

IN THE MATTER OF THE NORTH YORKSHIRE LOCAL PLAN

AND IN THE MATTER OF THE UNITED KINGDOM ONSHORE OIL AND GAS

OPINION

1. I am asked to provide an Opinion for UKOOG in relation to the lawfulness of the current version of the North Yorkshire Local Plan. I will not set out the background as that is well known to all parties.
2. The principal issue is in relation to draft policy M17, and the 500m buffer zone around residential properties for proposals for hydrocarbon development. The draft policy imposes a ban on such proposals unless the developer can show “exceptional circumstances”. The Council sought at the hearing to argue that this did not amount to an absolute measure, but that is plainly not correct. Firstly, there is a very high test of exceptionality, and secondly, it would not be possible for a developer to show “exceptional circumstances” if the point being made was simply that there were no unacceptable impacts. That situation would not on any normal meaning amount to exceptional circumstances. Therefore in practice this policy would amount to a ban on hydrocarbons within 500m of residential properties.
3. After the hearing the Council produced some changes to their proposed Modifications. However, in respect of the residential buffer zone in M17, no new wording has yet been produced.
4. In my view it is plain that the buffer zone policy in M17 does not meet the tests for soundness in para 182 of the NPPF. The four tests are that the plan should be positively prepared, justified, effective and consistent with national policy. The two main issues that arise here are the lack of evidential justification for the policy, and its plain inconsistency with national policy.
5. The purported justification for the buffer zone is the impact on residential amenity from the proposed development. However, the Council have not produced any evidence to show any specific impacts which would justify such an approach. In terms of noise, the NPPG sets out specific noise levels for hydrocarbon development, which would need to be met on each site. These levels will be set out in appropriate conditions. The level of impact of noise from the development will be greatly influenced by local conditions, such as proximity to other noise generators such as a road. A buffer zone policy fails to take into account those individual circumstances and therefore would need very strong evidence to be justified.
6. On the facts of hydrocarbon development, residential amenity can and will be protected to an acceptable degree without any buffer zone requirement, through the normal imposition of appropriate conditions. Secondly, it is a matter of record that hydrocarbon developments have been approved both in North Yorkshire and elsewhere with development much closer than 500m to dwellings. With the protection of the appropriate conditions occupiers have

been fully protected. There is simply no evidence that the buffer zone policy is needed to protect from noise impacts.

7. In terms of visual impact, this is again wholly related to the circumstances of a particular site, and the screening and topography between the development and the relevant dwellings. Intervening trees and buildings may well mean that there is little or no intervisibility between site and receptor, even with a very tall drilling rig.
8. There are no other impacts on residential amenity raised by the Council, that could possibly justify the policy.
9. The second reason this policy is in clear breach of the soundness test is its relationship to national policy. As explained in detail in UKOOG's written representations and Appendix 4 in particular, national policy is supportive of hydrocarbon extraction, subject to the normal tests of not causing unacceptable environmental impacts. The effect of the buffer zone policy is to sterilise a very large proportion of the PEDL licence areas in North Yorkshire. In its representations at appendix 9 UKOOG produced a plan of the effect of the residential buffer within the licence areas. This is only illustrative, but has not been challenged by any party at the hearing. It is clear from this plan that if the 500m policy is upheld there will only be a very small proportion of the licence area where extraction will be possible. The effect of the policy is therefore wholly inconsistent with national policy. It is notable that the Council have not sought to refute the impact of the policy.
10. The effect of the policy is therefore to prevent the delivery of the hydrocarbon development supported in national policy and as such is not sound.
11. UKOOG's other outstanding concerns are largely reflected in the representations that have already been made.
12. There remains no justification for the differentiation in policy between conventional and unconventional hydrocarbons. Where there is a difference in extraction methodology, i.e. the use of high volume hydraulic fracturing that impacts on land use, then this is appropriately dealt with by reference to the Infrastructure Act definitions of hydraulic fracturing. However, there is no justification being put forward for a difference between conventional and unconventional hydrocarbons. The Council appears to be confusing the extraction methodology, with the geology. All the present format to the policies does is introduce confusion by splitting conventional and unconventional hydrocarbons for no purpose. The Council's modifications do not appear to have addressed this problem.
13. The appropriate definition of hydraulic fracturing is that set out in the Infrastructure Act. The 2016 Government Consultation document, is merely making clear that the definition applies to each and every stage of the hydraulic fracturing.

14. On M16(b) there is no justification either in evidence or national policy for restrictions that go beyond those accepted by UKOOG, save for the additional areas now covered by the Government Consultation document, i.e. RAMSAR sites, SACs and SSSIs. The other elements in M16 (b) (i) are not supported by evidence, and are unjustifiably restrictive.
15. On M16 (b) (ii) sub-surface restrictions should reflect those in the Infrastructure Act but be no more extensive. The two relevant tests of soundness are those set out above, namely lack of justification and inconsistency with national policy. There is no evidence being advanced by the Council that lateral drilling at levels allowed under the Infrastructure Act will cause any harm and as such the policy is not justified. Further the level of restriction being imposed is inconsistent with national policy, both as being outside the terms of the Infrastructure Act, and by placing an unjustified restriction contrary to the support for hydrocarbons.
16. In my view unless the Plan is modified as set out above, it will not pass the soundness test.

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BLACKSTONE CHAMBERS

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