Permitted development for shale gas exploration, a consultation response from CPRE

This CPRE submission has been compiled following extensive consultation within our network of local groups, all of whom have first-hand experience of how the planning system operates at a local level.

Question	Response
Context and comments on the scope and background of the consultation	Context The Campaign to Protect Rural England (CPRE) welcomes the opportunity to respond to this consultation on permitted development for shale gas exploration. CPRE fights for a better future for the English countryside. We work locally and nationally to protect, shape and enhance a beautiful, thriving countryside for everyone to value and enjoy. As a charity with about 60,000 supporters and members, a branch in every county, over 200 district groups and more than 2,000 parish council members, we have an extensive reach across the country. Below we set out our answers to the questions posed in this consultation. However, we feel it is important to set out our position on the principle of permitted development for shale gas exploration at the start of this response. CPRE believes that fracking should stop unless it can be clearly demonstrated that it would: • help secure the radical reductions in carbon emissions required to comply with planning policy and meet legally binding climate change targets; • not lead to unacceptable cumulative harm, whether for particular landscapes or on the English countryside as a whole, and • be carefully controlled by effective systems of regulation and democratic planning, which are adequately resourced at both local and national levels. Since formally adopting this position[1], evidence has added further weight to this precautionary approach. This includes several reports from government advisory bodies indicating that fracking plays no role in a future where the UK meets its legal climate change targets[2]; an independent report finding that we would need about 6,100 wells to produce enough gas to replace even half of future UK gas imports, resulting in an industrialisation of our countryside[3]; and evidence of additional emissions of air pollutants with higher impacts on local and regional air quality.[4]

[1] CPRE Policy Guidance Note on Shale Gas (2017) (Accessed 24.10.18)
[2] National Infrastructure Commission: National Infrastructure Assessment (July 2018) (Accessed 24.10.18)
[3] The Implications of Fracking in UK Gas Import Substitution (April 2018) (Accessed 24.10.18)
[4] DEFRA: Potential Air Quality Impacts of Shale Gas Extraction in the UK (July 2018) (Accessed 24.10.18)

	Our particular concern with the measures announced in the Written Ministerial Statement (WMS) of May 2018 is the intention not only to ignore this evidence, but to bypass the rights of local communities to have a say in whether fracking takes place or not. We are not alone in these concerns. In July, the Housing, Communities and Local Government Select Committee stated that the WMS proposals "would result in a significant loss to local decision making, exacerbating existing mistrust between local communities and the fracking industry".[5] They recommended that "Fracking planning applications should not be brought under the Nationally Significant Infrastructure Projects regime nor acquire permitted development rights." Finally, the recent publication of the Intergovernmental Panel on Climate Change (IPCC) report on 'Global Warming of 1.5°C' highlights the need for drastic and urgent changes to energy systems, including total net decarbonisation by 2050. We are clear that the development of a shale gas industry in the UK is inconsistent with the need to speed up the transition to renewable energy.[6] Ultimately, while we will be responding in accordance with the questions posed in this consultation, it is important that the department has our overall position on these proposals in mind. <u>Comments on the section: Scope of the consultation</u> CPRE are concerned that the consultation states that 'Impact assessment is not required' (p.5) and we fail to understand the rationale leading to this decision. From government guidance[7] we note that IAs '*are generally required for all UK Government interventions of a regulatory nature that affect the private sector, the third sector and public services. They apply regardless of whether the regulation originates from a domestic or international source…*' and '*apply to primary and secondary legislation, as well as codes of practice or guidance. They should be undertaken when considering traditional regulations as well as alternatives such as proposals which encourage self-regulation or opt-in regulation and voluntary guidance or proposed codes of practice*'. <u>Comments on the section: Background to the consultation</u> In answering the questions below, we wish to comment on some of the pre-amble to the consultation. In particular, we query the assertion that '*shale gas has the potential to play a major role in further securing our energy supplies…*'. Our own analysis, drawing on expert advice to Government (the Committee on Climate Change), shows the necessity of a steep decline in gas use to meet emissions reductions targets necessary to avert damaging impacts of climate change on the

[5] House of Commons Housing, Communities and Local Government Committee Planning guidance on fracking (July 2018) (Accessed 24.10.18)
[6] IPCC: Global Warming of 1.5 degrees celsius (October 2018) (Accessed 24.10.18)
[7] BIS: Impact Assessment (2010) (Accessed 24.10.18)

	countryside and its communities. We judge that, on current evidence, shale gas development cannot help secure the radical reductions in carbon emissions required to comply with planning policy. The Government's Clean Growth Strategy is optimistically aspirational rather than realistically specific. Our views on the role of gas in climate change mitigation are further underlined by the IPCC's recent report, as detailed above. Fundamentally, we cannot see how replacing local authority planning oversight of this type of development can be seen to be compatible with maintaining the integrity of local democratic planning, especially in the context of government commitments to localism and putting people in control of development that affects their communities.
Question 1 a) Do you agree with this definition to limit a permitted development right to non-hydraulic fracturing shale gas exploration? Yes/No b) If No, what definition would be appropriate?	No, for several reasons. If a permitted development right for NHF for SGE was introduced, we believe the proposed definition should explicitly exclude injection of any fluids for the purposes of hydraulic fracturing, as stated in paragraph 20. The definition should also explicitly exclude stimulated exploration techniques, including acidising (also known as 'acid fracking' or 'matrix acidisation'). It is far from clear what 'a testing period not exceeding 96 hours per section test' would mean in practice. We presume this refers to 'pressure transient testing' although the footnote reference is to 'drill stem tests'. Again, we would wish to have more detail, and thereby certainty, as to what such testing periods involve and their relationship to well stimulation techniques short of hydraulic fracturing. <u>No comment.</u>
Question 2: Should non-hydraulic fracturing shale gas exploration development be granted planning permission through a permitted development right? Yes/No	**No.** Currently Schedule 2, part 17, Class J of the Town and Country Planning (General Permitted Development) (England) Order 2015 (hereafter 'the 2015 Order'), deals with permitted development in relation to the temporary use of land for mineral exploration and (at J.1) excludes *inter alia* the drilling of boreholes for petroleum exploration, with other limits on height of structures, area of land used, depth of excavations and period of exploration (not exceeding 24 months (J.1(f)). Permitted development rights are rightly confined to minor, temporary, non-extensive mineral exploration with minimal impacts. By contrast, planning applications for shale gas exploration through deep borehole drilling represent a magnitude of development that would be unprecedented

	within contemporary usage of PD regimes. Indeed, such applications could readily fall to be considered as 'major development' either by meeting the statutory criteria[8] or by assessment of the decision maker (MPA), taking into account the development's nature, scale or duration. The scale of development (height of rigs; extent of land take; massing of site infrastructure), its duration (up to five years, even though the drilling period would normally be much shorter) and its local impacts (including residential amenity, noise, nuisance, emissions, increases in HGV traffic often on narrow country lanes, landscape/visual amenity, ecology, hydrogeology and hydrology (including acquifer protection), induced seismicity) cannot be subject to a 'light touch regime' normally associated with minor structures such as household extensions, small telecommunications masts, change of use of extant buildings etc. Mineral planning authorities should retain decision-making powers on exploratory borehole drilling to test for shale gas for the following important reasons: 1. The proper assessment of the potential impacts associated with such development will require appropriate data and analyses to be brought forward with such applications and interrogated carefully by planning officers and associated specialists (even though such assessments may fall short of the form of environmental statement required by the EIA regime). 2. Such developments, and decisions on them must be properly tested through local democratic processes. This is an integral part of the English planning system and a fundamental component of gaining a 'social licence' for any form of development. 3. In coming to a decision on shale gas exploration, councillors and councils become fully aware of the potential impacts that may be associated with future production of well sites in their locality. There must be equitable treatment of development within the planning system and also within mineral planning as a whole. Recent shale gas exploration developments we have responded to have been of a similar scale and complexity to large minerals applications. The non-energy minerals industry fully accept that local (mineral) planning authorities are the most appropriate way to make decisions on operations with potentially significant and long-lasting impacts (even if the land is restored in the long term to its original condition) with a democratically-informed testing of benefits and harms. This is necessary to ensure that locally made planning decisions are 'a front line of democracy', (statement by the former Secretary of State for Communities and Local Government, Sajid Javid). The difference in scale between the kinds of developments usually dealt with through permitted development rights and the currently proposed right is

[8] See Article 2 (Interpretation) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

	significant, and potentially sets a precedent for future new PD rights for classes of development supported by a strong financially-motivated development lobby. We suggest that ministers should seriously consider whether they want to open the flood-gates for demands for PD rights for harmful but allegedly lucrative forms of development.
Question 3 a) Do you agree that a permitted development right for non-hydraulic fracturing shale gas exploration development would not apply to the following? Yes/No	Surface development for shale gas is already proscribed in the first six categories of protected areas or designated sites (marked 'Yes' below), so it would be wholly inappropriate to allow permitted development rights in those situations. We would argue that PD rights would also be inappropriate in Sites of Archaeological Interest and protected groundwater source areas, commensurate with extant Government policy for the protection of cultural heritage and water bearing strata.
• AONBs	Yes
• NPs	Yes
• Broads	Yes
• WH Sites	Yes
• SSSIs	Yes
• SMs	Yes
• Cons Areas	Yes
• Sites of archaeol. Interest	Yes
• Safety hazard areas	No comment
• Military explosive areas	No comment
• Land safeguarded for aviation or defence	Yes

• Protected GW source areas b) If no, please indicate why. c) Are there any other types of land where a PDR for NHFSGE development should not apply?	N/a Green Belt: due to potential impacts on openness which should be decided through a full planning application. Land designated as a Local Green Space and other community registered land assets such as village greens, sports fields, parks, allotments, etc. Sites on the Register of Historic Parks and Gardens of special historic interest in England. The curtilages and settings of Grade 1 and Grade 2 listed buildings. Land in a designated Heritage Coast. Habitats sites and Irreplaceable habitats, as defined in the NPPF. Land classified locally as SANGs (Suitable Alternative Natural Greenspaces). Ramsar sites. Local wildlife sites. The settings of NPs, AONBs, Broads, WH sites, SSSIs and SMs, with an offset of at least 350m. Valued landscapes. Sites of geological value. Land within 800m of geological faults. Ancient woodland, ancient and veteran trees; non-ancient woods and trees, as defined in the NPPF. Land within 500m of a residential property and any other sensitive receptor (e.g. schools, care centres). Best and most versatile agricultural land.
Question 4: What conditions and restrictions would be appropriate for a PDR for NHF SGE development?	We have already highlighted above that there are many potentially significant impacts on the countryside and local communities that arise from NHF SGE. As the consultation itself infers (para.34), we believe that such development could only be controlled effectively by numerous exclusions, limitations and restrictions which are specific to local circumstances. The proposals and potential conditions etc would also require full public consultation if they were to carry local confidence. To do this properly, the process would be little different to a full planning application and we therefore argue that there will be no saving to be had as the new PD regime cannot reasonably conform to any rational understanding of a 'light touch process'. We are also concerned that extending PD rights to NHF SGE implies a lighter touch regulatory environment overall. Planning inspectors (e.g. at Wressle) and others have already pointed out deficiencies and errors in permitting. Whilst we agree that MPAs can rely in principle on other regulatory regimes, it does not automatically follow that they have to agree with them when the separation of land use issues and other forms of regulatory oversight is not appropriate. In this respect, to place NHF SGE in the PD regime risks a serious weakening of the proper and reasonable oversight of a complex and high risk form of development.

Question 5: Do you have any comments on the potential considerations that a developer should apply to the local planning authority for a determination, before beginning the development?	We refer to our answer to Question 4 (above). We suggest that list of matters that would need to be dealt with via prior approval would be extremely lengthy (but include, *inter alia*, transport and highways, visual/landscape impacts (including assessments of impacts on openness of the Green Belt where appropriate), noise, residential/local amenity, air quality, ecology, hydrogeology, hydrology, ground stability). We are also concerned that the separation of different aspects of land use impacts prevents the consideration of cumulative impacts and the development as a whole which is unsatisfactory and unacceptable. Furthermore, all matters for prior approval would require public consultation. Again, we conclude that the resultant process would not be much different from a full planning application nor offer much opportunity for speedier decision making. It could also create a new 'hybrid' type of application in a planning system that is already complex and difficult for local communities to understand and engage with. This would be most unhelpful.
Question 6: Should a PDR for NHFSGE development only apply for two years, or be made permanent?	In the event that a PD regime for NHF SGE is implemented, we would strongly suggest a time limitation, followed by a comprehensive review of impacts. Two years would probably be an appropriate period of time for evidence of impacts (benefits and harms) to emerge. Clear criteria must be brought forward to judge the efficacy (or otherwise) of any such PD regime and the effects of its application (i.e. the developments allowed) must be fully monitored and reported without delay to public and Parliament at the end of the trial period.
Question 7: Do you have any views on the potential impact of the matters raised in this consultation on people with protected characteristics as defined in s.149 of the Equalities Act 2010?	We believe that disadvantage would accrue to rural communities, and vulnerable groups within them, for example through inability to engage effectively with consultations because of poor access to broadband or libraries. More significantly, environmental impacts (e.g. increased traffic, pollution, noise, light etc) would inequitably fall on more vulnerable people within the scope of definition of the Equalities Act. These are matters that should fall to be considered by an Impact Assessment, to assess impact in relation to compliance with the Equalities Act. It is disappointing that this was not carried out prior to this consultation being issued (see our response in respect of the scope of the consultation above, p.2).