

Talk Fracking NPPF Legal Challenge Legal Briefing Paper

Summary

- On 14 May 2019, the High Court declared that paragraph 209(a) of the NPPF was unlawfully adopted on 24 July 2018, and quashed it.
- Paragraph 209(a) is therefore no longer part of the NPPF, nor part of requirements of 'soundness' when local plans are made.
- Paragraph 209(a) also no longer applies when planning applications for fracking are considered, or when appeals are heard.
- The fracking "Written Ministerial Statements" (WMSs) setting out Government support for fracking remain in effect for now. But they are no longer the 'last word' on whether fracking is to be supported. Planning authorities and Inspectors must also properly consider evidence and objections against fracking, and reach their own view.
- Other public bodies which had supported fracking on the basis of it being Government policy also now need properly to consider objections and evidence against, and reach their own view.
- Public bodies can also, having taken into account objections and other evidence, now depart from Government policy in the WMSs by adopting their own stance opposed to fracking.

In more detail

On 14 May 2019, the High Court (Mr Justice Dove) declared that the Secretary of State for Housing Communities and Local Government had acted unlawfully when he included a new paragraph 209(a), relating to on-shore oil and gas development (which includes fracking), in the new National Planning Policy Framework (NPPF) on 24 July 2018.

Paragraph 209(a) said this:

“Minerals planning authorities should:

- (a) recognise the benefits of on-shore oil and gas development, including unconventional hydrocarbons, for the security of energy supplies and supporting the transition to a low-carbon economy; and put in place policies to facilitate their exploration and extraction;”

The full judgment, explaining the judge’s full reasoning, is available [here](#).

The simple point was that the Secretary of State should have considered up to date scientific and other evidence – including that submitted to him by Talk Fracking (and including the “[Mobbs Report](#)”) – before deciding whether to adopt paragraph 209(a). But he did not do so.

The judge’s order also ‘quashes’ paragraph 209(a). In other words paragraph 209(a) is no longer part of the NPPF. It follows that the 19 February 2019 version of the NPPF, which is still on the www.gov.uk website, is not legally correct anymore.

The Secretary of State has not yet said what, if any, action he is going to take in response to those developments.

However, it follows from the judge’s order that complying with paragraph 209(a) is no longer part of the requirements for ‘soundness’ when Minerals Planning Authorities are making local plans, or when planning inspectors are considering draft plans.

Nor is that paragraph to be taken into account when determining individual planning applications or appeals.

However, unless and until the Secretary of State withdraws the existing Written Ministerial Statements (WMS) dealing with fracking, they remain in force.

But, those WMSs now have to be seen in the light of the judge’s conclusion that the Government’s *“in principle support for hydrocarbon extraction ... will have to be considered alongside any objections and evidence produced relating to the impact of shale gas extraction on climate change. These are conflicting issues which the decision-maker will have to resolve.”* (paragraph 73)

In other words, a Minerals Planning Authority, or an Inspector considering an application for planning permission for a fracking development, is no longer constrained by a WMS as was sometimes suggested before.

It is clear that objectors will now be fully able to raise technical and other objections to the principle of fracking (including by referring to the latest scientific evidence). The approach taken, for example, at the planning appeal at Preston New Road - where the Inspector and the Secretary of State proceeded as if support for the principle of fracking had been settled by the WMS - should not now be repeated.

It also follows that other public bodies which had adopted stances supportive of fracking on the basis of that being Government policy need to revisit that position. They need, at the very least, to be receptive to and consider representations to the effect that they should no longer support fracking.

It is now also open to public bodies to take into account objections and evidence opposed to fracking in deciding not to follow Government policy on fracking, and then adopt their own policies which may be opposed to fracking.

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