

# PERMITTED DEVELOPMENT CONSULTATION GUIDELINES

This information will help you respond to the government consultation on whether to allow nonhydraulic exploratory drilling for shale gas to be considered as Permitted Development (PD).

Before you make your own submission, we suggest you read the government [Consultation Guidelines](#), which includes background on the Permitted Development regime and the government's reasons why they think this is a good idea. This will help to provide some background and context for each question.

## HOW TO SUBMIT YOUR RESPONSE TO THE CONSULTATION

The government wants everyone to respond to the consultation **online**, which you can access by clicking [here](#) or by cutting and pasting this link into your browser: <https://www.surveymonkey.co.uk/r/9LDDSVZ>

Alternatively, you can download their Word Document **response form** by clicking on the link below: [Permitted devt shale consultation response form](#)

When you've completed the form, you can send it as an attachment to this **email address**: [shaleconsultation@communities.gsi.gov.uk](mailto:shaleconsultation@communities.gsi.gov.uk)

or **post** it to: Shale Consultation, Planning Infrastructure Division, Ministry of Housing, Communities and Local Government, 3rd Floor, Fry Building, 2 Marsham Street, London, SW1P 4DF

**The deadline for this consultation is 11.45 pm on Thursday 25th October 2018.**

## CONSULTATION RESPONSE GUIDELINES

The [introduction](#) to the consultation states that the government are "**seeking views on the principle of granting planning permission for non-hydraulic shale gas exploration development through a permitted development right.**" However, many of the questions in the consultation appear to be about how best to implement a permitted development right for exploratory drilling for shale gas - *not* about the principle whether this is a good idea or not. You therefore need to be careful in how you answer the questions, so you don't inadvertently end up supporting the principle of permitted development by default.

**QUESTION 1a** (which on the online form is confusingly called "3 Question 1a") asks: **Do you agree with this definition to limit a permitted development right to non-hydraulic fracturing shale gas exploration?**

This is followed up by **QUESTION 1b**, which asks: **"If no, what definition would be appropriate?"**

The definition this question refers to is not on the online form or the downloadable form, but on page 12 of the [Consultation Guidelines](#) (para 21). The wording of this definition is: **"Boring for natural gas in shale or other strata encased in shale for the purposes of searching for natural gas and associated liquids, with a testing period not exceeding 96 hours per section test".**

So, respondents are being asked to either agree with the government's definition - thus by implication agreeing with the principle that exploratory drilling for shale gas should be classed as permitted development - or asked to write their own, which again amounts to support of the principle (but with a different definition). We therefore recommend the following responses:

**QUESTION 1a** - Answer '**No**'.

**QUESTION 1b** - Rather than try to rewrite the definition, we suggest you make the following points in the box provided, either by using one of the sentences or paragraphs below, or writing a similar point in your own words. Don't forget to change 'I' to 'We' if you are responding on behalf of an organisation.

- No definition would be appropriate because non-hydraulic exploratory drilling for shale gas should not be considered as Permitted Development under any circumstances.
- I am strongly against the principle of making non-hydraulic exploratory drilling for shale gas Permitted Development. Therefore there is no alternative definition that would be appropriate, as including any such definition in this response could be interpreted as supporting the underlying principle, to which I am strongly opposed.
- The stated aim of this consultation is to *"seek views on **the principle** of granting planning permission for non-hydraulic shale gas exploration development through a permitted development right."* However, the wording of question 1 already assumes that this principle has been accepted, and is simply asking what kind of definition would be appropriate for this to take place. This question is a clear example of 'leading the witness', as any alternative definitions offered by respondents will be interpreted as de facto supporting the underlying principle.
- I would like to complain about the wording of this question, which can only be answered by people who agree with the principle of making non-hydraulic exploratory drilling for shale gas Permitted Development. There is no available answer for any person or organisation who is opposed to this principle.
- I am in full agreement with The Housing, Communities and Local Government Select Committee report "Planning Guidance on fracking", published on 5th, July, which says in Paragraph 91 that *"Shale gas development of any type should not be classed as permitted development. Given the contentious nature of fracking, local communities should be able to have a say in whether this type of development takes place, particularly as concerns about the construction, locations and cumulative impact of drill pads are yet to be assuaged by the Government."*

**QUESTION 2** asks: **"Should non-hydraulic fracturing shale gas exploration development be granted planning permission through a permitted development right?"**

This one is easy. The answer is '**No**'.

**QUESTION 3a** asks: **Do you agree that a permitted development right for non-hydraulic fracturing shale gas exploration development would not apply to the following?** This is followed by a list of areas where this might not apply, i.e.: **Areas of Outstanding Natural Beauty, National Parks, The Broads, World Heritage Sites, Sites of Special Scientific Interest, Scheduled Monuments, Conservation areas, Sites of archaeological interest, Safety hazard areas, Military explosive areas, Land safeguarded for aviation or defence purposes, Protected groundwater source areas**

This question is again a bit of a minefield. Firstly, the wording of the question itself is written in a (deliberately?) tricky way, and by asking if you agree whether something should NOT apply it appears to be (deliberately?) designed to induce a false response. And secondly, it again assumes that the principle of making exploratory drilling permitted development has already been accepted, and is simply discussing what parameters and restrictions should be placed on such developments.

We think that the question is asking whether the listed areas (AONBs, National Parks, etc.) should be excluded from any Permitted Development rights, if such rights were imposed by the government. We therefore recommend that you answer 'Yes' to **QUESTION 3a**.

**QUESTION 3b** asks: "If no, please indicate why."

As we have answered Yes to Question 3a, this could be left blank. However, we suggest you take the opportunity to clarify your answer to 3a, and to express your dissatisfaction with the way the question is worded, and the fact that (like Question 1) it assumes that the principle the consultation claims to be about has already been accepted. Here are some options of what you can say, or write your own version.

- I would like to clarify my response to question 3a, which is written in very confusing language. Nonhydraulic exploratory drilling for shale gas should NOT be allowed in the areas listed under any circumstances.
- As with question 1, this question assumes that "*the principle granting planning permission for nonhydraulic shale gas exploration development through a permitted development right*" as stated in the introduction has been accepted and approved, and is simply discussing what restrictions should be placed on permitted development rights. Therefore this question is inappropriate in a consultation whose stated aim is to test support for the principle itself, and is another example of 'leading the witness'.
- I would like to complain about the confusing wording of this question, which asks someone if they would agree with a negative. This is perhaps designed to trick people into giving the 'right' answer from the government's point of view, and such confusing language has no place in such an important consultation.

**QUESTION 3c** asks: "Are there any other types of land where a permitted development right for nonhydraulic fracturing shale gas exploration development should not apply?"

This is an opportunity to state your opposition to the principle of making non-hydraulic exploratory drilling for shale gas, and is probably the best place to include more general concerns about the proposal (and the impacts of fracking in general). Here are some possible responses, or please write your own.

- I strongly oppose the principle of granting planning permission for non-hydraulic shale gas exploration development through a permitted development right. Therefore I consider such a right inappropriate on all the areas listed in Question 3a, and also any land that is near villages, farms, dwellings, ancient buildings, bodies of water and all areas designated for wildlife and conservation.
- The permitted development regime was originally established so that small, uncontroversial developments - such as a conservatory, a loft conversion or a garden shed - can proceed without the applicant having to apply for local council planning permission. Constructing an exploratory well-pad is neither small nor uncontroversial, and if included in the permitted development regime would be a clear misuse of the principles and intentions of permitted development legislation.
- If exploratory well sites are classed as permitted development, the scope for the local community to comment on the proposals will be greatly reduced. Fracking is highly unpopular across the country because of its impacts on human health, the rural economy, the well-being of nearby residents and the climate, and this proposal is clearly an attempt to bypass the justifiable concerns of local people and businesses who oppose this unwanted, unsafe and unnecessary industry.

- This proposal is an attack on local democracy and the principles of localism, which this government claims to support. Democratically elected local councils should retain the right to represent their communities' needs and wishes when dealing with planning applications such as those for exploratory well sites.
- Planning practice guidance states that "exploration drilling onshore is a short term, but intensive, activity. Typically, site construction, drilling and site clearance will take up between 12 and 25 weeks." It is classed as major development, currently requiring planning and permitting consent. To class such well pads as permitted development should not be allowed under any circumstances.
- If exploratory well sites are allowed under permitted development rules, this will make it almost impossible for any community or local authority to successfully oppose such a development, which will in turn open the floodgates for commercial fracking against the wishes of those who live in the area.
- Exploratory well sites could be considered the Trojan Horses of the fracking industry. Once a well site has been established and positive test results obtained, it will be almost impossible for local residents or councils to block any further production at the site. This permitted development plan, along with the proposal that commercial fracking should be treated as a Nationally Significant Infrastructure Project, is part of a wider plan by central government to impose a full-scale fracking industry on an unwilling public, and is an affront to all principles of local democracy and accountability.

**QUESTION 4** asks: **"What conditions and restrictions would be appropriate for a permitted development right for non-hydraulic shale gas exploration development?"**

This question is again asking about what restrictions should be placed on a permitted development regime for non-hydraulic exploratory drilling for shale gas - which again assumes that the principle on which this consultation should be based has already been decided, and it's just a matter of laying down appropriate boundaries and conditions. And we, as respondents, are again left with the decision whether to play along with the consultation and list other restrictions that should be placed on exploratory wellsites - thus by implication agreeing with the principle of Permitted Development to which we are strongly opposed - or refute the basis of the question. Here are some things you can say in answer to Question 4:

- As previously mentioned, I am strongly opposed to the principle of non-hydraulic exploratory drilling for shale gas being classed as permitted development. This question, along with questions 1 and 3, is only appropriate if this principle has been accepted, and therefore has no place in a consultation that claims to be consulting on the principle itself.
- The [guidelines](#) on this question begin with the highly questionable assertion that "*The UK has a world class regulatory regime to ensure that shale exploration can happen safely, respecting local communities and safeguarding the environment.*" (page 12, para 26). If this were true, then the views of local communities would be central to all decision-making processes related to shale gas exploration and production. However, this proposal seeks to dramatically reduce the opportunities for local communities to have their say, and shows that 'respecting local communities' is the last thing on the government's mind.
- The highly contentious claim that "*the UK has a world class regulatory regime to ensure that shale exploration can happen safely*" has yet to be tested, as only one high volume hydraulic fracturing operation has ever taken place onshore in the UK (Preece Hall in 2011). However, there have been numerous issues of regulatory infractions at the few sites already developed for fracking, such as Preston New Road in Lancashire and Kirby Misperton in Yorkshire, with little or no sanction by the regulators. The claim that the UK has a regulatory system that will 'ensure shale gas exploration can happen safely' when there are

hundreds of fracking wells across the country is very likely to be proved wrong, particularly as so much 'regulation' is in the hands of the companies themselves.

- It is clear that hydraulic fracturing for shale gas is a major development that has been shown to cause serious environmental harm in other parts of the world, including noise pollution, increased HGV traffic, air pollution, water contamination and numerous health issues for people living near well pads. There is no evidence that the government's so-called 'gold standard' regulations can make fracking safe in the UK when it has been shown to be highly damaging everywhere else, particularly if this industry is forced upon unwilling rural communities by classing the first stage of the process as permitted development.
- Local residents and other stakeholders have a legitimate interest in participating in decisions which affect their local environment, and classing shale gas development of any kind as permitted development would dramatically reduce their ability to do so.

**QUESTION 5** deals with the issue of Prior Approval, which needs a bit of explanation. According to Para 31 of the [Consultation Guidelines](#), "*Prior approval means that a developer has to seek approval from the local planning authority that specified elements of the development as listed in the legislation are acceptable before work can proceed.*"

However, the guidelines go on to say, "*The requirements relating to prior approval are much less prescriptive than those relating to planning applications. This is deliberate, as prior approval is a lighttouch process which applies where the principle of the development has already been established.*" A lighttouch process? This sounds like it would be almost impossible for a local authority to exercise any control, or refuse prior approval if exploratory drilling becomes permitted development.

And there's more: "*For shale gas exploration, local consideration of particular elements of the development may potentially be required to be approved by the relevant mineral planning authority through a prior approval process. By way of example, the prior approval considerations might include transport and highways impact, contamination issues, air quality and noise impacts, visual impacts, proximity of occupied areas, setting in the landscape, and could include an element of public consultation.*" Which makes us think - if all these things need to be taken into consideration, then surely they should be scrutinised in detail through a standard planning application, not waved through via the 'light touch process' of prior approval.

This brings us on to **QUESTION 5: Do you have comments on the potential considerations that a developer should apply to the local planning authority for a determination, before beginning the development?**

Here are some things you could say in your response to this rather confusingly worded question.

- The construction of exploratory well sites, with all the accompanying noise, traffic and disruption, is currently classed as major development, and is therefore not appropriate for a so-called 'light-touch' regime of prior approval, which I strongly oppose in principle.
- Prior approval is not an acceptable substitute for the level of scrutiny that would be involved in a full planning application. This so-called 'light touch' approach would make it extremely difficult, if not impossible, for local authorities to have any meaningful say on such developments, and I therefore strongly oppose this proposal.

- The guidelines to this consultation suggest that prior approval could include "*transport and highways impact, contamination issues, air quality and noise impacts, visual impacts, proximity of occupied areas, setting in the landscape, and an element of public consultation.*" However, if this level of scrutiny is to be applied, then the application should proceed via the normal planning system in the same way as other major mineral developments - not via a prior approval system.
- If non-hydraulic exploratory drilling for shale gas were classed as Permitted Development, the number of conditions and restrictions that would need to be considered would be extremely lengthy. These would include transport and highways, visual/landscape impacts (including assessments of impacts on the Green Belt), noise, residential/local amenity, air quality, ecology, hydrology, ground stability, etc. To do this correctly, the process would be little different to holding a full planning application, as is currently the case.

**QUESTION 6** asks: **Should a permitted development right for non-hydraulic fracturing shale gas exploration development only apply for 2 years, or be made permanent?** - and then gives you two tickbox options - 2 years, or permanent. There is no option that anyone opposed to the principle of the consultation can answer, or any comment box to express an alternative view.

Again, we feel that this question is another example of 'leading the witness' in a consultation that claims to be consulting on the principle of permitted development, and if either answer is ticked it could be considered as approval of the general principle. **We therefore recommend you leave this question blank and do not tick either option.**

**QUESTION 7** reads: **Do you have any views the potential impact of the matters raised in this consultation on people with protected characteristics as defined in section 149 of the Equalities Act 2010?** This relates to the legal requirement that consultations are assessed by the public sector equality duty contained in the Equality Act 2010. We have no comment on this question and suggest that you leave it blank. Alternatively, use this as a comment box for question 6 and add something like this:

- As the consultation does not provide a comment box for the previous question, I am using this opportunity to complain about the wording of Question 6. The only two options given to this question are that permitted development right should either be for two years, or should be permanent. If I ticked either box, it could be construed as support for the general principle of making shale gas exploration permitted development, to which I am strongly opposed.
- Given that the stated aim of this consultation is to establish whether there is support for the principle of making non-hydraulic exploratory drilling for shale gas permitted development, why are there no options available in Questions 1, 2 and 6 for people and organisations that oppose this principle? This is clearly unacceptable and shows that this consultation is specifically designed to manufacture consent to this outrageous and unworkable proposal.

And that's it! Don't forget to send in your responses, either online or by email/post, and please spread the word about this issue with neighbours, friends, family and colleagues. **Also please make sure you [contact your MP and local councillors](#) to ask them to oppose this proposal.**

There is another consultation going on in parallel to this one, on the plan to make full-scale commercial fracking a Nationally Significant Infrastructure Project. To find out more, and for guidelines on how to respond to this equally important consultation, click [here](#).