

In a Transient State: The Changing Jurisdictions of Energy Planning

Elen Stokes

Cardiff School of Law and Politics

A state of flux

- Energy transitions
- Speeding up; urgency
- Scaling down; central → local
 - Localism Act 2011
 - Giving 'local people' a 'final say' in windfarm applications (Conservative Party 2015 Manifesto)

Shifting jurisdictions in energy planning

- Expanding and contracting jurisdictional spheres
- 'Places that come and go' (von Benda-Beckmann & von Benda-Beckmann 2012)
- 'Emerging in between' (Smith 2007)

Devolution settlements

- eg Government of Wales Act 2006, Sch 7
- Town and Country Planning (Notification) (Unconventional Oil and Gas) (Wales) Direction 2015
 - Planning applications for fracking must be referred to the Welsh Ministers, where LPAs are minded to approve them

Shifting jurisdictions

eg

- Onshore wind farms >50MW removed from NSIPs to LPAs
 - s 78 Energy Act 2016, and Infrastructure Planning (Onshore Wind Generating Stations) Order 2016
- Shale gas fracking
 - DCLG, *Major infrastructure planning: extending the regime to business and commercial projects* (2013) – shale gas development not included in NSIP

Calling-in applications and recovering appeals

DECC and DCLG, *Shale gas and oil statement* (13 Aug 2015)

‘Appeals against any refusals of planning permission for exploring and developing shale gas, or against non-determination, will be treated as a priority for urgent resolution. The Secretary of State for Communities and Local Government may also want to give particular scrutiny to these appeals. To this end he will revise the recovery criteria and will consider for recovery appeals for exploring and developing shale gas.

...

The Secretary of State will also actively consider calling in shale applications.’

Recovery of appeals

- Since 2008, several changes to appeals recovery criteria
 - 30 Jun 2008: Criteria extended to include 'proposals of major significance for the delivery of the Government's climate change programme and energy policies'
 - 10 Oct 2013: temporary expansion of criteria to include 'renewable energy developments'
 - 9 Apr 2014: 'renewable energy developments' criterion extended for further 12 months
 - 16 Sept 2015: criteria to include 'proposals for exploring and developing shale gas'

Recovered appeals 2008-2016

136 energy-related

	Recovered	Allowed	Dismissed	Other
Wind	92	27	64	1 split
Solar	30	2	27	0
Biomass	13	11	2	0
Shale gas	4	3	0	1 deferred

Current analysis

- Mapping call-in and recovery
 - Using GPS co-ordinates
 - Overlaying additional data LPA performance; electoral cycles etc.
- Whether and how changes in decision-making level and process affect substance and outcome of decisions on energy planning