IN THE MATTER OF A SHALE GAS PLANNING APPLICATION AT PRESTON NEW ROAD

ADVICE

1. I am instructed to advise Friends of the Earth in respect of a planning application for shale gas exploration wells and hydraulic fracturing on land north of Preston New Road, Little Plumpton.

2. The application was considered by Lancashire County Council's Development Control Committee on 23rd and 24th June 2015 and following discussion adjourned to a further meeting on 29th June 2015.

3. The County Council has published an advice note from Mr David Manley QC dated 24th June 2015 on the ability of members to disagree with officer advice in this case.

4. It might be helpful to make a few observations on the context. Parliament has given the duty to determine planning applications to local planning authorities, almost all of which are councils consisting of elected councillors. Those councils establish their own decision making arrangements which are broadly speaking that the most important or contentious applications are decided by elected politicians. Similarly the most important appeals are recovered and determined by Ministers and the rest decided by appointed inspectors. This is a perhaps unnecessary reminder that planning decisions are taken by politicians rather than experts or lawyers and that the balancing of benefits and harm is ultimately a political decision. Whether a particular impact is acceptable has a large measure of political judgment to it.

5. Any decision-maker, whether politician, officer or Inspector must have regard to the circumstances and policies and consider the comments made, including advice received from experts from their own authority, other public bodies, the applicant and third parties. It is open to the committee to disagree with any particular advice that they are given. Members must of course have a basis in evidence and exercise a reasonable planning judgment in doing so.

6. I note that there is no suggestion that it would be unlawful for the committee to refuse the application. The question raised is whether it might be unreasonable to do so. It is apparent though that there are substantial matters in the officer advice which point against the scheme and there are matters on which members may disagree with the advice which they have been given.

7. County Council officer advice to be weighed against the scheme includes:

   (i) The proposal does not accord with policies SP2 and EP11 of the Fylde Borough Local Plan;

   (ii) The proposal, even with drilling rig height reduced to 35 metres, would have a moderate (and implicitly adverse) landscape and visual impact which would still be significant in planning terms;

   (iii) Even without tonal or impulsive noises, there will be an increase in noise levels;

   (iv) Predicted sky-glow is said to marginally exceed permitted standards.

8. The committee will also need to consider the other views expressed including the objection of the district planning authority and expert evidence assembled by objectors, including the noise evidence of MAS. Members may find those views persuasive. In particular there is a need to consider noise impacts in the round, in that drilling involves a continuous 24/7 industrial noise which at times will be well above other noise levels. MAS identify the need to reduce noise to a minimum and ways in which the maximum noise levels proposed do not provide sufficient protection. Were local residents to have their sleep disturbed harm to health would result.

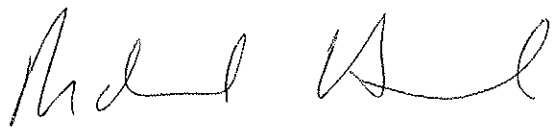
9. Members will want to consider whether there is compliance with policy DM2, which supports mineral development if it is shown that 'all material, social, economic or environmental impacts that would cause demonstrable harm can be eliminated or reduced to acceptable levels'. Officer advice is that demonstrable harm will result from the proposal, as set out in paragraph 7 above. The committee will therefore want to decide whether the harm from the scheme has been 'reduced to acceptable levels'. It would be reasonable for members to conclude that the harm identified in the report would not be at acceptable levels. Similarly if members were to disagree with their officers and find that there would be greater harm that would also allow them to conclude that the harm would not be acceptable and there would be a breach of DM2.

A breach of DM2 would suggest that the proposal is not sustainable development in breach of policy NPPF1 and national policy itself.

10. The committee would have to consider whether there is compliance with the development plan as a whole and whether there are material considerations outweighing the plan. Compliance with the plan as a whole is not a matter of adding up policies for and against but looking at the importance of policies in a particular case. For example, a proposal which has unacceptable economic, social or environmental impacts contrary to DM2 is liable to be seen as contrary to the development plan.

11. A finding that the application is not in accord with the development plan and so should be refused is one which is open to the committee on the material which it has. Such a view would be a reasonable one to take and capable of being defended on appeal. Similarly it would not be 'irresponsible conduct' for the committee to decide to refuse the application.

12. If any matters arise out of this advice, please do not hesitate to contact me in Chambers.



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Richard Harwood QC

26th June 2015