

13 July 2015

## CUADRILLA'S FRACKING APPLICATIONS REFUSED BY LANCASHIRE COUNTY COUNCIL

### **Ashley Bowes, Prospect Law**

For nearly a year and a half Lancashire County Council Development Control Committee heard extensive evidence from its own officers, the public and the applicant at a series of public hearings concerning two planning applications. Cuadrilla had sought permission for the construction and operation of four wells, drilled from a single large well-pad, with each well being subjected to hydraulic fracturing (fracking). The operation was expected to run 24 hours a day with fracking occurring for two months, followed by a three month initial period to test the flow of hydrocarbons (gas) and then 18-24 months of extended flow testing. They represented the largest appraisal of fracking in the UK.

The first site, at Roseacre Wood, was recommended for refusal on the grounds of its transport impact. The second site, at Preston New Road, although initially also recommended for refusal, was subsequently recommended for approval following further noise evidence from the applicant.

The scene was therefore set for a tense development control meeting on 23-24 June. On 24 June a motion to refuse the application was moved and seconded but, following an adjournment, was defeated on the Chairman's casting vote. It emerged that in the adjournment the Council received telephone advice from David Manley QC to the effect that the Council would be acting unreasonably to refuse the application and would expose itself to costs at appeal. A subsequent motion was passed to make that legal advice public.

In response to which, Friends of the Earth sought advice from Richard Harwood QC and the Preston New Road Action Group sought advice from Ashley Bowes. Both barristers' advice concluded that there were grounds to refuse the application on the evidence before the Committee.

At its reconvened meeting on 29 June, a motion to refuse the application was passed on Ashley Bowes' suggested reasons, which read as follows:

*"The development would cause an unacceptable adverse impact on the landscape, arising from the drilling equipment, noise mitigation equipment, storage plant, flare stacks and other associated development. The combined effect would result in an adverse urbanising effect on the open and rural character of the landscape and visual amenity of local residents contrary to policies DM2 Lancashire Waste and*

*Minerals Plan and Policy EP11 Fylde Local Plan.”*

*“The development would cause an unacceptable noise impact resulting in a detrimental impact on the amenity of local residents which could not be adequately controlled by condition contrary to policies DM2 Lancashire Waste and Minerals Plan and Policy EP27 Fylde Local Plan.”*

Cuadrilla has six months in which to decide whether to appeal. If Cuadrilla does choose to appeal against the refusals a public inquiry is highly likely, at which the Inspector will have to grapple with the competing expert evidence (especially on noise impact).

It is also likely that any appeal will be recovered by the Secretary of State for determination, in order to give a determinative policy steer for future applications.

Reacting to the decision the UK Onshore Oil and Gas urged the Government to take a “strategic review” of how the planning system deals with these applications. However, the Prime Minister appeared not to signal any imminent change to the system, responding at Prime Minister’s Questions on 1 July that: *“those decisions must be made by local authorities in the proper way, under the planning regime we have”*.

### **Introduction to Prospect Law and Ashley Bowes**

Prospect Law Ltd is an energy specialist UK law firm which is based in London and the Midlands. Prospect Energy Ltd is its sister company providing technical expertise. The two firms provide advice on energy development projects and energy related litigation concerning shale gas, nuclear and renewable energy schemes for clients in the UK and internationally.

Ashley Bowes is a barrister who specialises in planning and environmental law matters at planning appeals and in statutory challenges and judicial review cases in the High Court. He is involved in energy related development projects around the UK.

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