Department for Communities and Local Government

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Our Ref:3371843

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Dear Mr Wilkinson,

I refer to your enquiry made about the circumstances of a planning application for shale exploration proposals where the extent of those proposals effectively straddles two local authority areas.

I am very sorry to have not responded to your enquiry until now.

We are assuming that the premise of your enquiry is based is on proposed development proposals, for which planning applications are sought, taking place over two mineral planning authority areas, rather than consideration of development impacts of a proposal in the one authority on its neighbouring authority. Planning permission would not be needed from both mineral planning authorities in that latter scenario. But the local authority in whose area planning permission is sought is capable of taking into account planning concerns raised by the neighbouring authority and local residents in that authority in considering and determining the planning application before it.

While development proposals (for which planning permission is needed) straddling two authorities could happen in theory, its probably unlikely to in practice. While we can try to explain what might happen on 'the theory', obviously much will depend on the facts and circumstances of the particular individual case.

Planning practice guidance sets out that where a site which is the subject of a planning application straddles one or more local planning authority boundaries, the applicant must submit identical applications to each local planning authority.

In theory, that could result in planning permission for a development that straddles mineral authority boundaries being granted in one mineral planning authority but refused in the other. But that is unlikely to happen.

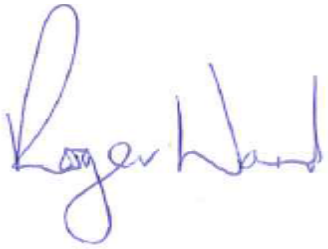
What could happen in a cross-boundary case like this is that one of the local authorities lets the other take the decision on the whole application. Section 101 of the Local Government Act 1972 allows local authorities to "arrange" for another local authority to discharge any of their functions. The same section also gives them the power to decide applications jointly.

So where the proposals straddles two authorities covered by planning applications to the two authorities,  it could be the one authority discharging both its own planning functions and those of the other authority in deciding the applications as a whole; or the two authorities (under the section 101 power) deciding the planning applications jointly;  or each authority deciding the application that is before them individually, as described earlier.

It is unlikely that mineral planning authorities would separately determine applications completely separately anyway, because the decisions would almost certainly end up inconsistent (even where both were granting permission, for example, it was down to a single different planning condition),  meaning a high risk of possible litigation.

Whatever the circumstances of who would be the authority or authorities determining the application(s) before them, planning law requires a decision on whether to grant planning permission to be made in accordance with the development plan(s) for the local authority(ies) area, unless material considerations indicate otherwise,  with planning concerns raised by local people capable of being such material considerations.

Yours sincerely,



Roger Wand