

## **HIGH PEAK BOROUGH COUNCIL**

### **Report to Economy and Growth Select Committee**

**27 September 2018**

<b>TITLE:</b>	<b>Government consultations relating to permitted development rights for shale gas exploration and approvals under the National Significant Infrastructure Projects regime</b>
<b>PORTFOLIO HOLDER:</b>	<b>Councillor Tony Ashton – Leader</b>
<b>OFFICER:</b>	<b>Dai Larnier - Executive Director (Place)</b>
<b>WARDS INVOLVED:</b>	<b>All Wards</b>

#### **Appendices – None**

### **1 Reason for the Report**

- 1.1 To consider the Council's response to two current Government consultations relating to permitted development rights for non-hydraulic shale gas exploration and approvals under the National Significant Infrastructure Projects regime respectively.

### **2 Recommendations**

- 2.1 To note the contents of the report and to recommend to submit an appropriate response to the Government's consultations.

### **3 Executive summary**

- 3.1 Separate Government departments are consulting on proposed changes to the planning process for shale gas exploration and extraction following a Written Ministerial Statement which set out the Government's view that there are potentially substantial benefits from utilizing shale gas. Views are sought on the principle of granting planning permission for non-hydraulic shale gas exploration development through a permitted development right.
- 3.2 A further consultation proposes to include shale gas production to be incorporated into the Nationally Significant Infrastructure projects regime. This would allow the Secretary of State to grant planning consent for proposals.

3.3 Both changes would reduce the ability of the Minerals Planning Authority to determine proposals in line with local policy. It is proposed to object to this in the interests of local democracy. The draft response also calls for the consideration of sensitive areas on the fringes of National Parks in relation to permitted development rights for non-hydraulic shale gas exploration.

#### 4. **How this report links to Corporate Priorities**

4.1 The proposals would have implications for Aims 1 3 and 4 of the Corporate Plan in terms of potential environmental and economic impacts.

#### 5. **Options and Analysis**

5.1 **Option 1 (recommended)** – respond to the two consultations as recommended in this report, subject to further suggestion by Councillors. This option would ensure that concerns that the Council may have are considered by Government.

5.2 **Option 2 (not recommended)** – do not respond to the two consultations. This option would not enable the Council to inform the Government's conclusions.

#### 6. **Implications**

##### 6.1 Community Safety - (Crime and Disorder Act 1998)

No direct implications.

##### 6.2 Workforce

No implications.

##### 6.3 Equality and Diversity/Equality Impact Assessment

This report has been prepared in accordance with the Council's Diversity and Equality Policies.

##### 6.4 Financial Considerations

There are no financial considerations for the Council relating to the recommendations of this report.

## 6.5 Legal

Permitted development rights are set out in the Town and Country Planning (General Permitted Development) (England) Order 2015. Provision for Nationally Significant Infrastructure Projects is made in the Planning Act 2008.

## 6.6 Sustainability

The proposed changes would reduce the opportunity for local authorities to determine if shale gas proposals constitute sustainable development.

## 6.7 Internal and External Consultation

Subject to approval, the Council's response to the consultations will be submitted to the Ministry of Housing, Communities and Local Government and the Department of Business, Energy and Industrial Strategy.

## 7. **Background and Detail**

7.1 There are currently two consultations led by the relevant Government departments that relate to the planning approvals process for the exploration and extraction of shale gas. It should be noted that the Borough Council is not the Minerals Planning Authority and therefore is not responsible determining proposals for minerals exploration or extraction. Outside of the Peak District National Park, Derbyshire County Council is the Minerals Planning Authority for the County.

7.2 Written Ministerial Statements on energy and planning policy made by Greg Clark and James Brokenshire on 17 May 2018 set out the the Government's view that there are potentially substantial benefits from the safe and sustainable exploration and development of our onshore shale gas resources. In order to take this forward, two consultations were announced with proposals to facilitate the shale gas industry as set out below:

### Consultation on Permitted Development for Shale Gas Exploration

7.3 The Ministry of Housing, Communities and Local Government is consulting on the principle of granting planning permission for non-hydraulic shale gas exploration development through a permitted development right. It covers the following areas:

1. Whether to introduce a permitted development right for non-fracturing shale gas exploration development
2. Definition of non-hydraulic fracturing shale gas exploration
3. Development not permitted
4. Development conditions and restrictions
5. Prior approval

6. Time-limited or permanent permitted development right
7. Public sector equality duty

- 7.4 Permitted development rights are set out in the Town and Country Planning (General Permitted Development) (England) Order 2015. They are a national grant of planning permission which allow specified works or development to be carried out without the need for planning permission. Permitted development rights are subject to conditions and limitations to control impact and to protect local amenity.
- 7.5 The consultation document makes it clear that views are sought on the principle of whether non-hydraulic fracturing shale gas exploration development should be granted planning permission through a permitted development right. Such rights are not proposed for the appraisal and production operations of shale gas extraction.
- 7.6 Seven questions are posed in the consultation document. Most of them are technical in nature and would be better addressed by the Minerals Planning Authority. However, Questions 2 and 3 relate to the principle of the proposals and where they may be exempt. Draft responses are outlined for each question below which seek to ensure that local authorities retain control over such development and that recognition is given to sensitive areas on the fringes of National Parks as well as within them.

### **Question 2**

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

#### Draft HPBC response

No. Whilst High Peak Borough Council is not the Minerals Planning Authority, we have concerns about any proposed changes to planning application processes which take decision making away from local authorities and the communities which they serve. This will reduce the ability of local people to comment on and engage with the planning process.

### **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**
- **Areas of Outstanding Natural Beauty**
  - **National Parks**
  - **The Broads**
  - **World Heritage Sites**
  - **Sites of Special Scientific Interest**

- **Scheduled Monuments**
- **Conservation areas**
- **Sites of archaeological interest**
- **Safety hazard areas**
- **Military explosive areas**
- **Land safeguarded for aviation or defence purposes**
- **Protected groundwater source areas**

Draft HPBC response

Yes. If permitted development rights for non-hydraulic fracturing shale gas exploration development are to be introduced, the Council would support their exclusion from the identified areas which are sensitive in terms of the natural environmental, heritage and health and safety.

However, it should be acknowledged that the setting of National Parks can also be environmentally sensitive. In upland areas such as High Peak, inter-visibility between the National Park and land on the periphery is high. As such, it is necessary to ensure that the visual impacts of shale gas exploration development outside of National Parks can be adequately considered by the relevant local authority.

Consultation on Inclusion of Shale Gas Production Projects in the Nationally Significant Infrastructure Project Regime

- 7.7 The Department for Business, Energy & Industrial Strategy is consulting separately on proposals to include shale gas production in the Nationally Significant Infrastructure Project (NSIP) regime. NSIPs are defined in the Planning Act 2008 and include certain energy, transport, water, wastewater and hazardous waste projects. Proposals for NSIPs are determined by the Secretary of State following an examination process and subsequent recommendation by the Planning Inspectorate. Planning approval comes in the form of a Development Consent Order and is subject to compliance with National Policy Statements relating to infrastructure. Currently, planning approval for shale gas schemes would be sought from the Minerals Planning Authority.
- 7.8 As with the consultation regarding permitted development rights, many of the consultation questions are best considered by the Minerals Planning Authority. However, Question 1 relates to the principle of the shale gas coming under the NSIP regime and therefore the concerns raised above regarding local decision making apply. As such, the draft response below is proposed.

**Question 1**

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

## Draft HPBC response

No. Whilst High Peak Borough Council is not the Minerals Planning Authority, we have concerns about any proposed changes to planning application processes which take decision making away from local authorities and the communities which they serve and which reduce the ability of local people to comment on and engage with the planning process.

### **Next steps**

- 7.9 The closing date for both consultations is 25<sup>th</sup> October. Subject to approval and any further amendments, it is proposed to respond to the two consultations as recommended. It is understood that Derbyshire County Council will be submitting a separate response to the consultation which identifies similar concerns to those identified in this report.

Dai Lerner  
**Executive Director - Place**

#### **Web Links and Background Papers**

#### **Location**

#### **Contact details**

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

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

Mark James, Senior  
Regeneration Officer  
(Planning Policy) –  
[mark.james@highpeak.gov.uk](mailto:mark.james@highpeak.gov.uk)