

REPORT ON THE NORTH YORKSHIRE MINERALS PLAN

The Councils' response to the draft North Yorkshire Joint Minerals and Waste Plan (The draft Plan) was considered by the Committee at its December 2017 meeting. The meeting commented on the draft Plan and authorised Cllr. Lindsay Burr to attend the Examination in Public (EIP) into the draft Plan on the Council's behalf.

Councillor Andrews was authorised to attend the EIP on behalf of Malton Town Council.

This is a joint report.

This report concerns only the part of the draft Plan which relates to fracking. The Council's Head of Planning may wish to report on other matters which the Council commented on.

One of the purposes of the draft Plan is to achieve a fair compromise between the interests of the fracking industry on the one hand and the concerns of residents, businesses etc. on the other.

The combined effect of paras. 5.134 and 5.137 of the draft Plan is to allow grids of drill pads, each two hectares in area (twice the size of the one we saw at KM8) and 10 drill pads to every 100 sq. km. This may not sound a lot, but 100 sq.km is equivalent to 38 square miles or an area just a little more than 6 miles by 6 miles, and means that, if the drill pads are evenly spaced, there will be one every mile and a half to two miles in every direction. This would mean, for example, a grid of 50 in the Vale of Pickering alone.

However, the draft Plan modifies the impact with a number of important matters which have to be taken into account in considering planning applications. The most important are as follows:

- There should be a 500m buffer between residences and surface structures (ie drill pads).
- There should be a 3.5 km zone outside the boundaries of the National Parks and AONB's – any fracking proposals within this zone would require a landscape impact statement.
- Fracking was defined as any kind of hydraulic fracturing and the definition was not restricted to hydraulic fracturing using more than a certain volume of fluid.

The effect of the definition is to bring all fracking within the government's policy of prohibiting fracking within AONB's and National Parks. It should be appreciated that if a restricted definition of fracking (such as the one in the Infrastructure Act) is adopted, then all fracking which does not come within the definition WILL NOT be prohibited in the National Parks, AONB's etc. It should also be understood that, in order to be viable, there has to be a grid of fracking drill pads as indicated above. This is explained in the more detailed submission which I made to the Parliamentary Select

Committee on Planning Guidance on Fracking which is attached. So, if some fracking is permitted in the National Parks or AONB's, the petrochemical industry is bound to require a grid of fracking drilling pads there.

Members should also note that if the Infrastructure Act definition of fracking were to apply to fracking in the draft plan, only one of the five test fracks which were given permission at KM8 would fall within the Infrastructure Act definition. That is the deepest one.

One of the issues which Cllr. Burr was tasked to deal with was the impact of fracking on the Vale of Pickering and the Yorkshire Wolds in regard to Policy SP13 of the Ryedale Plan. Policy SP13 requires development proposals to contribute to the protection and enhancement of distinctive elements of landscape character that are the result of historical and cultural influences, natural features and aesthetic qualities in these areas.

It is difficult to see how this policy can be sustained if, for example, there is a grid of 50 fracking drill pads, each 2 hectares in area, evenly spaced over the Vale of Pickering, each generating massive industrial scale HGV traffic movements, drilling noise and lit up like Christmas trees at night. Further details of the scale of operations appear on the attached submission to the Parliamentary Select Committee.

Prior to the EIP, the text of the draft Plan was amended to take policies like Ryedale's SP13 into account in planning decisions, and councillors Burr and Andrews wanted this to be firmed up as a policy, and this was agreed by this committee in December.

Councillors Burr and Andrews both attended the EIP. The public session concluded on 13th April. They argued the case for including policies such as Ryedale Plan Policy SP13 as a policy in the draft Plan. This was not agreed, but the inspector made the point that, as the Ryedale Plan is part of the Development Plan, then Policy SP13 was already a policy which has to be taken into account in all applications for any kind of mineral extraction.

Councillors Burr and Andrews also supported all of the qualifications, conditions, limitations and requirements which restrict the grant of planning permission for fracking.

Third Energy and the Petrochemical industry were also represented at the EIP. They not only opposed every single one of the restrictions, but even opposed the limitation on density (10 pads to every 100km as above), so as to give the fracking industry unrestricted opportunities to frack at greater densities than that "on a case by case basis in accordance with government policy".

They made no concessions whatsoever in regard to distance of pads from residences, landscape notice zone, and insisted that the definition of fracking should be the one in the Infrastructure Act – so as to allow fracking in the National Parks and AONB's.

As regards the 500m buffer, they said this would "**sterilise**" their mineral asset, presumably because this might make it difficult for them to establish the grid of fracking pads which they require. However, they failed to propose any alternative

whatsoever (other than that each decision should be on a case by case basis in accordance with government policy).

Notwithstanding this on 13th April the inspector provisionally approved the draft plan in principle subject to changes which do not affect this report and some tweaking of the wording in the fracking section.

It is important to note that the draft plan had been approved for the purposes of the EIP by the Conservative Executive of the North Yorkshire County Council, the National Parks Committee and the LibDem/Conservative administration at York City Council. **It is therefore not a local party political issue within North Yorkshire.**

Within a few days of the inspector's provisional approval of the plan on 13th April, the Chief Executive of UKOOG is understood to have met senior government officials. The circumstances of this meeting and what followed is set out in the attached statement of Chris Stratton OBE and Peter Fox QC on behalf of South Hambleton (ie villages in South Hambleton and outside including the town of Helmsley). Five weeks after the end of the public hearing into the EIP, on 17th May, the Secretary of State for Business, Energy and Industrial Strategy issued a "Minister's Written Statement" (MWS) to both houses of Parliament. This follows previous statements of policy in regard to fracking but goes much further.

The MWS reiterates the government's expectation that Mineral Planning Authorities should give "*great weight to the benefits of mineral extraction*" and states that

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"Plans should reflect that mineral resources can only be worked where they are found and applications must be assessed on a site by site basis and having regard to their context. Plans should not set restrictions or thresholds across the plan area that limit shale development without proper justification.

*"We expect Mineral Planning Authorities to recognise that Parliament has set out in **statute the relevant definitions of hydrocarbons, natural gas and associated hydraulic fracturing**. In addition these matters are described in the Planning Practice Guidance, which plans must have regard to. Consistent with this Planning Practice Guidance, policies should avoid undue **sterilisation** of mineral resources (including shale gas)".(my underlining)*

It will be seen that the wording in these paragraphs is designed to undermine much of the draft Plan, particularly in regard to the definition of fracking and the 500m residential buffer. The inspector clearly thinks the MWS does affect the plan, as soon after the publication of the MWS, the EIP inspector invited all the participants in the EIP to let her have their comments on the MWS and the changes which it purports to make.

The MWS goes further than just planning guidance. It gives notice of imminent consultations on allowing all test fracks (like the ones previously proposed for KM8) as Permitted development, and referring all planning applications for fracking to the Nationally Significant Infrastructure Planning Regime (NSIP) in London, which has no local accountability.

The excuse for these proposals is to speed up the planning process in regard to fracking. This is not quite right. Attached is a copy of a leaked letter from Amber Rudd, Greg Clark and Liz Truss to George Osborne dated 7th July 2015. This is mainly about a one-sided government funded information campaign to promote fracking. The pre-penultimate para of Page 3 of this document exposes the government's real intentions:

“As well as improving the current planning system, it is important that we have a long-term approach to planning which is suitable for handling the large number of applications that would be seen at a full production stage. We are therefore minded to bring commercial shale production within the Nationally Significant Infrastructure Planning Regime, and to be ready to begin the move from early 2016 for large scale applications.....”(my underlining and bold)

This shows little concern about speeding up the planning process. It suggest that the real reason is to deal with “large scale applications”. What is meant by “large scale applications”? Clearly this cannot be applications for consents for individual drill pads. It is more likely to mean outline or full applications for the development of entire grids of fracking drill pads over vast tracts of land. **The whole Vale of Pickering with 50 or more proposed drill pads could, for example, be comprised in a single “large scale application”. This would give the industry the certainty they may need to attract investment.**

So it is now possible to anticipate not only what is intended for the Vale of Pickering, but also the government's plans for the North York Moors. If anybody thinks that the North York Moors National Park is out of bounds to frackers, they should refer to the attached leading article of the Daily Telegraph. I'm not sure of the date of this, but it was published either late 2014 or early 2015. This specifically refers to the North York Moors National Park being a prime area for shale gas.

So, if we put all this information together like the pieces of a jigsaw, a clear picture begins to emerge. The definition of fracking will be changed so as to allow fracking everywhere in the County, including the North York Moors. Establishing grids which suit the industry will be a paramount consideration. So any of us could wake up to find we have a drilling pad on twice the scale of KM8 right outside our back doors, and there would be nothing anybody could do about it, as no doubt it would start under PD rights. A single application for planning permission to frack the North York Moors, for example, with tens of drilling pads could be referred to NSIP in London and granted within 18 months, and there will be nothing we could do about it.

There is no right of compensation for the loss of value or amenities of any property due to fracking, and no rural business will have any right to compensation for business losses. All PEDL licence areas will be totally industrialised. The money to be paid to communities will not compensate individuals for their losses.

I would stress this is not just an environmental issue about saving the planet from excessive use of fossil fuels: it is something which concerns the rights and property of everybody.

When the MWS was issued on May 17th Councillor Andrews felt that, as Mayor of Malton, Chair of Habton PC and a district councillor, he was duty-bound to do something about it. He waited until the Report of the Select Committee on Planning Guidance on Fracking came out on 5th July. Para. 84 of this recommends that the North Yorkshire Minerals and Waste Plan should be used as a template for government planning guidance on fracking. The report heavily criticises the MWS. Our MP, Kevin Hollinrake, was a member of the committee and supports its recommendations.

On July 10th Councillor Andrews wrote to the Secretary of State, suggesting his MWS was unlawful and in the hope that he might want to take the committee's views into consideration and withdraw or amend the MWS. Councillor Andrews was fobbed off and had to wait until 27th July for a substantive reply from the Secretary of State. Following receipt of legal advice from leading counsel, Marc Willers QC, legal proceedings were commenced on 16th August, and Councillor Andrews is fund raising to pay for it. So far he has been overwhelmed by public support and has raised a considerable sum.

It is emphasised that the purpose of Councillor Andrews' legal action, if successful, is to get the MWS set aside, so that the draft Plan as provisionally approved by the Inspector on 13th April will stand. In other words, Councillor Andrews has ended up defending the County Plan, when one might have expected County to take this on.

If this purpose is achieved, and the MWS is wholly set aside, it may still be possible for the Secretary of State to re-issue it in another form. However, if he does:

1. He will be under political pressure from all sides of the Houses of Parliament to take the findings of the Select Committee fully into account; and
2. He will not be able to impose the Infrastructure Act definition of fracking on any mineral planning authority without doing a "Strategic Environment Analysis", which is a long process involving public participation and expert opinion.

I would ask members to endorse this report and refer it to full Council.

I would also invite all council members in their private capacity to consider contributing to the legal action through the CrowdJustice site:

<https://www.crowdjustice.com/case/frackingchallenge/>

COUNCILLORS LINDSAY BURR and PAUL ANDREWS

20th August 2018