



Ministry of Housing,  
Communities &  
Local Government

Our Ref: APP/Q2371/W/15/3134385

Mrs Charlotte Dyer  
Herbert Smith Freehills LLP  
Exchange House  
Primrose Street  
London  
EC2A ECG

12 February 2019

Dear Mrs Dyer

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY CUADRILLA ELSWICK LIMITED  
EXPLORATION SITE ON AGRICULTURAL LAND THAT FORMS PART OF ROSEACRE  
HALL, TO THE WEST, NORTH AND EAST OF ROSEACRE WOOD AND LAND THAT  
FORMS PART OF THE DEFENCE HIGH FREQUENCY COMMUNICATIONS SERVICE  
(DHFCS) SITE BETWEEN ROSEACRE ROAD AND INSKIP ROAD, OFF ROSEACRE  
ROAD AND INSKIP ROAD, ROSEACRE AND WHARLES, PRESTON, LANCASHIRE  
APPLICATION REF: LCC/2014/0101**

1. I am directed by the Secretary of State to refer to his letter of 6 October 2016 and to the report enclosed with that letter of the Inspector, Wendy McKay LLB Solicitor (non-practising), who held a public local inquiry on 9 to 12, 16 to 19, 23, 25 to 26 February, and 2 to 4, 8 to 11 and 16 March 2016 into your client's appeal against the decision of Lancashire County Council (LCC) to refuse your client's application for planning permission for:
  - Appeal C: construction and operation of a site for drilling up to four exploratory wells, hydraulic fracturing of the wells, testing for hydrocarbons, abandonment of the wells and restoration, including provision of access roads and improvement of access on to the highway, security fencing, lighting and other uses ancillary to the exploration activities, including the construction of a pipeline and a connection to the gas grid network, in accordance with application ref LCC/2014/0101, dated 16 June 2014.
2. The Secretary of State has also had regard to the report of Melvyn Middleton BA (Econ) DipTP Dip Mgmt MRTPI who held a public local inquiry on 10-13, 17-19, 24 and 25 April 2018. The scope of the reopened inquiry was restricted to highways safety issues, and the highways Inspector did not request or hear evidence on other matters that did not relate to this, with the exception of those matters referred to in HIR1.4.

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## **Terminology and approach in this decision letter**

3. This decision letter is to be read in conjunction with the Secretary of State's decision letter of 6 October 2016 (hereafter referred to as 'the original decision letter'), insofar as that letter relates to Appeal C. The original decision letter dealt with two appeals by Cuadrilla Bowland (Appeals A and B) and two appeals by Cuadrilla Elswick (Appeals C and D), and followed a public local inquiry between 9 February and 16 March 2016 (hereafter referred to as 'the original inquiry'). A report was produced by Wendy McKay LLB Solicitor (non-practising) (hereafter referred to as 'the original report' and 'the original Inspector' respectively). All references to paragraphs in the original Inspector's report appear as 'IRxx'.
4. The original decision letter allowed Appeals A, B and D. Those appeals therefore have no relevance to the current decision, and the Secretary of State has not taken any matters pertaining to them into account in reaching his decision on this appeal, except where stated.
5. The reopened inquiry into the Appeal C highways issues (hereafter referred to as 'the highways inquiry') was held between 10 April and 25 April 2018. A report was produced by Melvyn Middleton BA (Econ) DipTP Dip Mgmt MRTPI (hereafter referred to as 'the highways report' and 'the highways Inspector' respectively). All references to paragraphs in the highways Inspector's report appear as 'HIRxx'.
6. The revised National Planning Policy Framework was published on 24 July 2018, and is referred to as 'the revised NPPF'. The NPPF which was published in 2012 is referred to as 'the original NPPF'. Where the changes to wording between the original NPPF and the revised NPPF do not affect the Secretary of State's conclusions, they are not separately flagged up.

## **The original Inspector's recommendation and summary of the decision**

7. The original Inspector recommended that Appeal C be dismissed. For the reasons set out in his original decision letter of 6 October 2016, the Secretary of State disagreed with the original Inspector's recommendation on Appeal C. He indicated that he was minded to allow Appeal C and grant planning permission, subject to conditions, and to being satisfied that the highways safety issues identified by the original Inspector could be satisfactorily addressed. Accordingly, the Secretary of State deferred his decision on Appeal C to enable the matter to be considered further via a reopened inquiry.
8. For the reasons given below, the Secretary of State, like the original Inspector, considers that the highway safety issues have not been satisfactorily addressed. He has decided on that basis to dismiss Appeal C and refuse planning permission. Copies of the original decision letter, the original report and the highways report are attached.

## **Matters arising since the original inquiry**

9. Matters arising during closing submissions of the original inquiry, and between the close of the original inquiry and the original decision letter are set out at paragraphs 9-11 of the original decision letter and are not reproduced here. Representations received between the close of the original inquiry and the original letter are set out at Annexes E and F of the original decision letter, and are not reproduced here. Matters arising between the issuing of the original decision letter and this decision letter are set out below.

10. On 25 January 2018 a Written Ministerial Statement on Energy Policy was made by the Secretary of State for Business, Energy and Industrial Strategy ('the January 2018 WMS'); On 17 May 2018 a Written Ministerial Statement on Energy Policy was made by the Secretary of State for Business, Energy and Industrial Strategy and the Secretary of State for Housing, Communities and Local Government ('the May 2018 WMS').
11. Between 5 and 27 March 2018 Lancashire County Council consulted the main parties on a Supplementary Environmental Report and Planning Statement Addendum (non-highways matters) produced by the appellant. The Secretary of State received no representations following this consultation.
12. Lancashire County Council subsequently identified that statutory consultees had not been consulted on the Supplementary Environmental Report and the Planning Statement Addendum. They therefore recirculated this information to all parties in June 2018, allowing a further 21 days for the submission of representations. The Secretary of State received no representations following this further consultation. He received the Supplementary Environmental Report and Planning Statement Addendum on 14 June 2018.
13. The highways inquiry was held between 10 and 25 April 2018. The appellant reconsidered a number of issues (HIR15.3), and in addition to the introduction of two additional routes, made a number of detailed changes to the routing proposals and their use (HIR1.28-1.31). The revised NPPF was published after the close of the highways inquiry. Main parties were invited to make representations on the effect of the revised NPPF on the matters covered by the highways inquiry, and these representations were taken into account in the drafting of the highways report (HIR1.8).
14. On 12 April 2018 the judgment of the Court of Justice of the European Union (CJEU) in Case 323/17 *People over Wind and Sweetman v Coillte Teoranta* on the correct application of the Habitats Directive 92/43/EEC was handed down.
15. The revised NPPF was published on 24 July 2018.
16. On 7 August 2018, the judgment of the Court of Justice of the European Union (CJEU) in Case C-461/17 *Brian Holohan and Others v An Bord Pleanala* on the application of the Habitats and Environmental Impacts Assessment Directive 2011 was handed down.
17. The Fylde Local Plan (to 2032) was adopted on 22 October 2018.
18. Representations which have been received since the issuing of the original decision letter are listed at Annex A. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.
19. The Secretary of State has taken the matters set out in paragraphs 10-18 above into account in reaching his decision, and they are addressed in the relevant sections below. However, for the reasons set out in paragraphs 96-123 and 133 below, he considers that the highways issues are determinative in this case. He does not consider that any changes arising as a result of the matters above are capable of carrying sufficient weight to overcome his view that permission cannot be granted on highways grounds. He therefore does not consider it is necessary to refer back to parties on these matters before reaching his decision.

## Policy and statutory considerations

20. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
21. In this case the development plan consists of the Joint Lancashire Minerals and Waste Development Framework Core Strategy (CS), dated February and adopted March 2009; the Joint Lancashire Minerals and Waste Local Plan – Site Allocations and Development Management Policies Part 1 (JLMWLP), dated September 2013; and the Fylde Local Plan to 2032 (FLP), adopted on 22 October 2018. The Secretary of State considers that the development plan policies of most relevance to these appeals are those set out at IR1.151-1.156, and also include the following policies of the FLP: GD4 (Development in the countryside), ENV1 (Landscape), ENV2 (Biodiversity), ENV3 (Protecting existing open space), ENV5 (Historic environment) CL1 (Flood alleviation, water quality and water efficiency), INF1 (Service accessibility and infrastructure) and T4 (Enhancing sustainable transport choice).
22. At HIR1.16 the highways Inspector notes that parts of the newly introduced Red Route (RR) pass through Wyre Borough, and that the policies of the Wyre Local Plan 1999 that have been saved by direction of the Secretary of State may consequently be relevant to the wider appeal. However, given the Secretary of State's conclusions that permission cannot be granted on highways grounds, he does not consider it is necessary to assess the accordance of this proposal with policies in the Wyre Local Plan, or to refer back to parties on this matter before reaching his decision.
23. Other material considerations which the Secretary of State has taken into account include: the National Planning Policy Framework, July 2018 ('the revised NPPF'); the National Planning Practice Guidance ('the Guidance'); the Overarching National Policy Statement (NPS) for Energy (EN-1); the Written Statement on Shale Gas and Oil Policy made to the House of Commons by the Secretary of State for Energy and Climate Change on 16 September 2015 ('the 2015 WMS'); the Written Statement on Energy Policy made to the House of Commons by the Secretary of State for Business, Energy and Industrial Strategy on 25 January 2018 ('the January 2018 WMS'); and the Written Statement on Energy Policy made to the House of Commons by the Secretary of State for Business, Energy and Industrial Strategy and the Secretary of State for Housing, Communities and Local Government on 17 May 2018 ('the May 2018 WMS'); the Planning Practice Guidance for Minerals (2014) ('the PPGM'); the Noise Policy Statement for England ('the NPSE'); the Paris Agreement; and the Lancashire Climate Change Strategy 2009-2020.
24. The original Inspector considered that the original NPPF policies most relevant to the appeal were those set out at IR1.173-1.182. The Secretary of State agrees with the highways Inspector that the policies in the revised NPPF which are most relevant to this appeal are those set out at HIR1.20-1.22 and HIR1.26, and agrees with his analysis at HIR1.23 that in the light of Section 9 of the revised NPPF it is for the decision-maker to determine on a case-by-case basis whether there is an unacceptable impact on highway safety or whether the residual cumulative impacts on the road network are severe.
25. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the appeal schemes

or their settings or any features of special architectural or historic interest which they may possess.

### *Emerging plan*

26. The emerging plan includes the emerging Joint Lancashire Minerals and Waste Local Plan, and the emerging Lancashire County Council Shale Supplementary Planning Guidance Document on Onshore Oil and Gas Exploration, Production and Distribution.
27. Paragraph 48 of the revised NPPF states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework.
28. A draft of the emerging Joint Lancashire Minerals and Waste Local Plan was published for consultation between 28 September 2018 and 28 November 2018. The Secretary of State considers that the relevant policies include MW1 (Management of Waste and Extraction of Minerals), MW2 (Minerals Exploration), MW3 (Planning Obligations), MW4 (Development in the Countryside), MW5 (Decommissioning, Restoration and Aftercare), MW8 (Ensuring the Best and Most Efficient Use of Resources), and MW17 (Onshore Oil and Gas). As the emerging plan is at an early stage and has not yet undergone independent examination, the Secretary of State considers that it carries little weight at this stage.
29. The emerging Lancashire County Council Shale Supplementary Planning Guidance Document on Onshore Oil and Gas Exploration, Production and Distribution is at an early stage of preparation and following consultation remains in draft form. A number of fundamental objections were made by Parish Councils and the Roseacre Awareness Group (RAG), and there is not yet an indication of whether or how Lancashire County Council intends to take account of these objections. Its policies may be subject to change. For these reasons and the reasons given at IR12.12, the Secretary of State agrees with the original Inspector at IR12.12 that little weight can be attributed to it at this stage.
30. For the reasons given at paragraph 22 above, the Secretary of State has not assessed the weight attaching to the emerging Wyre Local Plan (HIR1.18).

### **Environmental Statement**

31. Prior to and at the PIM (see paragraph 7 of the original decision letter), the adequacy of the Environmental Statement for Appeals A and B was raised. The Secretary of State considered the submissions that were made by various parties (IR1.10-1.17). He agreed with the original Inspector's conclusion in IR1.12 that while comments made by Preston New Road Action Group related to Appeals A and B, they were also clearly relevant to the Environmental Statement for Appeals C and D. The Secretary of State was satisfied that the cumulative assessment presented, in both Environmental Statements, was an appropriate approach and was adequate for the purposes of the EIA Regulations (IR1.22). For the reasons given at IR1.18-1.23, he agreed with the Inspector's conclusion at IR1.24 that the two proposals should not be treated as a single project requiring a single Environmental Statement. Like the Inspector he was satisfied that the Environmental Statement relating to Appeal C was adequate and met the minimum requirements of Schedule 4, Part 2, of the EIA Regulations.

32. In reaching his decision, the Secretary of State took into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and the environmental information submitted before the inquiry opened (IR1.64-1.78). For the reasons given at IR1.79-1.84, he agreed with the Inspector that the Roseacre Wood Environmental Statement provided adequate information pertaining to the main alternatives studied by the Appellant in respect of Appeal C, as well as an indication of the main reasons for the choices made, taking into account the environmental effects.
33. The Secretary of State has reviewed his findings on this matter in the light of the Supplementary Environmental Report dated March 2018. Overall, he is satisfied that the Environmental Statement, the Supplementary Environmental Report and other additional environmental information provided comply with the above regulations and that sufficient environmental information has been provided for him to assess the environmental impact of the proposal.

### **The approach to the development plan**

34. In his original decision letter, the Secretary of State agreed with the original Inspector that it was necessary to determine whether the second bullet point of paragraph 14 of the original NPPF was engaged. The appellant's case was put on the basis that the development plan was silent or out-of-date (IR12.7-12.8). The Secretary of State agreed that the development plan did not contain policies specific to the particular form of development under consideration in these appeals (IR12.15). For the reasons given at IR12.13-12.14, he also agreed with the original Inspector at IR12.15 that it was necessary to consider whether the development plan contains relevant general development control policies sufficient to enable a judgment to be made as to whether the proposed development would be acceptable or unacceptable in principle.
35. For the reasons given at IR12.16-12.18, he further agreed with the original Inspector at IR12.18 that Policy DM2 is consistent with the original NPPF and should be given full weight, and that on its own it provides a sufficient basis to judge the acceptability of the appeal proposals in principle. He therefore agreed that the development plan was not 'silent' in this instance. He further considered that it was not absent or out-of-date in terms of consistency with relevant original NPPF policies.
36. For the reasons given at IR12.19-12.24 and IR12.32, the Secretary of State agreed with the Inspector at IR12.24 that Lancashire County Council's approach to the PPGM and evolving national policy on shale gas development was appropriate, and that relevant policies, such as Policy DM2 of the JLMWLP, were not to be regarded as out-of-date simply because they do not specifically deal with shale gas.
37. The Secretary of State considered the relevance of the Fylde Borough Local Plan (the FBLP). For the reasons given at IR12.25-12.31, he agreed with the Inspector at IR12.30 that where policies in the FBLP were capable of sensible application to minerals development, then they could reasonably be applied. He further agreed at IR12.31 that Policy EP11 could not sensibly be applied to these schemes.
38. Overall the Secretary of State concluded in the original decision letter that the weighted balance in the last bullet point of paragraph 14 (decision-taking) of the original NPPF did not apply because the development plan was not absent, silent or out-of-date.

39. The Secretary of State has reviewed his findings on this matter in the light of the matters set out in paragraphs 10-18 above. The relevant test is now set out at paragraph 11(d) of the revised NPPF which indicates that the weighted balance applies where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date.
40. The highways Inspector, at HIR1.25, notes that the Secretary of State previously determined that JLMWLP Policy DM2 was consistent with the original NPPF and should be given full weight and that, in addition, the Secretary of State considered that on its own it provided a sufficient basis to judge the acceptability of the proposal in principle. The highways Inspector goes on to consider, at HIR1.25, that the thrusts of the revised NPPF transport policies that relate to this appeal are materially similar to those in the 2012 version and that therefore he can see no reason why Policy DM2 should not continue to be given full weight. The Secretary of State agrees.
41. Overall the Secretary of State considers that his original reasoning on this matter holds good in the light of changes since the original decision letter was issued, and that where policies in the newly adopted FLP are capable of sensible application to minerals development, then they can reasonably be applied. He notes that Policy EP11 of the FBLP does not have a direct parallel in the FLP, where matters to do with Landscape are set out in ENV1. Overall he considers that there are relevant development plan policies, and that the policies which are most important for determining the application are not out of date. The weighted balance therefore does not apply.

#### **Need – National policy and the 2015 Written Ministerial Statement**

42. In his original decision letter, the Secretary of State considered the weight that should be attached to the need for shale gas exploration and the 2015 WMS. For the reasons given at IR12.34-12.52, he agreed with the Inspector at IR12.50 that the factors identified by Friends of the Earth did not undermine or materially reduce the weight to be attributed to the 2015 WMS. He further agreed that the need for shale gas exploration is a material consideration of great weight in this appeal, but that there is no such Government support for shale gas development that would be unsafe and unsustainable (IR12.52). The Secretary of State also considered that the need for shale gas exploration set out in the 2015 WMS reflected, among other things, one of the Government's objectives in the 2015 WMS, in that it could help achieve secure energy supplies.
43. He also considered that how the Government may choose to adapt its energy policies is a matter for possible future consideration, and that if thought necessary, this could be addressed through future national policy. This is not a matter that falls to be considered in this appeal.
44. The Secretary of State has reviewed his conclusions in the light of the matters set out at paragraphs 10-18 above. In line with the 2015 WMS, the January 2018 WMS, the May 2018 WMS, the original NPPF and the revised NPPF, he considers that great weight attaches to the benefits of mineral extraction; in this case the national need for shale gas exploration and the benefits of on-shore oil and gas development as set out at paragraph 209(a) of the revised NPPF and the May 2018 WMS. While the current proposal for exploration would not necessarily lead directly to production of shale gas, it is a necessary precursor of exploitation of the resource and as such the 'great weight' set out in paragraph 205 of the revised NPPF attaches to it.

## Habitats Regulations Assessment

45. In his original decision letter, the Secretary of State considered the Inspector's assessment of Habitats Regulations matters (set out at IR1.103-1.118 for Roseacre Wood) and agreed with the original Inspector that for the reasons given in these paragraphs and IR12.876, there would be no likely significant effects upon the Morecambe Bay SPA/Ramsar and Ribble and Alt Estuaries SPA/Ramsar as a result of the development at the Roseacre Wood exploration site, either alone or in combination with other plans or projects. Like the original Inspector he was satisfied that the necessary mitigation measures had been identified and could be secured by planning condition and those measures would operate effectively and as envisaged (IR12.876).
46. The Secretary of State has noted the appellant's view<sup>1</sup> that 'the approach in *People over Wind* has no application on the facts of this case...the Shadow HRA undertaken by the Appellant complies with the principles of the *People over Wind* judgment. In any event, the conclusion of no impact on the integrity of the SPA would be the same irrespective of the stage at which the mitigation measures were taken into account so there can be no question of prejudice arising in these circumstances.'
47. The Secretary of State has concluded that in the light of the *People over Wind* judgment, the screening assessment undertaken for the purposes of this application and presented to the original inquiry is no longer legally sound. However, as the results of any rescreening or appropriate assessment could not overcome his reasons for dismissing this appeal and refusing planning permission, he does not consider that it is necessary to rescreen the proposal or further refer back to parties on this matter before reaching his decision.

### The adequacy of the proposed arrangements for the production and treatment of waste fluid

48. The Secretary of State has considered the original Inspector's analysis of the planning policy background, the relationship between the planning decision process and other regulatory regimes, and proposed arrangements for the production and treatment of waste fluid, as set out at IR12.583-12.635. For the reasons given in these paragraphs, he agrees with the original Inspector's conclusion at IR12.632 that the position adopted by the Environment Agency has not left a gap in the environmental controls that would require further consideration of the matter by the decision-maker. He further agrees with the original Inspector at IR12.633 that there would not be any material land use planning adverse impacts associated with the proposed means of treatment of the flowback fluid, including the practical capacity of the treatment facilities to accept it. Like the original Inspector he is satisfied that the appellant has demonstrated, by the provision of appropriate information, that all impacts associated with the production of flowback fluids by the projects would be reduced to an acceptable level, and that the proposed development would be in accordance with JLMWLP Policy DM2 and relevant national policy (IR12.635).

### Public health and public concern

49. In his original decision letter, the Secretary of State considered carefully the evidence and the representations that were put forward in respect of public health and public concern (IR12.636-12.662). He agreed with the original Inspector for the reasons given at IR12.655 and IR12.658 that it could be assumed that the regulatory regime system would

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<sup>1</sup> Letter of 13 June 2018 from Herbert Smith Freehills on behalf of the appellant



operate effectively to control emissions and agreed that there would be no health impacts arising from potential exposure to air and water pollutants. He considered the potential health impacts of public concern. He agreed with the original Inspector at IR12.659 that the processes would be regulated and all pathways that could potentially impact upon human health would be monitored and appropriately controlled, and therefore considered these concerns carry little weight in the planning balance. He agreed with the original Inspector at IR12.661 that the available evidence does not support the view that there would be profound socio-economic impacts or climate change impacts on health associated with these exploratory works. He noted that there was no outstanding objection raised by Public Health England to the proposed development on public health impact grounds (IR12.644). Overall he agreed with the original Inspector that the appellant had demonstrated by the provision of appropriate information that all potential impacts on health and wellbeing associated with the projects would be reduced to an acceptable level, and further agreed that the proposed development would be in accordance with JLMWLP Policy DM2, CS Policies CS5 and CS9 and relevant national policy (IR12.662).

50. The Secretary of State has reviewed his conclusions in the light of the matters set out at paragraphs 10-18 above. The Supplementary Environmental Report, which concludes that whilst new baseline data has been collected (including data on population statistics, life expectancy, deprivation and health) and there have been some changes to the data, the community profile has not changed significantly enough to alter the outcome of the assessment and as such is deemed to still be valid. The appellant considers that this is consistent with the position as at the date of the Secretary of State's original decision letter. The Secretary of State notes that no representations have been received which dispute the conclusions in the Supplementary Environmental Report, and his overall conclusions on this matter remain unchanged.

### Climate change

51. In his original decision letter the Secretary of State considered the representations on climate change which were made by Friends of the Earth and other parties at the original inquiry, and took into account the responses to the reference back exercise (referred to in paragraph 10 of the original decision letter). For the reasons given at IR12.673-12.678, he agreed with the original Inspector's conclusion that the issues raised as to how shale gas relates to the obligations such as those set out in the Paris Agreement and the Intergovernmental Panel on Climate Change carbon budgets are a matter for future national policy and not for this appeal (IR12.677). The Secretary of State considered that this is also the case for the Government's approach to Carbon Capture and Storage. He further agreed with the original Inspector at IR12.678 that for the purposes of this appeal, the analysis should be limited to a consideration of the project emissions during construction, operation and decommissioning, together with cumulative impacts as assessed by the Environmental Statements within the framework set by national and local policies.

52. The Secretary of State further considered that the need for shale gas exploration set out in the 2015 WMS reflected, among other things, the Government's objectives in the WMS, in that it could help to achieve lower carbon emissions and help meet its climate change target.

53. The Secretary of State further considered the question of emissions arising from this proposal. For the reasons given at IR12.679, he agreed with the original Inspector that there was no material error in the Environmental Statement estimate of methane

emissions. For the reasons given at IR12.682, he further considered that in the light of the support provided by the national policy for shale gas exploration, the emissions likely to arise from the appeal proposal would be entirely reasonable and fully justified (IR12.682).

54. Overall, the Secretary of State agreed with the original Inspector's conclusion at IR12.686 that the project would be consistent with the original NPPF's aim to support the transition to a low carbon future in a changing climate. He further agreed that in respect of climate change, the appellants had demonstrated, by the provision of appropriate information, that all material, social, economic or environmental impacts that would cause demonstrable harm would be reduced to an acceptable level and that the project represented a positive contribution towards the reduction of carbon. He considered that the proposed development would be in accordance with JLMWLP Policy DM2 and relevant national policy.
55. The Secretary of State has reviewed his conclusions in the light of the matters set out at paragraphs 10-18 above. Paragraph 209(a) of the revised NPPF sets out that on-shore oil and gas development, including unconventional hydrocarbons, has benefits for the security of energy supplies and supporting the transition to a low-carbon economy, and he considers that the project would be consistent with these aims. His conclusions on the other matters set out above are unchanged.

#### Planning conditions sought by Friends of the Earth

56. Friends of the Earth have sought a number of planning conditions if planning permission were to be granted for the proposed development (IR12.687-12.695). For the reasons given in these paragraphs, the Secretary of State agrees with the original Inspector's conclusions that a baseline health survey of local residents would not be necessary, or relevant, and that it would not be reasonable to impose it (IR12.691). He agrees that a condition requiring the reporting of any material breach of planning conditions to Lancashire County Council within 48 hours should be imposed (IR12.693). He agrees that it would not be necessary or reasonable to impose a condition requiring the developer to provide Lancashire County Council with information identifying the available permitted off-site waste treatment facilities (IR12.695).

#### **Other considerations**

##### Seismicity

57. In his original decision letter, for the reasons given at IR12.696-12.703 and IR12.810, the Secretary of State agreed with the original Inspector at IR12.810 that the risk of induced seismicity would be reduced to a minimum and an acceptable level. He agreed with the original Inspector's view that there were no concerns in relation to the effectiveness of the proposed monitoring arrangements or the enforceability of the proposed means of control.
58. The Secretary of State has reviewed his conclusions in the light of the matters set out at paragraphs 10-18 above. The Supplementary Environmental Report, which concludes that there has been no significant change to the baseline conditions and predicted impacts in relation to induced seismicity, and that the resulting residual effects of the project are not significant. The appellant considers therefore that the position is consistent with the position as at the date of the Secretary of State's original decision letter. The Secretary of State notes that no representations have been received which

dispute the conclusions in the Supplementary Environmental Report, and his overall conclusions on this matter remain unchanged.

#### Impact on house prices and house insurance

59. For the reasons given at IR12.704-12.711 and IR12.811, the Secretary of State agrees with the original Inspector at IR12.811 that planning is concerned with land use in the public interest. He agrees that there are no health and wellbeing impacts of any substance associated with this consideration over and above those which have already been taken into account. He considers that the protection of private interests such as house prices and insurance are factors to which no weight should be attributed.

#### Alternatives including microwaves as an alternative to current fracking methods

60. For the reasons given at IR1.84, IR12.712-12.718 and IR12.812, the Secretary of State agrees with the original Inspector at IR12.812 that the matter of alternatives has been properly considered by the Environmental Statement and that all policy and legal requirements have been met in that respect.

#### The effect on flood risk, water quality and waterways

61. In his original decision letter, for the reasons given at IR12.719-12.729 and IR12.813, the Secretary of State agreed with the original Inspector IR12.813 that no flood risk issues of any substance would arise, that there would be no significant effects on surface water run-off, drainage or water supplies and that the proposed development would not have any material adverse impact on existing water supplies and quality.

62. The Secretary of State has reviewed his conclusions in the light of the matters set out at paragraphs 10-18 above. The Supplementary Environmental Report highlights that new guidance has been issued pertinent to the assessment of water resources. It states that a desk study of available information has been undertaken, and that the site remains unchanged with regards to geology, proximity to surface watercourses and further existing hydrological features. It further states that the main change in the observed Water Framework Directive (WFD) status is with regards to Lords Brook where the watercourse is currently recorded as attaining a Poor Overall and Poor Ecological status. The Supplementary Environmental Report states that, in terms of results, this change will have a negligible impact with the 2014 ES Chapter assessing the watercourse with a higher significance; it therefore provides an assessment against a slightly worst-case scenario. The Supplementary Environmental Report concludes that the resulting residual effects of the Project are not significant and that this position is consistent with that as at the date of the Secretary of State's original decision letter. The Secretary of State notes that no representations have been received which dispute the conclusions in the Supplementary Environmental Report. His overall conclusions on this matter remain unchanged.

#### Air quality and dust

63. In his original decision letter, for the reasons given at IR12.730-12.735 and IR12.814, the Secretary of State agreed with the original Inspector at IR12.735 that no material adverse effects would result from air quality or dust as a result of the project either on its own or in combination.

64. The Secretary of State has reviewed his conclusions in the light of the matters set out at paragraphs 10-18 above. The Supplementary Environmental Report states that there have been a number of changes to guidance relating to the operational phase of the project since the original decision letter. The appellant considers that the air quality assessment for the construction phase of the development as present in the 2014 Environmental Statement remains valid. However, a re-assessment of the operational phase of the development has been undertaken. This concluded that the residual air quality effects of the project are of negligible significance under a conservative operating scenario and that it remains consistent with the position as at the date of the original decision letter.
65. The Supplementary Environmental Report states that Defra LAQM background mapping data was revised in 2016 and 2017, and concludes that, according to the Defra website, there remain no Air Quality Management Areas (AQMAs) within the vicinity of the site. The Secretary of State notes that no representations have been received which dispute the conclusions in the Supplementary Environmental Report, and his overall conclusions on this matter remain unchanged.

#### Light pollution

66. In his original decision letter, for the reasons given at IR12.736-12.739 and IR12.816, the Secretary of State agreed with the original Inspector at IR12.816 that given the mitigation that could be secured by planning condition, and the temporary nature of the development, the effects would not be unacceptable.
67. The Secretary of State has reviewed his conclusions in the light of the matters set out at paragraphs 10-18 above. The Planning Statement Addendum notes that Policy EP28 (Light Pollution) in the FBLP has not been replaced in the FLP; instead light pollution will be dealt with in accordance with the NPPF. The Planning Statement Addendum acknowledges that the site will be lit at night, but in accordance with the NPPF, it would be subject to a detailed lighting scheme to limit light pollution. The Secretary of State notes that no representations have been received which dispute the conclusions in the Planning Statement Addendum, and his overall conclusions on this matter remain unchanged.

#### Vibration

68. For the reasons given at IR12.740-12.743 and IR12.815, the Secretary of State is satisfied like the original Inspector at IR12.815 that no material adverse impacts would arise as a result of vibration associated with the projects either on their own or in combination.

#### Heritage assets

69. In his original decision letter, and for the reasons given at IR12.744-12.748 and IR12.817, the Secretary of State agreed with the original Inspector at IR12.817 that a planning condition would satisfactorily safeguard any archaeological assets during construction. The Secretary of State concluded that there would be no harm to heritage assets as a result of the proposed development and that all listed buildings and their settings would be preserved.
70. The Secretary of State has reviewed his conclusions in the light of the matters set out at paragraphs 10-18 above. The Supplementary Environmental Report notes that new

guidance has been issued and new baseline data has been collected. It states that there remain no designated heritage assets within the 1km study area and there are now 19 non-designated heritage assets shown within the Historic Environment Record. The appellant considers that the position is the same as at the date of the Secretary of State's original letter. The Secretary of State notes that no representations have been received which dispute the conclusions in the Supplementary Environmental Report. His overall conclusions on this matter remain unchanged.

### Economic benefits

71. For the reasons given at IR12.749-12.769 and IR12.818, the Secretary of State agrees with the original Inspector at IR12.769 that the local economic benefits of the exploration stage would be modest. He attributes little positive weight to these benefits. The Secretary of State notes that the original Inspector considers little weight should be attributed to the national economic benefits which could flow from commercial production at scale at some point in the future, in the context of the exploratory works development which is the subject of these appeals. As both the original and revised NPPF make clear that each stage should be considered separately, the Secretary of State considers that in the context of these appeals, no weight should be attributed to the national economic benefits which could flow from commercial production in relation to this site at scale at some point in the future.

### Economic disbenefits

72. In his original decision letter, for the reasons given at IR12.770-12.782 and IR12.819-820, the Secretary of State agreed with the original Inspector at IR12.820 that there would be no material adverse impact upon the local economy including tourism and farming. He further agreed that the scheme would be in accordance with relevant development plan policies, and there would be no material conflict with the original NPPF aims for sustainable economic growth.

73. The Secretary of State has reviewed his conclusions in the light of the matters set out at paragraphs 10-18 above. He agrees with the highways Inspector, for the reasons given at HIR15.165-15.167, that in comparison to the effects on the Blue Route (BR), there would be additional adverse economic impacts on local business if the Green Route (GR) and Red Route (RR) were to be used by HGVs visiting the appeal site (HIR15.167). He considers that this carries moderate weight against the proposal.

### Landscape and visual impact

74. In his original decision letter, the Secretary of State gave very careful consideration to the effect that the proposed development would have on the character and appearance of the surrounding rural landscape and the visual amenities of local residents. He agreed with the original Inspector at IR12.369 that there is a clear distinction to be made between the drilling, hydraulic fracturing and initial flow testing phases and other phases.

75. For the reasons given at IR12.361-12.362, the Secretary of State agreed with the original Inspector at IR12.362 that the landscape does have some value at local level and the appeal site displays a number of positive characteristics identified by the Lancashire Landscape Strategy. For those reasons, he agreed that it was a 'valued' landscape in original NPPF terms.

76. For the reasons given at IR12.363-12.369, he agreed with the original Inspector at IR12.369 that during the drilling, hydraulic fracturing and initial flow testing phases, the combined effect of the changes would result in a significant effect on the landscape that would be perceived from a wider area of about 650-700m. For the reasons given at IR12.370-372 he agreed at IR12.372 that there would be an adverse impact from the lighting when rigs were on site during the first phase of the development, but that during the extended flow testing phase, there would be very limited additional impact on the landscape due to lighting. He further agreed, for the reasons given at IR12.373-12.374, that the significant adverse landscape effects would be experienced during the drilling, hydraulic fracturing and initial flow testing phases, and that this would be a short-term impact. He took into account that the particular effects associated with the proposed development would be reversed at the end of the temporary six-year period, and that any localised changes to landscape components would be fully remediated (IR12.374).
77. When considering the visual effects of the proposal, the Secretary of State took into account the original Inspector's assessment of the photomontages which were provided by parties (IR12.351-12.352). He agreed that the photomontages produced by Mr Halliday for the Roseacre Awareness Group provided a more realistic and reliable impression of the likely impact of the proposed development, and took those photomontages into account in reaching his conclusion.
78. For the reasons given at IR12.376-12.380, the Secretary of State agreed with the original Inspector at IR12.402 that there would be some significant adverse visual impacts, but that only a low number of residential receptors would experience effects of that magnitude. He further agreed that the proposal would not affect the outlook of any residential property to such an extent that it would be so unpleasant, overwhelming and oppressive that it would become an unattractive place to live (IR12.380). He considered the original Inspector's assessment of the impact on people enjoying recreational activity in the area at IR12.381-12.382. He agreed with her conclusion that there would be a significant adverse visual effect experienced by users of this section of Roseacre Road, and at certain points on Public Rights of Way in the vicinity of the site during the drilling, hydraulic fracturing and flow testing phases (IR12.382). He further agreed that the visual effects of significance would only be experienced during these phases (IR12.383).
79. The Secretary of State considered the implications of imposing a condition limiting the height of the drilling rig to 36m. He took into account the operator's need for flexibility as well as the potential benefits in terms of visual amenity. He agreed with the original Inspector's conclusion at IR12.389 that there is no substantial evidence to support the view that there would be any genuine difficulties or undue burden placed upon Cuadrilla in gaining access to a 36m rig. For the reasons given at IR12.388 and IR12.390-12.393, he agreed with the original Inspector that the change to residential receptors in close proximity to the site would be exceedingly obvious and that the difference would constitute a distinct and real improvement in their visual amenity (IR12.393). He further agreed, for the reasons given at IR12.394-12.396, that such a condition would meet all the tests set out in the original NPPF, paragraph 206, and would be in accordance with development plan policy (IR12.396).
80. For the reasons given at IR12.384-386, the Secretary of State agreed with the original Inspector's conclusion that there would be no cumulative landscape and visual effects of any significance.

81. The Secretary of State considered the original Inspector's overall conclusions on landscape and visual impact. For the reasons given at IR12.397-12.400, IR12.404 and IR12.844-12.848, he agreed with the original Inspector at IR12.400 that although there are landscape impacts that would cause demonstrable harm which cannot be eliminated, they have been reduced to an acceptable level and the development would therefore be in accordance with Policy DM2. He further agreed at IR12.401 that there would be no conflict in the long term with the aim of the original NPPF to conserve and enhance the natural environment. For the reasons given at IR12.402-12.404 he agreed with the original Inspector at IR12.403 that there would be harm arising from the visual effects of the development but this has been reduced to an acceptable level such that there would not be conflict with Policy DM2.
82. The Secretary of State has reviewed his conclusions in the light of the matters set out at paragraphs 10-18 above. He considers that the publication of the revised NPPF does not affect his conclusions that the site is a 'valued' landscape. He considers that the condition proposed in paragraph 79 above would meet all the tests set out in paragraph 55 of the revised NPPF, and that there would be no conflict in the long term with the aim of the revised NPPF to conserve and enhance the natural environment.
83. The Supplementary Environmental Report records that a search was carried out for planning applications on the Fylde Borough Council and Lancashire County Council planning portals for any applications received from 01/01/2014-22/08/2017. Seven small scale, domestic planning applications were identified within a 1km radius of the site (e.g. building extensions and erection of stables). However, the Report considers none are likely to materially change the outcomes of the landscape and visual assessment. In addition all viewpoints adopted during the 2015 Landscape and Visual Impact Assessment (LVIA) ES Addendum were revisited to assess any changes in landscape character. The Supplementary Environmental Report advises that the revised visual baseline indicate that the visual baseline has not changed significantly since the production of the 2015 LVIA ES Addendum. The Supplementary Environmental Report concludes that with no significant change to the baseline conditions and predicted impacts, the resulting residual effects of the project are not significant except during the drilling, hydraulic fracturing and flow testing phases when significant effects are anticipated. This is consistent with the position as at the date of the Secretary of State's original decision letter. The Secretary of State notes that no representations have been received which dispute the conclusions on the Supplementary Environmental Report, and his overall conclusions on this matter remain unchanged.

#### Noise impacts

84. The Secretary of State has carefully considered the noise impacts of the proposal in the light of the policy and guidance, the Environmental Statement and Addendum (IR12.509-12.512), and the representations made by the various parties. He agrees with the original Inspector at IR12.501 and 12.504 that the national and development plan policy background and the application of standards and guidance are as set out in relation to Appeal A (i.e. IR12.158-12.176).
85. The original Inspector's analysis of the appropriate night-time noise limit is set out at IR12.513-12.534 and IR12.852-853. For the reasons given in these paragraphs, the Secretary of State agrees with the original Inspector at IR12.531 that 42dB is not the appropriate level at which to set a LOAEL in this appeal, and that 35dB is likely to represent the LOAEL in this case. He further agrees with the original Inspector's

conclusions at IR12.532, IR12.534 and IR12.543 that the various proposed noise conditions in combination with a limit of 37dB LA<sub>eq</sub>, 1h (free field) would satisfactorily control adverse noise impacts during the night and would reflect the requirements of the PPGM.

86. He agrees with the original Inspector that at this level, no significant adverse noise impact would result, and that this is the lowest level which could be achieved without placing an unreasonable burden on the appellant at Roseacre Wood. He further notes that this is below the LOAEL of 40dB which is recommended by the WHO Night Noise Guidance and which takes into account the needs of vulnerable groups. He agrees with the original Inspector at IR12.531 that there are factors in this particular case that support a lower threshold.
87. The original Inspector's analysis of the appropriate daytime, evening and weekend noise limits is set out at IR12.535-12.538 and IR12.852. For the reasons given in these paragraphs, the Secretary of State agrees with the original Inspector that daytime noise limit should be 55dB LA<sub>eq</sub> (1 hour). He further agrees that the permitted hours of pumping associated with the hydraulic fracturing operations should be restricted to 0900 to 1300 hours on Saturdays, and 0800 to 1800 on weekdays. He agrees with the original Inspector's view that the available evidence does not support any further restrictions on working hours or noise limits either during the week or at weekends (IR12.538).
88. For the reasons given at IR12.540-541, the Secretary of State is satisfied that the appellant's noise assessment provides a reliable indication of the level of noise that would be likely to be produced at source and experienced by nearby residents. He agrees that, in practice, the appellant would be able to comply with the proposed conditions at the required limits (IR12.540). He further agrees that the conditions proposed to control the impact of noise in this case would be readily monitored and if necessary enforced (IR12.541).
89. He agrees with the original Inspector at IR12.543 and IR12.853 that subject to the imposition of appropriate planning conditions, the development would be in accordance with CS Policy CS5 and JLMWLP Policy DM2. The Secretary of State notes that Policy EP27 of the FBLP has not been carried forward in the newly adopted FLP, and that noise is to be dealt with in accordance with the provisions of the NPPF. He considers that the proposal is in accordance with the relevant provisions of the revised NPPF.

#### Community, recreation and amenity issues

90. In his original decision letter, the Secretary of State considered the likely impact on the community, recreation and amenity value of the area. He agreed with the original Inspector at IR12.550 that any further development proposals would require the grant of planning permission, and that it is appropriate to limit the consideration of impacts to those which would be the result of the exploration appeal. For the reasons given at IR12.551-12.552, he agreed with the original Inspector that the general perception of visitors of the attractiveness of the Fylde as a holiday destination would be little changed by the appeal schemes. He agreed with the original Inspector at IR12.553 and IR12.854 that there was likely to be some degree of economic disbenefit to local businesses in close proximity to the site, but that any such impacts would be localised and of relatively short duration. He further agreed that the social and economic impacts would be reduced to an acceptable level and the harm to the local community would be minimised. He agreed that the scheme would be in accordance with Policies CS5 and DM2, and that



there would not be any material conflict with paragraph 20 of the original NPPF and the achievement of economic growth (IR12.553 and IR12.854).

91. The Secretary of State has reviewed his conclusions in the light of the matters set out at paragraphs 10-18 above. He considers that there is no conflict with the aims of the revised NPPF to build a strong competitive economy.
92. The Supplementary Environmental Report states that updated baseline data has been collected. It concludes that, whilst some of the data has changed, the updated baseline data has not changed significantly enough to alter the outcome of the assessment and as such it is deemed to remain valid. The appellant considers therefore that the position is consistent with the position as at the date of the Secretary of State's original decision.
93. The Secretary of State's conclusions on economic disbenefits are set out at paragraph 73 above. For the reasons given in HIR15.168, the Secretary of State considers that there is likely to be an adverse effect on community recreation and amenity. He considers that this carries moderate weight against the proposal.

### Ecology

94. The Supplementary Environmental Report records that updated baseline ecological surveys were carried out for the project in 2017 using the most recent survey guidelines. The report states that the 2017 ecological survey results were comparable with those undertaken in 2013 and 2014. The executive summary of the Ecological Constraints Walkover 2017 concludes that the proposed mitigation measures remain unchanged from those as described in the 2014 Environmental Statement. The only additional finding was the identification of a single area of *Rhododendron ponticum* (Rhododendron) in Roseacre Wood, within 10m of the proposed access route into the site. The report records that an additional Invasive Species Management Plan will be required for any works in close proximity to the stand of Rhododendron. The Secretary of State notes that no representations have been received which dispute the conclusions of the Supplementary Environmental Report. He agrees with its conclusions, but given his overall decision on this case, has not proceeded to consider the necessity of securing the Invasive Species Management Plan.

### Hydrology and ground gases

95. The Supplementary Environmental Report refers to updated guidance which stresses the importance of measuring methane emissions for 12 months prior to hydraulic fracturing. The Supplementary Environmental Report states that the monitoring of dissolved methane in groundwater commenced on site on 13 October and that at the time it was written, 11 months of monitoring had been completed. The appellant considers that there have been no significant changes to the baseline conditions and predicted impacts and that the reassessment has concluded that the resulting residual effects of the project are not significant. They consider that the position is the same as at the date of the Secretary of State's original decision letter. The Secretary of State notes that no representations have been received which dispute the conclusions of the Supplementary Environmental Report. He agrees with its conclusions.

### Highway safety concerns

96. In his original decision letter, the Secretary of State gave careful consideration to the highway safety impacts of Appeal C. He considered the surveys which were carried out

by various parties (IR12.421-12.444). For the reasons given at IR12.436-12.443, he agreed with the original Inspector at IR12.444 that the Appellant's survey evidence underestimated the use of the preferred route by cyclists, pedestrians and equestrians. He also considered the safety/risk assessments which were put forward by various parties (IR12.445-12.454). For the reasons given at IR12.445-12.447, he agreed with the original Inspector at IR12.447 that the value of the Appellant's risk assessment was limited to the assessment and recommendations made in respect of the Dagger Road passing places.

97. The Secretary of State considered the original Inspector's assessment of the safety of the Dagger Road/Treales Road/Station Road junction. For the reasons given at IR12.456-12.462, he agreed with the original Inspector that there are aspects of the road layout at this point which carry with them obvious concerns as to the ability of large articulated HGVs to negotiate them safely. He further agreed that the appellant's assertions about the safety of this part of the route were not supported by any detailed analysis or risk assessment, and that the appellant's evidence did not satisfactorily rebut the risks at this junction identified in Roseacre Awareness Group's Risk Assessment (IR12.462).
98. The Secretary of State considered the original Inspector's assessment of the safety of the Salwick Road/Inskip Road junction at IR12.462a-12.464. For the reasons given in these paragraphs, like the original Inspector he was not satisfied that the use of this junction by large articulated HGVs had been properly considered and assessed (IR12.464).
99. The Secretary of State considered the original Inspector's assessment of the safety of Dagger Road and the proposed passing places at IR12.465-12.475. For the reasons given in those paragraphs he agreed that the proposed mitigation in the form of passing places had not been shown to be workable in practice, and as envisaged, the scheme would not achieve the desired outcome. He agreed with the Inspector that there were inherent deficiencies and risks associated with what was proposed that had yet to be addressed and which could not be satisfactorily overcome by the imposition of planning conditions (IR12.475).
100. For the reasons given at IR12.476-12.480, the Secretary of State considered that the features of the route which caused the greatest concern were those identified in paragraphs 90-92 of the original decision letter (IR12.477). He agreed that the scheme was unlikely to materially impact upon highway safety so far as the village of Wharles was concerned (IR12.480).
101. The Secretary of State considered the likely effectiveness of the Traffic Management Plan in mitigating relevant risks. For the reasons given at IR12.481-2.495, he agreed with the original Inspector that the Traffic Management Plan would not adequately address the particular safety issues associated with vulnerable road users, and would not serve to adequately address the shortcomings of the route. He agreed that it did not provide a satisfactory means of mitigation for the various identified risks associated with the preferred route (IR12.491-492). He further agreed that it did not automatically follow that because accidents have not happened in the past, they would not be likely to happen in the future, given the new scenario that would arise as a result of the proposed development (IR12.497).
102. Overall the Secretary of State agreed with the original Inspector at IR12.499 and IR12.849-12.851, that whilst the actual duration of the highest HGV flows would be relatively short, the volume and percentage increases in HGV traffic that would arise at

those times would be high. He agreed that this, combined with the deficiencies of the route, would be likely to result in a real and unacceptable risk to the safety of people using the public highway, including vulnerable road users. He agreed that in the absence of satisfactory mitigation measures, it could not be concluded that the use of the preferred route would represent a safe and sustainable approach. He further agreed that the proposed development would have a serious and very significant adverse impact on the safety of people using the public highway and would not be in accordance with JLMWLP Policy DM2 or CS Policy CS5. He also agreed that the residual cumulative impacts of development would be severe, and the scheme would be contrary to paragraph 32 of the original NPPF (IR12.500).

103. However, in his original decision letter, the Secretary of State noted that the above conclusions largely rested on the failure of the appellant to provide adequate evidence that they had properly considered and addressed the safety issues, and the failure of the appellant to demonstrate that the proposed mitigation was workable in practice. The Secretary of State considered that the appellant may be able to demonstrate that the safety concerns raised by parties and the original Inspector could be satisfactorily mitigated. The Secretary of State wished to give the appellant and other parties the opportunity to provide additional evidence on this point, and the inquiry was reopened for this purpose. The Secretary of State received the report of the highways Inspector on 28 September 2018. He has taken this report into account in reaching his final decision, along with the proposed changes put forward by the appellant, and sets out his conclusions below.
104. The Secretary of State has considered the adequacy of the surveys which were carried out. He notes that the highways Inspector does not reach the same conclusion as the original Inspector that the appellant's survey evidence underestimated the use of the BR by pedestrians (HIR15.29). However, for the reasons given at HIR15.8-15.16 and HIR15.28-15.32, the Secretary of State agrees with the highways Inspector that the failure to survey critical parts of the GR and RR, close to the main centres of population at Elswick and Inskip, from the perspective of pedestrian usage, is a serious weakness in the appellant's case (HIR 15.29). He further agrees that the equestrian and pedestrian surveys along critical parts of the GR and RR are inadequate (HIR15.172).
105. The Secretary of State has taken into account the traffic considerations set out at HIR15.17-15.27. He notes LCC's comparison of the number of days when peak traffic generation of 40-50 two-way HGVs per day was predicted has risen from 12 weeks at the original inquiry to 27 weeks, unless the appellant obtains a permit to treat surface water on site, when it would be 18 weeks (HIR15.20). For the reasons given at HIR15.17-15.27, the Secretary of State agrees with the highways Inspector at HIR15.27 that there would be significant increases in the volume and type of HGVs using the affected roads on weekdays, and that there would also be a substantial proportionate increase in the number of OGV2 vehicles using the road.
106. The Secretary of State has taken into account the safety concerns raised by parties and proposed mitigation (HIR15.33-15.45). He agrees with the assessment of the highways Inspector that successful implementation of a Route App cannot be relied on at this stage, and in any case would not be available to the overwhelming majority of drivers who would be using these roads (HIR15.42). He further agrees that the practicality of delivering driver education to a disparate and fluctuating group of drivers, not within the direct control of the appellant, cannot be guaranteed (HIR15.43). He further agrees that while 'highway improvement work', if effectively implemented, could go a long way to

making the roads safer for cyclists and other vulnerable road users in the new situation, a capped sum of £100,000 would be inadequate to rectify these safety hazards (HIR15.44-15.45).

107. The Secretary of State has considered the specific concerns around visibility which are set out at HIR15.46-15.57. He notes at HIR15.49 that it is now agreed that visibility at five of the proposed passing places does not meet the requirement set out at HIR15.48. The Secretary of State agrees with the highways Inspector that the appellant's inability to provide passing places that conform to the guidance previously given and that are workable in practice is a fundamental weakness in the appellant's case (HIR15.49). For the reasons given at HIR15.46 and HIR15.50-15.57, he further agrees that for visibility outside settlements to become a non-issue, a number of kilometres of hedgerows would need to be reduced in height to an extent that they were unable to grow during the spring and summer to heights that would restrict visibility from small cars or vans around the numerous bends and at the junctions along this route. He agrees with the highways Inspector's assessment that there was no evidence before the Inquiry to suggest that that is achievable, even with the use of LCC's powers under the 1980 Highways Act (HIR15.57).

108. For the reasons given at HIR15.59, the Secretary of State agrees with the highways Inspector that there is no evidence that the fund for hedgerow replacement costs, which is to be established under the s.106 agreement and capped at £20,000 including VAT, would be sufficient.

#### *The Traffic Management Plan (TMP)*

109. The Secretary of State has considered the highways Inspector's analysis of matters to do with the TMP (HIR15.63-15.65) and protests (HIR15.158-15.164). He notes that the appellant accepts that the TMP is predicated on the use of alternative routes and agrees that the appeal could not be allowed if only one route were used (HIR15.64 and HIR15.162). The Secretary of State endorses that conclusion.

110. The Secretary of State has not taken experience at Preston New Road or the likelihood of protests at this site into consideration in reaching his conclusion. He agrees with the highways Inspector at HIR15.162 that as the BR and RR both begin or end with a drive across DHFCS Inskip and the GR and RR both begin or end along the B5269 between Elswick and Thistleton, the revised proposal is not as flexible as it might at first glance appear to be. For this reason and because of the lack of evidence before him on the implications of an unavailable route across DHFCS Inskip (HIR15.65), he does not have confidence that the TMP would work effectively to control site traffic.

#### *The Blue Route (BR)*

111. The Secretary of State notes that despite the original Inspector's issues concerning the Dagger Road/Treales Road/Station Road junction, and the prominence given to them in the original Inspector's report, the appellant has offered no mitigation to overcome these concerns (HIR15.69), and agrees with the highways Inspector's view that the appellant has offered no meaningful risk assessment (HIR15.76). For the reasons set out in HIR15.69-15.76, the Secretary of State agrees with the highways Inspector that the evidence still does not satisfactorily rebut the risks associated with the use of this junction by large articulated HGVs as identified by RAG and others and endorsed by the original Inspector (HIR15.76)

112. For the reasons given at HIR15.77-15.79, the Secretary of State agrees with the views of the original Inspector and the highways Inspector at HIR15.80. Like them he is not reassured that the use of the Inskip Road/Salwick Road junction by large articulated HGVs has been properly considered and assessed.
113. The Secretary of State has considered the proposed mitigation on Dagger Road and the highways Inspector's comments on it. For the reasons set out at HIR15.81-15.90, he agrees with the original Inspector and the highways Inspector that in its current form, Dagger Road is not capable of safely accommodating the additional traffic generated by the appeal proposal. He further agrees with the highways Inspector that with a comprehensive traffic lighted system, accompanied by some road improvements that removed the risks on this stretch of road, it could be (HIR15.91). However, he further agrees that such a scheme was not put before the Inquiry (HIR15.91), and that the appellant has failed to show that its proposed mitigation would be 'workable in practice' and would 'achieve the desired outcomes' (HIR15.87).
114. For the reasons given in HIR15.92-15.94, the Secretary of State agrees with the conclusions of the highways Inspector that despite the appellant having adequate time to assess the visibility aspects of this route from a safety perspective and to design robust mitigation to overcome potential hazards, the proposed mitigation in the form of passing places had not been shown to be workable in practice. He further agrees that it is not appropriate for outstanding issues such as inter-visibility to be relegated to a later detailed design process (HIR15.94).
115. The Secretary of State has considered the highways Inspector's assessment of potential safety issues on Station Road (HIR15.95-15.99). He agrees with the assessment, including that visibility over hedges is a highway safety risk which should weigh in the overall balance (HIR15.95).
116. The Secretary of State agrees with the highways Inspector at HIR15.100 that the appellant's new evidence is very similar to that advanced at the original inquiry and rejected by the original Inspector. He accepts that the appellant has prepared and submitted a more comprehensive scheme of mitigation than before, but has noted above that no mitigation has been proposed for the Dagger Road/Treales Road/Station Road junction or the Inskip Road/Salwick Road junction, and agrees that most of the other concerns raised by RAG and the original Inspector remain unaddressed. He further agrees with the highways Inspector that where effective mitigation has supposedly been introduced, that mitigation is not comprehensive, has unnecessary omissions and is consequently flawed. The Secretary of State agrees with the views of both the original and highways Inspectors that in respect of the BR, in the absence of satisfactory mitigation measures, the proposed development would have a serious and very significant adverse impact on the safety of people using the public highway. Like them, the Secretary of State is unable to conclude that the use of this route would represent a safe and sustainable approach (HIR15.101).

#### *Green and Red Routes together*

117. The Secretary of State agrees with the highways Inspector's analysis of the section of the new routes which forms part of both the GR and the RR (HIR15.104-15.112). His overall conclusions on each of these routes are set out below.

### *The Green Route (GR)*

118. The Secretary of State has carefully considered the highways Inspector's analysis of the GR and the proposed mitigation, as set out at HIR15.113-15.135. He agrees with the highways Inspector's analysis, including his concerns about passing places, the use of verges and the lack of relevant survey information (HIR15.114-15.123); traffic speed and the implications for safety (HIR15.124-15.128); the lack of proposed mitigation and lack of certainty that a successful TRO could be implemented at the High Street/Lodge Lane/Roseacre Road junction (HIR15.129); the substantially increased risk of accidents involving children at the southern end of the built-up part of Elswick Village and lack of proposed physical or hours of use mitigation to address the problem (HIR15.130-15.133).
119. Like the highways Inspector, the Secretary of State endorses the appellant's 2014 TA conclusion that 'if this route were to be used... it is recommended that [it] is only used as a one-way route towards the site' (HIR15.134). However, also like the highways Inspector, he is not satisfied that the proposed mitigation is sufficient to enable the route to be safely used even in an inbound direction, and does not find that the use of this preferred route would present a safe and sustainable approach. Overall the Secretary of State agrees with the highways Inspector's conclusion that the proposed development would have a very significant adverse impact on the safety of people using this part of the public highway. Like the highways Inspector, in the absence of satisfactory mitigation measures he is unable to find that the use of this preferred route would present a safe and sustainable approach (HIR15.135).

### *The Red Route (RR)*

120. The Secretary of State has carefully considered the highways Inspector's analysis of the RR and the proposed mitigation, as set out at HIR15.136-15.157. He agrees with the highways Inspector's analysis, including his concerns about the lack of mitigation on the narrow section of Lodge Lane as well as visibility problems on the approaches to both bends (HIR15.137-15.139); the potential for roll-over and rear end shunts at the Lodge Lane/Preston Road junction (HIR15.140-15.142); the increased safety risks arising from increased OGV2 numbers at Inskip Corner and the inadequacy of a convex mirror as a way of resolving those risks (HIR15.147-15.149); and the absence of survey evidence on pedestrian usage of Higham Side Road (HIR15.153-15.155).
121. Like the highways Inspector, the Secretary of State endorses the appellant's 2014 TA conclusion that this route section should not be used by site HGV traffic (HIR15.156) and is not satisfied that the proposed mitigation is sufficient. Like the highways Inspector he is unable to find that the use of the RR as a preferred route would represent a safe and sustainable approach, and concludes that the proposed development could have a serious and very significant adverse impact on the safety of people using this part of the public highway (HIR15.157).

### *Highways conclusions*

122. The Secretary of State agrees with the highway Inspector for the reasons given at HIR15.170-15.171 that the safety concerns relating to the BR might be capable of resolution through appropriate mitigation, but that the mitigation advanced by the appellant falls far short of that which would be necessary to make this route safe for use by the type and number of additional HGVs that would result if the appeal were to be

allowed (HIR5.170). He further agrees for the reasons given at HIR15.172 that the use of the GR and RR by vehicles visiting the appeal site would also be inappropriate.

123. Overall he agrees with the highways Inspector at HIR15.173 that in the absence of satisfactory mitigation measures, the preferred means of accessing the appeal site by HGVs cannot be considered to represent a safe and sustainable approach. As the risks identified that would cause demonstrable harm have not been eliminated or reduced to acceptable levels by the mitigation proposed, the development is therefore not in accordance with JLMW policy DM2. The Secretary of State further agrees with the highways Inspector that safe and suitable access to the site would not be achieved and significant impacts from the development on highway safety would not be mitigated to an acceptable degree. There would be an unacceptable impact on highway safety and the proposal would be contrary to paragraphs 108 and 109 of the revised NPPF.

### **Planning conditions**

124. In his original decision letter the Secretary of State took into account of the original Inspector's comments and conclusions on the Appeal C planning conditions, as set out at IR12.919-12.935 (as well as relevant matters which had already formed part of the original Inspector's consideration of the Appeal A conditions – as noted at IR12.919). In respect of conditions 1-6 and 14-49, he agreed with the original Inspector's reasoning and conclusions. He also took into account national policy in paragraph 206 of the original NPPF and the relevant Guidance, and was satisfied that conditions 1-6 and 14-49 recommended by the original Inspector comply with the policy tests set out at paragraph 206. The original Inspector's recommended conditions were reproduced at Annex C of the original decision letter for the information of parties. However, given his conclusions on Appeal C in the original decision letter, the Secretary of State did not reach a conclusion on conditions 7A-12 (which relate to highway matters) at that time. He stated that he would reach a conclusion on these or any other conditions which are put forward regarding highway matters when he reached his final determination on Appeal C.

125. The Secretary of State has considered the highways Inspector's comments at HIR14.1-14.8 and also HIR15.174-15.183 and the Schedule of suggested conditions. He agrees with the highways Inspector at HIR15.184 that the conditions now put forward are compliant with the tests set out in paragraphs 54 and 55 of the revised NPPF. However, he does not consider that the conditions overcome his reasons for dismissing the appeal and refusing planning permission.

### **Planning obligations**

126. In his original decision letter, the Secretary of State had regard to the original Inspector's analysis at IR11.1, the planning obligation dated 16 March 2016 which relates to the Roseacre Wood Exploration Works Site, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended. The Secretary of State considered that this obligation complied with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the original NPPF and is necessary to make the development acceptable in planning terms, directly related to the development, and is fairly and reasonably related in scale and kind to the development.

127. The Secretary of State considers that the planning obligation dated 16 March 2016 complies with the tests now set out at paragraph 56 of the revised NPPF, but does not

consider that it overcomes his reasons for dismissing this appeal and refusing planning permission.

128. The Secretary of State has further had regard to the unilateral undertaking concerning highways matters which was signed by the appellant and owners of the land and submitted to the highways inquiry. He has taken into account the highways Inspector's comments at HIR14.10, HIR15.44-15.45 and HIR15.59. He agrees with the highways Inspector's assessment that a capped sum of £100,000 would be inadequate to rectify the safety hazards (HIR15.45), and that there is no evidence that a sum of £20,000 would be sufficient for hedgerow replacement costs (HIR15.59). He therefore considers that the unilateral undertaking is not fairly and reasonably related in scale to the development, and gives it no weight in reaching his decision.

### **Planning balance and overall conclusion**

129. For the reasons given above, the Secretary of State considers that the proposed development is not in accordance with JLMWLP Policy DM2, or the development plan taken as a whole. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

130. The Secretary of State considers that great weight attaches to the benefits of mineral extraction; in this case the need for shale gas exploration and the benefits of on-shore oil and gas development. He considers that the local economic benefits of the proposal carry little positive weight in support of this appeal. For the reasons given above and at IR12.856-12.857, the Secretary of State considers that the majority of impacts associated with the proposed development in its current form, including cumulative impacts, could be reduced to acceptable levels.

131. However, the proposed development would have a serious and very significant adverse impact on the safety of people using the public highway. He considers that it is not possible to conclude that the demonstrable harm associated with that issue would be eliminated or reduced to an acceptable level.

132. The Secretary of State considers that since safe and suitable access to the site for all people would not be achieved and there would be an unacceptable impact on highways safety, the scheme would be contrary to paragraphs 108 and 109 of the revised NPPF. The Secretary of State considers overall that the proposal does not represent sustainable development. He considers that highway safety issues carry very substantial weight against the proposal, and given the potentially very serious consequences identified in paragraphs 96-123 above, he concludes that in this case highway safety is a determinative issue. He further considers that the economic impacts on local business, and the impacts on community recreation and amenity carry moderate weight against the proposal.

133. He has given careful consideration to the other objections raised, but is content that other matters of concern could be satisfactorily controlled by planning conditions or by other regulatory regimes, and as such, they can be attributed little negative weight in the planning balance.



134. Overall he considers that there are no material considerations which indicate that the proposal should be determined other than in accordance with the development plan. He therefore concludes that Appeal C should be dismissed, and planning permission refused.

### **Human rights**

135. The original Inspector noted that some concerns were raised, in general terms, concerning specific human rights. Her consideration of these matters is at IR12.783-12.784. Given his decision in this case, the Secretary of State considers that there would be no interference with the rights referred to in those paragraphs.

### **Public sector equality duty**

136. The original Inspector had regard to the Public Sector Equality Duty, in accordance with section 149 of the Equality Act 2010, at IR12.785. The Secretary of State has also considered his own duty under the Act and reviewed this assessment in the light of his decision to dismiss this appeal and refuse planning permission. He considers that there would be no impact from the decision upon any of those persons with protected characteristics within the community, and the requirements of the Public Sector Equality Duty have been met.

### **Formal decision**

137. Accordingly, for the reasons given above, the Secretary of State agrees with the original Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for construction and operation of a site for drilling up to four exploratory wells, hydraulic fracturing of the wells, testing for hydrocarbons, abandonment of the wells and restoration, including provision of access roads and improvement of access on to the highway, security fencing, lighting and other uses ancillary to the exploration activities, including the construction of a pipeline and a connection to the gas grid network, in accordance with application ref LCC/2014/0101, dated 16 June 2014.

### **Right to challenge the decision**

138. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

Yours sincerely

*Maria Stasiak*

Authorised by the Secretary of State to sign in that behalf

## Annex A Post-inquiry representations

Post-inquiry representations which were received between the close of the original inquiry and the original decision are set out in the original decision letter and are not reproduced here. The list of post-inquiry representations below covers representations received between the original decision and the issuing of this decision letter.

<b>Name</b>	<b>Organisation</b>	<b>Date received</b>
Charlotte Dyer	Herbert Smith Freehills LLP (HSF) (for the appellant)	10 November 2017
Charlotte Dyer	HSF	22 March 2018
KJ Gorton		3 April 2018
Martin and Sarah Clayden		10 April 2018
David Kelsall		10 April 2018
Karen Guffogg		21 April 2018
Julie Fairbank		24 April 2018
Dr Duncan Copperthwaite		1 May 2018
Harry Campbell	Harrison Grant Solicitors (for RAG)	11 May 2018
Marianne Birkby	Radiation Free Lakeland	24 May 2018
C Streeter		24 May 2018
Jonathan Haine	Lancashire County Council	25 May 2018
Sam Moisha		29 May 2018
Ken Huggins		30 May 2018
Catherine Howard	HSF	7 June 2018
Jill Anderson	Lancashire County Council	7 June 2018
Jonathan Haine	Lancashire County Council	13 June 2018
Charlotte Dyer	HSF	13 June 2018
Charlotte Dyer	HSF	14 June 2018
Anne Broughton	Roseacre Awareness Group (RAG)	17 July 2018
Mark Menzies MP		24 October 2018
Jules Burton		16 January 2019



# Ministry of Housing, Communities & Local Government

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## RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

### SECTION 2: ENFORCEMENT APPEALS

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.