

## **County Council**

**19 October 2018**

### **Agenda Item 7(c) - Notice of Motion by Ms Lord**

#### **Consultations on permitted development rights for Shale Gas Exploration and defining proposals for major Shale Gas Production as Nationally Significant Infrastructure Projects – Briefing Note**

##### **Background**

###### *Onshore Hydrocarbons*

Some types of oil and gas (referred to as 'conventional hydrocarbons') flow through porous rocks (e.g. limestone, sandstone) into reservoirs where they are trapped under impermeable layers/'cap rock'. Both vertical and horizontal drilling is used for extraction. Hydraulic fracturing ('fracking' – pumping liquid into a well at high pressure to create/open up fractures) is not required to extract these hydrocarbons because the rock is naturally fractured. Other types of oil and gas (referred to as 'unconventional hydrocarbons') remain in pore spaces within the impermeable source rock (e.g. shale). Different technology (e.g. fracking) is required to extract these hydrocarbons.

###### *Shale Gas and Oil*

Shale gas and oil is found in rocks deep below the earth's surface. They have previously been considered too impermeable ('tight') to allow for the gas and oil to be recovered economically. The British Geological Survey (BGS) indicates that there is unlikely to be shale gas potential in the Weald Basin, within which West Sussex is located. It also concludes that it likely that only limited amounts of shale in the area have the potential to produce shale oil in commercial quantities.

###### *Phases of Development*

There are three phases of extraction: exploration, appraisal, and production. Planning permissions are required for each stage, as well as other (non-planning) consents/permits required under other regulatory regimes. However, in some cases, planning applications may seek permission for more than one phase (e.g. exploration and appraisal). The exploration phase involves seismic surveys to understand the geological structure followed by exploratory drilling (possibly including some hydraulic fracturing) to determine whether hydrocarbons are present. The drilling is a short-term but intensive activity. The appraisal phase may involve further drilling to establish whether the deposit can be economically exploited; it is usually a short-term activity. The production phase involves the long-term production of oil or gas commercially.

###### *Role of the County Council*

As the Mineral Planning Authority, the County Council is responsible for determining planning applications for oil and gas development or 'onshore hydrocarbon extraction'. Decisions are made within the Town and Country Planning system, which governs the development of land in the public interest.

## **Consultation**

The Government is consulting on two separate proposals relating to shale gas development. The first consultation seeks views on the principle of whether non-hydraulic fracturing shale gas exploration development should be granted planning permission through a permitted development right. The rights would relate only to the exploratory phase, where geological data is acquired to establish whether hydrocarbons are present. It would not apply to the appraisal or production phases. Specifically, the 'permitted development' rights would only apply to shale gas exploration and not to proposals to explore for other types of hydrocarbon. Also, it would only apply to proposals for non-hydraulic fracturing operations (to take core samples for testing purposes) and it would not allow the injection of fluids for the purposes of hydraulic fracturing.

The second consultation seeks views on the inclusion of major shale gas production projects that meet defined thresholds as Nationally Significant Infrastructure Projects (NSIPs). It would relate only to production development, not exploration or appraisal, and only to shale gas, not other hydrocarbons.

## **Permitted Development**

Permitted development rights, as defined in the Town and Country (General Permitted Development)(England) Order 2015, are a national grant of planning permission that allow certain building works and changes of use to be carried out without having to make a planning application. Permitted development rights can be subject to conditions and limitations to control impact and to protect local amenity. However, they are exempt from the usual planning application process, including the need for public consultation.

Where a relevant permitted development right is in place, there is no need to apply to the local planning authority (LPA) for permission to carry out the work. However, in a small number of cases, it may be necessary to obtain prior approval from a LPA before carrying out permitted development. Permitted development rights do not override the requirement to comply with other permission, regulation or consent regimes.

Drilling (or 'boring') for hydrocarbons is a significant operation with potential adverse impacts in terms of, amongst other matters, HGV movements, visual impact, the water environment, and noise emissions. Therefore, hydrocarbon exploration has the potential to result in more wide-scale impact than is the case for proposals with existing 'permitted development' rights, such as household extensions.

## **Nationally Significant Infrastructure Projects (NSIP)**

NSIPs are projects of certain types, over a certain size, that are considered by the Government to be so big and nationally important that permission to build them needs to be given at a national level, by the responsible Government minister. They include proposals for power plants, large renewable energy projects, new airports and airport extensions, major road projects etc. A local example is the Rampion Wind Farm.

Detailed plans for NSIPs are subject to consultation as part of the Development Consent Order process. LPAs, including the County Council, and communities

would be consulted as part of this process. Following examination by the Planning Inspectorate, the final decision to grant or refuse development consent would rest with the Secretary of State rather than LPAs.

Although proposals for hydrocarbon exploration can be controversial (both locally and nationally), such development is not large in physical scale or land-take. Also, it is unlikely that any single site (even including multiple pads) would, in isolation, make a significant contribution to meeting the UK's national energy needs.

## **Responses to the Consultations**

Officer-only responses have been drafted following discussion with the Cabinet Member for Environment. The deadline for responding is 25 October 2018. The draft responses, summarised below, will be finalised following the debate on the motion at full Council. With regard to the consultation on permitted development, the draft response is that the County Council does not agree with the proposal because:

- (a) there is no justification for separating out proposals for shale gas exploration from other types of hydrocarbon exploration;
- (b) the potential impacts of exploration are significant and they are not akin to those of the current types of permitted development, such as household extensions;
- (c) it is not considered appropriate for such significant development to be beyond the scope of the normal planning application process and the checks that it provides in the public interest; and
- (d) if permitted development rights are introduced, they should be subject to stringent conditions.

With regard to the consultation on NSIPs, the draft response is that the County Council does not agree with the proposal because:

- (a) it is unlikely that applications for major shale gas production projects would meet the current criteria to be considered as NSIPs. Furthermore, even if they did, it is unclear why proposals for the production of other types of oil and gas would not also be defined as NSIPs;
- (b) LPAs are the correct bodies to consider shale gas applications due to their democratic mandate and understanding of their place; and
- (c) given that such proposals are controversial, to take decisions away from LPAs would likely be seen by local communities as anti-democratic.

### **Lee Harris**

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