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Petroleum Safety Services Limited  
Milton Street  
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Your ref: PSSL/TE/KMA/HFS/PA/004  
Our ref: NY/2015/0211/ENV

**Planning Services**

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Tel: 01609 780780  
Contact: \

17<sup>th</sup> July 2015

Dear

**TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT  
PROCEDURE) ORDER 2015 SCHEDULE 1**

Planning application to hydraulically stimulate and test the various geological formations previously identified during the 2013 KM8 drilling operation, followed by the production of gas from one or more of these formations into the existing production facilities, followed by wellsite restoration. Plant and machinery to be used includes a workover rig (maximum height 37m) hydraulic fracture equipment, coil tubing unit, wireline unit, well testing equipment, high pressure flowline, temporary flowline pipe supports, permanent high pressure flowline and permanent pipe supports on land at KMA wellsite, Alma Farm, off Habton Road, Kirby Misperton, North Yorkshire on behalf of Third Energy UK Gas Limited

I write with reference to your recently submitted planning application dated 29<sup>th</sup> June 2015 in respect of the abovementioned development which was delivered by hand on the afternoon of Thursday 2<sup>nd</sup> July 2015 and was accompanied by a letter dated 2<sup>nd</sup> July 2015 which conveyed your Client's response to the letter of the County Planning Authority dated 9<sup>th</sup> June 2015.

The application details within the submitted form describe your Client's proposal as being "*to hydraulically stimulate and test the various geological formations previously identified during the 2013 KM8 drilling operation, followed by the production of gas from one or more of these formations into the existing production facilities, followed by wellsite restoration. Plant and machinery to be used includes a workover rig (maximum height 37m) hydraulic fracture equipment, coil tubing unit, wireline unit, well testing equipment, high pressure flowline, temporary flowline pipe supports, permanent high pressure flowline and permanent pipe supports*" (Section 6 of the submitted application form refers).

The submitted documentation has been reviewed. Please note the following.

(cont'd...)

The provisions of Article 13 of the Town & Country Planning (Development Management Procedure) (England) Order 2015, require requisite notice (as prescribed in Schedule 2 to that Order) to be either served, posted or published by an applicant depending upon whichever notice is relevant.

One of the relevant notices under Article 13 of the afore-mentioned Order should be served by an applicant upon any party with an interest in the land to which an application relates who, on any day 21 days prior to the date of an application, was an owner or a person with tenancy interest in the land (the unexpired term of which is no less than seven years), by means of either being "*published in a newspaper and, where relevant, on a website*" or being "*served on an owner or a tenant*" as defined in Schedule 2 to the Order.

Ideally, the specific notice to be served should use the text set down within Schedule 2 of the Order and, for ease of reference, is appended hereto as Appendix 1. The national Planning Portal guidance notes for the completion of the application form states "*once completed this form [Notice] needs to be served on the owner(s) or tenant(s)*".

While acknowledging that the provisions of paragraph 9 of Article 13 provide for the service of a requisite notice in the appropriate form set out in Schedule 2 or "*in a form substantially to the same effect*", having reviewed the application documents, the letter that is stated to have been served on a known owner of land does not cover all the points which are set down within the form as prescribed in Article 13. There is no issue with the notice being in the form of a letter, but it does not include text which defines the meaning of '*an owner*' or '*a tenant*' for the purpose of the notice; nor does it include the text in respect of the rights of owners or tenants of land. Although the requirements allow for some scope to vary from the notice in Schedule 2 these omissions lead to a view that the notice is not '*substantially to the same effect*' and is not '*requisite notice*'.

Another of the relevant notices is that which the application documentation indicates was published in the Malton Gazette & Herald on 17<sup>th</sup> June 2015. It appears that the Site Notice prescribed form has been used for this purpose rather than the template for the newspaper advert. Again, in principle, there is no issue with that approach providing it is '*substantially to the same effect*'. However, on review, I have concerns that it does not meet that requirement. The relevant notice is that which is appended hereto as Appendix 1 so it should cover issues covered by that Form and elements are missing (the rights of owners or tenants of land), there are also issues regarding the inspection of documents/and the description of the development which I will cover in more detail below.

Regard is also to be had to the national Planning Practice Guidance published on 6<sup>th</sup> March 2014 which defines the '*winning*' of a mineral to mean the making of the mineral "*available or accessible to be removed from land*" and the '*working*' of a mineral to mean the removal of "*it from its position in or under the land*". Minerals are defined for the purpose of the Town & Country Planning Act 1990 (Section 336 refers) as including "*all substances of a kind ordinarily worked for removal by underground or surface working, except that it does not include peat cut for purposes other than sale*". It, thereby, follows that, in addition to the service of the requisite notices earlier referred, under the provisions of Article 13, a site notice pertaining to the winning and working of minerals by underground operations is also required (appended hereto at Appendix 2).

The Site Notice you have provided should have detailed where the relevant documents were available for inspection pursuant to the notice which occurs prior to submission of the application. It should be noted that the prescribed notice in Schedule 2 states "*the applicant is responsible for making the application available for inspection within the area of the local planning authority*"; however, there has been no evidence submitted with the application to demonstrate compliance with this requirement.

A further point of concern is that the descriptions of the proposed development within each of the notices differ from that which appears within Section 6 of the submitted application form. That is to say, the description within each of the notices reads "*To hydraulically stimulate and test the various geological formations previously identified during the 2013 KM8 drilling operation, followed by the production of gas from one or more of these formations into the existing production facilities. Followed by wellsite restoration*"; whereas, the application form, as submitted, it reads "*To hydraulically stimulate and test the various geological formations previously identified during the 2013 KM8 drilling operation, followed by the production of gas from one or more of these formations into the existing production facilities, followed by wellsite restoration. Plant and machinery to be used includes a workover rig (maximum height 37m) hydraulic fracture equipment, coil tubing unit, wireline unit, well testing equipment, high pressure flowline, temporary flowline pipe supports, permanent high pressure flowline and permanent pipe supports*".

The two descriptions are considered to be materially different and thereby render the notices deficient in that they do not adequately inform the recipients/readers of the notices as prescribed. It is for this, and the reasons outlined above, therefore, that it cannot be considered that the notices have been duly served, published or posted in the way prescribed.

I appreciate that in preparing the notices you may have had regard to what other applicants may have submitted on similar applications (which were accepted by other MPA's), however I have to consider what is placed before the County Planning Authority and I am conscious that there will be a high degree of scrutiny. Consequently, it is considered that your Client's application cannot be validated as a duly made application and thereby incapable of being registered as such.

Two final matters before the closure of this letter are:

- i. the need to formally acknowledge receipt of your e-mail dated Tuesday 14<sup>th</sup> July 2015 (timed at 12:23) accompanied by the submission of a document entitled '*High Level Comparison Table*' which now has the word '*Confidential*' removed from the document.

With your Client's agreement, the document containing the word '*Confidential*' will be removed and replaced with the document accompanying your e-mail. It would be appreciated if confirmation of your Client's agreement to this could be provided in writing;

and,

- ii. the need to respond to your Client's formal request that the County Planning Authority consider the convening of "*an extra-ordinary meeting of its Planning & Regulatory Functions Committee in November 2015 where this application can be considered in detail and in isolation*".

Your Client's will be aware that such an undertaking may only be given at a point in time when it is considered that a position has been reached whereby a report may be prepared and indeed ready to present to Members. However, having recently taken the opportunity to solicit the views of Members, the holding of an extra-ordinary meeting where your Client's application is the only item of business was not objected to, in principle. This is given, of course, without prejudice to any formal decision Members of the Committee may wish to make at a later date should circumstances differ from that which currently prevails.

I trust that you will review the content of this letter and duly acknowledge its receipt in writing in due course.

Yours sincerely,

**Head of Planning Services**

## Appendix 1

### Town and Country Planning (Development Management Procedure) (England) Order 2015

#### NOTICE UNDER ARTICLE 13 OF APPLICATION FOR PLANNING PERMISSION

*(to be published in a newspaper and, where relevant, on a website or to be served on an owner\* or a tenant\*\*)*

Proposed development at (a) .....

I give notice that (b) ..... is applying to the [(c).....] [Council][Secretary of State]+ for planning permission to (d) .....

Any owner\* of the land or tenant\*\* who wishes to make representations about this application should write to the [Council][Secretary of State]+ at (e) ..... by (f) .....

\* “owner” means a person having a freehold interest or a leasehold interest the unexpired term of which is not less than 7 years, or, in the case of development consisting of the winning or working of minerals, a person entitled to an interest in a mineral in the land (other than oil, gas, coal, gold or silver).

\*\* “tenant” means a tenant of an agricultural holding any part of which is comprised in the land.

Signed.....

+On behalf of .....

Date .....

#### *Statement of owners' rights*

The grant of planning permission does not affect owners' rights to retain or dispose of their property, unless there is some provision to the contrary in an agreement or in a lease.

#### *Statement of agricultural tenants' rights*

The grant of planning permission for non-agricultural development may affect agricultural tenants' security of tenure.

+ delete where inappropriate

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#### Insert:

(a) address or location of the proposed development

(b) applicant's name

(c) name of the Council

(d) description of the proposed development

(e) address of the Council or the Secretary of State as appropriate

(f) date giving a period of 21 days beginning with the date of service, or 14 days beginning with the date of publication, of the notice (as the case may be)

## Appendix 2

### Town and Country Planning (Development Management Procedure) (England) Order 2015

#### NOTICE UNDER ARTICLE 13 OF APPLICATION FOR PLANNING PERMISSION FOR THE WINNING AND WORKING OF MINERALS BY UNDERGROUND OPERATIONS

*(to be posted in the case of an application for planning permission for development consisting of the winning and working of minerals by underground operations (in addition to the service or publication of any other requisite notices in this Schedule))*

Proposed development at (a) .....

I give notice that (b) .....

is applying to the [(c) .....  
for planning permission to (d) .....

Members of the public may inspect copies of:

- the application
- the plans
- and other documents submitted with it

at (e) .....  
during all reasonable hours until (f) .....

Anyone who wishes to make representations about this application should write to the

[Council][Secretary of State]+ at (g) .....

by (f).....

Signed.....

+ On behalf of .....

Date .....

+ delete where inappropriate

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Insert:

- (a) address or location of the proposed development
- (b) applicant's name
- (c) name of the Council
- (d) description of the proposed development
- (e) address at which the application may be inspected (the applicant is responsible for making the application available for inspection within the area of the local planning authority)
- (f) date giving a period of 21 days beginning with the date when the notice is posted
- (g) address of the Council or the Secretary of State as appropriate