

## **Matter 3 Written Statement – Frack Free Nottinghamshire**

### **Nottinghamshire Minerals Local Plan Examination – Matter 3 Q42: “Please comment on any implications for Policy MP12 arising from the judgement that quashes paragraph 209(a) of the Framework.”**

Statement by Frack-Free Nottinghamshire April 2020

In responding to the Examination Inspector’s question concerning the implications of the 2019 judgement in the case of Stephenson (Talk Fracking) v Secretary of State for Housing, Communities & Local Government\*, Frack-Free Nottinghamshire (FFN) assumes that he is fully aware of the background to and outcome of this case and so will proceed directly to comment on the key implications as follows:

1) Since Para 209(a) is no longer part of the National Planning Policy Framework (NPPF), it cannot feature in the requirements of soundness for local plans, and indeed it would be unsound for a policy justification to refer to it.

2) Explicit, in-principle support for oil and gas development proposals, both conventional and unconventional, can no longer be wholly sustained on the basis of Government policy. The decisions of Mineral Planning Authorities (MPAs) and other public bodies on proposals that lead to fracking activity, whether it be at exploration, appraisal or production stages, should now be weighed alongside evidence relating to the impact of oil and shale gas extraction on climate change. This aspect should be recognised by the insertion of FFN’s suggested addition to Policy MP12 (see section 6 of submission).

3) In assessing climate-related evidence, FFN believes that a MPA should refer to the provisions of the Climate Change Act 2008, as reflected in paras 149 & 150 of the NPPF, and could also draw upon:

- (a) the recommendations of a 2016 report by the Committee on Climate Change (CCC) that sets UK targets for emission cuts and tests for compatibility with them;
- (b) the 2018 report of the 'Planning Guidance for Fracking' Inquiry by the Communities and Local Government Committee (paras 27 & 28);
- (c) the content of the Mobbs Report\*\* of 2018 (quoted in the judgment by Justice Dove) which disproved the low carbon claims of the NPPF;

plus any subsequent, up-to-date technical /scientific reports.

\* <http://climatecasechart.com/non-us-case/claire-stephenson-v-secretary-of-state-for-housing-and-communities-and-local-government/>

\*\* <http://www.talkfracking.org/wp-content/uploads/2018/12/Whitehalls-Fracking-Science-Failure.pdf>

Ultimately, the MPA would need to be prepared to resolve any conflicting issues that arise. In terms of Nottinghamshire's Minerals LP, the veracity of Policy SP3 and the MPA's commitment to "...tackling the causes of climate change...and securing reductions in greenhouse gas emissions through the planning process" (see para 3.30), would be central to its assessment of applications under a revised MP12.

4) It follows from the scientific evidence provided by Talk Fracking in the High Court that the first sentence of Para 4.108 of the Local Plan should be withdrawn. It reads:

*"It is considered that there is no justifiable reason in planning policy terms to separate shale gas from other hydrocarbon development."*

Following the 2019 judgment, a key reason would be the need to require proposers of oil and gas developments, which increase fossil fuel dependency, to produce convincing evidence of their minimal impact upon climate change.

It is also clear that the reference to "...move towards a low-carbon economy" in Policy SP3 (1a) should be deleted as it is unsubstantiated and thus misleading.

The lack of validity for the low carbon claims and the refusal to treat fracking as a special case (based on its potential scale of operation) were the principal triggers for objections made by FFN at various stages of the Plan. The County Council continued to support the NPPF approach to shale gas as a low-carbon fuel and maintain that the existing, general development management policies would suffice when other MPAs were exploring more challenging policy criteria. For instance, Kirklees Metropolitan Borough Council developed a hydrocarbons policy requiring an applicant to demonstrate that a proposal would have "a net zero impact on climate change".

5) A final implication of the judgment is that the County Council should pay closer attention to the progress made by other MPAs in resolving the issues that arise from the need to build climate change considerations more effectively into their plan and decision making processes.

In its submission (see section 5) FFN has referred in particular to the approach taken in the adopted Kirklees LP (see above) and by North Yorkshire County Council in its Minerals & Waste Joint LP -where a number of issues were considered to require specific policies for hydraulic fracking (including its definition). These issues are the subject of a suggested additional Policy MP12a in section 6 of the submission. It

is worth noting that the North Yorkshire Plan Inspector has considered representations around the quashing of NPPF 209a, taken into account evidence of methane emissions (and consequent air pollution) from fracking sites, and has viewed the retention of a (disputed) 500m buffer zone as a sound aspect of the Plan.

Ref: <https://www.northyorks.gov.uk/minerals-and-waste-joint-plan-examination>

In conclusion, it seems clear that Justice Dove's judgment has potentially far reaching consequences for the oil and gas sector of the minerals industry which will need to contribute to the UK achieving a net zero emissions target by 2050. The CCC estimates that adherence to this will meet the Paris Agreement requirements to limit the increase in global average temperature to well below 2°C and to pursue efforts to limit the rise to 1.5°C. Such a commitment implies that the County Council can no longer follow a 'business as usual' approach to minerals extraction as a whole and shale gas extraction in particular, and should revisit policies, especially SP3 and MP12, with this critical objective in mind.

PJ/FFN/4-20