

Inclusion of Shale Gas production in the Nationally Significant Infrastructure Project Regime consultation

Response by Wildlife and Countryside Link

24th October 2018

Wildlife and Countryside Link (Link) brings together 49 environment and animal protection organisations to advocate for the conservation and protection of wildlife, countryside and the marine environment. Link is the biggest coalition of environmental and animal protection organisations in England. Our members practice and advocate environmentally sensitive land management, and encourage respect for and enjoyment of natural landscapes and features, the historic and marine environment and biodiversity. Taken together we have the support of over eight million people in the UK and manage over 750,000 hectares of land.

This response is supported by the following organisations:

Bat Conservation Trust
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Campaign to Protect Rural England
Friends of the Earth
RSPB
Wildfowl and Wetlands Trust
Woodland Trust
The Wildlife Trusts

Context

Below we set out our answers to the specific questions posed in this consultation. However, we feel it is important to set out our position on the principle of shale gas production and its place within the English planning system at the start of this response.

A number of recent reports have illustrated the importance of using a precautionary approach to fracking. This includes several reports from government advisory bodies indicating that fracking plays no role in a future where the UK meets its legal climate change targets,¹ and an [independent report](#) finding that we would need about 6,100 wells to produce enough gas to replace even half of future UK gas imports, resulting in an industrialisation of our countryside.² Furthermore, the recent report from the Intergovernmental Panel on Climate Change highlights the need for a rapid transition in our energy systems: a permitted development right for shale gas exploration will not support this transition.

¹ Including the [Air Quality Expert Group](#), [Committee on Climate Change](#); and [National Grid Future Energy Scenarios](#)

² Cardiff Business School, 2018. [The Implications of fracking in UK gas import substitution](#).

Our particular concern with the measures announced in the Written Ministerial Statement (WMS) of May 2018 is the intention not only to ignore this evidence, but to bypass the local planning system and the rights of local communities to have a say in whether fracking takes place or not.

We are not alone in these concerns. In July, the Housing Communities and Local Government Select Committee produced [a report](#) stating that the WMS proposals “would result in a significant loss to local decision making, exacerbating existing mistrust between local communities and the fracking industry”. They recommended that “Fracking planning applications should not be brought under the Nationally Significant Infrastructure Projects regime nor acquire permitted development rights.”

Scope of the consultation

As we also noted in our response to the Permitted development for shale gas exploration consultation, we are concerned that this consultation has not been carried out in accordance with the [Government’s consultation principles](#), in that an impact assessment has not been made (Consultation Principle C).

We note that the Next Steps state that secondary legislation would be required, alongside a further consultation and a full impact assessment. However, we fail to see why an Impact Assessment has not been carried out at this stage in the interest of openness and to allow an informed response to the consultation questions.

Question 1

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

No.

In summary, we believe this is inappropriate and unreasonable in a number of respects:

- **Impact on democratic, plan-led process:** Taken together with parallel proposals to extend permitted development rights to include non-hydraulic fracturing shale gas exploration, this runs roughshod over democratic plan-led processes and would deprive local authorities (mineral planning authorities in this case) of direct decision-making on major minerals development in their areas.
- **More robust decisions:** The minerals planning authority, which is familiar with and has an understanding of their area and local considerations, is better placed to determine applications than a remote decision maker.
- **Local communities:** Following from the previous points, it would contradict the statement in this consultation (p.6, Overview) that ‘The government recognises that the development of shale gas needs to be alongside support from local communities...’ and that ‘local communities must be fully involved in planning decisions and any shale gas application – whether decided by councils or government’. By forcing communities to accept shale production in their area whether they want it or not, these proposals run contrary to this sentiment.
- **Integrity of and confidence in the local planning system and local democracy:** removing decision-making powers from minerals planning authorities for no clear justification will harm public perceptions of planning and disempower elected representatives. Once the decision is made under NSIP, it will be the local council which is left to deal with the concerns of local communities and monitor and enforce conditions. However, councils will be without the income resulting from planning application fees to resource this.

- **Lack of fit with the NSIP planning process:** taking the defined thresholds in operation for the current infrastructural categories which fall to be considered under NSIP, the scale of fracking production development falls short, unless whole (regional) gas fields (shale gas basins) were to be considered in aggregate (which seems highly unlikely and undesirable).
- It is **unlikely that including shale gas production in the NSIP regime would hasten decision-making**, especially if applications were to be at a scale analogous to the current thresholds (were this even possible, given the likely scattered spatial nature of prospective well pad sites).
- There is no rationale why shale gas production, in comparison with other major mineral developments, should be exempted from consideration under the **Town and Country Planning Act 1990**. It would be unreasonable and potentially open to challenge by aggrieved operators in the non-energy minerals sector.

Question 2

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

Loss of direct MPA (LPA) decision-making

The Government has repeatedly stated the need for localism in respect of planning decisions. As recently as March 2018 the Prime Minister referred to putting local communities at the "heart of the planning process"ⁱ, and, also in March 2018, the former Secretary of State for Housing, Communities and Local Government, Sajid Javid, referred to local government as the "front line of our democracy"ⁱⁱ. This consultation makes clear (Overview, p.6) that 'local communities must be fully involved in planning decision and any shale planning application -whether decided by councils or government'. We agree and in our view, for this to be meaningful, this means that mineral planning authorities, where locally-elected representatives approve (or refuse) significant mineral developments (i.e. other than de minimis activity and PD), must retain all decision making responsibilities for shale gas applications in all three stages of development (exploration, appraisal and production).

Local involvement in NSIP regime applications

Although opportunities exist for local involvement (councils and communities) within the NSIP regime (both pre-application, and at pre-examination and examination stages), in our view these are limited and lack the ability to fully and forensically examine the proposal in an adversarial environment, such as is afforded by local public inquiries. Cross examination is a crucial and necessary element in the testing of evidence and it therefore lies at the core of a democratic planning system.

Furthermore, a comprehensive independent review by respected planning academics (Janice Morphet and Ben Clifford) for the National Infrastructure Planning Association has made clear that once schemes had been accepted into the NSIP system, there would be no need for the scheme promoter to establish the principle of development. In other words, the scheme would be unlikely to be rejected although it may be modified, for example to address (mitigate or moderate) environmental or other impacts. We would have very serious concerns if shale gas production – at whatever scale – become a virtual *fait accompli* given the serious local impacts such developments give rise to, which cannot be fully mitigated.

Relationship to other mineral developments under TCPA (1990)

We believe there is no case, on planning grounds, to remove shale gas development from the usual framework (under the TCPA, 1990) for local determination of mineral development, either for

energy and non-energy minerals. Others elsewhere have made a strong and cogent case for MPA retention of applications for unconventional hydrocarbons, in part to address the issue of ‘social licence’, which we strongly support and echo. The MHCLG Select Committee also concluded that moving shale gas production to the NSIP regime ‘is likely to exacerbate existing mistrust between local communities and the fracking industry’ (Eighth Report, para.82). They also noted the lack of justification or evidence for adopting a partisan approach to this particular type of minerals development (ibid.).

Lack of fit with the NSIP planning process

The Planning Inspectorate state that NSIPs are ‘projects of certain types, over a certain size, which are considered by the Government to be so big and nationally important that permission to build them needs to be given at a national level...’ (see <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2013/04/Advice-note-8.0.pdf>, para. 1.1).

Spatial extent (at surface or underground), including power lines and pipelines, and massing of development leading to visual impact over a significant area (e.g. wind farms; other electricity generation and transmission infrastructure) appear to be key criteria within the current thresholds for infrastructure projects considered by the Planning Inspectorate. Data provided by UKOOG suggests that an average shale gas production unit (1 pad containing 10 wells) will cover two hectares (2 ha). A recent independent estimate suggests 6 wells per pad and 3.5 ha of land take, including impact on immediately adjacent areas. While significant in terms of potential impact on landscape and nature, even with this higher estimate, the area of land impacted, either directly or indirectly seems to fall well short of either current thresholds, for example:

- 2-40 km of (overhead) power line or (underground) pipe-line;
- large road or rail schemes (including rail freight interchanges of 60 ha and above) with attendant land take;
- airports or airport extensions handling 10 million passengers per year or more;
- large harbours;
- large dams and reservoirs.

Similarly, amendments in 2013 allowed business and commercial development to be directed into the NSIP regime with indicative area thresholds of either 40,000m² (GIA – gross internal area), 100 ha or more or 150 ha or more for the winning and working of minerals (but not including oil or gas), either at surface or underground. Looking at precedents (ibid.) from two projects directed into NSIP under this legislation (the London Resort, Ebbsfleet; the International Advanced Manufacturing Park in Sunderland), criteria such as physical size (both exceeded 200,000m²), and significant impact on a wider than LPA area and wider economic impacts were part of the Secretary of State’s considerations. Again there seems little comparison with the scale of development envisaged for shale gas production, even according to UKOOG.

Impact on environmental protections

Paragraph 175c and footnote 58 of the revised National Planning Policy Framework (NPPF) enables the protections afforded to irreplaceable habitats to be overridden, with National Infrastructure Projects labelled as a ‘wholly exceptional circumstance’. We are concerned that the addition of shale

gas production into the NSIP regime will ride roughshod over protections afforded to these irreplaceable habitats.

As noted in our response on context, evidence also suggests that a precautionary approach to fracking is required to ensure that legal climate change targets are not placed at risk. For example, of the four future energy scenarios considered by the National Grid only the two scenarios without shale could meet the 2050 decarbonisation target. Moreover, the scale that fracking would need to operate at to have a real impact on our energy supplies would have huge impacts on our countryside.

Question 3

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

- a. The total number of individual wells per well-site (or 'pad')**
- b. The total number of well-sites within the development**
- c. The estimated volume of recoverable gas from the site(s)**
- d. The estimated production rate from the site(s), and how frequently (e.g. daily, monthly, annually or well lifetime)**
- e. Whether the well-site has/will require a connection to the local and/or national gas distribution grid**
- f. Requirement for associated equipment on-site, such as (but not limited to) water treatment facilities and micro-generation plants**
- g. Whether multiple well-sites will be linked via shared infrastructure, such as gas pipelines, water pipelines, transport links, communications, etc**
- h. A combination of the above criteria – if so please specify which**
- i. Other – if so please specify**

No comment. We consider that major shale gas production projects should not be brought into the NSIP project regime.

Question 4

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

No comment.

Question 5

At what stage should this change be introduced? (For example, as soon as possible, ahead of the first production site, or when a critical mass of shale gas exploration and appraisal sites has been reached).

If shale gas production were to be included in the NSIP regime, and we do not consider that it should be, it should only be considered once a critical mass of shale gas exploration and appraisal had been reached, and only when the level of probable and proven gas reserves have been established as being nationally significant.

Question 6

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

In order to be able to assess the full impact of including shale gas exploration in the NSIP regime, further monitoring is required. The regime would need to be able to take account of local conditions and planning constraints, including the need to de-carbonise and address/avoid any cumulative impacts of development.

For more information, please contact:

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ⁱ <https://www.gov.uk/government/speeches/pm-speech-on-making-housing-fairer-5-march>

ⁱⁱ <https://www.gov.uk/government/speeches/sajid-javids-speech-at-the-national-planning-policy-framework-conference>