

Annex A

Responses to previous Government consultations regarding Shale Gas



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Strategic Planning
West Offices
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Permitted Development for Shale Gas Exploration Consultation July 2018

Consultation Deadline: 25th October 2018

City of York Council Response

Question 1

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

A specific concern is that the definition proposed to apply for the purposes of a new permitted development right does not directly state that hydraulic fracturing is excluded from the scope of the right. Whilst it is clear from the text of the consultation that this is the intention, it is considered that, if a new right is introduced, this exclusion should be specifically stated in the definition itself for the avoidance of doubt.

Related to this concern is the potential for different interpretation of the term 'hydraulic fracturing' and how this could impact on the scope of any new permitted development right. Specifically, it is not clear whether the Government intends that only exploratory drilling involving 'associated hydraulic fracturing' as defined through the Infrastructure Act 2015 would be excluded from the scope of a new right. The Infrastructure Act, as subsequently clarified by Government, defines associated hydraulic fracturing as fracturing which involves the injection of more than 1,000 cubic metres of fluid at any fracturing stage or more than 10,000 cubic metres of fluid in

total. However, at this very early stage in the development of any shale gas industry in England, it is not yet known whether fluid injection volumes in excess of this threshold are likely to be typical.

The draft Minerals and Waste Joint Plan for North Yorkshire, York and the National Park sets out a wider definition of hydraulic fracturing which does not utilise a minimum volume threshold, with such an approach being in line with current national Planning Practice Guidance. This latter approach reflects the view of the Joint Plan authorities that significant land use planning impacts can arise where volumes of fracture fluid below the Infrastructure Act definition are used. This approach has been subject of initial support by the Inspector undertaking the Examination in Public of the Joint Plan, which has not yet concluded. It is considered essential that any new permitted development right for non-hydraulic fracturing shale gas exploration should clearly state that hydraulic fracturing at any volume is excluded.

Question 2

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

A balance needs to be struck between timely decision making and the need for appropriate scrutiny of development proposals at a local level. This is particularly the case for forms of development which have the potential to give rise to adverse impact on local communities, or be proposed in environmentally sensitive locations. A view on the principle of introducing the proposed new permitted development right can only be given in the context of the specific scope and limitations that would be applied, which are considered in more detail in the following sections.

Whilst Government's intention not to apply a new permitted development right in sensitive designations is welcomed and supported, it is necessary to consider the wider implications of the measures proposed through the consultation in the event that that position is not maintained.

There are several policies in the JWMP that make reference to the need to protect the historic character and setting of the City of York in determining whether development is appropriate in a particular

location. The Joint Plan policies which specifically refer to York Green Belt and the Historic Character and Setting can be found in Annex A to this report, these policies are:

M01: Broad geographical approach to supply of aggregates
M16: Key spatial principles for hydrocarbon development
D05: Minerals and Waste Development in the Green Belt
D06: Landscape

At the Examination in Public hearings relating to policies for hydrocarbons development, the Inspector asked for additional evidence to justify the inclusion of “Areas which Protect the Historic Character and Setting of York” (“Areas”) within the protection afforded by Policy M16(b)(i).

Paragraph 5.129 of the Joint Plan provides further explanation of the reference to the Areas in the policy.

“Although the City of York is not protected in the same way as National Parks and AONBs, the historic character and setting of the City is a key reason for having designated the York Green Belt, one of only six cities in England where this reason applies, and the historic City as a whole does not benefit from any other specific national policy protection. The relatively flat and low-lying landscape around York allows for long distance views of the Minster and other landmark buildings which are integral to the setting of the City...”

Paragraph 9.62 also states that:

“Evidence produced by City of York Council in 2013 identifies six principal defining characteristics which are strategically important to the historic character and setting of York, that set York apart from other similar cities in England These characteristics are:

- The City’s strong urban form, townscape, layout of streets and squares, building plots, alleyways, arterial routes, and parks and gardens;
- The City’s compactness;
- The City’s landmark monuments, in particular the City Walls and Bars, the Minster, churches, guildhalls, Clifford’s Tower,

the main railway station and other structures associated and chocolate manufacturing heritage;

- The City's architectural character, this rich diversity of age and construction displays variety and order and is accompanied by a wealth of detail in windows and door openings; bay rhythms; chimneys and roofscapes; brick; stone; timber; ranges; gables; ironwork; passageways; and rear yards and gardens;
- The City's archaeological complexity: the extensive and internationally important archaeological deposits beneath the City;
- The City's landscape and setting within its rural hinterland and the open green strays and river corridors and Ings, which penetrate into the heart of the urban area, breaking up the City's built form.

The work which the City of York has carried out in relation to its Green Belt protection as well as the special character and setting of the historic city has informed the inclusion of the Areas within the protection afforded by Policy M16.

The rationale for introducing a permitted development right for exploratory drilling for shale gas but not other forms of hydrocarbons is not clear, other than to address Government's perceived concern about the speed of decision making on shale gas proposals. In terms of the potential for impacts on the environment and local amenity, there is no expectation that exploratory drilling for shale gas would give rise to lesser potential for impacts than exploratory drilling for other forms of hydrocarbons. It is correspondingly unclear why the former form of development should benefit from additional flexibility through a permitted development right.

Furthermore, drilling to explore for shale gas in York is likely to require drilling to a greater depth than for conventional gas resources as the shale is at a greater depth and therefore may be expected to take longer, with correspondingly greater potential for longer duration impacts as a result of factors such as visual intrusion, noise and traffic movements. A related concern is the potential for harmful impacts to arise, through the use of permitted

development rights to bring forward incrementally more development in a given area, but without the ability for proper consideration to be given to the cumulative impacts of such development through the full planning process.

It is considered that these factors undermine the rationale for introducing the proposed new permitted development right. The essential role of permitted development rights is to give deemed consent for forms of development which are not likely to give rise to significant land use planning concerns and therefore require a lesser degree of scrutiny and public involvement. Extending permitted development rights to exploratory drilling activity, potentially taking many months, typically involving 24 hour operations and requiring use of substantial items of plant and equipment and associated vehicle movements, would not be in the best interests of ensuring delivery of sustainable development through the planning system, in line with established national planning policy, or help with the Government's stated intention of ensuring that there is public confidence in the development of the shale gas industry.

This view is consistent with the recent findings of the Housing, Communities and Local Government Committee Inquiry on Planning guidance which recommended, in its July 2018 report, that: *Shale gas development of any type should not be classed as permitted development.*

Given the contentious nature of fracking, local communities should be able to have a say in whether this type of development takes place, particularly as concerns about the construction, location and cumulative impact of drill pads are yet to be assuaged by the Government.

The City of York Council is committed to listening to the local community through the planning process but any decisions must be made within the relevant regulatory and legal framework.

Officers consider that Government should not introduce a permitted development right for non-hydraulic fracturing shale gas exploration. Notwithstanding this view, the following comments address matters relevant to other aspects of the consultation, in the event that Government does proceed to introduce a new permitted development right.

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**
- b) If No, please indicate why.**
- c) Are there any other types of land where permitted development right for non-hydraulic fracturing shale gas exploration development should not apply?**

The intention to exclude sensitive locations from the scope of a new permitted development right is welcomed but it is considered that the sensitive locations should be expanded to include protection for the historic character and setting of York. At the Examination in Public hearings relating to policies for hydrocarbons development, the Inspector asked for additional evidence to justify the inclusion of “Areas which Protect the Historic Character and Setting of York” (“Areas”) within the protection afforded by Policy M16(b)(i).

Paragraph 5.129 of the Joint Plan provides further explanation of the reference to the Areas in the policy.

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- The City's architectural character, this rich diversity of age and construction displays variety and order and is accompanied by a wealth of detail in windows and door openings; bay rhythms; chimneys and roofscapes; brick; stone; timber; ranges; gables; ironwork; passageways; and rear yards and gardens;
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The work which the City of York has carried out in relation to its Green Belt protection as well as the special character and setting of the historic city has informed the inclusion of the Areas within the protection afforded by Policy M16.

On the basis of the above explanation York's Historic and Character Areas should also be excluded from permitted development rights.

There is also concern that permitted development outside but close to the boundary of these sensitive areas could nevertheless give rise to potential for significant adverse impacts on the excluded area, for example as a result of visual and landscape impact including the impact of the infrastructure left behind, noise and loss of tranquillity, and as a result of increased traffic movements. There is a risk that appropriate opportunity for proper scrutiny of the potential for such impacts would be missed should a new permitted development right be introduced.

On the other hand, the necessary standard development conditions and restrictions that may be required as part of a new right in order to prevent unacceptable harm, including to adjacent protected areas, would be likely to be complex whilst also lacking the flexibility that can result from consideration of a planning application via a comprehensive process of consultation and scrutiny. It is not at all clear, therefore, that the proposed measures would be successful in either facilitating early stage shale gas exploration development, or in protecting the environment from the effects of such development.

Question 4

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

The questions of standard development conditions and restrictions and the need for prior approval of certain matters before permitted development rights can be exercised are inter-related. There is concern that the imposition of standard conditions for relatively substantial and complex forms of development such as that being contemplated would not be an effective means of preventing unacceptable impacts in all circumstances, owing to the wide range of site-specific circumstances that could arise.

There is also a risk that they could, in certain circumstances, result in unnecessary burdens on developers. It is considered that such matters are most effectively assessed and resolved through a full planning application process rather than a 'light touch' prior approval system.

Nevertheless, without prejudice to the view that introduction of a permitted development right for shale gas exploration would not be appropriate, it is considered that, if such a right were introduced, it should be accompanied by a requirement for prior approval of matters including:

- Size of well pad
- Density of well pads
- Height of any plant and equipment
- Duration of permitted development
- Means of access and volume of HGV movements
- Mitigation measures for noise, vibration, air quality and light intrusion
- Maintenance of a minimum separation distance from sensitive locations such as residential property
- Details of measures to be taken to screen the site and mitigate any potential impacts on ground and surface water resources, ecology, heritage assets, the landscape and air quality
- Management of waste
- Restoration of the site including confirmation of compliance with associated Environmental Permitting and Pipeline Regulations.
- Confirmation of Community payment under UKOOG Shale Community Engagement Charter, where relevant.

It is also considered that a standard requirement for prior notification of local residents and other relevant parties should be included, and in a way which allows a reasonable period for the receipt of representations. Such an approach could help ensure more effective public engagement in shale gas development proposals, in line with previous Government commitments to facilitate this. In the absence of adequate opportunity for public engagement in shale gas development proposals being brought forward under any new permitted development right, there is concern that public confidence in the overall planning and regulation of this form of development will be further weakened.

Significant concerns have been expressed by local communities about the potential effects of fracking development, within the MWJP it was considered appropriate to develop a policy which reassures residents and other sensitive receptors¹ that their amenity will be adequately protected. The preparation of the JMWP has been carried out within the parameters of the relevant regulatory and legal framework including the National Planning Policy Framework. The JMWP maintains that there is sufficient evidence to justify the adoption of a 500m separation distance

¹ Receptors - such as people, residential properties, nature conservation sites and designated landscapes.

from these sensitive receptors. It is considered that this approach is justified, subject to the qualifications inherent in the policy and the application of wider criteria relating to hydrocarbons development.

At the MWJP Examination in Public hearing session on hydrocarbons on 13th March 2018 , the Inspector requested further evidence from the Authorities to explain and justify the reference in Policy M17(4)(i) to the 500m buffer. This is set out below.

‘The Authorities are addressing a separate request to amend the reference to proposals within the buffer zone only being permitted “in exceptional circumstances”. This will be covered in proposed Main Modifications. The Authorities consider that the explanation of such “exceptional circumstances” provides appropriate flexibility in the application of the policy relating to the 500m buffer zone.

The purpose of the buffer is not to prescribe an absolute measure but to state a qualified guide, to the effect that proposals within 500m of sensitive receptors are “unlikely” to be consistent with ensuring a high level of protection to sensitive receptors from adverse land-use impacts. The stated policy objective of policy M17(4) is to maintain “adequate separation distances” and paragraph 5.146 recognises that this will need to be determined ultimately on a “case by case basis.” Proposals within 500m which can demonstrate that the appropriate protection of receptors can be achieved would be consistent with this policy objective. The 500m buffer identified in the policy must be seen in this context.

The Authorities consider that this approach is sound due to a combination of considerations, the main elements of which are set out below. Moreover, the PEDL coverage of the Plan area is extensive. The specific industrial processes are relatively new to this area and have generated significant local concern. The inclusion of a specific figure provides an appropriate level of guidance to developers and reassurance to local communities, particularly residents, in circumstances where experience of hydraulic fracturing within the Plan area is limited’.

Finally in relation to this particular matter, it is considered important that any new permitted development right is supported by effective and comprehensive standard conditions and prior notification and

engagement requirements, in order to reduce the extent to which mineral planning authorities may need to rely on their powers to use 'article 4 directions'. Such directions can be used to remove permitted development rights in instances where there is concern about the potential impacts of development which could otherwise be carried out under such rights.

Question 6

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

The acknowledgement by Government that there is uncertainty over the potential effectiveness of a permitted development right for non-hydraulic fracturing shale exploration development is noted and reinforces concern that the potential scale, nature and sensitivity of such development is not compatible with the use of such rights. If Government is nevertheless minded to introduce a new right, then it should be for a temporary period of two years only and Government should seek further views from interested parties at the expiry of that period before determining whether it should be carried forward or revised.

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?

The impact of the matters raised in this consultation could affect all people and not just those people with protected characteristics.