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Sussex drilling application refused – a good precedent for Lancashire councillors to follow (<https://web.archive.org/web/20220812113122/http://www.davidsmythe.org/frackland/?p=146>).

Posted on **26th June 2015** (<https://web.archive.org/web/20220812113122/http://www.davidsmythe.org/frackland/?p=146>) by **Professor David Smythe** (<https://web.archive.org/web/20220812113122/http://www.davidsmythe.org/frackland/?author=1>)

The unconventional drilling application in Sussex refused last summer shows that the Lancashire County Council (LCC) Development Control Committee is not bound to follow precisely the recommendations of its Officer Report. The councillors can and should come to their own conclusions.

The Development Control Committee (DCC) of LCC is currently considering whether or not to grant planning permission to Cuadrilla Bowland Limited for drilling and fracking at Preston New Road, Fylde Borough. It appears that the councillors of the DCC are being put under unreasonable legal pressure to follow, to the letter, the recommendations of its **Officer Report** (<https://web.archive.org/web/20220812113122/http://www.davidsmythe.org/fracking/LCC%20Public%20reports%20pack%2028012015%201000%20Development%20Control%20Committee.pdf>). But I have shown that this Officer Report shows clear evidence of bias towards the applicant, by its inclusion of *ad hominem* attacks on at least three expert witnesses (myself included), and, more importantly, by failing to address the detailed and rational objections by these expert witnesses. I have written to LCC, asking that my **two-page report** (<https://web.archive.org/web/20220812113122/http://www.davidsmythe.org/fracking/Smythe%20on%20Inadequate%20Officer%20Report%20Cuadrilla%20applications%20June%202015%20v1.1.pdf>) about this, submitted on 21 June 2015, be put before the DCC. I have not yet received a reply.

A West Sussex County Council (WSCC) decision taken in July 2014, concerning a similar planning application, shows that the councillors of the DCC need not feel that they must be bound by their own Officer Report, if they feel that it is erroneous, incomplete, biased, or for any other reason. Here is the WSCC precedent.

Celtique Energie applied to drill vertically and horizontally at Wisborough Green. My **objection document** (<https://web.archive.org/web/20220812113122/http://www.davidsmythe.org/fracking/Smythe%20Celtique%20planning%20application%20Wisborough%20Green%20June2014%20v1.3.pdf>), submitted via Kirdford Parish Council, demonstrated that Celtique's application documents were full of misleading statements about the geology, about the definition of unconventional vs. conventional exploration, and, in particular, about why the site selected was allegedly the best available.

The **WSCC Committee Report** (<https://web.archive.org/web/20220812113122/http://buildings.westsussex.gov.uk/ePlanningOPS/tabPage3.jsp?aplid=1599>) considered the Key Issues to be considered in determining the application. Here are the relevant extracts:

Planning Committee Agenda Item No. 4 22 July 2014

County Matter Mineral Application accompanied by an Environmental Statement

The installation of a well and associated infrastructure ... Land south of Boxal Bridge, Northup Field, Wisborough Green, West Sussex, RH14 0DD Application No: WSCC/083/13/KD

Report by Director of Communities Commissioning and Strategic Planning Manager

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9. Consideration of Key Issues

...

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9.8 As noted above, Policy 27 is subject to consideration of Policy 26 which states that "Proposals for oil and gas will be permitted where it is demonstrated to the satisfaction of the Planning Authority that it demonstrates the best option in comparison with other alternative sites within the area of search...", as well as requiring consideration of impacts on character and the environment which will be considered in separate sections below. Determining whether a proposal is the 'best option' feeds into consideration of whether there is a need for this development on this site in particular, or whether an alternative site would be preferable.

...

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9.14 County Council planning, environmental and highway officers were involved in the discussion of

alternative sites so were able to feed into the analysis. *It is considered that the alternative site assessment undertaken by the applicant was proportionate, robust and that the conclusions reached were sound.*

9.15 Therefore, it is considered by officers that there is a need for continued exploration and appraisal to establish whether there are hydrocarbon resources present which can be utilised. *It is also concluded that the site represents the best option within the search area, namely within the PEDL boundary. [my red highlighting]*

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Appendix 1: Reasons for Refusal

1. The applicant has failed to demonstrate that vehicles could enter and exit the site safely and without detriment to the highway network, contrary to Policies ...

2. The applicant has failed to show that vehicles could travel the proposed route to the site safely and without harm to highway capacity or road safety, contrary to policies ...

3. The applicant has failed to accurately assess the increase in HGV movements resulting from the development and so has failed to demonstrate that it would not have a detrimental impact on highway capacity and road safety, and on residential amenity through increased noise. The development would, therefore, be contrary to policies ...

4. The heavy goods vehicles resulting from the development would harm the character of Wisborough Green village and conservation area. The development would, therefore, be contrary to Policy ...

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A. The County Planning Authority has acted positively and proactively in determining this application by determining the application within a timely manner, clearly setting out the reasons for refusal, and giving the applicant an opportunity to overcome the likely reasons for refusal.

So the Report recommended refusal on the four grounds numbered above.

But at the public council meeting on 22 July, after I had made a five-minute presentation (<https://web.archive.org/web/20220812113122/http://www.davidsmythe.org/fracking/Smythe%20WSCC%20slides%20v1.pdf>), the committee added an amendment in its Decision Notice (<https://web.archive.org/web/20220812113122/http://buildings.westsussex.gov.uk/ePlanningOPS/tabPage3.jsp?apllid=1599>) to refuse unanimously the application on an additional fifth ground, as follows:

*In pursuance of their powers under the above mentioned Act and Orders, West Sussex County Council hereby notify you that they REFUSE the following development, that is to say:-
The installation of a well and associated infrastructure ... at Land south of Boxal Bridge, Northup Field, Wisborough Green, West Sussex, RH14 ODD
as shown on the application and plans submitted to this Council for the following reason:*

[items 1-4 above listed here]

5 The Applicant has not demonstrated to the satisfaction of the County Planning Authority that the application site presents the best option in comparison with other alternative sites within the area of search (the Petroleum Exploration and Development Licence (PEDL) area) contrary to Policy 26 of the Minerals Local Plan (2003)

In short, the committee, while accepting the four grounds for refusal recommended by its own officers' report, **disagreed with paras. 9.14 and 9.15 (quoted above) that the site was allegedly the best in the licence area.** Instead, the committee members accepted my evidence that the site had most probably been chosen in advance, and that the site search criteria had then been adjusted using spurious geological arguments to make it appear to be the most suitable location.

This has set a good precedent for the Lancashire DCC to follow. If the councillors feel that my arguments concerning the likelihood of groundwater pollution are sound, and outweigh the (so-called) Assessment by its Officer Report, then they should feel free to use them as a ground for refusal (incidentally, Celtique said they would appeal against the WSCC decision, but then backed out). The same applies, of course, to the other expert witness arguments objecting to the proposals, on public health, weak legislation, noise, and traffic grounds. **The councillors should have no fear of losing an appeal by the applicant, so long as the grounds for refusal are rational.** Their own Officer Report is flawed, and could become ground for a Judicial Review if the Preston New Road application is approved.

Categories: **Cuadrilla** (<https://web.archive.org/web/20220812113122/http://www.davidsmythe.org/frackland/?cat=13>)
