

**APPEAL BY ISLAND GAS LTD, PORTSIDE, ELLESMERE PORT
APPEAL REFERENCE APP/A0665/W/18/3207952**

**STATEMENT OF CASE
SUBMITTED BY FRACK FREE ELLESMERE PORT & UPTON
RULE 6 - INTERESTED PARTY**

OCTOBER 2018



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1. Introduction

- 1.1 This Statement of Case has been prepared by Frack Free Ellesmere Port and Upton (FFEP&U) in relation to the application by Island Gas Limited (the Appellant) for planning permission from the Local Planning Authority, Cheshire West and Chester Council (the Council), for application reference 17/03213/MIN:

“To mobilise well test equipment, including a workover rig and associated equipment, to the existing well site to perform a workover drill stem test and extended well test of the hydrocarbons encountered during the drilling of the EP1 well, followed by well suspension at Portside North, Ellesmere Port, Cheshire” (the Proposed Development).

- 1.2 FFEP&U is a group of concerned residents of West Cheshire, formed for defending the decision of the Council to refuse permission for IGas to develop their well in Ellesmere Port. The group comprises members of Ellesmere Port Frack Free and Frack Free Upton. Both groups were founded in 2014. FFEP&U was granted Rule 6 status on 12 Sept 2018.

- 1.3 The application for the Proposed Development was considered by the Council Planning Committee on 25 January 2018. Following a discussion, the Committee voted 10 to 1 in favour of refusing the application. The decision notice issued by the Council on 26 January 2018 cites the following reasons for refusal:

“In the opinion of the Local Planning Authority the proposed development to appraise for shale gas in this location will be contrary to the provisions of the policy STRAT1 of the Cheshire West and Chester Local Plan (Part One), which states, inter alia – Proposals that are in accordance with relevant policies in the Plan and support the following sustainable development principles will be approved without delay, unless material considerations indicate otherwise. The proposal fails to mitigate and adapt to the effects of climate change, ensuring the development makes the best use of opportunities for renewable energy use and generation”

- 1.4 FFEP&U supports the reason for refusal and will provide evidence to the inquiry concerning the sustainability of the proposed development, as set out below. FFEP&U will show that matters beyond climate change are relevant to the determination of whether the proposed development is sustainable. At the time of writing, FFEP&U is intending to call approximately nine witnesses.

2. Background

- 2.1 Ellesmere Port town centre is 1.7 km from the Appeal Site, which is located within an existing light industrial business park, adjacent to the M53 motorway connecting Birkenhead to the M6. The site is unusual in that it is:
- a) Located at the end of a cul-de-sac with constrained access.
 - b) Adjacent to a railway line.
 - c) Within 100 metres of about 6 industrial units (5 metres to the closest).
 - d) 150 metres from the M53, the major link from Birkenhead to the rest of the UK.
 - e) 200 metres from an explosives store (exact location not known for security reasons).
 - f) 250 metres from the epicentre of an earth tremor registering M1.6 in 1992.
 - g) 250 metres from the Manchester Ship Canal which is used to carry petroleum and hazardous chemicals to the Stanlow petrochemical complex (also a disposal site for the Syrian chemical arsenal in 2014).
 - h) 270 metres from one of the ten most important wildfowl overwintering sites in the UK which is classed as SSSI / RAMSAR, with regional implications.
 - i) 350 metres from a high-density residential area.
 - j) 800 metres from a children's play centre.
 - k) 860 metres from the closest of two large residential homes for the elderly.
 - l) 1 km from several schools.
 - m) 1 km from a hotel / tourist attraction complex.
 - n) 1.2 km from an existing Air Quality Management Area.
 - o) 1.7 km from the centre of Ellesmere Port. Ellesmere Port is classed as an area of multiple deprivation and poor health, amongst the worst in West Cheshire, and the UK.
 - p) 2 km from over 5,000 residences. A zone that many Australian states would class as a "buffer zone" between wells and residences / public buildings, and which the USA emergency services would evacuate in the event of a well blowout.
 - q) 4.5 km from a nuclear site which has strict seismic criteria in its nuclear licence.
 - r) Above the Sherwood Aquifer which the British Geological Society considers to be the second most important aquifer in the country. This aquifer supplies many Cheshire villages with excellent drinking water and also many farms for irrigation and livestock. The aquifer also supplies all the water to Chester Zoo, which is not only the largest UK tourist attraction outside London, it is one of the top five biodiversity centres globally.
 - s) At the centre of a 5 km radius containing between 30 and 40 aquifer water extraction facilities. It is not clear that the Appellant has checked the potential impact on all of these abstraction sites.
 - t) Within an area that is designated as the "Cheshire Science Corridor", a crescent of land where the Council and the Local Enterprise Partnership are attracting nationally and internationally significant research facilities and businesses. It is being marketed as a science hub and seeking to attract 20,000 hi-tech jobs into the area.

- 2.2 The nature of the location has changed since the Council considered the application for the Proposed Development:
- a) Housing developments are under construction 350 metres from the Appeal site, when previously the closest residence was 700 metres.
 - b) There is now occupation and use of a Gas Distribution Centre 55m from the Appeal site, and a retail Caravan and Accessories Centre within 50 metres.
- 2.3 FFEP&U will show that all the unusual elements of the Appeal Site's location are relevant to whether the Proposed Development is sustainable, because of its impact on adjacent employees and residents.
- 2.4 FFEP&U will also show that the cumulative impact of the Proposed Development, taken with both current and future development, is unacceptable. Ellesmere Port is already bordered by a hazardous chemical disposal site (used for the disposal of the Syrian chemical arsenal in 2014), a waste incinerator / energy recovery centre, a major oil refinery, a uranium enrichment facility, and a proposed nuclear submarine reactor decommissioning facility.
- 2.5 The existing well (EP1) on the Appeal Site was drilled under a planning permission granted to Nexen Exploration UK Ltd on 15 January 2010 for the purpose of Coal Bed Methane appraisal and production. Planning application number 09/02169/MIN. Nexen Exploration was acquired by IGas Energy PLC in January 2011.
- 2.6 No Environmental Impact Assessment has been carried out. The absence of an Environmental Impact Assessment has meant that the Appellant has never set out a full description of the extraction technique for which it seeks permission, nor has it been required to maintain a consistent approach to this issue. While the Appellant emphasises that the Proposed Development is not for hydraulic fracturing, neither is it for conventional oil or gas extraction. It is clear that:
- a) The Proposed Development will involve perforation through the wellbore casing and cement;
 - b) The perforations will be created using explosives;
 - c) Acid, biocides and corrosion inhibitors will be used through the perforations to extract the gas from the geological strata;
 - d) The gas, the spent acid and fluids containing dissolved materials will flow to the surface.
- 2.7 Whilst this is not hydraulic fracturing using acid and chemicals, it is either "matrix acidisation" or "acid fracking", which have similar risks to human health and the environment.

3. Planning Policy Context

- 3.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that where regard is to be had to the development plan, for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise. FFEP&U will rely on the relevant provisions of the Development Plan, including:
- a) Cheshire West and Chester Local Plan (Part One) adopted in January 2015
 - b) Ellesmere Port and Neston Borough Local Plan (Retained Policies)
 - c) Oil and Gas Exploration, Production and Distribution SPD
 - d) Cheshire Replacement Minerals Local Plan
- 3.2 The Cheshire West and Chester Local Plan (Part Two) has been subject to public examination during 2018. No significant modifications were requested. The Local Plan (Part Two) is highly relevant to the determination of the appeal, which was not the case when the Planning Committee took the original decision refusing permission. FFEP&U will therefore rely on the relevant provisions of the Local Plan (Part Two).
- 3.3 FFEP&U will also rely on applicable international, national, and local policies and relevant statutory duties, including:
- a) Planning and Compulsory Purchase Act 2004
 - b) Climate Change Act 2008
 - c) National Planning Policy Framework 2018
 - d) Planning Practice Guidance 2018
 - e) The Paris Climate Agreement 2016
 - f) European Union (Withdrawal) Act 2018, section 16

4. Conflict with the Development Plan – Unsustainable Development

There are a number of reasons why the Proposed Development conflicts with the Development Plan and hence amounts to unsustainable development.

4.1 Climate Change Impact

FFEP&U will demonstrate that the methane and carbon emissions (including fugitive emissions) which will inevitably be produced by the Proposed Development have not been adequately mitigated to meet the UK carbon budget constraints consistent with both the Paris Climate Agreement 2016 and the Climate Change Act 2008.

4.2 Geology, Hydrology and Seismicity

The well passes through the Sherwood Sandstone Aquifer, which is classed as a “major, high vulnerability aquifer” and provides excellent drinking water to many Cheshire villages, as well as to Chester Zoo. Additionally, many farms use this water for agricultural use. We shall demonstrate that the location of the application results in an unacceptable risk to this aquifer, to other groundwater, to the atmosphere and to the seismicity of the area. Such risky development is not sustainable and is contrary to the Development Plan. The Precautionary Principle also weighs against the granting of planning permission for this reason.

We will demonstrate that the fluids from the target rocks at depth are expected to have fairly high levels of radon gas and with a significant risk of high levels of toxic metals in the fluids withdrawn from the well. We will also demonstrate that a risk exists of encountering dangerous levels of hydrogen sulphide, in line with that found elsewhere in the Bowland Shales of the Bowland Basin

4.3 Air Quality and Health

Ellesmere Port town centre is an Air Quality Management Area. Ellesmere Port is adjacent to significant manufacturing industry, a large chemical complex, and air quality is of great concern. The proposed development will add a further burden to air quality in the area and contribute, with other factors, to significant potential threats to public health that must be taken together. FFEP&U will demonstrate that there are issues with the way that air quality has been considered and that the Appellant has underestimated the air quality impacts of the Proposed Development, particularly given that the Appeal Site is in a very deprived area, with endemic ill-health.

4.4 Risk, Public Health and Social Harm

There is significant emerging evidence about the public and social health impacts of developments such as the Proposed Development, particularly where such developments are highly controversial within the local community. The Appellant has underplayed the risks of the Proposed Development. FFEP&U will demonstrate that risk and consequences have not been adequately considered during this application, leading to an unacceptable risk to adjacent employees and residents. Such risky development is not sustainable, and the Precautionary Principle weighs against the grant of planning permission.

The social harm of the Proposed Development has also not been considered. This is a material consideration, particularly given the emerging research on the “mass trauma” such developments can cause to communities. We will demonstrate that the impact of this development on local residents is unacceptable.

4.5 Sustainable Economic Development

Flow testing will not create any sustainable jobs, neither will any longer-term production on this site, even if sufficient quantities of gas are found. Indeed, the proposed operation will impose conditions on the site that will hinder the development of sustainable jobs into the future. We will demonstrate that under no circumstance does this application meet the criteria of sustainable development, nor the economic ambitions for the area. Neither does the application provide for future generations (NPPF 2.7).

5. Other Material Considerations

5.1 National and International Policy

The Proposed Development is in conflict with relevant policies of the NPPF and relevant international policies, such as the Paris Agreement.

5.2 The Need

FFEP&U will challenge the need to explore for oil and gas in Ellesmere Port in relation to:

- a) The level of industrialisation of this extractive industry
- b) The economic aspects of this development
- c) Providing for the needs of future generations (NPPF 2.7)
- d) The need for fossil fuel phaseout
- e) BEIS Energy Security report issued December 2017 concluding that Shale Gas was not essential for UK gas security.

For these reasons we will demonstrate that Ellesmere Port is in particular the wrong place to develop unconventional gas extraction.

5.3 Suitability of current facility

In the application, the Appellant assumes that the current installation is suitable for re-use. The Appellant needs to demonstrate that there has been no deterioration of the facility in the intervening four years.

5.5 Relevant Decisions

Previous Planning Permission 09/02169/MIN: The Appellant states that the Council granted planning permission for a development on the Appeal Site that involved “*virtually the same processes and operation*” as the Proposed Development. FFEP&U will show the opposite is true. The previous permission was for extraction of coalbed methane, not shale / chert gas. The method of extraction is completely different, since acidisation was not previously proposed. Also, since the grant of the previous application, the Paris Agreement was signed, and the United Kingdom took on an international obligation to hold the increase in global temperature below 2°C and to take action to meet this objective consistent with science and on the basis of equity.

Druridge Bay: In March 2018 the Secretary of State dismissed an open cast coal mining appeal. As part of his decision he wrote that “The negative impact on greenhouse gases and climate change receives very considerable adverse weight in the planning balance”.

Wressle: On 27 February 2018 Andrew McCormack dismissed an Unconventional Oil and Gas development appeal. In his determination he said “The main issue is whether the proposal would constitute sustainable development with regard to local and national planning policies”. He concluded that “...the proposed development would not be sustainable development”

6. Planning Balance

- 6.1 The Proposed Development is contrary to the Development Plan. It should be refused permission, unless material considerations indicate otherwise. As set out above, when the material considerations are weighed in the balance, they do not indicate that planning permission should be granted.
- 6.2 FFEP&U understands that the NPPF requires decision-makers to give great weight to the benefits of mineral extraction, including to the economy. While some mineral extraction proposals do contribute to the quality of life in all our communities, the Proposed Development is not such a proposal. The Appellant overestimates the benefits that it will provide to the economy and fails to take into account the unacceptable adverse impacts of the Proposed Development.
- 6.3 FFEP&U believes that development of a range of successful and forward-looking industries in the Ellesmere Port area is a sensible and desirable aspiration. However, we will demonstrate that the very real negatives of this particular proposed development to the local community outweigh the putative and entirely speculative potential benefits.

List of Documents

As a Rule 6 Party FFEP&U will not be providing copies of any documents that have already been made available via PINS, or any core policy documents. We will refer to the documents provided by the Appellant and the Council and will additionally rely on the following documents:

Ref.	Document	Author
EP1	Adequacy of Current State Setbacks for Directional High-Volume Hydraulic Fracturing in the Marcellus, Barnett and Niobrara Shale	M Haley, M McCawley, A C. Epstein, B Arrington and E Ferrell Bjerke, Environmental Health Perspectives July 2016
EP2	Coal to Clean, how the UK phased out coal without a dash for gas	Sandbag, May 2018
EP3	Convention on access to information, public participation in decision-making and access to justice in environmental matters	UN Economic Commission for Europe, Aarhus 25 June 1998
EP4	CW&C Rossmore Ward Snapshot 2017	Cheshire West and Chester Council
EP5	Everything you always wanted to know about Acidising	Kathryn McWhirter et al. for Weald Action Group, Revised 2018
EP6	Fair fracking? Ethics and environmental justice in United Kingdom shale gas policy and planning	Cotton, M. (2016). Local Environment, 0(0), 1–18
EP7	Fracking Lancashire: The planning process, social harm and collective trauma	Damien Short, Anna Szolucha, Geoforum 2017
EP8	Fracking under the Radar	Weald Action Group 2017
EP9	Fracking: How far from Faults?	M P Wilson, F Worrall, R J Davies, S Almond: Geomech Geophys, Geoeng 2018 4:193-199
EP10	IPCC GLOBAL WARMING OF 1.5 °C	Intergovernmental Panel on Climate Change 2018
EP11	Preese Hall shale gas fracturing review and recommendations for induced seismic mitigation	Dr C. Green, Prof. P Styles and Dr B.J. Baptie, April 2012
EP12	Shale Gas Production in England: An Updated Public Health Assessment	David McCoy and Alice Munro, Medact July 2016
EP13	Shale gas: an updated assessment of environmental and climate change impacts	John Broderick, Ruth Wood, Paul Gilbert, Maria Sharmina, Kevin Anderson Tyndall Centre Manchester 2011
EP14	Site Map of proposed development site	Frack Free Ellesmere Port and Upton
EP15	Sustainability of UK shale gas in comparison with other electricity options: current situation and future scenarios	Jasmin Cooper, Laurence Stamford, Adisa Azapagic, Science of the total environment (Journal) 2018
EP16	The Manchester Marl Seal and the freshwater Eccles Mudstone	Robin Francis Grayson: ReasearchGate 2017
EP17	THE RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT	United Nations General Assembly 3-14 June 1992
EP18	UKOOG Community Engagement Charter Oil and Gas from unconventional reservoirs	UK Onshore Oil and Gas, launched June 2013

FFEP&U may review or add to the documents list in due course.

IGas and CW&C Council Documents not provided.

Document	Author
CW&C Air Quality Status Report 2017	Cheshire West and Chester Council
CW&C Ellesmere Port Snapshot 2017	Cheshire West and Chester Council
I Gas planning application 17/03213/MIN of 21 July 2017, documents submitted to the EA	IGas
I Gas planning application 17/03213/MIN of 21 July 2017, supplementary documents (Noise and Emissions)	IGas
I Gas planning application 17/03213/MIN of 21 July 2017, and supporting documents	IGas
Local Plan Part 1 2015	Cheshire West and Chester Council
Local Plan Part 2 2018	Cheshire West and Chester Council
Minutes of the Cheshire West and Chester Council Planning Committee meeting of 25 January 2018	Cheshire West and Chester Council
Nexen planning application 09/02169/MIN of 15 January 2010, and supporting documents	IGas / Nexen
Oil and Gas Supplementary Planning Document 2017	Cheshire West and Chester Council
Planning Officer's Report to the Planning Committee for the meeting of 25 January 2018	Cheshire West and Chester Council
Refusal of Planning Permission notice relating to application 17/03213/MIN issued by CW&C Council on 26 January 2018	Cheshire West and Chester Council
Supplementary Planning Document: Oil and Gas Exploration, Production and Distribution	Cheshire West and Chester Council

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HM Government Documents not provided:

Document	Author
A Green Future: Our 25 Year Plan to Improve the Environment	HM Government DEFRA 2018
An Environmental Risk Assessment for shale gas exploratory operations in England	HM Government Environment Agency 2013
Borehole Sites and Operations Regulations 1995	HM Government
Civil Contingencies Act 2004	HM Government
Climate Change Act 2008	HM Government
Environmental risks of fracking	House of Commons Environmental Audit Committee, January 2015
Gas Security of Supply: a strategic assessment of GB's gas security of supply	HM Government Dept for Business, Energy and Industrial Strategy, December 2017
National Planning Policy Framework 2018	HM Government
Onshore oil and gas operations in the UK: regulation and best practice (England)	HM Government Dept of Energy and Climate Change, December 2015
Onshore Petroleum The compatibility of UK onshore petroleum with meeting the UK's carbon budgets	HM Government Committee on Climate Change March 2016
Pollution Prevention and Control Act 1999	HM Government
Potential Air Quality Impacts of Shale Gas Extraction in the UK	Air Quality Expert Group, for Dept. for the Environment, Food and Rural Affairs, 2018
Radioactive Substances Act 1993	HM Government
Shale Gas Analysis for Committee on Climate Change	HM Government Committee on Climate Change, July 2016
The Clean Growth Strategy	HM Government, October 2017
Town and Country Planning Act 2017	HM Government
Use of acid at oil and gas exploration and production sites	HM Government Environment Agency 2018
Use of acid at oil and gas exploration and production sites	Environment Agency Jan 2018
Water Resources Act 1991	HM Government

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