



REPORT OF: THE DEPUTY CHIEF EXECUTIVE

TO: PLANNING AND HIGHWAYS COMMITTEE

ON: 18th OCTOBER 2018

ORIGINATING SECTION: PLANNING SERVICE

WARDS AFFECTED: ALL

COUNCILLORS: ALL

TITLE OF REPORT:

Blackburn With Darwen Borough Council's Response To The Ministry of Housing, Communities & Local Government (MHCLG) Consultation To Introduce Permitted Development Rights For Shale Gas Exploration, and The Department For Business, Energy & Industrial Strategy (BEIS) Consultation For The Inclusion Of Shale Gas Production In the Nationally Significant Infrastructure Project Regime (NSIP)

1. PURPOSE OF THE REPORT

- 1.1 To inform Members of the Council's response and views on the Government's proposals to amend the Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended) to extend the permitted development rights to cover non-hydraulic fracturing shale gas exploration sites, together with amending the 2008 Planning Act for NSIP to deal with all major shale gas production projects.
- 1.2 Members are asked to authorise the Planning Manager (Development Management) to submit a response on behalf of the Council to the Government consultation setting out the concerns outlined in this report.

2. BACKGROUND

- 2.1 The Government considers that domestic on-shore gas production, including from shale gas, has the potential to play a major role in further securing energy supplies and creating local and national economic benefits.
- 2.2 Members will recall that in 2016, the Government issued landward Petroleum Exploration and Development Licences (PEDL) under powers granted by the Petroleum Act 1998. Licence holders are then obliged to seek permission from the Oil and Gas Authority (OGA) before they start well operations. It is also important to clarify that a PEDL is not a "fracking license." If a well operation involves hydraulic fracturing, that will be included as part of the initial well design and planning

application. Once a licence is issued, there are many permissions and consents that need to be granted prior to any operations on site. These include, for example, planning permission, environmental permits from the Environment Agency, scrutiny of well design by the Health and Safety Executive, and OGA consents under the terms of the PEDL.

2.3 6no Licences were offered to 4 operators to explore for and extract petroleum (oil and gas – including shale gas) in six 10km x 10km grid squares that covered a large part of Blackburn with Darwen (two only covered a small area), and which also cover the Lancashire County Council area. Similar licenses were offered to various companies in much of Central and East Lancashire. The licenses provide the first step to starting drilling – but do not give absolute agreement to drill.

2.4 Members will also be aware with national press coverage of the planning applications received by Lancashire County Council for exploration sites at Preston New Road and Roseacre Wood on the Fylde, with the site on Preston New Road commencing in January 2017 (two wells have now been drilled). A further application is expected shortly for a site in West Lancashire.

2.5 A joint ministerial statement by Greg Clark (Secretary of State for Business, Energy and Industrial Strategy) and James Brokenshire (Secretary of State for Housing, Communities and Local Government) on the 17th May 2018 reinforced the Government's view that there were likely substantial benefits from safe and sustainable exploration and development of on-shore shale gas resources. The ministers went further by stating they remained 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, from the experience of these types of planning applications being determined by local planning authorities, ministers are of the opinion that planning decisions are very slow when measured against the statutory timescales. The Government therefore remained focussed on ensuring planning applications are determined as quickly as possible.

2.6. With this in mind, the ministerial statement referred to a consultation exercise being undertaken starting in the summer of 2018 on measures the Government consider will encourage and facilitate development relating to shale gas. In July 2018, two consultations started on the following:

- the principle of whether non-hydraulic shale exploration development should be granted planning permission through permitted development rights;
- whether shale gas production projects should be brought within the Nationally Significant Infrastructure Projects Regime

There are 6 questions posed relating to the introduction of permitted development rights relating to non-hydraulic shale exploration. These are:

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

- Should non-hydraulic fracturing shale gas exploration development be granted planning permission through a permitted development right?
- Do you agree that a permitted development right for non-hydraulic fracturing shale gas exploration development would not apply to the following?
 - 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
- Are there any other types of land where a permitted development right for non-hydraulic fracturing shale gas exploration development should not apply?
- What conditions and restrictions would be appropriate for a permitted development right for non-hydraulic shale gas exploration development?
- 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?
- Should a permitted development right for non-hydraulic fracturing shale gas exploration development only apply for 2 years, or be made permanent?

Both consultations expire on the 25th October 2018.

3. RATIONALE

- 3.1 Permitted development rights are a national grant of planning permission used to speed up the planning system e.g. change of use offices, shops and agricultural buildings to dwellings, and allow people to extend their homes with larger extensions. The rights only cover the planning aspects of the development contained in the Town & Country Planning (General Permitted Development) (England) Order 2015. There are also permitted development rights that relate to mineral exploration which include the drilling of boreholes (other than those for petroleum exploration), undertaking seismic surveys and other excavations for the purposes of exploring for mineral resources. Members are also advised that in recent years permitted development rights have been extended to include the drilling of boreholes for groundwater and seismic monitoring, which were introduced due to the growing interest in shale gas exploration activities (Part 17, Class K).
- 3.2 Whilst these permitted development rights have been introduced in the said Order, they are also subject to a range of conditions to ensure that such activities

can only be classed as permitted development if they are of sufficiently small scale and low environmental impact.

Consultation on introducing permitted development rights for shale gas exploration:

- 3.3 The proposal is for the permitted development rights for this type of exploration development to be for a temporary period of 2 years from which the legislation comes into force. The rights would only apply to shale gas exploration to allow companies to take samples for testing purposes and not for fracking itself. The definition proposed by government would allow *“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”*.
- 3.4 Members are therefore advised that the proposal would allow a drilling site to be constructed under permitted development rights for the purposes of taking core samples of shale for testing purposes or other testing operations. However, it would not be appropriate to introduce permitted development rights for sites which will be using the injection of fluids i.e. hydraulic fracturing, as part of the testing process.
- 3.5 The Government proposes that the permitted development rights would not apply in certain circumstances such as when a development would require an Environmental Impact Assessment, and when they would impact upon certain protected areas, such as Areas of Outstanding Beauty, scheduled monuments, or sites of archaeological interest or conservation areas.
- 3.6 Officers consider that there are contradictions between the joint ministerial statement produced in May 2018, and the proposals, the subject of the consultation. Paragraph 2.5 above refers to the Government stating that they wish to make planning decisions faster and ensure that local communities are fully involved in the decision making process. However, the impact of the proposed development rights would be to allow shale gas exploration to proceed on a site without the requirement of formally applying for planning permission. This therefore, will remove any opportunity for the local community to have a say in the development that potentially could have significant local impacts. What officers are concerned about and advise members is, that if the permitted development rights proposal is implemented it is likely to undermine public confidence in the planning system.
- 3.7 The proposal relating to the introduction of permitted development rights appears to include a Prior Approval process similar to other recent permitted development rights introduced e.g. offices to residential which is a 56 day process. It is not confirmed in the consultation whether this would apply for this type of development. Only certain issues can be assessed which will be defined in the legislation but it still will require consultation with statutory consultees.
- 3.8 Whilst it is recognised that the Government proposes that any new permitted development rights would be subject to limitations regarding location and scale, any drilling operation to take cores or to test for gas would be necessity be of

significant scale. Experience from other developments in the country has shown it normally requires a large portion of land take, would generate considerable levels of heavy goods vehicles, and these could give rise to a range of environmental impacts i.e. noise, visual impact, ecological, air quality and land stability, etc. The existing permitted developments rights including the most recent ones introduced under Class Part 17, Class K of the said Order, normally apply to proposals having a limited environmental impact. They certainly do not apply to development on the scale of shale gas exploration. Whilst the consultation is seeking views and comments on what conditions should be set, it is considered that these could be set at such a low level to ensure the impacts are as minimal as possible, it would make the scheme unviable and worthless to the developer.

- 3.9 It is recognised that the Government are proposing a definition of the type of exploration development which would be subject to the new permitted development rights (see paragraph 3.3 above). However, officers consider the definition is too complex and would be very difficult bordering on impossible for local planning authorities to monitor.
- 3.10 There is concern the new process will not provide enough detail on the proposed “boring” drilling operations and what is involved, which could alleviate any concerns from the local community about the processes involved. Having established an exploration drill site under permitted development rights, this would then make it difficult to reject an application for further development on the same site that may be considered inappropriate by virtue of the impacts having already occurred.

What does this mean for Blackburn With Darwen?

- 3.11 In early 2016, 6no Licences were offered to 4 operators to explore for and extract petroleum (oil and gas – including shale gas) in six 10km x 10km grid squares that covered a large part of Blackburn with Darwen (two only covered a small area), and which also covered the Lancashire County Council area. Similar licenses were offered to various companies in much of Central and East Lancashire. The licenses provide the first step to start drilling – but do not give absolute agreement to drill. On top of a license, any further drilling operation will then require planning permission from the Minerals Planning Authority (MPA), as well as permits from the Environment Agency and sign-off from the Health and Safety Executive. The proposed new permitted development rights will relate to the exploration phase in terms of boring holes etc. There is no certainty the licenses will be taken up or even if they are, that proposals will be brought forward for exploration. So far, the County Council has not received any notification or interest from a licence holder in relation to the east of the county. The only other interest (outside of the Fylde) was in West Lancashire, and a planning application is expected to be formally submitted shortly there.
- 3.12 One company Aurora, confirmed to officers at the time in 2016 they were awarded a licence to allow them to undertake initial surveys around the geological data which involved a site encroaching in our borough. Companies then had to decide whether to progress in the area. Aurora confirmed to officers

at that time, they were only at the initial stages, but they did indicate it was highly unlikely the PEDL would proceed in the Borough due to the nature of the geological data. Nothing has been heard since. If the developers accept the licences, they have 5 years to develop (up to 2021). Exploration may begin with seismic investigations to identify prospective structures in accordance with the existing permitted development rights, and potentially in accordance with the new permitted development rights. Licence holders must notify landowners, MPAs, and the OGA of plans to conduct the seismic surveys in the licence areas. The Council have not yet been formally notified by the operators with regards to the investigations in the blocks identified as part of the 2016 Licensing rounds . Confirmation was received from Aurora in 2016, that to date the work has comprised of an evaluation of existing geological data on the block (SD 62, that formed the basis of their application in the 14th Licensing Round at the end of 2015). A limited amount of historical geophysical data exists on the block and the Roddlesworth-1 well was drilled in the south of the block by Amoco in 1987 - the well reaching a total depth of 8,212 ft.

- 3.13 If the new proposals, the subject of the current consultation are confirmed as legislation however, it could lead to further enquiries by the operators relating to the exploratory works. However, this is an unknown perception.
- 3.14 In conclusion, it is considered that the proposals to introduce further permitted development rights risk undermining public confidence in the ability of the planning system to control such controversial forms of development, whilst at the same time introducing a number of challenges in being able to properly regulate shale gas exploration from a land use planning perspective.

Consultation for the Inclusion of Shale Gas Production in the Nationally Significant Infrastructure Project Regime (NSIP):

- 3.15 Currently, there is no specific provision for hydrocarbon development within the Planning Act 2008 regime and all applications for such development have to be made to local authorities under the Town and Country Planning Act 1990. The Government is currently consulting on a proposal to include major shale gas production projects within the Nationally Significant Infrastructure Projects regime and the criteria that should be used to indicate when such projects are nationally significant.

The fundamental question that relates to this consultation is:

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

- 3.16 The overwhelming response to this question is NO. The proposal would mean that applications for development falling within the Nationally Significant Infrastructure Projects regime would be made direct to the Secretary of State rather than to Blackburn With Darwen Borough Council (BwDBC) as Mineral Planning Authority. BwDBC would still have a role in the process as there are provisions within the Planning Act 2008 for local authorities to produce a local impact report

setting out its views on the development. There are also statutory provisions for local planning authorities to appear at any examinations or other public hearing sessions that may be organised by the examining panel. However, BwDBC would lose its powers of determination for such applications.

- 3.17 The Planning Act 2008 created a planning process for NSIP in areas of energy, water, waste, road and rail transport etc. If the Act is amended to include major shale gas production projects all future shale gas production projects would be decided by the Secretary of State. This would bring shale gas in line with other energy projects of national significance such as wind farms.
- 3.18 Within the proposed new process there is a pre-application process where the developer must consult with residents and submit a Statement of Community Consultation. The developer must also demonstrate they have had regard to responses from the consultation. The Planning Inspectorate will then consider this information alongside representations made by a local authority. If an application is accepted for Examination, the public have the opportunity to register their interest to participate in the examination. Local Authorities can submit Local Impact Reports.
- 3.19 Officers consider that the implications for including major shale gas developments which are at the production phase in the NSIP regime would have serious adverse impacts on local democracy leading to the decision making process for such highly controversial developments being removed from the local planning authority where the proposal is located. What will be gained from this? It contradicts again the comments raised in the joint ministerial statement in May 2018.
- 3.20 Officers indicate that there is little to be gained from bringing fracking planning applications under the NSIP regime; there is limited evidence that it would speed up the process and will likely increase the mistrust between local communities and the fracking industry. There is a particular concern that, if the NSIP regime were adopted, there would be no relationship between fracking applications and Local Plans in communities. This is particularly important as BwD (Minerals Planning Authority) are currently in the early stages of reviewing the Joint Minerals & Waste Local Plan with Lancashire County Council and Blackpool Borough Council, which will include a separate policy on onshore oil and gas. The production of this plan is guided and scrutinised by elected councillors.
- 3.21 Companies looking to carry out exploratory investigations in BwD, followed by testing and possible extraction of onshore oil and gas, including shale gas, must apply for planning permission to BwD. Applications are assessed under plans and strategies jointly prepared by Lancashire County Council, BwD and Blackpool Borough Council. The Joint Advisory Committee for Strategic Planning oversees the production of these development plan documents, and its membership includes the Council's Executive Member for Regeneration and the relevant Chair of the Planning & Highways Committee. The Plan is currently in the early stages of review with a consultation document published on the 28th September, which consolidates the plans into one document and includes a new

specific policy related to onshore oil and gas (previously there was none). The review of the new plan is detailed on the following link:

<http://www3.lancashire.gov.uk/corporate/consultation/responses/response.asp?ID=355>

- 3.22 It is recognised that under the current regime, there is a final option for a Minister to “call-in “ a decision made by the local planning authority and over-rule a planning decision. However, this still allows the perception to the local communities that the application has been considered by the locally elected Council and their representations have been taken into account as valid material planning considerations.
- 3.23 Whilst the proposal does provide opportunities for consultation with local authorities and communities there will be a significant loss to local decision-making, particularly when local authorities are best placed to understand their local area and consider how fracking can best take place in their local communities. In addition, to this any decisions should also be consistent with Local Plans.
- 3.24 The recently published National Planning Policy Framework (NPPF – July 2018), now requires local planning authorities to review their local plans where they are older than 5 years. In BwD’s case, the review of the Local Plan has now commenced with an Issues and Options paper being produced in December.
- 3.25 In conclusion, for the reasons stated above there is a strong feeling that any proposal to include major shale gas production projects within the NSIP regime would undermine the public’s perception of the planning system similar to the permitted development rights proposal, and introduce developments that could be at odds to any local planning policy. If the Government still wishes to bring such projects within this regime, it is considered that the criteria should be set so that only the most major of shale gas production schemes which are truly of national significance are affected.

4. POLICY IMPLICATIONS

- 4.1 None.

5. FINANCIAL IMPLICATIONS

- 5.1 The proposals set out by Government in this consultation would potentially reduce BwDBC’s involvement in determining applications for shale gas production. BwDBC would lose the fee income that would normally be received for such planning applications, but would still have a significant workload in terms of responding to the Nationally Significant Infrastructure Projects application.

6. LEGAL IMPLICATIONS

- 6.1 None.

7. RESOURCE IMPLICATIONS

7.1 None.

8. EQUALITY IMPLICATIONS

8.1 These are changes proposed to secondary legislation, therefore no local equality impact assessment has been made.

9. CONSULTATIONS

9.1 Planning Cross Party Working Group – 16th October 2018 meeting.

10. RECOMMENDATION

10.1 (i) That the Committee note the issues described in the report.

(ii) That the Committee endorse and recommend that officers be instructed to respond to the consultation as set out in this report before the consultation expiry date of the 25th October 2018.

Contact Officer: Gavin Prescott, Planning Manager (Development Management)
Date: 4th October 2018
Background Papers: “MHCLG Consultation - Permitted development for shale gas exploration” – July 2018
“BEIS Consultation – Inclusion of Shale Gas Production Projects in the Nationally Significant Infrastructure Project Regime” – July 2018