

NORTH YORKSHIRE COUNTY COUNCIL

22 February 2023

The Report of the Executive concerning a Notice of 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 THE REPORT

- 1.1 To provide County Council with a summary of the deliberations and recommendations of the Executive concerning a Notice of 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

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. A copy of the report that went to the Executive at their meeting on 7 February 2023 that includes a copy of the Motion 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.

- 2.3 The report that was considered by the Executive at their meeting on 7 February 2023 had appended the two Notices of Motion that were originally submitted to the meeting of the County Council on 16 November 2022. Instead, the revised Notice of Motion that combined the two and which was considered at County Council on 16 November 2022 should have been included in the report. This error was identified and the combined motion circulated ahead of the meeting of the Executive. It was agreed that the discussions could continue and did not need to be deferred as the matter needed urgent consideration, the report was still relevant and it fully addressed the issues raised in the motion.

3.0 EXECUTIVE MEETING ON 7 FEBRUARY 2023

- 3.1 The combined motion was considered at the meeting of the executive that was held on 7 February 2023. The full report, with the combined motion included, is at Appendix 1. County Councillors Bryn Griffiths and Arnold Warneken made representations to the Executive in support of the motion.

3.2 The minutes of the meeting of the Executive meeting on 7 February 2023 can be accessed via the following link - [Agenda for Executive on Tuesday, 7th February, 2023, 11.00 am | North Yorkshire County Council](#). A summary of the discussions are as follows:

- A national moratorium is in place and so no fracking can currently be undertaken in North Yorkshire
- The adoption of the motion by the Council could give the impression that the Council and its Members may have a pre-determined view or are biased in dealing with planning applications for fracking
- The perception or impression that members of a Council planning committee are biased because of expressed support for the motion could run the risk of appeals being made by applicants for fracking which would mean that the very thing that the proposers of the motion are seeking to achieve is then undermined
- The Localism Act section 25 and what constitutes pre-determination is complex and open for legal interpretation and local authorities need to come to their own conclusion and to consider the risks that may arise
- The adoption of the motion would present a significant and heightened risk to North Yorkshire
- The Minerals and Waste Plan is strong, protects the people of North Yorkshire and includes consideration of the mitigation of climate change.

3.3 Having considered the report in full, the representations by County Councillor Bryn Griffiths and Arnold Warneken, the Executive Members present voted unanimously against the motion.

4.0 FINANCIAL IMPLICATIONS

4.1 There are no specific financial implications associated with this report.

5.0 LEGAL IMPLICATIONS

5.1 The legal implications arising from the motion are addressed in this report. At present, there is a national moratorium on fracking and so no planning applications for fracking are being considered.

6.0 CLIMATE CHANGE IMPLICATIONS

6.1 The climate change implications arising from the motion are addressed in the report. At present, there is a national moratorium on fracking and so no planning applications for fracking are being considered.

7.0 EQUALITIES IMPLICATIONS

7.1 There are no specific equality implications associated with this report.

8.0 RECOMMENDATION

8.1 That County Council considers the recommendation of the Executive and does not support the Notice of 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.

Barry Khan
Assistant Chief Executive (Legal and Democratic Services)

County Hall, Northallerton

14 February 2023

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Daniel Harry, Democratic Services and Scrutiny Manager

Background documents: Constitution of North Yorkshire County Council - [New Council Constitutions \(northyorks.gov.uk\)](#)

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.

- 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 predetermination, 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: Combined 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.

Revised Notice of Motion on Fracking

The two motions on fracking, previously circulated in the papers for the County Council meeting, were combined into one with Cllr Bryn Griffiths as the proposer and Cllr Arnold Warneken as the seconder. The revised motion is as follows:

That this council:

1. Acknowledges that the combustion of oil or gas leads to the production of “Green House” gases, and
2. Agrees that fracking activities for oil or gas in North Yorkshire are therefore inappropriate in an area where the authority has declared a Climate Emergency, and
3. Believes that fracking is incompatible with this Councils Carbon Reduction Plan and the emerging Climate Change Strategy, and
4. Letters are sent to all North Yorkshire MPs, as well as the Secretary of State for Business, Energy and Industrial Strategy and the Minister of State (Minister for Climate), informing them of the Council’s position.

(Please note that the original version of the report to the Executive referred to the two motions that were initially submitted to the meeting of the County Council on 16 November 2022 and not the combined motion as above. See para 2.3 in the main report.)