Scope for public influence on shale gas decision-making through the planning system in England: Clues from Preston New Road

SEG Seminar, 02 October 2018
• Brief history of hydraulic fracturing (‘fracking’) / onshore unconventional hydrocarbon extraction (‘shale development’) as a public controversy in the UK

• UK public attitudes; and key perceptions and frames

• FFEfP – focus on ‘accommodation’

• Preston New Road inquiry – the case of climate change

• Can publics influence shale development decision-making through the English planning system?
Fracking as a public issue in the UK – A brief history

Cuadrilla admits drilling caused Blackpool earthquakes

Private company Cuadrilla Resources has admitted that its activities probably caused two “seismic events” that occurred in Blackpool earlier this year.

Fracking Go-ahead For National Parks as Controversial Infrastructure Act Becomes Law

By Kyle Mandel • Friday, February 13, 2015 - 04:47

Fracking application rejected by Lancashire county council

Anti-fracking campaigners visibly delighted as councillors reject Cuadrilla’s application to drill for shale gas at Preston New Road.

Scottish government backs ban on fracking

Cuadrilla secures final approval for first UK frack since 2011

The Oil and Gas Authority has cleared the way for fracking at Cuadrilla’s shale gas site near Blackpool.
The “Battle of Balcombe”

Figure 4. Coverage of fracking in The New York Times, the Guardian of London, and the Sydney Morning Herald, by date.

Public Attitudes – BEIS tracker

From what you know, or have heard about, extracting shale gas to generate the UK’s heat and electricity, do you support or oppose its use?

BEIS tracker: Reasons for opposition and support

- Wave 25 (Mar 2018) reasons for opposition:
  - Loss/destruction of natural environment (57%)
  - Risk of contamination of water supply (31%)
  - Risk of earthquakes (29%)
  - Not a safe process (29%)
  - Too much risk/uncertainty to support at present (28%)

- Wave 25 (Mar 2018) reasons for support
  - Reduce UK’s dependence on other countries for energy supply (36%)
  - Need to use all available energy sources (35%)
  - Reduces dependence on other fossil fuels (31%)
  - May result in cheaper energy bills (26%)
# UK perceptions and frames - pro

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<tr>
<th>Frame</th>
<th>Elements</th>
<th>Frequency</th>
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<td>Shale development as an economic opportunity</td>
<td>National economic opportunities – global competitiveness, economic growth, energy prices (for consumers and industry), rebalance economy and boost manufacturing, employment and supply chains, tax revenues, balance of payments, investors require certainty / will lose patience</td>
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<td>Local economic opportunities – employment, community benefits packages, local business rates</td>
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<td>Domestic shale gas as providing greater energy security</td>
<td>Reliability of domestic, indigenous supply, self-sufficiency, concerns over Russia</td>
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<td>Shale gas as a bridge</td>
<td>Cleaner than coal, needed for years to come, renewables not ready yet, win-win of continued reliance on fossil fuels (and maintaining lifestyles) whilst reducing GHG emissions</td>
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<td>Risks of fracking safely manageable</td>
<td>Robust regulation, UKs proud track record, existing and familiar technology widely used in the industry for many years, victim of ‘scare stories’, myths and inaccurate reports, poor practice in US can’t be repeated in UK, solution to controversy is to communicate authoritative scientific reassurances to sceptical publics</td>
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## UK perceptions and frames - anti

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<td>Fracking as a threat to the local environment and public health</td>
<td>Dirty, toxic and polluting, extreme energy, moratoria in other jurisdictions, particularly unsuited to densely populated areas, untested and experimental in UK, under-researched and novel, uncertainty over impacts, additional risks compared to conventional oil and gas development, long-lasting and irreversible impacts, potential to affect habitability of place, apparent rush to frack at odds with cautious approach to regulation, threats beyond direct perception for lay people, experts as remote and complacent and risks being under estimated by public bodies</td>
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<tr>
<td>Shale gas as antithetical to adequately responding to climate change</td>
<td>Fugitive emissions, methane worse than CO2, diversion or road block, crowd-out investment in renewables, lock-in fossil fuel dependency, slow transition, non-transition, keep it in the ground, strictly time-limited duration of ‘bridge’ vs. slow progress in establishing industry, short-termist quick fix, fossil fuels as archaic and finite, deferring rather than resolving issues, extending reliance on fossil fuels contrary to public expectations, at odds with sensed urgency of need to transition, too little too late or a step backwards, maintaining energy status quo</td>
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<td>The governance of shale gas development as democratically suspect</td>
<td>Lack of social license to operate, ‘deliberative speak’, national need vs. localism, lack of scope for citizen input, need for greater influence for local councils and communities, assumption that exploration will go ahead regardless of public opposition, lack of scope for meaningful participation or reflection on public values, support for national public consultation, failure to secure social license justifies ‘uninvited’ participation</td>
<td>10</td>
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<td>Government, regulators, experts and industry as untrustworthy</td>
<td>Lack of transparency, local community benefit packages as bribes, lack of impartiality, enablers not regulators, independence of regulators questioned , suppression of information, biased reports, ‘frackademia’, planning system not a fair arbiter , lobbying, Government too closely tied to industry, scepticism to price cuts being passed onto consumers, industry can’t be trusted to self-monitor and regulate , lack of trust in those that provide information , institutional downplaying of uncertainty, Government adopted premature position of partisan advocacy</td>
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FFEfP Overview: 3 objects of analysis and 2 key concepts

**Publics**
- Public attitudes, perceptions and framings of shale gas development
- Interplay with awareness, values, geography, etc.
- Change over time

**Policy**
- Struggle between competing political frames
- Dominant political frames that justify policy and seek to persuade the public
- Contestation from counter frames

**Stakeholders**

**Resonance**: To what extent do key policy frames resonate with public perceptions and vice versa?

**Accommodation**: To what extent are public frames accommodated within engagement and participation processes?

**Formal public engagement and participation processes**
- Impact on decisions, operations and policy
- How design, conduct and policy shape scope for inclusion and influence of public views
Accommodation of anti-fracking frames in regulatory decision-making

Hilson (2015) asks “which [fracking] frames are heard in English planning?”

Planning policy, EIA regs. and draft permitting decisions

Identifies two anti-fracking frames – local risk and global climate

Ambiguity over inclusion of ‘end-use’ of fuel as an indirect impact for EIA purposes; separation of oversight into phases; PPGM para. 124

Other specialist regulatory regimes
Preston New Road

- Cuadrilla initially applied for planning permission in February 2014
- EA granted two sites environmental permits in early 2015
- LCC planning officer recommended both sites be refused permission (PNR – noise; RW – noise and traffic)
- Cuadrilla put forward new measure to mitigate noise; planning officer changed recommendation on PNR (traffic issue remained at RW)
- Late June 2015 LCC refused both sites permission going against officer’s recommendation on PNR (refused on noise and visual impact grounds)
PNR Planning Inquiry

- September 16 2015 WMS
- Cuadrilla announce appeal; Greg Clark (then SoS for Communities and LG) recovers appeals
- Public inquiry February and March 2016
- Inspector recommends PNR be granted permission, RW be refused (still traffic)
- On PNR, SoS (now Sajid Javid) accepts recommendation and reasoning of Inspector, grants planning permission (reopens inquiry on RW)
- Cuadrilla have completed drilling two wells, the first of which will be fracked immanently

Kevin Anderson, FoEs expert witness on climate change, is cross-examined (Feb 26 2018)

- FoE, a rule 6 party at the inquiry, opposed the sites on the grounds of climate change, public health, and waste management
The issue of climate change at the inquiry

- Three key disputes over climate change at the inquiry
  1. Reconcilability of the development of a shale gas industry and UK’s climate change commitments
  2. Acceptability of the projects’ GHG emissions impact in and of themselves
  3. Credibility of the GHG emissions estimate, particularly the estimated level of methane emissions

- FoE argued
  1. Shale gas industry irreconcilable with climate change commitments, especially post-Paris and in the light of CCS competition cancellation
  2. Two sites’ emissions are in and of themselves an unacceptable use of constrained carbon budgets
  3. The GHG emissions estimate inevitable an underestimation

- Cuadrilla argued
  1. 16 September 2015 sets out the policy view that shale development helps achieve climate change targets (‘bridging fuel’ argument), this view can’t be questioned through this inquiry, and response to Paris/CCS matter for national policy development
  2. GHG impact of projects themselves negligible and insignificant (‘drop in the ocean’ argument)
  3. Estimates are reliable and in any event have already been found acceptable by the EA
• The Planning Inspector recommends

1. WMS remains Government position and subsequent issues of CCS and Paris are matters for national policy development; consideration should be limited to the impact of the emissions of the sites themselves (e.g. merits of Government policy not to be questioned here)

2. Project emissions represent very small fraction of carbon budgets whether compared nationally or regionally; in the light of policy support those emissions are entirely reasonable and fully justified

3. Assumptions and methods used in the GHG emissions estimate can be safely relied upon, there has been no material error in the estimate of methane emissions

• SoS accepts Inspector's reasoning on issue of climate change in full
Analysis – Can publics influence shale development decision-making through the English planning system?

• 3 key procedural features of planning oversight of shale development that severely limit accommodation of key public arguments and concerns
  1. Vertical deference - deferential orientation to government policy and the reasoning underpinning it
  2. Horizontal deference – deferential orientation to other regulators and regulation in general
  3. Double compartmentalisation – application-by-application, phase-by-phase bounding and sequencing of oversight

• Confounded by an evident lack of willingness and/or capacity to scrutinise technical claims
  • Lack of scrutiny over Cuadrilla’s methane emissions and flowback fluid volume estimates

• Revisiting Hilson (2015)
  • If anything a little optimistic about planning’s capacity to accommodate the ‘global climate frame’
  • The subsequent (to Hilson’s work) WMS and the approach taken to it at this inquiry effectively make it impossible to find a shale development application unacceptable on climate grounds
  • On the ‘local risks frame’, fails to fully grasp in-practice restrictiveness of the assumption of effective regulation

• Scope for public influence differs on a case-by-case and issue-by-issue basis –
  • Given current planning and energy policy landscape, little scope for accommodation of arguments regarding climate change and energy policy; public health, regulatory efficacy and uncertainty over impacts
  • Depending on the site, scope for influence through arguments over more ‘mundane’ issues, perhaps especially traffic
Broader implications; points for discussion

- Does it matter?
  - Environmental justice, normative arguments…
  - Lack of scope for influence may backfire…
  - Increasing prominence of the ‘bad governance’ frame…
  - If not planning then where?

- Planning’s role in securing GHG emissions reductions
  - Planning policy makes clear the role of planning in securing ‘radical reductions in greenhouse gas emissions’ (e.g. NPPF para. 93)
  - Hilson (2014) identifies the key statutory climate duties relevant to planning oversight of shale gas development in the UK (e.g. in England the Planning and Compulsory Purchase Act 2004 s.19(1A))
  - This statutory and policy background imposes a duty on planning authorities to contribute to climate change mitigation, but doesn’t specify the types of development that might help or hinder this aim – the WMS works in this void

- CCC role
  - Amendment to Infrastructure Act gives the Committee on Climate Change the duty to report to the Government on the compatibility of exploiting domestic onshore petroleum (including shale gas) with UK carbon budgets

- NSIP reforms?
  - Government currently consulting on proposal to determine shale gas production application under the Nationally Significant Infrastructure Project regime
Thank you!

Any questions?

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