

**From:** Kit Bennett  
**Sent:** 20 July 2018 10:48d  
**To:** Cadmel Edward  
**Subject:** For the Attention of the Inspectorate Consultation on Select Committee on Planning Guidance on Fracking— Report

Dear Elikakere, k

I am writing to you regarding the report of the Select Committee on Planning Guidance on Fracking. As a participant in the Examination in Public, you have asked me whether the Report affects the Plan, and if so how, and whether the Plan should be modified and if so how to reflect the Report.

While I do not believe that the Plan needs to be modified as a result of the Report, I do take the view that the Report is relevant to the Plan and the Examination in Public. This is because the Report offers support to several elements of the plan, as I will explain below. The Select Committee have made their report following an extensive evidence gathering process, including public hearings and the submission of written evidence. For this reason their Report should be given considerable weight.

The Report should be read with regard to the recent Written Ministerial Statement HCWS690. The question of whether the Written Ministerial Statement should lead to modifications of the Plan arose following the release of the Written Ministerial Statement. The Report indicates that such changes to the Plan are not necessary. The Report should therefore be seen as affecting the Plan, even though it should not lead to modifications to the Plan.

Paragraph 19 of the Report refers to the issue of how hydraulic fracturing should be defined.

"The Infrastructure Act 2015 definition of fracking does not reflect the technologies used on the ground nor the public understanding of fracking, leading to a lack of understanding among key stakeholders and significant concerns about loopholes in the current regulatory regime. We therefore believe that the Infrastructure Act 2015 definition is unsuitable in the planning context and recommend that it should not be liquid or volume-based. While we welcome the Government's intention to unify the definitions of fracking used in the Infrastructure Act 2015 and the National Planning Practice Guidance due to the resulting lack of clarity and uncertainty in using multiple definitions, we are highly concerned that the Government's suggestion that the Infrastructure Act definition will replace the current definition in a revised National Planning Practice Guidance. We call on the Government to amend the Infrastructure Act definition to ensure public confidence that every development which artificially fractures rock is subject to the appropriate permitting and regulatory regime."

This issue was discussed at length during the Examination in Public and some representatives of the oil and gas industry argued that the Infrastructure Act's definition of hydraulic fracturing as used in the Plan. However, the Select Committee have correctly pointed out that the definition results in a lack of clarity and concerns about loopholes in the regulatory regime. They are correct to point out that the Infrastructure Act definition of hydraulic fracturing is unsuitable in the planning context. The Report adds weight to the argument that the Plan should use a definition of hydraulic fracturing based on the Planning Practice Guidance, not one based on the Infrastructure Act.

Paragraph 53 of the Report deals with the role of national policy and local policy in planning decisions.

"While the primary consideration for Mineral Planning Authorities must be Local Plans, the status of the various guidance documents in the planning process is not always clear to Mineral Planning Authorities. Notwithstanding our earlier recommendation for the Government to consolidate its position on fracking in the revised National Planning Policy Framework, particularly in regard to how it fits with the UK's climate change commitments, we are confident that Mineral Planning Authorities are currently finding an appropriate balance between national and local policy and guidance in the determination of fracking planning applications."

This support for local decision making is welcome. You recently asked participants in the Examination in Public whether the Written Ministerial Statement HCWS690 should affect the Plan. I have already argued that it should not. The Report lends weight to this argument, as it expresses confidence in the ability of Minerals Planning Authorities to make appropriate planning decisions and supports the view that their primary consideration should be the Local Plans.

The Report also states that the Written Ministerial Statement should affect the Plan by paragraph 57 of the Report.

"It is also unclear how the 2018 WMS seeks to give localism a greater freedom to develop local plans without undue interference from central government".<sup>107</sup> As we comment in greater detail in Chapter 6, we heard that the MPAs have significant local knowledge and expertise which means that they are best placed to determine planning applications and Local Plans."

Paragraph 59 of the Report continues this argument.

"There is a contradiction between the spirit of the Localism Act 2011 and the 2018 Written Ministerial Statement on fracking planning policy which could unreasonably restrict Local Plans. Mineral Planning Authorities are best placed to understand their local area and weight up what requirements should be in place for fracking developments. We know that Local Plans are already subject to scrutiny at national level from the Planning Inspectorate. Given that the English planning system is plan-led, Mineral Planning Authorities should be free to adapt their Local Plans as they see fit as long as they do not arbitrarily restrict fracking developments. It is essential that Mineral Planning Authorities have the right to put conditions in their Local Plans which can be justified having regard to local circumstances."

While the Written Ministerial Statement expressed concern that some measures included in Minerals Plans might not be properly justified, it should be remembered that Minerals Plans, including the North Yorkshire Minerals and Waste Joint Plan are already subject to a full process of consultation and an Examination in Public. These processes already allow the justification of Minerals Plans to be subject to proper scrutiny and allow changes to be made to Minerals Plans if necessary. When a minister casts doubt on the justification of Minerals Plans in a statement, without providing any evidence to support that view, that is a risk to the ability of Minerals Planning Authorities to determine Local Plans without undue interference from central government. It is therefore welcome that the Report recognises that Minerals Planning Authorities are best placed to determine Local Plans.

While some measures in the Plan have been opposed by representatives of the oil and gas industry, the Report lends support to the Plan. The government has recently launched a consultation on whether hydraulic fracturing planning decisions should be made under the Nationally Significant Infrastructure Projects System (NSIP). If decisions were made in this way, the Plan would still be applicable to any planning decisions in the Joint Plan area. According to paragraph 84 of the Report,

"if NSIP were to be used for fracking applications, it is essential that a National Policy Statement is prepared as a matter of urgency that would include suitable measures to restrict inappropriate proliferation of well-pads and unacceptable impacts on landscapes. We consider that the North Yorkshire Draft Joint Minerals and Waste Plan offers an appropriate template for such guidance."

Regarding measures included in the Plan as unjustified, the Report describes them as a model for planning policy, particularly in the context of possible decisions under the NSIP system. This paragraph of the Report supports the view that the Plan should not be modified based on the Written Ministerial Statement.

Yours Sincerely,

Kirk Bennet