Legislative Changes to the Planning System and Significant Announcements in relation to Fracking within the United Kingdom

1. Summary

1.1 In recent years, incremental changes have been made to the UK's regulatory regime to progressively remove certain legal and practical hurdles to the development of the UK's onshore petroleum resources. This paper aims to set out those changes illustrating the strong Governmental support given to this novel industry in the United Kingdom.

1.2 Table 1 illustrates the timeline of key legislative dates and changes to the planning and regulatory regimes alongside significant Government announcements that have occurred to date. Points highlighted in Bold type are direct changes to the Planning System, those in italics are yet to be implemented.

Date	Legislative Change / Announcement
March 2012	**Publication of National Planning Policy Framework (NPPF) – Section 13 'facilitating the sustainable use of minerals'. Specifically, para 147 addresses on-shore oil and gas development (including unconventional hydrocarbons)**
October 2012	DECC policy statement restates the economic potential for shale
March 2013	George Osborne offers tax breaks for shale in 2013 budget
June 2013	DECC provides estimates of shale gas resources in north of England
July 2013	Northern Ireland minister rules out fast track process for fracking applications
September 2013	Pro-fracking speech by Ed Davey, Secretary of State for DECC
October 2013	European Parliament votes to ensure Environmental Impact Assessments must be undertaken before fracking commences at any site in the EU
December 2013	HM Revenue and Customs outlines new tax breaks for onshore oil and gas
December 2013	DECC announce new 'regulatory roadmap'
January 2014	David Cameron announces he is 'all out for shale' – Councils will keep business rates on shale sites (up from 50%)
January 2014	**Government publishes Town and Country Planning Town and Country Planning (Development Management Procedure and Section 62A Applications) (England) (Amendment No. 2) Order 2013 – which retains the requirement to serve notice on individual owners and tenants of land on the above ground area where works are required, but removes the requirement for owners of land beyond this area to be informed i.e. the owners of land where solely underground operations may take place.**

March 2014	**Planning Practise Guidance (PPG) published online to support the NPPF, including a specific chapter on minerals. Section 9 relates specifically to Planning for hydrocarbon extraction**
April 2014	House of Lords Economic Affairs Committee critics lack of progress
November 2014	George Osborne proposes north of England shale fund
January 2015	Leaked letter from George Osborne asking colleagues to push fracking progress
February 2015	Welsh moratorium on Fracking announced
June 2015	Lancashire County Council refused Cuadrilla Resources planning permission for 2 large applications at Preston New Road and Roseacre Woods on the Fylde. At the same time, they approved permission for 1 monitoring array but refused another both relating to the fracking sites. Cuadrilla stated they would appeal.
August 2015	**The Government decided to fast-track planning applications for fracking operations if Local Authorities don't process application fast enough**
September 2015	**Joint Written Ministerial Statement was published by CLG and DECC**
September 2015	Northern Ireland fracking ban announced
November 2015	The Environment Agency consultation on new standard rules permits – reduce the time it takes to get a permit for certain types of low risk oil and gas activities to up to 4 weeks – stating that the speeding up of this process is not at the expense of environmental protection.
November 2015	**The Government cancelled its £1bn competition for Carbon Capture and Storage technology**
December 2015	**The Government issued licensees for the exploration of shale gas underneath protected areas including National Parks and AONBs**
January 2016	*Ministers consider adding fracking to the Planning Act 2008 regime for Nationally Significant infrastructure Projects, taking decisions out of the hands of local authorities*
March 2016	George Osborne - announces measures to reduce tax rates for onshore and offshore oil and gas in the Budget
March 2016	The Liberal Democrat Party voted to ban fracking in England and Wales at its party conference.
April 2016	**Amendments to the (Minerals) Permitted Development Rights – drilling boreholes for the purposes of carrying out groundwater / seismic monitoring and for locating/appraising the condition of mines are now approved subject to conditions – height of infrastructure relating to this is also increased.**

April 2016	**Infrastructure Act 2015 came into force reducing the planning obstacles to drill sites including (amongst others) stating there is no need to monitor emissions after a permit has expired and that residents do not have to be notified about fracking individually. Also changed the definition of 'High Volume Hydraulic Fracturing' stating an operation could only be a 'fracking' operation if it involved the injection of 1000m³of fluid at each stage or more than 10,000m³ in total.** **Also introduced 'Maximising Economic Return' and trespass rights.**
May 2016	KM8 in Ryedale approved – despite strong opposition – Judicial Review hearing scheduled for November 2016
June 2016	Scotland announces fracking ban.
July 2016	Committee on Climate Change published its report concluding that fracking is not compatible with meeting the UKs carbon budgets. It highlighted that if industrial scale fracking is to go ahead, its emissions will need to be offset by emissions reductions in other areas to ensure UK carbon budgets were met.
August 2016	Theresa May announces plans to give individuals impacted by fracking monies collected through the Shale Wealth Fund and initiates a consultation on her proposals between August-October 2016
October 2016	The Labour party announced they would ban all fracking in the UK
October 2016	Cuadrilla sites in Lancashire determined by SoS – Preston New Road approved in line with Officer and Inspector recommendations, SoS minded to approve Roseacre Wood subject to re-opening the Inquiry and the Appellant producing more evidence on highways issues – against Officer and Inspector recommendations.

1.3 So far 9 key legislative changes have occurred since the publication of the National Planning Policy Framework in 2012 all supported by numerous announcements indicating the Government's endorsement of an industry, as yet untested, in terms of depth of operation onshore in the United Kingdom. Alongside this the Government are currently analysing the results of the Shale Wealth Fund consultation and debating whether to add Fracking to the Nationally Significant Infrastructure Projects lists which would take the decision-making process away from Local Planning Authorities.

1.4 At the same time as the Government pushing this industry, according to DECC's public attitudes tracking survey, between 2013-2016 opinion turned from being in favour to being

against fracking, though with a significant proportion remaining undecided. In October 2016, the latest public attitude's survey results were published showing support for fracking as being at an all-time low: 33% of people are now against fracking with only 17% in favour (fallen from 29% in February) and 48% of people neither for or against (although it is stated that the majority of these do not know enough about the subject to have an opinion).

1.5 Precedents have now been set by the approvals of applications in North Yorkshire and Lancashire which will potentially have significant impacts on decisions being made throughout the country. Major development applications which would cause significant detrimental highway implications at the rural sites of Roseacre Woods and Kirkby Misperton have been approved which will in turn undermine similar decisions at other such rural locations which would ordinality warrant refusal when assessing applications against the National Planning Policy Framework. Whilst it is true that each application should be assessed against its own merits, the Government are clearly continuing with its intention of going 'all out for shale' by the relaxing of planning regulations and the changing of definitions, which will make it increasingly difficult for local planning authorities to determine a refusal against a planning authority without the threat of a costs application being held over them alongside the appeal procedure itself as happened in Lancashire. At the same time, applications determined to date have seen a heavy reliance on a Written Ministerial Statement, setting out the Government's support for the industry, which in terms of the determination of planning applications, would not ordinarily trump planning policy.

2.0 Current Operations

2.1 Shale gas drilling in the UK is still at an exploratory stage, with the first application for five years for onshore drilling (KM8 in Ryedale) having been recently approved by the North Yorkshire County Council Planning Committee in May 2016. However, this decision is currently being challenged with a Judicial Review hearing scheduled for November 2016. The Secretary of State for Communities and Local Government (CLG) approved a planning application for the exploration of shale gas in line with Officer and Inspector recommendation (having called-in the applications when Members refused the application at Planning Committee) at Preston New Road in Lancashire alongside permitting two applications for large monitoring arrays for both groundwater and seismic activities (which were submitted prior to the change in permitted development rights for such development). However, contrary to both Officer and Inspector recommendation, and in line with the Planning Committee refusal, the Secretary of State has stated he is minded to approve the application to explore for shale gas at Roseacre Wood should the Appellant be able to provide further evidence on highway safety matters at a re-opened Public Inquiry. The decision to re-open the Inquiry leads one to question whether indeed the Government are intending to judge each site '*on its own merits*' as implied throughout the planning system or whether they are indeed '*all out for shale*' regardless of the specific environmental considerations to be taken into the planning balance at each location.

2.2 There are, ergo, currently no commercial shale gas operations in the UK currently and it is well documented that shale gas development in the UK will not be a game-changer as it was in the USA, for example, as there is less land available to drill on and landowners do not own the mineral rights to hydrocarbons beneath their land.

3.0 Changes to Planning Policy within the UK

3.1 This section of the report focuses primarily on the 9 key legislative changes to the planning and regulatory regimes within the UK but primarily England given the moratoriums and bans in place within Scotland, Wales and Northern Ireland.

3.2 The Government published the National Planning Policy Framework (NPPF) in March 2012 in order to streamline the planning process and in doing so replaced thousands of pages of existing planning policy. The NPPF should be read as a whole and many of the paragraphs within it will be relevant to many different types of planning applications for a variety of developments, Section 13 refers specifically to 'facilitating the sustainable use of minerals'. Whilst many of the generic minerals paragraphs would be applicable to determining an application for fracking, it is specifically paragraph 147 which directly refers to applications for onshore oil and gas development – including unconventional hydrocarbons, setting out clearly that developers should clearly distinguish between the three phases of development (exploration, appraisal and production).

3.3 In January 2014, the Government made amendments to the Town and Country Planning (Development Management Procedure and Section 62A Applications) (England) (Amendment No 2) Order 2013 following a consultation held in September 2013. Changes were made to the system of notification of landowners and tenants by applicants for onshore oil and gas development. The requirement to serve notice on individual owners and tenants of land on the above ground areas where works were required was retained, however, the requirements for owners of land beyond this area to be informed were dissolved i.e. the owners of land where solely underground operations take place no longer need notice serving meaning that drilling and fracturing can occur under one's land and property without you having been prior informed.

3.4 The online National Planning Policy Guidance (PPG) resource was published in March 2014 and is intended for use by anyone wishing to understand the requirements of the planning system in finer detail and supports the NPPF. Each 'topic' area defined as a potential development which requires planning consent, or a particular subject matter impacting on various development opportunities (e.g. noise or air quality) is dealt with separately within the PPG. Minerals therefore having its own section and often being referred to as PPG-M. Within PPG-M, there are several generic paragraphs which apply to all forms of mineral extraction development to inform the potential developer how to prepare an application for with particular regard to certain topics for example, noise associated with the development, air quality and other environmental considerations.

3.5 Section 9 of the PPG-M refers specifically to 'planning for hydrocarbon extraction'. This sets out the specific phases of development, what an application should consider and who the key regulators are for hydrocarbon extraction amongst other important matters.

3.6 One of the key criticisms off the planning process in relation to fracking is that there is much ambiguity within the planning process and other regulatory regimes given that this is still considered a novel technology within the UK (as seen at many 'meet the regulators' public events, recent planning committee meetings and at the Lancashire Planning Inquiries). The PPG-M sets out at paragraph 110 who the key regulators are for hydrocarbon extraction and goes further at paragraph 112 to set out their responsibilities stating that "*minerals planning authorities should assume that these regimes will operate effectively*". However, it is becoming evident as a result of the Inquiries and Regulator Meetings that there is a cross-over between the various themes that these bodies need to assess and that the definitive boundary is blurred. Regulators and importantly the planning authority are not always sure whose responsibility certain functions are, for example air quality or the transportation of waste fluids and NORMS away from a site – the Environment Agency (EA) are responsible for the waste product but the planners are responsible providing storage for the product on site and its transportation to the EA approved facility – but what happens if permitted facilities for the waste are at capacity? Whose responsibility is the waste product if it cannot be retained on site (as the EA only permit storage on site for a limited number of weeks) or it cannot be contained at a waste plant? There are currently only 3 of these such facilities in

England, all of which are in the north of the country. One of the largest is located in Leeds, West Yorkshire – but this centre only has a permit to process 300 tonnes of waste water per day. This equates to roughly the amount of waste water produced by one fracking well per day, therefore, existing facilities will quickly become overwhelmed and are thus inadequate) The PPG-M is not specific enough in some areas and therefore problems arise as highlighted at the Blackpool Inquiries.

3.7 In August 2015, a Government policy statement on shale gas and oil was announced introducing a number of measures designed to speed up the planning process for shale gas applications including:

- Recovery of shale gas appeals – the Secretary of State for Communities and Local Government will 'recover' planning appeals relating to exploring and developing shale gas for up to 2 years (this happened in Lancashire when an appeal was made by Cuadrilla following the refusals by Members) meaning the Government will make the final decision on the appeal rather than an independent planning inspector;
- Call-in of shale gas applications – the Secretary of State also has powers to call-in planning applications for his own determination before they are decided upon by the local planning authority;
- Identification of underperforming local planning authorities – the Government stated that they would identify underperforming local authorities who repeatedly fail to determine applications within the 16-week statutory framework. This will apply to any local planning authority who fail to determine up to 50% of their applications for shale gas exploration and production within any two-year period. To date, all applications for fracking that have been validated and determined by Committee have taken approximately 12 months, due to the fact that Applicants have not provided sufficient quality information relating to their schemes to enable full determination, therefore all planning authorities have had to ask repeatedly for and then consult on further information under Regulation 22. The threat of being penalised for delays which are not necessarily of their own making places an inordinate amount of pressure on local planning authorities to determine these complex planning applications in a set number of weeks, which clearly to date has not been achievable. The inevitable risk associated with this is that decisions will be rushed and made prematurely at the potential expense of residential communities living adjacent to proposed site locations and the surrounding biodiversity and natural environment.

3.8 In September 2015, the Secretaries of State for both CLG and the Department for Energy and Climate Change (DECC) published a joint Written Ministerial Statement (WMS) entitled 'Shale Gas and Oil Policy' supporting their August statement (as set out in para 3.7 of this report). This sets out the Government's intentions for shale development and despite being a Ministerial Statement and not actual planning policy is being relied upon heavily by Government and Industry in determining planning applications. No other industry has

traditionally given more weight to a WMS then existing planning policy in the planning balance, yet this occurred in North Yorkshire for the KM8 application and in the Secretary of State's report for Roseacre Wood in Lancashire highlighted by his intention to re-open the Planning Inquiry as he is minded to approve that application, despite serious concerns relating to highway safety expressed by Officers, Members and the independent planning inspector who made her recommendation to the Secretary of State having visited the site and witnessed the evidence presented throughout the Inquiry.

3.9 In November 2015, despite the Government promoting Carbon Capture and Storage (CCS) Technology in their Overarching National Policy Statement for Energy (EN-1), and PPG-M, cancelled its support for this technology as it was reported that the £1bn investment was needed elsewhere. Paragraph 93 of the NPPF sets out that planning plays a key role in helping to secure radical reductions in greenhouse gas emissions and providing resilience to the impact of climate change by amongst other things, supporting the delivery of renewable and low carbon energy and associated infrastructure. It goes on at paragraph 94 to state that local authorities should adopt strategies which are proactive and help to mitigate and adapt to climate change (in line with the objectives and provisions of the Climate Change Act 2008). Therefore, planning decisions should take into account both climate change and greenhouse gas emissions as material planning considerations, therefore applications for hydrocarbon extraction should be evaluated accordingly. The Infrastructure Act 2015 (discussed in more detail from paragraph 3.12 below) refers to the Government's own advisors on climate change, the Committee for Climate Change, who in July 2016 published its report concluding that fracking is not compatible with meeting the UKs carbon budgets. It highlighted that if industrial scale fracking is to go ahead, its emissions will need to be offset by emissions reductions in other areas to ensure UK carbon budgets were met.

3.10 The 14th round of Petroleum Exploration and Development Licenses were issued in December 2015. Despite the fact that the Government has placed the highest possible protection on National Parks and AONBs within the UK in terms of planning policy, the Government awarded PEDLs to potential operators within these protected areas stating however, that no fracking development could be sited above ground within these areas, but that fracking could take place 'beneath them' subject to the usual planning procedures.

3.11 In April 2016, the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016 came into force allowing the drilling of boreholes for the purposes of carrying out groundwater monitoring and seismic monitoring or locating and appraising the conditions of mines – where this is preparatory to potential petroleum exploration, without the need for achieving planning permission was introduced. The amendments also include increasing the structure height of the rig to be used for the drilling from 12 to 15 metres. The Government state that this is a necessary development in order to establish baseline information on the groundwater environment and seismic events.

3.12 These amendments are further supported by the introduction of the Infrastructure Act 2015 in April 2016 which has introduced several important key changes to the regulatory system which will in effect lessen stringent Planning procedures for industries.

3.13 The Infrastructure Act introduced a series of 13 conditions designed to protect the environment which should be adhered to for the issues of an onshore fracking license (awarded by the Secretary of State). The 13 conditions include the following:

1 Fracking is prohibited at depths of less than 1,000 metres, unless the Secretary of State gives consent. This gives companies the right to pollute (leaving of waste matter) 1000 metres below the surface.

2 Fracking is prohibited in protected areas. But the definition of protected areas was not defined by the Secretary of State at the time of publication. The government rejected a call for fracking to be banned under protected areas. This means fracking companies could drill horizontally under national parks from just outside their boundaries potentially threatening the important setting of the protected areas.

3 Fracking is to be prohibited in "protected groundwater source areas". But again, the definition was not set by the Secretary of State in the regulations at the time of publication. The government rejected calls for fracking to be banned in Groundwater Source Protection Zones 1-3, as defined by the Environment Agency, leading to confusion, with the then Secretary of State stating she would take the "narrowest possible definition." It has since been presumed that the narrowest possible definition means Zone 1.

4 Planning authorities should take account of the "environmental impact" of fracking developments. Yet, there is no explicit requirement for an Environmental Impact Assessment to be undertaken in planning policy.

5 The Health and Safety Executive will be required to visit the site of fracking wells. They must also provide a certificate that it has received a well-notification under existing regulations. Labour's amendment on this issue, which was rejected, specially required independent inspections of well integrity. The government agreed that inspections would be unannounced, but there is nothing in the Act that requires this to be the case.

6 Methane levels in groundwater must be monitored for a period of 3 months within the 12-month period immediately prior to fracking taking place. Whilst the monitoring element of this is essential to gather reliable baseline conditions (the Government rejected Labour's call for it to be monitored for 12 months), the government will allow groundwater monitoring wells to be drilled without requiring planning permission under the amendments to Permitted Development Rights.

7 The environmental permit for a fracking site will require monitoring of methane emissions. The government rejected Labour's proposal for monitoring after a site has been decommissioned. There is no requirement for long-term monitoring of other gases.

8 The environmental regulator should approve substances used in fracking. There are doubts, however, regarding whether the Environmental Agency have the people-power to check that all substances used are subject to approval at any stage of the operation never mind weekly.

9 Local planning authorities will be required to consider the cumulative effects of an application and other fracking applications. This is very vague and does not specify how decisions will be reached once the collective impacts have been considered. (This also appears contradictory to other parts of the Act discussed at para. 3.16).

10 Planning authorities must consider whether to impose a restoration condition for fracking operations. This is a standard minerals applications procedure; however, the Act does not make it compulsory for petroleum extraction applications.

11 Water companies must be consulted before planning permission is granted. However, there is no requirement for planning authorities to act based on the advice given.

12 *Operators should show they have given the public notice of fracking applications*. The government rejected Labour's call for people to be notified individually or give consent to access to areas beneath their land-holdings.

13 *A scheme must be in place to provide "financial or other benefit for the local area".* There was no reference in this condition to the voluntary community benefit scheme being funded by the industry or who will ensure that this provision is provided and at what cost to the public purse and public health. The Government have since announced and consulted on the Shale Wealth Fund.

3.14 These new provisions remove the requirement for an operator to have to seek rights of access from every individual landowner whose land is drilled under at a significant depth below the surface or to face a claim for trespass. The rights to use the land may be exercised by, for example, drilling, boring and fracturing, thus permitting the exploitation of petroleum or geothermal energy in "deep-level land" (i.e. at least 300 metres below the surface). In addition, there is the right to leave the deep level land in a different condition than before the right was exercised. This includes leaving any substance or infrastructure in the land. Liability for any loss or damage attributable to the exercise of these rights by another person is expressly removed from resting with the landowner providing proof is established. The operator will, however, still be required to obtain a PEDL, planning permission and other necessary consents.

3.15 Through the Infrastructure Act, the actual definition of High Volume Hydraulic Fracturing has been altered. Under the Act, the exploration of petroleum is only referred to as 'fracking' if the operations involves the injection of more than 1000 cubic metres of fluid at each stage or more than 10,000 cubic metres of fluid in total. This effectively means that the operation which was undertaken at Preese Hall in Lancashire that was proved to initiate the seismic event triggering the 5-year British moratorium on fracking in 2011 would not have been

categorised as 'fracking' if the Act had been in place at that time. It also means that approximately 40% of the wells drilled in the USA for unconventional gas under HVHF licences would not be classed as fracking operations in the UK. Whilst PPG-M still requires hydrocarbon extraction (via conventional or unconventional methods) to gain multiple consents and licenses (including planning permission) prior to development of the three phases of operation, this change in definition may in effect make it significantly easier for the operator to gain such approvals as it will enable companies to bypass the limited legal controls that have been retained by the Act. Legal and planning definitions must therefore be carefully drafted to ensure this potential 'loophole' is not exploited. The conditions that must be met for fracking to go ahead do not apply to geothermal operations, the Government stated at the time that *"conventional oil and gas well stimulation techniques will also be excluded."*

3.16 S41 of the Act also refers to 'Maximising Economic Recovery' (MER) stating that operators must extract as mush gas or oil as possible from their license areas and as economically as possible. This effectively means a license holder must attempt to explore and extract as much petroleum as possible within their license block as cost-effectively as possible. However, this conflicts with the Government's own planning advice provided in the NPPF which states that for a planning application to deliver sustainable development it must consider all three pillars as equal, i.e. social, economic and environmental. Whilst it is true that minerals are a finite resource and can only be worked where they are found and are given great weight in the determination of planning applications, the NPPF also states that local planning authorities should "*ensure that in granting any planning permission for minerals development, that there are no unacceptable adverse impacts on the natural and historic environment, human health or aviation safety and take into account the cumulative effect of multiple impacts from individual sites and/or from a number of sites in a locality*" (my emphasis). It is therefore essential that local planning authorities do not justify their decisions based on proposed operations being the 'most economic' in line with the Infrastructure Act's MER without ensuring that best practise methods are enshrined into the operation (which may not always be the most cost effective production technique) and thus providing some safeguards to the natural environment and human populations found adjacent to the site.

4.0 Conclusions

4.1 It is evident from the above brief analysis highlighting key statements and 9 key regulatory changes in recent years, that there has been a clear shift towards a more permissive regulatory regime through the strong support offered by the Government for shale gas exploration and exploitation in the UK. The Government have yet to decide on amendments to be made to the Planning Act 2008, therefore more legislative changes are likely in the forthcoming months.

4.2 Despite the Government's clear support, it must remain essential that specific environmental and social considerations are not overlooked to push ahead with the shale gas industry. The 13 conditions set out in the Infrastructure Act, have been 'relaxed' from the original proposals put forward by the Labour Party and agreed in the House of Commons which offered a more stringent set of protection conditions.

4.3 The Infrastructure Act has taken away land-owners rights to object or prevent fracking from occurring beneath their property whilst at the same time gives operators the right to potentially alter the conditions of the area on cessation of the operation leaving infrastructure and waste fluids at subsurface levels.

4.4 Despite, the Government stating that no fracking would take place in protected areas, operators are now allowed to frack beneath these areas and within the traditionally protected setting of these special areas.

4.5 The Infrastructure Act (as per national planning policy set out in the NPPF) directs planning authorities to take account of the cumulative impact of several operations within a license area, however, contradicts itself by instructing license holders to Maximise Economic Recovery within their permitted area. Given that there are currently no minimum distances set between operations there is the potential for a plethora of frack sites in one area, which cumulatively will undoubtedly have a negative impact on where the license blocks are situated, many of which are in rural locations. The success of this industry largely depends on its scale and relies heavily on multiple wells and numerous sites to be economically viable. The Government has on several occasions stated its supportive for the emerging industry which invariably means that planning authorities will have difficulty restraining the cumulative impact of multiple wells in licensed areas, despite the NPPF directing them to take this into account when determining applications.

4.6 The Written Ministerial Statement published in September 2015 sets out clearly the Government's intentions towards the shale gas industry. The WMS puts pressure on local planning authorities to determine applications in 16 weeks or be categorised as 'under-performing' and have local decisions taken out of their hands - even though that this is a novel industry (as stated by Gregg Clark when he was the Secretary of State for CLG) and potentially an EIA application requiring the submission of further information under Regulation 22.

4.7 The WMS has been heavily relied upon in all decisions to date from planning officers, to independent inspectors and the Secretary of State. Ordinarily in the planning process, actual planning policy would be given more weight than a WMS (which is purely a statement of intent) which sets a dangerous precedent for all other industries to follow suit. Applications in otherwise unsuitable locations for a major operation involving large numbers of heavy goods vehicular movements (Kirkby Misperton in North Yorkshire and Roseacre Wood in Lancashire) have been approved all citing that the WMS states that there is a "*national need to explore and develop our shale gas resources in a safe and sustainable and timely way."* The NPPF sets out that planning should deliver sustainable development and that there are three equal pillars to this. In the decisions taken to date, the potential economic benefits associated with the industry have been given more weight that the social and environmental pillars, thus making it more difficult to successfully oppose potential developments in unsuitable locations even though each planning application should be determined against its own merits.

4.8 The Government may still determine to relinquish planning authorities of their local democratic rights and add fracking applications to Nationally Significant Infrastructure Projects (NSIP) under amendments to the Planning Act 2008. If this occurs, then Independent Planning Inspectors will be responsible for determining applications and awarding 'development consent' to successful applications.

4.9 The Government have recently finished consulting on the Shale Wealth Fund (SWF), announced under Theresa May's new Government. It is stated in the consultation document that the fund would initially consist of up to 10% of tax revenues arising from shale gas production to be used for the benefit of communities which host shale sites. It would ensure that the development of the shale industry leaves a positive legacy in the local communities and regions where it is based and that residents can share the benefits of shale development and get a say on how the money is spent. However, when reading the Government paper on the SWF, it is difficult not to draw the conclusion that it is being set up to influence local communities and councils to grant approval for shale gas exploration and production, in effect a payment for planning approval, irrespective of the local harm that may arise in consequence, which is precisely what the planning system seeks to avoid. Paragraph 36 of the Planning Policy Guidance 1, General Policy and Principles (22 August 2001, not replaced by the National Planning Policy Framework) makes clear the guiding planning principal which is at issue; it states

"*Planning permission may not be bought and sold; local planning authorities should not allow their decisions to be affected by the offer of extra inducements; conversely, local planning authorities should not allow their development control powers to be used to require benefits from property owners which do not have land-use planning justification, or are unrelated to the development under consideration*."

4.10 Local Plans and Neighbourhood Plans are not referred to at all in the document (leading the reader to believe that the Government do intend to label fracking as an NSIP). The

proposals appear unaccountable, strategic investments that are far from sustainable and do little for the environment or social good. The complexities which are inherent in each of the proposals made illustrate that there could be potential problems with the management and implementation of the SWF, Difficulties as to who will receive and form of payment and who will not could be divisive, inequitable and legally challenged. At present, there is a lack of detail available as to the financial sums involved. 10% of all shale gas tax revenues could be £1 billion over the SWF lifetime, but it could also be zero. It all depends on issues which are currently unknown including future oil prices, operator costs, etc. It is hard to understand how this could realistically be achieved.

4.11 The evidence is ergo, overwhelmingly, that the Government are determined to push ahead with shale. The Government have been heavily criticised for cutting support for renewable energy (which 81% of the nation support as stated by the public attitudes survey published in April 2016 by DECC) and their current energy strategy has raised concerns as to whether it will achieve its climate change commitments. Notwithstanding the fact that public support for the industry is, according to their own surveys, at an all-time low with only 17% of people in support of fracking.

4.12 In conclusion, a number of key announcements and legislative changes surrounding the fracking industry in a relatively short timeframe have cumulatively initiated several uncertainties and conflicts for local authorities making decisions on applications. Local planning authorities determining any application for hydrocarbon extraction will undoubtedly feel an extraordinary amount of pressure placed upon them by the threat of having decisions taken out of their hands and being labelled 'under-performing'. The proposed 'potential benefits' stated in the WMS has been heavily relied upon in the determination of applications to date, overriding the concerns of local communities and any detrimental impacts to those adjacent communities and to the natural environment and is in effect overriding policy. A dangerous precedent has been set by the decisions taken in North Yorkshire and by the Secretary of State in re-opening the public inquiry into a refused application in Lancashire against the Council and Inspector's recommendation relating specifically to fracking applications in rural areas adjacent to small rural lanes and situated away from the strategic road network. Additionally, there are ambiguities, referred to in this paper, regarding the contradictory advice set out in the Infrastructure Act and planning policy surrounding assessing the cumulative development of multiple applications in a similar area. All of these elements combine to make determining applications wrought with difficulties.

4.13 No other industry has ever been so supported or pushed in the history of town and country planning within the UK (other than house building) at such an alarming rate.