Permitted Development for Shale Gas exploration

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Question 1

a) Do you agree with this definition to limit a permitted right to non-hydraulic shale gas exploration?

The proposed **definitions are not clear:**

What is meant by "core samples" ? Given the nature of gas exploration, effectively this is the same as "gas". Shale gas exploration works in such a way as to mean that it is difficult to resist extraction.

What is meant by "boring" for natural gas? This language is not used elsewhere: "drilling" is the legal term.

b) If no, what definition would be appropriate?

Question 2

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

No.

In general, we are concerned about the increasing use of permitted development (PD) rights as a policy tool. In our view there are arguably two circumstances where PD rights are appropriate:

- For minor developments (from a purely administrative point of view) and;
- To expedite approvals for development which are necessary for the public benefit and need to be delivered quickly (e.g. communications, electricity and highways infrastructure), accepting that elements of due diligence, local planning policy and public participation can be scaled back (e.g. through prior approval).

We are aware that the Coalition and the Conservative governments are making increased use of permitted development as a means to pursue ***government policy***. Examples are the use of PD to achieve government policy on using employment premises and agricultural buildings for housing. This is a departure from what permitted development was established to achieve and how it has operated successfully for many decades. The use of employment premises for homes has been a decidedly mixed blessing despite its apparent high

contribution to headline housing numbers.[1] There is a proper process for government policy to be pursued, and that is the National Planning Policy Framework.

Whilst it is acknowledged that Government sees shale gas exploration as important and necessary for securing energy supplies and creating economic benefits, we consider that no real case has been made to justify why such development falls under the above two categories. The planning system, if managed and engaged properly, should be able to determine the extent to which such development is acceptable (taking the national interest into account as a material consideration).

Since exploration can already take place under permitted development suing seismic survey this would suggest two key points; firstly that permitted development of drilling is has been explicitly removed from PD for very good reasons, and that the need for intrusive methods of exploration is not proven.

The problems with the use of PD for shale gas exploration are manifold:

1. The use of **prior notification process** with fees around £200 on current experience is wholly insufficient to cover the amount of work needed to make exploration safe and satisfactory. At present the rough costs for a planning application for shale exploration are around £100,000 for a mineral planning authority as against the fee income of around £3000. Even allowing for the reduction in work arising from the fact that the principle of the development would not be in question, if PD is introduced, the government must finance the process at full recovery rates or make the fees for prior notification equal to the costs.

The prior notification process is also impractical in this context. Either it will take so long to do properly that it will make no improvement in speed on the application process, or it will be done so scantily as to fail to make proper safeguards for people and the environment.

2. The concept of distinguishing between the principle of the development and the detail may well be one that professional staff can work with, but it is **difficult to explain to the public**. Therefore the LPA may incur additional costs arising from having to handle objection letters which are out of scope but nevertheless strongly felt. It seems unreasonable for the Secretary of State to shelter behind the national grant of permission and make LPAs deal with the consequences.

3. The scale of exploratory drilling entirely dwarfs development normally covered by PD (e.g. householder extensions). Boreholes in North Yorkshire can go down to 3000 metres below ground. Above ground impact may also be on an industrial scale: As set out in a recent debate in Parliament by Lee Rowley MP (13 September 2018):

> *"A 2 metre-high perimeter fence, a 4.8 metre-high combination of bunding and fencing, two to three cabinets of 3 metres in height, acoustic screening of 5 metres in height, four security cameras of 5.5 metres in height, a 2.9 metre-high power generator, two water tanks of 3 metres in height, a 4.5 metre-high Kooney pressure control, a 4 metre-high blowout prevention and skid and choke manifold, 9 metre-high lighting and a 10 metre-high emergency vent."*

There is a reason why PD applies to developments which are in the realm of *de minimis* and not to developments of this kind.

4. Blanket permissions granted by the Secretary of state on a national basis are highly likely to fail to take account of different local circumstances of traffic, geology, and landscape which make the imposition of standard national conditions highly unsuitable. A process

[1] ucl.ac.uk/news/news-articles/0518/01052018-office-to-residential-developments

designed for *house extensions* is being applied to a complex, disruptive and highly contested exploration process for which it is not suited.

5. The use of PD would create a powerful **precedent** in which an application for genuine commercial extraction would be judged. The mere existence of the exploration apparatus which is (as shown elsewhere in this submission is substantial) alters the terms in which a future substantive application would be judged.

6. It is acknowledged by the Government that the **imposition of conditions** would need to cover a large array of issues (see question 4) – again not how permitted development works. This requires control which currently is provided by a proper, local, professional and democratic process. The sheer complexity of the conditions needed demonstrates that a PD process is not appropriate.

7. Using PD in this context devalues of the **plan led system** for minerals planning in England. Decisions are supposed to be based on the development plan in the first instance. The role of the plan is removed.

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

The reference to Environmental impact assessment is not straightforward. EIAs apply where there are "significant effects". Given that the whole impact of introducing PD would be to remove public involvement, the basis on which this happens should be legally very clear. LPAs normally undertake "screening" of proposals to see if EIA is needed. This is a very different process from the straightforward legal basis used to decide if a householder extension needs permitted development. Moreover it needs funding (see our point about the use of Prior Notification) and it is potentially open to fairly easy legal challenge.

b) If not, please indicate why

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

- Special areas of conservation
- Special Protection Areas
- Unless it can be proven that these are all covered by SSSIs

And permitted development for exploration would not be appropriate under the Habitats Regulations if it would adversely affect the habitat of a relevant species. (Again this shows how difficult the whole concept of PD is in this context. This would potentially require an appropriate assessment of the impact.)

Question 4

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

To include but not be confined to:

- Scale of structures

- Heavy plant and goods vehicle movements
- Restoration arrangements
- Protection of ground water
- Noise / Hours of operation
- Light pollution
- Traffic light system in relation to seismic activity

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?

The use of **prior notification process** with fees around £200 on current experience is wholly insufficient to cover the amount of work needed to make shale gas exploration safe and satisfactory. At present the rough costs for a planning application for shale exploration are around £100,000 for a mineral planning authority as against the fee income of around £3000.[2] Even allowing for the reduction in work arising from the fact that the principle of the development would not be in question, if PD is introduced, the government must finance the process at full recovery rates or make the fees for prior notification equal to the costs.

The prior notification process is also impractical in this context. Either it will take so long to do properly that it will make no improvement in speed on the application process, or it will be done so scantily as to fail to make proper safeguards for people and the environment.

The list of issues in paragraph 33 is a minimum.

Question 6

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

If introduced we consider that PD should have a time limit..

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 2007?

No

[2] Planning Advisory Service / LGA *Planning for shale gas and oil development*