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08 October 2018

Dear Sir/Madam,

### **Town and Country Planning Act 1990**

### **Permitted Development Rights for Non-Hydraulic Fracturing Shale Gas Exploration**

Thank you for providing the Mineral Planning Authority (MPA) with an opportunity to provide feedback in relation to the Government's proposal to provide permitted development rights for non-hydraulic fracturing shale gas exploration development.

#### *Context*

Although Surrey is one of the most densely populated and urbanised shire counties, it remains essentially rural in character with 73% and 26% of the county designated Metropolitan Green Belt and an Area of Outstanding Natural Beauty respectively. Surrey is also the most wooded county in England with 22% woodland cover, almost double the national average of 12%.

The minerals industry makes an essential contribution to Surrey's prosperity and quality of life and is vital to the development and refurbishment of its infrastructure. Consequently, the MPA actively supports the minerals industry by facilitating a steady supply of minerals that are vital to the functioning of the economy; safeguarding mineral resources from sterilisation by other forms of development; and enabling the identification and potential exploitation of mineral resources including construction aggregates, clay, silica sand, and oil and gas.

Since the 1950s, conventional oil and gas exploration and appraisal has occurred fairly widely across the southern part of Surrey. Limited quantities of hydrocarbons are currently

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produced by conventional means to the south of the North Downs. There are two operational sites producing oil: Felton's Farm, Brockham and Palmers Wood Oilfield, Godstone; and there is one site currently with planning permission for appraisal activities at Horse Hill, near Horley. There is also one site currently with planning permission for production activities at Kings Farm, South Godstone; and the Albury wellsite has permission to produce and export gas via an underground pipeline.

Presently, there is no fracking for shale gas taking place or proposed in Surrey. The British Geological Survey (BGS) estimates that there is no significant shale gas potential in the Weald Basin which includes the southern part of Surrey. Shale oil rather than gas is likely to be present. This means that the focus for exploration using fracking is likely to be the north of England for the foreseeable future.

### *The Consultation*

#### **Question 1**

**a) Do you agree with this definition to limit a permitted development right to non-hydraulic fracturing shale gas exploration? Yes/No**

**b) If No, what definition would be appropriate?**

It is unclear what information is sought in relation to question 1 as it appears to be asking two separate questions i.e. (1) whether the MPA is agreeable to the proposed definition of 'non-hydraulic fracturing shale gas exploration'<sup>1</sup>; and (2) whether the proposed permitted development right should be limited to non-hydraulic fracturing shale gas exploration only.

In the case of (1) above the MPA does not agree with the proposed definition as it is unclear what 'non-hydraulic fracturing shale gas exploration development' would actually comprise. The MPA is not familiar with the term 'non-hydraulic fracturing shale gas exploration development' and it is notable that the same is not recognised by the Oil and Gas Authority's 'Consolidated Onshore Guidance' document dated June 2018 nor the House of Commons Briefing Paper 'Shale gas and fracking' dated April 2017 for example.

For these reasons the MPA does not consider that it is in a position to provide an alternative definition of 'non-hydraulic fracturing shale gas exploration development'. The MPA would suggest that the most appropriate authority to define what 'non-hydraulic fracturing shale gas exploration development' means is the Oil and Gas Authority.

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<sup>1</sup> "Boring for natural gas in shale or other strata encased in shale for the purposes of searching for natural gas and associated liquids, with a testing period not exceeding 96 hours per section test."

Further, the definition as proposed appears to be prefaced on the fact that hydrocarbons are knowingly present within the relevant strata. Section 19(7) of the Petroleum Licensing (Exploration and Production) (Landward Areas) Regulations 2014 is seemingly concerned with the 'production' and 'getting' of hydrocarbons where these are known to be present. The proposed definition alludes to this by beginning with "*Boring for natural gas in shale...*" when of course the purpose of 'exploration' activities is to ascertain whether exploitable hydrocarbons are present within the relevant strata in the first instance.

Moreover, the proposed definition apparently relates specifically to the intention to bore for "*...natural gas in shale or other strata encased in shale...*" and would therefore appear to exclude boring operations undertaken with the intention to search for shale oil. Such ambiguity is not helpful and should be avoided.

Reference to a "*...testing period not exceeding 96 hours per section test*" is equally unclear to the MPA. If there are multiple 'sections' is the 96-hour period to be applied consecutively or concurrently; what limit would be applicable to the number of section tests? Will the MPA need to rely on the goodwill of an operator in understanding when a section test has commenced and completed? Again, ambiguity is not helpful and should be avoided.

As an aside it is notable that the proposed definition does not exclude the use of hydraulic fracturing or any other means of fracturing e.g. by way of high pressure gas or explosives. The MPA would enquire whether this is the intention of the Ministry of Housing, Communities and Local Government (MHCLG)?

In the case of (2) above it is unclear why it is proposed to provide permitted development rights for shale gas exploration when conventional hydrocarbon exploration, a long-standing and well-understood practice in England and Wales which is less intrusive, does not currently benefit from the same. The MPA would suggest that such an approach is counter-intuitive given that shale gas exploration in the United Kingdom is novel and largely untested and is likely to give rise to significant environmental and amenity impacts in most circumstances.

## **Question 2**

**Should non-hydraulic fracturing shale gas exploration development be granted planning permission through a permitted development right? Yes/No**

No, the MPA does not agree that 'non-hydraulic fracturing shale gas exploration development' should be granted planning permission through a permitted development right as proposed.

Newly introduced permitted development rights for the change of use of offices, shops and other high street uses and agricultural buildings to residential use, installation of digital communications masts, and increased rights to extend homes and business premises are, with respect, not comparable to hydrocarbon exploration in terms of potential environmental and amenity impacts. MHCLG's proposal therefore is completely out of kilter with what has gone before.

The MPA considers that the novel, controversial and industrial nature together with the scale and likely significant environmental and amenity impacts of unconventional hydrocarbon development warrants continued and full-involvement of existing local democratic structures and the established plan-led system in determining whether such development should be granted express planning permission. This would allow for the continued proper management of major mineral development in Surrey by the MPA in accordance with the Development Plan, and other material considerations, so as to meet the needs and expectations of its communities.

Notwithstanding the above, paragraph 6 of the consultation document explains that "*any permitted development right would not apply to the appraisal and production operations of shale gas extraction.*" The MPA also considers such an approach to be counter-intuitive in the absence of further explanation and on the basis that the appraisal and production phases of hydrocarbon development generally have less of an impact on the environment and amenity than hydrocarbon exploration.

Further, paragraph 12 of the consultation document asserts that "*any developments that would be permitted through any potential permitted development right for non-hydraulic fracturing shale gas exploration, would still be required to receive the appropriate consents from the three regulators (the Environment Agency, the Health and Safety Executive and the Oil and Gas Authority) before development can proceed.*" However, this assertion fails to recognise that such regulators may not consider the surface impacts of hydrocarbon development (including highways, traffic and access matters), and where they do it would not be in the same way as the planning regime is required to i.e. whether the use of land is acceptable in the public interest. In this regard whilst certain factors of 'non-hydraulic fracturing shale gas exploration development' may be able to be considered under a prior approval process (e.g. highway, traffic and access; dust; ecology; noise; air quality) it is unlikely that the same would allow for proper interrogation of the need for the development in the location proposed and any suitable alternative sites. Although minerals can only be worked where they are found, there is more scope for alternative hydrocarbon drilling locations due to the nature of such development and associated technology.

The MPA is also concerned about the absence of any consideration in the consultation document to planning fees. The consultation alludes to there being a similar amount of work for the MPA to do (registration, EIA screening, publication, consultation, evaluation, determination and monitoring) in determining and managing a prior approval application for 'non-hydraulic fracturing shale gas exploration development' compared to an application for express planning permission but without, seemingly, a proportionate fee (currently £508 per 0.1ha for exploratory drilling sites not greater than 7.5ha) to cover at least part of the costs to the taxpayer? The highest fee payable for any prior approval application under the current fees regulations amounts to £462. What is MHCLG's intention in this regard?

Lastly, paragraph 5 of the consultation document refers to MHCLG's intention "*to publish revised planning practice guidance on shale development once the revised National Planning Policy Framework has been launched, ensuring clarity on issues such as cumulative impact, local plan making, and confirmation that planners can rely on the advice of regulatory experts.*" The MPA is not aware that such guidance has been published. Accordingly, in the absence of the same the MPA considers the subject consultation to be premature.

### **Question 3**

**a) Do you agree that a permitted development right for non-hydraulic fracturing shale gas exploration development would not apply to the following? Yes/No**

**b) If No, please indicate why.**

**c) Are there any other types of land where a permitted development right for non-hydraulic fracturing shale gas exploration development should not apply?**

Yes, subject to the MPA's views expressed above, it is agreed that a permitted development right for 'non-hydraulic fracturing shale gas exploration development' should not apply to land subject to the designations listed in the consultation document. In addition to these the MPA would recommend that a permitted development right for 'non-hydraulic fracturing shale gas exploration development' should not apply to:

- Land within close proximity to populated areas;
- Land to be accessed by an unclassified road;
- Land adjacent to public rights of way;
- Land within or adjacent to Nature Reserves;
- Land designated Metropolitan Green Belt;
- Land within or adjacent to Sites of Nature Conservation Importance;
- Land within or adjacent to Sites of Special Scientific Interest;
- Land within or adjacent to Special Protection Areas;

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- Land within or adjacent to Historic Parks and Gardens;
  - Land within the setting of or adjacent to Listed Buildings;
  - Land within the setting of or adjacent to Scheduled Ancient Monuments;
  - Land within Areas of High Archaeological Potential;
  - Land within or adjacent to Air Quality Management Areas;
  - Proposals where vehicle routing to and from the development site is through or adjacent to Air Quality Management Areas;
  - Land designated Flood Zones 2 and 3;
  - Land within or adjacent to Semi-natural Ancient Woodland;
  - Land within safeguarding zones for airports or aerodromes; and
  - Land within or adjacent to Ramsar Sites.

#### **Question 4**

**What conditions and restrictions would be appropriate for a permitted development right for non-hydraulic shale gas exploration development?**

As explained in the answers given to Questions 1 and 2 above, the MPA is not familiar with the term 'non-hydraulic fracturing shale gas exploration development' and is therefore unclear what the same would entail by way of surface and underground development. Additionally, other important spatial factors such as the location of the development and any designations applicable are unknown. In this context the MPA considers that any planning conditions to be imposed by a permitted development right should be necessary, relevant to planning and the development, precise, enforceable and reasonable in all other respects.

#### **Question 5**

**Do you have comments on the potential considerations that a developer should apply to the local planning authority for a determination, before beginning the development?**

This would be dependent upon the nature and scale of the development and its spatial characteristics including any designations applicable to the relevant land. Having regard to this and given the novel, controversial and industrial nature together with the scale and likely significant environmental and amenity impacts of unconventional hydrocarbon development the MPA would expect the minimum requirements for consideration to align with the MPA's Local List of Validation Requirements for planning applications. Additionally, the MPA would expect the applicant to engage with local communities prior to submission of the relevant prior-approval application in accordance with the Local Authority's adopted Statement of Community Involvement. Over and above the aforementioned it would be helpful and

prudent to require developers to engage with the MPA's pre-application advice service at the earliest opportunity.

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#### **Question 6**

**Should a permitted development right for non-hydraulic fracturing shale gas exploration development only apply for 2 years, or be made permanent?**

The MPA does not agree that 'non-hydraulic fracturing shale gas exploration development' should be granted planning permission through a permitted development right for the reasons explained above. However, if such a right is afforded to developers then a temporary period as suggested for the purposes of monitoring and evaluating its effectiveness appears to be a sensible approach.

#### **Question 7**

**Do you have any views the potential impact of the matters raised in this consultation on people with protected characteristics as defined in section 149 of the Equalities Act 2010?**

None.

I trust the above is helpful. Please contact me should you have any questions or concerns about the MPA's response.

*Caroline J. Smith*

Mrs. Caroline Smith  
Planning Development Manager

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