

North York Moors National Park Authority Planning Committee

13 December 2012

Minerals Planning Policy

1. Purpose of the Report

- 1.1 To inform Members of the current situation relating to minerals planning policy following the introduction of the National Planning Policy Framework and the proposed revocation of the Regional Spatial Strategy
- 1.2 To set out the options open to Members in addressing issues related to the above, seek their comments on these and agree an approach to addressing these issues
- 1.3 For Members to approve a Planning Advice Note to reinstate policies on oil and gas developments as an interim measure

2. Background

2.1 An assessment of the National Planning Policy Framework (NPPF) against the Local Development Framework (LDF) was presented to Members at the Development Plan Working Group in September and Planning Committee in October. As outlined to Members, the introduction of the NPPF and the proposed revocation of the Yorkshire and Humber Regional Strategy¹, has resulted in a number of gaps and potential conflicts in relation to minerals policy. To summarise:

1. With the exception of reference in Core Policy E and its supporting text to the Major Development Test being relevant, there are no detailed policies on oil and gas developments in the LDF as the relevant policies were contained in Annex 4 of Minerals Policy Statement 1. The NPPF does not contain any development management policies on oil and gas developments. There are therefore currently no policies for considering the detailed elements of oil and gas developments in the Park.
2. Paragraph 144 of the NPPF introduces a new requirement for great weight to be attached to the benefits of mineral extraction on the economy.
3. The Major Development Test in Minerals Policy Statement 1 which related specifically to minerals developments and referred to 'national considerations of mineral supply' has gone. The NPPF only contains the more generic Major Development Test.
4. Detailed guidance on assessing the environmental impact of minerals developments, which was contained in Minerals Policy Statement 2 and Minerals Policy Guidance 7, has been lost. Whilst Development Policy 1 of the LDF sets out policy in relation to environmental protection, minerals developments can often raise very specific environmental issues for which there is now no detailed guidance.

¹ The Regional Strategy comprises the Regional Spatial Strategy and the Regional Economic Strategy

5. In addition, although not a result of the NPPF, should the Regional Spatial Strategy (RSS) be revoked the requirement for a 'progressive reduction in aggregate production from National Parks and Areas of Outstanding Natural Beauty, noting that there is no justification for the provision of any new crushed rock sites within these areas within the Plan period (to 2026)' contained in RSS policy ENV4 will be lost.
- 2.2 The full assessment of the NPPF and the LDF is available at http://www.northyorkmoors.org.uk/_data/assets/pdf_file/0004/277915/Detailed-assessment-for-website.pdf. As explained in the table, whilst it is considered that the significance of these may be high when considered on their own, the NPPF does contain specific protection for National Parks which should help to continue previous policy positions.
 - 2.3 The NPPF also requires minerals planning authorities to produce an annual Local Aggregate Assessment, providing an assessment of demand for and supply of aggregates. Work on this is being undertaken jointly with North Yorkshire County Council, the Yorkshire Dales National Park Authority and the City of York Council.
 - 2.4 At their meetings referred to above Members agreed that there is a need to address these issues and authorised officers to investigate options for producing a Minerals Plan and the possibility of adopting relevant parts of the RSS and Minerals Policy Statements. This report advises on the ability of the Authority to carry out any of the above and recommends action based upon this.
3. **Potential to 'Adopt' Annex 4 of MPS1**
 - 3.1 At the time of writing the Core Strategy and Development Policies Government guidance was that policy contained in Planning Policy Statements should not be repeated in local policy. Policies on oil and gas proposals were previously contained in Annex 4 to Minerals Policy Statement 1 (MPS1). Therefore paragraph 6.31 of the Core Strategy and Development Policies states that 'Proposals for oil and gas exploration, appraisal and production will be considered against the policy in Annex 4 of MPS1'. The relevant parts of Annex 4 are paragraphs 3.3 to 3.19.
 - 3.2 As Annex 4 to MPS1 contained policies, not simply guidance or procedural advice, it cannot be straightforwardly adopted by the Authority as was the case with the Agricultural Workers' Dwellings guidance which has been adopted as a Planning Advice Note. Similarly, the gaps cannot be filled by the production of a Supplementary Planning Document - the NPPF states that Supplementary Planning Documents should be used to add further detail to policies contained in the development plan and not to establish new policies. As no policy exists in relation to oil and gas developments a Supplementary Planning Document is not an option open to the Authority.
 - 3.3 In relation to oil and gas exploration, appraisal and production, paragraph 147 of the NPPF states:

"Minerals planning authorities should also:

 - when planning for on-shore oil and gas development, including unconventional hydrocarbons, clearly distinguish between the three phases of development (exploration, appraisal and production) and address constraints on production and processing within areas that are licensed for oil and gas exploration or production."

- 3.4 The advice of the Authority's solicitor has been sought to determine to what extent the relevant parts of Annex 4 can still be used on the basis that the Inspector, upon finding the Core Strategy and Development Policies 'sound', considered that Annex 4 would be an appropriate basis upon which to consider such planning applications. It is considered that the Authority could reasonably continue to use those parts of Annex 4 which relate to the exploration, appraisal and production of oil and gas as a basis for decision making on the basis that nothing in the NPPF expressly conflicts with anything in these parts of the Annex. The latter part of the policy in the NPPF (relating to addressing constraints) is a new policy introduced by the NPPF and should be considered alongside the relevant parts of Annex 4.
- 3.5 Relevant parts of Annex 4 of MPS1 (paragraphs 3.3 to 3.19) should therefore be adopted by the Authority in recognition that the NPPF has expressly 'deleted' Annex 4 of MPS1, but;
- There are no alternative policies to consider such developments;
 - The policies in Annex 4 are considered to form part of adopted policy by way of direct reference in the Core Strategy and Development Policies which was found 'sound';
 - Annex 4 was referred to in the post-NPPF decision on the Ryedale Gas plant project; and
 - This is an interim measure until such time as policies can be put in place.
- 3.6 In the absence of any other tool, it is considered that the relevant text should be incorporated into a new Planning Advice Note. This is contained in **Appendix 1** to this report. It is not appropriate to consult as consultation was undertaken on the approach to oil and gas developments as part of the production of the Core Strategy and Development Policies.

4. **Policies contained in the Regional Spatial Strategy**

- 4.1 The Government intends to revoke the Yorkshire and Humber Regional Spatial Strategy. The main implications in terms of minerals for the Authority are outlined in bullet point 5 in paragraph 2.1 above. Policy ENV4 of the RSS forms the basis for the North York Moors now having a 'zero' apportionment in terms of aggregate production (the RSS set out an apportionment of 0.8 million tonnes of land-won crushed rock from the National Park between 2001 and 2016 which was met prior to the two quarries in the Park closing).
- 4.2 The RSS has not yet been revoked and the Government has recently published a Strategic Environmental Assessment into its revocation. The Authority has responded to this on the basis that the removal of some policies, including that referred to above, could have significant environmental effects and should therefore be retained. The final outcome is yet to be determined. Should this policy be revoked, this issue will need to be considered alongside the other minerals issues outlined above. Should the RSS not be revoked, the apportionments are nevertheless becoming out of date and the mechanism for reviewing these in the future will be via each Mineral Planning Authority's Local Plan.

- 4.3 There is no mechanism to simply 'adopt' parts of a Regional Spatial Strategy. Paragraph 218 of the NPPF states: 'Where it would be appropriate and assist in the process of preparing or amending Local Plans, Regional Strategy policies can be reflected in Local Plans by undertaking a partial review of focusing on the specific issues involved. Local planning authorities may also continue to draw on evidence that informed the preparation of Regional Strategies to support Local Plan policies, supplemented as needed by up-to-date, robust local evidence.'
- 4.4 The Planning Advisory Service, via their online forum, have clarified that this does not mean that a local planning authority can simply 'save' regional policies but that the same evidence base may be used to inform Local Plan policies. There is no fast track route to adopting new policies which are based upon former Regional Spatial Strategy policies. The same level of consultation, Sustainability Appraisal, examination and other requirements is needed, in the same way as starting a new plan from the outset.

5. Minerals Plan

- 5.1 The production of a new minerals plan would enable all issues above to be addressed. A new plan could either take the form of a minerals plan just covering the North York Moors National Park or could be undertaken jointly with other Minerals Planning Authorities in the sub-region. For the reasons stated in paragraph 3.2 it is not possible to address the issues through the production of a Supplementary Planning Document.
- 5.2 In relation to the latter, discussions have been taking place with officers from North Yorkshire County Council and the City of York Council on the production of a joint Minerals and Waste Local Plan. These two Councils had already been in discussion over the production of a joint minerals and waste plan. In order to fully inform Members of the options available, officers from the National Park Authority have engaged in these discussions. It is understood that the Yorkshire Dales National Park Authority are to incorporate their minerals policies within a comprehensive Local Plan which they are now beginning work on, although a formal response is awaited.
- 5.3 North Yorkshire County Council had begun work on a minerals and waste local plan to cover their planning authority area only, but are still at a stage where they could begin work on a joint Plan, whilst making use of much of the work already undertaken. The City of York Council have recently withdrawn their Core Strategy (covering all policies not just minerals) and will be producing a new Local Plan with an aim to have this in place by the end of 2014. Although much of the previous evidence base can be used, City of York are therefore essentially at the start of the plan preparation process. At this stage neither Council has formally agreed to produce a joint minerals plan, but Member level decisions are to be taken on this during December and January.
- 5.4 Having considered a very rough timetable, officers from the three Authorities consider that it would be reasonable to adopt a plan by the end of 2015. Officers are in discussion over how, in practical and general terms, the three authorities could each contribute in an equitable way. A verbal update will be provided to Members at the Committee meeting. In terms of Member involvement it is thought that use could be made of the sub-regional Spatial Planning and Transport Board at key points in the process, along with the usual decision making structures which operate within each Authority.

- 5.5 As well as providing a mechanism for formally addressing strategic cross-boundary issues (which would need to be addressed in any case under the Duty to Cooperate which has been brought in by the Localism Act), the production of a joint Plan will enable resources within the three Authorities to be used more efficiently. This includes sharing of costs (including time) relating to consultation and sustainability appraisal and, perhaps most significantly, sharing the cost of the Examination.
- 5.6 Although North Yorkshire County Council has already produced much of their evidence base, there may be opportunities to jointly commission any further evidence needed, although this could apply whether producing plans individually or jointly. A large part of the evidence base will be provided for in the Local Aggregate Assessment (see paragraph 2.3), although specific pieces of evidence are likely to be required, notably the definition of Minerals Safeguarding Areas as required under the NPPF.
- 5.7 It should be noted that the two Councils are proposing to produce a plan covering both minerals and waste. Whilst there is no pressing reason for the North York Moors' waste policies to be reviewed, this would enable an approach which clearly aligns with adjoining authorities and forms part of a wider waste planning strategy to be set out.
- 5.8 In terms of timescale, it is possible that undertaking a joint Plan could increase the time taken to produce the Plan, particularly as there are likely to be contentious issues outside of the Park that will need to be addressed. However, this is likely to be slight in comparison to the timetable as a whole and overall benefits outweigh this issue.

6. **Next Steps**

- 6.1 Should Members wish to produce a joint Minerals and Waste Local Plan with North Yorkshire County Council and the City of York Council (subject to the formal agreement of these Councils), the next step would be to draw up a detailed project plan and timetable. Initial areas of work would involve producing and updating the required evidence and reviewing the existing work North Yorkshire County Council has done in relation to Sustainability Appraisal to ensure that all authorities have met the statutory requirements. In tandem with this an initial consultation seeking views on the content of the Plan will need to be carried out under the Regulations, building upon the work the County Council has already undertaken.
- 6.2 Should Members wish to progress with a Minerals Plan just covering the National Park, the above steps will similarly apply, starting with producing the necessary evidence, undertaking initial work on Sustainability Appraisal and carrying out initial consultation.
- 6.3 Under either of the above options, the new plan would need to be added to the Authority's Local Development Scheme which will be presented to Members in the New Year.

7. Financial and Staffing Implications

- 7.1 There are a number of financial implications associated with producing a minerals plan, relating particularly to producing the evidence base and, perhaps most significantly, the Examination. Although a detailed costing exercise has not been undertaken (it is not possible to calculate exact costs at this stage), it is highly likely that the financial costs of producing a joint plan would be lower than the costs of producing an individual plan due to the opportunity to share the costs of Examination. Should the Authority wish to produce an individual plan, it may also be necessary to 'buy in' minerals expertise. Provision for undertaking the initial stages of plan preparation will need to be made within the budget for 2013/14.
- 7.2 In terms of staffing implications, it is considered that the requirements relating to producing a joint plan can be met via the existing staff resource in the Policy team. As mentioned above, should a Park-wide plan be pursued it may be necessary to source minerals expertise from elsewhere.

8. Sustainability Appraisal

- 8.1 This report relates to a process issue in respect of addressing gaps in current policy. Sustainability Appraisal would form part of the process of producing a plan.

9. Legal Implications

- 9.1 In relation to the adoption of Annex 4 of Minerals Policy Statement 1, whilst officers believe that this is best approach to take to address the issue, there is no certainty over the level of weight an Inspector may attach to it.
- 9.2 Any plan would be produced in accordance with the Town and Country Planning (Local Planning) (England) Regulations 2012 and other relevant legislation. There is provision within the 2004 Planning and Compulsory Purchase Act to produce a joint plan.

10. Recommendation

- 10.1 That Members note the implications of the NPPF and the proposed RSS revocation for minerals policies
- 10.2 That Members adopt the Planning Advice Note contained in **Appendix 1** as an interim statement of policy on oil and gas developments
- 10.2 That Members agree to the production of a minerals plan, and agree whether this should be an Authority-wide plan only or a joint minerals and waste plan with North Yorkshire County Council and the City of York Council (subject to the formal agreement of these authorities).

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Planning Advice Note – Oil and gas exploration, appraisal and production

In place of a specific policy relating to proposals for oil and gas exploration, appraisal and production, the North York Moors Core Strategy and Development Policies contains a reference, in paragraph 6.31, to Annex 4 of the now-deleted Minerals Policy Statement 1¹. Paragraph 6.31 states:

‘Proposals for oil and gas exploration, appraisal and production will be considered against the policy in Annex 4 of Minerals Policy Statement 1’.

The relevant parts of Annex 4 of MPS1 are paragraphs 3.3 to 3.19.

It is considered that, as it is specifically stated as the policy approach in the adopted Core Strategy and Development Policies and in the absence of any other specific policies, it is logical to continue to use these parts of Annex 4. These policies will be considered in conjunction with other relevant policies contained in the Core Strategy and Development Policies and the policies in the National Planning Policy Framework, including the Major Development Test where relevant.

The relevant parts of Annex 4 of MPS1² are set out below:

Exploration

Exploration encompasses a range of activities, including geological mapping, geophysical (seismic) investigations, and the drilling and investigation of wells and boreholes to assess prospects in more detail.

Seismic investigations

Seismic investigations generally have very limited environmental effects. Vibroseis techniques are often regarded as de minimis, since the investigations are transient. Where seismic surveys constitute development within the terms of the Town and Country Planning Act 1990 (“the 1990 Act”), permitted development rights (PDRs) are available under the Town and Country Planning (General Permitted Development) Order 1995 (GPDO), subject to certain conditions. PDRs should not be withdrawn without very good reasons.

In all cases the industry should fully discuss its proposals with the local planning authorities (LPAs) and statutory agencies. MPAs and highway authorities should be informed of the intended route for the survey, and prior notification given to residents on the immediate survey route. In two-tier planning areas, where county councils are the MPAs, operators should also ensure that district councils are aware of the intended investigations, and their commencement dates. In the case of vibroseis surveys using the road network, operators should inform the police of the route and anticipated timing of their operations. MPAs should alert operators to particularly sensitive historic buildings and sites that may be affected. Routes and survey timings should be designed to ensure the protection of habitats and wildlife. Statutory bodies should be consulted as early as possible as part of this process

Drilling

Part 22 of Schedule 2 to the GPDO gives PDRs in respect of certain exploratory operations undertaken with a view to the exploitation of a mineral, subject in certain cases to the developer giving 28 days notice to the MPA. However, development consisting of the drilling of wells for COG exploration is explicitly excluded, and an application for planning permission must be made to the MPA.

¹ Minerals Planning Statement 1: Planning and Minerals (Communities and Local Government, 2006)

² Please note that this text is a direct copy of paragraphs 3.3 to 3.19 of Annex A to MPS1 and may therefore contain some references which are factually out of date.

Policies should be drafted to ensure that each application to explore will be considered on its own merits, in accordance with the present guidance, and in relation to LDDs and any other relevant material considerations. These considerations should not include any hypothetical future proposal for development of the oil or gas resource.

In submitting an application for drilling, the developer should indicate what knowledge has been gained from seismic investigations in selecting the well site, but should not be expected to provide a firm development programme before full appraisal has taken place. Policies should indicate that, subject to the effects on the environment being appropriately addressed and mitigated, and a satisfactory restoration and aftercare plan prepared, applications for exploration may be favourably considered.

Where environmental or other conditions might preclude vertical drilling, MPAs should discuss with the industry the option of employing directional drilling. LDD policies should make clear that this approach will be adopted and that careful consideration will be given to factors such as:

the need for night-time drilling for safety reasons;

locating sites to minimise visual intrusion;

controlling vehicular activity and vehicle routing;

controlling the disposal of mud and other drilling residue; and

controlling noise and light emissions from drilling rigs with particular reference to night-time operations.

In most cases it will be appropriate to attach conditions to planning permissions to ensure that any adverse impact of the operation on the environment and local residents is kept to a minimum. Sometimes agreement on working practices may be reached with the operator based on the conditions attached to the award of the licence, or as part of an agreement made under section 106 of the 1990 Act (as amended). Section 106 agreements should not duplicate planning conditions or conditions attached to the award of a licence by DTI.

Because of the intrusive nature of drilling operations, policies should provide that these will not be permitted close to houses and other noise-sensitive properties unless noise levels from drilling and associated operations can be reduced to acceptable levels.

Particular care should be taken about siting all types of oil and gas wells close to water supply wells or boreholes. Early consultation with the appropriate regional office of the Environment Agency is essential, so as to consider measures to avoid the risk of pollution to ground water and aquifers. If aquifers are to be breached it will be necessary to discuss well-casing details and the composition of drilling muds with the Agency. Off-site disposal of drilling mud and cuttings are matters to be decided as part of the appropriate IPPC permit.

Appraisal

Should hydrocarbons be found as a result of drilling an exploration well, it may be possible to appraise the find by longer-term testing of that well. In other cases it may be necessary to attempt to define the extent of the find by drilling further wells at other suitable sites in the area. Until the extent of a find has been delineated, it is difficult to evaluate the various options available or to assess the viability and potential environmental effects of commercial exploitation. By the time applications for appraisal wells are submitted, operators may sometimes feel sufficiently confident about the extent of the find, and the way in which they would wish to exploit it, to consider supplying information on the likely planning proposals to the MPA at that stage.

This should be on the clear understanding that further appraisal might necessarily lead to changes in plans. As with all other forms of development, an application for an appraisal well must be considered on its merits. This consideration should take into account the long-term suitability of the site since such wells may subsequently be required for production purposes. The other factors listed above for exploration wells are equally relevant to appraisal wells. LDD policies should reflect this.

Production and Distribution

Although individual well sites can raise environmental issues, the gathering stations required for sustained production which separate, purify and treat the raw material, are likely to take up the most land. However there is some flexibility in the siting of these facilities and it is usually possible to conceal them by careful screening, landscaping and design, and by sinking facilities, including security fencing, below the surrounding ground level. Gathering stations should not be sited where they would have unacceptable adverse environmental impacts.

Pre-application discussions between the MPA and the industry on potential production proposals are essential. For the larger finds, it will be particularly important to establish how far the envisaged surface production facilities would be sufficient to handle the expected output from the find, or related finds as a whole. These considerations will also form part of the development programme, which operators are required to submit for consent to DTI under the terms of their licence. In exceptional cases, where discoveries of economic deposits extend across licence boundaries, the SSTI has powers to direct that such a find or accumulation is worked and developed as a unit.

It will usually be necessary for a MPA to attach certain conditions to any grant of planning permission for a gathering station or an export terminal, or to seek an agreement with the operator using section 106 of the 1990 Act for matters that fall outside planning control. Policies should make clear that conditions are likely to be imposed governing, amongst other matters:

timing and method of gas flaring, (also controlled by DTI under the Energy Act 1976);

access;

the direction of vehicles leaving the site;

noise emissions;

prevention of pollution associated, for example, with possible spillages;

the means of disposal of unwanted gas; and

the method by which the end product is to be transported from the well site or gathering station.

Operators should address all of these points in their planning applications and, where necessary and appropriate, in supporting environmental statements. Where possible, export terminals should be sited where they can feed into a long distance pipeline, or are connected to a railway or water transport, in preference to relying on road transport.

Where pipelines are to be used for transporting extracted oil and gas it will be necessary for operators to obtain consent from the appropriate authorities (the relevant MPAs, the Environment Agency and the Health and Safety Executive) for routes, vehicle access, the location of machinery storage areas, and of pipes, pipe-laying equipment and other construction materials.

In drawing up proposals, operators should avoid environmentally sensitive locations and take account of any potential impacts on nature conservation, for example the movement of animals. Proposals should also take into account the possible implications for agricultural activities, consulting where necessary with associations that represent agricultural interests.

For pipelines less than 10 miles in length, planning permission is required from the MPA. Longer pipelines require authorisation from the SSTI under the Pipelines Act 1962, although the usual planning and environmental considerations would be taken into account. The views of the LPAs, the Environment Agency, Natural England, the Health and Safety Executive, landowners and tenants should be sought. Also, a full environmental impact assessment statement would normally be required. On granting authorisation, the SSTI would then direct that planning permission for the pipeline shall be deemed to have been granted. In all cases, it is essential that land affected by pipeline development should be properly restored.