

North Yorkshire County Joint Waste and Minerals Plan

Submissions by Councillor Paul Andrews

I have been one of three District Councillors for Malton since 2003. I was elected as a Liberal Democrat in 2003 and went independent in 2004. I have been a Malton Town Councillor since 2007, and this is my second term as Mayor of Malton. I have been a Habton Parish Councillor since before 2003, and have been Chair of Habton PC since 2015. At this EIP I represent my ward as district Councillor, Malton as Mayor and Habton PC as chair of the Parish Council. I live in Great Habton.

I am a retired solicitor who has regularly advised and acted as an advocate on planning matters. I was Ryedale District Council's solicitor from 1988 to 1996. I worked for more than 20 years in local government (including a New Town) and in private practice. I finally retired as a solicitor in 2008.

Question 1: In a few paragraphs give a brief summary of how the duty to co-operate has been met?

Question 3: Are there any outstanding objections relating to the duty to co-operate and its fulfilment by the MWJP authorities?

Question 5: Has the MWJP been prepared in accordance with the Authorities' Local Development Schemes?

Question 14: Does the MWJP comply with Regulations 8(4) and (5) of the Town and Country Planning (Local Planning) (England) Regulations 2012 relating to consistency with the adopted development plan and identification of superseded policies? Very briefly state the purpose of the MWJP and its relationship with the development overall.

The duty to co-operate between neighbouring authorities has not been met. Ryedale District Council is a neighbouring authority for the purposes of the North Yorkshire Joint Waste and Minerals Plan (JWMP). Ryedale District Council (RDC) adopted the Ryedale Plan in September 2013. This set out the Council's local plan policies up until 2027. The Key Diagram of the Ryedale Plan identifies the Vale of Pickering and the Yorkshire Wolds as "Landscape of Local Value and Areas of High Landscape Value." Development in both the Yorkshire Wolds and the Vale are governed by Policy SP13 of the Ryedale Plan which requires all new development to enhance the character of the landscape.

The River Derwent which flows through most of the Vale and between the two towns of Malton and Norton is an SSSI. Further, the Vale lies between the North York Moors National Park and the Howardian Hills AONB, and is therefore an integral part of the setting of both.

The draft JWMP permits fracking in the Vale and the Wolds. As will be seen this cannot be consistent with Policy SP13. There is therefore a duty to co-operate between the Mineral Planning Authority and Ryedale in order to make both plans

consistent with each other so as to provide a consistent development plan; the duty to co-operate is not fulfilled by authorities talking to each other and agreeing not to differ: either SP13 must be modified so as to be consistent with JWMP or vice versa. However, Policy SP13 is part of a statutory adopted plan and this should outweigh any requirement to amend it in favour of the JWMP. In any event, there has clearly been little attempt between authorities to make both plans consistent and so the duty to co-operate between Ryedale and the Mineral Planning Authority has not been met in regard to the chapter of the JWMP on the extraction of unconventional hydrocarbons.

The relevant policies of the Ryedale Plan and other relevant documents are set out in the attached **Appendix 1**. It will be seen that the purpose of these policies is to preserve and enhance the character of the landscape and promote the agricultural, equestrian and visitor economies of the Vale of Pickering, the Yorkshire Wolds and other areas. These policies require, for the Vale of Pickering, the retention of visually sensitive skylines, hill and valley sides and the ambience of the area including nocturnal character, level and type of activity and tranquillity and sense of enclosure/exposure.

These policies will not be achieved if fracking is allowed, as fracking involves development of the following kind:

- Firstly, Para 5.134 of the draft JWMP envisages many drill pads for unconventional hydrocarbon and gas extraction, each with an area of two hectares and para 5.137 envisages a density of drill pads of 10 to 100 square kilometres, which approximates to them being spaced at a density of one to every one and a half to two miles, if evenly spaced;
- Secondly, each of these pads will have between 10 and 50 boreholes. This is because, as the gas has to be forced out of the rock, there have to be horizontal bores radiating like the spokes of a wheel in every direction and then following the grain in the rock
- Thirdly, it takes about 100 days drilling day and night to complete each borehole. So a fifty borehole pad with a single drilling rig would be in operation continuously for many years.
- Fourthly, the drilling rigs are over 100ft. high, are noisy and are lit up like Christmas trees at night.

Ryedale District Council, Malton Town Council, Habton Parish Council and other local councils objected to the JWMP on this ground and this objection remains outstanding.

This objection (**attached as Appendix 2**) was reported to County and accordingly it was decided to add the following text at the end of Para. 5.130 of the JWMP (PM 67):

“In some parts of the Plan area affected by PEDLs, areas of locally important landscapes have been identified in District and Borough plans. Where these continue to form part of the statutory development plan, and are relevant to a proposal which falls to be determined by North Yorkshire County Council as Minerals and Waste Planning Authority, regard will be had to the requirements of any associated local plan policy”.

The underlining is mine and its significance is explained below.

It should be noted that this is merely part of the explanatory notes and does not have the weight of a highlighted policy such as M16. This is not good enough: it needs to be made very clear that the policies of the MWJP do not override the fundamental objectives of policies in local plans which have been statutorily adopted.

The joint mineral planning authorities subsequently re-consulted on the now amended JWMP. Malton Town Council, Habton PC and several other local councils then objected to this modification on the grounds that it was not strong enough, was set out in explanatory text and not included in a policy, and provided no guidance or criteria as to how “regard” would be had to “the requirements of any associated local plan”. Our view was that there should be a specific requirement that applications for surface workings of fracking drill pads should be treated in exactly the same way as applications for any other type of industrial or employment development in areas identified in local plans as locally important landscapes in every respect (ie in regard to location, density, siting, design etc.) A copy of the objection is attached in **Appendix 3**.

County did not disagree with these observations, but responded (PC68) that the point was already covered as follows:

“It is not considered that specific reference is required within policy M16 as Policy D06 of the plan states that all landscapes will be protected from the harmful effects of development, and that they will be permitted where it can be demonstrated that there will be no unacceptable impact on the quality and/or character of the landscape, having taken into account any mitigation measures. This would ensure that appropriate consideration is given to impacts on landscapes within Ryedale (or elsewhere within the plan area) which are not nationally designated for protection. Furthermore Policy D08 specifically recognises the significance of the archaeological resource of the Vale of Pickering, the Yorkshire Wolds and the North Yorkshire Moors and Tabular Hills and indicates that particular regard will be had to conserving the distinctive character and sense of place in these areas. In combination these policies will help to ensure that the distinctive landscape character in Ryedale is protected, where minerals or waste development is proposed. Furthermore the Ryedale Plan itself forms part of the statutory development plan and existing Policy SP13 of that plan may be relevant to proposals for minerals and waste development, depending on the circumstances.”

In my view this does not go far enough for the following reasons:

- Policy D06 is a general policy and it distinguishes very clearly between areas specifically protected in Policy M16 (the AONB’s, the National Parks,

Heritage Coast the setting of York etc.) from everywhere else – which would include the Vale of Pickering and the Wolds. The policy does not therefore prevent paras.5.134 and 5.137 of the JWMP from applying to the Vale and the Wolds. Para. 5.134 envisages fracking drill pads with areas of two hectares and Para. 5.137 envisages a density of ten fracking drill pads every 100 square kilometres. This equates to ten drill pads every 38 square miles – which is an area just over six miles by six miles: in other words a drill pad, each with an area of two hectares, every one and a half to two miles in every direction. This cannot be consistent with Policy SP13 of the Ryedale Plan.

- Policy D08 is concerned with archaeological sites or resources within the Vale of Pickering. Again it does not prevent Paras. 5.134 and 5.137 from applying. My experience of policies relating to archaeology is that they are usually satisfied by a planning condition requiring an archaeological survey before works can commence. Such policies cannot be relied on to protect landscapes.
- As regards Policy SP13 being part of the Development Plan, Policy SP13 of the Ryedale Plan was drawn to the attention of North Yorkshire’s Planning Committee when it considered the application for the fracking of KM8. The submission I made on behalf of Habton Parish Council and of myself clearly made this point, but it was ignored in para. 4.13 of the Report which went to NYCC’s Planning Committee on 20th May 2016, where the fact that I made this point isn’t even mentioned or commented on. As Policy SP13 was in force on 20th May 2016, the application to frack at KM8 should have been refused. If County did not take full regard of Policy SP13 of the Ryedale Plan when there was no up to date minerals plan, County cannot be relied upon to make decisions which are consistent with adopted local plans unless this is written into the highlighted policies of the JWMP.
- The penultimate para of page 3 of the attached letter date 7th July 2015 (**Appendix 4**) suggests that large scale applications for multiple wells could be dealt with by the NIPS. This intention was confirmed in the last Conservative election manifesto. Further, INEOS has appealed against non-determination in at least two cases. Bearing in mind that there could be a move to take all fracking planning applications out of local control in this way, I feel that the planning authority determining a fracking application should have firm and clear guidance and the County response is not adequate.

I therefore have no confidence that Policy SP13 of the Ryedale Plan will be given due weight in planning applications for unconventional mineral extraction unless:

The Vale and the Wolds are specifically included in Policy M16 (b)(i) as areas where unconventional mineral extraction is excluded and/or another paragraph is added to Policy M16 as policy M16(f) stating:

““In some parts of the Plan area affected by PEDLs, areas of locally important landscapes have been identified in District and Borough plans. Where these continue

to form part of the statutory development plan, and are relevant to a proposal which falls to be determined by the appropriate Minerals and Waste Planning Authority, the requirements of the local plan in regard to the location, density, siting, design etc of employment/industrial development within such areas shall apply to all applications for surface development of buildings, works, equipment and machinery there”.

This para is identical to the explanatory text which County has added at the end of para.5.30 (see above), except that the words underlined are substituted for the words underlined above.

I would also ask that the Vale of Pickering is specifically named in Policy D04, as an integral part of the setting of both the North York Moors National Park and the Howardian Hills AONB.

In these circumstances, it is clearly the case that the chapter of the JWMP on unconventional mineral extraction is still not consistent with Policy SP13 of the adopted Ryedale Plan, and that therefore the duty for neighbouring authorities to cooperate has not been satisfied.

Therefore, the answer to Question 3 is yes and the answers to questions 5 and 14 is “No”.

My concerns would be satisfied if the plan is amended so as to exclude the Vale of Pickering from the area where fracking is allowed using the words suggested in Appendix 2 as requested in the objection made in November 2016 and also as requested .in Appendix 3

COUNCILLOR PAUL ANDREWS