

# Briefing

## Shale gas exploration and planning

### Fighting off fracking

#### Introduction

The new National Planning Policy Framework 2012 does not mention fracking. It also replaces some of the previous minerals planning policy statements and guidance. There is therefore very little guidance for local authorities on dealing with fracking and fracking-related applications.

Local planning authorities which are in areas where fracking could occur should ensure that they have adopted a core strategy policy to provide a context for considering applications for fracking and fracking related activities e.g. exploratory drilling.

Please see our campaign briefing 'Shale gas: energy solution or fracking hell?'

[http://www.foe.co.uk/resource/briefings/shale\\_gas.pdf](http://www.foe.co.uk/resource/briefings/shale_gas.pdf) for further information about the key issues concerning fracking.

#### Main objections

The main objections to fracking which are strongest in planning terms are as follows:

- Climate change impacts
- Precautionary principle (particularly in application to groundwater contamination)
- Unacceptable adverse impacts

There is also a serious lack of information in the applications that are coming forward and therefore local authorities should be strongly encouraged to demand an Environmental Impact Assessment failing that, the equivalent amount of information covering the same issues as an Environmental Impact Assessment e.g. on air, water, soil impacts. The regulations governing Environmental Impact Assessments can be found on [www.legislation.gov.uk](http://www.legislation.gov.uk), titled 'The Town and Country Planning (Environmental Impact Assessment) Regulations 2011.

The National Planning Policy Framework does contain a link to the Climate Change Act (which links to the overall target to reduce emissions), and there is a duty for local authorities local development documents as a whole to consider climate change impacts (Section 19, Planning and Compulsory Purchase Act 2004).

## Precautionary principle and unacceptable adverse impacts

Minerals development frameworks should include a specific policy on the application of the precautionary principle to all applications on fracking – which means that unless it can be proven that there will be no groundwater contamination that the development should not go ahead.

The EU Water Framework Directive and environmental law do provide for the precautionary principle to be considered in planning although there is no explicit reference to this principle in the new National Planning Policy Framework.

A summary of the Water Framework Directive is as follows:

*The case of groundwater is somewhat different. The presumption in relation to groundwater should broadly be that it should not be polluted at all. For this reason, setting chemical quality standards may not be the best approach, as it gives the impression of an allowed level of pollution to which Member States can fill up. A very few such standards have been established at European level for particular issues (nitrates, pesticides and biocides), and these must always be adhered to. But for general protection, we have taken another approach. It is essentially a precautionary one. It comprises a prohibition on direct discharges to groundwater, and (to cover indirect discharges) a requirement to monitor groundwater bodies so as to detect changes in chemical composition, and to reverse any anthropogenically induced upward pollution trend. Taken together, these should ensure the protection of groundwater from all contamination, according to the principle of minimum anthropogenic impact.*

(Water Framework Directive: [http://ec.europa.eu/environment/water/water-framework/info/intro\\_en.htm](http://ec.europa.eu/environment/water/water-framework/info/intro_en.htm))

Note that the Environment Agency is in charge of providing permits, and guidance on these permits are available here: <http://www.environment-agency.gov.uk/business/topics/permitting/32320.aspx>. As well as the planning permission, developers will need these permits.

In relation to environmental considerations, local authorities should develop policies which expand upon the following guidance in the National Planning Policy Framework 2012 (para 143):

*“set out environmental criteria, in line with the policies in this Framework, against which planning applications will be assessed so as to ensure that permitted operations do not have unacceptable adverse impacts on the natural and historic environment or human health, including from noise, dust, visual intrusion, traffic, tip- and quarry-slope stability, differential settlement of quarry backfill, mining subsidence, increased flood risk, impacts on the flow and quantity of surface and groundwater and migration of contamination from the site; and take into account the cumulative effects of multiple impacts from individual sites and/or a number of sites in a locality;”*

Local authorities are also directed by the National Planning Policy Framework to (para 144):

*“ensure, in granting planning permission for mineral development, that there are no unacceptable adverse impacts on the natural and historic environment, human health or aviation safety, and take into account the cumulative effect of multiple impacts from individual sites and/or from a number of sites in a locality;”*

Particular impacts that may result from fracking exploration and extraction activities include:

- Transport movement (for transporting water on and off site)
- Water use (the amount used in the activity, particularly in areas of water shortage)
- Air pollution (leakages of methane)
- Migration of contamination from the site (leakages of polluted water)

The 1992 Rio Declaration on Environment and Development states that, “where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation”. The Interdepartmental Liaison Group on Risk

## Fracking and planning

Assessment (ILGRA), in its 2002 paper *The Precautionary Principle: Policy and Application*, made a number of important points including noting that the precautionary principle should be invoked when:

- there is good reason to believe that harmful effects may occur to human, animal or plant health, or to the environment; and
- the level of scientific uncertainty about the consequences or likelihood of the risk is such that best available scientific advice cannot assess the risk with sufficient confidence to inform decision-making.

Precautionary action requires assessment of the costs and benefits of action, and transparency in decision-making.

### Climate Change

Friends of the Earth recommends that local development frameworks include a policy on climate change that specifically uses the following guidance to adopt (para 94 *“proactive strategies to mitigate and adapt to climate change, taking full account of flood risk, coastal change and water supply and demand considerations.”*) It is a core planning principle that local plans should support the ‘transition to a low carbon future’. Paragraph 93 says *“Planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions.”* This policy could specifically say that in order to mitigate climate change, that it does not consider fracking to be an appropriate part of its strategy and that instead it will promote the development of renewable energy resources and reduce demand for energy through various measures.

### Evidence base

Making a strong case against fracking will need a comprehensive evidence base. The Tyndall Centre has put together evidence on the climate change impacts from fracking (<http://www.co-operative.coop/Corporate/Fracking/Shale%20gas%20update%20-%20full%20report.pdf>)

### Getting involved in planning

In England, where you are in a two-tier local authorities fracking is not the province of the local district authority but the tier above – e.g. the county council. The district authority could adopt Friends of the Earth’s proposed planning policy (see box below for full policy) into their core strategy (if the timing is right) or they can adopt, by following the correct processes, the policy as a supplementary planning document.

You have a right to be heard in the inquiry if you have objected to a local plan (see our campaigners’ guide to the English planning system: [http://www.foe.co.uk/resource/guides/31\\_the\\_english\\_planning\\_sy.pdf](http://www.foe.co.uk/resource/guides/31_the_english_planning_sy.pdf))

You also have a right to make representations on supplementary planning documents but this has to be made within the timeframe set by the local authority (The Town and Country Planning (Local Planning) (England) Regulations 2012, regulation 13). Before a local authority adopts a supplementary planning document it must consult and show how these representations have been taken on board (regulation 12). There is a minimum of 4 weeks for the consultation.

### Proposed Planning Policy

#### Policy 1

**An applicant for planning permission for fracking or shale gas operations (including test drilling and extraction) must demonstrate by appropriate evidence and assessment that reasonable scientific doubt can be excluded as to adverse impacts of the proposed development alone or in combination with other developments:**

**On the quality and quantity of water resources, including groundwater and water courses;**

**On air quality (including through emissions of methane and sulphur);**

**On seismic activity;**  
**On local communities;**  
**On greenhouse gas emissions and climate change.**

## **Policy 2**

**Planning permission for fracking or shale gas operations (including test drilling and extraction) will not be granted unless:**

- (a) the Council is satisfied that all reasonable scientific doubt that there is any risk of adverse impacts has been eliminated;**
- (b) the proposal will not compromise the Council's duties in relation to climate change mitigation; and**
- (c) the proposal is environmentally acceptable, or it can be made so by planning conditions or obligations.**

## **Political strategy**

Politically it is vital that councils pass a motion, and Friends of the Earth recommend the following motion. This will lay the ground for being able to include the policy within the local plan or as a supplementary planning document.

**Suggested motion** (in area where there are possibilities for shale gas exploration)

***This Council notes that it has a responsibility to tackle climate change.***

***This Council acknowledges that exploration of unconventional fossil fuel undermines action on climate change and diverts resources away from investment in a safe and secure renewable energy future.***

***This Council notes that there are possible significant adverse impacts from shale gas exploration and exploitation, including water contamination and air pollution, and that, in line with the precautionary principle, applications for shale gas development should be refused.***

***This Council calls for a moratorium on shale gas exploration within the UK.***

**Suggested motion** (in area where shale gas exploration is unlikely)

***This Council notes that it has a responsibility to tackle climate change.***

***This Council acknowledges that exploration of unconventional fossil fuel undermines action on climate change and diverts resources away from investment in a safe and secure renewable energy future.***

***This Council notes that there are possible significant adverse impacts from shale gas exploration and exploitation, including water contamination and air pollution, and supports a 'frack-free' declaration for this area.***

***This Council calls for a moratorium on shale gas exploration within the UK.***

**For further information please contact at Friends of the Earth:**

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