

**Decision Maker:** DEVELOPMENT CONTROL COMMITTEE

**Date:** Tuesday 11 September 2018

**Decision Type:** Urgent Non-Executive Non-Key

**Title:** GOVERNMENT CONSULTATIONS ON SHALE GAS;  
  
PROPOSED PERMITTED DEVELOPMENT RIGHTS FOR SHALE GAS EXPLORATION & TRIGGERS FOR THE PRODUCTION OF SHALE PRODUCTION PROJECTS INTO THE NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECTS REGIME

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**Chief Officer:** Chief Planner

**Ward:** (All Wards)

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1. Reason for report

The Government are seeking views on two concurrent consultations;

- i) A consultation by the Ministry of Housing, Communities and Local Government on the principle of whether non hydraulic fracturing shale exploration development should be granted planning permission through a permitted development right; and
- ii) A consultation by the Department for Business, Energy and Industrial Strategy on the criteria required to trigger the inclusion of shale production projects into the Nationally Significant Infrastructure Projects regime.

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2. **RECOMMENDATION(S)**

- 2.1. That Members consider the two Government consultations and note the planning concerns.
- 2.2 Members note the draft suggested response as set out in Appendix 1 and agree that the final response be prepared by the Chief Planner in consultation with the Chairman

### Impact on Vulnerable Adults and Children

1. Summary of Impact: N/A
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### Corporate Policy

1. Policy Status: New Policy: Government policy relating to planning procedures for Shale Gas exploration and production projects
  2. BBB Priority: Excellent Council Quality Environment:
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### Financial

1. Cost of proposal: Not Applicable:
  2. Ongoing costs: Not Applicable:
  3. Budget head/performance centre: Development Control
  4. Total current budget for this head: £1.66m
  5. Source of funding: Existing gross revenue budget for 2018/19
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### Personnel

1. Number of staff (current and additional): 38.64 FTEs
  2. If from existing staff resources, number of staff hours:
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### Legal

1. Legal Requirement: None:
  2. Call-in: Not Applicable:
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### Procurement

1. Summary of Procurement Implications: None
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### Customer Impact

1. Estimated number of users/beneficiaries (current and projected):
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### Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments:

### 3. COMMENTARY

3.1 It is the Government's view that there are potentially substantial benefits from the safe and sustainable exploration and development of our onshore shale gas resources. Shale gas has the potential to play a major role in further securing energy supplies and creating economic benefits locally and nationally. Joint Written Ministerial Statements on Energy and Planning Policy on 17 May 2018 reiterated the Government's view and announced a number of measures to facilitate decisions on shale planning applications including;

i) A consultation on the principle of whether non hydraulic fracturing shale exploration development should be granted planning permission through a permitted development right

ii) A consultation on the criteria required to trigger the inclusion of shale production projects into the Nationally Significant Infrastructure Projects regime.

#### **Permitted Development for Shale Gas Exploration consultation**

3.2 The "Permitted Development for Shale Gas Exploration" consultation seeks views on the following matters;

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

3.3 In line with the Written Ministerial Statement, any permitted development right for exploratory shale drilling would only apply to shale gas exploration, and for non-hydraulic fracturing operations to take core samples for testing purposes. The right would not apply to hydraulic fracturing; where this is proposed, planning permission would still be required.

3.4 The consultation proposes and seeks views on the definition of non hydraulic fracturing which is proposed as follows; "*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*". Projects which fall within the proposed definition would still require appropriate consents from three regulators: the Environment Agency, the Health and Safety Executive and the Oil and Gas Authority.

3.5 Views are also sought on possible Permitted Development Right exemptions, including (amongst others) areas of outstanding natural beauty, national parks, world heritage sites, conservation areas, sites of archaeological interest, sites of special scientific interest and land safeguarded for aviation or defence purposes.

3.6 Respondents are asked to suggest what conditions and restrictions might be appropriate for shale gas exploration to mitigate any potential adverse effects and impacts of the development. For example, some permitted development rights for use of land for mineral exploration include limits on the height of any structure assembled and time limits on the operation and duration of works. The consultation also seeks views on whether a prior approval should be sought from the Local Planning Authority to allow for local consideration of particular elements of the development.

- 3.7 The Government could seek to monitor the success of the permitted development right by granting it time-limited consent. This would enable a review of the impacts and outcomes and inform whether permitted development rights should be retained permanently. The consultation seeks views on whether the right should apply only for 2 years or be made permanent.

#### Policy Background:

- 3.8 The NPPF states at Para 209 that Minerals Planning Authorities should:

- a) recognise the benefits of on-shore oil and gas development, including unconventional hydrocarbons, for the security of energy supplies and supporting the transition to a low-carbon economy; and put in place policies to facilitate their exploration and extraction;
- b) when planning for on-shore oil and gas development, clearly distinguish between, and plan positively for, the three phases of development (exploration, appraisal and production), whilst ensuring appropriate monitoring and site restoration is provided for;
- c) encourage underground gas and carbon storage and associated infrastructure if local geological circumstances indicate its feasibility;
- d) indicate any areas where coal extraction and the disposal of colliery spoil may be acceptable;
- e) encourage the capture and use of methane from coal mines in active and abandoned coalfield areas; and
- f) provide for coal producers to extract separately, and if necessary stockpile, fireclay so that it remains available for use.

- 3.9 As a Unitary Authority, Bromley is a minerals planning authority. In recognition that most London authorities would largely duplicate each other on aggregates landed at wharves and rail depots, together with data on construction, demolition and excavation (CD&E) waste, the Mayor has published the 'Local Aggregate Assessment for London' (2018), for all London Boroughs.

- 3.10 There are no policies relating to fracking in the Unitary Development Plan or in the proposed Local Plan. However Policy SI11 of the Consultation Draft London Plan (Dec 2017) states that development proposals for exploration, appraisal or production of shale gas via hydraulic fracturing should be refused. The supporting text states that the Mayor does not support fracking in London and highlights the British Geological Survey report (2014) for the Department of Energy and Climate Change which concluded that "*there is no significant Jurassic shale gas potential in the Weald Basin*". Supporting Para 9.11.2 states that it is highly unlikely that there is any site that is geologically suitable for a fracking development in London. Para 9.11.3 adds that "*should any London fracking proposal come forward there is a high probability that it would be located on Green Belt or Metropolitan Open Land. Furthermore, London and the south east of England are seriously water-stressed areas. Fracking operations not only use large amounts of water but also presents risks of potential contamination, presenting significant risks to London*"

#### Proposed response to Government Consultation

- 3.11 Objections are raised regarding the introduction of permitted development rights for shale gas exploration as this would remove the need for a full planning permission taking the decision making powers from the Local Planning Authority. The impacts of the proposal on the locality would therefore not be assessed and people living near proposed fracking sites would not have the opportunity to comment.

## **Inclusion of Shale Gas Production in the Nationally Significant Infrastructure Project Regime**

- 3.12 The Planning Act 2008 created a planning process for Nationally Significant Infrastructure Projects (NSIP) in fields of development including energy, water, waste water, road and rail transport and hazardous waste disposal. For projects falling within the scope of what is defined in the Planning Act 2008 as a NSIP, this becomes the only route for obtaining planning consent. The final decision for granting development consent rests with the relevant Secretary of State depending on the type of infrastructure project.
- 3.13 Regulatory regimes that are separate but complementary to the planning permissions are already in place to ensure on-site safety, prevent water contamination, and mitigate seismic activity and air pollution. The Infrastructure Act 2015 reinforces these regulations and has introduced a range of further requirements that must be met before an operator can carry out high volume hydraulic fracturing in a responsible, sustainable and safe manner.
- 3.14 The Government is seeking views on the timings and criteria for including shale gas production projects in the Nationally Significant Infrastructure Project regime under the Planning Act 2008. Possible criteria for projects to be brought into the NSIP regime could be the number of wells, the estimated total volume of recoverable gas, and the estimated production rate. The consultation states that, while large-scale shale gas production is likely to be many years away, applications for the first production sites could be received in the coming years.
- 3.15 The consultation explains that if the Planning Act 2008 was amended to include major shale gas production projects as a Nationally Significant Infrastructure Project, then all future shale gas production projects that met defined threshold(s) would have to apply for development consent within the Nationally Significant Infrastructure Project regime. This would only apply to production phase projects, however, and not exploration or appraisal projects.
- 3.16 It also sets out the role of local communities and local authorities within the Nationally Significant Infrastructure Project regime. Members of the local community and the local authorities are able and encouraged to get involved in Nationally Significant Infrastructure Project applications from the pre-application stage through to the examination of the application.

### **Proposed response to Government Consultation**

- 3.17 Objections are raised for the following reason. If shale gas production is designated as a Nationally Significant Infrastructure Project, the decision making powers would be taken away from the Local Planning Authority as the decision making process for NSIP's lies with the Secretary of State.

## **4. POLICY IMPLICATIONS**

- 4.1 The Unitary Development Plan does not contain any policies on fracking neither does the draft Local Plan. The consultation draft London Plan does however contain a policy relating to the exploration of shale gas (see above).
- 4.2 The Department for Business, Energy and Industrial Strategy have produced guidance on Fracking "Guidance on fracking: developing shale gas in the UK" Jan 2017.

<b>Non-Applicable Sections:</b>	<b>IMPACT ON VULNERABLE ADULTS AND CHILDREN LEGAL' FINANCIAL, PERSONNEL &amp; PROCUREMENT IMPLICATIONS</b>
Background Documents: (Access via Contact Officer)	<a href="https://www.gov.uk/government/consultations/permitted-development-for-shale-gas-exploration">https://www.gov.uk/government/consultations/permitted-development-for-shale-gas-exploration</a>  <a href="https://www.gov.uk/government/consultations/inclusion-of-shale-gas-production-projects-in-the-nationally-significant-infrastructure-project-nsip-regime">https://www.gov.uk/government/consultations/inclusion-of-shale-gas-production-projects-in-the-nationally-significant-infrastructure-project-nsip-regime</a>