

## Lancashire County Council

### Commons and Town Greens Sub-Committee

**Minutes of the Meeting held on Thursday, 22nd September, 2011 at 10.00 am in Cabinet Room 'D' - County Hall, Preston**

#### **Present:**

County Councillor Albert Thornton (Chair)

#### **County Councillors**

T Brown	P Malpas
C Coates	P Rigby
J Jackson	P Steen

County Councillor P Malpas replaced County Councillor T Jones for this meeting only.

#### **1. Apologies**

Apologies were received from County Councillors T Sharratt and J Sumner.

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

The Chairman reported the sad death of County Councillor Bob Mutch who died in August 2011. The Committee stood in silent tribute.

#### **Resolved:** That;

- i. 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 2011/12 municipal year be noted;
- ii. The membership of the Sub-Committee following the County Council's annual meeting be noted; and
- iii. The Terms of Reference of the Sub-Committee be noted.

#### **3. Disclosure of Personal and Prejudicial Interests**

County Councillor P Steen declared a prejudicial interest in item 6 as he was a Member of Rossendale Borough Council's Development Control Committee which had previously taken a decision in relation to this matter in 2007.

In view of this, Councillor Steen requested that item 7 on the agenda be taken before item 6. The Chairman agreed the request.

#### **4. Minutes of the Meeting held on 7 February 2011**

**Resolved:** That, the Minutes of the meeting held on the 7 February 2011 be confirmed and signed by the Chairman.

#### **5. Commons Act 2006 Schedule 3 Commons Registration (England) (Amendment) Regulations 2009**

##### **Application for the Amendment of a Register in relation to Rights of Common being grazing rights registered as Entry 3 in the Rights section of Register Unit CL123, Black fell, Blanch Fell and Haylot Fell Littledale, Lancaster**

A report was presented on an Application from William Alan Huddleston, Margaret Elizabeth Atkin, Christine Mary Sayer and Barbara Ruth Huddleston to register severance of the rights away from land at Bell Hill Farm and then subsequent transfer of rights to the Applicants which were rights in gross.

The Sub-Committee was informed that the rights at present were registered as being the right to graze sheep to a limit of 79 and a half sheepgates (one ewe together with followers and a hog counting as the sheepgate) over the whole of CL123 and that these rights were currently shown as attached to land at Bell Hill Farm Littledale as shown on the supplemental map with the Registers referred to in the report. Copies of various Deeds had been provided and the Deed plan which was marked on the agenda as to be presented at the meeting (due to its large size) was shown to the Sub-Committee to illustrate that the farm, along with its grazing rights, was purchased in 1951 by Edward and Mary Huddleston to which parts of the land had since been transferred.

It was reported that the first transfer was in 1985 and that the grazing rights were expressly reserved to Edward and Mary Huddleston. It was a Deed of Gift of a small part of the farm and it was agreed and declared that it "does not include (and there are expressly reserved to the Donors) all those rights of common sheep and cattle gaits on Black Fell Blanche Fell and Haylot Fell appurtenant to Bell Hill Farm". It was arguable that this was when all the rights became severed but it was suggested that on balance it was not clear enough and it might be considered that only those rights attached to the small section being transferred were severed at this time. The Sub-Committee was advised that these few rights were then held in gross by Edward and Mary Huddleston.

It was also reported that there were further transfers in 1991 with rights retained by Mary Huddleston and a trustee, as Mr Huddleston had died. The Solicitors confirmed the rights in gross had passed to Mary Huddleston and Mr Gillibrand on the death of Mr Edward Huddleston. There was then a transfer of part of the farm in January 2002 but the rights had not been mentioned and in August 2002 there was the transfer of most of the remainder of the land together with all the commons rights as per the 1951 purchase to the applicants.

It was reported that notice of the application had been duly served according to the Regulations and that no response had been received save for further details being requested by a neighbouring landowner but no objection raised and a visit to inspect the file by a rights holder.

The Sub-Committee was advised that if the application was well founded the appropriate amendment to the register should be made.

The Sub-Committee was also advised that some rights were expressly reserved and thereby were not transferred with the land but became severed in 1985 and 1991. The small piece of land at the farm which had not been the subject of any transfer had any rights which were attached to it were sold separately in 2002 when all the rights were stated to be transferred to the applicants.

It was reported that the Solicitors who acted for the purchasers in 2002 confirmed that there was no intention to transfer any grazing rights and confirmed that the purchaser made no claim to any grazing rights nor believed that they ever held any. They were not aware of them exercising any rights. A letter direct from the purchasers confirmed their belief that their Solicitors could provide the information about the grazing rights. The Sub-Committee was informed that only a few months after the sale, were the rights then transferred to the applicants separately from the land.

The Sub-Committee was advised that, on balance there would appear to be sufficient evidence of the rights being severed at various times to end up held in gross by Mr and Mrs Huddleston and then Mrs Huddleston and Mr Gillibrand as trustee and that they then transferred the rights to the Applicants in 2002. It was considered that the severance and transfer should now be shown on the Register and the rights shown as jointly held in gross by the Applicants.

**Resolved:** That

- i. The application to register the severance of rights and transfer in gross to the applicants jointly of the rights registered in Entry 3 of the Rights Section of CL123 namely the right to graze sheep to a limit of 79 and a half sheepgates (one ewe together with followers and a hog counting as the sheepgate) over the whole of CL123 be accepted; and
- ii. The register be amended in accordance with the Commons Registration (England) Regulations 2008 as amended to register said severance and transfer.

**6. Section 16 Commons Act 2006  
Application to de-register common land CL165 at Crook Hill,  
Whitworth, Lancashire and to provide replacement land**

A report was presented on a consultation by DEFRA regarding the Registration of New Town and Village Greens.

It was reported that DEFRA in realising the volume of applications received by local authorities, the character of the application land, the controversy attracted by applications, the cost of the determination process and the impact of registration on a landowner felt that it was sufficient to justify reform of the registration system. It was hoped that the proposals as presented by DEFRA would achieve an improved regulatory balance between protecting high quality green space valued by local communities and to enable development to occur at the right place at the right time. A list of consultees was set out at appendix 'B' to the report. The proposals were also extracted from the consultation document and set out in the report.

The Sub-Committee was informed that DEFRA were especially keen for the County Council and the other six pioneering authorities of Part 1 of the Commons Act 2006 to provide their views in response to the consultation.

The Sub-Committee considered each proposal in turn. The Sub-Committee's responses to the proposals and questions were agreed as follows:

- Response to question 1:  
The Sub-Committee felt that there was sufficient reason to justify reform of the present greens registration process.

*Proposal 1 – Streamline sifting of applications*

Jane Turner, Senior Solicitor, highlighted that early rejection of applications were difficult to justify, especially in light of other cases being successful on the basis of six user evidence forms. Mrs Turner explained that under Part 1 of the Commons Act 2006, officers could 'reject' applications on the basis of there being no user evidence forms and until such evidence is produced the application could not be considered further until it is duly made.

Whilst Members agreed with the need to streamline the sifting of applications to provide officers with additional options to reject; they felt that proposals further on in the consultation document could serve well to deter weak or vexatious applications such as the introduction of charging fees for applications to register land as a green. However, concern was expressed that for those people who could afford the proposed potential application fees (outlined further on in the consultation document) and who had their application rejected early might also be in a financially sound position to bring the County Council to judicial review. Concern was also expressed that if both parties had sufficient monies to challenge such a decision, then the application process could drag out unnecessarily.

- Response to question 2:  
The Sub-Committee felt that there were better proposals further on in the consultation document instead of those suggested under proposal 1 but an additional opportunity to consider the strength of applications may be useful although possibly not used very often.
- Response to question 3:  
The Sub-Committee agreed that the owner of land affected by an application should be invited to comment on it before initial determination is made by the Registration Authority (the County Council).

### *Proposal 2 – Declarations by landowners*

It was explained that DEFRA were proposing to implement a similar mechanism as with Section 31 (6) of the Highways Act 1980, whereby a landowner could deposit a map of the land, and make a declaration, to be renewed every ten years, that any use of the land for the purposes of sports and pastimes be with the landowner's permission and would therefore be not treated as done 'as of right'. It was suggested that if this mechanism was to be implemented there could be a flurry of applications to the Registration Authority. In the event of such increased activity, concern was expressed if timescales to determine applications were to be set by Government. However, it was suggested that if this power was implemented, the County Council should actively seek to deposit such declarations as a landowner itself.

Members felt that this mechanism would be beneficial for landowners. Consideration was given towards how best the County Council should promote such declarations. The Sub-Committee felt that local authorities should be responsible for publicising declarations and suggested that the County Council should place notices on the land concerned and inform parish councils of such events.

The Sub-Committee also felt that there should be a public notices page on the County Council's website. It was also suggested that notices should appear in the County Council's free newspaper issued to all households in Lancashire instead of in the paid press to reduce costs.

- Response to question 4:  
The Sub-Committee supported the proposal to enable landowners to make such declarations on the basis that there would no timescale restriction for local authorities to determine applications.
- Response to question 5:  
The Sub-Committee felt that the Registration Authority should take the necessary steps to publicise declarations using the following mediums; internet, local authority free newspaper, site notices displayed on land concerned, and to inform Parish Councils.

### *Proposal 3 – Character*

The Sub-Committee considered the proposal to introduce a character test to ensure that greens accord with a popularly held traditional character of such an area.

Strong concerns were raised in relation to the definition of the proposed character test. It was felt that the test would introduce yet more indefinable phrases into legislation and make the determination of greens more complex than it already was. Various scenarios were envisaged and it was considered that such a test raised difficulties.

- Response to question 6:  
The Sub-Committee did not support the proposal to introduce a character test that would ensure greens accorded with a popularly held traditional character of such areas.
- Response to question 7:  
The Sub-Committee did not agree with the character test that land must be open and unenclosed in character. The Sub-Committee did not support the adoption of the additional criteria that was set out at paragraph 5.5.11 in the consultation document (page 37).

### *Proposal 4 – Integration with local and neighbourhood planning*

The Sub-Committee considered whether the greens registration system should be integrated with local neighbourhood planning matters.

There was a difference of opinion between Members of the Sub-Committee on the proposal to rule out the making of a greens application where a site was designated for development in a proposed or adopted local or neighbourhood plan. On being put to the vote, the majority view of the Sub-Committee was in support of the proposal.

- Response to question 8:  
The majority of the Sub-Committee was in support of the proposal which would rule out the making of a greens application where a site was designated for development in a proposed or adopted local or neighbourhood plan.
- Response to question 9:  
The Sub-Committee supported the proposal that a greens registration application could not be made after an application for planning permission had been submitted in respect of a site, or on which there was statutory pre-application consultation, until planning permission had itself been refused or implemented, or had expired.

### *Proposal 5 – Charging Fees*

The Sub-Committee considered the proposal to introduce charging fees for applications to register land as a green. It was explained that the Registration Authority was currently unable to set such fees. The proposal set out in the consultation document suggested that the fee be set by the Registration Authority

subject to a ceiling of £1000. It was hoped that by introducing such a fee might deter some applications or otherwise demonstrate sufficient commitment by the users of an application (contributing jointly).

- Response to question 10:  
The Sub-Committee supported the proposal to charge a fee for applications.
- Response to question 11:  
The Sub-Committee did not support the proposal for refunding a fee if an application is granted.
- Response to question 12:  
The Sub-Committee agreed that the fee should be determined by the Registration Authority. However, the Sub-Committee agreed that the fee should be at a ceiling of £1000 plus advertising costs. A power to agree waiving of costs may be appropriate.

*Proposal 6 – Cumulative Impact*

- Response to question 13:  
The Sub-Committee did not support the adoption of all of the proposals which were set out in Chapter 5.3 to 5.7 in the consultation document for reasons as set out in the minutes above accordingly.

*Proposal 7 – Voluntary registration under section 15(8)*

- Response to question 14:  
The Sub-Committee did not support the adoption of the character test in relation to the voluntary registration of land as a green, under section 15(8) of the 2006 Act.

*Views invited 15, 16 and 17:*

In relation to paragraphs 5.10 to 5.11.1, the Sub-Committee considered a suggestion that landowners should be notified as soon as an application has been received by the Registration Authority. One Member asked how the Registration Authority obtained the details of who a landowner was and the cost of obtaining such information. The process was explained. However, in this instance and in an effort to notify landowners at early stage it was suggested that a land registry search be done on the assumption that the land is registered and a single acknowledgement letter be sent out and it was suggested that if such a proposal was accepted the notification should be optional at the discretion of the Registration Authority rather than prescribed.

**Resolved:** That, the Sub-Committee's responses to the proposals and questions, as outlined in the minutes above, would form the County Council's response to DEFRA's consultation on the Registration of New Town or Village Greens.

## **7. Consultation by the Department for Environment Food and Rural Affairs (DEFRA) on the Registration of New Town or Village Greens**

The Sub-Committee considered a report on whether the County Council should join in as applicant on an application to de-register a corridor of Common Land on CL165 in connection with that part of the application land which was a publicly maintainable highway. The extent of Lancashire's administrative area was clarified.

It was reported that Coronation Power Ltd 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, Calderdale Metropolitan Borough Council and Rochdale Metropolitan Borough Council.

The Sub-Committee was informed that the main construction work required on CL165 related to the construction of an access route to the turbines on Crook Hill. Instead of applying for consent to carry out such works on Common Land, the owner of CL165, Mr Dearden, Lord of the Manor, had applied for a corridor of land to be de-registered and no longer recorded as Common Land. The corridor to be de-registered accommodated the route of the proposed access road but also included existing lengths of public highway. The corridor followed the line of the highway called Landgate and was also crossed by a number of public footpaths and bridleways as it continued to the County boundary. The area of highway affected was 4,260.2 square metres (0.426 ha) and Coronation Power Ltd had included the land with highway rights on the surface in the application to remove it from the area of registered Common Land.

The Sub-Committee was advised that under s16 Commons Act 2006 the owner of any land registered as common land was the person who could apply to the Secretary of State for the land to cease to be 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 Highway Authority had no replacement land to offer.

It was reported that the Application, which was already submitted, applied for common land to be de-registered (release land) and offered exchange land to be new common land (replacement land). The application affected a corridor of land on CL165 in Lancashire would result in the release of 6.98ha of land (which includes the 0.462ha of highway). An area of 1.6ha had been offered as replacement land immediately adjacent to CL165 and within the County boundary. The application also sought to de-register common land on CL166, CL172 and CL168 being about 22.82ha. A further area of 2.397ha had also been offered as replacement land but this was outside the Lancashire boundary and within the boundary of Rochdale MBC at Long Clough Farm, Littleborough to the south of CL168.

The Applicant recognised that the replacement land was a lot less than the release land and following completion of the construction work it was planned to

re-register the released land that was not required for the day to day operation of the wind farm. Within CL165 the area of land to be re-registered was 4.98ha. 2.0ha of land was to be removed from the register as it would not be available for use as common land as a result of the wind farm operational requirements. It was stated that all land would be re-registered once the wind farm was de-commissioned. A summary of the land position was provided in the report and is set out below:

- Area to be de-registered (released) 6.98ha
- Area to be removed  
(deregistered until the wind farm is de-commissioned)  
(includes the access tracks) 2.00ha
- Area to be re-registered on completion of construction work 4.98ha
- Area to of replacement land within Lancashire  
(although shown as 1.68ha on plan) 1.60ha
- Shortfall of 0.40ha

The Sub-Committee was advised that the surface of all highways (whatever sort, vehicular, footpath or bridleway) which were publicly maintainable was vested in the Highway Authority by virtue of S263 Highways Act 1980. This, following DEFRA's comments, was advised to be sufficient interest to mean that it was the Highway Authority who was the owner in respect of the highway land. For the highway land to be considered for de-registration it was therefore suggested that the highway authority be also an applicant.

The Sub-Committee was also advised that if the Highway Authority did not join in with the application it was possible that the Secretary of State would have to leave the highway land out of the application and it would remain as part of the Common Land. It was noted that the Applicant was not registered owner of all the Landgate sub soil and the Highway Authority was the only owner of the access land onto CL165. The Sub-Committee noted that there was a suggestion that there might be a need even for a Highway Authority to apply for consent for works where the highway was on Common Land. This would need to be investigated and clarified but by joining in the application to de-register seeking de-registration of highway the possible need for consent was removed if the application was successful.

The Sub-Committee considered the ownership information and the views of the developer and DEFRA and noted that Lancashire County Council had not objected to the planning application.

The Sub-Committee was advised that it was the County Council's discretion as to whether to join in the application but it was the case that the authority must exercise its discretion reasonably. In this matter its decision should not be based on whether a wind farm was thought to be appropriate. It was noted that as the authority had not objected to the scheme and that de-registration could only be

neutral or positive for the authority, it was suggested that the authority should enter into the scheme but if any costs were claimed the application be withdrawn.

It was suggested that the Sub-Committee should take the opportunity to state any concerns it had about the Section 16 application itself given the criteria to be considered by the Secretary of State and to remind the Secretary of State about various matters.

The Committee raised several concerns. The Secretary of State would have to be sure that the Highway Authority had sufficient interest to be an owner and as the application affected CL166, 168 and 172 it may be that Highway Authorities in Rochdale and Calderdale Metropolitan Borough Council should also be applicants. The lack of replacement land within Lancashire was of concern and the effect on loss of land with public rights of access. There was a need for the Secretary of State to be clear as to how re-dedication would be achieved and public rights attach to the new common land yet it was not considered appropriate that highways become part of new common land again. The need to wait for S106 Agreements to be finalised with Calderdale Metropolitan Borough Council, Rochdale Metropolitan Borough Council and Rossendale Borough Council and difficulties in enforcing S106 Agreements were referred to and the Secretary of State would need to be satisfied that the offer to create new common land and other provisions in the S106 Agreements sufficiently bound the land.

The Sub-Committee considered the recommendation as set out in the report. Whereupon it was therefore;

**Resolved:**

- i. That the appropriate papers be signed by the County Secretary and Solicitor so that Lancashire County Council become a joint applicant in Application COM283 already lodged at the Planning Inspectorate for the de-registration of a corridor of common land on CL165 to allow the construction of a wind farm at Crook Hill making it clear that it was as an owner in respect of the highway land only within the administrative area of Lancashire;
- ii. That the Secretary of State be made aware of the concerns noted at the meeting
- iii. That the Sub-Committee noted that there was still a requirement for an agreement to be entered into with the developer as to the works being done on highways within and near the application land;
- iv. That the Secretary of State be asked to defer making a decision regarding the de-registration of land until all Section 106 Agreements have been entered into by; Calderdale Metropolitan Borough Council, Rochdale Metropolitan Borough Council and Rossendale Borough Council.

**8. Date of Next Meeting**

The next meeting of the Commons and Town Greens Sub-Committee will be held on Tuesday and Wednesday, 8 and 9 November 2011 at 10am, County Hall, Preston.

I M Fisher  
County Secretary and Solicitor

County Hall  
Preston