

Committee	Lead Cabinet Member for Transport and Environment
Date	13 October 2014
Report By	Director of Communities, Economy and Transport
Title of Report	Petition calling upon the County Council to refuse to allow any attempt at hydraulic fracturing (Fracking) for hydrocarbons anywhere in East Sussex
Purpose of Report	To consider a petition directed at the County Council relating to the refusal of any attempt at Fracking for shale oil and gas anywhere within East Sussex

RECOMMENDATIONS: The Lead Member is recommended to advise the petitioners that the County Council could not apply a blanket ban on Fracking because this would seek to fetter future decisions and the Council is under a legal duty to determine each application having “regard to the provisions of the development plan, so far as material to the application, and to any other material considerations”.

1. Financial Appraisal

1.1 Currently there are no specific financial implications arising from the recommendation detailed in this Report. Funding for the determination of planning applications is covered within existing Departmental budgets.

2. Background

2.1 At the County Council meeting on 15 July 2014, Councillor Wallis presented a petition to the Chairman calling on the County Council to refuse to allow any attempt at Fracking for hydrocarbons anywhere in East Sussex. The petition had a signature count of 494. The petition’s statement is included as Appendix 1 and a full copy of the petition is available in the Members’ Room. Standing Orders provide that where the Chairman considers it appropriate, petitions are considered by the Cabinet or relevant Cabinet Member and a spokesperson for the petitioners is invited to address the Committee. This petition has been referred to the Lead Member for Transport and Environment.

2.2 The petition relates to the use of the method of hydraulic fracturing (Fracking) in order to extract hydrocarbons (oil and gas). Fracking is a technique used to extract shale oil and gas which is trapped in rock and which would not flow freely when a well is drilled. Fracking uses a mixture of fluids, which are pumped at high pressure into the rock, to create narrow fractures which in turn allow the oil or gas to flow to the surface.

2.3 East Sussex County Council is a Minerals Planning Authority and therefore deals with oil and gas matters. The Authority would deal with any planning application for the exploration, appraisal and production of unconventional hydrocarbons (shale oil and gas) within East Sussex, though any proposals within the National Park would be dealt with by the South Downs National Park Authority. The current situation in East Sussex is that there are no active sites and no current planning permissions or applications for oil and gas exploration.

2.4 The policy context is that the Government believes in a strong and diverse energy mix. Shale is seen as an important potential domestic energy resource that could act as a bridge to a greener future. In planning terms, the National Planning Policy Framework has a presumption in favour of sustainable development. Paragraph 142 states that it is important that there is a sufficient supply of energy that the country needs. Minerals though can only be worked where they are found. The Government’s Planning Practice Guidance has recently been updated with further details on the approach to development for unconventional hydrocarbons in National Parks and Areas of Outstanding Natural Beauty.

2.5 The consenting regime for hydraulic fracturing of shale rock is complex. Apart from planning permission, the Department of Energy and Climate Change (DECC) issues a Petroleum Exploration and Development Licence (PEDL) to operators wishing to explore for oil and gas, the Environment Agency issues environmental permits, the Health & Safety Executive regulates aspects of the well design, and finally, a well consent is issued by DECC. Planning permission is therefore only one part in the numerous checks and balances that have to occur before oil or gas development could take place.

3. Comments / Appraisal

3.1 Notices of Motion on Fracking have been before the County Council in the past. At its meeting on 27 March 2012, following a debate, the Council resolved to acknowledge that there were significant public concerns over Fracking. It continued that County Councillors and members of the public should be properly and fully informed once the evidence base is established. The Council agreed to support the temporary suspension of Fracking in Lancashire and request that Members receive a briefing on Fracking prior to any planning application being considered. This has not yet occurred as no application has yet been received.

3.2 The Council's Constitution requires that Planning Committee determines applications relating to the control of development. The Government's Planning Practice Guidance states that Members must maintain an open mind when considering planning applications.

3.3 The Town and Country Planning Act 1990, Planning and Compulsory Purchase Act 2004 and the Town and Country Planning (Development Management Procedure)(England) Order 2010 requirements are that planning applications should be considered in accordance with Development Plans and any other material considerations. The High Court may quash a decision where it considers that extraneous factors have been taken into account, or where factors have been incorrectly taken into account. The Council cannot fetter its discretion by deciding that it will not allow any application for Fracking irrespective of the merits of the application.

3.4 The environmental concerns relating to fracking are recognised and acknowledged, and where relevant, these would be assessed at the planning application stage and also by other regulatory bodies.

4. Conclusion and Reason for Recommendation

4.1 The Council is under a legal obligation to consider each application on its merits taking into account material planning considerations. The County Council could not apply a blanket ban on Fracking as this would seek to fetter future decisions.

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Director of Communities, Economy and Transport

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Local Members: All

BACKGROUND DOCUMENTS
None

Appendix 1 – Petition Statement

“East Sussex County Council is requested to apply the precautionary principle and refuse to allow any attempt at hydraulic fracturing ('fracking') for hydrocarbons anywhere in East Sussex, on the grounds that the potential risks of environmental harm and potential risks to public health significantly outweigh any potential economic benefits arising from such extraction.

“The evidence of environmental harm and damage to public health from hydraulic fracturing from hydrocarbons in places where it has occurred at scale, such as Canada, USA, and Australia, has accumulated to such an extent that it is incumbent upon East Sussex County Council to take account of such evidence and prevent fracking from occurring anywhere in East Sussex in the first place. UNEP has issued a global alert about the risks of fracking at:

http://na.unep.net/geas/archive/pdfs/GEAS_Nov2012_Fracking.pdf and the EU has identified some of the high risks from fracking at:

<http://ec.europa.eu/environment/integration/energy/pdf/frackingstudy.pdf> ”

