Permitted development for shale gas exploration consultation

Response by Wildlife and Countryside Link

24th October 2018

Wildlife and Countryside Link (Link) brings together 49 environment and animal protection organisations to advocate for the conservation and protection of wildlife, countryside and the marine environment. Link is the biggest coalition of environmental and animal protection organisations in England. Our members practice and advocate environmentally sensitive land management, and encourage respect for and enjoyment of natural landscapes and features, the historic and marine environment and biodiversity. Taken together we have the support of over eight million people in the UK and manage over 750,000 hectares of land.

This response is supported by the following organisations:

Bat Conservation Trust
Butterfly Conservation
Campaign to Protect Rural England
Friends of the Earth
RSPB
Wildfowl and Wetlands Trust
Woodland Trust
The Wildlife Trusts

Context

Below we set out our answers to the questions posed in this consultation. However, we feel it is important to set out our position on the principle of permitted development for shale gas exploration at the start of this response.

A number of recent reports have illustrated the importance of using a precautionary approach to fracking. This includes several reports from government advisory bodies indicating that fracking plays no role in a future where the UK meets its legal climate change targets,[1] and an independent report finding that we would need about 6,100 wells to produce enough gas to replace even half of future UK gas imports, resulting in an industrialisation of our countryside. Furthermore, the recent report from the Intergovernmental Panel on Climate Change highlights the need for a rapid

[1] Including the Air Quality Expert Group and Committee on Climate Change and National Grid Future Energy Scenarios, 2018

transition in our energy systems: a permitted development right for shale gas exploration will not support this transition.

Our particular concern with the measures announced in the Written Ministerial Statement (WMS) of May 2018 is the intention not only to ignore this evidence, but to bypass the local planning system and the rights of local communities to have a say in whether fracking takes place or not. This is at odds with the government's own commitments to democratic accountability in planning and to localism.

We are not alone in these concerns. In July, the Housing Communities and Local Government Select Committee produced a report stating that the WMS proposals "would result in a significant loss to local decision making, exacerbating existing mistrust between local communities and the fracking industry". They recommended that "Fracking planning applications should not be brought under the Nationally Significant Infrastructure Projects regime nor acquire permitted development rights."

Relationship with NSIP consultation

Whilst the background to the consultation refers to the concurrent consultation by the Department of Business, Energy and Industrial Strategy, the remainder of the document fails to connect them. For example, paragraph 22 outlines that where a developer intends to use hydraulic fracturing, they would be required to obtain planning permission from the relevant mineral planning authority. However, the proposals in the consultation regarding the inclusion of Shale Gas production in the Nationally Significant Infrastructure Project Regime (NSIP consultation) may mean that this is not the case. The two consultations should more clearly highlight areas where they may affect each other.

Comments on the section: Scope of the consultation

We fail to understand the rationale leading to the decision that an Impact Assessment is not required and are concerned that it has not been carried out in accordance with the Government's consultation principles (Consultation Principle C).

From government guidance we note that IA '*are generally required for all UK Government interventions of a regulatory nature that affect the private sector, the third sector and public services. They apply regardless of whether the regulation originates from a domestic or international source…*' and '*apply to primary and secondary legislation, as well as codes of practice or guidance. They should be undertaken when considering traditional regulations as well as alternatives such as proposals which encourage self-regulation or opt-in regulation and voluntary guidance or proposed codes of practice*'.

Comments on the section: Background to the consultation

The consultation document refers to consent that will need to be obtained from the three regulators in paragraph 12. However, this fails to reflect the Written Ministerial Statement of 17 May 2018, which states 'the Government is setting up a Shale Environmental Regulator which will bring the regulators together to act as one coherent single face for the public, mineral planning authorities and industry. We intend to establish the regulator from the summer.'

Our detailed comments, and answers to the specific questions (nos. 1-7) are below.

Question 1

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

No.

b) **If No, what definition would be appropriate?**

There is insufficient information provided with this question to make an informed response. The definition should be explicit and clearly exclude the injection of any fluids for the purposes of hydraulic fracturing, as per Ministerial Statement in paragraph 20. The definition should be subject to further consultation with industry specialists, the public, NGOs and academic experts to ensure that it is robust and understandable.

Question 2

Should non-hydraulic fracturing shale gas exploration development be granted planning permission through a permitted development right?

No.

Currently, permitted development (PD) rights are rightly confined to minor, temporary, non-extensive mineral exploration with minimal impacts. The Town and Country Planning (General Permitted Development) (England) Order 2015 excludes inter alia the drilling of bore holes for petroleum exploration, and includes other limits regarding height of structures, the area of land used, and the depth of excavation and period of exploration. These developments are often uncontroversial.

By contrast, planning applications for shale gas exploration through deep borehole drilling represent a magnitude of development that would be unprecedented within contemporary usage of PD regimes. It is certainly not minor. The scale of development (including extent of land take), its duration (up to five years) and local impacts (including noise, emissions, landscape/visual amenity, ecology, and hydrology) warrant the scrutiny of a full planning application and cannot be subject to a 'light touch regime' without posing significant risks.

Mineral planning authorities (MPAs) should retain decision-making powers on exploratory borehole drilling to test for shale gas. This is for two main reasons:

1) To properly assess the potential impacts associated with such development. This will require appropriate data and analyses to be brought forward with such planning applications and interrogated carefully by planning officers and associated specialists in light of local and mineral planning policies. Additionally, it enables any issues that may be of relevance, should a developer wish to carry out hydraulic fracturing, to be established at this early stage. MPAs have the local knowledge required to carry out this assessment accurately and make decisions on operations with potentially significant and long lasting impacts.

2) That such developments, and decisions on them, are properly tested through local democratic processes, which means that the development plan is the starting point for decisions. This is an integral part of the English planning system and is necessary to ensure that locally made planning decisions are "a front line of democracy" (statement by the Prime Minister on 5 March 2018).

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

- **AONBs** - yes (PD should not apply)
- **NPs** - yes (PD should not apply)
- **Broads** - yes (PD should not apply)
- **WH Sites** - yes (PD should not apply)
- **SSSIs -** yes (PD should not apply)
- **SMs -** - yes (PD should not apply)
- **Cons Areas** - yes (PD should not apply)
- **Sites of archaeol. Interest** - yes (PD should not apply)
- **Safety hazard areas** – No comment
- **Military explosive areas** – No comment
- **Land safeguarded for aviation or defence** -No comment
- **Protected GW source areas** - yes (PD should not apply)

b) If no, please indicate why.

c) Are there any other types of land where a PDR for NHFSGE development should not apply?

Yes. As our response outlines, a permitted development right should not apply to any non-hydraulic fracturing shale gas exploration regardless of location.

Surface development for shale gas is already proscribed in the first seven categories of protected areas or designated sites, so it would be wholly inappropriate to allow permitted development rights in those situations. We would argue that PD rights would also be inappropriate in Sites of Archaeological Interest and protected groundwater source areas, commensurate with extant Government policy for the protection of cultural heritage and water bearing strata.

If the government was to progress with the proposition to allow a PD right, there are a number of other types of land where it should also not apply:

1. **Irreplaceable habitats:** By definition, these are habitats, which would be technically very difficult (or take a significant amount of time) to restore, recreate or replace once destroyed. Even temporary operations can have a significant and detrimental effect on these habitats and they should not be part of the PD regime.
2. **Ramsar sites**: excluding these sites would be commensurate with their protected status. Even temporary operations can have a significant and detrimental effect on these habitats and they should not be part of the PD regime.
3. **Local wildlife sites**: these are vital wildlife refuges and core components of a Nature Recovery Network. Even temporary operations can have a significant and detrimental effect on these habitats and they should not be part of the PD regime.
4. The setting of the **designated assets listed in Question 3a** to ensure that it reflects the high status of these landscapes and sites. Even temporary operations can have a significant and detrimental effect on these assets and they should not be part of the PD regime.
5. **Green Belt**: the potential impact on openness should be determined through a full planning application to reflect paragraph 113 of the revised NPPF that an essential characteristic of Green Belts is their openness.
6. **Community assets**, such as Local Green Space, town and village greens, valued landscapes and playing fields and sites designated as Suitable Alternative Natural Greenspace where a full planning application should be required to determine potential impacts on wildlife and the local community.

Question 4

What conditions and restrictions would be appropriate for a PDR for NHF SGE development?

We consider there should be no permitted development right for non-hydraulic shale gas exploration for reasons given above. However, if the government is determined to go ahead with this proposal in spite of the significant drawbacks, there would need to be extensive conditions. As the consultation itself infers (paragraph 27 and paragraph 34), we believe that such development could only be controlled effectively by numerous exclusions, limitations and restrictions, which will be specific to local circumstances. The proposals and potential conditions etc. would also require developers to seek prior approval to ensure compliance, including assessment of the impacts and risks on the natural environment and how these are to be mitigated. This would then require full public consultation and consultation with bodies with a relevant interest in the impact of the development in paragraph 29 if they were to carry local confidence.

To do this properly, the process would be little different to a full planning application, other than the principle of whether such development should go ahead and assessment to see whether it is compatible with local planning policies set out in the Local Plan and Minerals Plan (which PD by passes). We therefore argue that there will be no saving to be had in terms of time and resources. However local communities would become even more disenchanted with the planning system. At the same time local authorities would be left to deal with the concerns of local communities and

monitor and enforce conditions. However, councils would be without the income resulting from planning application fees to resource this. For more please see response to Q5.

The conditions should consider how to take account of cumulative impacts and include a strict environmental monitoring regime.

Question 5

Do you have any comments on the potential considerations that a developer should apply to the local planning authority for a determination, before beginning the development?

We refer to our answer to Question 4 (above). We suggest that the list of matters that would need to be dealt with via prior approval would be extremely lengthy (but include, *inter alia*, transport and highways, visual/landscape impacts (including assessments of impacts on openness of the Green Belt where appropriate), noise, residential/local amenity, air quality, ecology, hydrology, ground stability, setting in the landscape). These various aspects should not be considered in isolation and would need to be considered as a whole, including cumulative impacts. Alongside these issues, the scope of any net environment gain relating to the activity would also need to be considered, including the carbon cost of the exploration, as well as the likely scale and impact of future extraction if exploration is successful.

Furthermore, all matters for prior approval would require public consultation. Again we conclude that the prior approval process is completely unsuited to such a complex form of development with a wide range of potential impacts which all require careful consideration. In practice, it would not be much different from a full planning application nor offer much opportunity for speedier decision making. However, the reduced income as a result of planning application fees may restrict the resources they are able to devote to process. It could also create a new 'hybrid' type of application in a planning system that is already complex and difficult for both developers and local communities to engage with. It would also create further tension as communities may feel like it is a 'done deal'. This would be most unhelpful.

Question 6

Should a PDR for NHFSGE development only apply for two years, or be made permanent?

As noted in the introduction to our response, we are unclear why the Government states that an IA is unnecessary. Paragraph 34 further fuels this confusion. If the government wishes to develop a PD for non-hydraulic fracturing, an assessment of the impact should be carried out to better understand the potential use and issues that may arise, and therefore the criteria for monitoring. This includes, in particular, impacts on local communities and compatibility of shale gas extraction with climate change targets. This is essential in order to set appropriate monitoring timeframes.

In the event that a PD regime for NHF SGE is implemented, we would strongly suggest a two year time limitation, followed by a comprehensive review of impacts in a report to the public and parliament.

If there are major problems, there must be the facility to remove the PD right immediately.

Question 7

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

No comment.

For more information, please contact:

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