The questions and responses to the Consultation paper "Permitted development for shale gas exploration".

Question 1

a) Do you agree with the following definition ('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') to limit a permitted development right to non-hydraulic fracturing shale gas exploration?

This is quite a technical question. Paragraph 20 of the Consultation document indicates that the purpose would be to allow "*operations to take core samples for testing purposes*" (i.e. the core samples would be tested). However, the suggested definition indicates there would be a testing period not exceeding 96 hours, with the OGA Consolidated Onshore Guidance explaining that "*when testing a discrete section of the well, each section can be produced for a maximum of 96 hours but the total quantity of oil produced from all sections should not exceed 2,000 tonnes per section*".

This means the suggested definition would allow for a degree of production, which seems to contradict the approach that is being taken in paragraph 20.

As such, **Nottinghamshire County Council (NCC) does** not agree with the proposed definition.

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

NCC recommends the following, more appropriate, definition:

"*Boring for natural gas in shale or other strata encased in shale for the purposes of searching for natural gas and associated liquids by obtaining borehole logs and taking core samples for testing purposes*"

This suggested definition is based upon **the Council's** experience of dealing with a planning application for a monitoring borehole at the Tinker Lane site where the Environmental Statement stated:

> *"The well has been designed to obtain logs and core. This would enable an understanding of the geological sequence beneath the site to be obtained. Logging is the physical measurement of subsurface properties by lowering specialist tools down the wellbore. Coring is the collection of rock samples from the wellbore. These would then be analysed at the surface in order to understand the small scale properties of the rocks".*

There is a fundamental difference between collecting geological information in the form of borehole logs and core samples and testing the in situ rock (either with or without fracturing). **NCC is** of the view that there would not be an issue with putting gas

monitoring equipment on top of the borehole for 96 hours to record any 'natural' flows of gas due to the pressure release. To not do so would be a missed opportunity in terms of data collection.

Question 2

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

Nottinghamshire County Council does not consider that it would be appropriate for exploration to be granted planning permission through a permitted development right, for the reasons stated below.

Local involvement

The effect of the proposed legislation would be to make a national grant of planning permission for shale gas exploration and thereby removing the local level of decision making and local accountability that communities expect. **Members of the Council's Planning and Licensing Committee have stated that they wish to continue to have the power to make decisions on all shale gas applications in the spirit of local democracy. They wish to continue to receive reports, with recommendations, from planning officers, to enable them to continue to make planning decisions on proposals which may affect the communities that they represent.** Although the Government has stated that it remains fully committed to ensuring that local communities are fully involved in planning decisions that affect them, it remains to be seen how the permitted development process would enable full public involvement as the purpose of the consultation is to take shale gas exploration out of the current planning process.

Permitted development legislation

The GPDO legislation has been subject to significant levels of amendment in recent years, each time increasing the scope of permitted development with varying degrees of effectiveness. In some instances the new or amended rights have been particularly high profile with a large uptake from developers. For example research from the Local Government Association (LGA) found that 1 in 10 new homes across England in the last two years had come about through the new office to residential conversion permitted development rights, with some cities recording a majority of new homes being created this way. The LGA though highlighted that this has impacted on the inability of local authorities to secure any developer contributions towards local infrastructure or affordable housing requirements.

Paragraph 34 of the consultation document acknowledges that it is unclear how effective the proposed legislation would be (in the Government's aim to further the industry) given it envisages a range of exclusions, limitations and restrictions. This shows that these types of proposals would result in multiple and complex planning

issues which require expert consideration by planning and regulatory experts with local knowledge on a case by case basis.

Prior approval and fee income

In some of the more recent amendments to the GPDO the legislation has introduced the requirement for prior approval for certain limited and technical matters such as flooding, noise and transport. The introduction of a similar type of procedure for shale exploration would allow at least some consideration of these technical matters at a local level and provide additional safeguards to prevent unacceptable developments. It does however introduce additional work for the Minerals Planning Authorities which has not been matched with an appropriate level of fee payment (currently £96 or £206 for prior approvals). The consultation also considers whether there should be a level of public consultation which, together with the technical assessments, can result in a similar level of work as a full planning application. If such an approach is taken forward it would be appropriate to make an accompanying amendment to the Town and Country Planning (Fees for Applications, etc.) Regulations to set an appropriate fee level. **NCC** suggests that it sets the fee as it would be the same if a full application was being made. For the applications dealt with at Nottinghamshire Tinker Lane attracted a fee of just under £10,000 and Misson Spring just under £23,000. Officers suggest there should be a fee schedule based upon a certain amount per well, or based on the site area similar to planning application fees at present.

Another potential method of dealing with a fee shortfall might be for there to be an extension of the existing shale wealth fund provisions which would allow for grants to be paid to the MPAs who deal with these matters.

Unreasonable delays

This proposal to make shale gas exploration permitted development appears to be an attempt to speed up the time it takes to get exploration off the ground, which would remove the thorough consideration of potential impacts and the measures which can be put in place (through conditions and S106 obligations) to mitigate and compensate such impacts.

With reference to Paragraph 11 of the consultation document in relation to the time taken to deal with the application, this states that MPAs have taken up to 83 weeks for a decision with agreement for time extensions. This is a direct reference to the Misson Springs planning application. However, in the case of that application the delays were due to multiple Regulation 22 requests for further information, which the applicant was slow at providing; the long and complex Section 106 negotiations involving numerous parties; the requirement for a restoration bond and delays caused by the legal challenges relating to restrictive covenants raised by objectors during committee proceedings. All these factors increased the time taken to deal with an already complex application. It is likely that even if exploration were made permitted development there may be so many processes, limitations and other complex considerations that decisions may not be much quicker than the current process.

Enforceability

If shale gas exploration development was to be defined as permitted development the limitations list would have to be very carefully worded to cover all the possible impacts and issues which might fall to be considered in the planning arena for each and every possible site. These would then have to be enforceable which would no doubt be via an enforcement notice for unauthorised development if it fell outside those permitted. If only one aspect was breached the County Council would have to consider whether it would be expedient to take enforcement action bearing in mind the undoubted public pressure the authority would be put under to act.

To conclude, permitted development rights should only be used to free up the planning system by allowing uncontroversial and limited impact development to be granted. **NCC** does not consider that this should relate to shale gas exploration for the reasons given above.

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?

Areas of Outstanding Natural Beauty; National Parks; The Broads; World Heritage Sites; Sites of Special Scientific Interest; Scheduled Monuments; Conservation Areas; Sites of archaeological Interest; Safety hazard areas; Military explosive areas; Land safeguarded for aviation or defence purposes; and protected groundwater source areas.

This appears to be a relatively comprehensive list and, as such, officers generally agree with the suggested list of excluded areas where permitted development rights would not apply. Additionally, if the development would be EIA development then the new rights do not apply and officers consider that it would be useful to make reference to this within this list of restrictions.

All excluded areas set out above have definitions within the legislation so it would be beneficial for the legislation to cross reference to these definitions. For instance:

“Sites of archaeological interest” (as defined in The Town and Country Planning General Permitted Development (England) Order 2015) means land which:

(a) is included in the schedule of monuments compiled by the Secretary of State under section 1 of the Ancient Monuments and Archaeological Areas Act 1979 (schedule of monuments);

(b) is within an area of land which is designated as an area of archaeological importance under section 33 of that Act (designation of areas of archaeological importance) (19), or

(c) is within a site registered in any record adopted by resolution by a county council and known as the County Sites and Monuments Record.

It will be necessary to provide absolute clarity in terms of the definitions of the various excluded areas within the list. For instance if "sites of archaeological interest" included any site with a Historic Environment Record (HER) on it, there may be very few sites in Nottinghamshire that would qualify for permitted development. Both the Misson Springs and Tinker Lane sites have records as they have been identified as having archaeological interest and would, in planning be terms, be regarded as Non Designated Heritage Assets.

The definition of "Protected groundwater source areas" is set out in The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016 as follows:

(1) For the purposes of Class JA, "protected groundwater source area" means any land at a depth of less than 1,200 metres beneath a relevant surface area.

(2) In paragraph (1), "relevant surface area" means any land at the surface that is:

(a) within 50 metres of a point at the surface at which water is abstracted from underground strata and which is used to supply water for domestic or food production purposes, or

(b) within or above a zone defined by a 50-day travel time for groundwater to reach a groundwater abstraction point that is used to supply water for domestic or food production purposes."

It is worth noting that reference to protected groundwater source areas, as defined above, appears to be the same as Source Protection Zone 1 (Inner Protection Zone) only, and would not include SPZ2 and 3. In the case of the planning applications submitted to Nottinghamshire County Council, Tinker Lane fell into SPZ3 and Misson Springs was just outside a SPZ 3.

b) If 'No', please indicate why

NCC recommends some additional area should also be protected from non-hydraulic fracturing shale gas exploration development, as detailed in the answer to (c) below.

c) Are there any other types of land where a permitted development right for non-hydraulic fracturing shale gas exploration development should not apply?

<u>Irreplaceable habitats</u>

The revised NPPF includes greater protection for 'irreplaceable habitats' including ancient woodlands and trees. They are defined in the NPPF as *Habitats which would be technically very difficult (or take a very significant time) to restore, recreate or replace once destroyed, taking into account their age, uniqueness, species diversity or rarity.*

They include ancient woodland, ancient and veteran trees, blanket bog, limestone pavement, sand dunes, salt marsh and lowland fen.

In line with this and the Government's 20 year Environment Plan, this additional protection could be given. This would be particularly relevant to Nottinghamshire in the case of Sherwood Forest.

Listed Buildings

Whilst the demolition of a Listed Building would require planning permission there is no restriction where a proposal would indirectly affect the setting of a listed building. Currently Article 5 offers the only power available to MPAs in such cases where there would be an unacceptable adverse impact to the setting of a Grade I listed building. This is a very limited power and does not fully respond to the legal duty local authorities and the Secretary of State have to preserve listed buildings and their settings and Conservation Areas. It is not possible to set an arbitrary stand-off to listed buildings as their settings can vary greatly. It is a professional judgment which is required on a case by case basis. This also applies to stand-offs to ecological designations. This matter was relevant to the Misson Springs site with its proximity to a SSSI.

It is suggested that Article 5 could be amended to give MPAs greater ability to restrict developments where appropriate, such as to include the protection of all listed buildings or the setting of conservation areas.

Question 4

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

NCC considers that the protection of residential amenity seems to be generally lacking here, except for the reference to "restrictions on any operations carried out within a certain distance of sensitive site users".

The starting point for restrictions should be Class KA as introduced in The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016. If the Government decides not to make the new permitted development right subject to any local prior approval process it should at the least require a prior notification, allowing the MPA the opportunity to consider the use of an Article 5 direction (which should be widened in scope as suggested in the answer to Question 3 above).

As set out in the answer to Question 3 above if the development would be EIA development then the new rights do not apply by virtue of Article 3 (10) and (11). It would be useful to provide a cross reference to this within any list of restrictions that may be specified so to make it clear that it is likely that the developer would have to engage with the MPA to screen the proposal for EIA Regulation purposes.

In **this Council's** experience of dealing with the two sites in Nottinghamshire, there were a significant amount of site specific conditions (and matters covered under the associated legal agreements) that were needed to make both developments acceptable in planning terms. **NCC** remains extremely concerned about the effectiveness of generic conditions or restrictions being used to mitigate the specific impacts at different sites. This highlights why this type of development is not suitable for the permitted development regime.

However, one area that would benefit from specific restrictions is noise. In line with the Planning Practice Guidance, day time noise limits at the nearest sensitive receptors should be limited to no more than 10dB above background level, with total noise not exceeding 55dB. With regards to night time noise, levels should be no higher than 42dB at the nearest sensitive receptors.

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?

Paragraph 33 of the consultation paper states:

"*By way of example, the prior approval considerations might include transport and highway impact, contamination issues, air quality and noise impacts, visual impacts, proximity of occupied areas, setting in the landscape and could include elements of public consultation*".

The prior approval topics set out are very similar to the topics that would be covered in a planning application, but without the democratic decision making process involved in a planning application. Also, as raised in **the** response to Question 2 above, the amount of work involved (officer time and cost) would be comparable to that of a planning application, albeit with no planning application fee associated with it. It would be unreasonable to significantly increase the workload of MPAs in this way without adequate financial recompense for the work that would need to be undertaken and which would allow the MPA to properly resource the work. Suggestions that this could be adequately covered by a Planning Performance Agreement (PPA) are misguided. Covering these costs under a PPA would rely on the goodwill of the applicant/developer to pay the authority, with no requirement for them to do so. **NCC** would welcome the continuation/expansion of the shale wealth fund to guarantee funds to MPAs to deal with these matters.

Furthermore, there are concerns about the amount of time that would be given to consider these issues. For example, the County Council has recent experience of dealing with prior approvals under Part 17 Class K (b), which allows for the carrying out of seismic surveys. This basically allows 28 days for the MPA to agree additional

conditions. Such a time period would not be adequate to consider the issues listed in Paragraph 33 above.

Question 6

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

NCC has interpreted this question as asking whether the permitted development rights should be changed permanently, or whether they should be trialled for a two year period before being made permanent. The response is based on that assumption.

Given the clear lack of understanding as to the impact that the changes would have, or how effective they would be (as admitted in Paragraph 34), going ahead with permanently changing the permitted development rights would seem to be quite a risk. However, it would be less risky for the Government to make the change temporary with the option to remove the permitted development rights in two years' time, rather than permanently changing them. This two year trial would allow for a full assessment of the effectiveness of the permitted development regime for this type of development and enable Government and MPAs to judge what the impacts have been and whether any exploratory development has been sufficiently controlled and its impacts properly mitigated.

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?

No comments

Appendix

The questions and responses to the Consultation paper "Inclusion of shale gas production projects in the nationally significant infrastructure project regime"

Question 1.

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

The response to this question is based upon the County Council's response provided in April this year to the questions posed on this matter by the Housing, Communities and Local Government Committee and the evidence given by the Group Manager Planning at the subsequent Select Committee. **However it also reflects the subsequent decisions made by the Council's Planning and Licensing Committee and Full Council which has sought to strengthen the Council's view " that there is no justification for singling out fracking to be included in the 'Nationally Significant Infrastructure Project' regime.**

i) Nottinghamshire County Council can see a strong argument for decisions on fracking applications remaining at a local level, i.e. by members of the Council's Planning and Licensing Committee following consideration of committee reports compiled by planning officers. This would seem to be the most democratic method of decision making, i.e. determination by members who represent local communities within the county. As with many planning decisions, particularly those unpopular with local people, the County Council has frequently been reassured that even if the local residents are not happy with the decision/outcome, they are generally content with the fair and transparent process that led to that decision. Objectors and supporters alike are given the opportunity to speak at planning committee meetings and if decisions were not made at the local level this opportunity may be lost.

ii) ~~In the light of the Written Ministerial Statement of the 16th September 2015 the County Council can see some benefits in the applications for all shale gas proposals, not just those involving fracking, being classified as national infrastructure allowing shale gas companies to apply directly to the Planning Inspectorate.~~ Planning applications for shale gas proposals (Nottinghamshire has dealt with planning applications on two sites, both for ground water monitoring and exploratory boreholes) are extremely demanding on Council resources, particularly staffing. This is the case, both during the determination stage and after the decisions are made, including intensive monitoring of the sites and dealing with complaints/enquiries from the local community. The planning fees accompanying the planning applications were wholly inadequate to cover the additional costs incurred but, in mitigation, the County Council applied for, and received, shale gas funding made available to Minerals Planning Authorities by the then DCLG. This enabled the County Council to employ staff to cover the extra development management workload, implement necessary upgrades to IT systems and meet legal costs etc. This extra financial burden on the County Council was to some degree mitigated by this Government funding. However, shale gas proposals will continue to be extremely demanding on Council resources and the proposed removal of this extra workload created by shale gas proposals could be advantageous for some minerals planning

authorities. In particular, employing additional staff with the necessary yet specialist minerals and waste planning experience at such short notice could be problematic given the specialist nature of this type of planning work. Also, given that Minerals Planning Authorities are usually given little to no notice of when an application is going to be submitted, recruiting additional resources through standard recruitment procedures is not a speedy process and can quite easily take as long as the statutory determination period for a shale gas application (13 to 16 weeks). **It is essential, more than ever, that Minerals Planning Authorities are sufficiently resourced to deal with shale gas planning applications**

iii) Nottinghamshire has little experience in dealing with proposals for national infrastructure under the 2008 Planning Act. From published guidance available on the matter it appears that the County Council would continue to have a significant role in the process from the pre-application stage right through to the monitoring and enforcement of the Development Consent Order, along with the conditions attached, as well as the agreeing the terms of any S106 agreement. This involvement would be welcomed and would allow local specialist knowledge to feed into the process, for instance in the scope of the Environmental Impact Assessment. Additionally, elected members are able to present their views, and those of their constituents at the hearing stage, as well as providing officers with a clear policy steer. However, as the planning fee for these proposals is paid to the Planning Inspectorate local planning authorities would need to resource the work without receiving a fee. Having accepted that there is significant input by the authority this could only reasonably be achieved if funding were made available to the authority, perhaps through the continuation of the shale gas grants. As described in the paragraph above, shale gas proposals, even at the early stages, are extremely demanding on resources, particularly professional planning, legal and support staff. **We wish to reiterate that Minerals Planning Authorities need to be sufficiently resourced to deal with shale gas planning applications**

iv) One considerable disadvantage of classifying planning applications for fracking as national infrastructure projects is that it does fuel the perception held by many communities that the Government considers fracking to be a “special case” which needs to be treated as such. This perception is further fuelled by the Government’s overarching support for the exploration of the UK’s potential shale gas reserves. Following the Written Ministerial Statement of 16/9/2015 the County Council, has tried to reassure local people that shale gas applications are potentially no more controversial than other types of hydrocarbon extraction or large scale quarries which typically have lifespans of 30 to 40 years. Nottinghamshire has a long history of coal, gas and oil extraction and still has nine active oilfields, which have been granted permission and have operated for many years without controversy. Understandably local communities are concerned about fracking as a new technology and the topic has become one of national debate. Alarmist headlines have been published by the press which provide local communities with misleading information rather than factual advice. The County Council has endeavoured to counter any such misleading information through dedicated shale gas pages on its website. Removing the decision making process from the local level is likely to further increase this suspicion, held by some local people, that central government is looking to force through the exploration and production of any shale gas reserves. It will be important for

the Government to reassure the population as to why this needs to be the case to avoid raising levels of concern further.

v) In conclusion, Nottinghamshire County Council ~~has recognised that there are both~~ **recognises some potential** advantages ~~and disadvantages~~ to classifying fracking proposals as national infrastructure under the 2008 Planning Act. ~~This proposal could be supported, provided that reassurances can be given that~~ **However, on balance, the County Council does not support the proposal to include shale gas production projects in the NSIP regime. If the Government does decide to go ahead and include these projects in the NSIP regime then** the County Council will need to be fully involved throughout the various stages of the decision making process. This needs to include both local professional and specialist input, as well as opportunities for elected members to represent their communities. The views of local people must be given the same level of consideration as is currently the case. It must remain a fair and transparent process and one with which local people feel able to engage. As an authority with experience of dealing with shale gas proposals, it is important that Local Authorities receive adequate financial resources to enable them to fully participate in the process. Extending the shale gas grants available to local authorities may be one method of doing this. Inclusion in the NSIP regime should apply only where the shale gas production is truly of 'national significance', the exploratory and appraisal phases should provide the operators with sufficient information to know how much gas they are likely to be able to extract from a well site, or how much per annum, and therefore confirm whether it is nationally significant or not. We would not want to see smaller shale gas production development included because there is political frustration that the planning application process is problematic or taking too long.

Question 2.

Please provide any relevant evidence to support your response to Q.1

Please see comments made above.

Question 3.

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:

a. The number of individual wells per well-site (or 'pad')

b. The total number of well-sites within the development

a/b It is unlikely that an individual site (or pad) would be of national significance, irrespective of the number of wells. However, where there are a number of sites (or pads) which are obviously part of the same development (e.g. targeting the same

reservoir) this is moving towards being more significant. However, the point at which a multi-pad scheme would be nationally significant would differ from site to site, so we would expect this to be one criterion among many. There would also need to be some kind of preventative measure to prevent the **'salami-slicing' of shale gas development and s**top individual applications being submitted to an MPA separately to avoid the NSIP process, and conversely to stop sites over a wide geographical area being bundled together as one NSIP application when they are not actually part of the same development.

c. The estimated volume of recoverable gas from the site(s)

d. The estimated production rate from the site(s), and how frequently (e.g. daily, monthly, annually or well lifetime)

c/d– It is considered that the volume of resource/production is the best indicator as to whether a scheme is of national significance. However, there are serious concerns given the inherent uncertainty with 'estimated' volumes, be it recoverable volumes or production rates, which could be manipulated to be in/out of the NSIP process.

e. Whether the well-site has/will require a connection to the local and/or national gas distribution grid

e – A well site, or sites, not connected to the grid may well have greater impacts, particularly in respect to ongoing traffic movements, although these would be local impacts. However, connection to the grid may indicate a larger and more significant scheme. On the other hand, it might just be because there is a grid connection near to the proposed development site. It is considered that this would not be a useful criteria for determining national significance.

f. Requirement for associated equipment on-site, such as (but not limited to) water treatment facilities and micro-generation plants

f – If a site, or group of sites, is of a scale where there is associated equipment such as water treatment and generation facilities, this is indicative of a larger operation and may be more likely to be of national significance. With regard to generation, there are plenty of natural gas sites (coal mine methane) within Nottinghamshire that include micro-generation 1-2MW per engine and up to three engines at some sites. These sites are clearly not nationally significant, so it is suggested that there would need to be a MW threshold set reasonably high, such as 50MW (although this would trigger the NSIP process itself anyway under existing legislation).

g. Whether multiple well-sites will be linked via shared infrastructure, such as gas pipelines, water pipelines, transport links, communications, etc

g – Multiple sites linked together with associated infrastructure would be more indicative of a scheme that is of national significance than a single site/pad. This could be useful as one of the criteria.

h. A combination of the above criteria – if so please specify which

i. Other – if so please specify

h/i – no further comments.

Question 4.

Please provide any relevant evidence to support your response(s) to Question 3.

See above answers

Question 5.

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).

It seems pointless implementing such changes when it is unknown whether there is economically recoverable shale gas available. On the other hand, once this has been established it would be useful to have the system in place to deal with major, interconnected schemes which recover significant quantities of gas and/or have a large generating capacity and have potentially significant amenity and environmental impacts.

Question 6. Please provide any relevant evidence to support your response to Question 5.

No further comments