is considered that the most appropriate way to demonstrate this commitment is for the shale gas exploration projects to be subject to the scrutiny of a full planning application.
25. The consultation sets out a series of questions. These are repeated as appendix A with the council’s proposed response.

¹ B Clifford: *Extending Permitted Development Rights in England: The Implications for Public Authorities and Communities*. Royal Institution of Chartered Surveyors, 2018

| IMPLICATIONS | |
|---|---|
| Finance | There are no financial implications arising directly from this report |
| Legal | None |
| Community Safety | None |
| Human Rights and Equalities | None |
| Sustainability and Environmental Impact | None |
| Health & Safety and Risk Management | None |

| LEAD AUTHOR | CONTACT DETAILS | DATE |
|-------------|--|-------------|
| Mark Evans | Mark.evans@fylde.gov.uk & Tel 01253 658460 | August 2018 |

| BACKGROUND PAPERS | | |
|---|-----------|---|
| Name of document | Date | Where available for inspection |
| Permitted development for shale gas exploration - MHCLG | July 2018 | https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/726916/Consultation_document_-_shale_gas_permitted_development.pdf |

Attached Documents

Appendix A - Proposed Responses

Appendix A - Proposed Responses

Question 1

a) Do you agree with this definition to limit a permitted development right to non-hydraulic fracturing shale gas exploration? Yes/No

(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.)

Proposed FBC Response

Yes

b) If No, what definition would be appropriate?

Question 2

Should non-hydraulic fracturing shale gas exploration development be granted planning permission through a permitted development right? Yes/No

Proposed FBC Response

No

Question 3

a) Do you agree that a permitted development right for non-hydraulic fracturing shale gas exploration development would not apply to the following? Yes/No

- Areas of Outstanding Natural Beauty
- National Parks
- The Broads
- World Heritage Sites
- Sites of Special Scientific Interest
- Scheduled Monuments
- Conservation areas
- Sites of archaeological interest
- Safety hazard areas
- Military explosive areas
- Land safeguarded for aviation or defence purposes
- Protected groundwater source areas

Proposed FBC Response

Yes, subject to additional areas set out in answer to Q 3c below

b) If No, please indicate why.

c) Are there any other types of land where a permitted development right for non-hydraulic fracturing shale gas exploration development should not apply?

Proposed FBC Response

If a permitted development right is conferred, in addition to the above list, it should not include sites that are within:

- Valued Landscapes
- Locally designated ecological areas
- Best and Most Versatile Agricultural Land
- Registered Parks and Gardens
- Sites within 400m of residential properties

Question 4

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

Proposed FBC Response

Given the complex nature of shale gas exploration and potential environmental impacts that are dependent upon site specifics, it is not considered appropriate to impose a standard set of conditions through the permitted development process.

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?

Proposed FBC Response

The prior approval process is not considered an appropriate method for considering potential impacts of shale gas exploration, as it will inevitably narrow the focus of the matters that can be considered in the decision and so cannot account for all local circumstances.

Question 6

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

Proposed FBC Response

There should be no permitted development right for non-hydraulic fracturing shale gas exploration development. However, if a permitted development right is introduced, it should be time limited to no more than 2 years in order to facilitate an early review of its effectiveness.

Question 7

Do you have any views the potential impact of the matters raised in this consultation on people with protected characteristics as defined in section 149 of the Equalities Act 2010?

Proposed FBC Response

No