

# A BARRISTER'S PERSPECTIVE ON THE CUADRILLA FRACKING CASES IN LANCASHIRE

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# THE PUBLIC INQUIRY FEBRUARY-MARCH 2016

- 19 sitting days over 6 weeks
- 7 parties and 26 witnesses
- Approaching 150 public speakers
- Hundreds of thousands of pages of documents
- 498 page Inspector's report followed by SoS decision letter

# THE PROPOSALS: EXPLORATION WORKS

- 2 exploration sites in the Fylde – Preston New Road (PNR) and Roseacre Wood (RW)
- Up to 4 wells at each site – vertical and horizontal drilling up to 3,500m in depth and up to 2,000m from the well pad
- Target formation – Bowland Shale
- Drilling and fracking 30 months (8 months fracking)
- Initial and extended flow testing
- 6 year life in total

# THE PROPOSALS: MONITORING WORKS

- 80 sites for buried monitoring (at some 100m) within 4km radius of well pad – to test fracture propagation
- 8 or 9 surface seismic monitoring stations - to measure induced seismicity
- Above ground appearance – 2x2m fenced area only with inspection cover for buried sites and small cabinet for surface stations

# LANCASHIRE COUNTY COUNCIL'S DECISION

- Applications made June 2014 and decided June 2015
- PNREW and MW refused contrary to officer recommendation
- EW - noise and landscape/visual impact; MW - industrialisation of countryside
- RWEW refused in accordance with officer recommendation on highway impacts but MW granted
- Local democracy in action

# CAUDRILLA' S APPEALS

- Caudrilla appealed the 3 refusals
- RWMW also appealed but only in relation to a condition (as permission had been granted)
- 4 appeals thus to be considered

# THE INSPECTOR'S REPORT (4/7/16) (1)

- Recommendation that appeals at PNR be allowed
- Landscape/visual impacts not unacceptable and noise could be dealt with by condition; case on industrialisation of countryside rejected
- Recommendation that RWEW appeal be dismissed
- Landscape/visual impacts not unacceptable and noise could be dealt with by condition but proposals unacceptable on highway grounds
- RWMW condition appeal recommended to be allowed

## THE INSPECTOR'S REPORT (2)

- Great weight to be given to need for shale gas exploration
- FoE's concerns rejected: treatment of flowback fluid; public health concerns; compatibility of proposals with climate change obligations
- Assumption that other regulatory controls would work
- Shale gas would assist in transition to low carbon economy
- Relationship to climate change obligations for national policy
- Fears for farming and tourist industry had no real basis

## THE INSPECTOR'S REPORT (3)

- No award of costs recommended against LCC on PNREW
- But recommendation for such an award on PNRMW

# THE SECRETARY OF STATE'S DECISION (6/10/16)

- SoS agreed with all Inspector's conclusions
- Also agreed with recommendations save for RWEW
- SoS considered here that conclusion of serious adverse highway impact rested on Cuadrilla's failure to provide adequate evidence and show that mitigation would work
- Inquiry into RWEW to be re-opened
- PNREW and MW and RWMW all now permitted

# SUBSEQUENT EVENTS

- PNR works have proceeded
- Enormous volume of sustained protest at site
- Legal challenge to PNR decision has been rejected
- *Preston New Road Action Group v Secretary of State for Communities and Local Government* [2017] EWHC 808 (Admin)
- Permission to challenge RW decision to re-open inquiry has been refused

# PRESTON NEW ROAD ACTION GROUP v SoS

- CA decision awaited; various points of potential general application to note from HC decision
- Temporary development does not infringe NPPF paragraph 109's policy of protecting and enhancing valued landscapes
- An ES for an exploration/appraisal proposal does not have to assess the cumulative impact of potential future production
- It can be assumed that controls imposed by other regulatory regimes will operate effectively to safeguard human health

## SOME OBSERVATIONS (PROCESS)

- Planning decisions on fracking are likely to continue to be slow – PNR consent only after 2 years from application; RW yet to be decided after 3 years
- Litigation is very likely to attend consents and give rise to extensive periods of uncertainty as the industry emerges
- Public inquiry was largely a worthwhile exercise – rigorous scrutiny of LCC's decision-making; opportunity to challenge and disprove some of Cuadrilla's more ambitious claims; effective vehicle for public participation

## SOME OBSERVATIONS (SUBSTANCE)

- Great weight will be given to need in future decisions
- Non-duplication principle – assumption that planning should work on the basis that other regulatory regimes will operate effectively – will continue to hold sway
- Typical determinative issues likely to be those which might arise in any planning application – noise, landscape/visual, ecology, heritage, traffic
- Approach of separate consideration to separate phases of activity will predominate