



ARE WE READY TO GET FRACKING?



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In 2012, and in direct response to the seismic events caused by fracking operations at Preese Hall in Lancashire, the Royal Society and the Academy of Engineering concluded that "the health, safety and environmental risks associated with hydraulic fracturing... can be managed effectively in the UK". In 2013, the British Geological Survey

in accordance with the local development plan, unless 'material considerations' indicate otherwise. Their outcomes are therefore politically influenced (or democratically driven, depending on your point of view) and inconsistent.

As David Bernal reported in the May edition of *Gi*, in June 2015 Lancashire County Council decided to reject Cuadrilla Resources' application to conduct fracking operations at greenfield sites in Roseacre Wood and Little Plumpton in the Bowland Basin, on the basis of their impact on traffic, the appearance of the landscape and noise. This, despite the fact that Cuadrilla had secured Environmental Agency permits for both sites and notwithstanding the Council's own Planning Officer's recommendation that permission be granted at the former.

estimated that the gas in the Bowland-Hodder shale was sufficient to secure the UK's gas needs for 43 years, even assuming an extraction rate of 10 per cent. In 2014, then Prime Minister David Cameron declared "we're going all out for shale". But by 2016, no commercial shale gas production has taken place in the UK.

On 23 May 2016, North Yorkshire County Council decided by seven votes to four to grant Third Energy UK Gas permission to undertake shale fracking operations at Kirby Misperton, in the Bowland Basin. Why was this the first planning permission to be granted for shale fracking for seven years and what does it tell us

Unlike their counterparts in Lancashire, the North Yorkshire Planning Committee accepted their Planning Officer's view that "planning controls should not be used to duplicate controls required by other regulatory bodies", such that weight could be given to the Environmental Agency's prior decision that it was "satisfied that [its] permit will ensure a high level of protection is provided for the environment and human health", and future assurance that it "will not allow any hydraulic fracturing to commence until such time as the Agency has approved the Hydraulic Fracture plan".

WHAT NEXT?

The ten paragraphs of North Yorkshire's press release explaining its decision contained six statements protesting the uniqueness of Third Energy's application and reiterated

about the prospects of future applications?

WHY NOT BEFORE?

There is presently no single, and no centralised, body responsible for granting permission to conduct fracking operations in the UK. For each of the exploratory, appraisal and production stages, the operator must obtain: an Environmental Agency permit, the local council's planning permission, the Health and Safety Executive's approval and Oil & Gas Authority sign-off.

At the planning permission stage, applications are decided by local councillors following public consultation and must be determined

demonstrate that shale exploration can be done cleanly and safely here. So we must put our immediate efforts into securing some early wins in exploitation". He concluded that he was "minded to bring commercial shale production within the National Significant Infrastructure Planning regime, and to be ready to begin the move from early 2016 for large scale applications".

In November 2015, Greg Clark directed that he, and not the local Planning Inspector, should determine Cuadrilla's appeals against Lancashire's refusal of permission to frack. The Planning Inspector's recommendations were delivered to Mr Clark on 4 July 2016, without prior publication. Mr Clark's final decision will be announced by 6 October 2016. To date, North Yorkshire has given Mr Clark one of the "wins" he sought in 2015. Lancashire may yet give him another.

THE NORTH YORKSHIRE DECISION

The different outcomes in North Yorkshire and Lancashire turned as much on the local planning authority's approach to the permission process as on the application itself.

It was of course significant that at North Yorkshire "there had already been drilling for gas on this site over many years". Exploratory drilling for conventional gas was first undertaken at Third Energy's wellsite in 1985; the field had been commercially operated for 20 years, the well had been drilled to its target formation of 3,104 metres TVD in 2013 and existing infrastructure enabled the four million litres of water required for fracking to be pumped directly to the wellsite, thereby reducing the traffic generated by Third Energy's operations.

However, North Yorkshire's Planning Committee also considered that "local councils are required" to take account of the National Planning Policy Framework (NPPF) implemented by Greg Clark MP, then Minister for Planning. The NPPF notes that "minerals are essential to support sustainable economic growth and our quality of life. It is therefore important that there is a sufficient supply of material to provide the infrastructure, buildings, energy and goods that the country needs". It requires planning authorities to "give great weight to the benefits of mineral extraction, including to the economy" when determining planning applications.

that "this decision does not have a bearing on future applications". Whatever the local authority's intention, this may not be consistent with central government policy.

On 16 July 2016, final approval for fracking operations was transferred from the Department for Energy and Climate Change to the newly-formed Department of Business, Energy and Industrial Strategy.

Even if nothing can be read into the name of that department, something can be taken from the individual with final say on permission to frack. The new Secretary of State for Business, Energy and Industrial Strategy is Greg Clark MP. The same Greg Clark who, in 2012, implemented a National Planning Policy Framework that required local planning authorities to consider the economic and social benefits of mineral extraction. And the same Greg Clark who, in 2015, co-wrote a letter to the Chancellor proposing an "ambitious strategy" to develop the shale gas sector in the UK so as to achieve exploration and fracking within two years, production within five and "a maturing shale gas production industry" by mid-2025.

In that letter, Mr Clark noted that "one of the hurdles to overcome to develop a more favourable public attitude is that nobody in the UK has seen or experienced a shale fracking operation in their area, aside from the limited operations at Preese Hall, abandoned in 2011. We need some exploration wells, to clearly

NEXT STEPS

On 7 July 2016, Friends of the Earth and Frack Free Ryedale commenced judicial review proceedings to quash North Yorkshire's grant of permission to First Energy, illustrating that even if permission is granted, it may yet be overturned. At present, the ultimate arbiter is the court. But even this line of challenge may not be immune from political intervention. The UK's obligations under the Aarhus Convention on Access to Justice in Environmental Matters currently require it to ensure that judicial review of planning decisions is "not prohibitively expensive" and, therefore, to limit claimants' liability to pay the defendant's legal costs of an unsuccessful planning judicial review. It remains to be seen whether the UK's nascent departure from the EU will facilitate a withdrawal from Aarhus, permitting the government to further restrict the ability of pressure groups to delay fracking. In any case, the legal and regulatory future for shale production is bright. ■

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