



11th December 2018

Agenda Item:10

REPORT OF CORPORATE DIRECTOR – PLACE

RESPONSE TO THE MINISTRY OF HOUSING, COMMUNITIES AND LOCAL GOVERNMENT ON COMPULSORY COMMUNITY CONSULTATION FOR SHALE GAS DEVELOPMENT

Purpose of Report

1. To seek Members' approval of the response to the Government's consultation on "Compulsory community pre-application for shale gas development" as set out in the appendix to this report.

Background information

2. The Ministry of Housing, Communities and Local Government (MHCLG) are consulting on whether applicants should be required to conduct pre-application consultation prior to undertaking shale gas development. The intention to consult on this matter was announced in the joint Written Ministerial Statements made on 17th May 2018. This consultation, which will last for 10 weeks, was published on 31st October 2018. A response to MHCLG will be required by 9th January 2019.
3. This consultation follows on from the two previous government consultations on shale gas development relating to permitted development and the Nationally Significant Infrastructure Projects regime, the Council's response to which were reported to this Committee in September and October. These consultations are now closed and a response from the Government on these matters is expected in due course.
4. In this latest consultation the Government acknowledges that sufficiently early engagement with communities at the pre-application stage may give local people an earlier say in the process and make developers aware of issues of importance to the community that may need to be resolved through the planning process. The National Planning Policy Framework and Planning Practice Guidance make it clear that early engagement has significant potential to improve the efficiency and effectiveness of the planning application system for all parties. It is currently not a statutory requirement for applicants to undertake pre-application consultation prior to submitting a planning application for every type of proposed development.

Existing consultation requirements for shale gas development

5. Currently under planning law, where a planning application has been submitted for shale gas development the minerals planning authority undertakes a period of publicity and consultation with the public and a range of different groups, including statutory and non-statutory consultees. The consultation period normally lasts for 21 days. Minerals planning authorities sometimes consider it necessary to re-consult as a result of any changes that may have been submitted by the applicant to address issues that may have been raised. Once all consultation and publicity has concluded the minerals planning authority will consider the representations and proceed to determine the application.
6. The Government is committed to ensuring that all planning applications are dealt with as quickly as possible and meet the statutory timeframes for the determination of applications, currently 13 weeks for major applications and 16 weeks for applications requiring an Environmental Impact Assessment. Early engagement is seen as key to achieving this. The Government welcomes the shale gas industry's existing commitment, through their Community Engagement Charter, to ensure open and transparent communications between industry, stakeholder groups and communities in which they operate. However, **requiring** applicants to conduct pre-application consultation with the community prior to undertaking shale gas development could strengthen the role local people play in the planning process.

Existing processes for compulsory community pre-application consultation

7. At present there are only two categories of development that require community consultation at the pre-application stage, these are a) for development that would fall within the scope of the Nationally Significant Infrastructure Project regime, and b) for more significant onshore wind development. The requirement to undertake pre-application consultation is the responsibility of the prospective applicant. The two processes for these are different and it is suggested that any process for shale gas proposals could follow one of these processes or a different process altogether.

Onshore wind development consultation process

8. The Localism Act 2011 introduced a new statutory requirement for compulsory consultation with local communities for certain types of application at the pre-application stage. The Government brought forward legislation in November 2013 for pre-application consultation. The statutory requirement for applicants to consult with local communities (prior to undertaking onshore wind development involving more than 2 turbines, or where the hub height of the turbine exceeded 15 metres) is linked to the threshold at which onshore wind development requires screening to determine whether there is a likelihood of significant effects under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. Where the proposed onshore wind development meets this criteria the legislation requires the prospective applicants to:
 - Publicise the proposed application in such a manner that is likely to bring it to the attention of a majority of the persons who live at, or occupy,

premises in the vicinity of the land. In doing so setting out information on how the applicant may be contacted, and the proposed timetable for consultation (ensuring sufficient time for people to comment);

- Have regard to advice (if any) given by the local planning authority about local good practice;
 - Where proposing to go ahead with making an application for planning permission, have regard to any responses to the consultation:
 - Where an application for planning permission is made, it must be accompanied by particulars of how the applicant complied with the publicising and consultation requirements, the responses received by the applicant, and how the applicant has taken account of the responses.
9. The Consultation paper suggests that, as with onshore wind development, it could be appropriate that shale gas development that is likely to have significant impacts on the environment (requiring an Environmental Impact Assessment) could be subject to the requirement to undertake community pre-application consultation, and this could follow the above process. It is worth noting however that such a proposal would include shale gas developments that did not require an EIA but still potentially had significant impacts on an area and had considerable interest from the local community.

Nationally Significant Infrastructure Projects regime

10. The other process by which applicants are required to undertake pre-application consultation prior to undertaking development is through the Nationally Significant Infrastructure regime. These relate to significant infrastructure projects in the following areas of development including energy, water, waste water, road and rail transport, and hazardous waste development. The Planning Act 2008 sets out the thresholds above which certain types of development are considered nationally important and therefore require development consent under the NSIP regime. The previous Government Consultation paper considered whether to include shale gas development within this regime, the outcome of which is still awaited.
11. Under this regime applicants are required to:
- Produce a Statement of Community Consultation, in consultation with the relevant local planning authority, which describes how the applicant proposes to consult with the local community about their project and then carry out consultation in accordance with that statement;
 - Make the Statement of Community Consultation available for inspection by the public in a way that is reasonably convenient for people living in the vicinity of the land where the development is proposed;
 - Set a deadline for consultation responses of not less than 28 days from the day after receipt/last publication;

- Have regard to relevant responses to publicity and consultation; and
 - Prepare a consultation report and submit it to the Secretary of State.
12. The Consultation paper states that as with Nationally Significant Infrastructure Projects it could be appropriate that shale gas development that fulfils specific criteria or thresholds is subject to a requirement to undertake community pre-application consultation prior to submitting a planning application, and this could follow the process set out above. Of course, if the Planning Act 2008 was to be amended, so as to bring shale gas into that regime then the statutory pre-application consultation outlined above would be required for such development.

Consultation paper questions

13. The consultation paper poses the following questions;

Question 1- Should community pre-application consultation be compulsory prior to applying for planning permission for shale gas development?

Yes/No/Not sure

Question 2 - By what process (if any) should prospective applicants be required to conduct community pre-application consultation prior to applying for planning permission for shale gas development?

Onshore wind development/ Nationally Significant Infrastructure Projects/Other (please specify)

Question 3 - What (if any) shale gas developments should be subject to compulsory community pre-application consultation?

All shale gas development requiring a planning application/ Where an Environmental Impact Assessment is required/Other criteria or threshold (please specify)

Question 4 – Do you have any view on the potential impact of the matters raised in this consultation on people with protected characteristics as defined in section 149 of the Equality Act 2010?

14. The proposed responses to the above questions are set out in the appendix to this report. The timing of this consultation has meant that the outcome of the two previous consultation papers is still unknown and therefore proposals set out in those papers may influence some of the matters proposed by this consultation. For instance, if some or all shale gas developments were included within the NSIP regime then pre-application requirements would be set by that regime. The response has been prepared on the basis of the present situation.

Statutory and Policy Implications

15. This report has been compiled after consideration of implications in respect of finance, the public sector equality duty, human resources, crime and disorder,

human rights, the safeguarding of children, sustainability and the environment, and those using the service and where such implications are material they are described below.

Human Rights Implications

16. Relevant issues arising out of consideration of the Human Rights Act have been assessed. Rights under Article 8 (Right to Respect for Private and Family Life), Article 1 of the First Protocol (Protection of Property) and Article 6 (Right to a Fair Trial) are those to be considered. In this case, however, there are no impacts of any substance on individuals and therefore no interference with rights safeguarded under these articles.

RECOMMENDATIONS

It is recommended that Members approve the response to the Ministry of Housing, Communities and Local Government as the formal comments of the County Council on their consultation paper entitled “Compulsory community pre-application consultation for shale gas development” as set out in the appendix to this report.

ADRIAN SMITH

Corporate Director – Place

Constitutional Comments [RHC 19/11/2018]

Planning & Licensing Committee is the appropriate body to consider the contents of this report by virtue of its terms of reference.

Financial Comments [RWK 15/11/2018]

There are no specific financial implications arising directly from the report.

Background Papers Available for Inspection

The Government’s consultation paper entitled ‘Compulsory community pre-application consultation for shale gas development – October 2018’ is available for public inspection by virtue of the Local Government (Access to Information) Act 1985.

Electoral Divisions and Members Affected

All

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For any enquiries about this report, please contact the report author.