

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);

Consultation on Government proposals to introduce permitted development rights for shale gas exploration

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Executive Summary

The Government has published a consultation on proposals to introduce new permitted development rights for shale gas exploration development. Responses to the consultation must be submitted by 25 October 2018.

Recommendation

Cabinet is asked to authorise the Head of Service, Planning and Environment, in consultation with the Cabinet Member for Economic Development, Environment and Planning, to submit a response to the Government 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, which will be hydraulically fractured and tested.

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 substantial benefits from safe and sustainable exploration and development of on-shore shale gas resources. The ministers also stated that 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, Government is of the view that recent planning decisions on shale exploration are disappointingly slow when measured against the statutory timescales. The Government therefore state that they are committed to ensure that any planning applications are dealt with as quickly as possible.

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.

Following the Ministerial Statement in May 2018, a Notice of Motion was raised at the meeting of Full Council on 19 July. The original proposal was amended but the following wording was approved by Full Council:-

Lancashire County Council notes that in May this year Ministers outlined a proposal in a Written Statement to redefine non hydraulic fracturing shale gas exploration applications as permitted development and to redefine large scale shale gas production sites as Nationally Significant Infrastructure Projects, thus removing any local authority control and community involvement in decision making.

Lancashire County Council is committed to the principles of localism and the involvement of local communities in decisions that affect their environment, their health and safety and their well being and resolves to respond to the Government's forthcoming consultation that applications for fracking should be determined by local planning authorities in accordance with planning law and guidance and to also share this response with Lancashire MP's and relevant Government ministers.

This report deals with the proposals relating to permitted development rights. The second proposal relating to the National Infrastructure Projects regime is the subject of a separate report to Cabinet.

Advice

Permitted development rights were originally introduced to allow certain types of minor development with very little environmental impact to proceed without the need to apply to the local authority for express planning permission. The rights contained in the Town and Country Planning (General Permitted Development) (England) Order 2015 cover issues such as minor householder development (house extensions), agricultural development and development undertaken by local authorities such as bus stops and traffic light controls.

There are also permitted development rights that relate to mineral exploration which include the drilling of boreholes (other than those for petroleum exploration), undertaking of seismic surveys and other excavations for the purposes of exploring for mineral resources. Permitted development rights for mineral exploration have also been extended in recent years to include for the drilling of boreholes for groundwater and seismic monitoring, these rights having been introduced due to the growing interest in shale gas exploration activities. All of these permitted development rights are 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.

The Government consultation proposes to extend the permitted development rights to cover non-hydraulic fracturing shale gas exploration sites. It would therefore 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. The Government considers that it would not be appropriate for permitted development rights to apply to any sites using the injection of fluids (hydraulic fracturing) as part of the testing process.

The following definition is therefore proposed as to the nature of works that would be permitted development:-

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.

The Government proposes that the permitted development rights would not apply in certain circumstances such as when a development would require Environmental Impact Assessment and when they would impact upon certain protected areas such as Areas of Outstanding Natural Beauty, scheduled monuments or sites of archaeological interest or conservation areas. They would also be subject to a range of conditions such as limitations on duration of development, restrictions on the number of wells, heights of structures and plant and no removal of trees.

The desire of Government to encourage shale gas exploration and to reduce planning obstacles to such development is noted. However, the following general comments are made regarding the principle of extending the permitted development rights and the detail of the proposals:

- In the consultation paper, the Government has stated they are '*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, the effect of the proposed permitted developments rights would be to allow shale gas exploration to take place without the need for any planning application and therefore no opportunity for local communities to have a say in development that would potentially have significant local impacts. The introduction of the new permitted development rights therefore risks undermining public confidence in the planning system.

- 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 by necessity be of significant scale. It would normally require a significant land take, would generate considerable levels of heavy goods vehicles and could give rise to a range of environmental impacts including noise, visual impact and on ecology. The existing permitted development rights apply to types of development that would normally have very limited environmental impact and not to development of the scale of shale gas exploration that has the potential for significant impacts. Whilst the conditions to any new permitted development rights could be set at a level to ensure that any impacts are minimal, there is a danger that they would have to be set so low as to make the rights virtually worthless to the industry.
- The Government has proposed a definition of the type of exploration development that would be subject to the permitted development rights. However, the definition proposed is considered to be complex and would be impossible for planning authorities to monitor to ensure that any development was being undertaken within the boundaries set by the permitted development rights.
- The permitted development rights would only be for the exploration phase and planning permission would still be required for any exploration featuring hydraulic fracturing or production. However, having established an exploration drill site under permitted development rights, it would then make it difficult to resist an application for further development on that site that may be considered inappropriate because many of the impacts would have already occurred.
- In certain cases permitted development rights can be subject to a prior approval process where a developer has to seek consent from the planning authority that specified elements of the development are acceptable before work can proceed. The Government is proposing that a similar prior approval process might apply to shale gas exploration and that this could include an element of public consultation. These proposals are noted. However, it should be recognised that the principle of development cannot be challenged through the prior approval process and therefore it would not be possible for a planning authority to resist a fundamentally unacceptable development except by using an Article 5 direction to remove the permitted development rights and require a full planning application to be submitted. Such a direction can be overruled by the Secretary of State.
- The Government is also consulting on whether the new permitted developments rights should be introduced on a permanent basis or whether they should be limited to a 2 year 'trial' period. It is considered that if such rights are introduced, they should be limited to a 2 year temporary period to allow their impact to be assessed.

In conclusion, the intentions of Government to encourage shale gas exploration by speeding up the planning process are noted. However, 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 a controversial form of development and also presents a number of challenges in being able to properly regulate shale gas exploration from a land use planning perspective. It is therefore

recommended that officers be instructed to respond to the consultation as set out in this report.

Consultations

N/A

Implications:

The proposed permitted development rights if introduced would mean that applicants for certain shale gas exploration development would not need to apply to the county council for planning permission before commencing such development. There may therefore be some loss of planning fee income. However, this would be balanced by a reduction in work load. There would also be a reduction of public confidence in the planning system.

Risk management

Lancashire is currently the subject of significant levels of shale gas exploration activity and interest is likely to continue in future. Therefore it is important that the county council responds to the consultation along the lines in this report given the implications for the regulation of shale gas exploration in Lancashire.

List of Background Papers

Paper	Date	Contact/Tel
Ministry of Housing, Communities and Local Government Consultation on Permitted Development for shale gas exploration	July 2018	Jonathan Haine 534130

Reason for inclusion in Part II, if appropriate

N/A