

**HAMPSHIRE COUNTY COUNCIL
Decision Report**

Decision Maker:	Regulatory Committee
Date:	14 November 2018
Title:	County Council response to the following consultations: 1. Proposed changes to permitted development rights for non-hydraulic shale gas exploration; and 2. Proposed criteria to trigger the inclusion of shale gas production projects into the Nationally Significant Infrastructure Projects regime
Report From:	Head of Strategic Planning

Contact name: Lisa Kirby-Hawkes

Tel: 01962 845795

Email: lisa.kirby-hawkes@hants.gov.uk

1. Recommendation

- 1.1. That members of the committee note the contents of the response to the consultation on proposed changes to permitted development rights for non-hydraulic shale gas exploration.
- 1.2. That members of the committee note the contents of the response to the consultation to proposed criteria to trigger the inclusion of shale gas production projects into the Nationally Significant Infrastructure Projects regime.

2. Executive Summary

- 2.1 The Government issued 2 consultations relating to shale gas development in July 2018. These are of interest to Hampshire as the County has existing conventional oil and gas resources and the potential for shale gas and oil.
- 2.2 This report sets out the responses made by the County Council to these consultations.

3. Consultation on the proposed changes to permitted development rights for non-hydraulic shale gas exploration

- 3.1 The consultation¹ related to proposed changes to permitted development rights for non-hydraulic shale gas exploration. It was issued by the Ministry of Housing, Communities & Local Government.
- 3.2 Permitted development relates to activities which do not require formal planning permission from the Local Planning Authority (Minerals and Planning Authority – such as Hampshire County Council). Permitted development rights are set out in the Town and Country Planning (General Permitted Development) (England) Order 2015². The Order sets out both what is allowed under each permitted development right, and any exclusions, limitations and conditions that apply to comply with the legal duty to mitigate the impact of development granted under permitted development. Where a proposed development does not fall within the permitted development limits, this means that an application for planning permission needs to be made to the local planning authority. Permitted development only covers the planning aspects of the development. It does not remove requirements under other regimes (e.g. environmental licencing and permitting or environmental legislation).
- 3.3 The consultation commenced on 19 July 2018 for 14 weeks, ending on 25 October 2018 and covered the following areas:
1. Whether to introduce a permitted development right for non-fracturing shale gas exploration development;
 2. Definition of non-hydraulic fracturing shale gas exploration;
 3. Development not permitted;
 4. Development conditions and restrictions;
 5. Prior approval;
 6. Time-limited or permanent permitted development right;
 7. Public sector equality duty.
- 3.4 The consultation sought views on the principle of granting planning permission for non-hydraulic shale gas exploration development through permitted development rights and asked a number of associated questions relating to locational limitations, conditions that might be applied and whether any permitted development right should be permanent or temporary only.
- 3.5 The proposed changes only related to shale gas exploration. The exploratory phase of oil and gas extraction seeks to acquire geological data to establish whether hydrocarbons are present, which in the case of shale gas may involve drilling an exploration well and conducting seismic surveys. This is then followed by a (testing) appraisal stage, and then a production stage.

¹ Proposed changes to permitted development rights for non hydraulic shale gas exploration: <https://www.gov.uk/government/consultations/permitted-development-for-shale-gas-exploration>

² Town and Country Planning (General Permitted Development) (England) Order 2015: <http://www.legislation.gov.uk/ukSI/2015/596/contents/made>

Any permitted development right would not apply to the appraisal and production operations of shale gas extraction.

- 3.6 The proposed changes do not relate to any other stage of development (appraisal or production) or proposals which do not include hydraulic fracturing (fracking).
- 3.7 By law, development which is likely to have significant effects on the environment requiring an Environmental Impact Assessment would not be permitted development³.
- 3.8 County Council officers considered the contents of the consultation, discussing the implications of the proposed changes nationally and prepared a response to the question set in the consultation document as set out in Appendix B. The County Council's response can be summarised as follows:

The County Council does not agree with the proposed changes to permitted development rights for shale gas exploration. We have indicated that the definitions of PD should be left as they currently are. We have also indicated that we believe that the timing of any change to permitted rights is premature as the industry is in its infancy. Changes to permitted development rights for conventional oil and gas were not immediate and followed a passage of time as the industry developed and was established.

- 3.9 In an associated covering letter, we have also re-iterated our plea to the Government departments to keep us informed of the timing of any subsequent consultations relating to oil and gas (including shale) issues in advance of publication. We have made this point in a number of previous responses as the departments have historically released documents without any prior warning. As Minerals Planning Authorities, we will largely be the first point of contact for local communities, interested parties and local press when they wish to find out more about oil and gas issues and Government consultations. The flurry of documents and consultations issued in recent years relating to oil and gas development has often taken place without prior notice given to Minerals Planning Authorities about the timescales for their publication. This has often meant that local interest groups and the local press have seen sight of the documents or announcements around the same time as Minerals Planning Authority and will immediately contact the relevant authority with their enquiries. We have made the point that this was particularly the case with this round of consultations which resulted in extensive correspondences being sent to our elected members and officers. We have requested that the Government departments provide us with a briefing note in advance of key consultations or announcements so that we can react more speedily to the enquiries received and brief members as necessary.

³ The Town and Country Planning (General Permitted Development) (England) Order 2015: <http://www.legislation.gov.uk/uksi/2015/596/article/3/made>

4. Consultation on the proposed criteria to trigger the inclusion of shale gas production projects into the Nationally Significant Infrastructure Projects regime

- 4.1 The consultation⁴ related to proposed criteria to trigger the inclusion of shale gas production projects into the Nationally Significant Infrastructure Projects regime. It was issued by the Department for Business, Energy & Industrial Strategy.
- 4.2 Planning permission is currently required for each phase of oil and gas development from the relevant Minerals Planning Authority (MPA). An operator must seek planning permission under the Town and Country Planning Act 1990 for the extraction of hydrocarbons from the local Mineral Planning Authorities (MPA) (or from the Secretary of State for Ministry of Housing, Communities & Local Government on appeal or if a planning application is called-in by him for his determination).
- 4.3 The County Council is a MPA and determines any oil or gas proposal within its administrative area against the relevant policies of the adopted Hampshire Minerals and Waste Plan (2013)⁶ as well as its associated oil and gas supplementary planning document (2016)⁷. The Plan and associated guidance include robust policies and guidance relating to all issues associated with proposals for onshore oil and gas development. Policy 24 (Oil and gas development) is of particular relevance as it relates to the three different phases of oil and gas development (exploration, appraisal and production) for both conventional and unconventional oil or gas developments.
- 4.4 Under the current planning regime, any shale gas production proposal would need to go through the same permitting and permissions process as other onshore oil and gas production phase projects. The planning system controls the development and use of land in the public interest and this includes ensuring that the new development is appropriate for its location, taking account of the effects (including cumulative effects) such as pollution, visual impact, transport movements and flood risk among many others.
- 4.5 The Government considers that major shale gas developments which are at the production phase would be most suitable for inclusion in the Nationally Significant Infrastructure Project regime as these could be of a scale to be considered nationally significant. Planning applications for production projects which do not meet the criteria to be considered nationally significant

⁴ Criteria to trigger the inclusion of shale gas production projects into the Nationally Significant Infrastructure Projects regime: <https://www.gov.uk/government/consultations/inclusion-of-shale-gas-production-projects-in-the-nationally-significant-infrastructure-project-nsip-regime>

⁵ Town and Country Planning Act 1990: <https://www.legislation.gov.uk/ukpga/1990/8/contents>

⁶ Hampshire Minerals and Waste Plan (2013): <http://documents.hants.gov.uk/mineralsandwaste/HampshireMineralsWastePlanADOPTED.pdf>

⁷ Oil and gas development Supplementary Planning Document (2016): <http://documents.hants.gov.uk/planning-strategic/HMWPOilandGasDevelopmentinHampshireSPDFinalFeb2016.pdf>

will still be subject to the planning process under the Town and Country Planning Act 1990.

4.6 The Planning Act 2008⁸ created a planning process for Nationally Significant Infrastructure Projects in fields of development including energy, water, waste water, road and rail transport and hazardous waste disposal. Nationally Significant Infrastructure Projects are major infrastructure developments of a type and scale defined under the Planning Act 2008. The Nationally Significant Infrastructure Project regime is bespoke in three main ways:

- **Establishes the need:** If an application for development consent demonstrates that it meets the national evidence base and 'need' in planning policy terms set out in the National Policy Statement, that national need does not need to be revisited again during the examination nor in determining the application.
- **Timescales:** The Planning Act 2008 sets out prescribed timescales for the examination and determination of applications for development consent. This means, in effect, that decisions must be made within one year of commencement of the examination, unless one or more of the relevant deadlines are extended by the Secretary of State. There are extensive requirements on applicants to consult with local authorities, communities and statutory consultees at the pre-application stage as set out in the Planning Act 2008. There is the opportunity for local authorities, statutory bodies and other interested parties to participate in the examination of an application. Members of the public can also take part in the examination stage if they register as an interested party.
- **Single application:** Finally, if a Development Consent Order is granted, it can incorporate other powers which cannot be included in a planning permission under the Town and Country Planning Act 1990. For example, powers for the compulsory acquisition of land.

4.7 The Act provides the legal framework for applying for, examining and determining applications for Nationally Significant Infrastructure Projects; taking into account any National Policy Statements where necessary. The final decision for granting development consent rests with the relevant Secretary of State, for matters relating to the field of energy this would be the Secretary of State for BEIS.

4.8 For projects falling within scope of what is defined in the Planning Act 2008 as a Nationally Significant Infrastructure Project, this becomes the only route for obtaining planning consent. The Planning Act 2008 defines the type and scale of infrastructure developments considered to be nationally significant.

4.9 Proposals considered under as a Nationally Significant Infrastructure Project would be considered against relevant National Policy Statements. In making decisions on such applications, the Secretary of State must also have regard

⁸ Planning Act 2008: <https://www.legislation.gov.uk/ukpga/2008/29/contents>

to any local impact report submitted by a local authority, and any other matters which the Secretary of State considers are both important and relevant to any decision. There are currently designated National Policy Statements which are grouped into fields including an overarching field of energy⁹.

- 4.10 Under the Planning Act 2008, an operator wishing to construct a Nationally Significant Infrastructure Project must submit a development consent application to the Secretary of State. As part of this process, the operator will need to have assessed any likely significant impacts of the proposed project. For such projects, where an application is accepted, the Secretary of State will appoint an 'Examining Authority' to examine the application in accordance with any relevant National Policy Statement. The Examining Authority will be arranged by the Planning Inspectorate and will be either a single Inspector or a panel of between two and five Inspectors. The examination will take into account any information and have regard to any local impact report submitted by the local authority as well as representations from statutory bodies, non-governmental organisations and other interested parties including the local community. Once the examination has been concluded, the Examining Authority will reach its conclusions and make a recommendation to the Secretary of State, who will make the decision on whether to grant or to refuse consent.
- 4.11 The Government sought views on the potential timing and the criteria for major shale gas production projects to be included in the Nationally Significant Infrastructure Project regime. The industry is still in the exploration stage in the UK and this initial consultation is focused on preparing for a potential future production phase. The consultation document describes the context for the consultation and provides an overview of the current application process as well as the potential future application process were shale gas production projects to be included in the Nationally Significant Infrastructure Project regime.
- 4.12 This proposed change would mean if individual infrastructure projects meet the relevant thresholds set out within the Planning Act 2008, then the Secretary of State automatically becomes the decision-maker for determining an application for development consent. This would mean that Hampshire County Council would no longer be the determining authority for any shale gas production proposals within its administrative areas as these would be determined by the Planning Inspectorate.

The consultation asked if there was agreement with the proposal to include major shale gas production projects in the Nationally Significant Infrastructure Project regime and what criteria should be used to determine the schemes that would fall within the regime (number of well sites, volume of recoverable gas, requirements for associated equipment etc.).

⁹ fossil fuel electricity generation (EN-2), renewable energy (EN-3), gas supply infrastructure and gas and oil pipelines (EN-4), electricity networks (EN-5); and nuclear power generation (EN-6).

4.13 The Government considers that current shale gas exploration and appraisal stage projects are of a smaller scale and are more appropriate for consideration under the Town and Country Planning Act 1990 as at present so are not impacted by the proposed changes

4.14 The County Council's response can be summarised as follows:

The County Council does not agree with the proposal to include major shale gas production projects in the Nationally Significant Infrastructure Project regime. This is based on the following areas:

- *The purpose of the planning system being to contribute to the achievement of sustainable development;*
- *The Government has previously stated its commitment to passing new powers and freedoms to local areas so that power can be exercised, close to the people who are affected by decisions, rather than distant from them. This was most demonstrated by the introduction of the Localism Act in 2011; The Government indicated that the Localism Act contained provisions to make the planning system clearer, more democratic, and more effective;*
- *Local government plays a crucial role as it is directly responsible for important public services. It makes sure that other services work together effectively for the good of the community. With councillors elected by and accountable to local people, local government provides democratic leadership. Local authorities are best placed to understand the requirements, concerns and nature of their communities and to take forward sustainable planning decision-making. Proposing to take the ability to determine applications of local community interest away from Local Planning Authorities contradicts the principles of localism.*

4.15 County Council officers considered the contents of the consultation, discussing the implications of the proposed changes nationally and prepared a response to the questions set in the consultation document as set out in Appendix C.

5. Next steps

5.1 The County Council submitted its response to both consultations on 24 October 2018.

5.2 Following the close of the consultations, the Government will consider the replies and issue its response.

5.3 With regards to the consultation on the proposed criteria to trigger the inclusion of shale gas production projects into the Nationally Significant Infrastructure Projects regime, as secondary legislation would be required in order to implement any proposed changes, the Government intends to

undertake a further consultation. This further consultation would build on the evidence from this initial consultation and be accompanied by a full impact assessment.

6. Further information

- 6.1 More information on oil and gas development can be found on our website¹⁰. This includes links to our oil and gas Frequently Asked Questions document¹¹.

7. Conclusions

- 7.1 That members of the committee note the contents of the consultation response in relation to the proposed changes to permitted development rights for non hydraulic shale gas exploration.
- 7.2 That members of the committee note the contents of the consultation response in relation to proposed criteria to trigger the inclusion of shale gas production projects into the Nationally Significant Infrastructure Projects regime.

Appendices:

Integral Appendix A – Corporate or Legal Information

Appendix B - Response to the consultation on the proposed changes to permitted development rights for non-hydraulic shale gas exploration

Appendix C - Response to the consultation proposed criteria to trigger the inclusion of shale gas production projects into the Nationally Significant Infrastructure Projects regime

¹⁰ Oil and gas information: <https://www.hants.gov.uk/landplanningandenvironment/strategic-planning/oil-gas-development>

¹¹ Oil and gas development in Hampshire: <https://www.hants.gov.uk/landplanningandenvironment/strategic-planning/oil-gas-development>

Links to the Strategic Plan

Hampshire maintains strong and sustainable economic growth and prosperity:	No
People in Hampshire live safe, healthy and independent lives:	No
People in Hampshire enjoy a rich and diverse environment:	No
People in Hampshire enjoy being part of strong, inclusive communities:	No
OR	
This proposal does not link to the Strategic Plan but, nevertheless, requires a decision because:	
The proposal does not link to the Corporate Strategy but requires noting by the Regulatory Committee in its statutory role as the minerals and waste planning authority.	

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

Document

Location

Consultation: Permitted development for shale gas exploration

<https://www.gov.uk/government/consultations/permitted-development-for-shale-gas-exploration>

Consultation: Inclusion of shale gas production projects in the Nationally Significant Infrastructure Project (NSIP) regime

<https://www.gov.uk/government/consultations/inclusion-of-shale-gas-production-projects-in-the-nationally-significant-infrastructure-project-nsip-regime>

Appendix B:

Submitted response to the consultation on Permitted development for shale gas exploration

Question	County Council response
<p>1 a) Do you agree with this definition to limit a permitted development right to non-hydraulic fracturing shale gas exploration? Yes/No</p> <p>b) If No, what definition would be appropriate?</p>	<p>No.</p> <p>The County Council does not agree with the Government's proposal to give permitted development rights for shale gas exploration. The definitions of PD should be left as they currently are.</p>
<p>2 Should non-hydraulic fracturing shale gas exploration development be granted planning permission through a permitted development right? Yes/No</p>	<p>No. The County Council does not agree with the proposal to give permitted development rights for shale gas exploration.</p> <p>The Council believes that the timing of any change to permitted rights is premature. The industry is in its infancy. Changes to permitted development rights for conventional oil and gas were not immediate.</p> <p>If it is the Government's intention to review PD rights for shale, it needs to be consistent with the provisions already in place for conventional oil or gas developments as set out under Schedule 17 of the Order. It should not be a blanket approach as proposed.</p>
<p>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</p> <ul style="list-style-type: none"> • Areas of Outstanding Natural Beauty • National Parks • The Broads • World Heritage Sites • Sites of Special Scientific Interest 	<p>Yes. If the Government is minded to include permitted development rights for shale exploration, the Council agrees that the list set out under question 3 a) should be applied.</p>

	<ul style="list-style-type: none"> • 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 	
	b) If No, please indicate why.	N/A
	c) Are there any other types of land where a permitted development right for non-hydraulic fracturing shale gas exploration development should not apply?	No.
4	What conditions and restrictions would be appropriate for a permitted development right for non-hydraulic shale gas exploration development?	<p>The County Council considers that the following conditions and restrictions should be applied:</p> <ul style="list-style-type: none"> • no trees on the land are removed, felled, lopped or topped and no other thing is done on the land likely to harm or damage any trees, unless the mineral planning authority have so agreed in writing; • before any excavation (other than a borehole) is made, any topsoil and any subsoil is separately removed from the land to be excavated and stored separately from other excavated material and from each other; • within a period of 28 days from the cessation of operations unless the mineral planning authority have agreed otherwise in writing; • any structure permitted and any waste material arising from other development so permitted is removed from the land; • any borehole is adequately sealed; • any other excavation is filled with material from the site; • the surface of the land on which any operations have been carried

		<p>out is levelled and any topsoil replaced as the uppermost layer, and</p> <ul style="list-style-type: none"> the land is, so far as is practicable, restored to its condition before the development took place, including the carrying out of any necessary seeding and replanting.
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 County Council considers that the potential considerations noted by way of example could all be of relevance (e.g. transport and highways impact, contamination issues, impact on water resources, air quality and noise, visual impacts, proximity of occupied areas, setting in the landscape, public consultation) and if included would make the process similar to applying for full planning permission. Therefore, the proposed changes would be redundant as the process would be as onerous as a planning application for both applicant and MPA.
6	Should a permitted development right for non-hydraulic fracturing shale gas exploration development only apply for 2 years, or be made permanent?	If it is the Government's intention to go forward with the changes to permitted development for shale gas exploration, this should only be for 2 years. This will ensure that in the event unexpected impacts are associated with the activities, these can then be dealt with through the planning process.
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?	No. Minerals can only be worked where they are found and as such the activities are unlikely to impact specifically on people with protected characteristics.

Appendix C:**Submitted response to the consultation on the inclusion of shale gas production projects in the Nationally Significant Infrastructure Project (NSIP) regime**

Question		County Council response
1	Do you agree with the proposal to include major shale gas production projects in the Nationally Significant Infrastructure Project regime?	No.
2	Please provide any relevant evidence to support your response to Question 1.	<p>The County Council does not agree with the proposal to include major shale gas production projects in the Nationally Significant Infrastructure Project regime.</p> <p>The purpose of the planning system is to contribute to the achievement of sustainable development. As set out in the NPPF (2018), at a very high level, the objective of sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs.</p> <p>The Government has previously stated its commitment to passing new powers and freedoms to local areas so that power can be exercised, close to the people who are affected by decisions, rather than distant from them. This was most demonstrated by the introduction of the Localism Act in 2011. It clearly stated when bringing forward the act that it would allow greater freedom and flexibilities for local government and this was considered to be vital in achieving a shift in power back to the local level which the Government wanted to see.</p> <p>When bringing forward the Act, the Government acknowledged that there were some significant flaws in the planning system. It stated that 'planning did not give members of the public</p>

		<p>enough influence over decisions that make a big difference to their lives. Too often, power was exercised by people who were not directly affected by the decisions they were taking. This meant, understandably, that people often resented what they saw as decisions and plans being foisted on them. The result was a confrontational and adversarial system where many applications end up being fought over’.</p> <p>The Government indicated that the Localism Act contained provisions to make the planning system clearer, more democratic, and more effective.</p> <p>Local government plays a crucial role as it is directly responsible for important public services. It makes sure that other services work together effectively for the good of the community. And with councillors elected by and accountable to local people, local government provides democratic leadership. Local authorities are best placed to understand the requirements, concerns and nature of their communities and to take forward sustainable planning decision-making. Proposing to take the ability to determine applications of local community interest away from Local Planning Authorities contradicts the principles of localism.</p>
3	<p>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 a nationally significant project with regards to shale gas production? Please select from the list below:</p> <p>a. The number of individual wells per well-site (or ‘pad’)</p> <p>b. The total number of well-sites within the development</p>	<p>In the event that the Government consider major shale gas production projects should be brought into the Nationally Significant Infrastructure Project regime, the County Council considers that the following criteria should be applied to indicate a nationally significant project with regards to shale gas production?</p> <p>h) A combination of criteria encompassing the following:</p> <p>a) The number of individual wells per well-site (or ‘pad’)</p>

	<p>c. The estimated volume of recoverable gas from the site(s)</p> <p>d. The estimated production rate from the site(s), and how frequently (e.g. daily, monthly, annually or well lifetime)</p> <p>e. Whether the well-site has/will require a connection to the local and/or national gas distribution grid</p> <p>f. Requirement for associated equipment on-site, such as (but not limited to) water treatment facilities and micro-generation plants</p> <p>g. Whether multiple well-sites will be linked via shared infrastructure, such as gas pipelines, water pipelines, transport links, communications, etc</p> <p>h. A combination of the above criteria – if so please specify which</p> <p>i. Other – if so please specify</p>	<p>b) The total number of well-sites within the development</p> <p>d) The estimated production rate from the site(s), and how frequently (e.g. daily, monthly, annually or well lifetime)</p> <p>g) Whether multiple well-sites will be linked via shared infrastructure, such as gas pipelines, water pipelines, transport links, communications, etc</p>
4	<p>Please provide any relevant evidence to support your response(s) to Question 3.</p>	<p>In the event that the Government consider major shale gas production projects should be brought into the Nationally Significant Infrastructure Project regime, the County Council considers that the criteria identified under question 3 should be applied. This is based on the following:</p> <p>The number of wells per well site and the total number of well-sites within the development is an important consideration because it will determine the scale of the development.</p> <p>The estimated production rate is also important as it guides the scale and timescales of the development as well as potentially other associated impacts e.g.</p>

		<p>HGV movements.</p> <p>Connections to other infrastructure should also be considered as it means that the site will interact with other utilities and provisions.</p>
5	<p>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).</p>	<p>Although the Council does not agree with the proposed change, if the Government is minded to introduce the change it should take place once a critical mass of shale gas exploration and appraisal sites has been reached.</p>
6	<p>Please provide any relevant evidence to support your response to Question 5.</p>	<p>Change following a critical mass of shale gas exploration and appraisal sites being reached will provide an opportunity for local authorities to continue determining proposals for exploration and appraisal. It will also ensure that industry development takes place before such a significant change. It will also provide an opportunity to review / reflect on historic planning process applications to date nationally. It will be important that Government supports local authorities financially in the processing and determining of applications until such a change takes place.</p>