

Housing, Communities and Local Government Committee

Oral evidence: Planning guidance on fracking, HC 767

Monday 14 May 2018

Ordered by the House of Commons to be published on 14 May 2018.

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Members present: Mr Clive Betts (Chair); Mike Amesbury; Bob Blackman; Helen Hayes; Andrew Lewer; Liz Twist; Matt Western.

Questions 71 - 140

Witnesses

I: Sally Gill, Group Planning Manager, Nottinghamshire County Council; Nicola Howarth, Minerals Planner, Peak District National Park Authority; Andrew Mullaney, Head of Planning and Environment, Lancashire County Council; Richard Flinton, Chief Executive, North Yorkshire County Council.

II: Mark Ellis-Jones, Programme Executive—Onshore Oil & Gas Programme, Environment Agency; Tom Wheeler, Director of Regulation, UK Oil and Gas Authority; Chris Flint, Director, Energy Division, HSE.

Examination of Witnesses

Witnesses: Sally Gill, Nicola Howarth, Andrew Mullaney and Richard Flinton.

Chair: Good afternoon and welcome to our second evidence session on planning guidance on fracking. Thank you very much for coming to be with the Committee this afternoon. Before I come over to yourselves, I would ask Committee members who are here to put on record any particular interests they might have. I am a Vice-President of the Local Government Association.

Liz Twist: I employ a councillor in my office.

Andrew Lewer: I am a Vice-President of the LGA as well.

Bob Blackman: As am I.



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Q71 **Chair:** Could I ask you, then, just to say who you are and which organisation you represent? If you just go down the table, that would be helpful to us.

Nicola Howarth: My name is Nicola Howarth. I work for the Peak District National Park Authority. I am a minerals planner.

Andrew Mullaney: Good afternoon. My name is Andrew Mullaney. I am head of planning and environment at Lancashire County Council.

Sally Gill: I am Sally Gill, group planning manager at Nottinghamshire County Council.

Richard Flinton: I am Richard Flinton, chief executive of North Yorkshire County Council and definitely not a planner.

Q72 **Chair:** There have been one or two changes proposed in the NPPF with regard to planning and fracking. How would the changes that have been proposed make any difference to the decision-making process in terms of applications for fracking in your areas, or will they not make any difference at all?

Andrew Mullaney: The draft NPPF clearly makes reference to hydrocarbons. There is a bit of inconsistency between what it is saying in the draft and the written ministerial statement. The written ministerial statement seems to touch on the need for gas and seems to put a lot more weight on it, whereas the draft NPPF just says that the minerals planning authorities should recognise the benefits. There is a slight difference in emphasis between the two. One of the first things we would like to see is more consistency between the two: which is carrying more weight? Is it the NPPF? Is it the written ministerial statement? When we are coming to determine applications or we are involved in planning inquiries, one of the key questions we have is about which one is more important and which one trumps the other, if at all. It would be good to have some consistency there.

Sally Gill: I would agree with that. It would be very useful to have a bit more clarity in the NPPF, so that, as planning authorities dealing with applications, we know how the guidance is expecting us to treat shale applications. From Nottinghamshire's perspective, a shale gas application is a minerals application like any other minerals application.

Nicola Howarth: Can I just clarify: are we talking about the proposed changes that were consulted on, and ended last week, to the NPPF? Are we talking about those?

Chair: Yes.

Nicola Howarth: In terms of the wording in paragraph 204, where it says, "When planning for on-shore oil and gas development, clearly distinguish between, and plan positively for, three phases of development (exploration, appraisal and production)", we consider that it favours one



form of mineral extraction over another. In essence, it is implying that fracking is sustainable development. The starting point for assessing a planning application and also for planning for minerals and for mineral-working is set out in paragraph 201. We want to understand whether mineral authorities use paragraph 201 in terms of assessing planning applications or paragraph 204, which clearly says that we should “plan positively for”, which implies that the development is already sustainable, whereas in effect you assess whether it is sustainable as part of a planning application.

Q73 Chair: We have probably partly gone here. I was going to ask what improvements you would like to see to the NPPF that would help you in the decisions that you have to make.

Andrew Mullaney: I have perhaps covered that. The main one for us would be the consistency and which one has primacy. It is quite a fragmented policy landscape at the moment, with written ministerial statements, the NPPF and online national planning guidance. Some harmonisation of those would help. The most important thing would be consistency.

Q74 Chair: I think you have answered the point about inconsistency between some of the paragraphs of the NPPF. Is there anything else you would like to see?

Nicola Howarth: We would just like to see it updated and expanded. We would also like for it to include national policy on climate change and the Government’s energy policy. It should really include best-practice measures and learning that has accrued so far, in terms of onshore oil and gas exploration. At the moment, it lacks that detail. In terms of technical assessment as well, previously it used to advise authorities on how to assess the impacts of major developments. It also provided technical guidance so that you could quantify those impacts and apportion weight appropriately. There is kind of a policy vacuum in that sense; it no longer provides that.

Q75 Chair: There is a report that has been brought to our attention, recently produced by Professor Peter Styles at Keele University, which we have had a chance to have a look at, where he is expressing concerns about fracking in historic mining areas where there are old or unknown faults, which could lead to seismic activity. I know there has been lots of issues around seismic activity but this has been a particularly detailed report that has drawn attention to the potential problems in particular areas where there has been old mine-working. Have you read the report? Does it raise concerns for you? Should these risks be made clear in guidance that is issued by Government?

Sally Gill: Although I have not read the report, when Nottinghamshire County Council was dealing with the shale gas applications from IGas, a number of respondents did raise issues of seismicity and concerns about it to us. The authority in dealing with the application did seek



professional technical advice to reassure us on that matter because Nottinghamshire is a former mining area. There are a large number of small little faults across the area and it was a concern to local people. We did explore that further. We did have to seek advice from specialists for that, because that is not something that we get called on to do in our normal, regular, day-to-day business.

Andrew Mullaney: Without drifting into other areas of questioning about the adequacy of guidance, because I am sure that will come, one of the areas that the guidance is quite weak on is things that are unique to fracking, such as seismicity, NORM—naturally occurring radioactive materials—and flowback fluid. The guidance is fairly silent on seismicity at the moment. We would consult the oil and gas authority to get their views on an application. Depending on what we got back from the oil and gas authority, we might then feel the need to seek some further guidance. The OGA might typically come back and say, “We will consider this as part of our normal determination process. You do not really need to concern yourself too much with it”.

If a response did come back along those lines, would that satisfy us? Probably not. We would seek our own guidance, particularly in Lancashire where we had the seismic events in 2011. It is an area of concern that we feel we need to be very robust on. Guidance around seismicity and perhaps some of the other areas I touched on that are unique to fracking would be welcome.

Nicola Howarth: I am not aware of the report but with a planning application, in coalfield areas the Coal Authority is a statutory consultee. I would expect that they would be able to provide some guidance in respect of that.

Q76 **Chair:** Do you think fracking organisations submitting a planning application should have to submit high resolution map datasets of fault lines?

Andrew Mullaney: Ultimately, the mineral planning authority needs to be satisfied that the impacts are being controlled. That is not to say that we should try to duplicate the controls but we do need to be satisfied that the impacts can be controlled and are going to be mitigated. Whether that needs high resolution maps, I do not now. We would also be looking at the traffic light system, just to see how that is going to be operated and how the operator proposes to manage the traffic light system, in terms of controlling seismicity. There is probably a range of information. I would not like to specify what that is. We would certainly need enough information and we would probably seek specialist advice on that before arriving at our own decision.

Q77 **Liz Twist:** It has been suggested to us that there is a lack of clarity in the definition of fracking, which means that some of the anti-fracking groups can challenge any application for hydrocarbon-related development, whether or not it would be understood or classed as



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fracking under the Infrastructure Act. Would there be a benefit if the guidance included a better definition of fracking?

Sally Gill: Yes, there would, but the wider world and particularly some of the ant-fracking groups will challenge local authorities on any application, whether or not it is related to shale gas development of any form. Indeed, as experienced in Nottinghamshire, we have had planning applications relating to conventional oil and gas, and protestors have started spreading rumours that that is related to shale gas and shale gas development. The local authority then has to spend a lot of time saying, "No, that does not relate to shale gas. That relates to conventional oil and gas, and oil has been extracted from that site for the last 40 or 50 years".

There is a lot of emotion around it, and groups choose to use information in certain ways. If there is clear information, yes, that is welcome, but it is about whether it will be used as we intend or whether people will say, "No, there is oil and gas involved in that planning application; therefore, it is shale and therefore we will start the campaigns going".

Richard Flint: I would probably take a slightly different view. In North Yorkshire, we have just gone through the process of finalising our minerals and waste local plan. Within that, we have taken a broad view of the definition of fracking. There are probably a couple of reasons around that. If you were to use the definition that is in the regulations around national infrastructure, then you would narrow it down so much so that we feel that applications that just miss that threshold would require all of the same level of consideration as something that hit that definition. We also believe that it is necessary to have something that is clear to the public in terms of what is understood by the term "hydraulic fracturing"; they can then be open to participating in the planning process as a result of a definition that is not completely all-encompassing but is open to their understanding of the phrase.

Nicola Howarth: It would help if there was a common definition for fracking. As it is set out in the Infrastructure Act, it is quite scientific. It is obviously an industry definition. There is a definition in the planning practice guidance for minerals, which relates a bit more to the operation of fracking. It would be helpful if the two were possibly combined in some way and there was consensus in trying to get agreement over one definition.

Andrew Mullaney: The Infrastructure Act definition in Section 4B is okay as it is. In our dealing with them, it makes a clear differentiation between what we would call full fracking and what might be called pressure testing, so we would not want the full process to kick in for those very small operations. That said, it is possible to get hung up on definitions. We could define something and three or four years down the track, when practice changes, that definition might become unworkable. What really matters is the impacts. It is the impacts that matter: the number of HGV movements and the night-time noise levels. It is those



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levels that we need to assess, and the environmental impact regulations are a good enough tool for us to do that. I am personally not too bothered about the definition. We can get hung up on it. What ultimately matters is the impact on people.

- Q78 **Liz Twist:** We seem to have a mixture of views. We might benefit from some greater clarity, but equally it might not make a difference in terms of how people respond to the planning applications. Is that right?

Richard Flinton: Yes.

- Q79 **Liz Twist:** Also you have referred to fact that it is a developing field and so there needs to be some room for manoeuvrability. Have I understood that correctly?

Andrew Mullaney: Yes. Flexibility.

- Q80 **Liz Twist:** Ms Howarth, you suggested an alternative way of looking at it. You mentioned the Infrastructure Act and you also mentioned the planning policy guidance definition, which you felt was better. Are others familiar with that? Do you share that view, or do you have alternative suggestions for how it could be improved?

Richard Flinton: I share that view. The planning policy guidance definition is what we have put into our minerals and waste local plan. Interestingly, we have been through a planning application, quite famously, in North Yorkshire, in our district of Ryedale. If you took the Infrastructure Act definition, that particular planning application would not have been caught by that, yet all of the considerations that we had to take into account would have been the same for the development that took place as for one that hit the actual Infrastructure Act definition, as well as there being the clarity in the public's mind in terms of what they were dealing with. The definition in the guidance is helpful in that respect.

Andrew Mullaney: There is no statutory test in terms of the environmental impact assessment regulations that will trigger fracking or not. In statutory terms, I am not sure it matters, perhaps unless you are in a designated area.

- Q81 **Liz Twist:** What effect does the distinction between conventional and unconventional oil and gas have on the planning process? You talked, Ms Gill, about the fact that people do not always see them as different. Is there any difference in how they are considered in the planning process?

Sally Gill: For my authority it is minerals applications, and we start looking at the applications from what the development plans say. It is important that, as a minerals planning authority, we treat all minerals applications the same, whether it is somebody who is sanding a gravel quarry or a borehole for shale gas extraction. We have to treat all applications with the same weight and the same due care and attention.



As an authority, they will all be treated in the same robust way and through a robust decision-making process.

Q82 **Liz Twist:** Does anyone else have anything to say on that?

Andrew Mullaney: I will agree with that. It is about the impact on the highway network, where the nearest neighbours are and what the night-time noise levels are going to be like. Those are the key tests.

Q83 **Liz Twist:** We heard from Matt Lambert of Cuadrilla in our last session. He told the Committee that they frequently find councillors are either under pressure to or wish to concern themselves with generally sub-surface matters that are dealt with by other regulators. Is that your experience when dealing with applications?

Andrew Mullaney: I heard Mr Lambert say that. I can understand why he said that but I do not support why he said it. It is important to distinguish between a planning authority having considered an issue and trying to control it. It is important that we consider, and that the planning authority is satisfied with, things like groundwater impact, even though that is controlled by the Environment Agency, and seismicity. It is important that we consider that and are satisfied about that, through the environmental impact assessment regulations.

In fact, paragraph 120 of the National Planning Policy Framework directs us to do that; it directs us to look at planning and pollution control issues. If you look at paragraph 122, after that, it says not to try to duplicate the controls of other bodies, but you have to consider those things. It is a subtle but important difference. We have to consider, we have to be satisfied but we should not duplicate the controls.

Richard Flinton: I would agree with what Andrew has said. I would add that, from our experience of dealing with a fracking application, that was not the approach that members took. Members took a very rounded view of all of the issues that were relevant to the application and those that were going to impact on the local communities. It was an application that was eventually passed in North Yorkshire. There was not a nimby view taken of it but they were very concerned, in the way that Andrew describes. They were interested in what was happening sub-surface but their interest extended far beyond that. It was more the impact in the local community that they were interested in.

Sally Gill: I would share both Andrew and Richard's comments. We spent a lot of time talking to our members and indeed talking to some local protest groups, explaining our role, explaining the role of the Environment Agency and explaining the role of the Health and Safety Executive. The thread that was running through all those discussions and preparation was that, as a minerals planning authority, we will carry out our role to the best of our ability. All those other parties and those other agencies will do exactly the same. Yes, we will talk to them but they are



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the specialists in those areas and we will take their guidance and their instructions.

If I may point you towards a diagram that the former Department of Energy and Climate Change put together, it is a nice little pentagon on regulatory collaboration. I will send you the link to that. We found that diagram very useful in all our deliberations, because it set out clearly the roles of the Health and Safety Executive, the Environment Agency, central Government, the Oil and Gas Authority, Public Health England and the mineral planning authority. We felt that encapsulated it all: what our role was and what somebody else's role was. That was a very easy-to-digest diagram. We used that quite a lot in our committee reports.

Q84 **Liz Twist:** Ms Howarth, did you want to say anything?

Nicola Howarth: As mineral planning authorities, we should consider sub-surface matters where it relates to the operational use of the land and where it is material to the planning determination.

Q85 **Liz Twist:** You all feel that councillors understood that differentiation and were clear about it?

Richard Flinton: Yes.

Q86 **Bob Blackman:** Moving on to planning guidance that is given to you, one of the things we had received is written evidence from 20 different versions of guidance. There seem to be two different views on this particular aspect of bringing together the guidance in one consolidated document. There is quite strong support for bringing it together, but there are other people that say that bringing it together may cherry-pick and may lead to a simplification of the whole process, which will prevent some groups from opposing it. What is the view of each of you on bringing together all this guidance into one particular document?

Richard Flinton: Again, I will preface by saying that I am not a professional planner but the view of my colleagues is that they are generally satisfied with the guidance that we have and satisfied with its availability. It is available electronically. It provides the right balance in terms of guidance, the national policies and, crucially, allowing us to go through, as I have been saying, the development of our own local policies relating to our place. It is one of relative comfort with the present situation and not necessarily pushing for anything that is new.

Q87 **Bob Blackman:** Given that there is quite a wide range of different guidance documents, are you happy that there is this wide range? Would you rather see one document or at least a reduction in the number of documents?

Richard Flinton: The view that has been expressed by my planning team is that they are comfortable with the way it sits at the moment. If everything can be consolidated without losing the sense of what is there,



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I am sure that is a nice and easy thing for professionals to have regard to, but we are not coming at this from the point that there is a serious problem to be fixed in terms of the guidance.

Sally Gill: All I would add to Richard's comments is that, yes, there is a lot of information out there that is really useful and has been very useful to us in our processes. Rather than putting it all in one document, it would be useful if it was all in one place on your website, so we knew that if we were looking at information, everything was in one place—not necessarily one document—so we could then use the bits we needed to use, so we would be sure that we had the most up-to-date list on documents, correspondence and things. That would be our suggestion.

Andrew Mullaney: As I said previously, we consider it to be quite fragmented. It is quite bitty at the moment.

Q88 **Bob Blackman:** Do you consider it to be contradictory as well?

Andrew Mullaney: I would not say contradictory. I would say that there is perhaps a difference in emphasis in weight. The current NPPF and indeed the new draft NPPF seem to attach slightly different weight than the written ministerial statement of September 2015. The question is, as I said before, and having just gone through a public inquiry on this, about which trumps the other. Which carries more weight? Which is the statement of government policy? Trying to harmonise that would be helpful. There are other bits of guidance as well that could do with updating. I alluded to NORM, seismicity and flowback fluid. A key one is around public health. The Public Health England report of 2014 is now four years old. A lot of the questions that are raised in fracking relate to public health. Some kind of update on planning, fracking and public health would be helpful. Without duplicating all those controls of Public Health England, there are some things that would benefit from an update. My position is that there is merit in harmonising.

Q89 **Bob Blackman:** Sally suggested bringing it all together, at the very least. Is that something you would see an advantage in happening?

Andrew Mullaney: Yes.

Nicola Howarth: We would like to see it consolidated as well. It would be helpful for the public.

Q90 **Bob Blackman:** Do you mean consolidated in the way that Sally suggested, or put together in one document with clear statements of what is going to take priority?

Nicola Howarth: Put together in one document.

Q91 **Bob Blackman:** Given that there are statements around and guidance from various different groups—and, Andrew, you have drawn our attention to the issue of who takes priority and what the most important aspect is—how should all this be pulled together? Who is going to be the



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author of this and the determinant of what the guidance is, if it is brought together as one group of guidance? Do you have a view on that? I will start with you, Nicola, because I was with you already.

Nicola Howarth: I would have thought it would be central Government initially, because the NPPF and planning practice guidance—

Q92 **Bob Blackman:** Do you think it should be part of the NPPF?

Nicola Howarth: It would be better as a separate document but it should be put together by central Government and put out to consultation that way.

Q93 **Bob Blackman:** Are there any contradictory views?

Andrew Mullaney: The NPPF can be updated at the high level but that is not the right place to have the level of detail that was in the online planning practice guidance. The online planning practice guidance on minerals is quite helpful. It is 90% there but there are some gaps that need updating. MHCLG would be the people to do that.

Sally Gill: While it is important to put everything in one place, adding it to the NPPF is not perhaps the place to put it, because then other areas of planning would quite rightly say, "Why have we not got a big chunk of the NPPF relating to housing and relating to sand and gravel?" It perhaps needs to be free-standing in a more appropriate place than the NPPF.

Bob Blackman: I am sure Ministers would be saying they are not going to recreate the thousands of pages.

Richard Flinton: I very much agree with Sally's comments.

Q94 **Andrew Lewer:** Related to this, I just wondered what elements of fracking specifically relate to public health.

Andrew Mullaney: We had the Public Health England report of 2014, which concluded that if properly controlled the public health impacts of fracking were minimal. We need some kind of update to that. It has been four years since that. We get a lot of opposition groups all the time saying there has been this report and that report. If that Public Health England report was updated and in turn that underpinned some revised government guidance on planning, public health and fracking, that would be helpful. I do not envisage it being *War and Peace*, but even just a paragraph or two in the revised, possibly online planning guidance would be helpful.

Q95 **Chair:** Is this not merely about having some co-ordinated guidance but also about having it updated as well? There are public health issues where things may have changed since then. We mentioned at the beginning Professor Styles' report, where he has raised some new concerns on the back of a detailed analysis that he has done of fracking in old mining areas. Should there be an ability, where new information and new evidence comes to light, to be able to get the guidance updated quickly, rather than waiting for two, three or four years, as you have just



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indicated, before things are done?

Andrew Mullaney: Possibly. There could even simply be a statement that says, "We are constantly keeping things under review. If we feel the need to change, we will change". At the moment, there seems to be silence, which is filled by opposition groups pointing to studies X, Y and Z in America or whatever. Being a planner dealing with that feels quite isolating.

Sally Gill: It is very important, if there is new information that becomes available relating to shale gas, that any guidance or documentation is updated. Any work consolidating or even listing information needs to build in a mechanism to review and update, so that when we are making decisions we know we have the up-to-date list of information to look at.

Q96 **Matt Western:** Apologies for being a little bit late. I used to sit on a regulatory committee at a county council. I have a lot of empathy with where you probably find yourselves on these things. I am interested to know about the existing guidance and how it is that you manage to balance between the local and national guidance and policy in determining fracking applications.

Nicola Howarth: Generally all guidance is material. The weight that you give that is for the decision-maker and it is done on a case-by-case basis. National guidance supports the principle of fracking and that has to be assessed against the impacts of it. It is a balancing exercise. There is also the economic argument that needs to be balanced against social and environmental issues.

Andrew Mullaney: There seems to be some inconsistency between, on the one hand, what I would call the climate change ambitions of national policy and, on the other hand, the importance that is attached to shale gas. For example, the written ministerial statement says there is a need for gas and it is important but, on the other hand, we have things like the Clean Growth Strategy. As a planner, I am left wondering where we go with this. On the one hand, we seem to be asked to reduce CO₂ but, on the other, this need for gas obviously results in CO₂ emissions.

I noticed in the recent draft NPPF, in paragraph 204, it talks about mineral planning authorities recognising shale gas in the transition to a low-carbon economy. Maybe I am reading too much into it but that seems to me almost like a coded way of saying, "You do not need to worry, MPAs, about shale gas and the carbon emissions that result, because it is taking us on a path, on a transition to a low carbon economy". I would like to see something more concrete around this apparent inconsistency between the Clean Growth Strategy and the need to promote gas through planning policy.

Sally Gill: Like Andrew in Lancashire, that was a discussion and a dilemma that we had in dealing with applications. At times, various individuals did try to develop a debate about energy. We had to keep



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saying, "Look, we are dealing with a planning application. Wider national-level discussions about energy policy are not for this planning process". Some clarity would be useful. It would make it very clear we were dealing with a planning application and it was not appropriate to be discussing national energy policies.

Richard Flinton: I take a view of having more comfort with the balance in terms of the national policies that require us to look at the benefits from mineral extraction but then enable the local policies to look at how you would qualify that and how you would make sure it is done in a balanced way in relation to the nature of your particular communities. One of the areas in North Yorkshire where the Bowland shale provides the greatest opportunity for gas extraction is in the district of Ryedale. That is a very beautiful part of North Yorkshire. It is a national park and area of outstanding natural beauty. One of the key issues for us is how you balance the issue of proliferation of the industry against the requirements of the community, the need for farming to thrive and tourism industries to do likewise.

Therefore, we see having the main maxim within the planning policy but then having the ability to interpret that balance locally as being of vital importance. We have a range of policies in place that help to go towards achieving that balance. I am sure there will be a range of views on that. We feel that we have been able to get somewhere towards that in our new local plan by being able to have the scope for the local policies that we put in place.

Q97 **Matt Western:** Could you give a couple of examples of those policies you mentioned?

Richard Flinton: A couple of examples would be in terms of those very protected designations, such as national parks and areas of outstanding natural beauty. There is a zone that requires very high levels of protection, three and a half kilometres within the bounds of the national park. There is also a requirement requiring very high levels of protection within 500 metres of somebody's dwelling. Those types of policies, plus some commentary on overall density levels, help to achieve that type of balance, which we have been able to pull together at a local level. I should add a qualification that the overall plan process has not properly been finished yet, although we have just been through the examination in the public part of the planning process.

Q98 **Andrew Lewer:** I am hearing that a local planning application should not be an opportunity for a debate about the national energy mix but I am also hearing that more clarity on that would be helpful. I do not understand the contrast between the two, on the basis that you would not turn down a planning application for a petrol station because the Government said they want more electric cars by 2040.

Andrew Mullaney: In determining the application we look at how much carbon dioxide is emitted from the flow sites, from the HGVs and those



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kinds of things. One of the things we did when we were determining the Preston New Road application was to look at the CO₂ equivalent emissions of that and compare it with CO₂ annually from the district as a whole, and concluded it was probably about 5% or less, and that that was acceptable. If the national policy is steering you towards reducing carbon dioxide, at what level does it become unacceptable? Is it 5%? Is it 7%? Is it 8%? These are the kinds of issues that you are dealing with in the determination process.

Q99 Mike Amesbury: Is the statement, which suggests that shale extraction would help move towards a carbon-neutral economy and that default position in planning, a statement of politics or fact, in your opinion?

Andrew Mullaney: You are asking me to provide opinion. Planners do not do opinion.

Mike Amesbury: Based on the evidence.

Andrew Mullaney: At this point in time, what we have is a very small number of experimental boreholes. We do not even know whether the industry is going to be viable and whether it will elucidate more applications. It is impossible to say at the moment. It is what it is, and it is for experimental boreholes on one site for four years. We will take it from the next stage after that.

Q100 Chair: Can I come back to North Yorkshire and your plan that you just commented about? You have had your inquiry now, in public? I think the inspector said she was minded to look favourably on the ideas of restricted distances to residential units, to restricted limits on areas of natural beauty and natural parks, and to put limits on the number of wells in any area, and also the slightly wider definition of fracking that you have taken. Do you think you have been slightly brave as an authority, going in that direction, with no real laid-down guidance that you can fall back on? You have really developed this yourself. Are other authorities already talking to you about whether they might follow suit?

Richard Flinton: The answers to those two questions are "yes" and "yes". We almost welcome the opportunity to be brave and to be able to shape our policies to suit our place. I described Ryedale as an example earlier; we felt that there were a number of factors that we really had to take into account in order to safeguard the characteristics of the place. We pulled together that suite of measures, which we believe enables the industry to take place, is in line with recognising the value of mineral extraction, tempers the level that the industry will reach in order to enable those other qualities of life but also factors local existing jobs taking place. It was a matter of carving out our own way. In doing so, we looked at other planning issues relating to other industries, other factors and other issues of noise, transport, et cetera, and we brought those to bear in relation to this particular issue and, as I say, related it to our place. That is the importance of local government having a role in



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determining planning applications and pulling together local plans. I would be extremely supportive that that stays the same.

Q101 **Chair:** Can I ask the other planning authorities: have you been looking at what North Yorkshire has done and thinking that you might do something similar?

Sally Gill: Local authorities always look at what their colleagues are doing. If we can avoid reinventing the wheel and someone has a good idea, we will always borrow it. In Nottinghamshire, we are at the very early stages of preparing our minerals local plan. We had an issues and options consultation earlier this year. It is very early days to say what the plan may or may not look like. I will probably be able to answer that question in a few months' time but not at the moment.

Andrew Mullaney: We have been following very closely what is happening in North Yorkshire and the recent inspector's report, particularly around the buffer zone. I thought the inspector's wording, which was fine, was actually quite telling. My opinion is that people are over-egging it. There is an exclusion zone but it is predicated on impacts being made acceptable, so you can be within the buffer zone if you can demonstrate the impacts are acceptable, which is of course what the planning process and developers will always seek to do. If you can demonstrate the night-time noise is acceptable, it might only be 150 metres away from a dwelling. If you can demonstrate it is acceptable, it passes the North Yorkshire test. I do not think it is as seismic a policy shift as people are making out.

Chair: "Seismic" may not be quite the right word.

Nicola Howarth: We would support a mandatory offset distance away from residential development and sensitive receptors. It does advocate that in planning practice guidance but it tends to be on a site-specific basis. If it was included in the national policy then that would reinforce that policy direction and NPAs could impose a buffer.

Q102 **Mike Amesbury:** This is for you, Sally. You said you support treating fracking planning applications as nationally significant infrastructure projects if you are given reassurances and it involves the county every step of the way. What would be gained by treating fracking applications as nationally significant infrastructure projects?

Sally Gill: The key thing is that the decision would be made that it is important nationally, so it would be treated via the nationally significant infrastructure project route. The important thing for my authority is that, while we have had to make some quite difficult decisions, the role of the minerals planning authority is the main way that members of our local communities can engage with the debate around shale gas and fracking. Through all our processes, that has been a very important role. Our members had to make some very difficult and challenging decisions. There was a lot of media interest and wider world interest. If these



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applications were to be dealt with by the nationally significant infrastructure project regime, it would still need to be recognised that local authorities have a big role in that and we would need to be adequately resourced to deal with consultation.

For most of the processes, people come to the local authority for information or they come to make representations, because our processes and decision-making are all transparent and all in the public domain. People can come and speak at our committees and ensure that their councillors have heard what they have to say. Other regulators do not have that public-facing role. That local authority role, which is public-facing, is very important. If they were dealt with separately, we would not have any objections, provided we have the resources to do the proper consultation and properly resource the role that we would still have to have in that.

Q103 Mike Amesbury: Is there a risk in simply knocking things upstairs, so to speak, and taking away local informed decision-making processes and democracy?

Sally Gill: In our response to you, we felt there were benefits in doing it both ways. The thing that I am sure my colleagues would share is that while shale gas applications are minerals planning applications, and that is what we do, the interest relating to shale gas applications and the amount of time we have had to all spend on these applications far outweigh the time we would have spent on an application for sand and gravel extraction and things. They are very resource-hungry applications for us to deal with.

Richard Flint: I would take a slightly different view. While recognising everything Sally has said about the nature of the planning application for shale gas, how large and contentious it is, how difficult to handle it is, and how there is insufficient funding for local government to deal with such planning applications, I absolutely fundamentally believe that the first port of call is that it should be a local authority determination. Unless the whole development is very sizeable, it should not automatically go up into the national infrastructure regime; it should stay local so that there can be the full scrutiny of it locally. Local people should have the opportunity to pitch their views in and understand how all the issues are being determined. In any event, you would have to replicate quite a lot of that in terms of your statutory consultation duty. The determination being at the local authority level feels like the right place for it to be.

Andrew Mullaney: It is a very important point. If I say nothing else to you, I really want to make this important point. We believe it is vitally important that decision-making stays local. I am not quite sure what the reason is for it going up into national infrastructure. Based upon the last session, there was some discussion around the speed of decision-making. First of all, if this did go to national infrastructure I do not think it would be quicker; it would possibly be slower. National infrastructure could



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take up to a year and possibly two. National infrastructure requires a lot of groundwork to be done, even before the hearing is made. There is then a 12-month period in which the Secretary of State has to have made the development consent order.

Further down the track, if you come to make changes to the planning conditions—or requirements, as they are called—that can be a very clunky, cumbersome process. If you look at the guidance on the changes to development consent orders, they are classed in two parts: material changes and non-material changes. If you are getting into material changes, you can possibly open up again the whole infrastructure examination process. Careful scrutiny needs to be made of the timescales that would be attached to this.

Fundamentally, however, the issue, whether it is local or national, is one of pressure from certain sectors of society. That is what is causing the delay. The suggestion that local authorities are somehow dragging their feet or do not have the competencies in speed of determination is wrong. I know Mr Lambert, in the last session, alluded to 28 months. That is not a figure I recognise. I can understand how he might have said that but do not agree, being close to the determination process and know what happens.

We got an application submitted in June 2014 for Preston New Road. Because of the pressure that is put on this by objectors, there is a lot of information from Friends of the Earth and other organisations—20 or 30-page, detailed submissions. The applicant is very keen to address those objections as they come along. The reason for that is that they do not want this to end up in the High Court, because that would elongate the process greatly, if a decision made by the mineral planning authority is somehow not robust because it has not addressed a particular point of an objection. The applicant, in our experience, has been super-keen to address these things by making detailed rebuttals. We had four of those detailed rebuttals in the first five months from the applicant.

Things come along, from Friends of the Earth or whoever. We put them on the planning register. Cuadrilla sees them and submits the detailed rebuttal of them. Unfortunately, a lot of that contains fresh information. What that does is trigger what is called Regulation 22, from the EIA regs. It has to be advertised and consulted upon. That kicks in a period. We had four of those in the first five months. We then got to committee within five months and at the committee hearing itself the officer's recommendation was refusal, on night-time noise grounds, because there were some substantial elevated night-time noise levels above background.

The applicant then submitted detailed information or mitigation for noise at the committee. Again, that triggered Regulation 22, so we have to go out again, advertise and consult on this. All this has the effect of elongating the process, because the applicant is keen to address it.



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Because of all this external pressure, which we do not normally get in other applications, the applicant is keen to address it. If you are national infrastructure, that will still happen. That is not going to go away. In fact, national infrastructure is probably too cumbersome to address it, compared with the fleet-footedness we have at local level.

What you have, because of the external pressure that is coming to this, is a process that is long. It took us 12 months from receipt of the application to determination—not 28 months—but that was punctuated by five, possibly six Regulation 22 sets of information from the applicant.

During that process we have probably had at least 12, possibly 17—I do not know the exact figure—of what are called pre-action protocols, which are legal challenges from Friends of the Earth and other groups, where they write to you and say, “Please answer the following 20 questions. If you do not answer in seven days then we will take it to the next stage”. We have probably had at least a dozen of those. This is the kind of arena and pressure that is taking place, and unless you see it and unless you are experiencing it, you do not realise. This will also happen at the national infrastructure level.

I am sorry to go on at length about this. It is the most important point I wanted to make: this notion that local authorities are dragging their feet and have not got the competencies is just not true. If it happened at the Planning Inspectorate it would be exactly the same.

Q104 Mike Amesbury: It was suggested in earlier evidence sessions that a specific multi-agency assessment or examination of fracking applications would help speed up the process. Would you agree with that suggestion?

Andrew Mullaney: I cannot see how it would. One thing that has sped things up is that the Environment Agency has got into the groove of determining these applications. It is well used to looking at the groundwater impacts and seismicity impacts. When we dealt with Preston New Road that was not the case; it was kind of new for everybody.

The Environment Agency—and this is what we have submitted in our evidence—quite rightly was getting pressure for legal challenge. When we wrote to them as a statutory consultee and said, “What do you think about the groundwater impacts?” they were quite rightly saying, “Actually, we want to keep our powder dry. We have not determined our permit yet and so we do not want to give you statutory comments on something we are in the middle of determining. It prejudices our thinking. Our thinking has not yet been formed”. The agency have now got that and they have a few under the belt. Probably 70% to 80% of the responses we got were related to things that were outside a planning area, things that were controlled by the agency. Now that the agency is on top of this more and it is not as new as it was, things should be quicker and smoother.



Q105 **Mike Amesbury:** Nicola, I am conscious of the fact that you have not come in. Again, on this notion of a multi-agency approach to fracking applications, what are the advantages and disadvantages of that?

Nicola Howarth: I do not see how it would speed up the process, because at present mineral planning authorities work with the Health and Safety Executive and the Environment Agency already in dealing with mineral applications. There is already a good working relationship there. I am not quite sure how it could improve matters because we already work effectively in a kind of partnership way anyway.

Q106 **Andrew Lewer:** You have covered quite a bit of what I was going to ask in terms of the timings of fracking applications. You have covered yours, but do any of you have experience of other authorities that are taking longer than is expected or is required in statute for applications for fracking?

Sally Gill: Our process for our application is like Andrew's, because we have to carry out additional consultation under Regulation 22. That does add time to the process. If we receive new information we have to consult on it, then we have to take it into account. As we were taking applications to committees, we were reviewing every bit of information to make sure that we had carried out appropriate consultation on everything we had. That was quite time-consuming in itself, let alone dealing with the responses.

When we got the first application to committee, one of the objectors to the proposal presented us with information at lunchtime while the committee was sitting, so we had to pause the committee to look at that information and then reconvene it again, which added time to the process.

At the end of the day, my committee and the authority want to make robust decisions, so we will look at everything that we need to look at. Most of the applicants from our applications were IGas and they were prepared to work with us to ensure that when a decision was made it was a robust decision.

Q107 **Andrew Lewer:** On that in particular, if you have a statutory timeframe and new information comes through, does that wind the clock back again?

Sally Gill: We negotiated extensions of time so we were always within the appropriate timeframes, and because we had a very good working relationship with the shale gas company, we negotiated positions.

Q108 **Andrew Lewer:** Are Yorkshire a big part within timeframe, normally?

Richard Flinton: In terms of the major application that we determined, it took 10 months for that to be determined. The main issues very much recognised what Andrew described in terms of the ongoing new information supplied by Third Energy and the need to re-consult, as well



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as dealing with thousands and thousands of objections and representations that were made. That was the bulk of the time.

It is interesting that that application was determined in May 2016 and there have been other ongoing processes, not least with Government, in terms of final signoff that still have not been completed.

Nicola Howarth: We have not dealt with a fracking application, but we deal with major mineral applications, and it is generally unrealistic of the industry to expect us to deal with major controversial planning applications within the statutory timeframe because you often have hundreds or thousands of objections; you have to make sure your legal processes are correct and you are often having to negotiate Section 106 agreements and Section 278 agreements with the highway authority, so it is quite difficult to actually meet those statutory timeframes. We do have agreements in place with respect to the time period.

If the operators are not happy with the timeframe, there are other routes they can take to get a quicker decision. They can go to the Secretary of State and appeal against non-determination if they wish.

Q109 **Andrew Lewer:** When I was the leader of the minerals planning authority in Derbyshire County Council, we had some huge applications, but they were for things that had happened a lot before and been similarly huge—sand and gravel extraction, and what-have-you. Do you think that although some of these applications may always be complex, the fact that they will no longer be new and all of these things will have happened before more than was the case means that they will not take even as long as they have taken and it will bed down, in a sense?

Richard Flinton: I agree with the premise there. There is a degree of that. The timeframe within which that bedding down takes place, though, may not be necessarily quick, but, particularly within authorities that have already experienced or been through it before, as those issues are gone over and explained, and each side has its say, as it were, councillors and even the general public are more familiar with them the next time round, so you are right in what you are saying.

Sally Gill: Each application we are looking at on the merits. For one application, there were some very major environmental issues that we needed to look at; for another, the site was not as environmentally sensitive. Whilst things probably will speed up as more applications are dealt with, it is important that, right at the start, the minerals planning authority looks at what the issues are on that particular site, and we start from there. Obviously our awareness of what may happen through the process of dealing with the shale gas application is greater, but we still have to think, "What are the issues? What are the road issues? What is the water? What is the wildlife?"

Andrew Mullaney: As long as you have the pressure from objectors in the volume that it is, that is putting pressure on the system wherever the



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determination takes place. Let us also not forget that the Secretary of State already has powers to call in these sorts of applications if he wants, if he considers them to be nationally important.

Q110 Andrew Lewer: I am not a gambling man but I will ask this question anyway. Do local authorities have sufficient resources to process fracking applications properly?

Richard Flinton: No, and we do not resourced very much to do that. The application that I have described in North Yorkshire cost over £500,000 in terms of the burden to the council and we received some funding help from the Government, which amounted to in the region of £170,000, so there is a considerable balance to be met by the council.

Sally Gill: I agree with that. Like Richard, we were successful in obtaining some funding from DCLG, which was welcomed, but in dealing with these applications, when the applications were coming to committee the whole of the authority was involved; it was not just my team and the planning and licensing committee; it was my colleagues in the emergency planning and my legal colleagues. It was not just a burden on my planning finances; it was a burden on the local authority's finances.

Andrew Mullaney: I would agree, yes. It is not just determination; it is post-decision as well, in terms of the monitoring and enforcement of sites. At the peak, if something at the site is happening—say, for example, the fracking rigs are being brought on, which they will be at some point in the summer—I am expecting our complaints to go through the roof and us to have to deal with those. Whether they are actual complaints or how significant they are, nevertheless all have to be investigated.

Nicola Howarth: I agree. I also think it would be helpful if the funding was available on an ongoing basis from the Government. There was a deadline to submit your application for the bid and I think it was available on a first come, first served basis, which I do not think is helpful, really. More available and less restricted would help.

Q111 Liz Twist: I wanted to ask you about discussion of where people go to discuss the big issue of fracking. You are here speaking as mineral authorities and you showed us the infographic from the Department that says who is responsible for what. Do you have a view on where people go? You are having to cope with the overall objections because you have a public process. Do you have a view on where people raise that big issue of, "Is it good for this area?"

Sally Gill: Through the planning process lots of people contact us, so we talk to them about the process. On our website we put a lot of frequently asked questions that relate to our responsibilities and other regulators' responsibilities. We also set up a couple of sessions where we brought councillors, parish councillor, the regulators and the Frack Free groups



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together in one room so they could all hear from each other and each other's roles and responsibilities.

We have found that often the local authority is the first point of call for someone to go now when the last round of the pedal licences were released. We were getting people and our local media phoning the county council wanting information because they did not know where else to go. We were having to explain to lots of our local media that we had only just seen the announcement the same day as they had, so we were still looking at it. Because local authorities are public facing, if people want information they will try us first and hopefully we can either direct them in the right direction or point them to our website. People do come to the local authorities first.

Andrew Mullaney: That is true. If you look at the number of representations sent to the Environment Agency on permit applications, they are dwarfed by the number of reps that councils receive, because people see the democratic representative role of the council.

Richard Flinton: I agree with both colleagues, but there is an issue in terms of how the public understands the roles of the different agencies. Clearly not everybody has access to Sally's diagram there. We, and I am sure other agencies, try to make that to be as straightforward as we possibly can to the public, but if you are first looking at where you do start to get involved in the issues that you think affect you then I can understand the confusion that a member of the public has.

Q112 **Chair:** I have one follow-up point. The Government, in the Conservative manifesto, promised to bring in a shared environment regulator to pull all the regulatory functions together in one body. Would that help the process?

Richard Flinton: I feel your gaze on me, Chair. I am not sure, to be honest. As Andrew said so very well earlier on, the main issue for me is that the planning element of it is determined by local council still and that remains, and that does not get put into a separate agency. We feel that we work well enough with the other agencies. The issue of public understanding of other agencies is clearly a problem. In summary, there may be some benefits but they are not very significant benefits.

Sally Gill: I do not feel at the moment that there is a hole that needs a new regulator to plug. Our role and the roles of the other regulators are very clear. If a new regulator did come into being, there would be some duplication and that would probably cause more uncertainty. Ourselves and the other regulators we have now all carry out our roles, and there is not a need for another one.

Andrew Mullaney: I echo what Richard said about maintaining democratic input and control in the planning process. It is instructive to look at other industries; the chemical industry, nuclear industry, agriculture industry and food industry all have multiple regulators. All of



them have expertise and competences, whether it is the Food Standards Agency, the Driver and Vehicle Standards Agency, the Environment Agency or the Health and Safety Executive. There is a risk that if you create a single regulator there will be dilution of those skills and competencies, and that would be my concern.

Nicola Howarth: I would agree. Provided that they are properly resourced, I do not see why you would need a separate regulator.

Chair: Thank you all very much for coming to give evidence to us this afternoon.

Examination of Witnesses

Witnesses: Mark Ellis-Jones, Tom Wheeler and Chris Flint.

Q113 **Chair:** Thank you very much for coming. We will begin our second panel this afternoon. Could you just go down the table and say who you are and the organisation that you represent?

Tom Wheeler: My name is Tom Wheeler. I am the director of regulation at the Oil and Gas Authority.

Chris Flint: I am Chris Flint, a director in the energy division at the Health and Safety Executive.

Mark Ellis-Jones: Mark Ellis-Jones, programme executive at the Environment Agency's onshore oil and gas programme.

Chair: Thank you. We put on record our general interests as Committee members at the beginning of the first session, but Mike, you have something to add to that at this stage as well.

Mike Amesbury: I am the PPS to the Shadow Working Pensions Secretary, so particularly with reference to the Health and Safety Executive.

Chair: Yes, that is helpful. That is on the record. Thank you.

Q114 **Liz Twist:** The first question is about the efficacy of the current guidance, really. Do local authorities and the general public really have a clear idea of what each of you do and what your remits are in relation to fracking?

Mark Ellis-Jones: Should I take that first? I am happy to do that first. We have been doing a huge amount of work as individual regulators but also together; I can hopefully speak on all of our behalves in saying that. We have been doing a lot of what we call "meet the regulator" events in local communities, where the three regulators sat here, plus local mineral planning authorities, have done sessions specifically to outline respective roles to members of the public.



We have done feedback from those, and generally, where we have gone into local communities, sometimes even before planning applications or permit applications have been submitted, those have gone down really well and people have really appreciated the opportunity to hear from us directly.

From the Environment Agency's point of view specifically, we have done quite a lot of work, both with operators and with local communities, to explain our role more fully, so we have published sector guidance for the onshore oil and gas sector, which sets out very clearly what our role is in terms of environmental permitting and our interface with the planning system. That covers the whole onshore oil and gas sector, not just shale gas and hydraulic fracturing.

Chris Flint: I would echo what Mark said. The planners are quite clear about our roles. I suspect there is some confusion among the public. We have done an awful lot to try to raise awareness around that. Just to give some feel for that, we have held 12 awareness events since 2014 directly with individual planning authorities, six events arranged by the Planning Advisory Service that has attracted planners from a number of MPAs, 14 events in parish and borough county councils, including Lancashire, North Yorkshire, et cetera, that are directly involved. We have produced this guide for planners, which we can leave copies of or they are available on the website; we have the guide for the planners on the role of HSE. Then to supplement that we have been involved with over 100 public engagement events, to explain and engage with the public and various pressure groups, to ensure that they are clear about our respective roles and how we work closely together.

Tom Wheeler: We participate in the "meet the regulator" events, wherever there is fracking planned or expected to be planned, and we have very close relationships with MPAs on a regular basis when the need arises. With the MPAs, yes, the understanding is good and when it is a new thing for an MPA we work very closely with them to help them understand and to point them in the right direction to our guidance. As Chris said, the public inevitably need to learn what happens in the regulatory processes, but the "meet the regulator" events and things like that form a really good service for that.

Q115 **Liz Twist:** Are people clear, when they are faced with an application for fracking, about whose responsibility is what and who they can comment to about a particular aspect of an application?

Mark Ellis-Jones: There is always more we can do, and we should do more. We had evidence just now about the regulatory framework, not just for onshore oil and gas but actually lots of sectors—be it nuclear, incineration, the food industry or the waste industry. They are all complex sectors that actually have multiple regulators and interfaces with the local communities and planning. Clearly for an issue like onshore oil and gas, that is high public interest and contentious, there is always an



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onus on us as regulators, as the Environment Agency, to explain our role and to do that as simply and clearly as possible.

In terms of the level of responses that we get from our consultations, the Environment Agency is required to consult on operators' permit applications to us, and we get significant numbers of consultation responses holding us to account about the decisions we are going to make in terms of environmental permitting. We definitely feel that people are aware of what our role is and they are coming to us through the consultation processes, as well as things like freedom of information requests, to challenge us and hold us to account on that.

Q116 Liz Twist: Can you give us some idea of the level—the number or quantity—of responses you get to an environmental permit application? It is quite difficult, is it not, to respond to? It is not quite the same process as a planning application.

Mark Ellis-Jones: I could not speak about the relative ease in terms of the process, but we advertise; for a shale gas application, we will do two rounds of consultation. That goes on a site called Citizen Space; the first round is on the application and there is just an online form that a member of the public can complete to put in their consultation response. My understanding is that it is quite simple.

The second round is on something that we call our "minded to" decision. We only go to do a "minded to" consultation when something is high public interest, and that is essentially when we have taken all of the considerations into account, both the public consultation responses but also responses from statutory consultees, and we essentially publish what is—and it says it on the tin—a "minded to" decision, so whether or not we are minded to grant the permit or not to grant the permit, and our reasons for doing so. Again, there is another four-week consultation on that process. That is also done through Citizen Space.

In terms of the exact numbers, they can hugely vary. Consultations for the higher interest sites, such as Cuadrilla in Lancashire and Third Energy in Yorkshire attracted in their thousands. I could not give you the exact numbers, I am afraid, but if you want I can supply them afterwards. We have other applications for the broader onshore oil and gas sector that can just attract half a dozen, or 30 or 40. It can be hugely variable.

Chris Flint: I could not give you the numbers that we have had in, but certainly HSE is committed to continue to work with mineral planning authorities, to explain our role and to get involved with the public engagement events. I cannot think of any other sectors or industries where we have done as much public engagement as this one, so we are committed to continuing that.

In terms of numbers, I have not got that to hand, but when we do get letters in, or correspondence from MPs or the public directly, we will then co-ordinate with our Environment Agency colleagues in LGA to make sure



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we give a co-ordinated response back, to make sure they get all the information in one place. We will continue to do that. In terms of actual numbers, I could not give you that today.

Tom Wheeler: Our decisions are not generally consulted on, so we do not have that interface with the public. We do, though, as mentioned earlier, have the “meet the regulator” events. As you would expect, we get correspondence, FOIs and things like that. They are generally targeted. They are generally asking questions that are relevant to the OGA. I cannot think of any from the top of my head, but I would have referred them back to my colleagues here. I would say, yes, people do broadly pick the right person to come to, between the regulators and the mineral planning authorities.

Q117 **Liz Twist:** Thank you. Cuadrilla told the Committee that, “We frequently find councillors are either under pressure to or wish to concern themselves with generally sub-surface matters that are dealt with by other regulators”. Do you feel that the planning process can and does deal with issues that more rightly fall within your remit?

Chris Flint: We will deal with the well notifications. The relationship between us and the mineral planning authorities is fine. I am not aware that that specifically is holding anything up, and I think there is a clear understanding. Integrity is really important, both in terms of safety of the workers on the site and the public offsite, and of course it is integral to ensuring environmental safety as well. We have quite a robust regime around that, so the operator needs to give us 21 days’ notification before they start any work. That well notification needs to cover everything from the design, construction and operation through to decommissioning. We expect weekly reports to come into us around all that. I am not conscious that any of the planning applications have been held up where people got involved in sub-surface. Our advice has been taken on board and we have not had an issue there.

Mark Ellis-Jones: From the Environment Agency’s point of view, we consider that our remit is quite clear in terms of environmental permitting and the interface with that on planning. We do a lot of work with the planning officers, as you heard in the earlier testimony, around making sure that those two processes are speaking to each other. We will often encourage an operator to do something called twin-tracking. That is when an operator will put in a planning application and a permit application at the same time, so that the two can be done in parallel. Certain requirements, such as an environmental impact assessment, if required, can sometimes be required for permitting as much as it is for planning, so it is important that the scoping is done properly. We will be a statutory consultee on that process, so we can form a scoping study.

We feel that our regulatory remit is quite clear. We have set that out in sector guidance to operators and we will work with planning officers to make sure that they know what we are regulating and what therefore falls under planning.



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More recently it has been helpful for planning committees to determine the planning application after the permit application has been issued, if indeed we do issue it. That enables the planning officer and the planning committee to very clearly see what is in the permit, what is in our decision document, and therefore what might then be in the purview of the planning council and what controls we have put in place under the permit.

Tom Wheeler: For our part, the key overlap with MPAs is on seismicity. We are responsible as the lead regulator on controlling or mitigating seismic events. We have a robust system in place to do that, which looks at both reducing the risk and then, once fracking has begun, if there are indications of seismic activity we have a traffic light system that allows that to be controlled and mitigated so far as is possible. While it has not proven to be a serious problem, occasionally mineral planning authorities are looking at the issue of seismicity themselves as well.

Q118 **Liz Twist:** From what you have said, none of you feel that there is an issue of councillors getting over-involved, through the planning process, in areas that are your remit?

Chris Flint: No.

Mark Ellis-Jones: As you heard in the earlier testimony, it is important that local councillors and planning committees satisfy themselves under the current planning framework that we have discharged our duties and that they can have confidence in those. The onus is on us—certainly us as the Environment Agency—to set that out and explain that in full terms to the planning officer, and we also make approaches to the committees to appear in front of committees, and very clearly set out what we have regulated and how we regulated it. When planning committees, in particular, have invited the Environment Agency in to give evidence, we have had the opportunity to set out how we are regulating it and the controls we have put in through the permit. Committees have found that that really helpful, so as long as we are given that opportunity then that can avoid any overlap, or perceived overlap.

Q119 **Liz Twist:** I want to ask you what I asked the last panel as a last question. Each of you have a defined area of responsibility. Where do people who may be responding to applications go on the big issue of whether or not they agree with fracking or not? I do not mean the policy nationally; I mean the application locally.

Mark Ellis-Jones: The big question, as you put it, in terms of whether or not they want fracking ultimately is a national policy question, which is set by BEIS. It is matter of Government as to what the policy mix is. As the Environment Agency we regulate everything from shale gas to local hydropower schemes in rivers all the way through to nuclear and everything in between. The policy mix is a national question for Government rather than for us as the regulator. The answer is probably through their MP.



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Chris Flint: In our case, if they go to our website and they search, they would find information about how we go about regulating the onshore oil and gas industry and specifically the shale industry. The planning guidance is there, and how we work together with our colleagues in the other agencies, et cetera. There is information available if you search on the HSE website.

Tom Wheeler: Unlike Chris and Mark, we are the oil and gas regulator so we obviously have an interest, but fundamentally we are an organ of Government. Our remit and our functions are clearly set out in statute and those are to manage the licensing process and the consenting process and any onshore work to do with risks of seismicity. If we were asked a question on energy transition or carbon budgets or things like that, we would refer them to the Department.

Q120 **Mike Amesbury:** Are the regulations of the industry strong enough to help inform planning decisions locally? I will start with you, Mark.

Mark Ellis-Jones: Sorry, do you mean are the regulations strong enough in terms of the planning?

Mike Amesbury: In terms of the Environment Agency to inform the planning process locally?

Mark Ellis-Jones: The Environment Agency's strong view is that we have the right regulatory controls in place for this sector. We regulate the onshore oil and gas sector, so our regulation through environmental permitting does not make a distinction between shale gas and hydraulic fracturing specifically. We have been regulating the onshore oil and gas sector for many years. We believe that we have the right environmental controls. Our environmental permits will cover groundwater, waste emissions to air, naturally occurring radioactive materials and surface water protection. They are extensive.

We have issued what we think are robust, tightly controlled permits for the first shale gas and hydraulic fracturing sites in Lancashire and Yorkshire. We will continue to do so when other sites bring those forward, including the other onshore oil and gas developments. Our controls are fit for purpose and in relation to planning we need to continue to work with mineral planning authorities to help them understand and have visibility of the types of controls that we are putting in place.

Chris Flint: From the Health and Safety Executive's point of view, it is a bit similar to what Mark set out in terms of the distinction between hydraulic fracturing onshore and offshore wells. It makes no difference as to how we go about the regulatory activity. We have a long-established regime. It is goal-setting and risk-based under the Health and Safety at Work Act, so it requires risk to the workforce and members of the public to be taken into consideration and for the operators to manage those risks to as low as is reasonably practicable. We expect



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them to do that. It is supplemented by specific regulations for the oil and gas industry in this context.

Again, we do not distinguish onshore and offshore in many cases here, so we have got the Borehole Sites and Operations Regulations, which apply to all onshore oil and gas wells. Those regulations require a notification to be sent to HSE about the design, construction and operation of the well throughout its lifecycle. They have to continue to do that and send us weekly reports. They have to develop a health and safety plan as well, and stick to that. That is going to set out how they are going to manage the risks on site.

In addition to that, we have the Offshore Installations and Wells (Design and Construction, etc.) Regulations, which is misleading as they also apply onshore. Importantly, they have specific requirements for all wells. They include well integrity provisions, which apply throughout the life of shale gas or oil wells. They also require the well operator to send a weekly update to HSE during the construction of the well, so that inspectors can check that work is progressing as described in the notification.

A combination of all those duties provides us with information at key stages of the life-cycle of the well, helps us to assess whether risks are being adequately controlled and informs when we visit, and we can take appropriate regulatory action if they are not sticking to what has been set out.

Tom Wheeler: The majority of our regulations relate to the efficient recovery of the resource. The only area where we, like colleagues here, have an overlap with the mineral planning authorities is on this issue of seismicity. I touched on it a moment ago. We believe we have a robust regulatory regime in place to deal with that. It applies only to hydraulically fractured wells, because that is where the identified risk exists.

It starts by managing the risk of that happening through first of all asking licensees to do very sophisticated analysis of fault lines within the area that they are planning to frack. Those are tested by ourselves and, at the moment, while the industry is in its infancy we often get external people to review them as well. We understand the risks and that will then inform how we consent to a hydraulic fracturing plan.

Once operations begin we have, again, an equally robust process whereby very, very, very small imperceptible seismic events are monitored through a series of receptors. The first time there are any records of seismic activity above background levels are felt there is this traffic light scheme that requires, at very low level, the operator to pull back and to assess before they do anything else. There is that dual approach of making sure that we absolutely minimise the likelihood and then, once we are up and running and once the companies are operating



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and going through a hydraulic fracturing process, they are managing any risk as that emerges.

- Q121 **Chair:** Can I come back to the definition of fracking that appears to be somewhat different in different documents? I wonder whether that causes confusion and whether it should be rectified. We have the Infrastructure Act, which, as I understand it, is a water-based definition, for want of a short description. That excludes other forms of fracking technologies that are still contained in the minerals planning guidance, where you can use different materials to actually force the gas out. Do we need a common definition? Does the fact that we have not got one cause any difficulties?

Mark Ellis-Jones: Again, from the Environment Agency's point of view, the legislation that we rely on does not contain a definition of hydraulic fracturing and we do not need one in order to put the environmental controls in place that we have. The important and critical thing for us, whatever the activity on the spectrum that the onshore oil and gas industry may use—from the very first drilling of the borehole all the way through, perhaps, to full hydraulic fracturing, and anything in between—is whether they are doing it in a way that groundwater can be protected? Are they managing their wastes in a way that those wastes can be managed effectively and without damage to the environment? Are there any emissions to air, land or water, and how those can be controlled?

The definition is not material to our core role, which is managing the impact on the environment and making sure that that impact is minimised and controlled safely. From the environmental permitting point of view there is no need, specifically, for a definition. If we were going to rely on one, it would probably be the one in the Infrastructure Act because it is in statute, but it is not one that we rely on to fulfil our function as the Environment Agency.

Chris Flint: Likewise for the Health and Safety Executive, the definition neither helps nor hinders us because the legislation that I described applies equally. The only area where it probably has some impact is that the Infrastructure Act requires us—because of the definition, I guess—to visit each shale gas site before fracking takes place and then let the Secretary of State at BEIS know that we have received notification of weekly reports from the operator. We would regulate those sites in exactly the same way whether the definition was there or not.

- Q122 **Chair:** But you would not visit a site where water was not being used for it.

Chris Flint: No, we may still visit the site. It will depend upon the operator or intelligence around them.

- Q123 **Chair:** You would not have to visit a site.

Chris Flint: We would not have to. We would do that on a risk-based approach. If we felt it was needed, we would do it.



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Tom Wheeler: We use the Infrastructure Act definition as clarified by the Secretary of State last year to determine when a company needs to submit what we call a hydraulic fracture plan. If a plan does not meet the water-based tests that are set out in the legislation, we would not always require one. We reserve the right in guidance to require one should we think there are risks of seismic activity as a result of it. We would always require a hydraulic fracture plan when it meets the tests set out in the Infrastructure Act. We find the definition useful and we rely on it for that purpose.

Q124 **Chair:** Is that slightly unnerving for the public: that when you produce your plan, you have to visit a site if water is being used at a certain quantity to undertake the fracking process, but if the operator is going to use liquefied petroleum gas or carbon dioxide or other things, you do not have to do the same things? You may choose to do them but you do not have to.

Tom Wheeler: There are numerous ways of stimulating wells and producing oil and gas from them that have been used onshore and offshore for many, many, decades. There is a recognised risk associated with hydraulic fracturing, and the legislation and our guidance is designed to deal with that risk.

Q125 **Chair:** It is a different definition to the minerals planning guidance. That is quite an important document that defines fracking differently.

Tom Wheeler: The purpose that the minerals planning authority uses it for is different to ours. We use it for this risk of seismicity, and the analysis that we have done is that it is a volume-based test. That is the one that would define the risk.

Q126 **Chair:** That is about volume of water and not volume of anything else, which actually would be covered by minerals planning guidance but not by the Infrastructure Act?

Tom Wheeler: If someone were to come along with a plan to inject an equivalent quantity of some other substance that is not water, we would look at extraordinarily carefully at that, probably more so than we would do in the case of water or the fracking fluids that we are familiar with. The issues are around smaller volumes where, historically, these have always happened and they do not present the same risks of activating faults that do with very high-volume hydraulic fracturing.

Chris Flint: Irrespective of the definition we would still regulate in the way that I have set out. The number of visits a site might receive would depend upon the risk as we saw it and the performance of the operator.

Mark Ellis-Jones: That would be the same with the Environment Agency. Regardless of what the activity is and the quantities of fluid, or the types of fluid, that you might want to inject, we would have the same regulatory requirements. For example, in the case of groundwater an operator has to undertake something called a hydrogeological risk



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assessment. They have to disclose to us what they are injecting and the quantities. We prohibit any hazardous chemicals going into the ground. They have to disclose all of the chemicals or proppants that they want to use. That is all assessed in exactly the same way, regardless of the scale of the operation. We make a risk-based decision, essentially around the environmental receptors and protecting the environment.

Q127 **Chair:** To follow up, is there any specific change that has to be made to the guidance or the regulations around fracking that currently exist?

Chris Flint: Not from our perspective.

Tom Wheeler: Not our guidance.

Mark Ellis-Jones: No. The definitions in planning are not material.

Chair: So we have a perfect world.

Q128 **Bob Blackman:** In terms of the guidance that was given—I do not know if you were here during the earlier session—there is a wide plethora of different guidance documents out there on fracking. Equally, the last panel was a bit split in its evidence over whether there should be one guidance document or whether all the guidance documents should be brought together in one portal so that people could see them. Could I ask each of you how would either bringing together all the guidance documents in one section for easy access or bringing it together in one document advantage your organisation?

Tom Wheeler: To respond to Clive's point, we are very happy with our own individual guidance. Indeed, as you said, there is a split opinion on whether it is well understood. The issue is less on the individual bits of guidance but more whether people understand how they join together and coalesce.

Q129 **Bob Blackman:** Is there a fragmented approach to this and are there contradictory pieces of guidance?

Tom Wheeler: Personally I do not think there is any contradiction. I am not absolutely familiar with all of the guidance but I am not aware of any particular contradictions that have been brought to my attention. Perhaps there is an issue around understanding where one stops and another begins.

Chris Flint: What I took from the previous session was that there was clarity around the roles of the respective regulators amongst the planners. There was perhaps some difference of opinion around the guidance that was available to them as planners in terms of dealing with applications. However, that is dealt with, whether it is in a national framework or a local framework, HSE will still be committed to working, as in other areas, with whatever system is in place. We would be committed to doing that.

Q130 **Bob Blackman:** Clearly at the moment we have 20 different guidance



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documents; that is what we have had reference to in our written evidence. Does that cause you any concern? It certainly would to me, having all these different guidance documents.

Chris Flint: If there is a lack of clarity around some area, there has to be some benefit in bringing that together and providing clarity for planners, if they are having difficulty with that. I was not quite sure whether they were referring to guidance that we have produced as regulators or the guidance that is coming from central Government elsewhere. They appear, from what they are saying, to have absolute clarity over what the regulators do and where they fit in the system. We have certainly provided guidance. There is probably some benefit in having perhaps a landing point where people can go to and then it takes you, perhaps, off for further detail into our respective websites, so they can go to one place and it is all drawn together. Doing that could not be harmful, and is likely to be helpful.

Mark Ellis-Jones: Likewise. If the question is specifically around planning guidance and bringing all planning guidance into one place, like Chris, I thought that in the previous session there was maybe some disagreement between previous written ministerial statements and the current draft NPPF. There was view that there needed to be some consistency. In terms of the Environment Agency's regulatory guidance, we would be very keen to maintain that as separate. It is very specific to a separate set of legal requirements under the Environmental Permitting Regulations. We have produced guidance that sets out what those requirements are. Like Chris and Tom, I would have no problem with signposting that more clearly if it was felt that that was needed.

As the previous panel said, there is a communications challenge and there have been several attempts to put in one place the overall picture. The hexagon that was shown before is a good example of a good communications tool, and there have been other attempts at doing that. For example, there is a roadmap that was produced by what was then DECC. That was an attempt, again, to put in one place the roadmap of regulatory requirements across all regimes. There could be more work to be done in that space as a communications tool.

Q131 **Bob Blackman:** Who should do that?

Mark Ellis-Jones: Probably central Government.

Q132 **Bob Blackman:** When you say central Government, which Department do you mean?

Mark Ellis-Jones: It is probably a collaboration.

Bob Blackman: We will not wait for that to happen.

Mark Ellis-Jones: The overall policy around shale is owned by BEIS. My sponsoring Department is Defra and we have a direct interest in that through the Environmental Permitting Regulations. There are others



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along here who have other sponsoring Departments. There is a collaboration, and that collaboration is, in many ways, happening already.

We, as regulators, are in regular conversation with each other and, indeed, with local mineral planning authorities. We are also in regular conversation with our sponsoring Departments and our sponsoring Departments are talking regularly around this. This is both a national priority and an area of high public interest, so you would expect Government to be doing quite a lot of liaison around this.

Q133 Bob Blackman: Do you have any other views?

Chris Flint: In terms of a link, a collaboration between BEIS and MHCLG, with direct inputs from ourselves to inform what gets set out.

Tom Wheeler: I would agree with what Chris and Mark have said.

Q134 Andrew Lewer: Do you think anything would be gained from treating fracking planning applications as nationally significant infrastructure projects?

Chris Flint: The answer is that it would make no difference to HSE. We would still support the process in exactly the same way, irrespective of what was in place. That is a policy decision for the Departments.

Tom Wheeler: I give the same answer.

Mark Ellis-Jones: We are a statutory consultee in both, so we work through both systems and, again, it is a matter for policy.

Q135 Andrew Lewer: In our first evidence session it was suggested a multi-agency approach to fracking applications—multi-agency meetings and, particularly, examinations—would be beneficial. Do you see any advantages in that or any disadvantages in doing it that way?

Mark Ellis-Jones: Do you mean in terms of local planning?

Andrew Lewer: Yes.

Mark Ellis-Jones: In many ways, where this is done well, this is happening already. As I alluded to earlier, we actively try to encourage local planning committees to invite us to give evidence at planning committees. We work incredibly closely with planning officers to help them come to their decisions. For about 80% of all onshore oil and gas planning applications, planning officers are making recommendations to approve the applications. That is partly because they are working really closely with the other regulators to understand that regime. Where it works really well we are doing that already. I would really encourage planning authorities, whilst we are probably funded to do so, to make use of that service. We would be happy to come to any planning inquiry and explain our role and remit.



Chris Flint: HSE is not a statutory consultee but we still offer support to all minerals planning authorities and, with the exception of a couple, they have all taken that offer up in the past. As regulators we will continue to work very closely together and we have formal arrangements with the EA around this.

Tom Wheeler: We are also not a statutory consultee. We would not typically go to the planning meetings. We work very closely indeed with planning authorities in the run-up to those, in much the same way as Mark and Chris have described.

Q136 **Andrew Lewer:** Apparently in the Conservative election manifesto there was a reference to creating a shale environmental regulator. Would you welcome the creation of such a regulator?

Mark Ellis-Jones: It is ultimately a matter for policy and for central Government. From the Environment Agency's point of view, right now our fundamental focus is on the front line, on making sure that we are regulating these sites, that we are out with local communities and that we are visible. That is our primary focus on the regulation. We will work and continue to advise Government as and when they want to bring forward any proposals. We will give them good advice based on our competencies.

Chris Flint: It is a policy matter for BEIS and we will continue to work closely with them in any developments in that area. What I would say is that there are plenty of examples in the major hazard world where we work effectively together as regulators, whether that is for onshore major hazards around the COMAH regime, where we work very closely with our environmental legislation colleagues, whether it is Scotland with SEPA, Wales with the NRW, or England with the EA. With offshore, we work very closely with OPRED, the environmental regulator, and those relationships work very well and effectively, and have been proven to do so without creating a separate body.

Tom Wheeler: I absolutely agree. We work well together. We have a proven track record in working together, either informally as we do in the onshore at the moment, and more formally as we do offshore with OPRED. If BEIS decided that that was what they wanted to do, we would be committed to helping them as we would with any other policy that they choose to pursue.

Q137 **Andrew Lewer:** I do not want this to sound like this is making policy on the hoof—and Chris might be slightly off the hook on this one—but would it be at least possible to nominate either the Environment Agency or the UK Oil and Gas Authority as the shale environmental regulator?

Tom Wheeler: There is good experience that mixing an economic and an environmental regulator without very careful diligence is not a good approach to Government. The current inquiry into Piper Alpha recommended that. A single thing under one body might be difficult to



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manage. I am not saying it is impossible but you would have to be extraordinarily careful in how you set that up.

Chris Flint: I would also reference Deepwater Horizon at Macondo. That was a big environmental issue, of course, as well as safety. Again, there were similar issues raised about people being too close as sponsoring bodies with the regulators. The benefit of us regulating together in the that we do is that we have expertise that the EA can rely upon and they have expertise that we can rely on, and the same with the OGA, for example. We employ the wells engineers. They are in integral to ensuring well integrity which, as I said at the beginning, is not just around ensuring safety but also ensuring that environmental issues are dealt with. The well integrity is absolutely key in this industry.

Mark Ellis-Jones: I would add that we are the responsible body for the Environmental Permitting Regulations. We are bound in law to make decisions in terms of our regulatory remit. Unless there was a change to that fundamental underpinning legislation, we would not be able to defer that responsibility to another body. That said, there are ways in which we can collaborate across regulators. The HSE and ourselves have an informal memorandum of understanding and a working together agreement around shale gas, which governs how we work together. There are also examples, as Chris just referred to. For example, in the Control of Major Accidents Hazards, we both have statutory responsibility under COMAH as being a competent authority but remain as independent organisations. We would not just be able to nominate one of ourselves but there are probably other options around how we work together that could be explored.

Q138 **Andrew Lewer:** You are already the shale environmental regulator who can draw expertise from other agencies.

Mark Ellis-Jones: We operate as a joint set of regulators at community events in terms of "meet the regulator" events. There is one in Lancashire on Wednesday for the Cuadrilla site, and all of our teams will be there very much facing the local community and the local parish council and others with a single voice in terms of how we are regulating.

Chris Flint: It might also be worth saying that on the ground we do try to co-ordinate site visits as well together, so we go at the same time. We do this in a COMAH environment and offshore. We try to do as many visits together as possible with the environment regulator.

Q139 **Chair:** I have one follow-up to the Environment Agency. You are saying that you have a general remit to protect the environment across every activity. If a separate shale environmental regulator were established, they would have to change your remit to say, "You have responsibility for the environment with the exception of this specific area where a new regulator has been set up".



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Mark Ellis-Jones: Our statutory purpose is the promotion of sustainable development under the Environment Act. Yes. We are the responsible authority for issuing environmental permits under the Environmental Permitting Regulations. If the shale environmental regulator became the responsible body for that there would have to be a separation of duties, yes.

Q140 **Chair:** You would have to have an exception to your responsibilities in that area, because a new regulator would have those responsibilities.

Mark Ellis-Jones: That would be a matter of how the legislation was crafted and the options, yes.

Chair: Thank you all for coming this afternoon and answering our questions. Thank you very much.