

MHCLG Committee – Planning Guidance on Fracking

March 2018

Submission of the Landscape Institute

Who we are

The Landscape Institute is the royal chartered body for the landscape profession. As a professional organisation and educational charity, we represent over 5000 landscape architects, planners, designers, managers and scientists. The Institute and its members work to protect, conserve and enhance the built and natural environment for the public benefit. We promote multi-functional and sustainable landscapes that deliver a wide range of economic, social and environment benefits.

Executive Summary

ES1. In response to the Committee's questions:

- There is an urgent need to update and expand on the current guidance as decisions are being made based on inadequate and outdated advice;
- Mineral Planning Authorities (MPAs) need a comprehensive document incorporating existing (where it remains relevant), updated and expanded government guidance, in order to prepare robust local plan policies for the sustainable development of shale gas exploration and production sites;
- the status, in planning terms, of the extant Government guidance, and the weight it can be given at planning inquiries, is lower than it needs to be; MPAs need national guidance that is specific to fracking as the potential social, visual and environmental impacts differ from those generated by conventional types of mineral extraction;
- the Landscape Institute does not agree that applications for fracking should be dealt with as national infrastructure under the 2008 Planning Act; communities affected by individual fracking proposals need the decision-making process to be locally accountable, approachable and responsive to their local concerns;

ES2. The Landscape Institute believes that local communities and the natural environment should not be disadvantaged, put at risk or be subject to unnecessary disruption associated with the exploration and extraction of shale gas.

ES3. The Landscape Institute is in the process of producing Best Practice guidelines for consultants who are engaged by energy companies to

prepare planning applications, and also for professionals employed by local authorities who are expected to assess the submitted applications. This guidance will focus on the potential landscape and visual impacts of shale gas exploration. We would be happy to share this with the Committee when it is finalized.

Q1. Is there the need to update and improve the guidance available?

1.1 There is an urgent need to update and expand on the current guidance as decisions are being made based, in our view, on inadequate and outdated advice.

1.2 MHCLG's Mineral Planning Guidance (MPG) as it is currently drafted is overly vague and unhelpful with regards to shale gas extraction (ref: 27-104-20140306). It was revised most recently in 2014, and is in some parts out-of-date.

1.3 However, national Minerals Planning Guidance (MPG) provides very little useful guidance and an assumption is made that the shale gas industry will select suitable sites for exploration, rather than the local authorities. Bearing in mind that some flexibility is possible insofar as the technology is available to drill horizontally into gas-bearing strata from a considerable distance away, this approach neglects to take account of the potential social, visual and environmental impacts at the surface of operational development.

1.4 In the absence of any clear government guidance, MPAs have been expected to write their own local policies. As a result, many of the shale gas extraction policies published in the past by MPAs have tended to be generic and insufficiently specific to safeguard all the local interests of acknowledged importance, given the scale of operations envisaged by some drilling companies. More recently, as Mineral and Waste plans are reviewed and updated, and as MPA's gain experience and share knowledge about the fracking process, local hydrocarbon policies are becoming more attuned to the needs of the industry, the local economy, communities and the environment (see for instance: *Draft North Yorkshire Mineral and Waste Joint Plan 2017*)

1.5 Local authorities, fracking companies and regulators all need certainty in order to make major planning and investment decisions. Locally derived policies need to reflect local circumstances, but also need to be consistent with national policy guidance. National guidance needs to be updated and expanded in light of recent technological developments and a growing understanding of the potential impacts of fracking.

1.6 MPAs & Local Planning Authorities (LPAs) should therefore continue to be encouraged, and guided by government, to produce detailed gas/oil Exploration and Extraction Planning Documents for all the areas where shale gas extraction is potentially viable. These plans should cover a period of at least 10-20 years, subject to 5 yearly review, so that they can

properly regulate the long-term sequence of exploration and extraction sites and respond positively to the growth of this fledgling industry.

Q2. Is there the need for a comprehensive document incorporating existing and updated guidance?

2.1 We believe Mineral Planning Authorities (MPAs) need a comprehensive document incorporating existing, updated and expanded government guidance.

2.2 Fracking is a relatively new form of mineral extraction; in the absence of any practical examples of exploration and production in the UK, the NPPG/MPG guidance, written in 2014, is partial, lacking in detail and generally vague. It is currently incumbent on mineral planning authorities to write local plan hydrocarbon policies that are:

- consistent with the relevant items of national guidance that are scattered throughout various publications robust so that they can withstand scrutiny on appeal and at Judicial Review;
- enforceable and capable of revision as technology changes over the plan period.
- applicable and effective locally.

2.3 The fracking industry is relatively new to the UK and we have a relatively narrow 'window of opportunity' in which to regulate the initial stages of fracking development so as to prevent the occurrence and extent of the type of devastation caused to areas of the US and Canada.

2.3 Very little is known about the potential long-term impacts of fracking on communities; for example relating to noise and vibration, air and groundwater pollution, etc. Research to identify and fully understand the real social and environmental impacts of fracking will be costly. Importantly, funding will need to be found in advance of any income generated by planning application fees, although any such costs will be more than offset by planning application fees and the substantial tax revenues that will be generated when shale gas production is underway. In our view it is unrealistic to expect 'cash-strapped' local authorities to undertake the necessary research and detailed analysis that, for other forms of development such as housing, is produced as a matter of course by government.

2.4 A composite document, produced by or on behalf of government, should enlarge on, and plug the gaps in, current guidance available to local authorities in NPPF and NPPG. For example, in line with the NPPF 'presumption in favour of sustainable development', the selection process for new drilling sites must always be 'environment-led'. Great sensitivity to local concerns is needed, both in policy-writing and in the processing of planning applications, to ensure that the intrinsic character of the countryside, and of the communities it contains, is not significantly damaged by fracking operations.

2.5 Robust evidence-based local plan policies should be informed by:

- exploration data, which will indicate the location and volume of the viable reserves within the PEDL areas;
- baseline monitoring, undertaken by the Environment Agency and other regulatory bodies, which will indicate geological faults and any other constraints;
- landscape character assessment, including landscape sensitivity and capacity studies, which should be commissioned by the MPA in parallel with the above in order to identify areas capable of accommodating drilling sites without detriment, including an indication of the appropriate density of sites within any PEDL area. This best-practice methodology can be used to prevent adverse cumulative impacts and 'industrialisation' of the landscape, which is of great concern to local communities. (Similar studies by LPAs have produced effective local guidance for the siting of wind turbines for instance).

2.6 Criteria to be used for assessing potential drilling sites should be developed with an understanding of valued landscape attributes that contribute to distinctiveness and sense of place, and those measures needed for development to make a positive contribution to its locality. Most PEDL areas are rural, principally agricultural, containing small settlements and scattered properties. Different areas vary in their capacity to absorb development; some may be able to accept a higher density of drilling installations than other more visible or environmentally sensitive parts of the countryside.

2.7 National guidance must ensure that adequate time is allowed for full consultation with local stakeholders and the public before decisions about fracking proposals are made. In order to elicit meaningful public consultation responses on this highly emotive topic, local authorities, with the support of government, need to provide verified factual information about the potential impacts of fracking operations.

2.8 For example, there are concerns that adverse impacts may include primary emissions of nitrogen oxides (NO_x), volatile organic compounds (VOCs) and dust, and secondary pollutants such as ozone and methane. Likewise serious concerns are being expressed about air borne silica particulate emissions, resulting from the use of fine sand pumped into fracking wells at high pressure, and potential well leakage of benzenes and heavy metals. Local communities have a right to be fully protected from avoidable health risks, and to be meaningfully reassured about these concerns prior to commencement.

2.9 Current guidance fails to explain the relevance and importance of landscape character assessment as a recognised means of identifying locations which offer the greatest (or least) scope to accommodate drilling sites. It is important to identify 'restricted' areas, for example, land bordering the boundaries of, inter-visible with, and therefore harmful to, the setting of National Parks and AONBs, protected heritage assets and sites with biodiversity value, land close to settlements, or where access and traffic would have an adverse impact on communities.

2.10 Other issues where government guidance could usefully be collated into a single source of advice include:

- Local economy: where exploration licences cover productive farmland which must be safeguarded as 'best and most versatile land' (NPPF paragraph 112); potential drill sites in areas important for tourism & cultural heritage. It would be counterproductive to allow the depletion of these assets with a consequent and adverse effect on business and local employment within the agricultural and tourism industries;
- Energy market: hydrocarbon price fluctuations are frequent, and the costs of extraction are high, which could result in companies either ceasing operation, not restoring sites or failing to meet other obligations. Planning authorities can require mineral extraction applicants to agree to be bound by a financial bond to cover the cost of site restoration and decontamination, should they become insolvent. Many companies take out insurance to cover this risk. Government should require that similar safeguards will always be required for shale gas extraction involving fracking.
- Water supply: well heads should be located so that the huge volume of water required for each fracked well (circa 6 million gallons per well) can be piped from trunk mains or abstracted from boreholes or rivers, in order to minimise HGV road tanker movements. Flexibility from extractors and coordination with water suppliers will be essential, which may mean that the cheapest option is not always acceptable.
- Waste water: national guidance should require a strategic plan to be approved for dealing with the enormous volumes of contaminated water produced per well (circa 3million gallons per well, potentially 30 million gals per drilling site). It appears that the capacity for treating fracking waste water may be very limited, relative to the amounts likely to be produced (this has been discussed in relation to the Lancashire fracking enquiry). The traffic management plan that forms part of the planning application for each fracking operation needs to set out all possible routes to each licenced wastewater treatment site.
- Enforcement: mitigation of harm will need to be effective and stringently enforced, which will inevitably add delays and additional costs into the process. Such delays and additional costs need to be built into the developer's financial projections. Potential 'abnormal' costs could affect the viability of some sensitive sites, which is why developers need the certainty of clear government guidance in order to make investment decisions with a greater understanding of the likely costs. Some potential drilling sites may have to be completely ruled out where environmental and social constraints outweigh the economic benefits from shale gas exploration.

- Traffic and Highways: many rural roads are already subject to excessive deterioration; in part this is due to industrialised farming techniques which necessitate heavy and wide vehicles. Many country lanes are well used by recreational cyclists, horse riders, and walkers so there is widespread concern about additional heavy traffic associated with shale gas extraction which would change their character. HGV access should be restricted to the A&B road network and traffic impact assessments should be required to include an assessment of the impact upon the character of any rural roads affected. In line with the NPPF requirement to maintain and promote healthy communities (paragraphs 69-78 and 109), no towns, villages or hamlets should be harmed by increased traffic, and particular care is needed where urban Conservation Areas would be affected.
- Community benefits: the provision of landscape mitigation and urban enhancement projects will be particularly important in locations with designated and locally valued landscape, wildlife or heritage assets, for example local nature reserves, woodlands and conservation areas. Similarly, scope for enhancement exists in areas with previously depleted reserves, where the shale gas extraction industry is responsible for the restoration of abandoned sites and should be required to undertake appropriate improvements to the visual and biodiversity value of the local landscape.

Q3. What is the status – in planning terms – of the extant Government guidance?

3.1 The status, in planning terms, of the extant Government guidance, and the weight it can be given at planning inquiries, is lower than it needs to be.

3.2 In planning decisions, the greatest weight is given to development plan policies which, in the case of fracking, will be policies in an adopted local minerals and waste plan. The adoption of *'clear [policy] guidance and criteria for the location and assessment of hydrocarbon extraction within the Petroleum Licence areas'* in minerals and waste plans enables MPAs to set standards and criteria that will enable them to determine planning applications in their own area. Such policies may be adopted as an addendum to existing Mineral and Waste Plans, or be incorporated into updated plans as and when they are reviewed, alternatively they could take the form of Supplementary Planning Documents.

3.3 However, where the development plan is absent, silent or the relevant policies are out of date, an application should be determined in accordance with NPPF principles unless otherwise specified. The NPPF provides generic guidance about setting out local plan policies and determining planning applications for minerals extraction. Section 13 *'Facilitating the sustainable use of minerals'* refers principally to aggregates and industrial minerals and says very little about how to judge

whether the exploration and production of unconventional hydrocarbons constitutes sustainable development (para 147).

3.4 For planning authorities to secure the highest safety and environmental safeguards, MHCLG needs to provide national policy guidance of sufficient status, contained within NPPF and/or in NPPG, to over-ride all previous informal guidelines and advice. National guidance relating to fracking needs to be more detailed and more comprehensive so MPA's can be sure that their policies are consistent both with government guidance and with other policies adopted for different PEDL areas.

Q4. Should applications for fracking be dealt with as national infrastructure under the 2008 Planning Act rather than at local level?

4.1 We do not agree that applications for fracking should be dealt with as national infrastructure under the 2008 Planning Act

4.2 The development consent regime for nationally significant infrastructure projects or major infrastructure projects consists of a well-regulated process of written representations, hearings and site visits by a Planning Inspector or an examining panel. However, an individual application for a single exploratory drill site cannot be described as 'major infrastructure' and these costly and time-consuming procedures will surely feel unduly intimidating to local residents.

4.3 If decisions are to be made locally, this will enable extraction companies applying for consent to drill to enter into productive "pre-app" discussions with local planning officers, and thereby be fully made aware of acceptable parameters for development and extant criteria in local plan policies. This is also more likely to reassure local communities and businesses that decision-makers will be locally accountable.

4.4 For example, constraints may need to be applied to the siting and density of extraction sites to ensure that adequate 'buffer zones' will safeguard settlements and individual properties from disturbance. In our view, only local planning authorities have sufficient information to accurately assess cumulative impact at the local scale.

4.5 Regulators (e.g. the Environment Agency, MPAs, H&SE) need to work closely together to scrutinise individual fracking proposals; it would be helpful if there could be a 'one stop shop' reference point for local people who have concerns and queries. This process would be harder to manage if local MPA decision-makers were to be replaced by a central government Infrastructure Examining panel.

4.6 To be credible and sustainable, fracking decisions must reflect the wishes of the local communities and all interested parties. The 16-week determination period means that there is always a risk of decisions being made on the basis of inadequate information from applicants. However, if

MPAs fail to determine an application within the statutory time limit it can be 'called in' and determined by the Planning Inspectorate.

4.7 The only part of the major infrastructure development consent regime that seems to offer advantages over a 'standard' planning decision-making process is the potential for a local authority to submit a 'local impact' report. PINS guidance explains that this will provide details of the likely impacts of the proposed development on any part of the local authority's area, and their relative importance, based on the local authority's existing body of local knowledge and robust evidence of local issues. The report is intended to allow local authorities to represent the broader views of their community. It may cover a broad range of local interests and impacts, including economic and social ones, presented in terms of their positive, neutral and negative effects.