

Report to the Cabinet

Meeting to be held on Thursday, 11 October 2018

Report of the Head of Service for Planning and Environment

Part I

Electoral Division affected:
(All Divisions);

Inclusion of shale gas production projects in the Nationally Significant Infrastructure Project regime

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Executive Summary

The report concerns a consultation by the Department for Business and Industrial Strategy regarding proposals to include shale gas production projects within the Nationally Significant Infrastructure Projects Regime. A response to the consultation should be submitted by 25 October 2018.

Recommendation

Cabinet is asked to note the report and authorise the Head of Service, Planning and Environment to respond to the consultation setting out the concerns outlined in this report.

Background

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.

In recent years the Government has granted a number of new licences for on shore hydrocarbon exploration across the UK and this has generated industry interest in proposals for exploration activity. In Lancashire, planning applications have been received for exploration sites at Preston New Road and Roseacre Wood on the Fylde; and a further application is expected shortly for a site in West Lancashire. The site at Preston New Road commenced in January 2017 and two wells have now been drilled and which will be hydraulically fractured and tested.

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, ministers are of the view that recent decisions on shale exploration applications are disappointingly slow when measured against statutory targets for determining planning applications.

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 17 May 2018 reiterated the Government's view that there were likely to be substantial benefits from safe and sustainable exploration and development of onshore shale gas resources.

The ministerial statement announced a range of measures to encourage and facilitate timely planning decisions on shale gas developments including:

- Holding a consultation in summer 2018 on the principle of whether non hydraulic fracturing shale exploration development should be granted planning permission through permitted development rights
- Consulting in summer 2018 on whether shale gas production projects should be brought within the Nationally Significant infrastructure Projects Regime.

This report deals with the second of those proposals. The first proposal is the subject of a separate report to Cabinet.

Advice

The Nationally Significant Infrastructure Projects Regime was introduced by the Planning Act 2008 and offers a different consenting process for major infrastructure developments than through the Town and Country Planning Act 1990. It currently applies to projects such as major energy, road and rail transport and hazardous waste disposal. The county council has previously been involved with three such projects: the Heysham to M6 Link Road, the Halite Energy Gas Storage Project in Wyre and the Whitemoss hazardous waste landfill site in Skelmersdale.

The Planning Act 2008 defines the type and scale of infrastructure projects considered to be nationally significant and therefore required to obtain development consent. For projects falling within these thresholds, an application for Development Order Consent has to be made to the Secretary of State which for energy projects is the Secretary of State for Business, Energy and Industrial Strategy. The relevant Secretary of State is responsible for the examination and determination of the application.

There are three features of the Planning Act 2008 procedures which are of particular note:

- Decisions on Nationally Significant Infrastructure Projects are guided by National Policy Statements which set out for the relevant sector the need for development; and which provides clarity and certainty for scheme developers in establishing the national need for the project.
- The Planning Act 2008 also sets out prescribed timescales for the examination and determination of applications for development consent. This

means that decisions must normally be made within one year of commencement of the examination.

- Development Consent Orders can also, if granted, incorporate other powers which cannot be included within a planning permission. For example for compulsory purchase of land.

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 consultation asks the following questions, for which responses have been drafted.as follows

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

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 the county council as Mineral Planning Authority. The county council 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, the county council would lose its powers of determination for such applications.

The principle of commercial shale gas developments being included within the Nationally Significant Infrastructure Projects regime has already been the subject of discussion as part of a House of Commons Communities and Local Government Select Committee Inquiry earlier in 2018 into planning guidance on fracking. The county council submitted written and oral evidence to this inquiry.

After hearing evidence from a range of private and public sector organisations, the Select Committee concluded ' *that there is little to be gained from bringing fracking applications at any stage under the Nationally Significant Infrastructure Projects regime; there is limited evidence that it would expedite the application process and such a move is likely to exacerbate existing mistrust between local communities and the fracking industry. We are particularly concerned that if the Nationally Significant Infrastructure Projects regime were adopted, there would be no relationship between fracking applications and Local Plans in communities. Furthermore we note that the Government has not provided any justification or evidence for why fracking has been singled out to be included in a national planning regime in contrast to general mineral applications.*

The Select Committee went on to conclude that '*whilst the Nationally Significant Infrastructure Projects regime does provide opportunities for consultation with*

Mineral Planning Authorities and local communities, such a move could be perceived as a significant loss to local decision making. Mineral Planning Authorities are best placed to understand their local area and consider how fracking can best take place in their local communities'.

The Committee also concluded that if Nationally Significant Infrastructure Projects were to be used for fracking applications, it is essential that a National Policy Statement be prepared which included suitable provisions to restrict inappropriate proliferation of well pads and unacceptable landscape impacts.

Given the range of views that were sought as part of the Select Committee Inquiry process, it is considered that significant weight should be attached to these conclusions and should form the basis of the county council's response to this question.

Finally, the county council adopted a motion on this issue in July 2018 that decision making on shale gas developments should remain with mineral planning authorities.

2. If you consider that major shale gas production projects should be brought into the Nationally Significant Infrastructure Project regime, which criteria should be used to indicate nationally significant project with regards to shale gas production?

The consultation includes a range of criteria including number of wells per site, total number of well sites within the development, level of recoverable gas, production rates, connection to the local gas grid, whether multiple well sites will be linked via shared infrastructure or a combination of the above criteria.

It is considered that any criteria used must ensure that developments are sufficiently large in scale that they are truly nationally significant. It is not considered that single well sites would necessarily qualify as nationally significant even if they involved multiple wells. A more sensible criteria would be in terms of linked multiple well sites that are proposed as part of a gas field development plan.

3. At what stage should this change be introduced? (For example, as soon as possible, ahead of the first anticipated production site or when a critical mass of shale gas exploration and appraisal sites has been reached.)

This question is difficult to answer as it depends upon the likely rate of progress in demonstrating the viability of the UK shale industry. At present the Preston New Road site is probably the most advanced in the UK in terms of establishing whether shale extraction involving fracking in the UK is likely to be commercially viable. However, that will only be known once the wells that have been drilled at Preston New Road have been fractured and the gas flows from those wells tested over an extended period. It is therefore likely to be some time until the shale gas industry is in a position to propose significant production facilities. By this time it may be possible that the industry has had more time to demonstrate that its impacts are acceptable and therefore the planning process is less controversial and decisions can be taken over a speedier timescale that might render the Nationally Significant Infrastructure Projects process unnecessary.

It should also be pointed out the Nationally Significant Infrastructure Projects regime might not offer the quick decision making sought by government. The process can be expensive and time consuming in relation to preparatory work by the developer; and particularly if material changes to planning conditions are requested by the operator

In conclusion, it is considered that the proposal to include shale gas production sites within the Nationally Significant infrastructure Project regime would potentially undermine local decision making on development projects and reduce the role of local planning authorities in the process. 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.

Consultations

N/A

Implications:

This item has the following implications, as indicated:

The proposals set out by Government in this consultation would potentially reduce the county council's involvement in determining applications for shale gas production. The county council 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.

Risk management

The proposals in this consultation could have significant implications for the county council as Mineral Planning Authority given the level of current and future interest in exploring for shale gas in Lancashire. It is therefore important that the county council responds to the consultation along the lines set out in this report so that the Government is aware of the county council's concerns.

List of Background Papers

Paper	Date	Contact/Tel
Department for Business, Energy and Industrial Strategy – consultation on the timings and criteria for including major shale gas production projects in the Nationally Significant Infrastructure Project regime.	July 2018	Jonathan Haine 01772 534130

Reason for inclusion in Part II, if appropriate

N/A