

Minerals and Waste Joint Plan for North Yorkshire County Council, the City of York Council and the North York Moors National Park Authority

**Additional Hearings 24 and 25 January 2019 :
Unconventional Oil and Gas**

Note for the Inspector from the MPA's on the transcript of the Judgement of Mr Justice Holgate in the case of R (OAO Andrews) v SSBEIS & SSHCLG [CO/3256/2018]

1. The MPA's have considered the Judgement of Mr Justice Holgate in the case of R (OAO Andrews) v SSBEIS & SSHCLG [CO/3256/2018] and consider that the MPA's original response to the Inspector's additional MIQ's 16 remains pertinent and valid.
2. Mr Justice Holgate's judgment considers the effect of the WMS2018 (paragraphs 9 and 10) and sets out that it cannot be construed as mandating that the MPA's must apply a particular definition of fracking when formulating local plan policies. He highlights that where an authority takes a different approach from that set out in national policy then the policy and justification relied upon can be scrutinised by the Inspector through the examination process.
3. In paragraph 16 Mr Justice Holgate states in relation to the definition of fracking:

'In my judgment the policy statement in question simply refers to two definitions of fracking-type development which should be considered by planning authorities when drawing up their development plans without, as I have indicated already, requiring adherence to either one or indeed both of those definitions. Planning Authorities drawing up relevant plans are entitled as a matter of law to disagree with the advice of central government on this point, for example as regards the use of the definitions in the 2015 Act or the 1998 Act. The question of what appropriate definition should be applied within a particular planning-making authority's area is a matter to be considered on the merits through the process under the 2004 Act, having regard to all material considerations.'

4. The MPA's consider that they have acted in accordance with the approach outlined by Mr Justice Holgate. Justification for the policy and the definition adopted by the MPA's has been provided in the Authorities' note on the distinction between conventional and unconventional hydrocarbons (LPA87) with further contextual evidence subsequently presented in LPA97 in response to publication of WMS2018 and this has been subject to the scrutiny of the Inspector in the course of the examination.