

# North Yorkshire County Council

## Executive

7 February 2023

### Consideration of the Motion on fracking activities for oil or gas in North Yorkshire that was referred to the Executive at the meeting of the County Council on 16 November 2022

#### Report of the Assistant Chief Executive (Legal and Democratic Services)

#### 1.0 PURPOSE OF REPORT

- 1.1 To enable the Executive to consider the motion regarding fracking activities for oil or gas in North Yorkshire that was referred by County Council at their meeting on 16 November 2022 and to make recommendations to the meeting of the County Council on 22 February 2023.

#### 2.0 BACKGROUND

- 2.1 At the meeting of the County Council on 16 November 2022, a Notice of Motion regarding fracking activities for oil or gas in North Yorkshire was considered. County Council resolved that the motion be referred to a meeting of the Executive for consideration, with recommendations to be brought back to the meeting of the County Council on 22 February 2023. The motion is at Appendix 1.

- 2.2 The Council's Constitution (Council Procedure Rules, section 11, page 193) states:

(h) If a motion is referred to the Executive or one committee only, the Executive or that committee shall report to the Council upon that motion together with its recommendation. If a motion is referred to more than one committee, the Executive shall report to the Council upon that motion together with its recommendations. The report of the Executive or any committee to which a motion has been referred shall contain a statement of that motion.

(i) When the Executive or a committee reports back on a motion, the motion, as originally moved and seconded at the earlier meeting, will be the matter before the Council. Any recommendation of the Executive or committee to amend the motion will therefore be an amendment to the motion and any recommendation to support or oppose the motion will be only an expression of views.

#### 3.0 Current Government position on Fracking

- 3.1 In 2018 Cuadrilla Resources Limited (Cuadrilla) completed Hydraulic Fracturing (fracking) at its site in Preston, Lancashire with the operation having generated a significant number of seismic events. In 2019 the Oil and Gas Authority (OGA) commissioned studies to understand and learn from those operations. This culminated in a report published by the OGA in November 2019 which concluded that it was not possible to accurately predict the probability or magnitude of tremors associated with fracking.

- 3.2 In response to the OGA report the government introduced a moratorium on fracking as it concluded that it could not rule out future unacceptable impacts on the local community. The moratorium was included as a manifesto pledge and although it was briefly lifted the current Prime Minister confirmed in October that he stands by the moratorium.
- 3.3 The current position is that the moratorium on fracking remains in place so fracking is not permitted to take place in England at this time.
- 3.4 Currently there are no planning applications for fracking in North Yorkshire.

#### **4.0 Role as Minerals Planning Authority**

- 4.1 The proposed motions highlight that the Council has declared a climate emergency, however the Council remains the Minerals Planning Authority for North Yorkshire and has a statutory responsibility for considering any applications for fracking in the County. In considering any applications which come forward the Council as the Planning Authority is required to act fairly and be seen to act fairly in the decision making process.
- 4.2 The motions as proposed seek that the Council agree that fracking activities in North Yorkshire are inappropriate as a climate emergency has been declared, suggest writing to senior government ministers to reinforce opposition to fracking and affirming the Council's opposition to fracking on the basis of scientific evidence, however this could give the impression that the Council and its Members have a pre determined view or are biased in dealing with planning applications for fracking. The Localism Act section 25 provides that a decision maker "is not to be taken to have had, or appeared to have a closed mind (to any extent) just because he has previously done anything that directly or indirectly indicated what view he took, or would, or might take, in relation to a matter", and that matter was relevant to the decision. This provision recognises that certain matters are not themselves to be treated as pre determination, however the wording of the legislation indicates that there is still scope for decisions to be invalid by reason of predetermination.
- 4.3 A resolution of the Council reflecting the terms of the proposed motion would be a public declaration of the Council's over all position on the issue of fracking. Even with the cover provided by S25 of the Localism Act 2011 this could still present challenges for Members who may have to make decisions on fracking applications as they are required to make planning decisions openly, impartially and fairly on the basis of justifiable planning reasons and to have an open mind when approaching applications. When Members are sitting in a quasi judicial role as they are with planning decisions, they have to be alert to how any views expressed by them individually or a collective view of the Authority could impact their position. It is not just about being fair and impartial, but being seen to be so. The legal test when considering bias is not whether there is actual bias, but whether a fair minded observer aware of all the facts would conclude there was a real possibility of bias.

#### **5.0 Minerals and Waste Joint Plan adopted in 2022**

- 5.1 The County Council's recently adopted Joint Local Plan recognises that there could be planning applications for fracking in North Yorkshire in the future as there are number of areas covered by oil and gas exploration licences issued by the OGA. In preparing the Plan the joint authorities took a precautionary approach in the context of fracking as it recognised that the industry in the UK was at a very early stage of development.
- 5.2 The Joint Plan policies ensure that fracking applications are restricted in certain areas for example, National Parks, AONB'S, Special Protection Area's and similarly sensitive areas

and that rigorous criteria must be met in order for any applications to be approved. It highlights that specific local amenity considerations are applicable and that there would be separation distances for example surface development within 500m of residential buildings would only be permitted where an unacceptable degree of adverse impact can be mitigated.

- 5.3 Further the Joint Plan also highlights the importance of climate change in minerals planning and that such development could have implications for greenhouse gas emissions. Joint Plan policy requires applications to address the potential for cumulative impacts of development on climate change and where appropriate to propose mitigation.

## **8.0 FINANCIAL IMPLICATIONS**

- 8.1 There are no specific financial implications arising from this report.

## **9.0 LEGAL IMPLICATIONS**

- 9.1 The proposed motion as currently worded carries the risks for the Council and Members as highlighted in section 4 of this report.

## **10.0 CLIMATE CHANGE IMPLICATIONS**

- 10.1 There are no specific climate change implications in this report. Any applications for planning permission would require climate change issues to be considered as part of the planning process and decision making.

## **11.0 EQUALITIES IMPLICATIONS**

- 11.1 There are no specific equality implications in this report.

## **12.0 RECOMMENDATION**

- 12.1 That the Executive considers the motion on fracking activities for oil or gas in North Yorkshire that has been referred by County Council and makes recommendations to be considered at the meeting of the County Council on 22 February 2023.

BARRY KHAN  
Assistant Chief Executive (Legal and Democratic Services) and Monitoring Officer  
County Hall  
NORTHALLERTON

Report author: Catriona Gatrell Head of Legal Corporate

### **Background Documents:**

The Council's Constitution

<https://edemocracy.northyorks.gov.uk/documents/s12593/Issue42May2022Covid19Edition.pdf>

**Appendix 1:** Notice of Motion regarding fracking activities for oil or gas in North Yorkshire that was referred from County Council at their meeting on 16 November 2022.

**Notice of Motion regarding fracking activities for oil or gas in North Yorkshire that was referred from County Council at their meeting on 16 November 2022.**

**2) Fracking**

Proposer Cllr. Bryn Griffiths  
Secunder Cllr Joy Andrews

“That this Council:

1. Agrees that fracking activities in North Yorkshire are inappropriate for an area where the Council has declared a Climate Emergency and
2. In light of the Government’s statement that it will only frack where there is support, Council therefore wishes to ensure the Prime Minister, the Secretary of State for Business, Energy and Industrial Strategy and the Minister for State (Minister for Climate) are fully aware of the opposition to fracking in North Yorkshire and letters are sent to them to reinforce this Council’s opposition to fracking.”

**3) Fracking**

Proposer Cllr Arnold Warneken  
Secunder Cllr Kevin Foster

“This council believes that there is firm scientific evidence that fracking for oil and gas is incompatible with the need to achieve net zero carbon emissions sufficiently rapidly to avoid climate breakdown, furthermore it is in direct conflict with the Councils Carbon Reduction Plan and the emerging Climate Change Strategy, therefore North Yorkshire County Council in line with the current Governments policy is opposed to Fracking in North Yorkshire.”

Note the reasons for the matter being considered at the Council meeting itself have been given as:

1. It is bad practice to delay decision making unnecessarily and members will have had more than adequate time to form a judgement on the motion
2. North Yorkshire County Council has declared that it recognises there is a climate emergency and so issues relating to climate change need addressing with urgency
3. Since the last full council meeting there have been national government policy changes which brought the possibility of fracking back onto the agenda and it is important for the Council... [view the full agenda text for item 14.](#)