

Lancashire County Council

Commons and Town Greens Sub-Committee

Minutes of the Meeting held on Tuesday, 2nd October, 2012 at 10.30 am in Cabinet Room 'C' - County Hall, Preston

Present:

County Councillor Albert Thornton (Chair)

County Councillors

T Brown	M Parkinson
C Coates	P Rigby
J Jackson	T Sharratt
A Jones	P Steen

County Councillor K Brown attended the meeting under Standing Order No. 19(1).

Apologies

Apologies were received from County Councillors S Leadbetter and J Sumner.

Constitution: Chair and Deputy Chair; Membership; Terms of Reference of the Commons and Town Greens Sub-Committee

Resolved: That;

1. The appointment of County Councillor A Thornton and County Councillor S Leadbetter as Chair and Deputy Chair of the Sub-Committee for the remainder of the 2012/13 municipal year be noted;
2. The membership of the Sub-Committee following the County Council's annual meeting be noted; and
3. The Terms of Reference of the Sub-Committee be noted.

Disclosure of Pecuniary Interests

There were no pecuniary interests declared.

Minutes of the Meeting held on 31 January 2012

Resolved: That, the Minutes of the meeting held on the 31 January 2012, be confirmed and signed by the Chairman.

Section 16 Commons Act 2006

Request for the County Council to join as Applicant to deregister common land near Reaps Moss, Lancashire and to offer replacement common land both crossed by Footpath 394, Bacup

County Councillor Steen reported that he would abstain from taking part in a decision on this matter as he had attended a meeting of Rossendale Borough Council's Development Control Committee which had previously considered a proposal in relation to the development of the wind farm at Crook Hill.

A report was presented on a request from Coronation Power Ltd for, Lancashire County Council, as highway authority, to join in on an application for the de-registration of small areas of common land unit CL472. Part of Public Footpath 394 crossed one of these areas and also crossed the land offered in exchange. The surface of Footpath 394, Bacup was publicly maintainable and its surface was vested in the highway authority.

The Sub-Committee was informed that Coronation Power was proposing to develop a wind farm at Crook Hill which was situated on the edge of the County of Lancashire. The proposed development site covered registered common land within the boundaries of Lancashire County Council and Calderdale Metropolitan Borough Council CL472 (the registration papers were held at Calderdale). The Sub-Committee also recalled its decision made on 22nd September 2011 following which the County Council had joined in an application to de-register common land (CL165) because of its ownership of highways on the land as highway authority.

Most of the area where the wind farm access road and areas for the turbines were to be constructed had already been deregistered from the common (Application COM 135). The new boundary of common land was shown on the plan attached at Appendix 'A' to the report. At that time it was not appreciated that highway authorities might be an owner which ought to have joined the application.

The Sub-Committee noted that owners of the common land (release land) might apply to de-register their land as common land and offer exchange land to replace the de-registered land (replacement land). An application had been made to DEFRA and was done so under section 16 of the Commons Act 2006.

The Sub-Committee also noted that under S16 Commons Act 2006 the owner of any land registered as common land was the only person who could apply to the Secretary of State for the land to cease to be so registered. If the release land was more than 200 square metres the application must include a proposal that some replacement land be registered as common land in place of the release land. The Sub-Committee was informed that in determining the application the Secretary of State should have regard to interests of those having rights on or occupying the release land; the interests of the neighbourhood; the public interest (including nature conservation, conservation of landscape, protection of public rights of access and protection of archaeological remains and features of historic

interest); and any other relevant matter. Consents of any leaseholders or charge holders of the land were required and owners of replacement land would have to join in the application.

Under S61 Commons Act an "owner" was the holder of the legal estate in fee simple. The Sub-Committee was advised that although the surface of publicly maintainable highways was vested in the County Council, the title was not a pure fee simple but was a determinable fee simple. It was, therefore, considered that this was sufficient title to be an "owner" under the Commons Act.

The Sub-Committee was informed that there were two owners of the Common land to be de-registered under this application and were shown on the application as Mr J Dearden and Mr P Harman but the County Council was also regarded as having sufficient ownership interest in the surface of Public Footpath 394 such that Coronation Power had been advised by the Planning Inspectorate that Lancashire County Council as highway authority should be a joint signatory to the application. Coronation Power had therefore asked that the County Council consider the matter and become a joint signatory.

The Sub-Committee was advised that this application, if successful, would result in the release of 14,720m² of common land (which includes the area of highway being footpath 394 Bacup) and that an area of 15,305m² was being offered as replacement land immediately adjacent to CL472 and within the County boundary. This was also crossed by Footpath 394 Bacup.

Following completion of the construction work the Sub-Committee noted that public access would be permitted and that it was planned to re-register the released land that was not required for the day to day operation of the wind farm. A unilateral undertaking had been offered under S106 Town and Country Planning Act 1990.

The Committee also noted that Coronation Power had offered to permit public access and re-register common land. This was similar to what had been offered in the matter previously considered. The Sub-Committee recalled their concerns. However, it was reported that in the decision on COM 283 the Inspector considering the matter for the Secretary of State was content with the unilateral undertaking to provide for public access and referred to it granting a non revocable licence to the public for access and a similar licence to the commoners. He did however find that the S106 unilateral undertaking had demonstrated the landowner's intention to re dedicate re-dedication of land which would be a matter for the landowner.

On being put to the vote, seven voted for the recommendation as set out in the report with one abstention.

Resolved:

1. That Lancashire County Council becomes a joint applicant with Mr J Dearden and Mr P Harman in the application to DEFRA Number COM351 under

section 16 of the Commons Registration Act for the de-registration of that part of CL472 crossed by Footpath 394 Bacup to allow the construction of a wind farm on Inchfield Moor by Coronation Power and for the designation of replacement land.

2. That representations be made to express concerns that public access and re-registration be secured.

Commons Act 2006

Commons Registration (England) (Amendment) Regulations 2009 as amended Regulation 44

Application for a Declaration of Entitlement to be recorded in respect of some of the Rights of Common being grazing rights registered as attached to land at Manor House Farm, Overton, being Entry 1 in the Rights section of Register Unit CL193

A report was presented on an Application from AJ Bargh for a Declaration of Entitlement to record his rights to graze 34 cattle on CL193.

The Sub-Committee was informed that Regulation 44 stated that applications for a declaration of entitlement must be made by a freehold or leasehold owner of the land to which rights were attached.

In this matter rights were attached to Manor House Farm which were shown edged in red on the supplemental map referred to in the report as Appendix 'A'. The rights attached to this land were to graze 100 head of cattle over CL193.

A copy of Land registry title LAN 43529 had been provided which showed that part of the farm as shown on the supplemental map was owned by Alan John Bargh as shown on the plan referred to in the report as Appendix 'B'. The Sub-Committee noted that it had been calculated that this land was 33.3% of the Manor House farm land on the supplemental map.

The Sub-Committee was informed that 33.3% of the grazing rights were calculated as the right to graze 33 cattle. Whilst mathematically this figure had produced a fractional quantity the Sub-Committee was advised that a right to graze a fractional animal was not recognised in law and that the fractional right had been rounded down following advice from DEFRA. The Applicant was aware of this.

It was reported that Notice of the application had been duly given according to the Regulations and that no response had been received.

The Sub-Committee was advised that if the application was well founded the appropriate amendment to the register should be made. Here it was advised that although the application was to record 34 cattle the correct entitlement was the rounded down figure of 33 cattle. The Sub-Committee was advised that the Application be accepted in part.

Resolved: That the application be accepted in part and a Declaration of Entitlement be recorded in the Commons Register in accordance with the Commons Registration (England) (Amendment) Regulations 2009 that Mr Alan John Bargh be entitled to exercise part of the right attached to Manor House Farm namely the right to graze 33 head of cattle over the whole of CL193.

Commons Act 2006

Commons Registration (England) (Amendment) Regulations 2009 as amended. Regulation 44

Application for a Declaration of Entitlement to be recorded in respect of some of the Rights of Common being grazing rights registered as attached to land at Colloway Farm, Overton, being Entry 3 in the Rights section of Register Unit CL193

A report was presented on an Application from AJ Bargh for a Declaration of Entitlement to record his rights to graze 21.57 cattle and 7.19 sheep on CL193.

However, it was reported that since the agenda papers for this meeting were despatched an issue over ownership of the land had arisen. The Sub-Committee was informed that according to various deeds ownership of the land was thought to be held jointly. However, according to the solicitors acting on behalf of AJ Bargh and JJ Bargh, ownership fell under JJ Bargh as sole owner of the land. The Sub-Committee was advised that in the light of this new evidence, a problem had arisen in that the Application was from AJ Bargh and that Regulation 44 stated that applications for a declaration of entitlement must be made by a freehold or leasehold owner of the land to which rights were attached.

The Sub-Committee was then informed that the solicitors believed that AJ Bargh was a tenant and that a copy of a tenancy lease dated 21 January 2010 was received by the County Council two days prior to the meeting by email. However, it was highlighted that the email from the solicitors made reference to "a reduction to writing of the current agreement" to which it was felt that the email had implied that the agreement had only recently been committed in writing.

The Sub-Committee was also informed that there was a discrepancy over the date of the tenancy lease as conveyance records showed that such an event had only occurred more recently. It was therefore felt that AJ Bargh could no longer be the Applicant in this matter and it was therefore suggested that an amended Application be sought and that Notice of the amended application should be duly given in accordance with Regulations.

However, Councillors expressed their concerns over the status of the lease and the "reduction to writing of the current agreement" and felt that Registration must be done correctly. It was therefore suggested that the report be deferred and that a fresh application be sought. Councillors felt that the advantage of a fresh application would ensure that Registration is done properly.

The Sub-Committee was advised that under the new Regulations, Applicant's should be given the opportunity to make oral representations. It was therefore;

Resolved: That;

1. The report be deferred on the basis that the Sub-Committee was minded to not accept the Application for the reasons as set out in the minutes above;
2. The Applicant be given the opportunity to make oral representations to the Sub-Committee, if the Applicant did not wish to proceed with this application then the person entitled to do so be invited make a fresh Application for a Declaration of Entitlement.

Commons Act 2006

Applications made to the Registration Authority yet to be determined

The Sub-Committee received a report which set out details of applications made to the County Council as Registration Authority to alter the register of common land or the register of town greens which were yet to be determined.

Also, the Sub-Committee noted that through the red tape challenge, DEFRA had made a commitment to fully commence Part 1 of the Commons Act 2006 throughout England. However, it was explained that the roll out of the legislation would unlikely to happen before the present life of the current parliament.

Resolved: That the report be noted.

Urgent Business

No Items of urgent business were raised at the meeting.

Date of Next Meeting

It was noted that the next meeting of the Commons and Town Greens Sub-Committee would be held at 10.00am on Monday and Tuesday, 28th and 29th January 2013 at County Hall, Preston.

I M Fisher
County Secretary and Solicitor

County Hall
Preston