

Planning for shale gas and oil development - Experience from Lancashire, North Yorkshire, Nottinghamshire and West Sussex

In 2015 the Government issued Petroleum Exploration and Development Licences for onshore oil and gas development. Licence holders will need to apply for planning permission in order to undertake such development. As a result Mineral Planning Authorities with licences in their area are likely to receive planning applications for the exploration, testing and production of shale gas and oil in the next few years. Lancashire, North Yorkshire, Nottinghamshire and West Sussex County Councils have already dealt with such planning applications. Their work has been captured in this case study, highlighting both the challenges that lie ahead and areas of good practice. The experience of the four authorities provides valuable advice to help other councils to process and determine applications, including engaging with developers, local communities and the other regulators.

Twelve 'top tips' can be recommended as good practice. These are summarised below and explained in more detail in the final section of this report.

- Establish an early dialogue with companies that have Petroleum Exploration and Development Licences in your area.
- Encourage the company to engage in early engagement with local communities and the other regulators and to have full pre-application discussions with the MPA before submitting any planning application.
- Apply for shale gas exploration funding from DCLG if it is available.
- Consider entering into a Planning Performance Agreement.
- Ensure that all interested parties are kept informed of the proposed development and the decision making process.
- Put relevant information on shale gas and oil policy, information and applications on the web site.
- Ensure that members receive training in planning for shale gas and oil developments and keep members informed at key stages in the planning process.
- Ensure that your administrative systems, processes and staffing levels are fit for purpose to deal with the very large numbers of representations that can be generated by shale gas and oil applications.
- Establish a 'development team' of relevant technical officers
- Encourage the company to 'twin-track' the environmental permitting applications with the planning application.
- Ensure that there are robust procedures in place for such matters as dealing with FoI requests, how representations will be dealt with and public speaking at Committee.
- Establish a Community Liaison Group to provide an effective link between the MPA, other regulators, the operator and the local community.

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Planning for Shale Gas and Oil

The exploration of shale gas and oil, and hydraulic fracturing – or ‘fracking’ as it has become commonly known – is a contentious issue for local authorities and communities across the country. Shale gas and oil exploration, appraisal and development are relatively new to the UK but they have the potential to be a major source of economic growth in the coming years.

The Government considers that shale gas and oil development should be part of the future energy mix, subject to environmental assessment and controls. Relatively little exploration and appraisal activity to assess the nature of the resource and its commercial viability has been undertaken in the UK. Government statements are clear in their support for exploration to take place in a safe and sustainable manner.

Shale gas and oil developments are the subject of consents and controls by a number of regulatory bodies. The Government believes that the existing regulatory systems are fit for purpose whilst acknowledging that experience will enable more robust controls to be developed if necessary.

Mineral Planning Authorities are advised to plan positively for shale gas and oil proposals, whilst taking into account constraints to development. Local authorities alongside other bodies will need to be equipped to handle unprecedented levels of interest in ‘fracking’ by both local communities and anti-fracking groups nationally and even internationally.

Gas and oil has been extracted from reservoirs of porous limestone and sandstone by conventional means in the UK for over 100 years.

Such extraction continues today, contributing to energy supply. Some of these wells were hydraulically fractured, before 'fracking' became contentious. Planning permission for such developments has been granted and sites have operated largely without controversy.

Recent developments in drilling and well development technology have made it possible to extract gas and oil from less porous shale deposits that are typically two to four kilometres below the ground surface by hydraulic fracturing.

The British Geological Survey has estimated that there may be more than 50 years supply of shale gas in north and central England as well as significant resources of shale oil in the Weald Basin in southern England. However, the recoverable reserve will only become known through exploration activity.

Following seismic activity experienced at the Preese Hall Farm site in Lancashire in 2011, proposals for hydraulic fracturing have generated high levels of opposition from local communities and anti-fracking groups. This has created new challenges for Mineral Planning Authorities.

The Case Studies

In this guide, the experience of four Mineral Planning Authorities in dealing with planning applications for shale developments is showcased to assist other Councils plan for handling shale gas and oil proposals in their area.

Lancashire County Council

During 2009/10 Lancashire County Council granted planning permission to a number of planning applications for hydrocarbon development including hydraulic fracturing. These applications

generated little public interest in a County that has a long history of conventional hydrocarbon development. One of these sites, operated by Cuadrilla Resources, was Preese Hall Farm that experienced seismic activity in 2011. This led initially to a national moratorium on hydraulic fracturing and subsequently to the introduction of the 'traffic lights system' for responding to any seismic activity. It also increased public awareness and attention given to shale developments.

In 2014 Cuadrilla applied for planning permission to develop two new sites to explore for shale gas by drilling, hydraulically fracturing and testing the flow of gas at Preston New Road and Roseacre Wood in the west of the County. Planning applications for monitoring associated with each site were also submitted.

In June 2015 the Council refused planning permission for both exploration sites and for monitoring at Preston New Road. The monitoring site at Roseacre Wood was approved. In September 2015 Cuadrilla lodged four appeals in total, three against the refusal decisions and one against a planning condition imposed on the permission for the monitoring array at Roseacre Wood.

The four appeals were heard at a conjoined public inquiry by an inspector in early 2016. The Secretary of State for Communities and Local Government allowed three of the appeals, for the Preston New Road proposals and both monitoring proposals for Preston New Road and Roseacre Wood, in October 2016. He also minded to allow the appeal for shale exploration at Roseacre Wood, subject to highway safety issues being satisfactorily addressed. At the time of writing this report, the Secretary of State's decisions are subject to legal challenges.

Cuadrilla also has received planning permission on appeal for seismic and pressure monitoring at the Grange Hill exploration Site. The

Preese Hall Farm site that experienced seismic activity has now been restored.

The Beconsall site (drilled but not fracked) has a time extension to restore the site by 2018.

North Yorkshire County Council

Resources of gas have been exploited in North Yorkshire over a substantial period of time but to date there has been no history of shale gas production.

A site at Kirby Misperton in the Vale of Pickering has produced gas since the 1990s. In July 2015 the Council received a planning application from Third Energy for hydraulic fracturing, testing and gas production at this site. The Council granted planning permission for this development in May 2016. This decision was subsequently the subject of a legal challenge by Judicial Review but the High Court dismissed this challenge in their judgement in December 2016.

Nottinghamshire County Council

Oil has been extracted in Nottinghamshire since the 1940s and shale oil and gas resources are known to exist.

Two planning applications have been submitted to drill exploratory wells for hydrocarbons. The first, submitted in 2015, is at land off Springs Road, Misson. The Council resolved to grant this planning permission in November 2016, subject to the signing of a legal agreement. The second, submitted in 2016, is a site off Tinker Lane, near Retford and the Council resolved to grant planning permission in March 2017. The legal agreements have now been signed and planning permission has been issued in respect of each site.

West Sussex County Council

Natural gas was found in the Weald Basin in 1897 and provided fuel for the first natural gas lighting in the UK. More recently gas and oil have been commercially exploited in the area, including at several sites in West Sussex.

In 2010 Cuadrilla Resources were granted planning permission to drill an exploratory borehole for oil and gas exploration at Lower Stumble, south of Balcombe. The planning permission included provision to use hydraulic fracturing. This led to considerable opposition and protest by local communities and anti-fracking groups nationally. A subsequent application in 2014 for exploration and appraisal by flow testing at the Balcombe site was also granted planning permission, but has not been implemented

In 2013 planning permission was refused for the exploration, testing and evaluation of hydrocarbons on land near Wisborough Green. An appeal was submitted but subsequently was withdrawn. Also in 2013 planning permission was granted for a similar development near Billingshurst. Neither of these applications included fracking.

Resource Requirements

All four Mineral Planning Authorities highlighted largely unforeseen and often unprecedented resource issues in dealing with shale gas and oil planning applications. The resource issues differed between the authorities but can be considered under seven categories – planning staff, administrative staff and technology, other Council services, timescales, specialist advice, security and finance.

Planning Staff

One Mineral Planning Authority estimated that 304 person days of

planning staff time was spent on an application. A second authority estimated that two applications involved 125 and 150 days respectively of planning staff time, whilst two applications to vary a condition on existing permissions each involved an estimated 50 days of planning staff time. A third authority estimated that the applications and appeals for two applications required an input of 700 person days of planning staff time.

The normal arrangement in development management is that a planning case officer is assigned to deal with the planning application and this was the case for the shale applications dealt with by the four Mineral Planning Authorities. The case officer was typically an experienced planning officer, in some cases the head of service because of the high profile of the application. In some cases more junior officers assisted with the more routine aspects. Dealing with the application was sometimes a full-time commitment. One authority had used some of the DCLG capability and capacity support funding made available to authorities during 2015/16 to pay for a temporary post whilst the Principal Planner was working on the application.

The overall message therefore is that the amount of planning staff time to deal with shale applications and appeals is considerable. Several reasons were given for this.

The numbers of representations received (see below) were unprecedented. Representations need to be read and taken into account as well as processed. The representations included academic and detailed submissions that required careful scrutiny. Source material had to be examined to check on the accuracy of the submissions.

The level and nature of public scrutiny was also unprecedented. Scrutiny came not just from local communities but also from anti-fracking groups nationwide and internationally. The prospect of the

decision being challenged meant that even greater care than normal had to be taken to ensure that the process was robust and in line with the legal requirements.

All four Mineral Planning Authorities reported significant numbers of Freedom of Information requests, pre-action protocols, Environmental Information requests and requests for information about the application from interested parties including councillors and the media. Dealing with these was generally straightforward as the authorities had robust procedures in place but nevertheless this was a time consuming process.

Some of the planning issues were fairly straightforward and within the general remit for mineral planning officers but others were more complex. One Mineral Planning Authority referred to paragraph 112 of Planning Practice Guidance that states:

‘There exist a number of issues which are covered by other regulatory regimes and mineral planning authorities should assume that these regimes will operate effectively. Whilst these issues may be put before mineral planning authorities, they should not need to carry out their own assessment as they can rely on the assessment of other regulatory bodies. However, before granting planning permission they will need to be satisfied that these issues can or will be adequately addressed by taking the advice from the relevant regulatory body.’

It felt that whilst this guidance is clear, as the main interface with the public and the ultimate decision maker of the planning application, the Mineral Planning Authority can feel pressure to be knowledgeable on issues that are outwith its remit. Whilst what can be considered by the Mineral Planning authority and/or the other regulators can be an issue

from a public perspective, Planning Practice Guidance makes clear the demarcation of their respective roles and responsibilities. It also makes clear that the planning decision maker should be able to rely upon, and not duplicate, consideration of issues within the remit of the other regulators in exercising their decision making functions.

Administrative Staff and Technology

The shale planning applications submitted to all the case study Mineral Planning Authorities resulted in very large numbers of representations, mainly objections. One authority reported that it had dealt with two applications simultaneously that between them generated over 35,000 representations. A second MPA received representations from 3,950 different people with some of these people submitting multiple representations at different stages of the application process. The other two authorities also recorded representations in the thousands for its shale gas and oil applications. Processing these representations posed significant challenges in terms of both staff and technology.

One Mineral Planning Authority brought in additional administrative staff from other parts of the Council to deal with the high volumes of representations. It also needed to upgrade its planning application database to ensure that all representations could be logged onto the database, as the previous system could only manage up to 999 responses per application.

A learning point that one Mineral Planning Authority considered would be useful to other authorities was: *'making everything as clear as possible from the start by making available as much information as possible online to facilitate self-help and ensure the information is accessed by all interested parties at their convenience, thereby avoiding customer disappointment'*.

Other Council Services

As well as seeking advice from specialist areas within the Council, most Mineral Planning Authorities also made special briefing arrangements involving a range of Council and other services. One authority set up a special 'oil/gas team' involving fire/resilience, planning, media/communications, the police and sometimes the Parish Council that met weekly to have briefings. Other services such as highways, legal and democratic services were included as the need arose.

A second authority considered setting up a 'development team' of technical officers but, given the particular circumstances of the case, decided that this was not warranted. However, it acknowledged that a 'development team' approach is likely to be necessary and best practice for future shale gas applications.

Timescales

The staffing requirements relate to the time that the planning process for dealing with shale gas and oil applications takes.

Amber Rudd and Greg Clark's joint Ministerial Statement of 16 September 2015 set out a number of expectations of the planning system, including the timescale for determination. *'There is a clear expectation that local planning authorities should ensure that decisions on planning applications are made within statutory timeframes: 16 weeks where an application is subject to Environmental Impact Assessment. This should be supported by an upfront timeline agreed with the applicant including the anticipated decision date.'*

Only one of the Mineral Planning Authorities in this case study had been able to meet this timescale for two applications one of which was refused planning permission whilst the second was an application to retain an existing well site. The authority considered that keeping to

land-use planning considerations was important in speeding up the determination process. Two other applications had each been determined in around 24 weeks.

The determination period for applications in the three other authorities varied between 40 and 60 weeks, with the extensions of time for determination being agreed with the various companies.

There were various reasons for these long timeframes including the absence of pre-application discussions, the high public interest and numbers of representations, the high level of external scrutiny and the complexity of some of the issues. All the authorities considered that it was better to handle the application robustly even if it meant that there were requests for extensions of time, rather than taking to risks by not offering an appropriate amount of consultation time or fully considering all the technical and environmental issues.

Mineral Planning Authorities considered that applicants also shared this view.

Specialist Advice

All four Mineral Planning Authorities sought a range of specialist advice on the issues raised by the planning applications. This included advice from within the Council related to such matters as landscape, ecology, archaeology and highways. As they are all two-tier areas, advice was also sought from District Council environmental health officers.

One Mineral Planning Authority commissioned expert acoustic advice and two authorities commissioned specialist external advice on geology and seismicity.

All four Mineral Planning Authorities sought advice from the other regulators – the Environment Agency, the Health and Safety Executive

and the Oil and Gas Authority (or the former Department of Energy and Climate Change for applications dealt with before the Oil and Gas Authority was established). There is a separate section later in this report dealing with the other regulators.

Statutory and non-statutory consultees, such as Natural England and Public Health England, also provided advice through their consultation responses.

Other than seismology, the range of specialist advice sought therefore was not markedly different from planning applications for other types of mineral development. However, the level of detail required was often greater.

Security

All four Mineral Planning Authorities reported that they made special security arrangements at various stages of the planning process. This was of a type and scale unprecedented in their dealing with planning applications for other types of development. The committee meeting at which the application was determined was a particular focus for protest groups and demonstrations. At some such meetings both police and private security personnel were in attendance to provide the required assistance in maintaining barriers, dealing with demonstrators and controlling access.

One Mineral Planning Authority had significant problems with encampments by anti-fracking demonstrators in the vicinity of a proposed site in 2013. The planning application had been granted permission three years earlier without any objections being received but the development had not commenced. Highway land near Preese Hall Farm became a magnet for protest groups representing local communities and from wider afield. The increased awareness of fracking led to significant levels of protest by local communities on

some subsequent planning applications.

Finance

The amount spent by Mineral Planning Authorities to deal with the applications greatly exceeded the planning application fee. The fee for an application, dealt with by one authority before special Government funding became available was £3,080 and the estimated costs of dealing with it were over £100,000 for planning staff, security, expert advice and legal costs.

The Government ‘recognises shale represents a new area for mineral planning authorities and that it will present complex and challenging issues for them in processing shale planning applications’. (DCLG. *Shale exploration– support for mineral planning authorities. Invitation to bid. December 2016*). A funding programme of £1,200,000 in 2015/16 and a further £800,000 in 2016/17 was made available to help authorities improve their capacity and capability to deal with shale planning applications.

Three of the Mineral Planning Authorities in this case study successfully applied for funding from the 2015/16 programme. All three authorities stated that the funding helped to offset their costs in dealing with planning applications and welcomed the decision by DCLG to continue with the programme in 2016/17.

Conclusions

As will be clear from the above analysis, the information obtained from the MPAs on the various resource requirements of dealing with a planning application or appeal is incomplete; in some cases the information is not available whilst in others it is confidential.

The following table summarises the information that was provided. Averages are not meaningful so the information is set out in ranges.

Resource	Range
Person days to deal with an application	150 – 304
Planning staff costs to deal with an application	£50k - £70k
Other costs to deal with an application	£45k*
Weeks to determine an application	24 – 60
Number of representations received	892 – 16k
Appeal costs	£330k**

* Only one MPA was able to estimate ‘other costs’ that included security, webcast, consultancy advice and legal.

** Only one MPA had dealt with appeals. The costs were for a conjoined public inquiry for four appeals

Working with Other Regulators

Shale developments are subject to a range of consents and regulatory controls exercised by various bodies. As well as Mineral Planning Authorities, these include the Environment Agency, the Oil and Gas Authority, the Health and Safety Executive and, if drilling encroaches on coal seams, the Coal Authority. Public Health England also performs an important advisory role, as does the District Council’s Environmental Health Officer in areas of two-tier local government.

The four Mineral Planning Authorities generally reported that they had had good working relationships with the other regulators and advisors in dealing with planning applications for shale developments. This

particularly applied to the Environment Agency with some authorities reporting that there was regular contact involving planning officers, environmental health officers and the Environment Agency to share information during the planning application process.

The Environment Agency's environmental permitting regulations cover the protection of water resources, the treatment and disposal of mining waste, the treatment and management of any normally occurring radioactive materials and some elements of air quality such as the disposal of waste gases through flaring. One Mineral Planning Authority reported: *'The Company twin-tracked the environmental permits and they were all issued before the planning decision was made. This helped the decision making process'*.

The regulators also participated in officer and member training events, including events facilitated by the Planning Advisory Service (PAS) and the Advisory Team for Large Applications (ATLAS). One Mineral Planning Authority reported that the regulators had attended and made presentations at an event it had organised on an application for District and Parish Councils. This had been helpful in making the Councils aware of the regulators' responsibilities and in demonstrating that the regulators would carry out their activities diligently.

One Mineral Planning Authority commented that the engagement with the other regulators on shale applications was no different than happens in respect of other minerals and waste planning applications. It engaged with the regulators at pre-application stage, for formal consultation on the planning application and maintained an active dialogue thereafter when it was required.

Working with the Industry

Two Mineral Planning Authorities reported that there had been comparatively little meaningful pre-application discussions with the

companies before they submitted their planning applications. It was considered that this lack of pre-application engagement contributed in one case to two submissions having to be withdrawn because the validation errors were so extensive, resulting in a delay of over two months between the date of the first submission and the date of validation of the third submission.

One Mineral Planning Authority said that for future shale applications it might seek to enter into a Planning Performance Agreement with the applicants. This agreement is essentially a project management tool, agreed between the authority and the applicant, to assist the authority in handling the proposal from pre-application to post-determination.

The Planning Advisory Service has prepared a model Planning Performance Agreement for shale applications. This states: *'The guiding principle of this PPA is one of cooperation and consistency throughout the negotiation and discussion relating to the planning process, to provide a degree of certainty for the intended outcomes and to improve the quality of the project and of the planning process'*.

The user guide for the agreement identifies a number of benefits associated with its use. It stresses: *'This agreement does not give a guarantee of planning permission. It relates to the process of considering development proposals and not the decision itself'*.

One Mineral Planning Authority stated that it did not consider a Planning Performance Agreement because it wanted to make sure it was seen as being impartial and independent from the applicant. In two cases authorities stated that in the absence of pre-application discussions, there was no time to consider a Planning Performance Agreement. With such large numbers of representations it was thought that it might be difficult to identify a deliverable timetable for dealing with the application. However, the authorities did not rule out considering

the use of such agreements for future planning applications.

One Mineral Planning Authority indicated that looking forward there is a need to improve the understanding by the industry in the planning process. This included such aspects as engaging in early and meaningful pre-application discussions and being open and transparent in engaging with local communities (see also section on public engagement below).

Public Engagement

Public engagement on planning applications is a key responsibility of the Mineral Planning Authority. It will make applications and supporting documents, including the Environmental Statement, available to local people and will ask for their comments. The comments received are then taken into account in the planning decision.

One Mineral Planning Authority stressed the importance of being well prepared for public engagement. *'A communication strategy was developed once the Council was aware that a planning application would be submitted. The communication team took the lead on developing the strategy. Meetings were held with other stakeholders to understand how different situations would be handled. This included demonstrations and encampments which included liaising with the police'*.

As highlighted earlier in this report, the public interest and numbers of representations received on the shale applications were unprecedented and caused various problems for the Mineral Planning Authorities. One authority set up a dedicated e-mail address specifically for representations on the application, separate to the generic e-mail address for development management. A 'promo' web page was also

prepared for news and updates on the application and the decision making process.

One Mineral Planning Authority has a section of its web site dedicated to shale gas development. The section provides an overview of the planning process and information about shale gas exploration. The information is relevant for any shale gas application in the County.

A second authority preferred to put such information on the planning applications register webpage on its website as it was 'current' unlike other parts of the Council's website, where it took longer to post information. For applications with significant public interest it also put out 'frequently asked questions' information.

The benefits of good public engagement were apparent in one area with the authority reporting that: *'Although local communities were disappointed at the decision, they were pleased with the way they had been engaged and kept informed as well as being able to participate'*.

One authority highlighted having the capacity to deal with communications on the planning application as its main learning point. When asked what it would do differently for any future shale applications, it responded as follows: *'Ensure and, importantly, sustain a complement of staff to assist in the practical day-to-day administration of the array of communications from all interested parties, including consultees, members of the public, campaign/action groups (both local and national), queries from all levels of government, including parish councils, district/borough councils and other mineral planning authorities, their members and officers, as well as dealing with agents representing the applicant and the applicant direct too'*.

Whilst the Mineral Planning Authority has the statutory responsibility to carry out public engagement, to carry out public engagement, it is

also important that the industry plays its part. The advice to the industry from one authority was to: *'provide responses to queries from the public (no matter how wacky the queries), do pre-application public engagement preferably at drop-in events rather than public meetings where the loudest can dominate and send people who know about the application, the site and the process, not necessarily the Chief Executive Officer'*.

Two applicants had set up Community Liaison Groups during the planning process. Local residents and representatives of local action groups and Parish Councils attended meetings of these groups. In one case meetings were also attended by the local member and sometimes by planning officers. This authority generally thought these meetings were helpful in communicating information and reducing misinformation and recommended that they should be set up at an early stage in the process.

Community Liaison Groups can also be helpful in dealing with post-decision issues (see later section in this report).

Some of the other regulators are also required to carry out public engagement for some of their roles. United Kingdom Onshore Oil and Gas, a body that represents the industry, promotes better and more open dialogue between oil and gas companies and other stakeholders including the public.

Political Engagement

All four Mineral Planning Authorities highlighted the importance of member training on shale gas and oil developments. One authority held an event shortly before the application was submitted, facilitated by the Advisory Team for Large Applications, at which each of the regulators delivered presentations on their respective roles and responsibilities. In other cases similar training events were held during

the planning process.

The Planning Advisory Service offers training in planning for shale gas and oil and has relevant information on the councillors' section of its web site. One Mineral Planning Authority had held a training event for its members facilitated by the Planning Advisory Service shortly before the planning application was presented to its Planning Committee. The authority found this useful in reinforcing members' awareness and understanding of the issues raised by shale applications.

All four authorities informed their members that an application was likely at the earliest possible stage and subsequently kept them informed at various stages of the application process. They all agreed, however, that it was important that officers deal with the application and the dialogue with the company, other regulators, consultees and the public. Members should not be put into a position whereby they may be perceived as predetermining the application before they are presented with all the relevant evidence and information through the Committee report and supporting documents.

The Planning Committees of all four authorities had had considerable experience in dealing with major minerals and waste planning applications. Whilst these may not have generated as many representations as the shale applications, many of the applications had been complex and controversial. The experience of members of the Planning Committee was important in helping them to deal with the planning issues raised by the shale applications.

Handling the Committee Meeting

The public interest generated by shale applications can lead to special arrangements being required at the meeting that the Committee determine the application. The committee meeting at one Mineral Planning Authority lasted an unprecedented five and a half days. At a

second authority the meeting was held over two days during which there was a virtual close-down of normal Council business at County Hall because of the measures taken to provide security and prevent unauthorised access. The meeting was live-streamed on You Tube and the progress of the meeting was updated via Twitter.

The large number of people and organisations submitting representations can also result in widespread interest in speaking at the Committee meeting.

One authority stressed the importance of having a good protocol in place so that it can be seen that the process for speaking at the meeting is fair, transparent and the same as applies for other applications. *'The protocol for public speaking has been in place for a number of years. This allows only three speakers in support of the application and three speakers against. There is also allowance for the applicant to speak for up to 10 minutes. This protocol helped to manage the process given the level of objection and there was no expectation for any more people to speak'*.

One Mineral Planning Authority stressed the importance of setting out in the committee report what can and cannot be taken into account as material considerations in the planning assessment. It said that doing this has been helpful in reinforcing to members the respective roles and responsibilities of the authority and the other regulators, in particular the Environment Agency. *'We were very clear about where our role began and ended which I think helped us manage the process. Our committee reports were relatively brief compared with others I've seen, reflecting that we are solely about land use planning and in those terms it's not that complicated. This also helped when we were responding to complaints and representations during the process'*.

Post Decision Issues

It is often the case that if the Mineral Planning Authority refuses planning permission, the company will appeal to have the decision dismissed by an independent inspector or the Secretary of State for Communities and Local Government. Similarly if the authority grants planning permission, that decision can be the subject of legal challenge by Judicial Review by an objecting group.

One Mineral Planning Authority estimated that its costs of the public inquiry into four appeals were £330,000 for consultants, legal fees, hiring the venue and providing security. Two authorities reported that their barristers' costs associated with legal challenges of decisions to grant planning permission were very substantial, notwithstanding the monies recovered through costs awards in their favour. In one authority area following a High Court decision dismissing a legal challenge to the Council's decision to grant planning permission, a group of about ten anti-fracking protestors occupied land in the vicinity of the site. This gave rise to considerable media interest prompting the Assistant Chief Constable to reassure local communities by making the following statement: *"To avoid any doubt, anti-fracking protestors are not seen as a terrorist threat by the police.... On the contrary, the groups of local protestors have been nothing but peaceful and respectful of the law. Not one arrest has been made in connection with protest action associated with the issue in our area. We will continue to liaise with all groups involved in the issue, to ensure people's right for lawful protest, maximizing the safety of all concerned, while minimising disruption to the wider community."*

None of the sites dealt with by the four Mineral Planning Authorities in the period covered by this case study has yet entered the operational phase. Often Community Liaison Groups are set up for operational mineral workings and this has already happened for at least one of the shale sites recently granted planning permission. Typically chaired by

an independent local resident, such groups meet on a regular basis to discuss operations at the site and future plans. They may also be responsible for making decisions on any funds provided by the company for the benefit of local communities that are adversely affected by impacts from site operations.

Top Tips

Planning for shale gas and oil can present new challenges for Mineral Planning Authorities. But through the experience of Lancashire, North Yorkshire, Nottinghamshire and West Sussex County Councils that has been highlighted in this study, a number of 'top tips' can be recommended as good practice.

- **Establish an early dialogue with companies that have Petroleum Exploration and Development Licences in your area.** Some companies will have a good understanding of the planning process but others may have had only limited knowledge and experience. Establishing a dialogue will benefit the Mineral Planning Authority in knowing what the company's plans are for progressing its interests. It will also benefit the company in knowing what the authority expects if it intends to bring forward a proposed development.
- **Encourage the company to engage in early engagement with local communities and the other regulators and to have full pre-application discussions with the Mineral Planning Authority before submitting any planning application.** Early engagement will help to identify issues that the company will need to address in bringing forward a development proposal. Full pre-application discussions, including screening and scoping for environmental assessment where applicable, mean that it is more likely that the authority will be able to validate the application and progress the assessment and decision making processes in a

timely manner.

- **Apply for shale gas exploration funding from DCLG if it is available.** The Government recognises that shale applications are a new area for Mineral Planning Authorities and will present complex and challenging issues. The three authorities in this case study that received funding welcomed the financial assistance that they received from DCLG for the application process
- **Consider entering into a Planning Performance Agreement.** Whilst none of the Mineral Planning Authorities in this case study entered into a Planning Performance Agreement, some recognised that it could be a helpful tool as well as a potential way of providing funding for dealing with shale gas and oil planning applications. Authorities should discuss the potential for a Planning Performance Agreement as part of the pre-application discussions with the company referred to in point 2 above. The Planning Advisory Service has prepared a model agreement and guidance note for shale applications to show what can be achieved. Properly done, the concern that such an agreement may be perceived as favouring the company should be capable of being avoided.
- **Ensure that all interested parties are kept informed of the proposed development and the decision making process.** All the Mineral Planning Authorities in this case study stressed the importance of keeping local communities in particular, informed from the time that the proposal is publicly announced. This will work best if the authority, the company and the other regulators work together in community engagement. Two authorities in the case study had prepared Communication Plans to assist in this process.
- **Put relevant information on shale gas and oil policy, information and applications on the web site.** Mineral Planning

Authorities should ensure that the Council web site or planning application web site is kept up to date with details and progress of the application. Applications for exploration only are unlikely to involve fracking and this should be made clear to avoid misunderstanding about the nature of the proposals. Some authorities have also set up sections on planning for shale gas and oil developments on their web sites. These might include general information, national and local policy and frequently asked questions, as well as information on planning applications.

- **Ensure that members receive training in planning for shale gas and oil developments and keep members informed at key stages in the planning process.** Member training is important, as there are some issues relevant to shale gas and oil planning applications that will be new to even experienced members of the Planning Committee. Officers should carry out discussions and negotiations with the company but keeping members informed at key stages will aid eventual decision-making.
- **Ensure that your administrative systems, processes and staffing levels are fit for purpose to deal with the very large numbers of representations that can be generated by shale gas and oil applications.** The planning applications submitted to all the case study Mineral Planning Authorities resulted in very large numbers of representations, mainly objections. Processing these representations posed significant challenges in terms of both staff and technology.
- **Establish a ‘development team’ of relevant technical officers.** Some Mineral Planning Authorities set up technical teams of officers from different service areas that met regularly to share information and progress on the planning application. Such development teams might also include officers from partners such as the District Council and the other regulators.
- **Encourage the company to ‘twin-track’ the environmental permitting applications with the planning application.** Two of the case study Mineral Planning Authorities identified this as important in helping to clarify the issues that are the responsibility of other consenting regimes and the issues that need to be addressed through the planning process. It is particularly helpful if the environmental permits are in place before the planning decision is made.
- **Ensure that there are robust procedures in place for such matters as dealing with Freedom of Information and Environmental Information requests, how representations will be dealt with and public speaking at Committee.** All four Mineral Planning Authorities stressed the importance of dealing with shale gas and oil applications in the same way as other planning applications. The high level of public interest and scrutiny and the large numbers of representations do not mean that the Council’s normal procedures should not be followed but they do highlight the need for the Council to have robust procedures in place.
- **Establish a Community Liaison Group to provide an effective link between the Mineral Planning Authority, other regulators, the operator and the local community.** Some Mineral Planning Authorities reported that the applicant had established a Community Liaison Group during the planning process. Such groups have a proven track record for many types of mineral sites and can be particularly effective once the site is operational. Often chaired by an independent local resident the group will meet on a regular basis to discuss operations at the site and future plans. It may also be responsible for making decisions on any funds provided by the company for the benefit of local communities that are adversely affected by impacts from site operations.



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