

8th April 2020

Nottinghamshire Minerals Local Plan: Inspectors matters, issues and questions

Matter 3 – Minerals Provision Policies

Policy MP12: Oil and Gas

42 ‘Please comment on any implications for Policy MP12 arising from the judgement¹ that quashes paragraph 209(a) of the Framework.’

Implications on Policy MP12 arising from judgement that quashes paragraph 209(a) of the framework

UKOOG Response

The responses made in this document are made on behalf of UKOOG, the trade body for the onshore oil and gas industry. The responses have been agreed by main PEDL holders (INEOS, IGas Energy PLC and Egdon Resources PLC) that are impacted by the Nottinghamshire Minerals Plan (the Plan) and should be read in conjunction with previous representations made to the Plan by both UKOOG and PEDL holders.

Introduction

This document addresses the question raised by the Inspector with regards to the 6th March 2019 High Court Judgment by Justice Dove (the judgement) relating to a challenge by Clare Stephenson on behalf of Talk Fracking to paragraph 209(a) of the National Planning Policy Framework (NPPF) July 2018, the subsequent order to quash 209a and the Written Ministerial Statement (WMS) by the Secretary of State (SoS) for the Ministry of Housing Communities and Local Government (MHCLG) of May 23 2019¹

EXECUTIVE SUMMARY (please see appendix 1 for a detailed response)

UKOOG believes that the existing policies within the Plan excluding changes already requested are sound, specifically MP 12 (oil and gas) and SP 3 (Climate Change) and that there is no impact to those policies brought about by the judgement. Both identified policies are in line with the NPPF (as amended), Planning Practice Guidance (PPG) and Written Ministerial Statements specifically relating to onshore hydrocarbons.

The Dove judgement opined on the lawfulness of the consultation process only, that the MHCLG carried out ahead of the decision by the SoS to adopt the revised NPPF. Scientific evidence put forward (specifically the Mobbs Report) challenging the role that onshore shale gas would play in assisting the UK to transition to a low carbon economy by 2050 had not been taken into account by MHCLG. As a result of that oversight the consultation process was found to be unlawful. Paragraph 209a, which advised that decision-makers should attach significant weight to that role when preparing development plans and determining individual planning applications was struck out.

Rather than address the procedural issue identified by the Court by instructing a fresh consultation process to examine the relative merits of the competing scientific evidence that had been put forward to support and challenge the UK Government's previously held national planning policy position, the SoS elected instead to simply remove paragraph 209a from the revised NPPF and issue a Written Ministerial Statement² stating that all other guidance including the remaining paragraphs of the NPPF and the Written Ministerial Statements on onshore oil and gas published in 2015 and 2018 remained extant. This extant guidance is reviewed in Appendix 1 and a review of the Dove judgement in Appendix 2.

¹ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2019-05-23/HCWS1586/>

² <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2019-05-23/HCWS1586/>

It remains UKOOG's strong view that the evidence by others such as the Committee on Climate Change demonstrates that the production of an indigenous supply of onshore shale gas would have a lower carbon footprint than imported liquefied natural gas and thus assist the UK in transitioning to a low carbon economy.

The effect of this decision is that consideration of the strategic planning policy issue of whether or not the development of onshore shale gas would assist the UK in transitioning to a low carbon economy by 2050 and the required assessment of the science which surrounds it, has been deferred.

The Court was not required to opine, and did not opine, on the relative merits of the scientific evidence.

UKOOG's view is supported by the recent conclusions of the Planning Inspector at the Egdon Resources Wressle planning appeal⁴ dated 17 January 2020, who stated *"Reference was made to the 2019 case of Stephenson v. SSHCLG [2019] EWHC 519 (Admin). This was a challenge to the Government's decision to adopt the (former) paragraph 209(a) of the Framework. However that paragraph is no longer part of national policy and the Court's decision was concerned with the lawfulness of the government's decision-making process and not with the merits of the policy"*.

What remains clear, as evidenced by the terms of the subsequent WMS issued on 23 May 2019¹ is that the UK Government remains committed to "the safe and sustainable exploration and development of [the country's] onshore shale gas resources." This together with the provisions of paragraph 209b of the revised NPPF, "**plan positively** for, the three phases of development (exploration, appraisal and production), whilst ensuring appropriate monitoring and site restoration is provided for", makes it clear that the Plan must continue to make provision for onshore petroleum development (our emphasis). A failure to do so would render the Plan inconsistent with the NPPF and the WMS and thus unsound.

The issue for the Inspector and the Plan arising out of the Dove Judgement, therefore, is to what extent and in what circumstances the issue of climate change impact is properly addressed in terms of the current proposed policies and supporting Justification.

The response to climate change and in particular the relevance of research and actions required under the Climate Change Act 2008 as amended should be left to central government as is very clearly stated within the Act. There is still a strong and material case for shale gas as the recent WMS (23 May 2019)¹ states *"We remain committed to the safe and sustainable exploration and development of our onshore shale gas resources"*.

This point is reiterated by the recent recovering by the SoS for MHCLG of the Ellesmere Port and Woodsetts planning appeals for exploration development. The reason for recovering the appeals is common to both: *"The reason for this direction is that the appeal involves proposals for exploring and developing shale gas which amount to proposals for development of major importance having*

more than local significance. The Government has made clear in the WMS of May 2018 that it would consider carefully recovering appeals of this nature³."

We also wish to note the additional comments made by the Inspector on Egdon Resources' appeal for the Wressle development regarding national energy policy (para 33)⁴ *"It is no part of national policy to attempt to reduce emissions by restricting the production of hydrocarbons in the UK, as was implied or stated by some objectors. Nor was such an approach suggested by the Committee on Climate Change when dealing with the net zero 2050 position – and there is no policy which provides that a net zero carbon economy in 2050 would be hydrocarbon-free. the proposed extraction of hydrocarbons is consistent with national energy policy. Furthermore, in that context a domestic supply has obvious security advantages and reduces the need for imported gas and oil"*⁴

The Committee on Climate Change as the independent advisors to Government have published two relevant reports firstly in 2016 and more recently in 2019, these are reviewed in Appendix 3. Key points include:

- The UK will need up to 70% of current gas supply in 2050 and beyond to meet net zero
- UK onshore gas produces significantly less pre-combustion emissions than imported gas
- The UK without onshore gas will have to import 86% of gas demand in 2050
- The CCC specifically requested no further offshoring of emissions
- The CCC Net Zero report and supporting documents identifies a significant and growing production emissions envelope for onshore gas production

A review carried out by UKOOG (see appendix 4) of the Mobbs Report put forward by Talk Fracking as scientific evidence, however, has revealed significant flaws in its author's interpretation and application of baseline empirical evidence. UKOOG are of the view that the flaws in the report render its conclusions invalid.

The inspector for the Wressle appeal³ also commented that *'I am entitled to assume that other regulatory regimes will operate effectively and that it is not necessary for me to carry out my own assessment because I can rely on the assessment of the other regulatory bodies. There is no evidence that other regimes are incapable of operating effectively and adequately regulating the development.'* This comment is particularly relevant to the recent moratorium imposed by Government in November 2019 which applies only to hydraulic fracturing consent issued by the Oil and Gas Authority, meaning that the moratorium is not a material consideration at a local planning level.

Conclusion

³ <https://www.investigate.co.uk/igas-energy-plc/rns/ellesmere-port-appeal-update/201906280700057406D/>

⁴file:///C:/Users/aspl/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/Appeal%20decision%203221694%20(1).pdf

We therefore believe that the deletion of para 209a from the NPPF has no impact on the Plan. The judgement did not highlight any uncertainties in the scientific evidence on emission levels that the UK Government had previously relied upon. It simply ruled that the UK Government's failure to take account of the report which purported to challenge that evidence rendered the underlying public consultation exercise unlawful. The issue of climate change is adequately covered in the plan in line with previous judgements and furthermore is covered by other regulatory regimes such as the Environment Agency and the Health and Safety Executive. UKOOG and the PEDL holders in Nottingham consider the plan sound and it meets all required tests.

Appendix 1 – Review of Extant policies and statements

NPPF 209(a) required Mineral Planning Authorities (MPA's) to recognise the benefits of on-shore oil and gas development, including unconventional hydrocarbons, for the security of energy supplies and supporting the transition to a low-carbon economy; and put in place policies to facilitate their exploration and extraction. In the light of the judgment, weight could no longer be afforded to NPPF 209(a) and it was subsequently withdrawn. However, substantial weight can still be afforded to other parts of the NPPF:

- NPPF 203 provides that it is essential that there is a sufficient supply of minerals to provide the infrastructure, buildings, energy and goods that the country needs. Since minerals are a finite natural resource, and can only be worked where they are found, best use needs to be made of them to secure their long-term conservation;
- NPPF 204(a) provides that planning policies should provide for the extraction of mineral resources of local and national importance. "Mineral resources of local and national importance" are defined as minerals which are necessary to meet society's needs, including oil and gas (including conventional and unconventional hydrocarbons);
- NPPF 205 provides that, when determining planning applications, great weight should be given to the benefits of mineral extraction, including to the economy;
- NPPF 209b asks local authorities when planning for on-shore oil and gas development to clearly distinguish between, and plan positively for, the three phases of development (exploration, appraisal and production), whilst ensuring appropriate monitoring and site restoration is provided for;

There has not been any challenge to these parts of the NPPF.

The points above have been reiterated by the most recent WMS in May 2019⁵

The CCC Report on onshore petroleum in 2016 and the Government Response support the large-scale production of shale gas provided three tests are met. The Judgment does not materially impact on the degree of weight to be attached to the 2015 WMS⁶. The 2015 WMS has been updated by the 2018 WMS⁷ and the 2018 WMS was not the subject of the legal challenge and remains a key aspect of National Energy Policy. It reflects longstanding Energy Policy, including that in National Policy

⁵ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2019-05-23/HCWS1586/>

⁶ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2015-09-16/HCWS202/>

⁷ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-05-17/HCWS690/>

Statement 1, which is not disputed. It must, therefore, as a matter of law remain a material consideration. The weight to be attached to it is a matter for the decision maker and the Courts will not interfere in such a planning judgment absent irrationality (per Sullivan J in *Newsmith*)⁸. The Judgment does not render this key aspect of National Energy policy immaterial by extinguishing the weight which can be attached to it. Therefore, substantial weight should be afforded to the 2018 WMS:

- It provides that the UK must have safe, secure and affordable supplies of energy, with carbon emission levels that are consistent with existing carbon budgets (defined in the CCA 2008 and international obligations). Such national energy policy imperatives remain unchanged by the Judgment;
- In the light of the CCA (2008) and the PA (2016), the Government considers that gas has a key part to play in meeting such objectives (currently and in the future). That is because (as the WMS recognises): (i) gas still makes up around a third of our current energy usage; and (ii) in every scenario proposed by the CCC - setting out how the UK could meet its legally binding 2050 emissions reduction targets – includes demand for natural gas. They are not addressed in the Judgment at all and remain unchanged by it;
- The Government also considers that further development of onshore gas resources has the potential to deliver substantial economic benefits to the UK economy. But to achieve such benefits (strongly supported in all iterations of the NPPF), the Government recognises that they must work with responsible companies prepared to invest in exploration, to test the size and value of the potential reserves and to ensure that our planning and regulatory systems work appropriately. Again: such matters are not addressed in the Judgment at all and remain unchanged by it;
- The Government considers that this country has “world class regulation” to ensure that shale gas exploration can happen “safely”. That is not addressed in the Judgment and remains unchanged by it;
- The Government expects MPA’s to give “great weight” to the benefits of mineral extraction. That remains part of the NPPF which was not the subject of challenge. It remains National Energy Policy.

The 2018 WMS relies on longstanding national energy policy imperatives such as security of supply, affordability and economic growth. It expressly recognises our national and international commitments in respect of climate change. However, it also recognises the reality of the current energy market, which is heavily reliant on gas both now and in the foreseeable future (applying current CCC scenarios). Such material considerations are not (even arguably) reduced in weight due

⁸ [https://uk.practicallaw.thomsonreuters.com/1-101-3850?lrTS=20170603105947316&transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/1-101-3850?lrTS=20170603105947316&transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1)

to this Judgment. In all the circumstances, therefore, the 2018 WMS is a material consideration of significant weight.

This view was reiterated by the WMS of May 2019⁹:

- For the purposes of the National Planning Policy Framework, hydrocarbon development (including unconventional oil and gas) are considered to be a mineral resource.
- Specific policy on the planning considerations associated with their development is set out at paragraphs 203-205 and the remainder of 209 of the National Planning Policy Framework.
- In particular, paragraph 204(a) of the National Planning Policy Framework states that planning policies should “provide for the extraction of mineral resources of local and national importance” with paragraph 205 stating that “[w]hen determining planning applications, great weight should be given to the benefits of mineral extraction, including to the economy”.
- The Written Ministerial Statements of 16th September 2015 on ‘Shale Gas and Oil Policy’ and 17th May 2018 on ‘Planning and Energy Policy’ also remain unchanged and extant.
- The Written Ministerial Statements sit alongside the National Planning Policy Framework. Planning Practice Guidance is also unaffected by the ruling.
- The Government remains committed to the safe and sustainable exploration and development of our onshore shale gas resources.

⁹ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2019-05-23/HCWS1586/>

Appendix 2 – Review of Dove Judgement

Talk Fracking made an application for judicial review (JR) of the adoption by the SoS MHCLG of paragraph 209(a) NPPF on 24th July 2018. It is worth noting there has not been any challenge to National Energy Policy contained within the 2015 WMS, nor the 2018 WMS.

The JR was brought on 4 grounds:

- Ground 1 asserted that SoS MHCLG unlawfully failed to take into account material considerations, namely scientific and technical evidence, which had been produced following the adoption of the 2015 WMS;
- Ground 2 asserted that SoS MHCLG failed, in publishing NPPF 209(a), to give effect to the Government's long-established policy in relation to the obligation to reduce greenhouse gas emissions under the Climate Change Act 2008;
- Ground 3 asserted that, in adopting NPPF 209(a), SoS MHCLG unlawfully failed to carry out a Strategic Environmental Assessment (SEA).
- Ground 4 asserted that SoS MHCLG failed to carry out a lawful consultation exercise in relation to the revisions to the NPPF (published on 24th July 2018).

Ground 4

Ground 4 succeeded because Justice Dove concluded that the consultation exercise on the draft NPPF 204(a), which became NPPF 209(a), was unlawful.

The SoS MHCLG submitted that there was no policy being formulated or revised. There was, therefore, no breach of the Sedley principles. Justice Dove held that a reasonable reader/member of the public would have concluded that SoS MHCLG was inviting and intending to consider and evaluate consultation responses on the substance of the policy in draft NPPF 204(a). Justice Dove concluded that the design and process of the consultation was legally flawed.

Ground 1

Ground 1 is very closely allied to Ground 4. Having concluded that the public were engaged in the consultation on the basis that the merits of the policy itself was included as part of the consultation; Justice Dove held that the Mobbs report was relevant to the decision which was being advertised and that the SoS MHCLG failed to take it into account. The decision was therefore unlawful.

Justice Dove does not pass any judgment on the merits of the Mobbs report or any other evidence submitted as part of the consultation process (positive or negative). Rather, he concludes that, having led the public to believe that the substance of the policy was being consulted upon, it was material and relevant to the decision being advertised.

Grounds 1 and 4 focus entirely on the consultation process by which the NPPF was adopted and **not** the scientific or technical merits of the arguments in the Mobbs report.

Ground 2

Justice Dove accepted the SoS MHCLG submissions that the revisions to the NPPF had no bearing at all on the Government's commitment to satisfying the CCC's three tests. Those tests remain in place and will have to be passed prior to "large scale extraction" proceeding, to be consistent with the requirements of the Climate Change Act 2008. Ground 2 was therefore held to be unarguable.

Ground 3

Justice Dove set out that arguments in connection with whether or not the revisions to the NPPF should have been the subject of Strategic Environmental Assessment (SEA), which have been addressed in the case of *Friends of the Earth v Secretary of State for Communities and Local Government* [2019]. Further discrete points were raised in relation NPPF 209(a). However, none of the points raised disturbed the principle conclusion of the *Friends of the Earth* case that SEA is not required on the basis that the Framework is not "required by law".

Appendix 3 – Committee on Climate Change Reports

The Climate Change Act 2008 (as amended) required that the UK reduce its annual emissions by 80% from 1990 levels under a 2°C budget. This Act is the UK’s nationally determined contribution to the Paris Agreement.

The Intergovernmental Panel on Climate Change (“IPCC”) released a document in October 2018¹⁰ which described the international action required in order to achieve the upper ambitions of the Paris Agreement, that being limiting global warming to 1.5°C above pre-industrial baselines.

Following the release of this document, Claire Perry MP requested that the UK CCC provide evidence and recommendations to the UK government on whether or not the UK should legislate for a 1.5°C emissions budget (i.e. a ‘net-zero’ target).

The CCC Report¹¹ has been prepared by the CCC with a view to making recommendations for a new emissions target for the UK, having regard to the latest scientific evidence on climate change. The CCC Report seeks to advise the UK Government to put policies in place, as well as legislation where appropriate, in order to reduce greenhouse gas emissions (“GHGs”) in the UK as a contribution to global climate change.

In seeking to achieve net zero GHGs by 2050, the CCC has forecast that the UK would require close to 600 terawatt hours (“TWh”) (55 billion cubic metres (“bcm”)) of natural gas (page 252 of the CCC Report¹²). This requirement, under a scenario with a totally decarbonised economy, remains very significant and equates to a 32% reduction in UK gas demand from today.

The CCC has concluded that there should be a key role for hydrogen as a fuel source in heat, transport and industry and for natural gas directly in the power sector (with Carbon Capture Utilisation and Storage (“CCUS”)). Use of hydrogen downstream will have ‘zero combustion emissions’, as the bi-product of the combustion of hydrogen is water, rather than CO₂.

The least cost option for hydrogen production is steam methane reforming of gas with CCUS¹³, or more efficient auto thermal reforming of natural gas combined with CCUS. As the CCC Report notes on page 252 (first bullet:

“Significant reductions in natural gas consumption across buildings, industry and power in our net-zero scenarios are somewhat offset by new demand for gas to produce hydrogen.”

¹⁰ <https://www.ipcc.ch/sr15/>

¹¹ <https://www.theccc.org.uk/publication/net-zero-the-uks-contribution-to-stopping-global-warming/>

¹² <https://www.theccc.org.uk/publication/net-zero-the-uks-contribution-to-stopping-global-warming/>

¹³ Figure 2 of https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819648/ccus-business-models-consultation.pdf

If there was to be no continued onshore natural gas production, or exploration to assess the resource, under the UK continental shelf natural gas production (i.e. offshore) forecast by the Oil and Gas Authority (page 252 of the CCC Report), the UK would be reliant upon imported gas to meet 86% of demand by 2050.

In 2017 the UK imported 475TWh of natural gas, and by 2050 the UK's import dependency is forecast under net zero conditions to be 515TWh¹⁴ (page 252 of the CCC Report), therefore representing a proportional and volumetric increase in natural gas imports from today.

The UK therefore has a choice – it can produce the resources needed to meet the energy demand of a net-zero economy domestically, or it can choose to import these resources, with consequent concerns over security of supply and an increasing carbon footprint.

It should therefore be a priority for the UK to meet the UK's recognised natural gas demand from the sources with the lowest pre-combustion emission footprint. The CCC's assessment in its 2016 report was that UK shale would have a pre-combustion footprint of 28g CO₂/kwh¹⁵. By comparison, LNG is forecast to have a pre-combustion footprint of 57g CO₂/kwh and long distance pipeline is forecast to have a pre-combustion footprint of 68.5g CO₂/kwh¹⁶. These imported sources have a more carbon intensive footprint given the significant distance over which they must be transported. The principle of using locally sourced gas applies regardless of the formation being targeted or the technology used to extract it. Further, onshore gas raises no issues of security of supply, a longstanding concern in Energy and Planning policy statements.

UK shale would offer at least a 50% pre-combustion emission saving over LNG and long-distance pipeline and reduce the carbon footprint of the fuels the UK consumes.

This conclusion is mirrored in a recent report produced by the Department for Business, Energy and Industrial Strategy ("BEIS")ⁱ which similarly concluded that onshore natural gas production would offer significant emission savings over LNG (see page 8 of the BEIS report)¹⁷. Again, the argument for developing local, lower pre-combustion emission gas sources is relevant regardless of the formation.

The CCC states very clearly as follows (first bullet point on page 106 of the CCC Report):

*"The design of the policy framework to reduce UK industry emissions must ensure it does not drive industry overseas, which would not help to reduce global emissions, and be damaging to the UK economy."*ⁱ

¹⁴ UKOOG analysis of gas demand vs production (including biomethane production)

¹⁵ <https://www.theccc.org.uk/wp-content/uploads/2016/07/CCC-Compatibility-of-onshore-petroleum-with-meeting-UK-carbon-budgets.pdf>

¹⁶

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/237330/MacKay_Stone_shale_study_report_09092013.pdf

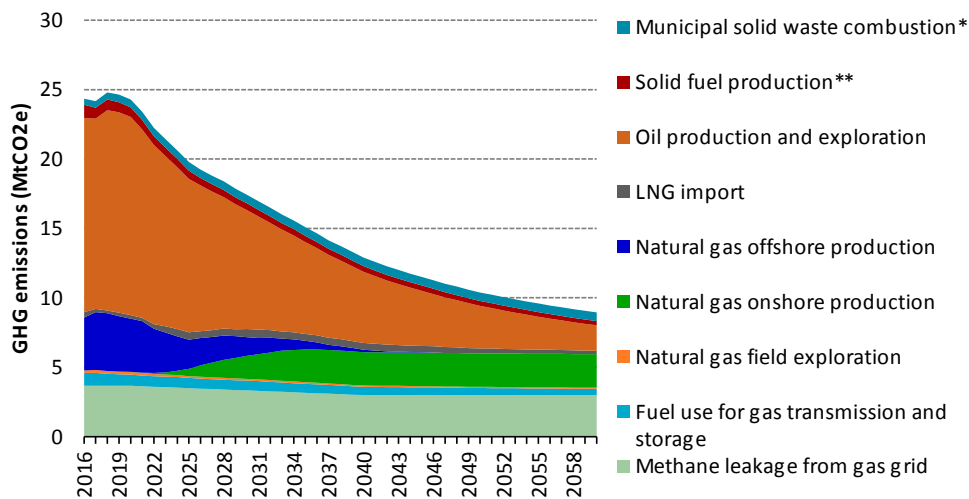
¹⁷

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/798243/H2_Emission_Potential_Report_BEIS_E4tech.pdf

In addition to the details set out above in relation to pre-combustion emission gas sources, it is clear that the CCC recognises that an offshoring of oil and gas production is not constructive for domestic energy production. It is also clear that the only conclusion one can come to in this regard is that it should be a priority for the UK to source that natural gas from the sources with the lowest pre-combustion emission footprint. Otherwise, the CCC’s recommendation to not offshore the UK’s emissions cannot be met. This, of necessity, requires the consent of exploration development as a necessary pre-cursor to (i) understanding the nature and size of any resource and (ii) production.

The CCC Net Zero report does not direct decision makers to apply different statutory or planning principles and/or tests to those stipulated within the CCC’s March 2016 report ‘Onshore Petroleum: The compatibility of UK onshore petroleum with meeting the UK’s carbon budgets’ⁱⁱ.

Finally, the Net Zero supporting documents identifies a significant and growing production emissions envelope for onshore gas production, demonstrated in the following graph produced by the CCC¹⁷:



2016 Report from the CCC

In 2016, the CCC released a document entitled ‘The compatibility of onshore petroleum with UK carbon targets’¹⁸. This report provided an assessment conducted under a 2°C scenario. However, the principles and tests stipulated therein apply equally to the net zero 1.5°C target. The CCC Report does not direct any other interpretation in this regard.

The tests (essentially) are:

Test 1: Well development, production and decommissioning emissions must be strictly limited.

Test 2: Consumption – gas consumption must remain in line with carbon budgets requirements.

Test 3: Accommodating shale gas production emissions within carbon budgets.

¹⁸ <https://www.theccc.org.uk/wp-content/uploads/2016/07/CCC-Compatibility-of-onshore-petroleum-with-meeting-UK-carbon-budgets.pdf>

With regard to Test 1, UK onshore oil and gas operators have agreed to apply the Best Available Techniques (“BAT”) for gas management. Following thorough analysis of gas management techniques for onshore oil and gas sites, the Environment Agency concluded that flaring was BAT for exploration sites and this is controlled by Environmental permit.

With regard to Test 2, under the net zero target proposed by the CCC, the UK would require a significant volume of natural gas throughout the transition to a low carbon economy and similarly at the outcome destination, no forecasts however have gas consumption rising relative to 2010 consumption.

With regard to Test 3, the requirement that the ‘extra’ emissions should be accommodated is for Government, and as explained above – it should not be achieved by offshoring industry.

The CCC’s Net Zero report does not identify any amendment to or revocation of the CCC’s comments in the 2016 report advising in respect of the need for exploration¹⁹, which states:

“In order to start to ascertain the UK reserve, a period of exploration would be required to find the most productive areas in the shale formation. ... If flow-rate levels consistent with commercial exploitation can be established over a number of exploration wells the industry might then move on to development well drilling and the production phase of operations.”

The three tests set out within the CCC’s 2016 report remain extant and relevant and for central government and to a lesser extent the Environment Agency to opine and regulate on.

With respect to aspects relating to climate change, we draw to the Inspector’s attention to the roles of those other regulatory bodies as follows:

The Environment Agency (EA)

The EA’s remit concerns the protection of the environment and human health through the regulation of emissions to air, water and land.

Environmental regulation specific to climate change requires the following Environmental permits:

- Management of extractive waste – through a waste management plan.
- Industrial Emissions Directive – when the intention is to flare more than 10 tonnes of natural gas per day (generally applies to exploration phase only).
- Medium Combustion Plant Directive (as enacted by the 2018 amendment to the Environmental Permitting Regulations) – relating to combustion plant such as generators with lower thermal input.

Health and Safety Executive (HSE)

¹⁹ <https://www.theccc.org.uk/wp-content/uploads/2016/07/CCC-Compatibility-of-onshore-petroleum-with-meeting-UK-carbon-budgets.pdf>

The HSE monitors shale gas operations from a well integrity viewpoint to ensure no leaks from wells – this is undertaken through the Offshore Installations and Wells (Design and Construction, etc.) Regulations 1996 (DCR). The design and construction of the well is key to subsurface environmental protection. Through the use of multiple physical barriers of casing and cement, as well as utilising natural impermeable geology layers as protection, the well will prevent the migration of hydrocarbons or well fluids into the surrounding rock formation or ground water bodies.

Exploration versus Production

The CCC brings forward in their 2016 report an important point which is the need for exploration ahead of production and indeed the three tests are exclusively with respect to production. The CCC acknowledges the need for exploration and any emissions to be relatively small and manageable *“[exploration] emissions are generally small ...”, that “[small] volumes of gas may be generated during the development of the well, most of which is likely, at a minimum, to be burned in a flare.¹⁸”*

The need to plan separately for exploration is also highlighted in NPPF 209b *“Minerals planning authorities should: when planning for on-shore oil and gas development, clearly distinguish between, and plan positively for, the three phases of development (exploration, appraisal and production), whilst ensuring appropriate monitoring and site restoration is provided for;*

As highlighted above we believe that the current modified Nottinghamshire County Council Minerals Local Plan adequately covers the climate change issues.

Appendix 4 - Analysis of the Mobbs Report

UKOOG anticipates that as a result of the Inspector's question that the Mobbs report ('How The Government Has Misled Parliament And The Public On The Climate Change Impacts Of Shale Oil And Gas Development In Britain' - A Report For Talk Fracking – February 2017²⁰) may be submitted or referred to him by others. Given the Judgement did not opine on the merits of the Mobbs report we urge caution in seeking to bring this forward in the current discussion of the Plan as it is considered irrelevant.

UKOOG has reviewed the Mobbs report and concludes it to be an attempt to undermine the analysis and conclusions in the Mackay & Stone report²¹, which the UK Government has used to justify their approach to shale gas, and specifically its role in the transition to a low carbon economy. In summary UKOOG believes the Mobbs report is inaccurate and out of date (published February 2017).

Mobbs puts forward a view on the carbon footprint of shale gas contrary to the majority academic consensus that shale gas in terms of emissions is better than coal and imports from Liquefied Natural Gas (LNG) and similar to non-shale oil and gas extraction.

UKOOG agree with the conclusions reached by The Committee on Climate Change (CCC)²², Sustainable Gas Institute²³, Royal Society²⁴ and the recently completed analysis for the Northern Territory²⁵ which is in direct contrast to Mobbs assessment. In addition, UKOOG also agrees with the conclusions in 2017 in a report produced by the Tyndall Centre for climate research on behalf of Friends of the Earth that short distance unconventional gas (i.e. shale gas) would offer a life cycle emission saving over both LNG and long-distance pipeline gas²⁶.

In agreement with the groups above, the Tyndall Centre Report states that for long distance natural gas pipelines, a doubling of distance will increase the emissions by 30-35%. It stands to reason that the UK should minimise the pipeline distance from well to wire, wheel or home.

²⁰ http://fraw.org.uk/meir/frac_science.html

²¹

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/237330/MacKay_Stone_shale_study_report_09092013.pdf

²² <https://www.theccc.org.uk/wp-content/uploads/2016/07/CCC-Compatibility-of-onshore-petroleum-with-meeting-UK-carbon-budgets.pdf>

²³ <https://www.sustainablegasinstitute.org/briefing-note-1/>

²⁴ <https://royalsociety.org/topics-policy/projects/shale-gas-extraction/>

²⁵ <https://frackinginquiry.nt.gov.au/about-shale-gas>

²⁶

http://www.foeeurope.org/sites/default/files/extractive_industries/2017/natural_gas_and_climate_change_anderson_broderick_october2017.pdf

Key highlights of our analysis included:

- A specific promotion by Mobbs of top down analyses of fugitive emissions ignored the fact that those techniques at the time could not identify the source of methane they were analysing. More recent research identifying where sources of methane originate conclude that previous results from bottom up analysis still stand.
- The Howarth analysis is used almost exclusively by Mobbs. This analysis was regarded as an academic outlier by both Mackay & Stone and the CCC due to distortion of data. In addition, the data used was prior to the changes in United States regulation in 2015.
- Mobbs criticises both the emissions and production data used by Mackay and Stone. Analysis of recent data actually shows that the MacKay & Stone report has overestimated the impact of emissions and underestimated the recoverable volumes per well (EUR).
- The Allen research is criticised because it was part funded by industry but Mobbs ignores that the Howarth report was funded by anti-fossil fuel groups.
- The Mobbs report makes no attempt to review the analysis of data in the context of UK regulation and does not comment on the comparative emissions footprint of LNG.

References for Main Submission and Appendix 1

ⁱ H2 Emission Potential Literature Review, BEIS Research Paper Number 22 (April 2019):
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/798243/H2_Emission_Potential_Report_BEIS_E4tech.pdf

ⁱⁱ <https://www.theccc.org.uk/wp-content/uploads/2016/07/CCC-Compatibility-of-onshore-petroleum-with-meeting-UK-carbon-budgets.pdf>



Appeal Decision

Inquiry Held on 5 – 7 November 2019

Site visit made on 7 November 2019

by Phillip J G Ware BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th January 2020

Appeal Ref: APP/Y2003/W/19/3221694

Lodge Farm, Clapp Gate, Appleby, Scunthorpe DN15 0DB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Egdon Resources UK Limited against the decision of North Lincolnshire Council.
 - The application Ref PA/2018/1316, dated 4 July 2018, was refused by notice dated 29 November 2018.
 - The development proposed is the retention of the Wressle-1 wellsite and access track for the production of hydrocarbons, together with an extension of the site by 0.12ha for the installation of additional security facilities; site reconfiguration to facilitate the installation of a new impermeable membrane, French drain and surface water interceptor; construction of a new bund, tanker loading plinth and internal roadway system; installation of an additional groundwater monitoring borehole; well operation; installation of production facilities and equipment; installation of gas engine and electrical grid connection; oil and gas production for a temporary period of 15 years; and restoration to arable land.
-

Application for costs

1. At the Inquiry an application for costs was made by Egdon Resources UK Limited against North Lincolnshire Council. This application is the subject of a separate Decision.

Decision

2. The appeal is allowed and planning permission is granted for the retention of the Wressle-1 wellsite and access track for the production of hydrocarbons, together with an extension of the site by 0.12ha for the installation of additional security facilities; site reconfiguration to facilitate the installation of a new impermeable membrane, French drain and surface water interceptor; construction of a new bund, tanker loading plinth and internal roadway system; installation of an additional groundwater monitoring borehole; well operation; installation of production facilities and equipment; installation of gas engine and electrical grid connection; oil and gas production for a temporary period of 15 years; and restoration to arable land all at Lodge Farm, Clapp Gate, Appleby, Scunthorpe DN15 0DB in accordance with the terms of the application, Ref. PA/2018/1316, dated 4 July 2018, subject to the conditions set out in the Schedule to this decision.

The appeal site and the proposal

3. The appeal site is around 1.85 hectares in extent and is broadly level and rectangular in form. It is set in generally open countryside northeast of Broughton and north of Wressle. The site includes the existing wellsite, earth bunds, wellhead and other equipment (all enclosed by security fences) and an access track. The proposal includes a small extension (0.12ha) to the original site adjacent to the access, intended for security and related uses.
4. Access to the site is from the B1208, through a farmyard which includes a small residential enclave, and along an unmade track for a distance of about 530 metres. There are agricultural buildings and a slurry silo in the immediate vicinity of the site.
5. The proposal as submitted to the Council included a range of supporting documentation¹. Of particular importance, for reasons discussed below, were a Hydrogeological Risk Assessment and a Civil and Structural Design Statement. The essential purpose of the proposal is to retain the existing infrastructure and undertake further works necessary to facilitate the production of oil and gas for 15 years. Following that period the intention is that the land would be restored to arable use.
6. The Council agrees with the appellant that the proposal does not involve High Volume Hydraulic Fracturing ('Fracking') within the definition in the Infrastructure Act 2015². Although some local residents implied that they took a different view, the technical evidence was clear that the proposal does not constitute fracking. This was also the position of an Inspector dealing with a very similar proposal – explained below³. The 2019 Ministerial statement regarding Hydraulic Fracturing Consents does not apply to this proposal, and no party provided evidence that it did.

Relevant planning and energy policies

7. The development plan comprises the saved policies of the North Lincolnshire Local Plan (LP) (2003)⁴, the North Lincolnshire Core Strategy (CS) (2011)⁵ and the Appleby Parish Neighbourhood Plan (NP) (2019)⁶.
8. The full list of policies relevant to the appeal are set out in the Statement of Common Ground (SOCG)⁷. In particular the Council's reason for refusal alleged non-compliance with the following policies:
 - LP policies M23 (oil and gas production) and DS15 (water resources)⁸.
 - CS policy CS18 dealing with sustainable resource use and climate change.
9. The SOCG also sets out relevant policies in the National Planning Policy Framework (the Framework), and Planning Practice Guidance (PPG)⁹. Amongst

¹ SOCG Section 5

² Statement of Common Ground (SOCG) 2.3a

³ DL 15

⁴ CD F1

⁵ CD F2

⁶ CD F3 The site is outside the NP boundary, save for part of the access road

⁷ SOCG 7.3 – 7.5

⁸ The reason for refusal also referenced LP policy DS13, but this refers to the level of water in the drainage system, and is not relevant

⁹ SOCG 7.6 - 7.7

other matters these deal with water quality and ground conditions, pollution, and the sustainable use and extraction of minerals.

10. National policy, particularly the Overarching NPS for Energy (EN-1)¹⁰ is directly relevant, as are other documents related to climate change and the government's commitment to a net zero carbon economy by 2050¹¹.

Planning history and the Council's position

11. It is important to summarise¹² the planning background to the appeal in order to understand the Council's position, which was to not oppose the appeal.
12. In June 2013 planning permission was granted for the construction of a temporary wellsite for an exploratory borehole¹³. (Subsequent planning applications for the retention of the wellsite were refused by the Council in 2017.)
13. On 4 January 2018 two proposals were dismissed on appeal¹⁴. The development proposed in these cases (which were virtually identical) was "The retention of the existing wellsite and access road for the long-term production of hydrocarbons". (At the same time the Inspector allowed the retention of the temporary wellsite for a limited period. In January 2019 an appeal decision¹⁵ extended the temporary period for a further year.)
14. The main reasons for the dismissal of the appeals related to "...the absence of a ground conditions survey report and of sufficient evidence on the adequacy of the geosynthetic clay liner (GCL)". The Inspector was concerned with potential adverse impacts on groundwater resources and watercourses (this reflected the Council's concerns at that stage). The Inspector also considered the effect on local residents, the community and the local economy but, aside from the water resources issue, concluded that there would be no material harm in any other respect.
15. The application which has led to this appeal was submitted in July 2018. In response to this the Council commissioned a review¹⁶ by JBA Consulting into the appellant's Hydrogeological Risk Assessment and their Civil and Structural Design Statement. This concluded that the main weaknesses identified by the previous Inspector had been addressed or could be addressed by planning conditions¹⁷.
16. With that background, the application was recommended for approval by officers, but permission was refused by the Council in November 2018¹⁸. The reason for refusal related to potential ground contamination from water runoff and infiltration, and consequent effects on local residents, the community and the local economy.
17. Following the Council's production of its Statement of case, indicating that the appeal would be opposed, a special Planning Committee meeting was held on

¹⁰ CD E3

¹¹ SOCG 7.8 – 7.9

¹² The full history is at SOCG Section 6

¹³ CD D1

¹⁴ CD D6

¹⁵ CD D8

¹⁶ CDA 16

¹⁷ SOCG 2.3

¹⁸ CD B3

17 July 2019. Subsequently the Council advised (22 July 2019) that it would not be presenting evidence at the Inquiry and was withdrawing its case in respect of the appeal. The authority considers that the proposal meets all relevant development plan policies¹⁹. This withdrawal was on the condition that there would be acceptable planning conditions. The authority took no part in the Inquiry other than to assist on the matter of conditions.

18. A SOCG was produced which explains and reflects this position.

Main issue

19. There is one main issue in this case. That is the effect of the proposal on groundwater and watercourses.

Reasons

20. The appellant's uncontested evidence explains that the activity which has taken place to date on the site has established a significant and viable reserve of oil and gas. The principle of hydrocarbon development on the appeal site is set out in the planning history and is accepted by the Council²⁰. What was at odds between the Council and the appellant, before the authority changed its position, was the detail of the proposal and any consequent pollution risk.
21. The 2018 Inspector's concerns related to the lack of a ground conditions survey report, and uncertainty about the adequacy of the GCL liner. These matters led him to conclude that the appeal should be dismissed on the basis of the potential effect on groundwater and watercourses. The approach adopted by the appellant following the dismissal of the January 2018 appeals was to prepare a new and more comprehensive system of containment and environmental protection, with an updated range of technical documents explaining the new provisions.
22. The appellants have sought to address the first of the previous Inspector's concerns by the submission of a Ground Conditions Investigation Report. This has not been contested. The geology of and around the site near the surface is set out, and shows the existence of capping layers to the aquifers beneath. Overall, this persuasively demonstrates that the ground conditions are acceptable and that there is no risk of settlement. This new material was then used as part of the new design of the scheme as set out in the Civil and Structural Design Statement.
23. As was explained in written evidence and at the Inquiry, the proposal which has been produced is for the site to be developed using a triple barrier approach – unrelated to the existing GCL liner (to which I return later):
- The first level contains liquid (oil and water) in pipes and tanks
 - As a second line of defence these pipes and tanks would be contained in sealed bunded areas
 - The third level of containment is the provision of a new barrier under the entire operational site. This is the most significant change to the previous proposal and involves the installation of a high-density polyethylene impermeable membrane over the site – with the existing

¹⁹ SOCG 2.2

²⁰ SOCG 2.3d

aggregate removed and replaced. This membrane was explained in detail in evidence and at the Inquiry, and its efficiency was not contested.

24. The existing GCL liner, the exposed edges of which I saw on site in a somewhat degraded condition (probably due to exposure to the elements), would be repaired and retained. From what I read, saw and heard, I can well understand the previous Inspector's concerns about placing much reliance on this liner. However in the scheme before me the GCL liner is not relied on or included in the Risk Assessment, and is no longer an integral part of the proposal. Given that it is already in place, the appellants have taken the reasonable approach that it should be repaired and retained, but not relied on.
25. It is important to note that the construction would be undertaken in accordance with a Construction Quality Assurance (CQA) plan which the Council and the Environment Agency (EA) would have to approve. (I will return to this dual approval below). This would include a wide range of matters, as explained in the evidence, and would be an independent verification scheme dealing with the robustness and engineering standards of the lining to provide short, medium and long term protection.
26. The proposal already benefits from Environmental Permits²¹ issued by the EA covering regulated activities, and some of these matters would be additionally covered by planning conditions²². The EA raised no objections to the proposal and considers that the current scheme would enhance the previously agreed protection measures or represents such a low risk that no permit is required. I give the EA's views considerable weight especially as they form an important part of the overall scheme of regulation which would control the site and operations.
27. Some residents appeared to suggest that the Environment Agency were either unaware of the detail of the proposal or had not properly considered the position. However there is nothing to justify that suggestion. In line with the NPPG on Minerals²³ I am entitled to assume that other regulatory regimes will operate effectively and that it is not necessary for me to carry out my own assessment because I can rely on the assessment of the other regulatory bodies. There is no evidence that other regimes are incapable of operating effectively and adequately regulating the development.
28. The Council's position, as stated above, was to withdraw its objection to the proposal and take no part in the Inquiry. This is obviously an important material consideration. In addition, JBA Consulting, who wrote the report on the current proposal for the Council, were the company who appeared for the authority in opposition to the previous proposal at the 2018 Inquiry. Their depth of knowledge of the site and the proposal cannot be faulted. Their conclusion was that in comparison with the previous schemes the new documentation addresses the main weaknesses identified by the previous Inspector, or could do so by way of conditions.
29. There are minor differences related to some inputs to the risk assessment as between the appellant's and the Council's consultants. However I do not need

²¹ CD G1/G2

²² SOCG 2.3g

²³ CD E2

to consider these detailed matters as, even if the Council's consultant's more cautious approach were adopted, the residual risks would be low or less. There is no suggestion from any party that the appellant's risk assessment was in any way deficient.

30. Development plan policy is generally permissive of minerals extraction, provided certain criteria and safeguards are met. For example LP policy M1, which deals with applications for mineral working, sets out this permissive approach subject to four criteria dealing with visual and other amenity impacts, the method of working, restoration and after-care, and highways matters. These criteria are all met by the appeal scheme, as discussed below, and the overall thrust of the policy is favourable to the appeal. The same approach is adopted specific to oil and gas boreholes by LP policy M23, which deals with environmental protection measures.
31. LP policy DS15, dealing with water resources, provides that development will not be permitted which would (amongst other matters) adversely affect the quality of water resources by pollution. The same approach is adopted by CS policy CS18. For the reasons set out above the proposal complies with these policies.
32. In coming to my views on this issue I have considered groundwater supplies, local watercourses (including the adjacent Ella Beck) and the British Steel abstraction borehole at Clapp Gate²⁴. Overall, the proposal would not harm groundwater and watercourses and would comply with the relevant policies of the development plan.

Other matters

National energy policy

33. National energy policy, most succinctly set out in NPS EN-1 and the Framework, is aimed at reducing demand by end users, and in that way reducing both demand and consumption. It is no part of national policy to attempt to reduce emissions by restricting the production of hydrocarbons in the UK, as was implied or stated by some objectors. Nor was such an approach suggested by the Committee on Climate Change²⁵ when dealing with the net zero 2050 position – and there is no policy which provides that a net zero carbon economy in 2050 would be hydrocarbon-free.
34. With that background and given the continuing role of fossil fuels in providing for UK energy needs during the transition to a low carbon economy, the proposed extraction of hydrocarbons is consistent with national energy policy. Furthermore, in that context a domestic supply has obvious security advantages and reduces the need for imported gas and oil²⁶. In coming to that conclusion, I share the views of the 2018 Inspector²⁷.
35. At the regional level, this approach accords with the regional strategy which is to foster the growth and diversification of the Humber chemical and energy cluster²⁸. These industries rely heavily on hydrocarbons, and a local supply has obvious transportation and sustainability benefits. There is no suggestion that

²⁴ SOCG 2.3n

²⁵ CD H6

²⁶ SOCG 2.3c) and e

²⁷ DL 39 and 41

²⁸ As in the Economic growth Plan for North Lincolnshire

this proposal would increase the use of hydrocarbons, and the evidence demonstrates that the effect would be simply to transfer production to a more local source.

36. I fully accept the desire of some objectors to seek changes in national policy and legislation, in the light of urgent climate change issues. However such matters are well outside the remit of the appeal. This point was accepted at the Inquiry by a number of objectors putting forward these views.

Other potential material considerations

37. A range of other matters were raised by objectors²⁹. These have, on the face of it, the potential to be material considerations in planning appeals. Very limited technical evidence was given by objectors in relation to these matters. I will deal with each in turn.
- Thornholme Priory is a scheduled ancient monument lying some way to the north of the site. The Council and the appellant consider that there may be a visual and setting impact on the Priory arising from the proposed drilling rig, but that the impact will be of slight/moderate scale and for a short temporary period only. They do not consider that any mitigation measures are necessary³⁰. Given the distance from the appeal site to the Priory, I am far from persuaded that there would be any such impact but, even if there were, it would be very limited in scale and for a finite duration. The public benefits of the proposal would significantly outweigh any effect on the setting. On that basis the proposal complies with LP policy HE8, dealing with ancient monuments.
 - The appellant's Transport Statement demonstrates that there would be significant HGV movements only for short periods, for example during site mobilisation. Otherwise vehicle movements would be low. No objection has been received from the Highway Authority and, subject to appropriate controls and mitigation, there is nothing to support concerns over highway safety. The scheme would comply with LP policy T2, dealing with access to developments.
 - The effect on the landscape and the visual impact of the proposal would be limited both in scale and duration. The site is in close proximity to agricultural buildings and in this context would have very limited impact. It would comply with LP policy LC7, dealing with landscape protection.
 - The site is acknowledged to be in a low flood risk area and the scheme is designed with a capacity to accommodate rainwater equivalent to that from a 1 in 100 year storm event. No technical evidence has been put forward to demonstrate risk from flooding, and the proposal is acceptable in relation to CS policy CS19, which deals with flood risk.
 - The SOCG notes that there would be unlikely to be any impact on protected species or habitats³¹, and Natural England have no objections to the proposal. I have no persuasive evidence to take a different view, and the proposal does not conflict with LP policy DS15 and LC5, dealing

²⁹ The first matter is also a statutory consideration

³⁰ SOCG 2.3j

³¹ Additional mitigation in relation to water voles is proposed to deal with the low residual risk that they may be present in Ella Beck adjacent to the site.

with nature conservation and species protection, or CS policy CS17 dealing with biodiversity.

- Some local residents were concerned with the effect on air quality resulting from the flaring of gas from the site. The need for and frequency of this was explained by the appellant³². This is one of the matters which is covered by another regulatory regime and is dealt with in the Environmental Permit³³. The Environment Agency explain that they have carefully considered emissions to air that will arise from flaring and that an air quality assessment has been carried out³⁴. Whilst there would be some very localised and occasional effect on air quality it would be regulated and overall would not conflict with LP policy DS11.
- Noise issues could be controlled by conditions to an acceptable level.
- A number of objectors opposed the proposal on the basis of potential seismic risks. In particular this concern related to 'proppant squeeze' which involves pumping a mix of fluids and beads at pressure through holes in the wellbore casing. This activity, if successful, would open fine fractures in the rock, allowing hydrocarbons to flow. The detail of this operation was explained by the appellant, and it was also explained that, if it were necessary, it would only be used once. It is clearly different in both scale and purpose from fracking, and the evidence is that the likelihood of proppant squeeze inducing a seismic event is extremely remote. The Council and the appellant agreed that there is no evidence to suggest that the development will give rise to induced seismicity³⁵. This was also the position of the previous Inspector³⁶, and I have no reason to disagree.
- Some objectors also expressed concern related to the consequences of acidization. This process, as was clearly explained by the appellant, involves the injection of a combination of diluted acids (hydrochloric and hydrofluoric) through the wellbore. It was explained that this operation, which would be performed once and not repeated, is routinely employed following the drilling of boreholes and wells, to remove any 'skin' effect and to enhance natural permeability. It would be injected at a pressure well below that which would actually fracture the rock. It was suggested by objectors that this would be the first onshore application of the technique. But the appellant explained that this is not the case and gave a specific example of its use at the nearby Crosby Warren site in the 1980s (at higher pressures). Some objections focussed on the various names for the process – however that does not assist as the nature of the activity, however described, is clear. The Environment Agency is satisfied with this aspect of the scheme, and there is nothing to lead me to disagree.

Other matters raised by objectors

38. There were four matters raised by objectors³⁷ to which, after careful consideration, I cannot accord any weight – for reasons I set out below.

³² Including CD A4 paragraphs 27/28

³³ CD G1

³⁴ CD G2

³⁵ SOCG 2.3q

³⁶ DL 32

³⁷ Largely Mr McLeod

- Reference was made to the 2019 case of *Stephenson v. SSHCLG [2019] EWHC 519 (Admin)*. This was a challenge to the Government's decision to adopt the (former) paragraph 209(a) of the Framework. However that paragraph is no longer part of national policy and the Court's decision was concerned with the lawfulness of the government's decision-making process and not with the merits of the policy.
- There was also a reference to court decisions in Australia. However that country has its own laws dealing with decision making in relation to development proposals. It is not possible to read across from one system to the other, nor was any evidence presented to explain how the Australian cases affected English law.
- One objector³⁸ relied on what he described as a "precedent" set by the Planning Inspectorate in rejecting proposals for the re-powering of turbines at Drax power station. However, as was revealed later in the Inquiry (not by the objector) the Secretary of State granted consent for the scheme in October 2019, rejecting the examining authority's recommendation. So the actual decision in that case was the opposite of the position put by the objector.
- Finally there was a decision, said to have been made by Michael Gove MP. However little evidence was submitted regarding this case, and what was submitted was confusing. What could be gleaned was that this was not a land use planning decision, but rather a decision taken on behalf of the government as the landowner of the site.

Conditions

39. A set of planning conditions was agreed by the appellant and the Council in the SOCG³⁹. I have made only minor changes in the interests of precision.
40. In the interests of clarity, a condition is needed to confirm the approved plans (Condition 2).
41. For highway safety reasons, the development must be carried out in accordance with the submitted highway documents (3).
42. Although the nearest dwellings are some distance away (though facing the access road) it is important that a suite of conditions controls noise. A Noise Management Plan is to be submitted for approval and noise limits imposed (4, 8 – 11). Similarly in the interests of residents' amenity details of the drilling rig should be submitted for approval (5) and the hours of its assembly and demobilisation should be controlled (6). In addition, the hours during which the reconfiguration of the site would take place need to be controlled (7). All machinery should be silenced and maintained in accordance with the manufacturers' recommendations (12).
43. In the interests of residential amenity a Construction Quality Assurance Plan, including some documentation already submitted, should be approved (17). I appreciate that to a large extent this would duplicate other regulatory regimes however (as the appellant accepts) this would add an additional element of confidence for the authority and local residents.

³⁸ Mr McLeod

³⁹ SOCG Section 8)

44. The lighting of the site needs to be controlled, also in the interests of residents' amenity (13).
45. To protect air quality, the dust mitigation measures already submitted should be adhered to during the reconfiguration, production and restoration phases (14).
46. In relation to the protection of water quality, borehole installation and monitoring details need to be submitted for approval (15). Load testing, including plate testing across the site, needs to be submitted for approval (16).
47. In order to minimise impact on biodiversity, the development needs to be undertaken in accordance with the updated Ecological Appraisal (18).
48. Finally, in line with the application, the permission should be limited to 15 years from the start of production (20) and restoration should commence within 6 months of the cessation of production (19). This is in the interests of the local environment.

Planning balance and conclusion

49. Beginning with the policy position, it is common ground between the parties that the proposal complies with all the relevant policies of the development plan, and there is no suggestion that the policies are out of date. I agree with that position.
50. s38(6) of the 2004 Act is therefore engaged, and planning permission should be granted unless material considerations indicate otherwise. In addition, the Council agrees that the proposed development is sustainable within the meaning of paragraph 8 of the Framework⁴⁰. I agree with that position and the presumption in favour of sustainable development in paragraph 11c of the Framework is triggered. This adds further weight in favour of the proposal in the overall balance.
51. The appellant's approach has been to consider the issues which led to the two 2018 appeals being dismissed, and to amend the scheme and provide further evidence to overcome the problems identified by my colleague. They have done this in a comprehensive fashion, as the Council have accepted, following a thorough review of the material.
52. The Council agrees with the appellant that the proposal would deliver economic benefits nationally and locally through taxation, business rates and direct and indirect jobs⁴¹ and would reduce the need for imported fuel. I give great weight to these and other benefits. In particular the proposal would make a significant contribution towards the provision of secure energy supplies and be consistent with the use of a mix of energy sources during the transition to a low carbon economy.
53. Any very limited residual adverse effects of the proposal would not be significant and could be properly controlled, and mitigated. This can be done by way of planning conditions as part of this appeal, and by way of the other regulatory regimes – to which I give significant weight. There are no material considerations which, even taken together, come close to outweighing the

⁴⁰ SOCG 2.3b

⁴¹ SOCG 2.3f

presumption in favour of the development and the benefits which it would bring.

54. For the reasons given above I conclude that the appeal should be allowed.

P. J. G. Ware

Inspector

**Lodge Farm, Clapp Gate, Appleby, Scunthorpe
Schedule of conditions**

1. The development must be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: ZG-ER-W1-PA-01; ZG-ER-W1-PA-02; ZG-ER-W1-PA-03; ZG-ER-W1-PA-04; ZG-ER-W1-PA-05; ZG-ER-W1-PA-06; ZG-ER-W1-PA-07; ZG-ER-W1-PA-08; ZG-ER-W1-PA-09; ZG-ER-W1-PA-10; ZG-ER-W1-PA-11; ZG-ER-W1-PA-12; ZG-ER-W1-PA-13; ZG-ER-W1-PA-14; ZG-ER-W1-PA-15; ZG-ER-W1-PA-16; ZG-ER-W1-PA-17; ZG-ER-W1-PA-18
3. The development hereby approved shall be carried out in accordance with the Traffic Management Plan and Mitigation Measures set out in Chapter 7 of the submitted Transport Statement and the Traffic Management Plan.
4. Prior to the commencement of development, a Noise Management Plan (NMP) shall be submitted for written approval to the local planning authority. The NMP shall clearly set out all potential sources of noise and techniques to be used to prevent and mitigate noise which shall demonstrate compliance with noise conditions 8 - 11 below. The NMP shall also include methods to deal with noise complaints from the general public. The approved NMP shall be implemented in full for the duration of the development.
5. Prior to the commencement of drilling operations or well stimulation on site, the name, make, model and technical noise specification for the drilling rig shall be submitted for approval to the local planning authority. The approved rig shall not be substituted without the prior written approval of the local planning authority and all approved noise mitigation measures shall be implemented in full throughout the duration of drilling.
6. Assembly and demobilisation of drilling rig equipment at the production well site shall only take place between the hours of 0700 and 1900 Monday to Saturday.
7. Site reconfiguration, site production setup and associate HGV deliveries shall only take place between the hours of 0700 and 1900 Monday to Saturday.
8. Noise from the site shall not exceed 42dB $L_{Aeq5min}$ when measured at any noise sensitive dwelling between 1900 and 0700 hours Monday to Sunday inclusive.
9. Noise from the site shall not exceed 60dB L_{Amax} when measured at any noise sensitive dwelling between 1900 and 0700 hours Monday to Sunday inclusive.
10. Noise from the site shall not exceed 55dB $L_{Aeq 1h}$ when measured at any noise sensitive dwelling between 0700 and 1900 hours Monday to Sunday inclusive.

11. Noise from the site shall not exceed 70dB L_{Amax} when measured at any noise sensitive dwelling between 0700 and 1900 hours Monday to Sunday inclusive.
12. All plant and machinery shall be maintained and silenced in accordance with the manufacturer's recommendations at all times.
13. Lighting of the site shall be carried out in accordance with the lighting plan set out in the Lighting Assessment written by Strenger and dated July 2018. The mitigation measures described in Section 8 of the Lighting Assessment shall be implemented in full for the duration of the development.
14. The dust mitigation measures set out in Appendix C of the approved Air Quality Dispersal Modelling Assessment produced by AECOM and dated 4 July 2018 shall be adhered to for the duration of site reconfiguration, site production setup and site restoration. There shall be no burning of waste on site at any time.
15. Prior to the commencement of development, a borehole installation plan for the deepening of three existing groundwater monitoring boreholes and the installation of an additional groundwater monitoring borehole within the Unconsolidated Sands Aquifer shall be submitted to and approved in writing by the local planning authority. The borehole installation plan shall include details of the design, logging and construction of the boreholes. No development shall take until the additional monitoring borehole is in place. Both the existing and the additional groundwater monitoring boreholes shall be constructed and monitored in accordance with the approved borehole installation plan.
16. Prior to the commencement of development, a scheme for undertaking on-site load bearing testing shall be submitted to and approved in writing by the local planning authority. The scheme shall include plate testing across the site where additional protection is not proposed (that is, those locations not referred to at paragraph 3.6, page 13 of the Civil and Structural Design Statement prepared by Alan Wood and Partners, dated 25 May 2018), and additional cylinder testing with final screened aggregate and repeated loading cycles. The results of the plate bearing tests and cylinder tests shall be submitted to the local planning authority and the depth of aggregate cover over the areas of the site where additional protection is not proposed shall be agreed in writing with the local planning authority, prior to any production operations taking place.
17. No development shall commence until a construction quality assurance (CQA) report has been submitted to and approved in writing by the local planning authority. The CQA shall include the documentation listed in paragraph 3.11, page 16 of the Civil and Structural Design Statement prepared by Alan Wood and Partners, dated 25 May 2018.
18. Works and biodiversity enhancements shall be carried out strictly in accordance with section 7 of the submitted document, "Wressle Well Site - Updated Ecological Appraisal" dated July 2018. The management

prescriptions and measures set out in table 6.1 and sections 7.1, 7.2 and 7.3 of the document shall be carried out in their entirety in accordance with the timescales set out in Table 7.1. All biodiversity features shall be retained thereafter.

19. The restoration shall commence within six months of the cessation of production, and the site shall be restored in accordance with the approved restoration scheme and aftercare programme set out in Appendix 5 (Site Closure and Restoration Procedure) of the submitted Planning and Sustainability Statement produced by Barton Willmore dated July 2018. The aftercare period shall commence from the date the local planning authority confirms that the restoration works have been carried out and fully implemented in accordance with approved details.
20. The use hereby permitted shall be for a limited period being the period of 15 years from the date of the commencement of production.

*****End of conditions*****

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:
Mr A Law (Strategic Development Officer)
Who assisted the Inquiry particularly in relation to conditions

FOR THE APPELLANT:	
Mr Hereward Philpot QC, instructed by Mr R Glover, Squire Patton Boggs	
He called	
Mr Mark Abbott BSc(Hons) FGS	Egdon Resources plc
Mr Mark Barwood BSc(Hons) CEng MICE	Alan Woods and Partners
Mr Jonathan Foster	Zetland Group Ltd
Mr James Dodds BSc(Hons) DUC MSc CGeol FGS	Envireau Ltd
Mr Paul Foster BSc(Hons) DipTP MRTPI MRICS	AECOM

INTERESTED PERSONS:	
Mrs J Turner	Local resident
Mrs K E Williams	Local resident
Ms R Fawcett	Local resident
Mr A McLeod	Environmental campaigner
Mr D Roberts	Local resident

INQUIRY DOCUMENTS

1	Statement and documents of Mrs Turner
2	Statement and documents of Mrs Williams
3	Statement and documents of Mr McLeod
4	Statement and documents of Ms Fawcett
5	Crosby Warren Appraisal testing report (Mr Abbott)
6	Crosby warren document regarding hydrofluoric acid use (Mrs Turner)
7	NAUE performance tables
8	Consultation on siting criteria and process for a new national policy statement for nuclear power with single reactor capacity over 1 gigawatt beyond 2025 (DBEIS) (2018)
9	Drax power station decision
10	Appellant's closing submission and attached table addressing third party issues.

CORE DOCUMENTS

CDA APPLICATION DOCUMENTS	
CDA1	Application Form, Notices and Covering Letter
CDA2	Planning and Sustainability Statement
CDA3	Hydrogeological & Flood Risk Assessment
CDA4	Air Quality Dispersion Modelling Assessment
CDA5	Lighting Assessment
CDA6	Assessment of Environmental Noise Emissions
CDA7	Assessment of Traffic and Transport
CDA8	Updated Ecological Appraisal Report
CDA9	Archaeological Desk Based Assessment and Heritage Impact Assessment
CDA10	Landscape and Visual Appraisal
CDA11	Civil and Structural Design Statement
CDA12	Supporting Plans and Drawings
CDA13	EIA Screening Report and Covering letter
CDA14	EIA Screening Opinion
CDA15	Memo – Further Information for Broughton Far Wood SSSI
CDA16	JBA Review of the Hydrogeological and Flood Risk Assessment and Civil and Structural Design Statement
CDA17	Response to the JBA Review of the Hydrogeological and Flood Risk Assessment and Civil and Structural Design Statement
CDB DECISION DOCUMENTS	
CDB1	Planning Committee Report PA/2018/1316
CDB2	Minutes and resolution of the Committee Meeting re PA/2018/1316
CDB3	Decision Notice (PA/2018/1316)
CDC APPEAL DOCUMENTS	
CDC1	Appeal Form and Notices
CDC2	Appellant's Statement of Case
CDC3	LPA's Statement of Case
CDC4	Draft Statement of Common Ground
CDC5	Emails to Planning Inspectorate confirming NLC's withdrawal of evidence
	CDC6 Statement of Common Ground
CDD OTHER PLANNING DECISIONS	
CDD1	Decision notice granting consent for the construction of a temporary wellsite for drilling of an exploratory borehole with associated structures and works (ref: MIN/2013/0281)
CDD2	Decision notice refusing consent for the retention of the Wressle-1 wellsite and access road for the long-term production of hydrocarbons (ref: MIN 2016/0810)
CDD3	Decision notice granting consent for the installation of four groundwater monitoring boreholes at the existing Wressle-1 site (ref: PA/2016/0808)
CDD4	Decision notice refusing consent for the retention of the existing Wressle-1 wellsite and access road for the long-term production of hydrocarbons (ref: PA/2017/696)
CDD5	Decision notice refusing consent for a variation of condition 24 of planning permission ref: MIN/2013/0281 (ref: PA/2017/268)
CDD6	Inspector's decision letter against the refusal of planning permission for the retention of the existing 'Wressle-1' wellsite and access road for the long term production of hydrocarbons ref: MIN/2016/0810 (ref: APP/Y2003/W/17/3173530)("Appeal A"); Appeal against the refusal of

	planning permission for the retention of the existing 'Wressle-1' wellsite and access road for the long-term production of hydrocarbons ref: PA/2017/696 (ref: APP/Y2003/W/17/3180606) ("Appeal B"); Appeal against the refusal of planning permission for a variation of condition 24 of planning permission ref: MIN/2013/0281 (ref: APP/Y2003/W/17/3182879) ("Appeal C")
CDD7	Decision notice refusing consent for a variation of Condition 11 of planning permission APP/Y2003/W/17/3182879
CDD8	Inspector's decision letter against the refusal of variation of condition 11 of planning permission ref: APP/Y2003/W/17/3182879 (ref: APP/Y2003/W/18/3212137)
	NATIONAL PLANNING POLICY DOCUMENTS
CDE1	National Planning Policy Framework
CDE2	On-line Planning Practice Guidance
CDE3	Overarching National Policy Statement for Energy EN-1
	NORTH LINCOLNSHIRE PLANNING POLICY DOCUMENTS
CDF1	North Lincolnshire Local Plan (extracts)
CDF2	North Lincolnshire Core Strategy (extracts)
CDF3	Appleby Neighbourhood Local Plan
	ENVIRONMENTAL PERMIT
CDG1	Environmental Permit ref EPR/AB3609XX/V003
CDG2	Permit Decision Document
CDG3	Water Resources Act 1991
CDG4	Onshore Oil and Gas Sector Guidance
CDG5	Conservation Notice 9 June 2014 Environment Agency
	OTHER DOCUMENTS
CDH1	Planning and Sustainability Statement accompanying Original Planning Application for Exploration
CDH2	The Lifting Operations and Lifting Equipment Regulations 1998 Health and Safety Executive
CDH3	The Offshore Installations and Wells (Design and Construction, etc) Regulations 1996 Health and Safety Executive
CDH4	Borehole Sites and Operations Regulations 1995 Health and Safety Executive
CDH5	The Petroleum Act 1998 (as amended by the Infrastructure Act 2015)
CDH6	Committee on Climate Change Net Zero: The UK's contribution to stopping global warming
CDH7	Press Release May 2019 UKOOG
CDH8	CIRIA -C736 Containment systems for the prevention of pollution 2014 CIRIA