

Update – government consultation on shale gas development – January 2019

The government is currently consulting on a third matter relating to shale gas development: compulsory community pre-application consultation for shale gas development.

Cumbria County Council has submitted a response to this consultation which is attached overleaf:



MHCLG Consultation – Compulsory community pre-application consultation for shale gas development

Cumbria County Council response to consultation questions:

Introduction

Cumbria County Council has received a number of enquiries over the past few years from members of the public concerned about the potential for shale gas production (“fracking”) proposals coming forward.

To date no enquiries on appraising these shale resources have been received by the council, although planning permissions have previously been granted elsewhere in the county for coal bed methane drilling, testing and extraction.

Our view is that community pre-application consultation should be compulsory for all stages of shale gas development requiring planning permission. The process currently used for on-shore wind farms is generally sufficient but we think this should be adapted to include greater clarity on what is required; a minimum 21 day consultation period, and a requirement to notify the relevant town or parish council and locally elected ward councillors.

Our response to the consultation questions is set out below:

Q1) Should community pre-application consultation be compulsory prior to applying for planning permission for shale gas development?

Yes/No/Not sure

YES. Shale gas development is known to be a particularly sensitive issue and there is already concern from the public that some elements of shale gas development may be brought into the permitted development regime. Ensuring shale gas developers have fully engaged with local communities prior to submitting an application for planning permission will ensure there is maximum opportunity for concerns to be raised at the outset, and therefore addressed in the application at the point of submission. Ideally this should assist with the timeliness of decision making on planning applications for shale gas development. At the very least it will allow greater transparency in the planning application process.

Q2 By what process (if any) should prospective applicants be required to conduct community pre-application consultation prior to applying for planning permission for shale gas development?

Onshore wind development/ NSIP/Other (please specify)

OTHER – The current process for onshore wind development is generally sufficient but we think to be effective the requirements need to be clearer and also a minimum consultation period of 21 days should be specified. It would also be beneficial for the pre-application community consultation to include notification of the relevant town or parish council and locally elected ward councillors. This would further assist in the timeliness of decision-making as these key local consultees would also be aware of the proposals and the views of the community prior to the application being submitted. This should enable then to provide a detailed response early on in the application process.

The statutory requirement for community pre-application consultation for on-shore wind developments is triggered by the scale of the development involving more than 2 turbines or where the hub height of any turbine exceeds 15m. The height of the drilling rigs for shale gas exploration is shown as being 30m. Requiring compulsory community pre-application consultation for shale gas development therefore seems consistent based on scale of the development.

The main differences between the process for on-shore wind turbines and the process set out for NSIP developments appears to be that certain requirements are specified for NSIP developments only: the developer has to agree with the local authority beforehand how the consultation will be carried out; a minimum consultation period of 28 days is specified; a formal consultation report has to be prepared and submitted with the application.

The process for on-shore wind turbines simply requires developers to have regard to the advice given by the local planning authority on local good practice. We think if this process is replicated for shale gas development there should be a requirement for developers to demonstrate they have consulted with the local planning authority beforehand on how they will carry out their community pre-application consultation and followed that advice. We also think that a minimum consultation period should be specified but that 21 days would be sufficient as requiring a longer time than the planning application consultation period does not seem justified.

There is a requirement in the on-shore wind turbine process for the applicant to provide details of how publicising and consultation requirements have been complied with; responses received, and how the response have been taken into account in the submission. For NSIP developments there is a more formal requirement to produce this information in the form of a consultation report. When using the on-

shore wind turbine process it is likely most developers would provide the information in the form of a short report or clearly referenced section in other planning application documents. However, it might be helpful to clarify how this information should be presented. This should save time in the planning application process by avoiding confusion or dispute during determination over whether community consultation has been carried out properly.

For these reasons we think the following wording (based on the process for on-shore wind turbines) is most appropriate for setting out the operator's requirements for community pre-application consultation.

We would also suggest making it a requirement to include consultation with statutory consultees as part of this process (e.g. Natural England; Environment Agency; local highways and Lead Local Flood Authority). Under the Welsh planning system this has been a requirement for all major planning applications since 2016 and it would seem appropriate for development of this more sensitive nature:

- Publicise the proposed application in such a manner that it is likely to bring it to the attention of a majority of the persons who live at, or occupy , premises in the vicinity of the land. This should typically involve at least one site notice in a location that can easily be viewed by the public and letters/leaflet drops to nearby residents/occupiers, as well as notifying the relevant town/parish council and locally elected ward councillors.
- When publicising the proposed application the following information, as a minimum, should be provided: where details of the proposed application can be viewed by the public; the date by which comments must be received in response to the pre-application consultation (this must be a minimum of 21 days from the date of the notification); how and where responses may be submitted; contact details of how the applicant can be contacted for more information (this could be via an agent or consultant).
- Where the operator proceeds to submitting an application for planning permission a brief report should be included as part of the application submission on how the community pre-application was carried out; details of comments received; how these have been taken into account and whether they have influenced the final proposal. This should be provided either as a separate document or as a clearly referenced section with another planning submission document.

Q3 What (if any) shale gas development should be subject to compulsory community pre-application consultation?

All shale gas development requiring a planning application/ where an EIA is required/ other criteria or threshold (please specify)

ALL SHALE GAS DEVELOPMENT REQUIRING A PLANNING APPLICATION.

We do not think that using a threshold of EIA development, or even minimum scale (eg. site area; height of drilling equipment) is appropriate for determining whether shale gas development should be subject to compulsory community pre-application consultation. Much of the potential impact of shale gas development, particularly as perceived by local communities in which the development is to be located, relates to concerns of seismic activity, groundwater pollution etc. which may not relate directly to the size or scale of development above ground.

Whilst it is stated that applications for all phases of shale gas development are likely to fall under Schedule 2 of the EIA, we would not want to see a situation where some shale gas developments do not require compulsory community pre-application consultation because following screening they are not deemed to be EIA development, or because they fall just below any other thresholds specified such as site area or height of drilling equipment.

Shale gas development is known to be a controversial topic that generates significant interest from the public. The main impetus behind this and other government consultations relating to shale gas development is to reduce the length of time it takes for a planning application to be determined. Requiring community pre-application consultation for all shale gas developments will maximise the opportunity for local communities (including residents, businesses, town/parish councils and elected local ward councillors) to air their concerns before the application is submitted and so the operator has opportunity to address them in the submitted scheme. Submission of a pre-application consultation report with the application will allow the local planning authority to identify much earlier on what the strength of local feeling and key issues are. This will help them plan ahead for the appropriate determination procedure (ie. committee or delegated decision).

The UK Onshore Operators Group (UK OOG) is already committed through their Community Engagement Charter to engage with local communities, residents and other stakeholders at each stage of the operations (exploration, appraisal and production) in advance of operations and in advance of any application for planning permission. Therefore making pre-application community consultation a compulsory requirement for all shale gas development is not unduly burdensome on the operator as they are already committed to that level of engagement.

By introducing compulsory requirements through the land use planning system the process becomes more consistent and transparent. Local communities should have more confidence that their views are being taken into account from the outset and recognised by the local planning authority. Working to an agreed scheme should make the community consultation

requirements clearer and will avoid confusion or dispute during the application process.

Q4 Do you have any views on the potential impact of matters raised in this consultation on people with protected characteristics as defined in section 140 of the Equality Act 2010?

NONE