



CLG Consultation on Amendment to permitted development rights for drilling boreholes for groundwater monitoring for petroleum exploration Technical Consultation

A response by National Parks England

April 2015

Introduction

1. National Parks England supports the policy-making process by co-ordinating the views of the nine English National Park Authorities and the Broads Authority. It is governed by the Chairs of the ten authorities. Our response represents the collective view of officers who are working within the policies established by the National Park Authorities (NPAs) and Broads Authority and follows internal consultation amongst the officers. We are happy for our response to be made publicly available and would be happy to discuss any of the points we make further with officials if that would be helpful.

2. Our overriding request is that the Government:

- adheres to the commitments made in the House of Commons and restrict development that includes high volume hydraulic fracturing and other developments that is inherently a pre-cursor to this practice from being carried out in National Parks;
- Does not diminish or undermine such commitments through making changes to permitted development rights (PDRs);
- Does not as a consequence of amending PDRs impose additional burdens on National Park Authorities or unnecessary additional controls; and
- Ensures that the Broads Authority is added to Class A, AI (c) of the Permitted Development Order 1995.

Consultation questions:

Question 1: Do you have views on whether we amend the restrictions on existing permitted development rights for mineral exploration, to enable the drilling of boreholes for groundwater monitoring for petroleum exploration?

3. During the debate on the Infrastructure Bill, DECC Minister Amber Rudd MP went on record as saying that the Government would remove the ability of companies to develop in National Parks in “exceptional circumstances”. (Hansard, HoC, 26.01.15, Col 586). She said; “let me add to my earlier comments that we have agreed an outright ban on fracking in national parks, sites of special scientific interest and areas of outstanding natural beauty”. We

expect this to include the 12 National Parks designated within England and Wales under the *National Parks and Access to the Countryside Act 1949*, and the Norfolk Broads designated under the *Norfolk and Suffolk Broads Act 1988*.

4. The Infrastructure Act, which was given royal assent on 12 February, includes a number of conditions (set out in Section 50) that the Secretary of State must satisfy themselves of, before granting a 'hydraulic fracturing consent'. Of particular relevance are the conditions that state that *'the associated hydraulic fracturing will not take place within protected groundwater source areas'* and *'the associated hydraulic fracturing will not take place within other protected areas'*. There was also a debate about whether the wording should include 'under' protected areas, but the amendment did not make the final Act. This means, as the Government will recognise, that there could still be hydraulic fracturing under protected areas from sites outside.

5. The intended purpose of this current Government consultation to allow for the drilling of boreholes for groundwater monitoring for petroleum exploration, is to support the conditions imposed at Section 50 of the Infrastructure Act, particularly the need for developers to monitor groundwater methane levels for a period of twelve months before high volume hydraulic fracturing can occur.

6. It is necessary that the importance of protected areas, as acknowledged by Government in the debate on the Infrastructure Act is not undermined or diminished by any change to permitted development rights afforded by the Town and Country Planning (General Permitted Development) Order 1995 (as amended). Neither should the changes that the Government are proposing impose another burden on local planning authorities or layer of unnecessary control.

Question 2: Do you agree that the amended rights should (with the one exception on height of structures) be subject to the same restrictions and conditions as apply currently to mineral exploration? If not what alternative restrictions or conditions would be appropriate?

7. Class A allows for the drilling of boreholes if the operation does not exceed 28 days and amongst other conditions, is not located within a National Park, AONB, site of archaeological interest or a site of special scientific interest. It is therefore considered that the proposed changes put forward by DCLG to maintain the status quo for Class A restrictions would not have any significant implications for National Park purposes pertaining to boreholes for groundwater monitoring for petroleum exploration as the level of current control would be maintained. We would, however, request that the Norfolk Broads be included in Class A, AI.

8. Class B currently allows for the drilling of boreholes for a period of up to 6 months unless otherwise agreed by the Mineral Planning Authority (MPA). In such a scenario the developer must serve notice on the MPA of its intention to carry out the development. Unlike Class A, the current restrictions for Class B development do not preclude such development taking place within National Parks, the Broads and other protected areas. It does however, allow MPAs to make a direction under Article 7 (within 21 days beginning with receipt of notification) requiring that the development should not take place unless planning permission is granted. As has been set out in their own response, unlike National Parks, the Broads Authority is not the Minerals Planning Authority for its area and there will

need to be local discussions with Norfolk and Suffolk County Council regarding the changes that are proposed.

9. The requirement of the Infrastructure Act for developers to monitor groundwater methane levels for a period of 12 months before undertaking high volume hydraulic fracturing implies that this fracturing process is likely to take place in the future.

10. Having regard to the Government's announcement to exclude this particular high volume hydraulic fracturing process from taking place within protected areas, it would appear that the current Article 7 notification process would only add another layer of unnecessary control. Groundwater boreholes for petroleum exploration within National Parks and the Broads should therefore be explicitly excluded from Class B as it would for Class A.

11. Finally, National Parks England would like to draw the Government's attention to the fact that 'the Broads' has been omitted from Class A, A1 (c) despite being of National Park status and we ask that that be added so as to be consistent with other National Parks.

Question 3: Do you agree with the proposal to amend the height restrictions to 15 metres for structures assembled or provided under the permitted development right?

12. The current height restriction for any structure assembled under Part 22, Class A and Class B is 12 metres. Given the sensitivity of protected landscapes, an additional 3 metres in height for a drill rig could lead to unacceptable visual intrusion, particularly if the structure is in place for the full permitted 6 month period.

13. It is acknowledged that National Parks and other protected areas are excluded from Class A permitted rights and therefore for short term development of up to 28 days, the proposed increase in height to any structure would not affect these protected areas. This however is not the case for the Broads where the landscape is flat and the historic drainage mills, which are often around 10m high, have a significant impact on the landscape; structures up to 15m high that are not elements of the cultural landscape would have a very significant effect on the landscape. As such, see paragraph 11 regarding the request for the Broads to be included at Class A, A1 (c). It is also acknowledged that pursuant to Class B development, an Article 7 direction can be served by a MPA requiring the submission of a planning application.

14. However, as alluded to in response to Question 1 above, the Government's current proposals would allow high volume hydraulic fracturing to still take place under a National Park but from outside these protected areas. There is the potential for these structures of up to 15m being situated directly adjacent to a National Park and other protected areas thus impacting on the setting of the designated areas which would not be subject to the same level of control currently performed by National Park authorities.

15. As mentioned in response to Question 1, the Government has made it clear that high volume hydraulic fracturing is to be excluded from National Parks. Therefore, the increase in height restrictions from 12m to 15m for a process of groundwater methane monitoring required in advance of this excluded process; together with the possible visual intrusion from these taller structures, then the need for an MPA to pursue an Article 7 direction would place an added layer of control and strain on planning authorities. It is

considered that the conditions applied to Class B should include an exclusion of this type of development from National Parks and the Broads Authority.

Question 4: We consider that, as well as the benefits in providing public confidence that the environmental impacts of potential petroleum exploration schemes are being properly considered, the proposal could save time for such schemes going forward. What potential cost savings might be achieved were these permitted development rights to be realised?

16. It is considered that the proposed changes, in particular to Part 22, Class B which unlike Class A does not exclude development from protected areas, is inconsistent with the objectives of the Infrastructure Act. The proposed changes to permitted development rights at Class B imply that groundwater boreholes for petroleum extraction (a prerequisite for high volume hydraulic fracturing) within a National Park or the Broads could be permitted, yet the hydraulic fracturing process itself, is excluded from protected areas by reason of controls within the Infrastructure Act.

17. In order to prevent unnecessary costs associated with a proliferation of Article 7 directions, it is considered that National Parks and the Broads should be included within the conditions at Part 22, Class A and Class B, restricting development from being carried out in these protected areas.

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