**Update – government consultations on shale gas development – October 2018**

The government is currently consulting on two matters relating to shale gas development - 1) whether non-hydraulic fracturing shale gas exploration should be treated as permitted development and the circumstances in which this might be appropriate and 2) the criteria required to trigger the inclusion of shale gas production projects into the Nationally Significant Infrastructure Projects (NSIP) regime.

Cumbria County Council has submitted responses to both these consultations which are attached overleaf:

- Response to MHCLG consultation on permitted development for shale gas exploration
- Response to BEIS consultation on inclusion of shale gas production projects in the Nationally Significant Infrastructure Project (NSIP) regime

**MHCLG Consultation – Permitted development for shale gas exploration**

**Cumbria County Council response to consultation questions:**

## Introduction

Cumbria County Council has received a number of enquiries over the past few years from members of the public concerned about the potential for shale gas production ("fracking") proposals coming forward.

There is a narrow band of shale rock across Allerdale and Carlisle districts, skirting the top of the Lake District National Park. It is also known that there are black shale deposits at some of the existing limestone quarries in the very south of the county and it is likely that these lie at the very top of the Bowland-Hodder shale formation. The Bowland Shale Study indicates very limited extension of that hydrocarbon basin into Cumbria and current maps of likely shale resources do not show further resources in the county.

To date no enquiries on appraising these shale resources have been received by the council, although planning permissions have previously been granted elsewhere in the county for coal bed methane drilling, testing and extraction.

As minerals planning authority, the council determines several major applications for other minerals extraction each year. The council has a good track record of consulting with local communities on both planning applications and pre-application enquiries with regard to these proposals.

In addition, a number of exploratory drilling proposals have been submitted in relation to other minerals extraction (eg coal) and the council has dealt with these prior notification submissions under Class K of the GPDO confirming the works are permitted development under this class, subject to compliance with relevant conditions.

For the past few years, all the applications received for minerals extraction have been approved without challenge. This demonstrates a confidence from local communities that their views are being taken into account during the determination process, with appropriate conditions being used to ensure their amenity and wellbeing is not unacceptably affected as a result of permissions being granted. Local communities are also familiar with the existing permitted development rights afforded to other minerals operators, knowing that the council as minerals planning authority still has some control over this process.

Following launch of the two government consultations in respect of shale gas production, the council has received over 30 representations from the public concerned about what they consider to be the removal of the council's decision-making power as local minerals planning authority, and as a consequence, removal of the opportunity for views of the local communities affected by proposals to be properly reflected in the decision making process.

Permitted development rights have already been introduced to assist shale gas developers by allowing the drilling of boreholes for groundwater monitoring, seismic monitoring and locating/appraising of mines in preparation for petroleum exploration. Our view is that further permitted development rights for shale gas exploration should not be introduced. The scale of development involved with shale gas exploration activities is significantly larger than that of other minerals exploration and so this permitted development would have far greater impact on the landscape and local communities.

It is local communities who are directly affected by such proposals in their area. To see development of this scale going ahead without opportunity for their views, and those of other consultees, to be considered in an open and transparent way (as would happen with determination of an application for planning permission) risks undermining public confidence in the planning system.

The proposed prior notification procedure is described as a light-touch approach and local communities are likely to feel such proposals are not being assessed as thoroughly as they would be under a full planning application. A particular concern is that , under a prior notification procedure, the principle of the development cannot be challenged.

Removing shale gas exploration from the requirements for full planning permission means that development which is known to be controversial could now go ahead with little intervention or control from the minerals planning authority. This seems counterproductive to the government's aim for shale gas developments to be more accepted in the UK.

Our response to the consultation questions is set out below:

**1a) Do you agree with this definition - *Boring for natural gas in shale or other strata encased in shale for the purposes of searching for natural gas and associated liquids, with a testing period not exceeding 96 hours per section test* - to limit a permitted development right to non-hydraulic fracturing shale gas exploration? Yes/No**

YES

**b) if No, what definition would be appropriate**

**n/a**

**2) Should non-hydraulic fracturing shale gas exploration development be granted planning permission through a permitted development right? Yes/No**

NO – The scale of development and issues involved are too complex to be reasonably dealt with as permitted development.

For example, under the existing Class K permitted development rights for other mineral exploration the maximum height for structures to be accepted as permitted development is 15m. The height of the drilling rigs for shale gas exploration is shown as being 30m. This will have far greater impact on the landscape and local communities. This demonstrates shale gas exploration is not comparable with other minerals exploration work; extending the permitted development rights is not appropriate.

The MHCLG Select Committee has already stated very clearly that shale gas development should not be classed as permitted development and that local communities should be able to have a say in whether this type of development takes place. We see no evidence in the consultation paper to demonstrate why the proposed permitted development rights are justified.

Administrating a prior notification application under the proposed permitted development right would be tantamount to handling a full planning application and will have significant resource and cost implications for minerals planning authorities. This is evident from the extent of controls and conditions suggested within the consultation document, including the reference to consulting with local communities as part of the prior notification procedure.

Despite the work involved, the fees for a prior notification will be substantially less than for a full application. If a permitted development right was to be introduced then a higher fee should be charged and minerals planning authorities should still be able to receive compensation from the shale gas fund for handling these.

Given the consultation document indicates there should still be some engagement with local communities during prior notification we can see little benefit to be gained from introducing the permitted development right. The sole reason appears to be to speed up the decision-making process, however often the reason for delays in determination of planning applications is due to the need for further information from the applicant in order to fully address all relevant issues.

These issues would still need to be as fully addressed in order to determine a prior notification, yet as the prior notification procedure is described as a light-touch approach, local communities are likely to consider that such proposals have not been assessed as thoroughly as when they are subject to a full planning application.

Of particular concern is that, under a prior notification procedure, the principle of the development cannot be challenged. A minerals planning authority would therefore be unable to refuse a proposal in a location that might otherwise have been considered unacceptable, except by removing permitted development rights using an Article 5 Direction. It would then be harder to resist any subsequent planning application for the production phase as much of the harm will have already occurred on the site.

The effect of reducing the extent to which local communities can engage in the decision-making, and increasing their mistrust of the way in which shale gas proposals are being handled, seems counter-productive to the government's intention to make shale gas development more widely accepted.

We note the consultation document states in para.20 that the permitted development right "*would not apply to all onshore oil and gas exploration and/or extraction operations*." More clarification on this statement would be helpful – is it intended to mean the permitted development applies only to shale gas exploration and not, say, to coal bed methane extraction? This should be made clear to enhance public understanding.

**3a) Do you agree that a permitted development right for non-hydraulic fracturing shale gas exploration development would not apply to the following? Yes/No**

We agree that, if further permitted development rights were introduced, they should not apply to any of the areas/land types listed in the consultation paper. However, we think more consideration should be given to the setting of some of these designated areas (including National Parks and The Broads, AONBs, World Heritage Sites, SSSIs, Scheduled Monuments, Conservation Areas and sites of archaeological interest) and therefore a broader area

should be identified in respect of these areas where the permitted development right should not apply.

**3b) If No, please indicate why.**

As mentioned in the response to 3a) above, we think a broader area should be identified in respect of the designated areas already listed where the permitted development right should not apply.

This is because the equipment associated with shale gas exploration is likely to be more substantial in terms of height and scale than the drilling rigs used in other minerals exploration. Therefore the impact of permitted development rights for shale gas exploration , particularly on the landscape, will be far greater.

A buffer zone of 500m could be applied to ecological/archaeological designations (eg. SSSI, Scheduled Monuments, Conservation Areas, sites of archaeological interest) and a 2km buffer zone for landscape designations to allow for longer distance views into and out of National Parks, AONBs and World Heritage Sites.

**3c) Are there any other types of land where a permitted development right for non-hydraulic fracturing shale gas exploration development should not apply?**

See answer to question 3b) above. Land where the development could affect the setting of the designated areas already identified should also be taken into account and included in a buffer zone. The permitted development should not apply in the land included within the buffer zone.

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

If further permitted development rights were introduced, the following conditions/restrictions are considered appropriate:

a) The size and duration of the operation needs to be restricted. 96 hours per section test is already stated in the proposed definition. However, there should be a condition relating to the length of time operations on the land may be carried out for under permitted development. Existing Class KA limits the use of land for drilling boreholes to 24 months if required for groundwater monitoring and 6 months for all other cases. More clarity is needed.

As stated in response to question 2) we are concerned that the 30m height of drilling rigs for shale gas exploration is not comparable with the 15m height restriction for other minerals exploration rights under Class K.

b) Developers should not commence mobilisation until a Screening Opinion has been received (either from the minerals planning authority or Secretary of State). Whilst there should not be undue delay, with lead times of months for suitable drilling equipment to be available there is no reason that the land use planning considerations cannot be properly assessed at this stage. It is already noted in the consultation paper that projects which are EIA development should be excluded from the permitted development right. Making submission of a Screening Opinion a formal part of the prior notification process to establish whether the permitted development right may be conferred would therefore seem logical.

c) The following noise limit restriction should be imposed. Development should not be permitted if these levels are exceeded –
   - Noise generated during weekdays 7am to 7pm limited to background ($L90_{Aeq\ 1\ hour}$) +10dbA;
   - Noise generated during weeknights 7pm to 7am limited to background ($L90_{Aeq\ 1\ hour}$) +5dbA;
   - Noise generated during weekends and bank/ public holidays limited to background ($L90_{Aeq\ 1\ hour}$) +5dbA at the nearest noise sensitive properties

d) In line with existing permitted development rights for other mineral exploration under Class K - including Class KA for use of land in preparation for petroleum exploration - development should only be permitted on condition that no trees on the land are removed, felled, lopped or topped and no other thing is done to the land likely to harm or damage any trees.

e) In line with existing permitted development rights for other minerals exploration under Class K and KA, development should only be permitted on condition that within 28 days of operations ceasing - the borehole is adequately sealed; any other excavation on site is filled with material from the site; and the land is restored to its condition before the development took place, including the carrying out of any necessary seeding and replanting.

   If a developer is considering that an exploration borehole could be subsequently developed and adapted for use in production, this should be subject to a full application at the outset and not permitted development.

This is to ensure that local communities have an opportunity to express their views in the normal, democratically accountable, way and prevents arguments that using a site that is already established is less harmful to amenity than a greenfield site or that operators are somehow trying to circumvent the system. It would also ensure that safeguarding measures (such as groundwater monitoring boreholes) are in in place to establish baseline information before well development ahead of production is undertaken.

f) In line with existing permitted development rights for other mineral exploration under Class K and KA, development should only be permitted on condition that the development ceases no later than six months from the date of any prior notification decision.

This will provide local communities with some certainty over the timescale of the permitted development work and also provide re-assurance - along with the reinstatement requirements suggested in point e ) above – that the drilling of a borehole for exploratory/testing purposes will not be left open indefinitely to pre-empt that location as being the most suitable for any future production phase.

g) In line with Class KA for use of land in preparation for petroleum exploration, the developer should also be required to give prior notification to the Environment Agency and the relevant drinking water supply undertaker in writing of its intention to carry out the development and no development shall commence until the notification period has expired.

Given the complexity of shale gas proposals we consider the prior notification period should be 42 days (see response to Question 5 below).

**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?**

As stated in our response to Question 1, we consider the prior notification procedure is not adequate to deal with proposals for shale gas exploration and therefore shale gas exploration should not be granted further permitted development rights but should remain subject to full planning permission.

However, if a permitted development right is introduced , we agree that, in line with the existing permitted development rights for minerals exploration under Class K – including Class KA for use of land in preparation for petroleum exploration- proposals should be subject to a prior notification procedure to ensure there is some control over the scale and extent of works carried out,

and a means to minimise potential harm to the local environment and communities.

Given the complexity of shale gas exploration proposals, we consider the prior notification period should be increased to 42 days (6 weeks) which is commensurate with the fact a full planning application would be a major application with a 13 week determination period.

We consider that developers should be required to provide the following information as part of their prior notification submission:

a) sufficient environmental information for a Screening Opinion to be issued. A Screening Opinion would provide a robust basis for decision making. It is a well-established process that is widely recognised and understood by industry and planning professionals/ well informed individuals. As noted in the consultation, projects that are EIA development should be excluded from the permitted development right. The Screening Opinion should form the basis of any refusal of prior approval.
b) sufficient ecological information to carry out a Habitats Regulations Assessment if proposed development is located in or within 500m metres of a European Site.
c) Provision of a Traffic Assessment for the whole of the proposed operating period of the site. Impacts from traffic generated by the site need to be explicitly assessed by the highway authority as this can have a considerable impact on local amenity over and above their environmental impact.
d) Establishing day time and night time background noise levels at nearest noise sensitive properties and noise assessment in relation to machinery proposed. The minerals planning authority will need to have this information in order to make an assessment during the prior notification procedure as to whether the development would constitute a serious nuisance to the inhabitants of any noise sensitive properties nearby. It will also allow for consideration as to whether the suggested condition on maximum noise levels will be exceeded – see point 4 c) above- in which case development should not be permitted.
e) A Zone of Theoretical Influence should be provided to identify the potential visual impact of any equipment associated with the development on significant public viewpoints within 5km of the site. This will assist the minerals planning authority in making a timely determination of the prior notification submission, and also in providing a Screening Opinion.
f) Details of restoration proposals for the site. This will assist in compliance with the suggested condition requiring site restoration to be completed within 28 days of operations ceasing – see point 4 e) above – and will provide re-assurance to local communities that the site will be restored promptly and not left exposed to influence the location of any future proposals for gas shale production.

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

Given the sensitivities surrounding shale gas production, and the importance government is placing on this industry, it would be good practice to review the effectiveness of any new permitted development right after a two year period. This will provide opportunity to establish what impact it has had – whether positive or negative – and whether any changes should be made to the permitted development regime to make if more effective before considering whether to grant the permitted development right more permanently.

7) **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 Equalities Act 2010?**

None

Submission sent by email on behalf of Cumbria County Council by:
*Angela Jones*
*Assistant Director – Environment and Economy Services*
*Cumbria County Council*
*Cumbria House, 117 Botchergate, Carlisle, CA1 1RD*
*angela.jones@cumbria.gov.uk*

**BEIS Consultation – Inclusion of shale gas production projects in the Nationally Significant Infrastructure Project (NSIP) regime**

**Cumbria County Council response to consultation questions:**

## Introduction

Cumbria County Council has received a number of enquiries over the past few years from members of the public concerned about the potential for shale gas production ("fracking") proposals coming forward.

There is a narrow band of shale rock across Allerdale and Carlisle districts, skirting the top of the Lake District National Park. It is also known that there are black shale deposits at some of the existing limestone quarries in the very south of the county and it is likely that these lie at the very top of the Bowland-Hodder shale formation. The Bowland Shale Study indicates very limited extension of that hydrocarbon basin into Cumbria and current maps of likely shale resources do not show further resources in the county.

To date no enquiries on appraising these shale resources have been received by the council, although planning permissions have previously been granted elsewhere in the county for coal bed methane drilling, testing and extraction.

As minerals planning authority, the council determines several major applications for other minerals extraction each year. The council has a good track record of consulting with local communities on both planning applications and pre-application enquiries with regard to these proposals.

For the past few years, all the applications received for minerals extraction have been approved without challenge. This demonstrates a confidence from local communities that their views are being taken into account during the determination process, with appropriate conditions being used to ensure their amenity and wellbeing is not unacceptably affected as a result of permissions being granted.

Following launch of the two government consultations in respect of shale gas production, the council has received over 30 representations from the public concerned about what they consider to be the removal of the council's decision-making power as local minerals planning authority, and as a consequence, removal of the opportunity for views of the local communities affected by proposals to be properly reflected in the decision making process.

Our view is that there is not a compelling case to make shale gas production proposals NSIP schemes. Such an approach would be inconsistent with other minerals extraction proposals and appears to be driven solely by the government's desire to speed up the decision making process in respect of shale gas production.

It is local communities who are directly affected by such proposals in their area. To see development of this scale being determined at a national level, rather than by the elected minerals planning authority, risks damaging local community engagement and confidence in the democracy of decision making process, both of which are needed for shale gas production to progress in line with the government's intentions as stated in the Written Ministerial Statement issued in May.

Our response to the consultation questions is set out below:

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

NO**.** A compelling case has not been made as to why shale gas proposals should be included in the NSIP regime when other mineral operations are not.

The MHCLG Select Committee Inquiry concluded earlier this year that "…*there is little to be gained from bringing fracking 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 contract to general mineral applications."*

It is local communities who are directly affected by such proposals in their area. To see development of this scale being determined at a national level, rather than by the minerals planning authority, risks damaging local community engagement and confidence in the democracy of decision making process, both of which are needed for shale gas production to progress in line with the government's intentions as stated in the Written Ministerial Statement issued in May.

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

The Policy Statement by DCLG "Extension of the nationally significant infrastructure planning regime to business and commercial projects" states: "*The 2008 Act requires a final decision to be taken within one year from the start of the examination of an application. It also provides a 'one stop shop' approach to consents, which will be particularly beneficial to the largest and most complex projects, where multiple consents would otherwise be required.* ". However, it adds: "*For minerals projects, the Secretary of State would not normally expect to receive requests for projects unless they involve the extraction of a strategically important industrial mineral, or extraction of a mineral on a significant scale, for example where the surface or underground area was over 150 hectares*."

This policy statement in particular makes it clear that NSIPs are an exceptional class within land use planning. No clear argument is advanced in the current consultation to say why onshore unconventional gas alone should be regarded as nationally significant, when other minerals demonstrably necessary for economic growth are not. It seems to stem entirely from a desire to speed up the decision-making process for this particular form of development due primarily to the strength of local objections made regarding these planning applications and the impact this has on the timing of decision-making.

However, often the reason for delays in determination of planning applications is due to the need for further information from the applicant in order to fully address the issues. We question whether the NSIP regime would in fact be any quicker for operators, given the extent of preparatory work required leading up to an NSIP submission.

Shale gas production is known to be a particularly controversial form of development and it is local communities who are directly affected by these proposals. The effect of taking decision-making away from their democratically elected minerals planning authority seems counter-productive to the government's intention to make shale gas development more widely accepted. Whilst local communities do have the right to be consulted and to participate in the NSIP process, the feeling amongst many local communities is that their views will not carry the same weight as if the application was determined by their elected minerals planning authority.

If local communities have less confidence in the decision-making process, they are more likely to challenge and seek to overturn that decision which will cause delays for operators.

In our view, the negative impacts of undermining public confidence in the planning system and making local communities feel disassociated from decisions on significant developments that directly affect them, far outweigh the perceived benefit of speeding up the decision-making process for shale gas production by bringing it into the NSIP regime.

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

Our view is that shale gas production projects should not be brought into the NSIP regime. If a decision is made to include them as NSIP, from the list of criteria provided in the consultation paper, we consider that a combination of the following factors would be the most appropriate means to indicate whether a particular shale gas production project should fall within the NSIP regime:

- The total number of well-sites within the development
- Requirement for associated equipment on site, such as (but not limited to) water treatment facilities and micro-generation plants
- Whether multiple well-sites will be linked via shared infrastructure, such as gas pipelines, water pipelines, transport links, communications etc.

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

The identified elements are those with the potential to have the largest impact with respect to land-use planning and local communities. Using these criteria would also be consistent with the original intention of the NSIP regime to benefit " *the largest and most complex projects, where multiple consents would otherwise be required"*

Inclusion in the NSIP regime would only be appropriate for the very largest scale projects where clusters of sites/ pads with a requirement for sharing additional infrastructure over an extended geographical area should be considered. For example, the projects that would require multiple permissions to operate and that could be jeopardized if an ancillary consent was refused or otherwise frustrated. It is unfortunate that neither figures 2 nor 4 in the consultation document gave an adequate indication of the scale of development envisaged to fall within the NSIP regime.

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)**

Only when a critical mass of shale exploration and appraisal sites has been reached.

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

The "cost of compliance" in the UK, coupled with high value of land (which reflects population density) as compared to other shale gas producers such as the US results in questionable viability for onshore unconventional gas in the UK. Cheap imports of liquefied natural gas from Qatar and Malaysia also have a considerable impact on the viability of shale projects. To date there has not been sufficient exploration/ appraisal of sites to understand whether any really large scale projects could come forward.

It would therefore be prudent to wait until the true potential for large scale shale gas production is fully understood before determining that such proposals should properly be considered within the NSIP regime.

There is an implication in the wording of question 5 that a single production site may be considered NSIP.

We do not consider that a single, first application for shale gas production is sufficient to warrant being brought into the NSIP regime. As stated in our response to question 2, this would be inconsistent with the approach to other minerals extraction proposals and appears to be simply an attempt to speed up the decision-making process for the shale gas industry.

We consider that removal of the first shale gas production project straight into the NSIP regime would be counterproductive as this would surely lead to greater strength of objection from local communities concerned not just about the shale gas production itself but also the nature of the decision making. If local communities have less confidence in the decision-making process, they are more likely to challenge and seek to overturn that decision.

If a balanced view can be taken at some point in the future, that a particularly complex shale gas production project should be considered as NSIP then at least local communities can make a comparison between the decision-making process under the normal planning application route, and the one imposed by NSIP regime, rather than feeling they have been side-lined from the process on principle right from the start.