

Briefing

Fast-track fracking: why “non-fracking drilling” should not be treated as permitted development

Introduction

In a Written Ministerial Statement on 17th May 2018, the Government announced sweeping changes to planning rules, to “support the development of shale gas extraction”¹.

These proposals include:

1. **Treating “non-fracking” drilling² as permitted development:** this would remove the current requirement on fracking companies to apply for planning permission when drilling or sampling a well, which is often the first step towards fracking. With 17,820km² kilometres of England covered by oil and gas licenses,³ this could lead to the wide scale industrialisation of the countryside.
2. **The inclusion of shale production projects into the Nationally Significant Infrastructure Projects Regime:** this would mean final planning permission for shale production projects would be taken away from local authorities and given to central Government. This would significantly reduce the input of local views into the decision-making process, a move opposed by a range of organisations, including the Campaign for the Protection of Rural England⁴ and the Local Government Association⁵.

Friends of the Earth is asking that the Government withdraw plans to treat non-fracking drilling as permitted development and to ensure local councils and communities retain the final say on applications submitted by fracking companies.

¹ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-05-17/HCWS690/>

² For the purposes of this briefing, when we say ‘non-fracking drilling’ we mean non-hydraulic fracturing exploration.

³ Our Green and Pleasant Gasfield? Fracking and the English Countryside, page 9
<https://cdn.friendsoftheearth.uk/sites/default/files/downloads/HMW%20REPORT%20FINAL.pdf>

⁴ <https://www.cpre.org.uk/what-we-do/energy-and-waste/fracking/update>

⁵ LGA media statement, May 2018: <https://www.local.gov.uk/about/news/lga-responds-written-ministerial-statement-shale-developments>

Housing, Communities and Local Government Select Committee report: “Planning Guidance on Fracking”, Paragraph 91, July 2018

“Shale gas development of any type should not be classed as a permitted development. Given the contentious nature of fracking, local communities should be able to have a say in whether this type of development takes place, particularly as concerns about the construction, locations and cumulative impact of drill pads are yet to be assuaged by the Government.”

Drilling by fracking companies: why this should not be treated as permitted development

1. A “misuse” of permitted development rights

Permitted development is traditionally a system designed to deal with minor building works, where the impact will be small and uncontroversial, such as putting up sheds, garden fences, extensions and phone kiosks.

“Non-fracking drilling” is neither uncontroversial nor small.

Planning practice guidance states that “exploration drilling onshore is a short-term, but intensive, activity. Typically, site construction, drilling and site clearance will take between 12 to 25 weeks.”⁶ It is classed as major development, requiring planning and permitting consent.⁷ Drilling rigs are intrusive infrastructure, the average rig being 125ft tall.⁸

We only have a limited understanding that of what “non-fracking drilling” in the UK would comprise, but an application submitted by INEOS in Rotherham, in July 2017 is a possible example. The application proposed exploratory dry core drilling and no fracking. This was a ‘major’ application that underwent screening for Environmental Impact Assessment, and although none was required the application still had to be accompanied by a plethora of reports (ecological, traffic, noise, lighting, landscape and visual, geohydrological) in an attempt to demonstrate that planning impacts can be made acceptable. The scheme also faced substantial local opposition, refusal from the planning committee and went to Public Inquiry.

Under permitted development, local authorities would have significantly less input. There would be a requirement for ‘prior approval’, a process which does not consider the principle of whether development can or should happen, but instead only considers specific and limited factors set out in regulations.

2. The views of local people would be side-lined

The local planning system is one of the main routes for the public to express their concerns (or support) for what happens in their area. Under the permitted development proposal, scope for the community to comment will be massively reduced.

⁶ Guidance on the planning for mineral extraction in plan making and the application process, paragraph 098 <https://www.gov.uk/guidance/minerals>

⁷ The Town and Country Planning (Development Management Procedure) (England) Order 2015: http://www.legislation.gov.uk/uksi/2015/595/pdfs/uksi_20150595_en.pdf

⁸ <http://www.ukoog.org.uk/community/what-it-looks-like>

Opposition to fracking has been growing over the last 7 years. According to the Government's survey, only 18% of people support shale gas extraction, and 32% oppose.⁹ The views of local people should not be side-lined for what is a controversial, unpopular and risky industry.

Local councils should have a meaningful say in whether projects go ahead, where these could result in significant local impacts such as increased traffic, fields and open spaces being converted to drilling sites. Local councils should retain the right to represent their communities needs and wishes, as concluded by both the Housing, Communities and Local Government Select Committee's recent report on fracking¹⁰ and the Local Government Association.¹¹

3. Industrialisation of the English countryside

New research¹² by Professor Calvin Jones at the Cardiff Business School, commissioned by Friends of the Earth, reveals the scale of industrialisation of the countryside that could result from a fully-fledged fracking industry.

The report concluded that, in the most likely scenario, we would need to drill the equivalent of one new well every day for 15 years to replace just half of UK gas imports for 2021-2035 with fracked shale gas. This would mean 6,100 wells scattering the English countryside, requiring around 3,500 hectares of land - equivalent to 4,900 football pitches.

If the productivity of fracking wells is at the lower end of the range of possibility, that figure rises to an eye-watering 9,600 hectares - more than 13,000 football pitches of UK land handed over to industrialisation.

Daniel Carey-Dawes, Senior Infrastructure Campaigner at the Campaign to Protect Rural England,
Media Statement, May 2018

“Simplifying the shale gas application and exploration process will have disastrous effects for the health and tranquillity of our countryside, landscapes and environment. Our countryside is the breathing space for us all - it must not become an industrial testing ground for a fracking industry that has no environmental, economic or social licence”

4. Incompatibility with tackling climate change

Permitted Development for non-fracking drilling would undermine the UK's climate change commitments by enabling wide scale exploration (leading to extraction) of oil and gas.

⁹ Energy and Climate Change Public Attitudes Tracker, Wave 25:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/702640/Wave_25_Summary_Report.pdf

¹⁰ Housing, Communities and Local Government Select Committee report, “Planning Guidance on Fracking”, Paragraph 91, July 2018 <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/767/76711.htm>

¹¹ LGA media statement, July 2018: <https://local.gov.uk/about/news/lga-responds-select-committee-report-fracking>

¹² The Implications of Fracking in UK Gas Import Substitution, Professor Calvin Jones, April 2018:

https://cdn.friendsoftheearth.uk/sites/default/files/downloads/FOE-Frack-Import-Report_0.pdf

If we are to avoid dangerous levels of global warming, the majority of proven fossil fuel reserves need to stay in the ground.¹³

In 2016, as Minister for Climate Change, Nick Hurd MP stated “Between 70-75 percent of known fossil fuels would have to be left unused in order to have a 50% chance of limiting global temperature rise to below 2°C¹⁴.

Extraction of unconventional oil and gas just adds to the stockpile of fossil fuels that we can’t burn, making it more challenging to keep the world below the internationally agreed target of no more than 1.5 degrees of global warming.

Labour Councillor Judith Blake, Local Government Association’s environment spokesperson, LGA
Media Statement, May 2018

“We oppose any proposal for shale exploration to be allowed to bypass the locally democratic planning system through permitted development or national planning inspectors. We are clear that it should be up to local communities to decide whether or not to host fracking operations in their areas.”

How and when would the changes be implemented?

The Government’s proposals will be subject to consultation, starting in “summer 2018”. It is expected the consultation will be live just before Parliament rises for summer recess.

Changes to permitted development would be implemented by statutory instrument through a negative procedure, meaning they are not required to be brought before Parliament for a debate or for a vote.

What can parliamentarians do?

1. Please write to Ministers at BEIS and CLG raising concerns.
2. Request a Parliamentary debate on the changes after recess.
3. Table questions regarding the changes before the consultation ends in October.

Contact

Caroline Jones, Campaigner, Friends of the Earth: caroline.jones@foe.co.uk

¹³ McGlade, C and Ekins, P, 2015. The geographical distribution of fossil fuels unused when limiting global warming. Nature, 517 187-190. <http://www.nature.com/nature/journal/v517/n7533/full/nature14016.html>

¹⁴ House of Commons Hansard 19th December 2016 <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-12-09/56871>