



Response to Joint Plan Authorities' (JPAs) Supplementary Note for the Inspector with regard to Policy M17(4) Justification for reference to 500m separation distance from residential and other sensitive receptors.

Introduction

Current version of Policy M17 (4) i)

"Hydrocarbon development will be permitted in locations where it will not give rise to unacceptable impact on local communities or public health. Adequate separation distances should be maintained between hydrocarbons development and residential buildings and other sensitive receptors in order to protect local communities ensure a high level of protection from adverse impacts from noise, light pollution, emissions to air or ground and surface water and induced seismicity, including in line with requirements of Policy D02. Proposals for surface hydrocarbon development, particularly those involving hydraulic fracturing, within 500m of residential buildings and other sensitive receptors are unlikely to be consistent with this requirement and will only be permitted where it can be robustly demonstrated in site specific circumstances that an unacceptable degree of impact can be avoided.
(our emphasis)

The policy text advises that for the purposes of the practical application of Policy M17, the phrase "other sensitive receptors" includes residential institutions such as residential care homes, social services homes, hospitals and non-residential institutions, such as schools" (our emphasis).

(The words "particularly" and "includes" are emphasised because they indicate respectively in the context in which they appear that (i) the 500 metres set off distance will apply to both conventional and unconventional oil and gas exploration and (ii) the list of what will be deemed to constitute a "sensitive receptor" is open ended. It may be interpreted as including in addition to residential and non-residential institutions, all designated assets both at surface and at sub-surface.)

National Planning Guidance

The following national planning policy guidance is relevant and emphasised.

Paragraph 35 of the **National Planning Policy Framework (July 2018)** (NPPF) provides that local plans are examined to assess whether they have been prepared in accordance with legal and procedural requirements, and whether they are 'sound'.

Plans will be deemed to be 'sound' if they are shown to have been "positively prepared", are "justified" and "effective" and are "consistent with national policy".

Planning Policy Guidance - Minerals (October 2014) (PPG) at paragraph 106 explains that policies in local plans dealing with hydrocarbon extraction should "set clear guidance and criteria for the location and assessment of hydrocarbon extraction within [PEDL] areas."

The PPG at paragraph 1 explains that mineral work "may have adverse and positive environmental effects, but some adverse effects can be effectively mitigated."

PPG at paragraph 12 advises mineral planning authorities that they should assume that if it is accepted that the impact of hydrocarbon extraction on the environment and local communities can be mitigated to an acceptable level, it should be assumed that the necessary mitigation measures will be delivered and enforced at the instance of the relevant "non-planning regimes", which in the context of hydrocarbon development will include the Environment Agency, the Health and Safety Executive and the Oil & gas Authority.

PPG at paragraph 18 advises mineral planning authorities that any proposed separation distance should be established on a site specific basis taking account of:

- * the nature of the mineral extraction area
- * the need to avoid undue sterilisation of mineral resources
- * location and topography
- * the characteristics of the various mitigation measures that can be applied.

The **EIA Directive (2011/92/EU as amended)** expressly allows mitigation measures to be taken into account at the screening stage of an application in order to determine whether or not an EIA is necessary,

The **Written Ministerial Statement issued in May 2018 (WMS)** advises that applications for onshore unconventional oil and gas development, including those involving the proposed use of hydraulic fracturing, must be assessed on a site by site basis having regard to their context. If a plan wide restriction or threshold, such as the 500 metres separation distance from residential and other sensitive receptors proposed in terms of draft Policy M17(4), is to be validly included in a minerals plan, the WMS makes it clear that such a restriction or threshold must be properly justified.

UKOOG consider that the JPAs Joint Plan Authorities (JPAs) proposed insertion into Policy M17 of a 500 metre threshold of significance (resulting in applications, which propose to construct a well pad closer than 500 metres from a "sensitive receptor", being automatically presumed to have a significant adverse noise and visual (including light nuisance) impacts on that receptor and thus contrary to the development plan's policies on environmental protection unless the operator was able to demonstrate that each of the relevant receptors would be afforded a "high level of protection" against such impacts through the application of appropriate mitigation measures) is unsound because no proper evidential justification for its introduction has been given.

JPAs Justification for the 500 metres

In the current version of the Policy Justification text (see para. 5.146) the JPAs advise that the proposed application of the 500 metres "minimum horizontal separation distance" is justified because it is considered to represent "a reasonable distance taking into account the potential for a range of impacts, including noise vibration, light pollution, visual impact and other emissions, as well as the potential for some forms of hydrocarbon development to generate disturbance during night time periods, when there is potential for a greater degree of perceived impact. (our emphasis).

In its Supplementary Note to the Inspector on the issue of justification of the selection of 500 metres as the minimum separation distance, the JPAs have presented (in summary) the following explanations:

1. The decibel level of the noise associated from a drilling rig with a sound power level 109.8dBA will reduce on a free field basis (ie with no account being taken of the location of the well pad and the surrounding topography and the characteristics of the various mitigation measures that can be applied) across 500 metres to 47.8 dBA. If mitigation measures effecting a reduction of "5-10dB" in sound level are applied at this distance, it would effect a reduction of the noise level at the 500 metres separation point from 47.8dBA to 42dBA (47.8dBA - 5.8dBA) which is the maximum night time level permitted in terms of the PPG.
2. Given the "predominantly flat landscape which has a general absence of woodland", visual and lighting impacts "could be significant within 500m of sensitive receptors".
3. Given the potential for "multiple well sites" these noise, visual and lighting impacts "would be compounded"

UKOOG Comments

UKOOG wishes to make the following comments in relation to this justification:

- i. The Policy advises that the 500 metres separation distance is there to protect residences and other sensitive receptors from "*noise, light pollution, emissions to air or ground and surface water and induced seismicity*". There is no mention of visual impact, which is entirely reasonable. Given the acknowledgment in the JMPs that in the light of the "predominantly flat landscape which has a general absence of woodland", it is inevitable that there will always be some level of visual impact. It is accepted that there is a reference to "visual impact" in the text but it is the Policy not the text that is being tested for soundness. The justification for the 500 metres separation distance on visual impact grounds should be disregarded.
- ii. No justification has been put forward to demonstrate why a 500 metres minimum separation distance is needed to protect sensitive receptors from "emissions to air or ground and surface water and induced seismicity". These are, in any event, all impacts which are regulated by the relevant "non-planning regimes. The NPPF and PPG make it clear that mineral planning authorities should assume that these non-planning regimes will operate effectively to control air, water and seismic impacts.
- iii. No evidence is provided to explain why the lighting from a drilling rig (which would, as a matter of fact, be directed into the well site and carry, again as a matter of fact, mitigation measures which have to be taken into account because they are essentially "embedded") would cause an unacceptable impact at 500 metres. The justification for the 500 metres separation distance on lighting impact grounds should, therefore, also be disregarded. It is not a "reasonable" distance.
- iv. If the foregoing points are accepted, it means that the sole explanation put forward by the MPAs to justify the selection of the 500 metres is that if it is assumed that (a) the background noise level across the entire PEDL area is 32dBA, (b) the drilling rig has a sound power level of 109.8dBA (c) the local topography and any woodland cover should be disregarded and (d) mitigation measures will only be able to effect a reduction in sound levels of only 5.8dBA, then at a distance of 500 metres the night time noise level at the sensitive receptor will be reduced to 42dBA.

- v. Sensitive receptors are declared to include "residential institutions such as residential care homes, social services homes, hospitals and non-residential institutions, such as schools". These types of receptors are almost invariably located in built up areas where there would be no prospect of surface hydrocarbon development actually occurring. Non-residential institutions, by definition, are closed at night-time. The justification for a 500 metres separation distance to protect these types of properties from the potential for night-time noise disturbance should, therefore, be disregarded.
- v. The supporting text advises that the potential for some forms of hydrocarbon development to generate disturbance during night time periods. No explanation is provided as regards which forms of hydrocarbon development it is that the JPAs are concerned about. The 500 metres separation distance is, however, intended to apply to all forms of hydrocarbon development. The effect of the approach is, therefore, disproportionate and thus unreasonable.
- vi. If these points are accepted, it follows that the sole reason why a 500 metres minimum separation distance is being promoted is to protect residential properties from night-time noise disturbance. The evidence demonstrates that the JPAs have had no difficulty in imposing night-time noise limits on drilling operations to protect residential properties which are located as close as 200 metres to the well pad. The mitigation measures employed on a site by site basis to deal with noise impact are well understood both in terms of their performance and on-going monitoring. They are not novel. This confirms that there is no technical evidence before the MPAs which would justify the imposition of a 500 metres minimum set off distance to protect residential properties against night-time noise from drilling operations. It is, therefore, unreasonable.
- vii. In promoting the 500 metres separation distance the MPAs have specifically disregarded three of the principal factors which the PPG directs that they are expected to take into account when proposing a separation distance, namely, the location of the site and the surrounding topography, the characteristics of the various environmental effects that are likely to arise and the various measures that can be applied to either avoid them entirely or mitigate the risk of them occurring to an acceptable level.
- viii. It is entirely unclear how the 500 metres can be applied in practice during the appraisal stage in particular where more than one well pad may be required.

Taken together it is clear that, contrary to national guidance, no proper justification for the imposition of the proposed 500 metres minimum separation distance has been provided.



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