

Dear Elizabeth Ord,

I am writing to you to respond to the questions of whether the Written Ministerial Statement made by Greg Clark on 17 May 2018 affects the Minerals and Waste Joint Plan and whether the Plan should be modified to reflect the Written Ministerial Statement. My answer to these questions is that the Written Ministerial Statement does not affect the Plan and that there is no need to modify the plan to reflect the Written Ministerial Statement.

There are several points in the Written Ministerial Statement that might lead some to believe that the Plan should be modified to reflect the Written Ministerial Statement. I will deal with each of these below and will explain why I think that no modifications are needed to make the Plan reflect the Written Ministerial Statement.

According to the Written Ministerial Statement, shale gas development is of national importance. The Written Ministerial Statement goes on to say that the Government expects Minerals Planning Authorities to give great weight to the benefits of minerals extraction, including to the economy. The description of shale gas development being of national importance is similar to the description in the earlier Written Ministerial Statement of 16 September 2015 of shale oil exploration and development being a national need. Paragraph 144 of the National Planning Policy Framework (NPPF) requires local authorities to give great weight to the benefits of mineral extraction, including to the economy. During the Examination in Public, the Plan has been examined with regard to the Written Ministerial Statement of 16 September 2015 and the NPPF. It is clear that the government's position on the importance of shale gas and the benefits of mineral extraction have already been given due consideration during the Examination in Public and the proceeding consultations on the Plan. There is therefore, no need to modify the Plan on these grounds.

According to the Written Ministerial Statement applications should be assessed on a site by site basis, with regard to their context and plans should not set restrictions or limitations that limit shale development without proper justification. Policies included in the Plan, such as the 500 metre zone around residential buildings and other sensitive receptors and the consideration of visual impact at sites near the National Park and AONBs should not be considered to be restrictions, as they are not prohibitions. They are instead policies that apply appropriate tests to proposed development, considering the context in which the development is proposed. These policies are also fully justified. For these reasons, there is no need to modify these policies to reflect the Written Ministerial Statement. Policy M16 of the Plan does exclude unconventional hydrocarbons development and development involving hydraulic fracturing from designated sites. While this might be seen as a restriction, it should also be seen as justified given the importance of these designations for the landscape, wildlife, and heritage of the Plan Area. For this reason, there is no need to modify this policy to reflect the Written Ministerial Statement.

According to the Written Ministerial Statement, the Government expects Minerals Planning Authorities to recognise the fact that parliament has set out in statute the relevant definitions of hydrocarbon, natural gas and associated hydraulic fracturing. Of these definitions, the only one that the Plan might be seen as deviating from is the definition of associated hydraulic fracturing. While this definition was considered at the Examination in Public, it was pointed out that the Infrastructure Act, that brought in the definition of associated hydraulic fracturing is not planning law. Hydraulic fracturing is defined in paragraph 129 (Reference ID: 27-129-20140306) and paragraph 130 (Reference ID: 27-130-20140306) of the Planning Practice Guidance on hydrocarbons. Neither of these paragraphs mention a particular volume of fluid in their definition of hydraulic fracturing. The definition of hydraulic fracturing contained in the Plan cannot be seen as a deviation from the relevant Planning Practice Guidance on hydraulic fracturing. There is therefore no need to change the plan to reflect the Written Ministerial Statement with regard to the definition of hydraulic

fracturing.

According to the Written Ministerial Statement, policies should avoid undue sterilisation of mineral resources (including shale gas) so that they are consistent with the Planning Practice Guidance. I do not believe the policies of the Plan constitute sterilisation, for the reasons I explain above. None of them constitute a prohibition on shale gas development over a wide area. Where shale gas development is prohibited, it is only to protect important designated sites and not to exclude such development from extensive areas. However, I also wish to draw your attention again to paragraph 108 of the Planning Practice Guidance on hydrocarbon extraction, which states, “There is normally no need to create mineral safeguarding areas specifically for extraction of hydrocarbons given the depth of the resource, the ability to utilise directional drilling and the small surface area requirements of well pads.” (Reference ID: 27-108-20140306) This makes clear that the issue of sterilisation does not apply to hydrocarbon development.

In the Written Ministerial Statement, the government indicates an interest in modifying the Planning Practice Guidance. However, until these changes are made, the current version of the Planning Practice Guidance is the one that applies to plan making. It is this version, with its definition of hydraulic fracturing referred to above, that should guide the production of the Plan. Similarly the Written Ministerial Statement announces that the NPPF is to be altered. However given that the new version of the NPPF has not yet been produced, the current version of the NPPF should be the version that guides the production of the Plan.

In the Written Ministerial Statement the government has announced their intention to consult on proposals to make hydrocarbons development, that does not involve hydraulic fracturing, permitted development and to examine proposals for hydraulic fracturing as Nationally Significant Infrastructure Projects (NSIP). Both of these proposals are at a very early stage. It is not certain what policies will be implemented by the government after consultation. For this reason, the Plan should be written with regard to the current situation, in which applications for hydrocarbon development are decided by local Minerals Planning Authorities. It should be noted however, that even if future decisions are taken at the national level, through the NSIP process, the Plan will still be relevant to those decisions. There is no need therefore, to modify the Plan to anticipate possible future changes to the planning system.

Yours Sincerely,

Kit Bennett