

**DERBYSHIRE COUNTY COUNCIL**

**MEETING OF CABINET MEMBER – HIGHWAYS, TRANSPORT AND  
INFRASTRUCTURE**

**20 December 2018**

Report of the Strategic Director – Economy, Transport and Environment

**COMPULSORY COMMUNITY PRE-APPLICATION CONSULTATION FOR  
SHALE GAS DEVELOPMENT**

(1) **Purpose of Report** To authorise a formal response by the County Council on a consultation by the Ministry of Housing, Communities and Local Government (MHCLG) on Compulsory Community Pre-Application Consultation for Shale Gas Development.

(2) **Information and Analysis** on 31 October 2018, MHCLG published a consultation document entitled 'Compulsory Community Pre-Application Consultation for Shale Gas Development', which is seeking views on whether applicants should be required to conduct pre-application consultation with the local community for shale gas development.

A Joint Written Statement made by the respective Government Ministers on energy and planning policy, issued in May 2018, set out Government commitments to consult on a range of measures aimed to facilitate timely decisions on shale gas planning applications. These included holding early consultations on the principle of whether non-hydraulic fracturing shale gas development should be granted planning permission through a permitted development right, and consulting on the criteria required to trigger the inclusion of shale gas production projects into the Nationally Significant Infrastructure Projects (NSIP) regime. Both consultations closed in advance of this current consultation and Derbyshire County Council submitted extensive responses based on a report considered by the Cabinet Member on 11 October 2018 (Minute No. 93/18 refers).

The Council's representations opposed both introducing permitted development rights for non-hydraulic fracturing shale gas exploration development and including shale gas production projects into the NSIP regime. The Council observed that these measures would take decision making powers on such developments out of local control and that shale gas proposals are too technically complex and too locally contentious to be considered suitable for permitted development rights. The NSIP regime was considered to be inappropriate for dealing with shale gas production proposals

since, on an individual basis, they are not of a nationally significant scale. The County Council's representations also raised a number of serious concerns regarding the lack of local involvement in the consenting regimes being proposed in the consultations.

The Ministerial Statements also set out Government's commitment to consult on measures for strengthening community engagement through making pre-application consultation a statutory requirement. The consultation makes clear that it is addressing each of the three key stages of shale gas development including exploration, appraisal and production.

In the documentation, the Government "*recognises that early engagement with local communities on shale gas applications, including capitalising on formal pre-application discussions, is critical in building confidence in decision making, securing support for development proposals and setting realistic timeframes for decisions*" and affirms that "*it is of great importance that the views of communities are taken into account at an early stage to give local people more opportunity to influence and shape decisions about shale gas projects affecting their area*".

Most types of planning applications are not currently required under planning law to be preceded by any pre-application community consultation, with the exception of:

- a) development proposals that fall within the scope of the NSIP Development Consent Order (DCO) regime, and
- b) more significant onshore wind development proposals.

For both types of proposal, it is the responsibility of the prospective applicant to undertake pre-application consultation. The Government considers, therefore, that any such consultation for shale gas development could follow one or other of these processes or potentially a different process altogether, and is seeking views on this.

To summarise, Government is seeking views on four specific questions in its consultation document:

- 1) *Should community pre-application consultation be compulsory prior to applying for planning permission for shale gas development?*
- 2) *By what process (if any) should prospective applicants be required to conduct community pre-application consultation prior to applying for planning permission for shale gas development?* – Three options are indicated: the consultation process for onshore wind development/ Nationally Significant Infrastructure Projects/ or another process.
- 3) *What (if any) shale gas development should be subject to compulsory community pre-application consultation?* Three options are indicated: all

shale gas development requiring a planning application/ development for which an Environmental Impact Assessment is required/ or any other criteria or threshold.

- 4) *Do you have any views on the potential impact of the matters raised in the consultation on people with protected characteristics (including gender, age, disability, religion and race), as defined by Section 149 of the Equality Act 2010.*

Full details of the consultation can be viewed on MHCLG's website at the link below:

<https://www.gov.uk/government/consultations/compulsory-community-pre-application-consultation-for-shale-gas-development>

### **Member Comments**

All Derbyshire County Council Members have been contacted by email about this consultation. At the time of drafting this report, no Member comments had been received. Any comments subsequently received will be reported at the meeting.

### **Summary of Issues**

In developing a response for the Council to this use for consultation, two important factors have been taken into account.

First, of particular relevance to the Council's considered responses is the planning application to the Council and subsequent appeal under Section 78 of the Town and Country Planning Act 1990 by Ineos Upstream Ltd for planning permission for exploratory, vertical hydrocarbon drilling on land at Bramley Moor Lane, near Marsh Lane, Derbyshire. The appeal against non-determination by the County Council was allowed by the Inspector in her decision letter dated 16 August 2018. This was the first such proposal dealt with by the planning authority and the application and subsequent appeal processes highlighted that shale gas development proposals are highly complex in terms of the range of relevant issues they raise for planning authorities, particularly in relation to environmental, highways, residential amenity, public health and economic impacts.

As the Council has previously acknowledged, local communities know their areas better than anyone and are best placed to understand the likely social, economic and environmental impacts of shale gas development proposals in their locality.

The degree of sensitivity and the levels of concern, anxiety and uncertainty caused for local residents and businesses was also obvious. As such, it is firmly believed that shale gas development proposals of any form should be subject to compulsory community pre-application consultation so that communities can be engaged in the planning process at an early stage and

can be made aware of the likely social, economic and environmental impacts that may arise. This would provide an opportunity for meaningful discussion on how such impacts could be addressed or mitigated as part of the planning process.

Secondly, Derbyshire County Council has extensive professional experience of the NSIP regime from involvement in advising on a number of major schemes, which have been subject to, or are currently going through, the DCO process. The DCO process includes statutory requirements for applicants to undertake pre-application consultation with communities which, in Derbyshire County Council's experience, appears to be a very effective means of publicising the applicant's proposals more widely and encouraging engagement by communities in pre-application discussions on the applicant's proposals. The process particularly serves to highlight important community issues and concerns early on in the process that the applicant is required to address as the application progresses to the formal submission stage of the DCO application.

Appendix 1 of this report sets out a draft response on behalf of Derbyshire County Council on each of the questions, which is intended to provide the basis for a formal response on the consultation. The deadline for submission of comments to MHCLG is 7 January 2019.

## **Conclusions and Recommendations**

Proposals set out in the consultation document raise a number of issues for Derbyshire County Council in its role as Mineral Planning Authority (MPA). Having regard to the above, it is recommended that the County Council supports the introduction of measures that would make pre-application community consultation compulsory for shale gas development on the proviso that this should be the responsibility of the respective applicant (in consultation with the MPA) and should apply to all phases (exploration, appraisal and production) of shale gas development.

It is also recommended that the requirements for such community consultation should be clearly set out in new legislation, which would include specific details of the steps for prospective applicants to undertake.

It is wholly appropriate, therefore, that community pre-application consultation on shale gas development should be made a compulsory requirement for such proposals. Both the existing statutory requirements for pre-application consultation in the consenting regimes for onshore wind development and NSIPs have their respective merits as processes which could apply to pre-application consultation on shale gas developments.

However, the statutory pre-application consultation requirements of the NSIP regime, particularly the requirement for the applicant to prepare a Statement of Community Involvement, to consult on the Statement and to carry out

consultation in accordance with the Statement appears to be a very effective means of publicising the applicant's proposals more widely. It encourages engagement by communities in pre-application discussions on the proposals; and ensures that applicants seek to address concerns or issues raised prior to submitting the formal application. Accordingly, this is recommended as being the County Council's preferred approach.

(3) **Financial Considerations** There are no financial considerations directly associated with this report.

(4) **Legal Considerations** The recommendation in this report is made in the context of the County Council's responsibilities and services under the provisions of the Localism Act 2011, Planning and Compulsory Purchase Act 2004, Town and Country Planning Act 1990, Planning Act 2008 and Equalities Act 2010.

(5) **Social Value Considerations** The relevance of social value in terms of social, economic and environmental wellbeing has been considered in the preparation of this report.

### **Other Considerations**

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, environmental, health, property and transport considerations.

(6) **Key Decision** No.

(7) **Call-In** Is it required that call-in be waived in respect of the decisions proposed in the report? No.

(8) **Background Papers** Held on file within the Economy, Transport and Environment Department. Officer contact details – Steve Buffery, extension 39808.

(9) **OFFICER'S RECOMMENDATION** That the Cabinet Member delegates authority to officers to send a formal response, on behalf of Derbyshire County Council, on the consultation by the Ministry of Housing, Communities and Local Government on Compulsory Community Pre-Application Consultation for Shale Gas Development on the basis of the issues raised in this report and Appendix.

**Mike Ashworth**  
**Strategic Director – Economy, Transport and Environment**

## **Appendix 1:**

### **Consultation by the Ministry of Housing, Communities and Local Government (MHCLG) on Compulsory Community Pre-Application Consultation for Shale Gas Development**

#### **Question 1**

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

#### **Yes/No/Not Sure**

Yes. Derbyshire County Council fully supports the introduction of measures that would make pre-application community consultation compulsory for applicants for shale gas development and that this should clearly apply to the exploration, appraisal and production phases of development. The Council considers that it is particularly important that the responsibility for undertaking pre-application consultation with the local community on shale gas development should rest clearly with the respective applicant, including consultation with the Mineral Planning Authority, as is the case with the existing consenting regimes for onshore wind energy projects and Nationally Significant Infrastructure Projects (NSIPs).

Proposals for shale gas development, even a proposal for non-hydraulic fracturing exploration only, can be sizeable forms of development covering quite a large footprint and incorporating a range of supporting development, including compounds, buildings and other associated facilities, new access roads and drilling equipment, such as sizeable rigs. Accordingly, they are likely to generate a wide range of amenity issues for the local areas they affect.

Government will be fully aware of the considerable concern, uncertainty and anxiety such proposals have raised for local communities, where they have so far been proposed across the country. This was operated in Derbyshire with the shale gas exploration planning by Ineos Upstream Limited. The operations covered by the application, made in May 2017, included the construction of a well site, creation of a new access track, mobilisation of drilling, ancillary equipment and contractor welfare facilities to drill a vertical hydrocarbon exploratory core well and mobilisation of workover rig, listening well operations, retention of the site and wellhead assembly gear. The total period of development proposed was five years. Under a screening opinion by the County Council prior to the application, and also a screening direction by the Secretary of State following its submission, this proposed development was found not to be development requiring Environmental Impact Assessment.

This case history is summarised below to illustrate how even exploratory shale gas development proposals are complex in terms of the range of amenity and technical issues they raise, particularly relating to their site specifics. The case also highlights how sensitive shale gas development proposals are for local communities and the level of concern, anxiety and uncertainty they cause for local communities and businesses.

Before the Council was able to determine the planning application, the applicant made an appeal to the Secretary of State, under Section 78 of the Town and Country Planning Act 1990, against the determination of the application within the required period set out in the Regulations. The Council's Regulatory - Planning Committee on 5 February 2018, when Members resolved to authorise the presentation for the appeal of a case which was against the grant of planning permission for the proposal on the basis of i) harm to the open nature of the Green Belt; ii) impacts from traffic from the development over the relevant highway network; and iii) unacceptability of night time noise impacts which could not be acceptably mitigated by condition.

A total of 3,192 individual letters of representation from 3,033 households had been received objecting to the proposal, along with 9 letters expressing support for the application. A further 49 individual letters of representation from 44 households were received objecting to the proposal due to a lack of information. It also received several detailed submissions in objection from interest groups including Friends of the Earth, the Campaign for the Protection of Rural England, Eckington Against Fracking, Chesterfield Climate Alliance, Transition Chesterfield and Food and Water Europe.

The main concerns and objections raised in the representations to the proposal related to the location of the site, noise, traffic, Green Belt impacts, light pollution, landscape and visual impacts, air pollution, impacts on the water environment, drainage and contamination, wildlife and ecology impacts, public health, vibration and land stability and economic impact factors. Other objectors to the application included the local Member of Parliament, Dronfield Town Council, Unstone Parish Council, Eckington Parish Council and North East Derbyshire District Council.

An inquiry was held before an Inspector of the Planning Inspectorate between 19 and 29 June 2018. The Inspector issued her decision letter on the appeal on 16 August 2018, in which the appeal was allowed and planning permission granted for the application proposals, subject to the imposition of 37 planning conditions.

As Paragraph 12 of the consultation recognises, pre-application engagement has significant beneficial impacts, particularly in helping to provide interested parties with an understanding of the relevant planning policies and other material considerations that would be associated with a proposed shale gas proposal. Pre-application engagement would also enable collaborative

working between the applicant and community at an early stage to identify, understand and seek to resolve issues associated with the proposed development, such as on issues of noise and other amenity impacts, highways and visual impacts of the proposed development.

It is worthy of note that, after making a screening request with particulars of its proposal and up to the submission of its planning application, INEOS Upstream Limited (as explained in a “statement of community involvement” submitted with the application) carried out and participated in a range of consultation initiatives and events. These included holding two public exhibitions in the local area, attending a meeting of the local Parish Council, meeting the local primary school governors and the Headteacher, visits to residents close to the proposed site and participating at a public meeting in Mosborough. This activity may well have been useful in serving to promote awareness of and inviting feedback on their proposals prior to submission of the application. However, it is felt that if a public consultation statement with a programme of events tailored to the nature of the proposal and the locality had been produced in consultation with the Council from the outset, this could have ensured more effective engagement with the local community in opportunities to comment on the proposal.

As Paragraph 12 of the consultation recognises, pre-application engagement has significant beneficial impacts, particularly in helping to provide interested parties with an understanding of the relevant planning policies and other material considerations that would be associated with a proposed shale gas proposal. Pre-application engagement would also enable collaborative working between the applicant and community at an early stage to identify, understand and seek to resolve issues associated with the proposed development, such as on issues of noise and other amenity impacts, highways and visual impacts of the proposed development.

In the context of the above, the Council fully supports the introduction of measures that would make pre-application community consultation compulsory for applicants for shale gas development and that this should clearly apply to the exploration, appraisal and production phases of development. The requirements for such community consultation should be clearly set out in new legislation, which should also include specific details of steps for applicants to undertake.

Derbyshire County Council considers that local communities know their areas better than anyone and are best placed to understand the likely impacts of shale gas development proposals on their communities. It is appropriate, therefore, that community pre-application consultation on shale gas development should be made a compulsory requirement for applicants on such development proposals.



## Question2

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

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

At the outset on this response, Derbyshire County Council reaffirms its position that it expressed for the recent consultation by the Department for Business, Energy and Industrial Development (BEIS) on the Inclusion of Shale Gas Production Projects in the NSIP regime. In its response to the consultation, Derbyshire County Council expressed its firm opposition to all proposals to include major shale gas production projects in the NSIP regime, supporting and commending the clear conclusions and recommendations of the House of Commons Housing, Communities and Local Government Select Committee (HCLGSC) in its report published on 5 July 2018 on this question, particularly in the following paragraphs:

*“13. There is little to be gained from bringing fracking planning applications at any stage under the NSIP regime; there is limited evidence that it would expedite the application process and such a move is likely to exacerbate existing mistrust between local communities and the fracking industry. We are particularly concerned that if the NSIP regime were adopted, there would be no relationship between fracking applications and Local Plans in communities. Furthermore, we note that the Government has not provided any justification or evidence for why fracking has been singled out to be included in a national planning regime in contrast to general mineral applications. (Paragraph 82).*

*14. Fracking planning applications should not be brought under the NSIP regime. While we note that the NSIP regime does provide opportunities for consultation with Mineral Planning Authorities and local communities, such a move could be perceived as a significant loss to local decision-making. Mineral Planning Authorities are best placed to understand their local area and consider how fracking can best take place in their local communities.”*

Whilst pre-application consultation with the local community is evidently beneficial in itself and considered by the Council to be necessary for all shale gas developments, the Council remains adamant that any widening in the criteria for NSIPs to include any shale gas developments (which is alluded to at Paragraph 34 of this consultation), would be a serious loss of local involvement and accountability, for all the reasons it expressed in response to the BEIS consultation. The pre-application consultation process which applies to NSIPs nevertheless provides a model which with slight adaption could form a suitable standard process for pre-application

consultation in respect of applications to local mineral authorities for shale gas development.

The Council considers that there are particular merits in the statutory requirements for pre-application consultation within the NSIP regime, which would be appropriate as a process to adapt for pre-application consultation on applications to Mineral Planning Authorities for conventional planning permission. Particular beneficial elements of pre-application consultation required by the NSIP regime that could apply to pre-application consultation on planning applications include the requirements for applicants to:

- produce a Statement of Community Consultation, in consultation with the relevant local planning authority or authorities, which describes how the applicant proposes to consult with the local community about their project and then carry out consultation in accordance with that Statement;
- make the Statement of Community Consultation available for inspection by the public in a way that is reasonably convenient for people living in the vicinity of the land where development is proposed;
- set a deadline for consultation responses of not less than 28 days from the day after receipt/publication of the Statement;
- have regard to the relevant responses to publicity and consultation in the subsequent planning application; and
- prepare a consultation report and submit it to the relevant planning authority.

It is noted that some of the statutory requirements for pre-application consultation under Section 61W of the 1990 Act (currently for certain types of onshore wind development) are similar to the NSIP regime, particularly those for applicants to publicise their proposals; to have regard to responses made to the consultation; and for the applicant to set out particulars of how it complied with the publicising and consultation requirements, the response received by the applicant and how the applicant has taken account of the responses. However, it is considered that the more structured pre-application consultation requirements now in the NSIP regime are more advantageous, particularly the requirement for a Statement of Community Consultation to be prepared by the applicant; for the applicant to consult on the Statement; and carry out consultation in accordance with that Statement.

Derbyshire County Council has extensive professional experience of the NSIPs regime from involvement in advising on a number of schemes, which have been subject to, or are currently going through, the Development Consent Order (DCO) process. For example, in 2014 to 2015 Derbyshire County Council made representations on the DCO application process for the development of the East Midlands Gateway (EMG) Strategic Rail Freight Interchange on land north of East Midlands Airport in North West Leicestershire District. That particular development was for the development of over 500,000 square metres (m<sup>2</sup>) of new logistics, warehouse and

distribution floorspace; a new Kegworth bypass; realignment of the A50 and A453; provision of a new rail link and intermodal interchange; and extensive upgrading works to the M1 and junctions 24 and 24A. Other ongoing DCO schemes, that the County Council is currently involved with, include the A38 Grade Separated Junctions Scheme, which proposes the grade separation of three key junctions on the A38 through Derby; and Trans-Pennine Highway Scheme, which involves two new major highways schemes including a Mottram Moor Link Road and A57 (T) to A57 Link Road.

In Derbyshire County Council's experience above, the statutory pre-application consultation requirements of the NSIP regime, particularly the requirement for the applicant to prepare a Statement of Community Involvement, to consult on the Statement and to carry out consultation in accordance with the Statement appears to be a very effective means of publicising the applicant's proposals more widely and encouraging engagement by communities in pre-application discussions on the applicant's proposals. The process particularly serves to highlight important community issues and concerns early on in the process that the applicant will need to address as the application progresses to the formal submission stage of the DCO application.

For these reasons, pre-application consultation requirements of a similar kind to those now in the NSIP regime are considered by Derbyshire County Council to be the most appropriate for introduction to the planning applications regime for shale gas developments of all types.

### **Question 3**

**What (if any) shale gas development should be subject to compulsory community pre-application consultation.**

**All shale gas development requiring a planning application; where an Environmental Impact Assessment is required; other criteria or threshold (please specify)**

The response to this question builds on the Council's response to question 1 above. As it is explained in that response, shale gas developments of all forms, including those that might not require an Environmental Impact Assessment, are likely to be highly sensitive for local communities within which they are proposed and raise significant concern, anxiety and uncertainty for local communities and businesses affected by such development proposals. Even proposals for non-hydraulic fracturing shale gas exploration can be sizeable forms of development covering quite a large footprint and incorporating a range of supporting development, including compounds, buildings and other associated facilities, new access roads and drilling equipment, such as sizeable rigs. Accordingly, they are likely to generate a wide range of amenity issues for communities in the local areas they affect.

This is clearly exemplified by the Council's experience of processing the planning application by Ineos Upstream Limited for an exploratory drilling proposal at Bramley Moor Lane, Marsh Lane in Derbyshire as summarised in question 1 above.

Derbyshire County Council considers, therefore, that all shale gas developments requiring a planning application should be subject to requirements for compulsory community pre-application consultation.

#### **Question 4**

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

Derbyshire County Council considers that the matters raised in the consultation would not discriminate and would have equal impact implications for all members of the community, including those people with protected characteristics as set out in Section 149 of the Equalities Act 2010.