

Agenda Item No. 4(b)

DERBYSHIRE COUNTY COUNCIL

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

11 October 2018

Report of the Strategic Director – Economy, Transport and Environment

**GOVERNMENT CONSULTATIONS ON THE FUTURE PLANNING CONSENT
REGIMES FOR THE EXPLORATION AND PRODUCTION OF SHALE GAS**

(1) **Purpose of Report** To agree the County Council's formal response to two draft proposals from Government on the future consenting regimes for the exploration and production of shale gas.

(2) **Information and Analysis** Government is consulting on two separate, but related, proposed reforms to the consenting regimes for the exploration and production of shale gas:

- Consultation by The Ministry for Housing, Communities and Local Government (MHCLG): on Permitted Development for Shale Gas Exploration;
- Consultation by The Department for Business, Energy and Industrial Strategy (BEIS): on Inclusion of Shale Gas Production Projects in the Nationally Significant Infrastructure Project regime (NSIP).

A written statement on energy policy and planning by relevant ministers on 17 May 2018, reiterated the Government's view that there are potentially substantial benefits from the safe and sustainable exploration and development of the country's onshore shale gas resources. The statement announced a range of measures to facilitate timely decisions on shale gas planning applications and support for mineral planning authorities (MPAs) following up on manifesto commitments by:

- holding an early stage consultation in the summer of 2018, on the principle of whether non-hydraulic fracturing shale exploration development should be granted planning permission through a permitted development right; and
- consulting in the summer of 2018, on the criteria required to trigger the inclusion of shale gas production projects into the NSIP regime.

The statement also stated *“Further, we will strengthen community engagement by consulting in due course on the potential to make pre-application consultation a statutory requirement”*.

The two proposals were consequently published for consultation on 19 July 2018, with the same deadline for comments of 25 October 2018. Each consultation poses a range of questions on which views are invited. Appendices 1 and 2 of this report set out the relevant questions and proposed responses which the Cabinet Member is recommended to authorise as the basis for the County Council’s formal response.

Summary of Issues

In developing the response, two important factors have been taken into account.

Firstly, between January and June this year, the House of Commons Housing, Communities and Local Government Select Committee (HCLGSC), carried out an inquiry into whether planning guidance on fracking and the existing planning regime are fit for purpose. The Committee received over 200 written submissions and held three public evidence sessions who included witnesses from industry, MPAs and other regulators, anti-fracking campaigners and the Government. The Committee published its report and recommendations from the inquiry on 5 July 2018. Of particular note, the Select Committee made a number of recommendations relating to the potential for making shale gas exploration projects subject to permitted development rights and bringing shale gas production projects into the NSIP regime. In both cases, the Select Committee has recommended that neither option should be introduced by Government, not least because both would take decision making on shale gas development proposals out of local control. Details of the report of the Select Committee and relevant recommendations, are set out below.

On the issue of whether permitted development rights should be introduced for shale gas development (of any kind) it was recommended that:

“16. 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, locations and cumulative impact of drill pads are yet to be assuaged by Government.”

On the issue of whether shale gas development should be brought into the NSIP regime, it was recommended:

“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.

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.”

A copy of the Select Committee’s final report can be viewed at the link below, on which a Government response is currently awaited.

<https://www.parliament.uk/business/committees/committees-a-z/commons-select/communities-and-local-government-committee/inquiries/parliament-2017/planning-fracking-17-19/>

Secondly, and of particular relevance to the County Council, is the planning application and subsequent appeal by Ineos Upstream Ltd under Section 78 of the Town and Country Planning Act 1990 for planning permission for exploratory vertical hydrocarbon drilling on land at Bramley Moor Lane, near Marsh Lane, Derbyshire. The appeal was allowed by the Inspector in her decision letter dated 16 August 2018. However, the planning application and subsequent appeal processes have highlighted how shale gas development proposals, including proposals for exploratory drilling, raise a range of complex site specific issues which local MPAs are competent to examine through their professional resources and local knowledge base, particularly those issues relating to environmental, highways, residential amenity, public health and economic impacts, and opportunities for mitigation. This recent application has also highlighted how shale gas proposals raise high levels of anxiety within local communities, even where the proposals do not include substantial extraction or hydraulic fracturing.

Member Comments

Following publication of the two Government consultation documents, Councillor Lewis gave the following statement:

“Central Government is consulting on potential changes to the planning system which could lead to planning proposals for shale gas development no longer being decided locally.

I am opposed to making underground drilling using a rig to investigate how much shale gas is present in an area ‘permitted development’ – which

means shale gas companies would no longer need to apply for planning permission to do this work.

I am also opposed to giving a Government minister responsibility for deciding whether proposals to set-up a full commercial fracking operation should go ahead – which means local councils would no longer make decisions about these applications.

A House of Commons Select Committee inquiry recently concluded that applications for fracking should not be moved into the national infrastructure planning regime and should still be determined locally. I agree. Our planning process is a democratic process and I believe local councils are best placed to make decisions about development in their local area.

These changes could see local councils completely cut-out of the decision-making process at every stage for shale gas proposals with the greatest effects on the local communities and countryside.

If the planning system is short-cut by no longer requiring proposals to investigate for shale gas to be given planning permission, it will be a sad blow to public engagement through local decision making”.

The remainder of this report sets out in more detail the Government’s proposal.

Detailed Proposals

Permitted Development for Shale Gas Exploration (Proposed by MHCLG)

The purpose of this consultation is to seek views on the principle of whether non-hydraulic fracturing shale gas exploration development should be granted planning permission through a permitted development right. The exploratory phase of oil and gas extraction seeks to acquire geological data to establish whether hydrocarbons are present, which in the case of shale gas may involve drilling an exploratory well and conducting seismic surveys. This is then followed by an appraisal (testing) stage and then a production stage. The consultation makes it clear, however, that the Government is not wishing to consider any permitted development right being applied to the appraisal or the production stages of shale gas development.

Permitted development rights provide planning permission for specified kinds of development so that developers do not normally have to submit planning applications. The current range of permitted development rights are set out in the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended:

<http://www.legislation.gov.uk/ukxi/2015/596/contents/made>.

The Order sets out both what is permitted under each kind of permitted development right and certain exclusions, limitations and conditions that apply.

The consultation is seeking views/comments on the following seven specific questions/issues:

- 1) a proposed definition of non-hydraulic fracturing shale gas exploration as the basis for applying permitted development rights;
- 2) whether non-hydraulic fracturing shale gas exploration development should be granted planning permission through a permitted development right;
- 3) whether permitted development rights for non-hydraulic fracturing shale gas exploration should not apply in certain areas such as Areas of Outstanding Natural Beauty, National Parks, World Heritage Sites, Sites of Special Scientific Interest, Scheduled Monuments, Conservation Areas, Sites of Archaeological Interest etc;
- 4) what conditions and restrictions would be appropriate for a permitted development right for non-hydraulic shale gas exploration development (8 possible restrictions/conditions are suggested);
- 5) whether particular elements of shale gas exploration may potentially be required to be approved by the relevant planning authority through a 'prior approval' process, for example, transport and highways impacts, visual impacts, setting in the landscape and which could include an element of public consultation;
- 6) whether a permitted development right for non-hydraulic fracturing shale gas exploration development should apply for two years or be made permanent; and
- 7) the potential impact of the matters raised in the consultation on people with protected characteristics, as defined in Section 149 of the Equalities Act 2010.

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

<https://www.gov.uk/government/consultations/permitted-development-for-shale-gas-exploration>

Appendix 1 of this report sets out the proposed response on each of the questions.

Inclusion of Shale Gas Production Projects in the Nationally Significant Infrastructure Project Regime (Proposed by BEIS)

This consultation seeks views on the timings and criteria for including shale gas production projects in the NSIP regime under the Planning Act 2008. Currently, any organisation wishing to undertake shale gas development must submit a planning application to the relevant local MPA under the Town and

Country Planning Act 1990. However, the Government is considering moving the approval process for the production phase of shale gas production projects into the NSIP regime for dealing with.

Under the Planning Act 2008, an operator wishing to construct a NSIP must submit a Development Consent Order (DCO) application to the Secretary of State. Where an application is accepted, the Secretary of State will appoint an Examining Authority to examine the DCO application. The examination will take into account any information and local impact report submitted by the local authority, as well as representations from statutory bodies and other interested parties, including the local community. Members of the local community and local authorities are able and encouraged to get involved in the NSIP applications process from the pre-application stage through to the examination phase. Following a recommendation on the application by the Examining Authority, the final decision on the DCO application rests with the Secretary of State.

As part of the consultation, the Government has indicated that major shale gas developments, which are at the production phase, could be most suitable for inclusion in the NSIP regime. The Government is seeking views, therefore, on the most appropriate criteria and timings which could determine whether a shale gas production project is considered to be 'nationally significant'. The consultation sets out a range of potential criteria which could apply and timings for inclusion within the NSIP regime and seeks views on six specific questions:

1. whether shale gas production projects should be included in the NSIP regime;
2. the provision of relevant evidence to support the response to the 1) above;
3. if the response to the above is yes, which criteria should be used to determine whether the shale gas production project is a NSIP? A range of criteria are set out to select from, including the number of individual wells, the total number of wells within the development; estimated volume of recoverable gas from the site; estimated production rate from the site and how frequently; whether the well will require connection to the local or national grid; requirement for associated equipment on site; whether multiple wells will be linked by shared infrastructure (e.g. gas pipes, water pipes, transport links); or a combination of the above;
4. the provision of any relevant evidence to support the response to 3) above;
5. at what stage should the change to the NSIP regime be introduced for e.g. as soon as possible, ahead of the first anticipated production site, or when a critical mass of shale gas exploration and appraisal sites have been reached; and
6. provision of any relevant evidence to support the response to 5) above.

Full details of the consultation can be viewed on the BEIS website at the link below:

<https://www.gov.uk/government/consultations/inclusion-of-shale-gas-production-projects-in-the-nationally-significant-infrastructure-project-nsip-regime>

Appendix 2 of this report sets out a recommended response on each of the questions.

Conclusions and Recommendations

The proposed measures set out in the two proposals by MHCLG and BEIS raise a wide range of concerns for Derbyshire County Council in its role as MPA. The Council's proposal response (see appendices 1 and 2) draw from the findings of the HCLGSC Inquiry, as well as the experience in dealing with shale gas exploration applications and other applications for major infrastructure projects.

It is fully recognised that planning decisions need taking as quickly and efficiently as is practicable without compromising quality and robustness in decision making. However, there is no evidence that the options under consideration would deliver any such improvements to the system. In fact, it is the view of the County Council they would take important local planning decisions on matters such as shale gas development out of any local democratic control. The Council's proposed responses to the consultations are therefore framed accordingly, against the introduction of measures either to make shale gas exploration development subject to permitted development rights, or to bring major shale gas production development under the NSIP regime.

(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 and Planning Act 2008.

(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. Meeting the current and future needs of communities and the management of scarce resources (i.e. sustainable development) is central to the role of local and county planning authorities in preparing and implementing their local plans.

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 formal responses on behalf of Derbyshire County Council to the consultations by (1) the Ministry for Housing, Communities and Local Government: Permitted Development for Shale Gas Exploration; and (2) the Department for Business, Energy and Industrial Strategy: Inclusion of Shale Gas Production Projects in the Nationally Significant Infrastructure Project regime, on the basis of the draft responses in the appendices to this report and any additional views expressed and agreed at the meeting.

Mike Ashworth
Strategic Director – Economy, Transport and Environment

Appendix 1: Consultation by MHCLG: Permitted Development for Shale Gas Exploration

Question 1

a) Do you agree with this definition to limit a permitted development right to non-hydraulic fracturing shale gas exploration? Yes/No

The sequence of questions in this consultation, particularly questions 1 and 2, does not seem logical, as explained below.

Since Question 1 appears to start from a premise that some permitted development rights are to be introduced for exploratory non-hydraulic shale gas based on a certain threshold included in the proposed definition (i.e. testing for a period not exceeding 96 hours per test). However, as recognised by Question 2, there is a fundamental issue of whether any permitted development rights should be granted for shale gas exploration. All the other questions follow on from that fundamental question.

Therefore, Derbyshire County Council comments on this Question 1 are all in the context of its firmly negative position on the principle of whether non-hydraulic shale gas exploration should be subject to permitted development rights, as set out in its responses to Question 2. Its responses to Questions 1 and 3 to 6 are framed in the same context.

Derbyshire County Council would welcome the establishment of a clear definition of what constitutes non-hydraulic shale gas exploration, irrespective of whether or not permitted development rights would apply to the process. Shale gas exploration is a new activity and can cause much confusion and misunderstanding, particularly in the media and consequently by the public, about what this stage involves. Government publications consistently refer to the three key stages of shale gas development (exploration, appraisal and production) so it follows that each of these stages should be defined clearly so that the characteristics of each can be easily distinguished. It would be particularly helpful to local planning authorities to be able to quote such a definition when dealing with any relevant planning application such that what it is, and equally important, what it is not, can be unequivocally clear to the public and all stakeholders.

In terms of the definition which is put forward for comment in Paragraph 21 of the consultation, it is not clear why a threshold of 96 hours per section test has been suggested as a basis of whether or not permitted development rights would apply to the exploratory phase. No explanation is provided in the supporting text and so it can only be assumed that the 96 hours figure is an arbitrary figure that is not founded on any particular evidence. In practice, any maximum hourly threshold approach could provoke difficult situations for MPAs to handle, as soon as breaches of planning control occur through the

exploration failing to cease once the threshold number hours are completed. In those situations, although the MPA might be reluctant to attempt any enforcement for a limited few hours exceedance (since that might be disproportionate to the impacts arising from the exceedance), there would be an understandable public expectation, generated by the threshold, of immediate enforcement to prevent continuation of the breach.

b) If No, what definition would be appropriate?

In the County Council's opinion, it is the scale and nature of operational set up works which would be required to facilitate the exploration and testing that should be paramount in determining any definition for shale gas exploration. It is not just the drilling process that is important in assessing the significance of an application, other operations forming part of the development must also be included.

Derbyshire County Council would make no further comment on this question as it considers that non-hydraulic shale gas exploration fundamentally should not be subject to permitted development rights.

Question

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

Yes/No

Although this question has not been numbered nor ordered as the first question, it is both the primary question and the most important. It directly addresses the principle of the fundamental change which this consultation is exploring.

Derbyshire County Council is opposed to any granting of planning permission for non-hydraulic fracturing shale gas exploration through a permitted development right. It supports the conclusion of the House of Commons Housing, Communities and Local Government Select Committee (HCLGSC) in its report of 2 July 2018 that:

"16. 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 constriction, locations and cumulative impact of drill pads are yet to be assuaged by Government."

Whilst the consultation option for the creation of permitted development rights appears, first and foremost, to be put forward on the basis of time considerations, it is vital to give more attention to the potential for such a change to erode public confidence in the whole planning regime as it applies to shale gas.

The proposals are predicated on an opinion that planning applications for non-hydraulic fracturing shale gas exploration development take far too long for local planning authorities to determine. Nationwide, there have been very few such applications made to date, so there is insufficient evidence from which to draw any meaningful conclusion in this respect. Furthermore, early figures in the time taken for the determinations of such applications would not be a fair indicator for future trends. MPAs and their statutory consultees, as well as applicants and their agents, are still on a 'learning curve' in respect of gaining familiarity with these kinds of development, so it is only realistic to anticipate a rising trend of improvement in average speed of their determination, without any changes to the current system. Derbyshire County Council would contend strongly that non-hydraulic fracturing shale gas exploration developments are a) too complicated technically and b) too contentious in terms of public perceptions of fracking and associated energy policy and climate change concerns to be considered suitable for being candidates for permitted development rights of any kind. In recent years, the Government has introduced a range of permitted development rights for other forms of development, most notably to facilitate the Government's desire to significantly increase the supply of housing. Those permitted development rights, however, have been for relatively non-contentious changes of use from a range of uses, such as business, retail and leisure uses to residential, which have general public support and limited amenity impacts, can often be relatively small scale, and require a limited number of simple conditions to bring forward the development in an acceptable manner.

In contrast, proposals for non-hydraulic fracturing shale gas exploration development proposals 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.

The 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.

Derbyshire County Council received its first non-hydraulic fracturing shale gas exploration planning application on 8 May 2017. The operations covered by the application 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.

Prior to the County Council's determination of 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 failure of Derbyshire County Council to make a decision on the application within the required period set out in the Act. Prior to the appeal being heard at the inquiry, the planning application was considered by Derbyshire County 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 (Minute No.10/18 refers).

Following the County Council's public notifications of application, 3,192 individual letters of representation from 3,033 households were received objecting to the proposals along with 9 letters expressing support for the application. A further 49 individual letters of representation from 44 households were received objecting to the proposals 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, local County Council Member, 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.

This case history is highlighted to illustrate the fact that 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. Although the appeal on this application

has been allowed planning permission by the Inspector, in her 38 page Decision, it is particularly worthy of note that the Inspector's decision to grant permission is subject to 37 conditions, judged by her to be necessary to ensure that the development is acceptable. The discharge of these conditions will involve submissions by the developer to the County Council as MPA for its approval of a range of comprehensive schemes.

This Derbyshire case provides just one example of how these shale gas development proposals can be technically quite complex, as well as contentious. However, any development relating to shale gas can be expected to excite public sensitivities, even with a very short term and simple proposed operating programme. As such, they are unsuitable as candidates for permitted development rights, regardless of their scale and location.

The nature of shale gas exploration is such that a number of shale gas development proposals may well come forward in a local area for the same exploratory licencing block round. Authorising each individual exploration proposal as permitted development could see the planning system being ineffective for assessing, avoiding or moderating a range of potential cumulative impacts, from proposals in combination.

The Council also wishes to draw attention to the conclusions and recommendations of the HCLGSC. Its report of 2 July 2018 concluded that:

“16. 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, locations and cumulative impact of drill pads are yet to be assuaged by Government.”

In summary, Derbyshire County Council is firmly opposed to any new permitted development rights being created for shale gas exploration. It would take such development away from local democratic planning control. Bearing in mind the contentious nature of such proposals and the concern, anxiety and uncertainty they cause for local communities, the public in local communities in Derbyshire who may be affected by any such developments, including their Parish Councils, will expect to continue to have a full right to make representations to their local planning authorities about the acceptability of such proposals. This right would be curtailed if permitted development rights were introduced.

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? Yes/No

As explained in response to Question 2, Derbyshire County Council opposed to any extension of permitted development to non-hydraulic fracturing shale gas exploration. Therefore, it does not agree with any permitted development rights being extended to cover any of types of shale gas development, wherever they might be located.

In the event of Permitted Development rights being extended, of those locations listed that are relevant to Derbyshire, the County Council would particularly support the exclusion of National Parks, World Heritage Sites, Sites of Special Scientific Interest, Scheduled Ancient Monuments, Conservation Areas, Sites of Archaeological Interest, safety hazard areas, land safeguarded for aviation and defence purposes and protected groundwater source areas.

The relevant issue for all of the above designations is the potential for impacts on the valued characteristics relating to the designation that could arise from exploratory drilling. As the consultation option for permitted development rights does not include hydraulic fracturing, the activity that might be permitted would be the installation of the drill and its use and associated infrastructure, such as new access roads, new hard surfaced compound, new buildings and particularly the drill rig and its use. Whilst the duration of exploratory activity would be restricted to a maximum of six months, the drill rig would be substantially larger than equipment traditionally used for exploration of other minerals covered by permitted development rights. For those designated areas that are based on their landscape quality, the potential impact could be significant and particularly merit their exclusion. For other designations, particularly those based on their ecological or heritage value, the potential impacts of exploratory shale gas development could be permanent and destroy their value for ever.

b) If No, please indicate why.

Not applicable.

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

Derbyshire County Council considers that, in the event of Permitted Development rights being extended to cover this development, the range of excluded areas should also include World Heritage Site Buffer Zones, Special Areas of Conservation, Local Nature Reserves, areas that are important to the setting of listed buildings, and the areas important to the settings of Historic Parks and Gardens.

Each of the areas above are particularly important environmental designations that could be especially sensitive to the impacts of non-hydraulic fracturing shale gas exploration development. As for a) above, for those designated

areas that are based on their landscape quality, the potential impact could be significant and particularly merit their exclusion. For other designations, particularly those based on their ecological or heritage value, the potential impacts of exploratory shale gas development could be permanent and destroy their value for ever.

Question 4

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

As explain in the response to Question 2 above, Derbyshire County Council is opposed to any granting of planning permission for non-hydraulic fracturing shale gas exploration through a permitted development right.

The preamble to Question 4 and Paragraph 28, lists a range of 8 different types of conditions and restrictions that could be applied for permitted development rights for non-hydraulic fracturing shale gas exploration development and includes:

- agreement with the relevant MPA on the restoration of the condition 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 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; and
- no removal of trees from the land.

It can only be concluded from the above, therefore, that the Government itself considers that permitted development rights for exploratory shale gas development could only be made acceptable in environmental and amenity terms by the imposition of a large number and range of conditions. This is basically the same process as through the existing planning application regime and would have similar implications for MPAs in having to discharge those conditions, many of which would require the submission of additional information and studies that could have significant time and resource implications. Again, this would be the opposite to other forms of permitted development rights that have been introduced by Government in the last few years which are relatively uncontentious and raise few issues of environmental or amenity concern that requires the imposition of a large number of conditions.

Paragraph 29 indicates that permitted development rights could also require local planning authorities to consult with bodies with a relevant interest in the impact the development, such as the Environment Agency, Health and safety Executive, etc. However, it is of additional concern that the consultation makes no reference to any form of public consultation as being appropriate as part of any permitted development rights process. Without any assurance of a formal opportunity for public engagement in the process, the permitted development option under the consultation would be even more remote from local communities.

Moving to a permitted development process would also remove existing incentives for developers to engage in advance dialogue with local planning authorities, in the current system, the pre-application stage is often a crucial to a successful and smooth application process, when the full range of potential socio, economic and environmental impacts can be discussed between the local planning authority and the developer and the full range of information requirements to support the planning application can be suggested. Importantly, this can help to identify the need for appropriate mitigation measures. Conversely, with permitted development, the first time the local planning authority is aware that a developer is proposing a non-hydraulic fracturing shale gas exploration development is likely to be when it is approached by the developer with a request to agree the range of conditions that would need to be discharged. The setting and discharge of such conditions would itself require significant resource input by the local planning authority. In this regard, there is no indication in the consultation of whether the discharge of conditions would be subject to a fee for the local planning authority.

It is predicted that considerable confusion would be generated amongst residents and businesses in local communities if the local planning authority has to determine conditions to which an exploratory shale gas development is subject but the same authority has not been not able to decide in the first instance whether the proposed development is acceptable in principle or not.

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?

On the basis of the extensive range of matters set out in Paragraph 33 of the consultation that would be subject to prior approval by the local planning authority, any prior approval submission would be of a length and complexity tantamount to a planning application. The logical conclusion, therefore, is that all non-hydraulic fracturing shale gas exploration development should continue to be subject to the full planning application process where the full resource of the MPA can be utilised in the decision making process, with

meaningful public consultation. From the list of matters suggested, all of them could be considered to generate significant impacts, including transport and highways impacts, contamination issues, air quality and noise impacts, visual impacts, proximity to occupied areas and setting in the landscape.

The permitted development rights system is based on the assumption that the classes of development/operation thereby permitted are inherently acceptable in principle. A non-hydraulic fracturing shale gas exploration development needing prior approval would imply that there would be a level of development activity, being over and above the normal permitted development right allowance that might potentially not be acceptable.

A new prior determination process would also introduce a significant source of public confusion, particularly as Paragraph 33 indicates that the prior approval process 'could include an element of public consultation'. It is, however, of additional concern to Derbyshire County Council that this is the only substantial reference to any form of public input in connection with the options under consultation. Particularly given the concern, anxiety and uncertainty, such proposals generate for communities local communities will continue to expect to be able to influence – “have a say” - in the determination of whether any exploratory shale gas exploration development is acceptable or not in the first instance; merely being consultation recipients would not be sufficient.

Question 6

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

Derbyshire County Council considers that permitted development rights for non-hydraulic fracturing shale gas exploration should not be subject to any form of permitted development rights whether for a period of two years or permanently for all the reasons set out in its responses above to questions 2 to 6.

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?

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

Appendix 2: Consultation by the Department for Business, Energy and Industrial Strategy (BEIS): Inclusion of Shale Gas Production Projects in the Nationally Significant Infrastructure Project Regime (NSIP)

1. Do you agree with the proposal to include major shale gas production projects in the Nationally Significant Infrastructure Project regime?

No. Derbyshire County Council is firmly opposed to all proposals to include major shale gas production projects in the NSIP regime. It supports and commends the clear conclusions and recommendations of the House of Commons Housing, Communities and Local Government Select Committee (HCLGSC) on this question, in its report published on 5 July 2018, particularly in the following concluding 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.”

Derbyshire County Council has extensive professional experience of NSIPs 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. In Derbyshire County Council's experience, the DCO process is very lengthy and complex, as well as difficult for the public to fully understand. The process involves a pre-application consultation phase prior to the submission of the DCO application (usually up to six weeks); the submission of the application to the Secretary of State, who has 28 days to decide whether the application meets the required criteria, including whether the applicant's pre-application has been adequate; several months for the Planning Inspectorate to appoint an Inspector or panel of Inspectors and organise the Examination in Public (EIP); and then the Inspector or panel of Inspectors have six months to carry out the EIP. Following conclusion of the EIP, the Inspector or panel of Inspectors have three months in which to complete the report and recommendations to the Secretary of State. The Secretary of State then has 3 months in which to issue a decision.

There is no evidence to suggest that bringing shale gas production projects into the NSIP regime would speed up the decision making process for such developments to any significant extent. It is quite possible that the overall timescales for decision making would lengthen compared to the current planning application and appeals regime.

A major concern for Derbyshire County Council is that the NSIP regime was introduced by Government through the Planning Act 2008 to deal with very large scale infrastructure projects that are of national or regional significance. Shale gas production projects, however, are much more likely to be of lesser scale than this, and their socio-economic and environmental impacts would tend be concentrated on relatively local areas. 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 (m²) 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. Both of these schemes involve major new highway improvement works which are likely to generate wide-scale socio, economic and environmental impacts.

It also seems unlikely that the contribution of any single shale gas development project to meeting the UK's national energy needs would be 'nationally significant', and no evidence has been advanced which might suggest this.

Derbyshire County Council can see no justification, therefore, for shale gas production projects to be brought into the NSIP regime, in view of their likely scale and less than national significance.

A further consideration, reflected in the County Council's experience of the EMG scheme, is that resorting to the DCO process cannot guarantee any more directness in the decision making process. In the EMG DCO process, the panel of Inspectors recommended refusal of consent, finding the scheme to be inconsistent with national policy set out in the National Policy Statement for Strategic Networks (NPSNS). However, the Secretary of State, in his subsequent consideration of the application, did not agree with the panel of Inspectors' recommendation, and granted development consent for the scheme. The decision was controversial in the local area and caused

considerable confusion for local communities who had opposed the scheme through the examination process.

Derbyshire County Council therefore considers that, in practice, the decision making process on shale gas production projects would be no speedier or more effective if the NSIP regime was extended to include them.

More fundamentally, the decision making process for such projects would then be taken totally out of local control and the local democratic process. Although the NSIP regime and DCO process rightly includes statutory requirements for significant public consultation through the pre-application and examination stages, decisions on such DCO applications rely on recommendations by unelected Inspectors or panels of Inspectors, before being ultimately decided on by the Secretary of State. MPAs and their elected members would obviously lose their existing decisive role in the determination of such applications and thus local democratic participation would be curtailed. Derbyshire County Council would contend that local planning authorities are best placed to understand their local areas and consider how specific shale gas production projects will relate socially, economically and environmentally to the local areas and their communities.

BEIS will no doubt be aware that Derbyshire County Council has recently received its first non-hydraulic fracturing shale gas exploration planning application. On 8 May 2017, Ineos Upstream Limited submitted a planning application to Derbyshire County Council as MPA for the construction of a well site and 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 and retention of the site and wellhead assembly gear for a temporary period of five years on land adjacent to Bramley Moor Lane, near Marsh Lane in North East Derbyshire District.

Prior to the County Council's determination of 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 failure of Derbyshire County Council to make a decision on the application within the required period set out in the Act. Prior to the appeal being heard at the inquiry, the planning application was considered by Derbyshire County 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. (Minute No.10/18 refers).

In its consideration of the application and public consultation that had been carried out by the County Council on the proposals, 3,192 individual letters of representation from 3,033 households were received objecting to the proposals along with 9 letters expressing support for the application. A further 49 individual letters of representation from 44 households were received objecting to the proposals due to a lack of information. Several submissions were also received from local campaign groups including 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, local County Council Member, Dronfield Town Council, Unstone Parish Council, Eckington Parish Council and North East Derbyshire District Council.

An inquiry was held before a Government appointed Inspector 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.

The case above serves to highlight how sensitive shale gas development proposals are for local communities and the nature of the concern, anxiety and uncertainty they may cause for local communities and businesses. Local planning authorities and their elected Members are best placed, therefore, to understand their local area and consider how shale gas production projects could impact socially, economically and environmentally on local communities.

As the HCLGSC has highlighted, inclusion of shale gas production projects within the NSIP regime would also cause a considerable disconnection between local development plans and the decision making process. This is because under the NSIP regime, the applicant must demonstrate that the development proposal meets the national evidence base and satisfies the issue of 'need' in a national context in planning policy terms set out in relevant National Policy Statements. For example, in the case of the EMG scheme referred to above, the panel of Inspectors recommendation and the Secretary of State's decision were based primarily on an assessment of the scheme in the context of the National Policy Statement for Strategic Networks (NPSSN) and the first version of the National Planning Policy Framework (NPPF). The NPSSN sets out the need for development of road, rail and strategic rail

freight interchange projects on the national networks and the policy against which decisions on major road and rail projects will be made.

The consideration of nationally significant projects in this higher level national planning policy context significantly reduces the status and consideration of policies in local development plans, which may be particularly relevant to the consideration of the acceptability of proposals, which is of major concern to Derbyshire County Council. In the Town and Country Planning Act application regime, local development plan policies are afforded primary consideration in the decision making process and appropriate weight may give to evolving plan policies based on the stage of preparation of the plan (i.e. adopted or emerging).

2. Please provide any relevant evidence to support your response to Question 1.

See answer to Question 1 above for relevant evidence.

3. If you consider that major shale gas production projects should be brought into the Nationally Significant Infrastructure Project regime, which criteria should be used to indicate a nationally significant project with regards to shale gas production? Please select from the list below:

Derbyshire County Council is firmly opposed to the inclusion of shale gas production projects in the NSIP regime for the reasons set out in questions 1 and 2 above and therefore offers no further comment on this question.

4. Please provide any relevant evidence to support your response(s) to Question 3.

No comments.

5. At what stage should this change be introduced? (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).

Derbyshire County Council is firmly opposed to the inclusion of shale gas production projects in the NSIP regime for the reasons set out in questions 1 and 2 above. The County Council considers, therefore, that no changes of this kind should not be introduced under any circumstances.

6. Please provide any relevant evidence to support your response to Question 5.

No comments (see answer to Question 5 above).