

## **Commons and Town Greens Sub-Committee**

Meeting to be held on 2 October 2012

Electoral Division affected: Whitworth
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### **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 areas of land crossed by Footpath 394, Bacup**

(Appendices 'A', 'B', 'C' and 'D' refer)

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#### **Executive Summary**

Coronation Power Ltd is requesting that Lancashire County Council, as Highway Authority, joins in the application for the de-registration of small areas of common land unit CL472. Part of Public Footpath 394 crosses one of these areas and crosses the land offered in exchange. The surface of Footpath 394 Bacup is publicly maintainable and its surface vests in the highway authority

#### **Recommendation**

- i. That the Sub-Committee agrees to Lancashire County Council becoming 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.
- ii. That representations are made to express concerns that public access and re-registration is secured.

#### **Background and Advice**

Coronation Power is proposing to develop a wind farm at Crook Hill which is situated on the edge of the County of Lancashire. The proposed development site covers registered common land within the boundaries of Lancashire County Council, Calderdale Metropolitan Borough Council CL472 (the registration papers are held at Calderdale).

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

The Sub Committee will recall that this is now the case. It will recall its decision in September 2011 following which the County Council joined in an application to de-register common land because of its ownership of highways on the land as highway authority.

Small areas of common land CL472 (twelve in number) shown edged red on the application plan attached hereto as appendix 'A') are now required to be de-registered and a second application has been made to DEFRA (appendix 'C' refers). DEFRA's reference is COM 351.

Owners of the common land (release land) may apply to de-register their land as common land and offer exchange land to replace the de-registered land (replacement land). An application has been made to DEFRA (appendix 'C' refers) and is done so under section 16 of the Commons Act 2006.

Under S16 Commons Act 2006 the owner of any land registered as common land is the only person who can apply to the Secretary of State for the land to cease to be so registered. If the release land is 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. In determining the application the Secretary of State shall 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 are required and owners of replacement land have to join in the application.

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

The two owners of the Common land to be de-registered under this application are shown on the application as Mr J Dearden and Mr P Harman but the County Council is also regarded as having sufficient ownership interest in the surface of Public Footpath 394 such that Coronation Power have been advised by the Planning Inspectorate that Lancashire County Council as highway authority should be a joint signatory to the application. Coronation Power therefore ask that the County Council consider the matter and become a joint signatory. (Appendix 'D' refers)

This application, if successful, will result in the release of 14,720m<sup>2</sup> of common land (which includes the area of highway being footpath 394 Bacup). An area of 15,305m<sup>2</sup> is being offered as replacement land immediately adjacent to CL472 and

within the County boundary. This is also crossed by Footpath 394 Bacup. Plan at appendix 'A' refers.

Following completion of the construction work the Committee will note that public access will be permitted and it is planned to re-register the released land that is not required for the day to day operation of the wind farm. An unilateral undertaking has been offered under S106 Town and Country Planning Act 1990.

Attached at Appendix 'A' is a plan of the application land showing the area of CL472 and the area of replacement land within Lancashire.

Attached at Appendix 'B' is a plan showing the location of Footpath 394 Bacup.

The application form and its Appendix is attached as Appendix 'C'.

The letter from the planning Inspectorate is at Appendix 'D'.

If the Highway Authority does not join in the application it is thought unlikely that the part of the small red triangle affected by the footpath in County Council ownership, required for construction would not be able to be de-registered by the Secretary of State. The developer would presumably need to then apply for consent to do works. It is thought that the other small pieces of application land could proceed to be considered. The County Council's discretion must be exercised reasonably and in this matter should not be based on whether a wind farm is thought to be appropriate. It is advised that Footpath 394 remaining on common land or not, or being on land which becomes new common land does not unduly affect the County Council's powers or duties in respect of footpath 394 although if major works of maintenance were required consent for works may be required if it were a section on common land.

The Committee will note that Coronation Power offers to permit public access and re-register common land. This is as similar to what was offered in the matter previously considered. The sub committee had their concerns. 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 refers 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 demonstrated the landowner intention to re dedicate re-dedication of land was a matter for the landowner.

It is suggested that the Committee may once again wish to express concerns as to how such access and re-registration is secured.

## **Consultations**

N/A

## **Implications:**

This item has the following implications, as indicated:

## **Risk management**

### **Legal**

The section 16 application is required to allow the construction of a wind farm for which there is planning approval in place from the Secretary of State. Should a decision be taken to not join the application with Coronation Power then Lancashire County Council could be seen to be frustrating the planning process and preventing approved development leading to legal challenges and possible financial penalties along with damage to Lancashire County Council's reputation.

## **Local Government (Access to Information) Act 1985**

### **List of Background Papers**

<b>Paper</b>	<b>Date</b>	<b>Contact/Directorate/Tel</b>
File 3.669		Jane Turner/Office of Chief Executive/ 01772 532813

Reason for inclusion in Part II, if appropriate

N/A