

## The Planning Inspectorate

# Application to deregister or to deregister and exchange common land or town or village greens

Commons Act 2006: Section 16

Return completed application to:

The Planning Inspectorate  
Zone 4/05 Kite Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol  
BS1 6PN

Tel: 0117 372 8956, 0117 372 8768 or 0117 372 6387

Fax: 0117 372 6241

E-mail: [commonlandcasework@pins.gsi.gov.uk](mailto:commonlandcasework@pins.gsi.gov.uk)

# Application to deregister or to deregister and exchange common land

- Answer all the questions on this form in full and only use a separate sheet where there is insufficient space for your answer.
- Refer to the separate "Note on completing this form" (the "Notes") when applying
- Consult informally and widely about your ideas before developing a formal proposal
- References throughout this form to 'Common Land' apply equally to 'town or village green'

## SECTION A – The common land (or village green) – to be deregistered - the "release land" (see Notes 1, 2, 3, 4, and 5)

### Section A1 – The common:

1. Name of common  CL/VG No.
2. Located in the:
- (a) Parish/Town of
- (b) Borough/District/City of
3. Commons Registration Authority

### Section A2 – The owner (see Note 1):

4. Title (e.g Mr/Mrs/Miss/Ms/Dr)
- (a) Forename (s)
- (b) Surname
- (c) Position/Organisation (if appropriate)

### 5. Full Postal Address

Postcode

Telephone number  (incl national dialling code)

Mobile No

Fax number  (incl national dialling code)

E-mail address

I prefer to be contacted by  Email  Post

Please note that unless you tell us otherwise, we will send all correspondence to the person named above – not to the owner of the replacement land shown in Section B2.

### Please tick as appropriate:

Please send all correspondence to the owner above in question 4.....

Please copy all correspondence to the person named in question 15.....

# Application to deregister or to deregister and exchange common land

- Answer all the questions on this form in full and only use a separate sheet where there is insufficient space for your answer.
- Refer to the separate "Note on completing this form" (the "Notes") when applying
- Consult informally and widely about your ideas before developing a formal proposal
- References throughout this form to 'Common Land' apply equally to 'town or village green'

## SECTION A – The common land (or village green) – to be deregistered - the "release land" (see Notes 1, 2, 3, 4, and 5)

### Section A1 – The common:

1. Name of common  CLVG No.
2. Located in the:
- (a) Parish/Town of
- (b) Borough/District/City of
3. Commons Registration Authority

### Section A2 – The owner (see Note 1):

4. Title (e.g Mr/Mrs/Miss/Ms/Dr)
- (a) Forename (s)
- (b) Surname
- (c) Position/Organisation (if appropriate)

### 5. Full Postal Address

c/o Andrew Crossley  
G Crossley & Son  
104 Yorkshire Street  
Rochdale

Postcode

Telephone number  (incl national dialling code)

Mobile No

Fax number  (incl national dialling code)

E-mail address

I prefer to be contacted by  Email  Post

Please note that unless you tell us otherwise, we will send all correspondence to the person named above – not to the owner of the replacement land shown in Section B2.

Please tick as appropriate:

Please send all correspondence to the owner above in question 4.....

Please copy all correspondence to the person named in question 15.....

**Section A3 – Area of common and common rights:**

6. What is the total area of common as registered? 123.755 ha, 169.486 ha, 172.561 ha, 192.068 ha (see Note 2)

7. What common rights, if any, are registered (e.g number and type)? If the land is a town or village green, to what recreational use is it put?

Please see Appendix 1

8. If common rights are registered, are they ever exercised?.....Yes  No

9. If Yes, to what extent (e.g which commoners are active, which rights are exercised, and how frequently)?

The Commoners utilise their grazing rights on all four of the areas. It is understood from discussions with the commoners association for CL165, CL166 and CL164 that eight commoners exercise their rights on CL165 and CL166 this was given verbally and not documented. On CL172 and CL168 grazing rights are exercised but the frequency is unknown although site visits would indicate it is low. Pre-application consultation has not revealed further insight.

**Section A4 – Other rights over the common:**

10. Give details of any relevant leaseholders, other occupiers, or those holding any relevant charges over the release land (see Note 4) and enclose copies of their written consent to this application (see Note 3).

There are no relevant lease holders, other occupiers or those holding any relevant charges over the release land.

**Section A5 – Description of the release land:**

11. Area of release land 29.8 ha (m<sup>2</sup> or hectares)

12. Description (including location) of release land (see Note 5).

Land on north, north west and north east of the Watergrove Reservoir, adjacent to the village of Shawforth and Landgate quarry and north of the City of Rochdale in the Metropolitan Boroughs of Rossendale, Rochdale and Calderdale including several minor hills including Birching Brow, Long Hill, Moorhey Clough, Stubley Cross Hill, Crook Hill, Middle Hill and Rough Hill as shown on the plan accompanying this application edged in red. The grid reference for the centre of the site is 3925 4195.

**SECTION B – The land to be given in exchange – the “replacement land”**  
(see Notes 6, 7, 8, and 9)

13. Are you proposing to provide replacement land in exchange for the release land?.....Yes  No

If **Yes**, go to Question 14. If **No**, please explain here why you are not providing replacement land (see Note 6) and then go to Question 22.

**Section B1 - Location of the replacement land:**

14. Name, if any, of the replacement land:   
The replacement land is located in the:

- (a) Parish/Town of
- (b) Borough/District/City of
- (c) County of

**Section B2 – The owner of the replacement land (see Note 1):**

15. Title (e.g Mr/Mrs/Miss/Dr)
- (a) Forename (s)
  - (b) Surname
  - (c) Position/Organisation (if appropriate)

16. Full Postal Address

161 Featherstall Road, Littleborough

Postcode

Telephone No  (incl national dialling code)

Mobile No

Fax No  (incl national dialling code)

E-mail address

I prefer to be contacted by  Email  Post

**Please note that unless you tell us otherwise, we will send all correspondence to the person shown in Section A2.**

**SECTION B – The land to be given in exchange – the “replacement land”**  
(see Notes 6, 7, 8, and 9)

13. Are you proposing to provide replacement land in exchange for the release land?.....Yes  No

If **Yes**, go to Question 14. If **No**, please explain here why you are not providing replacement land (see Note 6) and then go to Question 22.

**Section B1 - Location of the replacement land:**

14. Name, if any, of the replacement land:   
The replacement land is located in the:

- (a) Parish/Town of
- (b) Borough/District/City of
- (c) County of

**Section B2 – The owner of the replacement land (see Note 1):**

15. Title (e.g Mr/Mrs/Miss/Dr)
- (a) Forename (s)
  - (b) Surname
  - (c) Position/Organisation (if appropriate)

16. Full Postal Address

Slough Farm, Docker, Kendal, Cumbria

Postcode

Telephone No  (incl national dialling code)

Mobile No

Fax No  (incl national dialling code)

E-mail address

I prefer to be contacted by  Email  Post

**Please note that unless you tell us otherwise, we will send all correspondence to the person shown in Section A2.**

**Section B3 – Description of replacement land:**

17. Area of land proposed as replacement land  (m<sup>2</sup> or hectares)

18. Description (including location) of land proposed as replacement land (see Note 5).

Long Clough: Land is located to east of Long Clough and to the south of Stansfield Hill and is shown on the plan accompanying this application edged light green

Duckworth Farm: The land is located to the east of Shawforth and Knowlsey Farm and near to the Limers Gate path and is shown on the plan accompanying this application edged light green.

19. Please confirm that the proposed replacement land is not already registered as common land or town or village green (See Note 7).....

20. Is the proposed replacement land subject to any other formal designation (for example, as public open space)? (See Note 8)..... Yes  No

If Yes, give full details:

21. Give details of any relevant leaseholders, or other occupiers, or those holding any relevant charges over the replacement land: (see Note 9).

Long Clough:

There are no relevant charges that apply to this land

Duckworth Farm:

There are no relevant charges which apply to this land.

**SECTION C - Access arrangements and current features of the lands (see Notes 10, 11 and 12)**

For questions 22 to 28 complete both parts of each question if replacement land is being provided. If no replacement land is being provided, complete part (a) of each question.

**Section C1 – Access to the lands:**

22. To what extent is there public access over the lands to be exchanged?

(a) The release land

Please see Appendix 1

(b) The replacement land

Please see Appendix 1

23. What will the access arrangements be after the exchange?

(a) The release land

During construction, the release land is likely to be fenced off temporarily for safety purposes. Land alongside the access tracks, which is being used to place peat, shall remain fenced off until re-vegetation has taken place. Again this is temporary. After construction and re-vegetation fencing shall be removed. Land deregistered from the common and not required for the wind farm will be re-registered for use by riders, public and graziers. A licence will be granted so access will be as it was prior to the application being made. Only the physical imprint of the turbine towers and substation will impede access. Please see the extension to this question in Appendix 1 to this form.

(b) The replacement land

This land will become common land and therefore be subject to the corresponding rights. If there are boundary markings separating this land from the common then access points by gate or stile will be put into these boundary markings to allow public and commoner animal access.

**Section C2 - Current condition of the lands:**

24. Describe the current condition and use of the:

(a) release land

Please see Appendix 1

(b) replacement land

Long Clough land is improved agricultural land.  
The Duckworth Farm Land is semi- improved agricultural land.  
Please see photos at Appendix 2.



25. What structures, (e.g buildings, roads, bridleways, footpaths, walls, fences or other constructions currently exist on the:

(a) release land

At the start of CL165 there is a well maintained access. This then turns into a less well maintained track private highway that leads through Crey Farm and up to Middle Hill quarry. This track then carries on to Hades quarry on CL166 and gradually deteriorates. Middle Hill quarry has a current planning permission in the Rochdale half of the site but is not currently being quarried. Hades quarry is sited on CL166 where CL166 and CL165 meet. Walls and fences delineate the edge of the commons where they are not owned by the Lord of the Manor but there is no boundary features between CL165, CL166, CL168 and CL172. Apart from these walls and fences there are no structures on CL166, CL172 and CL168 except public rights of way and boundary stones.

(b) replacement land

Long Clough: There are borders on the north, south and south west of the replacement land. Currently where the replacement land adjoins the replacement land given as part of COM133 there is no boundary feature.  
Duckworth Farm: there are dry stone borders to the south and east of the land.

26. What boundary features e.g. fences, hedges, walls (and access points such as stiles and gates) currently exist on (or on land immediately adjoining) the:

(a) release land

The land is common land with open access so there are no boundary features.

(b) replacement land

Long Clough: Currently where the replacement land adjoins the replacement land given as part of COM133 there is no boundary feature.  
Duckworth farm: Dry stone boarders to the south and west. Fencing to the south.

27. What, if any, boundary features are proposed to be removed or erected as part of the exchange?

(a) release land

No permanent boundary features. Temporary fencing may be required for safety purposes during construction. Temporary fencing may be required for up to 3 years for the re-vegetation of peat areas disturbed during construction. This temporary fencing will not follow the complete boundary area of the land deregistered from the common. Only the bare minimum will be used and gaps will be left in the fencing to allow the free movement of stock and the public. The placing of fencing will be strictly controlled by the conditions attached to the planning permission associated with the wind farm. The fencing will be placed in accordance with the approval of the Local Planning Authority.

(b) replacement land

Long Clough: The eastern edge of the replacement land will be fenced or dry stonewalled to create a new boundary indicating what is now common land and what is not. Where necessary parts of the boundary to the north separating CL168 and the release land will be removed and replaced with gate and stile to allow ease of access for the public and animals.  
Duckworth Farm: it is proposed to place a gate and stile in the southern dry stone wall to allow public and stock access.

28. Are any works or other things to be done by any party as part of the exchange?.....Yes  No

If Yes, give details:

(a) release land

Currently no works save construction are proposed for the release land. However applications have also been submitted under s38 Commons Act 2006 for restoration works to Hades Quarry and Landscaping works adjacent to Landgate quarry.

(b) replacement land

Works required are the placing of gates and stiles to allow access to the common.

29. Are any of the lands subject to any other rights or easements not already mentioned on this form?.....Yes  No

If Yes, give full details:

- Rights granted to Fred Temperly and Sons Limited to work areas of CL165 for Fireclay, ironstone, ganister and shale. Fred Temperly and Sons Limited was dissolved in December 1960 and the rights have not been exercised for many years.
- Rights in favour of the Mayor Aldermen and Burgess of Rochdale in respect of an aqueduct. Note that this right now resides in United Utilities Plc.
- A right of way has been given to Lancashire County Council from the entrance to land gate to Crey farm (CL165)
- Charge in favour of Crook Hill Properties Ltd in respect of CL166, CL168 and CL172 for an option to enable construction of a wind farm. This is the wind farm that this application relates to.
- Charge in favour of Fortis Clean Energy Fund GP limited in respect of CL166, CL168 and CL172.
- National Grid Plc have a grant of rights over the Long Clough Release land. See pre-application consultation response attached with this application.
- Frodine Limited have an option to buy the land belonging to Long Clough Farm. Consent is attached.

### SECTION D – Details of the exchange or deregistration, and any informal consultations (see Notes 13, 14 and 15)

30. What are the reasons for the exchange or deregistration and the circumstances surrounding it?

See appendix 1

31. It is strongly recommended that you consult informally on your proposals at an early stage in their development (see Annex A of the Notes). What informal consultation (e.g with local inhabitants) have you carried out? Give details below and provide written evidence.

- This application is to allow the Crook Hill wind farm to access the plateau from another access point that creates less impacts. A planning application for this was submitted in January 2011
- This application follows on from a previous application (COM133) concerning the deregistration and exchange of land for the Crook Hill 8 Wind farm. This application went to public inquiry where the issues that will arise here were discussed in great detail and evidence was brought by the applicant, the LPAs and the rule 6 parties.
- As part of this application a pre-application consultation has been carried out and the replies received are included with this application.

### SECTION E – Designations (see Notes 16 and 17)

32. Are any of the lands subject to this application in or near a Site of Special Scientific Interest (SSSI), a Special Area of Conservation (SAC), a Special Protection Area (SPA), or Wetland listed in accordance with the Ramsar Convention?.....Yes  No

If Yes, please give details, identify on the map (see section J), and provide evidence of any consultation you have consulted Natural England (see Note 16).

33. Do any of the lands contain a Scheduled Ancient Monument?.....Yes  No

If **Yes**, give details, identify on the map (see section J), and provide evidence of any consultation you have carried out with English Heritage (see Note 17).

34. Are any of the lands subject to this application in a National Park or Area of Outstanding Natural Beauty?.....Yes  No

**SECTION F – Adjacent Common Land (see Note 18)**

35. Does any area of common land or village green, of a different registration number, adjoin the common land or green subject to this application?.....Yes  No

If **Yes**, give details and identify them on the map (see Section J):

CL165 adjoins CL164. Please see the plan accompanying the register for CL165.

**SECTION G – Public Access (see Notes 19, 20 and 21)**

36. Do the public have a right of access to the release land for air and exercise under section 193 of the Law of Property Act 1925?.....Yes  No

37. Is the release land subject to an Order of Limitation made under section 193?.....Yes  No

If **Yes**, give its date and other details, and send us a copy:

(

**SECTION H – Scheme of management and local Acts (see Note 22)**

38. Is there a Scheme of Management for the release land, made under the Metropolitan Commons Act 1866 or the Commons Act 1899?.....Yes  No

39. Is the release land subject to any other regulatory Scheme or Act (e.g a Provisional Order Confirmation Act made under the Commons Act 1876) ?.....Yes  No

If **Yes**, to either question, give its date and other details below, and send us a copy of the Scheme or Act. Do you wish to seek any special arrangements to be made in relation to any of these provisions?

**SECTION I – Advertisement and Consultation (see Notes 23, 24 and 25)**

You must advertise your proposal in one main local newspaper and at the main points of entry to the lands within 7 days of making your application. Use the draft notice at Annex B of the Notes.

You must also send a copy of the notice (using the letter at Annex D of the Notes) to the following:

- the commons council or association (if there is one)
- all active commoners
- others with an interest in the lands e.g tenants, those with easements or other rights over the lands
- any relevant parish, district, city or county council
- Natural England (if applicable)
- English Heritage (if applicable)
- National Park Authority (if the lands are in a National Park)
- AONB Conservation Board or Joint Advisory Committee (if the lands are in an AONB)
- Open Spaces Society (see Note 25)

40. Which newspaper will the advertisement appear in, and on what date?

Rochdale Observer  
Todmorden News  
Rossendale Free Press

**SECTION J – Maps (see Note 26)**

You **must** include with your application **two copies** of a map which fully meets the requirements set out in **Note 26**.

41. Two copies of the map that meets the requirements set out in **Note 26** are enclosed.....

**SECTION K – Public inquiry or hearing (see Note 27)**

42. Give the name and address of a suitable place in the locality for holding a public local inquiry or hearing, should this be needed:

Rochdale RUFC, Banford, Rochdale.

Contact name/Telephone number:

**Checklist** (tick to confirm)

I have read the **Notes** in full.....

I have:

- answered all the questions on this form in full.....
- enclosed two copies of the map that meets the requirements of Section J.....
- enclosed a copy of the commons register in respect of this common (i.e details of the land, rights, and ownership, and the register map).....
- enclosed a copy of any document mentioned in answering the questions on this form (e.g scheme of management, written permission of any relevant leaseholders, letters from informal committees etc).....
- understood that any of the application papers may be copied to interested parties on request, and have informed people as necessary.....
- enclosed my application fee of £4,900.00.....

I will, within 7 days:

- advertise the proposal in one local newspaper.....
- post a copy of the notice at the main entry points to the lands.....
- send a copy of the notice to all those listed in Section I.....
- place a copy of the notice, map and application at the inspection point.....

I will write to you as soon as possible, using the letter at **Annex E** of the **Notes**, to confirm that the advertising requirements have been met.....

## Appendix 1

### Extensions to various questions

#### Question 7

##### CL172

Right to graze sheep: 5  
Right to graze cattle: 5  
Right to turbary: 1

##### CL168

Right to graze sheep: 19  
Right to graze cattle: 18  
Right to turbary: 1  
Right to graze horses: 3  
Right to cut and take bracken: 1

##### CL166

Right to graze sheep: 31  
Right to graze cattle: 26  
Right to turbary: 3  
Right to graze horses: 8  
Right to take stone: 1  
Right to graze pigs: 2  
Right to graze goats: 2  
Right to graze hens: 1

##### CL165

Right to graze sheep: 25  
Right to graze cattle: 24  
Right to turbary: 11  
Right to graze horses: 15  
Right to take stone: 11  
Right to graze goats: 2  
Right to graze poultry and hens: 2  
Right to graze geese: 7

as defined in the registers.

Please note that some commoners have rights that apply equally to CL172, CL168 and CL166. Commoners on 165 sometimes have rights to CL166 and CL164. Various combinations apply and are defined in the registers. The figures above do not distinguish between these duplicated rights.

Commoners on CL165:	25
Rights over CL165 only:	12
Rights over CL165 and CL164:	8
Rights over CL165, CL166 and CL164:	5
Rights over 165 and 166:	9

It should be noted that the restriction of grazing rights on CL165 mean that 3 commoners will not be affected by the application (entry 21, entry 26 and entry 27)

Commoners on CL172:	6
Rights over CL172 only:	2
Rights over CL172 and CL166:	2
Rights over CL172 and CL168:	4
Rights over CL172, CL166 and CL168:	2

Commoners on CL168:	19
Rights over CL168 only:	11
Rights over CL168 and CL166:	5
Rights over CL168 and CL172:	2
Rights over CL172, CL166 and CL168:	2
Rights over CL164, CL166 and CL168:	1
Commoners on CL166:	32
Rights over CL166 only:	12
Rights over CL168 and CL166:	5
Rights over CL166 and CL172:	2
Rights over CL172, CL166 and CL168:	2
Rights over CL165, CL166 and CL164:	6
Rights over CL165 and CL166:	4
Rights over CL164, CL166 and CL168:	1
Rights over CL166 and CL164:	3
Rights over CL166, CL162, CL163 and CL164:	1

### Question 22 a)

The following footpaths cross the release land:

- Rochdale:
  - WarFp226: beginning of footpath as it leaves WarFp225 is in the release land area
  - WarBp224: crosses perpendicular to the release land area as the area moves down of Rough Hill and the footpath travels around Rough Hill
  - WarBp219: also known as the Long Causeway crosses perpendicular to the release land area between turbines 3 and 4.
- Calderdale:
  - No footpaths in Calderdale cross the release land area
- Rossendale:
  - The release land area covers an adopted highway known as Landgate. Landgate extends to a cross roads where it departs from the release land area and travels northwest. The track that is then covered by the release land area is a private road.
  - Ftp25 follows the route of Landgate and is therefore within the release land area for the same length.
  - Ftp26 follows the release land area as it heads towards Middle Hill quarry
  - BW30 is crossed as the Bridleway travels through Middle Hill quarry.
  - Ftp30a is crossed as it travels through Middle Hill quarry
  - BW27 is followed until it reaches the Rochdale border
  - Ftp28 is followed until it reaches the Rochdale border
  - Ftp27b is crossed just before the Rochdale border

### Question 22(b)

Footpath LitFp44 crosses the Long Clough replacement land from west to east and is indicated on the plan.

Footpath FP 14 crosses the southern area of the Duckworth Farm land close to the dry stone wall on the southern boundary.



### Extension to Question 23

- (a) The applicant is aware that when the common land is deregistered the public's rights to access the release land that is (unless a PROW is in place) will cease. To deal with this and to ensure that so far as is possible the public's access to this area of land does not cease, the following is proposed:

#### Granting of a licence

The applicant will grant an irrevocable licence for the life of the wind farm (25 years) for the public to cross, re-cross and use the land that is deregistered from the common and used for the operation and maintenance of the wind farm either on foot or on horseback. Commoners and their animals will also be able to cross, re-cross and use the land for movements of their animals and grazing. However the applicant or his agents will be able to temporarily restrict the licence to enable construction, operations or maintenance to be carried out as and when necessary.

The applicant will enter into an obligation under s106 of the Town and Country Planning Act 1990 to confirm that it will grant a licence as described above.

#### Re- Registration

Please see details in the extension to Question 30 below regarding the re-registration of land back to the common. Once re- registered, the public's right to access this land will continue as it had in the past. The re- registration will also ensure that the commoners' rights to graze live stock over the original common land are restored to this rededicated common land.

The overall outcome of the application being that the public will be able to access all areas of the release land even though it has been deregistered. The exception being the physical impediments of the turbine towers, the substation and the base of the met mast.

*Non Grazable area*

This is the area of the release land that is not currently grazable given the existence of access tracks. Stock cannot graze it and therefore this must be considered in any calculation regarding a loss or gain of areas that can currently be grazed.

**The Figures**

Of the areas described above the following figures arise:

**Table 1**

<b>Landowner</b>	<b>Ha</b>	<b>Ha</b>	<b>Ha</b>	<b>Ha</b>	<b>Ha</b>
<b>Crook Hill 12 Hades</b>	<b>Release Land Area</b>	<b>Removed Land Area</b>	<b>Loss of Grazing Area</b>	<b>Non Grazable Area</b>	<b>Replacement land Area</b>
Jeremy James Dearden	29.8	7.97	6.81	0.81	
Bialk					2.397
Lloyd					1.6
<b>Total</b>	29.8	7.97	6.81	0.81	3.997

The release land area can be broken down over the common units:

**Table 2**

	<b>Ha</b>	<b>Ha</b>	<b>Ha</b>	<b>Ha</b>	<b>Total</b>
<b>Common Land Unit</b>	<b>CL165</b>	<b>CL166</b>	<b>CL168</b>	<b>CL172</b>	
Release land Area	6.98	14.84	2.55	5.45	29.8

Under application COM133 the following replacement land and release land was created:

**Table 3**

<b>Landowner</b>	<b>Ha</b>	<b>Ha</b>
<b>Crook Hill 12 Hades</b>	<b>Release Land Area</b>	<b>Replacement land Area</b>
Jeremy James Dearden	17.52	
Bialk and McGregor		3.35 3.34 = 6.67

Thus if this application is granted the following figures for the land deregistered from the common (CL165, CL166, CL168 and CL172) (Release Land) and land added to the commons (Replacement Land) will be in place:

**Table 4**

<b>Landowner</b>	<b>Ha</b>	<b>Ha</b>
<b>Crook Hill 12 Hades</b>	<b>Release Land Area</b>	<b>Replacement Land Area</b>
Jeremy James Dearden	17.52 + 29.8 = 47.32	
COM133 plus Bialk and Lloyd		6.67 + 3.997 = 10.667

The removed land, loss of grazing and non-grazable area can also be broken down by common unit. Table 5 below works on the basis of COM133 and this application being granted and therefore the wind farm constructed using the Hades Access. The order granting COM133 is included with this application.

**Table 5**

Common unit	Removed Land Area	Loss of Grazing Area	Non Grazable Area
CL165	2.00	1.34	0.66
CL166	3.17	2.87	0.15
CL168	0.97	0.91	n/a
CL172	1.83	1.69	n/a
<b>Total</b>	<b>7.97</b>	<b>6.81</b>	<b>0.81</b>

Once the wind farm is built and the deregistered land that is not needed for the operation and maintenance of the wind farm (including land to be deregistered under COM133) is re-registered with the commons registration authority there will be a net gain to the common of 2.697 ha. This is demonstrated by the following calculation:

**Table 6**

	Hectares
<b>Existing Commons Area of all 4 units (a)</b> (123.755 ha + 169.486 ha + 172.561 ha + 192.068 = 657.87 )	657.87
Release Land from Table 4 (b)	47.32
<b>[a-b]</b>	610.55
Replacement land Area from table 4 (c)	10.667
<b>[a-b+c]</b>	621.217
Land permanently removed (from table 5) (d)	7.97
Land to be Re-registered (e) [b-d]	39.35
<b>New commons Area (f) [ a-b+c+e]</b>	660.567
<b>Increase in commons area [f-a]</b>	2.697

## Conclusions

The Release Land Area for this application and COM133 equates to 7.19% of the total existing area of CL165, CL166, CL168 and CL172.

The Removed Land Area equates to 1.21% of the total current area of CL165, CL166, CL168 and CL172.

The Loss of Grazing Area equates to 1.04% of the total current area of CL165, CL166, CL168 and CL172.

As a result of the application there will be a net increase in the combined area of the four commons of CL165, CL166, CL168 and CL172 of at least 2.697 ha

There will be a net gain in grazing land to the common land at CL165, CL166, CL168 and CL172 of 3.86ha (10.667 minus 6.81 = 3.86ha).

The loss of grazing land for CL165 equates to 0.7 % of the total existing area of CL165 (see page 3 of application form or commons register).

The loss of grazing land for CL166 equates to 1.32% of the total existing area of CL166 (see page 3 of application form or commons register).

There will be a net gain in grazing land to the common land at CL165 of 0.26ha (Lloyd replacement land (table 1) (1.6) minus loss of grazing area (table 5) (1.34) = 0.26).

## Further relevant information

### Matters to be considered when determining the Application

Under section 16(6) Commons Act 2006 the appropriate national authority needs to have regard to:

- (a) the interests of persons having rights in relation to, or occupying, the release land (and in particular persons exercising rights of common over it);
- (b) the interests of the neighbourhood;
- (c) the public interest;
- (d) any other matter considered to be relevant.

The public interest is further defined at section 16(8) as including:

- (a) nature conservation;
- (b) the conservation of the landscape;
- (c) the protection of public rights of access to any area of land; and
- (d) the protection of archaeological remains and features of historic interest.

The applicant thinks that it is worth discussing these aspects to give greater clarity to the decision maker.

Planning permission for the development is required from 3 LPAs. Rochdale MBC, Calderdale MBC and Rossendale BC. Rochdale have granted planning permission and the decision notice is attached with this application. Calderdale has resolved to grant permission subject to a legal agreement. This resolution is included with the application. Rossendale are yet to determine their application but a decision should be made late August/early September 2011.

The SoS decision (and its accompanying Inspector's report) of 12 October 2009 and the decision on Mr Elliot dated 12 April 2011 are both material considerations of significant weight for this application and are included with this application. Further the conclusions (so far as relevant) should be adopted when determining this application unless new evidence causes them to be doubted. No "new" evidence has been presented on these "crossover" issues ie peat, ecology, hydrology, geology, archaeology, mining hazard, rights of the commoners and users of the common.

Also of relevance is the decision dated 13 July 2011 to grant application COM216 (Todmorden and Lower Moor). The application followed the same approach as was made for COM135 and COM133 and again relates to a wind farm. This is included with the application for reference.

Whilst any determination will have to be carried out in line with s16(6), parts of the criteria can be broken down into specific issues and for the sake of clarity this section focuses on those issues. In terms of an assessment of the issues, the topics that will need to be considered for this application will be the same as those considered by the Mr Baird and Mr Elliot. These are:

1. The need for Renewable Energy supplies
2. The effects on those with common rights
3. The effects on access by the public
4. Effect on ecology
5. Effects on Landscape
6. Effects on water supplies and water quality
7. Mining Hazard
8. The acceptability of the Long Clough replacement land.
9. The use of a planning obligation to ensure the re-registration of common land not needed for the operation and maintenance of the development
10. Interests of the Neighbourhood
11. Restoration of the eroding southern peat boundary on Crook Hill

The only issues that were not assessed by Mr Baird or Mr Elliot that are relevant to this application are:

As a result of this application there will be a loss of vegetation under the access tracks, turbine bases and substation. There will be a need to excavate peat but this can be stored on site and used in the restoration work that will take place under the planning permission and the consent to erect fencing applied for under COM131. Best practice will be employed to ensure that the wind farm construction and operation has minimal impact on peat.

As a direct result of this application, other than the peat and vegetation, there will be no other effects on ecology. By reference to the 2009 DEFRA guidance nature conservation arises in particular ie. peat and ecology generally. Inspector Baird's conclusions are to be found at 11.98 - 11.104 and 11.106 -11.115.

## **5. Landscape**

Impacts upon landscape and visual amenity and residents' amenities were considered by Inspector Baird at 11.125- 11.134. This application does not seek to go behind these conclusions namely localised landscape impact; no unacceptable harm to residents but a diminution of sense of remoteness and wilderness. However a large part of the conclusions of Mr Baird concerns the effect of the new access track from Higher Calderbrook Road to the plateau top. The effects will not arise because the access from Shawforth is not in a prominent position and travels through an area of already disturbed ground until it reaches Hades Quarry.

## **6. Water supplies and water quality**

This was addressed by Mr Baird at 11.92 -11.97. These findings are equally applicable for this access route. No evidence has been brought forward to show that the findings of the ES that supports the planning application are incorrect or in doubt. At 11.84 of Inspector Baird's report he noted the work done "... provides a sufficient level of understanding to acceptably identify the levels of risk. The studies conclude that the risks to private water supplies is low and which could be acceptably managed ..." A condition to protect private water supplies plus the requirement for a sediment control plan as part of the Construction Method Statement condition will be enough to protect private water supplies and water quality.

## **7. Potential Mining Hazard**

The ES recognises the release land area which makes up the main access track from Shawforth is undermined. At the 2009 inquiry the mining hazard risk assessment was recognised to be good (11. 90) for the Todmorden Moor wind farm and the same procedures have been followed here. There has been no objection from the Coal Authority. Risk to the access track is low and using the Construction Method Statement Condition engineering solutions can be provided if necessary.

## **8. The acceptability of the Long Clough replacement land**

It is recognised that the Long Clough land is only reachable to all commoners by vehicle or if they hold rights over CL168. Page 1 and 2 of this appendix gives this break down. Mr Elliot's approach in his decision was that for those commoners who only have rights over CL166 or CL172 the actual loss of grazing would not be significant. On top of this the Replacement land would provide a gain in both grazing land and the area of common. The Long Clough land is therefore acceptable to use as replacement land.

## **9. The use of a planning obligation to ensure the re-registration of common land not needed for the operation and maintenance of the development**

The s106 is a necessary tool to give guarantees that land will be reregistered as common land. Mr Elliot at para 34 recognised that it should be taken into account as material consideration and this applies equally in this case. Mr Woolcock (COM216) also came to the same conclusion at para 12 of his decision.

## **10. Interests of the Neighbourhood**

The interests of the neighbourhood are diverse and dependent on what the neighbourhood entails. Mr Elliot addresses what the effects are likely to be at para 102 to para 123 (excepting para 106) of his report into COM133. The findings of this report apply directly to this application including to any application affecting CL165. There is also the chance to reduce the fly tipping that is carried out at Middle hill and Hades quarry by putting in gates. Nothing has changed since the last inquiry so the findings of Mr Elliot at para 123 still apply.



Findings on residential amenity, water supplies and public access as discussed above are relevant here.

### **11. Restoration of the eroding southern peat boundary on Crook Hill**

An application under s38 of the Commons Act 2006 for temporary fencing was made (COM131) and was granted 12 April 2011.

#### **Issues not already assessed by previous inspectors**

##### **1. The Duckworth Farm replacement land**

This land has been put forward for those with rights of Common over CL165. It is described in this application and photos have been provided.

##### **2. The effects on the commoners of CL165**

The only commoner who has given any information on likely impact is Mr Thorpe who in his response to the planning application (but included with this application at the pre-application consultation response tab) stated that this will affect his fell ponies who graze around Rough Hill.

The access track will cause some minor temporary disturbance whilst it is being constructed. However, traffic of this access track will become light after 6 months of construction with the full construction timetable being 12 months. After that traffic will be limited to service vehicles which will be the equivalent of around 1 vehicle per week. After construction those animals will be free to move over the track and graze around it. This will be much as presently takes place on CL165 where animals can be seen using the tracks. Thus disturbance will be minimal and temporary.

The findings of Mr Elliot apply equally to CL165 because:

- a) The figures in terms of percentages of the Loss of Grazing Land are very similar.
- b) There will be a net gain in grazing land as a result of this application of 3.86ha
- c) They will be getting full access to the replacement land which they can use for grazing
- d) The access track passes through areas of ground which are either already an access track or is disturbed ground and because of this there will be large gain in grazing land.

In addition to this:

- I. Not all commoners on CL165 will be affected by the works because their rights do not extend to the release land.
- II. Whilst the applicant believes disturbance to be minimal, the commoners on CL165 with rights on CL166, CL172, and CL168 will be entitled to compensation under the fund to be set up as required by the 2010 S106 obligation.

##### **3. An Alternative Access**

This application is to allow the facilitation of a new access to a wind farm that already has planning permission and the remaining 4 turbines that were not part of COM133. COM133 deregistered the original access from Higher Calderbrook Road and the area to allow the construction of 8 turbines. This new access route has a number of advantages over the Higher Calderbrook Road access and this must be an important consideration when determining this application. These factors are:

1. It removes the need to deliver abnormal roads and HGVs through Littleborough and as such construction and component delivery vehicles will be kept on A roads through to the site entrance point at Shawforth.
2. The need for the highly engineered site entrance at Higher Calderbrook Road is removed. This reduces the impacts on the St James' Church and on Higher Calderbrook Road itself.
3. The need to create a new and complex access up Long Hill is removed.
4. The new access route will utilise an existing site entrance and existing track (used for quarrying and access to some local properties) for part of its route up to Rough Hill quarry roads, thereby reducing the land take requirements of the access arrangements and reducing the overall level of impact in terms of landscape and ecology.
5. Stone for use on site could be sourced from Middle Hill quarry. The ability to exploit this resource would reduce the volume of vehicle movements overall.

This would be a factor to consider under s16(6)(d).

#### 4. Restoration of Hades Quarry

The planning permission will be subject to a condition that Hades Quarry needs to be restored. A separate application under s38 of the Commons Act 2006 has been made to accompany this application.

##### Overall balance

As this application will allow the construction of a wind farm the need for the development must be considered in the balance. Nationally the UK government is signed up to producing 20% of all energy through renewables by 2020. The wind farm that will be built if this application is successful will go towards meeting this target.

The need for such developments and the reason for the national targets stems from the need to reduce the release of carbon from fossil fuel sources and delivering energy security. Support for these policy objectives is still on going as is the support for the development of onshore wind farms.

When this application is considered the importance of government policy on climate change and renewables must be considered.

There will be some harm to ecology and peat within the release land area. By reference to the 2009 DEFRA guidance nature conservation arises in particular ie. peat and ecology generally.

Set against this concluded modest degree of harm are two particular matters:

- The wider benefits of CO<sub>2</sub> reductions;
- The more local benefits which will undoubtedly arise from the habitat restoration and management proposals which the scheme will enable. These are of necessity non-specific at the present time but there are significant opportunities for enhancement and restoration with both COM131 and the Hades Quarry restoration and the landscaping.

The need/benefits issues arise under "any other matters considered to be relevant". As noted these issues must carry very significant weight - given that the commoners under the present proposals will receive more grazing than they currently have; that the common will increase in size and the common will benefit from restoration work the applicant asks that this application is allowed.