



Ministry of Housing, Communities & Local Government

Consultation response form

If you are responding by email or in writing, please reply using this questionnaire pro-forma, which should be read alongside the consultation document. You are able to expand the comments box should you need more space. Required fields are indicated with an asterix (*)

This form should be returned to:

shaleconsultation@communities.gsi.gov.uk

Or posted to:

Planning and Infrastructure Division
Ministry of Housing, Communities and Local Government
2nd floor, South East
Fry Building
2 Marsham Street
LONDON
SW1P 4DF

By 25 October 2018

Your details

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Are the views expressed on this consultation your own personal views or an official response from an organisation you represent?*

Organisational response

If you are responding on behalf of an organisation, please select the option which best describes your organisation.*

Local authority (including National Parks, Broads Authority, the Greater London Authority and London Boroughs)

If you selected other, please state the type of organisation.

[Click here to enter text.](#)

Please provide the name of the organisation (if applicable).

North Yorkshire County Council

The definition of non-hydraulic fracturing

Question 1

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

No

b) If No, what definition would be appropriate?

There is ambiguity here; ambiguity which doesn't exist within the current system. The current system is clear that the all recognised phases of hydrocarbon development, exploration, appraisal and development require planning permission. To introduce a system based upon the definition as proposed would introduce ambiguity that could potentially lead to uncertainty and confusion within a sector to which clearly there is seen by the Government (as described within the consultation document) a need to bring clarity. An example of the ambiguity is the absence of further definition of what is meant by the word 'testing' if all that is being proposed is the taking of core samples? The explanatory text within the consultation document preceding Question 1 explains that the proposal "would only apply to shale gas exploration, and for non-hydraulic fracturing operations to take core samples for testing purposes". If testing is to be confined to the testing of the core samples, then this should be made explicit within the definition. However, if the intention is that 'testing' is meant to be the production of the gas from the 'tight' rock formation, the question that then follows is, is the gas expected to be produced without stimulation of any kind? The definition does not confine itself to non-hydraulic fracturing and, for the avoidance of doubt, it should. What is meant by 'section' is also not addressed.

In summary, notwithstanding a view upon the principle of a PD right for non-hydraulic shale gas exploration (which is discussed below), it is not considered that the definition as put forward is appropriate and it is not considered that there could be such an appropriate definition in the context where a PD right was introduced.

Question 2

Should non-hydraulic fracturing shale gas exploration development be granted planning permission through a permitted development right?

No. Please see the document entitled 'Briefing Note' dated 28th September 2018 appended to this pro-forma for further commentary in respect of this question.

Development not permitted

Question 3

a) Do you agree that a permitted development right for non-hydraulic fracturing shale gas exploration development would not apply to the following?

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

Yes

b) If No, please indicate why.

Click here to enter text.

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

Click here to enter text.

Development conditions and restrictions

Question 4

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

Notwithstanding the response to Question 2 that the exploration of shale gas should not be permitted development, there are, nevertheless conditions and

restrictions that are considered materially significant should the Government introduce non-hydraulic fracturing shale gas exploration as permitted development.

These are set down below and are given without prejudice to the position that the view is firmly held that it would not be appropriate to convey PD rights to the type of development as proposed within the public consultation document.

Conditions and restrictions that are considered materially significant in addition to those listed within the consultation document are the following necessary and important environmental controls (although the list is not intended to be wholly exhaustive) such as limitations upon the:

- use of external lighting especially given the predominantly rural nature of North Yorkshire;*
- maximum limits upon noise levels; again, given the rural nature of the North Yorkshire that possesses some of the most tranquil and remote areas of the country;*
- size of the well pad;*
- measures to protect both ground and surface water;*
- means of access, vehicle number limitations and traffic routing;*
- duration of the carrying out of the operations;*
- ‘buffer zones’ from sensitive receptors (including homes, schools, residential care facilities etc.) within which greater restrictions would apply;*
- limitations on the heights of plant and equipment etc. including those used in site preparation works; and,*
- appropriate controls over the management of any wastes arising from the development.*

In summary, notwithstanding the considerations put forward above, it is important to note, for such development as that which is proposed, the attendant development management conditions that one would expect to accompany any consent for such development are necessarily numerous and complex in order that the development may take place without undue environmental, amenity and economic effects and, for that reason, inappropriate to be placed in a ‘one size fits all’ type of PD.

Prior approval

Question 5

Do you have comments on the potential considerations that a developer should apply to the local planning authority for a determination, before beginning the development?

While it is acknowledged that the use of 'prior approvals' is taken advantage of in respect of certain developments currently having the benefit of PD rights, these 'prior approvals' do not allow any assessment as to the principle of a development, but merely confine themselves to certain specific details. A list of the current prior approvals is provided within the attached Briefing Note at Appendix B.

Furthermore, while it is noted that certain developments that take benefit from PD, are required in specific circumstances to notify local residents by means of site notices, (T&CP (GPD) (England) Order 2015, Parts 6 & 11 for example), acknowledging that this, at the very least, ensures the community is made aware, it does not go so far as to seek their engagement.

There are plenty of examples of where certain aspects of a development could fall to the local planning authority to assess; although this is at the discretion of the local planning authority. An example lies in the case of Class A of Part 1 (Development within the curtilage of a dwellinghouse - enlargement, improvement or other alteration of a dwellinghouse), where the 'prior approval' of the local planning authority is required "where any owner or occupier of any adjoining premises objects to the proposed development" such that the impact of the proposed development on the amenity of any adjoining premises can be assessed.

Examples can also be found within Class C (retail, betting office or pay day loan shop or casino to restaurant or café) and Class J (retail or betting office or pay day loan shop to assembly and leisure) of Part 3 (Changes of use) of the Order, where the 'prior approval' process would assess, inter alia, noise, odour, waste management, working hours, vehicle movements etc.; within Class M, contamination and flooding risks are also assessed and within Class P, impacts on air quality. Within Part 4 (Temporary buildings and uses), any 'prior approval' under Class E (temporary use of buildings or land for film-making purposes) would also assess the light impacts of the proposed development.

It is anticipated that the nature of many of those aspects of development for which 'prior approvals' are currently sought under the provisions of the Order would also be equally relevant to any permitted development proposals in respect of non-hydraulic fracturing exploration for shale gas and it is therefore considered that these, as described here, should be seen as, at the very least, the minimum requirements.

In summary, notwithstanding, the numerous environmental and amenity

considerations to which a local authority must have regard, it does appear that the formal planning application process rather than a national consent under PD is the most sure way of scrutinising the significant material considerations robustly as well as openly and transparently.

Time-period for a permitted development right

Question 6

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

2 Years. The proposals concern an industry which has yet to establish itself. It would therefore be prudent that should a decision be made to introduce them as PD, they are confined to a limited duration in time and two years would appear to be a reasonable length of time in which to assess its effectiveness. However, it is also considered that prior to any decision to renew that two year temporary PD right, a further period of public consultation should be undertaken. In summary, in response to the question, in the event of a Government decision to introduce PD rights for non-hydraulic shale gas exploration whether that should apply for period limited to two years, the answer is 'yes' and that any decision to renew that two year temporary PD right should require a further period of public consultation.

Public sector equality duty

Question 7

Do you have any views the potential impact of the matters raised in this consultation on people with protected characteristics as defined in section 149 of the Equalities Act 2010?

It is not considered, in this particular instance, that the proposals have a negative impact either directly or indirectly on people with protected characteristics, having regard to the need to eliminate discrimination, foster good relations or and advance equality of opportunity.

Please note:

Unfortunately during the completion of this pro-forma, in respect of Question No. 2 above, the formatting of text does not appear to be allowed within the text boxes. Therefore, for ease of reference, the original Briefing Note endorsed by NYCC Executive Members for Business & Environmental Services without amendment on Friday 28th September 2018 is appended hereto.

**North Yorkshire County Council
Business and Environmental Services
Executive Members
28 September 2018
Government consultations (Permitted Development & Nationally Significant
Infrastructure) in respect of Shale Gas development)
Briefing Note**

1.0 Background

- 1.1 On July 19th of this year, shortly before Government recess, two public consultations were launched. These consultations follow the joint [Written Ministerial Statement](#) on behalf of the Secretaries of State for Business, Energy and Industrial Strategy and Housing, Communities and Local Government, the Rt Hon Greg Clark MP and the Rt Hon James Brokenshire respectively on 17th May 2018. The deadline for responses to both these consultations is 25th October 2018.
- 1.2 The [first consultation](#) relates to the prospect of deeming certain types of shale gas-related development to be permitted development (PD) i.e. development without the need for the prior grant of planning permission and, [the second](#), to direct that certain types of such development be brought into the fold of what are known as *Nationally Significant Infrastructure Projects*, or NSIPs for short.

2.0 The Consultations

Permitted development consultation

- 2.1 The consultation on permitted development for shale gas exploration by the Ministry for Housing Communities & Local Government (MHCLG) seeks views with specific regard to the principle of ***non-hydraulic*** (also referred to in the consultation as ***non-fracturing*** and ***non-hydraulic fracturing***) shale gas ***exploration*** as permitted development [emphasis added].
- 2.2 The term '*hydraulic*' refers to the use of fluids as a means to fracture rock formations which may contain shale gas and, therefore, the scope of the consultation is limited to the exploration by means other than by the use of fluids to fracture the formations i.e. *non-hydraulic/non-fracturing/non-hydraulic fracturing*.
- 2.3 Also importantly, the consultation does not propose PD rights in respect of the appraisal of any shale gas or its production. Oil and gas development is recognised as being undertaken in three distinct processes; *exploration*, *appraisal* and *production* in sequential order i.e. *production* would not normally precede *exploration* or *appraisal* and *appraisal* would not normally precede *exploration*. The Government makes clear that the purpose of allowing non-hydraulic fracturing for shale gas would be to "*acquire geological data to establish whether hydrocarbons are present*" i.e. "***to take core samples for testing purposes***" [emphasis within the original consultation document]. Any

appraisal of any well, or indeed any production from any well, therefore, would necessitate the need to apply for an express grant of planning permission.

- 2.4 The Government consultation document emphasises in bold type that they “*consider that it would not be appropriate for it to allow for the injection of any fluids for the purposes of hydraulic fracturing. The right would not apply to all onshore oil and gas exploration and / or extraction operations*”.
- 2.5 The basis for the proposal to bring non-hydraulic fracturing shale gas exploration into those developments which benefit from PD rights has been explained in the consultation document as being founded upon “*making planning decisions faster and fairer*”; while at the same time retaining the requirement that currently exists to secure consents from other regulators such as the Environment Agency, the Health & Safety Executive and the Oil & Gas Authority.
- 2.6 The PD rights that exist in England today can be found within the [Town & Country Planning \(General Permitted Development\) \(England\) Order 2015](#) (Appendix A attached hereto lists the headings of those development types which benefit from PD rights). Please note that this is not a reproduction of the Order itself, but is intended as a summary for the purposes of this Briefing Note.

NSIPs consultation

- 2.7 The Planning Act 2008 introduced the consenting system for what are referred to as *Nationally Significant Infrastructure Projects* (NSIPs) and, by way of example, under the provisions of Section 14 of the Act, NSIPs (relating to the fields of energy, transport, water, waste water and waste) may include:
- *the construction or extension of a generating station;*
 - *the installation of an electric line above ground;*
 - *development relating to underground gas storage facilities;*
 - *the construction or alteration of an LNG facility; a gas reception facility; harbour facilities, railway, rail freight interchange; a dam or reservoir; waste water treatment plant or hazardous waste facility;*
 - *the construction of a pipe-line by a gas transporter or by other than by a gas transporter;*
 - *highway-related or airport-related development;*
 - *development relating to the transfer of water resources; or,*
 - *development relating to a radioactive waste geological disposal facility.*
- 2.8 Other developments ‘*caught*’ by the regime include deep-mined coal and categories including major office, warehousing, manufacturing, research and development facilities as well as significant tourism and leisure schemes including sports stadia, so long as the Secretary of State deems them to be ‘*nationally significant*’. By this, it is meant, having significant economic impact, being important for driving growth in the economy, or having an impact across an area wider than a single local authority area.

- 2.9 Such developments, if dealt with under this regime, are decided in accordance with National Policy Statements (NPSs). It is important to note that an NPS for shale gas does not currently exist; however, Section 105 of the 2008 Act gives the Secretary of State the power to take the decision in the absence of an NPS. Therefore, in the absence of a NPS for a particular project, decisions would then need to be taken in accordance with the National Planning Policy Framework and any relevant local plan for the area where the development would be located.
- 2.10 While a proposal under the national development consenting order process could expect to take between 12 to 15 months to reach final determination (excluding the period for legal challenge/judicial review i.e. six weeks), this must be preceded by an extensive consultation outlining the proposals; a period of time which, depending upon the nature of the proposed development, can potentially exceed even the consenting process period. The process includes a period of 28 days where those responsible must decide whether the application has been duly made and, after a period of pre-examination where parties register their interest, the period of examination itself may take six months or so. The decision-takers then have three months in which to make their recommendations to the Secretary of State who then has a further three months to either grant or refuse consent.

3.0 Proposed response to the consultations

Permitted development consultation

- 3.1 There are seven questions posed within the consultation document with respect to permitted development rights and these are addressed below:

Question 1

- 3.2 The first question posed by the Government is whether one would agree with the proposed definition as put forward in the consultation document i.e. *'boring for natural gas in shale or other strata encased in shale for the purposes of searching for natural gas and associated liquids, with a testing period not exceeding 96 hours per section test'* and, if one disagrees with the proposed definition, what alternative definition would be thought to be appropriate.
- 3.3 There is ambiguity here; ambiguity which doesn't exist within the current system. The current system is clear that the all recognised phases of hydrocarbon development, exploration, appraisal and development require planning permission. To introduce a system based upon the definition as proposed would introduce ambiguity that could potentially lead to uncertainty and confusion within a sector to which clearly there is seen by the Government (as described within the consultation document) a need to bring clarity. An example of the ambiguity is the absence of further definition of what is meant by the word *'testing'* if all that is being proposed is the taking of core samples? The explanatory text within the consultation document preceding Question 1 explains that the proposal *"would only apply to shale gas exploration, and for non-hydraulic fracturing operations to take core samples*

for testing purposes”. If testing is to be confined to the testing of the core samples, then this should be made explicit within the definition. However, if the intention is that ‘testing’ is meant to be the production of the gas from the ‘tight’ rock formation, the question that then follows is, is the gas expected to be produced without stimulation of any kind? The definition does not confine itself to *non-hydraulic fracturing* and, for the avoidance of doubt, it should. What is meant by ‘section’ is also not addressed.

- 3.4 ***In summary, notwithstanding a view upon the principle of a PD right for non-hydraulic shale gas exploration (which is discussed below), it is not considered that the definition as put forward is appropriate and it is not considered that there could be such an appropriate definition in the context where a PD right was introduced.***

Question 2

- 3.5 This second question, ‘*should non-hydraulic fracturing shale gas exploration development be granted planning permission through a permitted development right?*’ requires a definitive ‘yes’ or ‘no’ response.
- 3.6 In responding in the negative to this question, the following are offered as possible reasons for coming to this view:
- permitted development, currently under the provisions of the [Town & Country Planning \(General Permitted Development\) \(England\) Order 2015](#), but also under previous iterations of the Order, has generally related to what the ‘lay person’ would understand to be relatively minor developments and examples include garden sheds and fences to name but a few; notwithstanding more specific minerals-related development which are referenced below;
 - amongst the developments listed within the Order as having the benefit of a consent without the need for planning permission, new Classes of permitted development were brought about by Articles 12, 13 and 14 of the 2016 amendment to the Order. These allow, the drilling of boreholes for the purposes of:
 - (a) carrying out groundwater monitoring;
 - (b) carrying out seismic monitoring; or
 - (c) locating and appraising the condition of mine operations,which is preparatory to potential petroleum exploration, and are subject to conditions and restrictions (such as no operations between 6pm and 7am, no more than 28 consecutive days, no closer than within 50 metres of any part of an occupied residential building or a building occupied as a hospital or school nor within a National Park, an area of outstanding natural beauty (AONB), a site of archaeological interest, a Site of Special Scientific Interest (SSSI) or the Broads or a protected ground water source area). Under new Class JA of Part 17, such development may take place for a period not exceeding 28 consecutive days. Under new Class

KA of Part 17, where a developer has notified the relevant authority in writing of its intentions, then such development may take place for a period not exceeding 24 months (in the case of the drilling of boreholes for carrying out groundwater monitoring) or 6 months (in other cases), unless the authority has otherwise agreed in writing. However, it is important to note that these elements of PD are distinguishable from that which is now being proposed within the current government consultation in that, *inter alia*, they are less intrusive requiring comparatively smaller drill rigs due to the likelihood of more shallow depths involved and are subject to the limitations referred to earlier in this paragraph;

- more generally, a review of the nature, scale and types of development reveals, for the most part, the general minor development that is permitted without the requirement for a specific grant of planning permission and an example is that while the tallest height of any structure under PD is 20 metres (e.g. a mast for electronic communications, Part 16, Class A), the majority of PD rights have controls restricting their heights to 15 metres or less;
- in being a nationally prescribed consent, many PD rights mean that there is no public engagement of any sort and this is understandably the case such that were formal planning permissions from authorities to be required for all developments, public engagement in respect of the minor nature of developments would render the planning system unduly cumbersome. However, the exploration of shale gas is considered likely to give rise to significant land use planning concerns and therefore require the close scrutiny, public engagement and local democratic decision-making that comes with the consideration of applications for planning permission;
- when one considers the infrastructure that would be required for the exploration of shale gas within the county, there is little to distinguish it from that which would be necessary for the stages of appraisal and production and examples are described below;
 - unconventional (or '*tight gas*') is predicted to be found in the Bowland Shale (a deep water Carboniferous shale) some 3km (10,000ft) below ground level (source: [The Carboniferous Bowland Shale gas study: geology and resource estimation, BGS, 2013](#)); almost three times the depth to which previous conventional wells within North Yorkshire have been sunk;
 - the sinking of a well down to the Bowland Shale under North Yorkshire requires the drilling of a borehole that is likely to require a drill rig of a height in the region of 40-60 metres (depending upon the type and the allocated time in which to sink the well). If a short duration of time is required, it follows that a drill rig of greater height would be needed which could accommodate longer lengths of drill pipe;
 - not only would the height of a drill rig of some 40-60 metres be significant within the landscape, it would also give rise to significant

affects upon the amenity of communities living in proximity to such a development;

- in addition, the depth of the target formation, coupled with the choice of drill rig, also determines the duration of the presence of the drill rig, its visual impacts and also its impacts upon the amenity of the local community when one considers that necessity of 24/7 drilling operations, shift changes, external lighting etc. when sinking a well. In the case of the sinking of the KM8 well on the Kirby Misperton A (KM-A) wellsite, the duration of drilling was estimated to be between 6 weeks and 3 months. In the case of the Preston New Road site in Lancashire, while the estimate had been 5 months for the drilling of the first well, in reality, the drilling of this first of four wells to be sunk on that site (down to a depth of 2.7 kilometres) took twice the time than estimated, i.e. 10 months;
- particularly with respect to the shale gas resource, queries are raised insofar as to the '*extent*'/'*scope*' of core sampling. Would the industry, for example, require core samples to be taken to determine the lateral extent of the target formation by way of directional drilling techniques, thereby, prolonging even further the duration of the presence of the drill rig. This is particularly concerning in light of proposals at the Altcar Moss site in Lancashire proposing a '*reach*'/'*stretch*' of lateral wells to a distance of 1.5 kilometres and those of the Preston New Road site (also in Lancashire) a distance of 2.5 kilometres;
- there is not only the consideration of the actual drilling of the well itself, but there are also the preparatory works involved in the construction of the well pad upon which the drill rig would need to be erected. Such a well pad is not an insubstantial construction. The KM8 well pad was estimated to require 140 loads for the delivery of the stone (280 vehicle movements, 140 in and 140 out). Although comparatively limited in size, the KM8 well pad covering half a hectare (5,000 m²) was estimated to take 6 weeks to build. In addition, security fencing and noise barriers are also likely to be required. In the case of the KM8 development, the individual vehicle movements attributable to the noise barrier alone amounted to 72 with a vehicle movement frequency of one every ten minutes. Furthermore, the cellar (housing the wellhead) which forms a containment area from which a well can be drilled is constructed from concrete rings, approximately 2.4m nominal diameter and 3m deep. Concrete deliveries would be needed to carry out this development which could again impact upon the duration of the development. A greater area of land is expected to be required in respect of an unconventional shale gas well (notwithstanding the absence of any hydraulic fracturing at the core sampling (*exploration*) stage) and, therefore, both time and cost-effectiveness would dictate that the well pad would need to be constructed to a size that would be capable of accommodating all the equipment required to undertake

hydraulic fracturing at the *appraisal* stage of the process (the ‘*frac*’ spread);

- such infrastructure requirements also necessitate both long vehicles and abnormal loads; logistics which one would not normally associate with the types of development that benefit from permitted development rights;
- furthermore, once the well has been sunk, the well requires testing and this can take an additional 3 weeks.
- the above concerns expressed in objection to bringing the exploration of shale gas into the realm of PD mirror the findings of the published report on 5th July of this year of the Select Committee Inquiry on [‘Planning guidance on fracking’](#) which pointed to concerns that introducing shale gas exploration into the realm of PD “*might allow operators to build well-pads in any location they deemed suitable without due process or consideration of impacts*”. It recommended that “*Shale gas development of any type should not be classed as permitted development. Given the contentious nature of fracking, local communities should be able to have a say in whether this type of development takes place, particularly as concerns about the construction, location and cumulative impact of drill pads are yet to be assuaged by the Government*”.

- 3.7 ***In summary, in response to the question whether non-hydraulic fracturing shale gas exploration development should be granted planning permission through a permitted development right, the response has to be ‘no’ for the reasons detailed above, but also summarised as being because of the nature and complexity of the development proposals which require robust, open and transparent scrutiny that can only be delivered through a formal planning application to the relevant planning authority.***

Question 3

- 3.8 Again, this next question requires a definitive ‘yes’ or ‘no’ response to whether one agrees with the proposal that a permitted development right for non-hydraulic fracturing shale gas exploration development would not apply in respect of AONBs, National Parks (NPs) (including the Broads), World Heritage Sites, Sites of Special Scientific Interest (SSSIs), Scheduled Monuments, Conservation areas, Sites of archaeological interest, Safety hazard areas, Military explosive areas, Land safeguarded for aviation or defence purposes and Protected groundwater source areas.
- 3.9 In the circumstance of anyone disagreeing with those exemptions identified within paragraph 3.8 above, the consultation seeks the reasons why this would be the case and then goes on to ask whether there are “*any other types of land where a permitted development right for non-hydraulic fracturing shale gas exploration development should not apply*”. On the basis that the list

within the consultation document is sufficiently comprehensive, it is not proposed to suggest in response to this consultation that there should be other areas of land for which specific exclusions should apply.

- 3.10 ***In summary, in response to this consultation question whether one would agree with the exclusions as put forward in the document, the answer would be 'yes'.***

Question 4

- 3.11 This question explores the issue in more depth asking what conditions and restrictions would be appropriate for a permitted development right for non-hydraulic shale gas exploration and is preceded by examples of where conditions and restrictions exist in respect of other types of permitted development.
- 3.12 Examples given within the consultation document include:
- *Agreement with the relevant mineral planning authority on the restoration of the conditions of the land before the development took place;*
 - *Limits on the height of any structure assembled or provided;*
 - *Limits on the height of any substructures and ancillary drilling compounds;*
 - *Time-limits on both the operation and duration of works;*
 - *Restrictions on any operations carried out within a certain distance of sensitive site uses;*
 - *Restrictions on the number of wells within a certain area;*
 - *Restrictions on development near an aerodrome or airport;*
 - *No removal of trees from the land.*
- 3.13 Notwithstanding the proposed response to Question 2 that the exploration of shale gas should ***not*** be permitted development, there are, nevertheless conditions and restrictions that are considered materially significant should the Government introduce non-hydraulic fracturing shale gas exploration as permitted development. These are set down below and are given without prejudice to the position that the view is firmly held that it would ***not*** be appropriate to convey PD rights to the type of development as proposed within the public consultation document.
- 3.14 Conditions and restrictions that are considered materially significant in addition to those listed with paragraph 3.12 above are the following necessary and important environmental controls (although the list is not intended as being wholly exhaustive) such as limitations upon the:
- use of external lighting especially given the predominantly rural nature of North Yorkshire;
 - maximum limits upon noise levels; again, given the rural nature of the North Yorkshire that possesses some of the most tranquil and remote areas of the country;
 - size of the well pad;
 - measures to protect both ground and surface water;
 - means of access, vehicle number limitations and traffic routing;
 - duration of the carrying out of the operations;
 - 'buffer zones' from sensitive receptors (including homes, schools, residential care facilities etc.) within which greater restrictions would apply;
 - limitations on the heights of plant and equipment etc. including those used in site preparation works; and,
 - appropriate controls over the management of any wastes arising from the development.

- 3.15 ***In summary, notwithstanding the considerations put forward in paragraph 3.14 above, it is important to note, for such development as that which is proposed, the attendant development management conditions that one would expect to accompany any consent for such development are necessarily numerous and complex in order that the development may take place without undue environmental, amenity and economic effects and, for that reason, inappropriate to be placed in a 'one size fits all' type of PD.***

Question 5

- 3.16 Again, in seeking more detail from consultees, the Government asks within its fifth question whether consultees would have “*any comments on the potential considerations that a developer should apply to the local planning authority for a determination, before beginning the development*”.
- 3.17 While it is acknowledged that the use of ‘*prior approvals*’ is taken advantage of in respect of certain developments currently having the benefit of PD rights, these ‘*prior approvals*’ do not allow any assessment as to the principle of a development, but merely confine themselves to certain specific details. A list of the current prior approvals is provided within Appendix B.
- 3.18 Furthermore, while it is noted that certain developments that take benefit from PD, are required in specific circumstances to notify local residents by means of site notices, (T&CP (GPD) (England) Order 2015, *Parts 6 & 11* for example), acknowledging that this, at the very least, ensures the community is made aware, it does not go so far as to seek their engagement.
- 3.19 There are plenty of examples of where certain aspects of a development could fall to the local planning authority to assess; although this is at the discretion of the local planning authority. An example lies in the case of Class A of Part 1 (*Development within the curtilage of a dwellinghouse - enlargement, improvement or other alteration of a dwellinghouse*), where the ‘*prior approval*’ of the local planning authority is required “*where any owner or occupier of any adjoining premises objects to the proposed development*” such that the impact of the proposed development on the amenity of any adjoining premises can be assessed.
- 3.20 Examples can also be found within Class C (*retail, betting office or pay day loan shop or casino to restaurant or café*) and Class J (*retail or betting office or pay day loan shop to assembly and leisure*) of Part 3 (*Changes of use*) of the Order, where the ‘*prior approval*’ process would assess, *inter alia*, noise, odour, waste management, working hours, vehicle movements etc.; within Class M, contamination and flooding risks are also assessed and within Class P, impacts on air quality. Within Part 4 (*Temporary buildings and uses*), any ‘*prior approval*’ under Class E (*temporary use of buildings or land for film-making purposes*) would also assess the light impacts of the proposed development.

- 3.21 It is anticipated that the nature of many of those aspects of development for which ‘*prior approvals*’ are currently sought under the provisions of the Order would also be equally relevant to any permitted development proposals in respect of non-hydraulic fracturing exploration for shale gas and it is therefore considered that these, as described here, should be seen as, at the very least, the minimum requirements.
- 3.22 ***In summary, notwithstanding, the numerous environmental and amenity considerations to which a local authority must have regard, it does appear that the formal planning application process rather than a national consent under PD is the most sure way of scrutinising the significant material considerations robustly as well as openly and transparently.***

Question 6

- 3.23 This penultimate question explores the duration for which such a permitted development right should be sustained i.e. “*should a permitted development right for non-hydraulic fracturing shale gas exploration development only apply for 2 years, or be made permanent*”.
- 3.24 The proposals concern an industry which has yet to establish itself. It would therefore be prudent that should a decision be made to introduce them as PD, they are confined to a limited duration in time and two years would appear to be a reasonable length of time in which to assess its effectiveness. However, it is also considered that prior to any decision to renew that two year temporary PD right, a further period of public consultation should be undertaken.
- 3.25 ***In summary, in response to the question, in the event of a Government decision to introduce PD rights for non-hydraulic shale gas exploration whether that should apply for period limited to two years, the answer is ‘yes’ and that any decision to renew that two year temporary PD right should require a further period of public consultation.***

Question 7

- 3.26 This final question is unrelated to the subject matter and instead relates to compliance with duties under the Equalities Act 2010. Notwithstanding, it is not considered, in this particular instance, that the proposals have a negative impact either directly or indirectly on people with protected characteristics, having regard to the need to eliminate discrimination, foster good relations or and advance equality of opportunity.

NSIPs consultation

- 3.27 There are six elements to this consultation.

Questions 1 & 2

- 3.28 The first asks whether one would agree with the proposal to include major shale gas production projects in the Nationally Significant Infrastructure Project (NSIP) regime and is followed by a supplementary request (Question 2) for evidence to support whatever view is expressed.
- 3.29 Given that this '*industry*' (if one could refer to it as such at this point in time in light of there having been only a handful of proposals brought forward thus far), is new in the context of operations in England, it is considered **overly premature** to take a decision that would see major shale gas production projects determined outwith the sphere of local democracy that is provided by local planning authorities up and down the country and placed in the hands of the relevant Secretary of State. Neither is there seen to be any justification or empirical evidence upon which to rely to demonstrate that a move to the production of shale gas being an NSIP development would even deliver the outcome so desired. One would have to question just how significant and indeed substantial a '*major shale gas production project*' would have to be to be considered '*to be in the national interest*'; warranting the taking of decisions away from the local communities in which the developments may be proposed.
- 3.30 The types of NSIPs are described on the '[National Infrastructure Planning](#)' website as "*major infrastructure projects such as new harbours, roads, power generating stations (including offshore wind farms) and electricity transmission lines*" and are limited to the energy; transport; waste; waste water; water; and business and commercial sectors. The website also points to examples being "*power stations; railways and major roads; reservoirs; harbours; airports; offshore wind farms and sewage treatment works - in other words, the kinds of large scale facilities that support the everyday life of the country*". Within the Yorkshire & Humber region, there are listed 21 projects, including *Ferrybridge Multifuel 2 (FM2) Power Station*, *Knottingley Power Project*, *Drax Re-Power*, *Ferrybridge D Combined Cycle Gas Turbine (CCGT) Power Station Project*, *Eggborough CCGT*; all projects which are clearly of national significance.
- 3.31 The earlier referred Select Committee report on '[Planning Guidance on Fracking](#)' expressed the view that there is little to be gained by the transfer of decision-making from the local communities to the national consenting regime and, indeed, more that could be lost by doing so.
- 3.32 It is interesting to note that the House of Commons Library advising Members on '[Planning for NSIPs](#)' advises that the process is "*front-loaded with a number of pre-application consultation requirements, which, depending on the complexity of the project, can take a number of years to carry out*". The website's FAQs relating to the length of time to determine NSIP states that "*from accepting an application to making a decision, the whole process should last in the region of 16 months. Previously the average time taken for major applications was around 2 years (100 weeks), with some applications for complex major infrastructure projects taking much longer still*".

- 3.33 ***In summary, the response to the question of whether one would agree with the proposal to include major shale gas production projects in the Nationally Significant Infrastructure Project (NSIP) regime would have to be ‘no’ on the basis that, at this stage and with the limited experience to date of this industry, it hasn’t been demonstrated, with any degree of robust argument, that this type of development warrants or justifies being considered as ‘nationally significant’ when compared to so many of the NSIP projects which clearly are.***

Questions 3 & 4

- 3.34 The third question seeks views on the criteria against which to assess whether a project is to be regarded as nationally significant and such criteria offered up within the consultation document are listed as:
- a) *The number of individual wells per well-site (or ‘pad’)*
 - b) *The total number of well-sites within the development*
 - c) *The estimated volume of recoverable gas from the site(s)*
 - d) *The estimated production rate from the site(s), and how frequently (e.g. daily, monthly, annually or well lifetime)*
 - e) *Whether the well-site has/will require a connection to the local and/or national gas distribution grid*
 - f) *Requirement for associated equipment on-site, such as (but not limited to) water treatment facilities and micro-generation plants*
 - g) *Whether multiple well-sites will be linked via shared infrastructure, such as gas pipelines, water pipelines, transport links, communications, etc*
 - h) *A combination of the above criteria – if so please specify which*
 - i) *Other – if so please specify*

This is then, again, followed by a supplementary request (Question 4) for evidence to support whatever view is expressed.

- 3.35 While noting the many examples of criteria put forward, there are no thresholds offered up which renders commenting with value difficult. Furthermore, in the absence of any clear definitions about the terminology used within the criteria, this equally renders valuable comment difficult. A case in point is that of the above criteria *b)* that would suggest a single development could comprise a number of well-sites. If one were to use the basis of the criteria which references ‘*the development*’ as comprising a number of well-sites and transposed them, for illustrative purposes, into the context of North Yorkshire’s six conventional gas well sites feeding the gas station, one could have a potential, though hypothetical, ‘*development area*’ stretching as far east as the Knapton Gas-fired Electricity Generating Station, as far north as Pickering, as far south and west as Great Habton covering an area of 145 square kilometres. While many projects that currently fall within the regime of the national consenting process are what could be referred to as ‘*static*’ geographic locations, the oil and gas industry is one which is characterised by constant transient sites as reservoirs are discovered, depleted and new ones brought ‘*on-stream*’ which would not, insofar as initial thoughts have revealed, be conducive to determining projects at the national level as opposed to the local level i.e. given the nascent nature of this industry

and the geographical variation in circumstances across the country, it is not possible to state that a particular number of well pads or well sites could be appropriately accommodated within a particular area without creating an unacceptable impact on local communities or the environment.

- 3.36 ***In summary, notwithstanding the viewpoint that it would not be appropriate, at this stage, to include shale gas production as NSIP development, the criteria put forward within the consultation document should, at the very least, provide a foundation upon which to develop a more robust and comprehensive list of criteria and ones which will help to demonstrate why such development would be considered by the Government to be 'nationally significant'.***

Questions 5 & 6

- 3.37 This question seeks the views of consultees as to when such a change to categorise such projects as NSIPs should take place and gives examples of possible timescales, for example, *“as soon as possible, ahead of the first anticipated production site, or when a critical mass of shale gas exploration and appraisal sites has been reached”* and, again, this followed by a supplementary request (Question 6) for evidence to support whatever view is expressed.
- 3.38 Notwithstanding the view of objection to the bringing of major shale gas production projects into the regime of Nationally Significant Infrastructure Projects (NSIPs), it is considered that an early decision on the part of the Government would ensure clarity for all interested parties.

4.0 Recommendations

- 4.1 That, Members are invited to
- note both the content of the two consultation documents;
 - offer any comments on the draft responses; and,
 - agree that a final response be prepared (in consultation with Members) prior to being sent to the two consulting Government Departments either along the lines as set out within this Briefing Note or with any requisite amendments Members may wish to make.

VICKY PERKIN
Head of Planning Services

Town & Country Planning (General Permitted Development) (England) Order 2015

Part)...

Class)...

1) Development within the curtilage of a dwellinghouse

- a) *enlargement, improvement or other alteration of a dwellinghouse*
- b) *additions etc to the roof of a dwellinghouse*
- c) *other alterations to the roof of a dwellinghouse*
- d) *porches*
- e) *buildings etc incidental to the enjoyment of a dwellinghouse*
- f) *hard surfaces incidental to the enjoyment of a dwellinghouse*
- g) *chimneys, flues etc on a dwellinghouse*
- h) *microwave antenna on a dwellinghouse*

2) Minor operations

- a) *gates, fences, walls etc*
- b) *means of access to a highway*
- c) *exterior painting*
- d) *electrical outlet for recharging vehicles*
- e) *electrical upstand for recharging vehicles*
- f) *closed circuit television cameras*

3) Changes of use

- a) *restaurants, cafes, or takeaways to retail*
- aa) *drinking establishments with expanded food provision*
- b) *takeaways to restaurants and cafes*
- c) *retail, betting office or pay day loan shop or casino to restaurant or café*
- d) *shops to financial and professional*
- e) *financial and professional or betting office or pay day loan shop to shops*
- f) *betting offices or pay day loan shops to financial and professional*
- g) *retail or betting office or pay day loan shop to mixed use*
- h) *mixed use to retail*
- i) *industrial and general business conversions*
- j) *retail or betting office or pay day loan shop to assembly and leisure*
- k) *casinos to assembly and leisure*
- l) *small HMOs to dwellinghouses and vice versa*
- m) *retail or betting office or pay day loan shop to dwellinghouses*
- n) *specified sui generis uses to dwellinghouses*
- o) *offices to dwellinghouses*
- p) *storage or distribution centre to dwellinghouses*
- q) *agricultural buildings to dwellinghouses*
- r) *agricultural buildings to a flexible commercial use*
- s) *agricultural buildings to state-funded school or registered nursery*
- t) *business, hotels etc to state-funded schools or registered nursery*
- u) *return to previous use from converted state-funded school or registered nursery*
- v) *changes of use permitted under a permission granted on an application*

4) Temporary buildings and uses

- a) *temporary buildings and structures*
- b) *temporary use of land*
- c) *use as a state-funded school for a single academic year*
- d) *shops, financial, cafes, takeaways, pubs etc to temporary flexible use*
- e) *temporary use of buildings or land for film-making purposes*

5) Caravan sites and recreational campsites

- a) *use of land as caravan site*

- b) *development on caravan site required by conditions*
- c) *use of land by members of certain recreational organisations*
- 6) Agricultural and forestry**
 - a) *agricultural development on units of 5 hectares or more*
 - b) *agricultural development on units of less than 5 hectares*
 - c) *mineral working for agricultural purposes*
 - d) *forestry developments*
- 7) Non-domestic extensions, alterations etc**
 - a) *extensions etc of shops or financial or professional premises*
 - b) *construction of shop trolley stores*
 - c) *click and collect facilities*
 - d) *modification of shop loading bays*
 - e) *hard surfaces for shops, catering or financial or professional premises*
 - f) *extensions etc of office buildings*
 - g) *hard surfaces for office buildings*
 - h) *extensions etc of industrial and warehouse*
 - i) *developments relating to an industrial process*
 - j) *hard surfaces for industrial and warehouse premises*
 - k) *waste deposits from an industrial process*
 - l) *development at waste management facilities*
 - m) *extensions etc for schools, colleges, universities and hospitals*
 - n) *hard surfaces for schools, colleges, universities or hospitals*
- 8) Transport related development**
 - a) *railway or light railway undertakings*
 - b) *dock, pier, harbour, water transport, canal or inland navigation undertakings*
 - c) *works to inland waterways*
 - d) *dredging by transport undertakings*
 - e) *development for the aid of shipping*
 - f) *development at an airport*
 - g) *air traffic services development at an airport*
 - h) *air traffic services development near an airport*
 - i) *development by an air traffic services licence holder within an airport*
 - j) *development by an air traffic services licence holder on operational land*
 - k) *development by an air traffic services licence holder in an emergency*
 - l) *development by an air traffic services licence holder involving moveable structures*
 - m) *development by the Civil Aviation Authority for surveys etc.*
 - n) *use of airport buildings managed by relevant airport operators*
- 9) Development relating to roads**
 - a) *development by highways authorities*
 - b) *development by the Secretary of State [...] under the Highways Act 1980*
 - c) *tramway or road transport undertakings*
 - d) *toll road facilities*
 - e) *repairs to unadopted streets and private ways*
- 10) Repairs to services**
- 11) Heritage and demolition**
 - a) *development by Historic England*
 - b) *demolition of buildings*
 - c) *demolition of gates, fences, walls etc*
- 12) Development by local authorities**
- 13) Water and sewerage**
 - a) *Water or hydraulic power undertakings*
 - b) *development by or on behalf of sewerage undertakers*
 - c) *development by drainage bodies*

d) *development by the Environment Agency*

14) Renewable energy

- a) *installation or alteration etc of solar equipment on domestic premises*
- b) *installation or alteration etc of stand-alone solar equipment on domestic premises*
- c) *installation or alteration etc of ground source heat pumps on domestic premises*
- d) *installation or alteration etc of water source heat pumps on domestic premises*
- e) *installation or alteration etc of flue for biomass heating system on domestic premises*
- f) *installation or alteration etc of flue for combined heat and power on domestic premises*
- g) *installation or alteration etc of air source heat pumps on domestic premises*
- h) *installation or alteration etc of wind turbine on domestic premises*
- i) *installation or alteration etc of stand-alone wind turbine on domestic premises*
- j) *installation or alteration etc of solar equipment on non-domestic premises*
- k) *installation or alteration etc of stand-alone solar equipment on non-domestic premises*
- l) *installation or alteration etc of ground source heat pump on non-domestic premises*
- m) *installation or alteration etc of water source heat pump on non-domestic premises*
- n) *installation etc of flue for biomass heating system on non-domestic premises*
- o) *installation etc of flue for combined heat and power on non-domestic premises*

15) Power related development

- a) *gas transporters*
- b) *electricity undertakings*

16) Communications

- a) *electronic communications code operators*
- b) *other telecommunications development*
- c) *other telecommunications development: microwave antenna*
- d) *driver information systems*
- e) *universal postal service providers*

17) Mining and mineral exploration

- a) *extensions, alterations etc ancillary to mining operations*
- b) *other developments ancillary to mining operations*
- c) *developments for maintenance or safety*
- d) *coal mining development by the Coal Authority and licensed operators*
- e) *coal mining development by a licensee of the British Coal Corporation*
- f) *coal-mining development on an authorised site*
- g) *coal-mining development by the Coal Authority etc for maintenance or safety*
- h) *waste tipping at a mine*
- i) *waste tipping from a mine on sites used since 1948*
- j) *temporary use of land etc for mineral exploration*
- (ja) *temporary use of land etc in respect of petroleum exploration*
- k) *use of land etc for mineral exploration*
- (ka) *use of land etc in respect of petroleum exploration*
- l) *removal of material from a stockpile*
- m) *removal of material from mineral-working deposits*

18) Miscellaneous development

- a) *development under local or private Acts or Order*
- b) *development at amusement parks*

19) Development by the Crown or for national security purposes

- a) *general development by the Crown*
- b) *extension or alteration of an operational Crown building*
- c) *developments on operational Crown land*
- d) *development on operational Crown land relating to an airbase*
- e) *development on operational Crown land relating to an airbase*
- f) *development on operational land within an airbase*
- g) *development on operational land outside an airbase*

- h) *development on operational land by the Crown connected with air traffic services*
- i) *emergency use of land by the Crown connected with air traffic services*
- j) *use of land etc by the Crown connected with air traffic services*
- k) *use of land by the Crown in relation to surveys etc*
- l) *use of buildings by the Crown on an airbase connected to air transport services etc*
- m) *development by the Crown on operational Crown land connected to rail*
- n) *development by the Crown on operational Crown land connected to shipping etc*
- o) *use of land by the Crown for spreading of dredged material*
- p) *development by the Crown on operational Crown land etc relating to aids to shipping*
- q) *development by the Crown relating to an emergency*
- r) *erection etc of gates, fences etc by the Crown for national security purposes*
- s) *closed circuit television cameras for national security purposes*
- t) *electronic communication apparatus etc for national security purposes*

END

APPENDIX B

Prior Approval
Agricultural and Forestry buildings & operations or demolition of buildings
Communications (previously referred to as Telecommunications Code Systems Operators)
Proposed Change of Use to State Funded School or Registered Nursery
Proposed Change of Use of Agricultural Building to a State-Funded School or Registered Nursery
Proposed Change of Use of Agricultural Building to a flexible use within Shops, Financial and Professional services, Restaurants and Cafes, Business, Storage or Distribution, Hotels, or Assembly or Leisure
Proposed Change of Use of a building from Office (Use Class B1) Use to a use falling within Use Class C3 (Dwellinghouse)
Proposed Change of Use of Agricultural Building to a Dwellinghouse (Use Class C3), where there are no Associated Building Operations
Proposed Change of Use of Agricultural Building to a Dwellinghouse (Use Class C3), and Associated Building Operations
Proposed Change of Use of a building from a Retail (Use Class A1 or A2) Use or a Mixed Retail and Residential Use to a use falling within Use Class C3 (Dwellinghouse), where there are no Associated Building Operations
Proposed Change of Use of a building from a Retail (Use Class A1 or A2) Use or a Mixed Retail and Residential Use to a use falling within Use Class C3 (Dwellinghouse), and Associated Building Operations
Notification for Prior Approval for a Change Of Use from Storage or Distribution Buildings (Class B8) and any land within its curtilage to Dwellinghouses (Class C3)
Notification for Prior Approval for a Change of Use from Amusement Arcades/Centres and Casinos, (Sui Generis Uses) and any land within its curtilage to Dwellinghouses (Class C3)
Notification for Prior Approval for a Change of Use from Amusement Arcades/Centres and Casinos, (Sui Generis Uses) and any land within its curtilage to Dwellinghouses (Class C3), and Associated Building Operations
Notification for Prior Approval for a Change of Use from Shops (Class A1), Financial and Professional Services (Class A2), Betting Offices, Pay Day Loan Shops and Casinos (Sui Generis Uses) to Restaurants and Cafés (Class A3)
Notification for Prior Approval for a Change of Use from Shops (Class A1), Financial and Professional Services (Class A2), Betting Offices, Pay Day Loan Shops and Casinos (Sui Generis Uses) to Restaurants and Cafés (Class A3), and Associated Building Operations
Notification for Prior Approval for a Change of Use from Shops (Class A1) and Financial and Professional Services (Class A2), Betting Offices, Pay Day Loan Shops (Sui Generis Uses) to Assembly and Leisure Uses (Class D2)
Notification for Prior Approval for a Development Consisting of the Erection or Construction of a Collection Facility within the Curtilage of a Shop
Notification for Prior Approval for the Temporary Use of Buildings or Land for the Purpose of Commercial Film-Making and the Associated Temporary Structures, Works, Plant or Machinery required in Connection with that Use
Notification for Prior Approval for the Installation, Alteration or Replacement of other Solar Photovoltaics (PV) equipment on the Roofs of Non-domestic Buildings, up to a Capacity of 1 Megawatt