

Written evidence submitted by Nottinghamshire County Council to the Communities and Local Government Committee on guidance for local authorities taking planning decisions on fracking applications

This submission has been made on behalf of Nottinghamshire County Council. The response to the first three questions have been compiled by planning officers, the response to the question “Should applications for fracking be dealt with as national infrastructure under the 2008 Planning Act?” has been drafted in consultation with County Council’s Chair of Planning and Licensing Committee.

Nottinghamshire County Council was keen to have an input into this matter given that it has already had experience of dealing with shale gas applications on two sites within the County.

Executive summary

- Nottinghamshire County Council recognises that there are both advantages and disadvantages to classifying fracking proposals as national infrastructure under the 2008 Planning Act.
- We would support this proposal providing that reassurances can be given that the County will 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 who has had 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.

Is there a need to update and improve the guidance available?

National Planning Policy Framework - Within the NPPF Chapter 13 (Facilitating the sustainable use of minerals) is the chapter that is directly relevant to shale gas and the only paragraph that directly relates to shale gas development is the first bullet point of Paragraph 147 which states:

“when planning for on-shore oil and gas development, including unconventional hydrocarbons, clearly distinguish between the three phases of development (exploration, appraisal and production) and address constraints on production and processing within areas that are licensed for oil and gas exploration or production”

However, there is no steer on how Minerals Planning Authorities should deal with shale gas applications, specifically the weight that should be given to them, other than the

general statement at the start of Paragraph 144 which relates generally to minerals extraction and gives “*great weight to the benefits of mineral extraction*”. Additional guidance in this regard within the NPPF would be beneficial. It is hoped that the proposed revisions to the NPPF will address this issue.

Planning Practice Guidance - Within the Minerals section of the online Planning Practice Guidance there is a section titled ‘Planning for Hydrocarbon Extraction’. This section covers:

- The phases of onshore hydrocarbon extraction;
- How mineral planning authorities plan for hydrocarbon extraction;
- The planning application process;
- Development Management procedures;
- Environmental Impact Assessment;
- Determining the planning application;
- Aftercare and restoration;
- Annex A: Shale gas and coalbed methane/coal seam gas;
- Annex B: Outline of process for drilling an exploratory well;
- Annex C: Model planning conditions for surface area.

This section of the PPG is relatively comprehensive. However, it is notable that it relates to hydrocarbon extraction in general (incorporating conventional oil and gas extraction as well as coal bed methane extraction and underground coal gasification). We support the position that hydraulic fracturing / shale gas extraction should not be decoupled from other hydrocarbon development and the guidance should remain within this section of the PPG.

Written Ministerial Statement - There is a Shale Gas and Oil Written Ministerial Statement (16th September 2015) which was made by the then Secretary of State for Energy and Climate Change. The statement formally replaced the Shale Gas and Oil Policy Statement issued by the Department of Energy and Climate Change (DECC) and the Department of Communities and Local Government (DCLG) on 13 August 2015. The statement expressly states that it should be taken into account in planning decision and plan making.

The WMS sets out the Government’s view that there is a national need to explore and develop shale gas and oil resources in a safe, and sustainable and timely way. The WMS also states that exploring and developing shale gas and oil resources could potentially bring substantial benefits and help meet objectives for secure energy supplies, economic growth and lower carbon emissions. As such, the Government considers that “*there is a clear need to seize the opportunity now to explore and test our shale potential*”.

In conclusion to this question Nottinghamshire County Council would welcome the proposed revised NPPF to include additional clarification as to what extent shale gas developments are considered to be “included” within the existing statement relating to minerals development which gives “*great weight to the benefits of mineral extraction*”. It is hoped that the proposed revisions to the NPPF will address this issue.

It is also considered desirable that Planning Practice Guidance is regularly updated to incorporate all Government guidance and Written Ministerial Statements relevant to shale gas development as and when guidance or statements are made. This would provide a single point of reference available to Minerals Planning Authorities in their determination of such applications and also to others involved in the planning process, including regulators and communities.

Is there a need for a comprehensive document incorporating existing and updated guidance?

The introduction to the consultation ahead of the inquiry states that it will focus on whether there needs to be a comprehensive document bringing all guidance together for all those involved in the planning process. In terms of existing guidance currently available this includes the following:

Government guidance

NPPF - March 2012

Planning Practice Guidance – March 2014

Shale Gas and Oil Written Ministerial Statement -16/09/2015

Guidance on Fracking: developing shale gas in the UK – updated 13th January 2017, Department for Business, Energy and Industrial Strategy

Collection - Shale gas, hydraulic fracturing and other unconventional hydrocarbons – updated 15th February 2017, Department for Business, Energy and Industrial Strategy, Ministry of Housing, Communities and Local Government, DEFRA and Environment Agency

Fracking UK Shale: planning permission and communities – February 2014, Department of Energy and Climate Change

Industry guidance

UK onshore shale gas well guidelines - Exploratory and appraisal phase (Issue 4) – December 2016, UKOOG (good industry practice)

Community/professional advice

Shale Gas Extraction Fracking proposals and the planning system – March 2017, Planning Aid/RTPI. Advice for Planning Aid Volunteers, politicians, community groups and individuals affected by shale gas proposal

Regulators guidance

Shale gas and oil guidance for planners – published January 2015, Health and Safety Executive

Onshore oil and gas sector guidance – August 2016, Environment Agency

This list may not be exhaustive but demonstrates that there is currently a significant wealth of information available serving different purposes and audiences.

The existing system of the NPPF giving the broad strategic planning framework and the PPG providing more detailed advice is considered to be the appropriate method for delivering guidance to local authorities taking decisions on fracking applications. Subject to the suggested areas of update and clarification stated in question 1 above the view is that the current system works well.

It is considered that advice drafted by the Government, regulators, statutory consultees and professionals etc. should remain as separate documents each with their own specific purpose. However, it would be useful to have a comprehensive list of all “guidance” relevant to shale gas applications, perhaps hosted and updated by the Gov.uk website.

What is the status – in planning terms – of the extant Government guidance?

The extant guidance set out in the NPPF, the PPG and other Government Guidance, together with written ministerial statements, are material considerations and must be taken into account in determining applications for shale gas proposals.

The existing NPPF was published in March 2012 and the Government has just published its draft revised NPPF for consultation purposes. The Planning Practice Guidance relating to Planning for Hydrocarbon Extraction was last updated in 2014. The section on deemed planning consent for some initial seismic work was updated in April 2015.

Should applications for fracking be dealt with as national infrastructure under the 2008 Planning Act?

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 our IT systems and fund 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). The County Council was fortunate when previously recruiting an experienced minerals and waste planner as it was able to recruit through its preferred agency contractor but such a recruitment method might not always be available when required or, even if available, result in a suitable appointment.

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.

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 WMS on 16/9/2015 in Nottinghamshire we have 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 9 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 advantages and disadvantages to classifying fracking proposals as national infrastructure under the 2008 Planning Act. We would support this proposal providing that reassurances can be given that the County will 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 who has had 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.

Please accept these as the formal views of Nottinghamshire County Council when these matters are considered by the Communities and Local Government Committee.