

Subject: Proposed De-Registration of
Common Land
Reaps Moss, Bacup

Status: For Publication

Report to: Cabinet
Development Control Committee

Date: 22nd October 2008
3rd November 2008

Report of: Planning Unit Manager

Portfolio Holder:

Regeneration and Leisure

Key Decision: No

Forward Plan

General Exception

Special Urgency

1. PURPOSE OF REPORT

To advise Cabinet of the latest state-of-play in respect of Appeals lodged against the decisions of the Council's Development Control Committee to refuse an application for planning permission for a Windfarm at Reaps Moss and to object to planning applications for two other Windfarms proposed in neighbouring local authority areas.

To establish the Council's stance in relation to an application for de-registration of Common Land at Reaps Moss.

2. CORPORATE PRIORITIES

The matters discussed in this report impact directly on the following corporate priorities and associated corporate objective.

- Delivering Regeneration across the Borough (Economy, Housing)
- Keeping Our Borough Clean and Green (Environment)
- Promoting Rossendale as a cracking place to live and visit (Economy)
- Improving health and well being across the Borough (Health, Housing)

3. RISK ASSESSMENT IMPLICATIONS

No issues

4. BACKGROUND AND OPTIONS

At its meeting on 28 November 2007 the Council's Development Control Committee considered a report in respect of applications for three Windfarms proposed by Coronation Power :

Application 2007/125 sought planning permission from this Council for the erection of three turbines with a height to blade-tip of up to 125m, and associated 80m high monitoring-mast, electricity sub-station and access tracks. This development was proposed on land at Reaps Moss, which is situated on moorland to the east of the settlement of Bacup, and is just to the south of Todmorden Road (A681), close to the borough boundary with Calderdale MBC.

This Council's comments were also being sought by Calderdale MBC and Rochdale MBC upon planning applications they had received proposing a 5-turbine Windfarm on Todmorden Moor (just to the north of Todmorden Road) and a 12-turbine Windfarm at Crook Hill (straddling the boundary between Calderdale/Rochdale).

In accordance with the Officer Recommendation, the Committee refused Application 2007/125 and objected to permission being granted for the other two Windfarm proposals.

In short, Application 2007/125 was refused for the following reasons :

- The very special circumstances had not been advanced to outweigh the presumption against inappropriate development in Green Belt and other harm the proposal would cause.
- The siting/size/form of the development proposed for Reaps Moss, in itself and in combination with the existing and proposed Windfarms, would unacceptably erode the visual amenity and recreational value of the moorland landscape.
- The loss of blanket bog habitat, which is of national/international importance and which cannot be replaced or mitigated, together with deficiencies in terms of the surveys of the composition, hydrology & ecology of the area and consequences for CO2 storage.
- Serious doubts about the adequacy of the submission in terms of survey work and the implications of the proposal for badgers, a species afforded special protection under the Protection of Badgers Act 1992.
- Failure of the Applicant to complete a S.106 Planning Obligation making provision for the payment of monies into a Local Community Trust it proposed, in relation to the scheme of mitigation/habitat management and to address concerns about a BBC re-broadcast link from Winter Hill to Todmorden.

Objections to the two other Windfarm schemes, by reason of cumulative impact, were lodged with Calderdale MBC and Rochdale MBC.

Coronation Power has appealed against the refusal of Application 2007/125 by this Council and the non-determination by Calderdale MBC and Rochdale MBC of the applications submitted to them. All three Windfarm proposals are now to be the

considered at a single Public Inquiry which is scheduled to begun on 17 February 2009.

In the documentation accompanying Application 2007/125, it was stated that :

“With respect to common land, 0.62ha of land will be lost as a result of the implementation of the Reaps Moss Wind Farm scheme. The Developer has therefore offered to replace the lost common land elsewhere in the area, specifically an area of 4.74ha. The Developer is aware of the need to apply for consent to the Secretary of State for Environment, Food and Rural Affairs under Section 194 of the Law of Property Act 1925.”

The Council has now been notified an application has been submitted to the Secretary of State for Environment, Food and Rural Affairs under S.16 of the Commons Act 2006 for land forming part of Inchfield Moor to cease to be registered to enable “construction and operation of a 5-turbine wind farm including access track and ancillary development”.

The notification letter is accompanied by a Plan, which is appended, showing edged-red the land they wish to be de-registered as common land and edged-green that land they propose be registered as common land in replacement.

I would advise that the eastern boundary of Inchfield Moor in the vicinity of Reaps Moss is such that little of the moor extends into the administrative area of Rossendale. The part of the moor within Rossendale borough to be de-registered is required for two turbines, the electricity sub-station and associated access roads. The replacement land will be within Rossendale borough, and is to measure 3.08ha in area and form an extension of the existing common land.

If the Council wishes to make any objections or representations in relation to the proposed de-registration and replacement common land it must do so no later than 10 November.

Should any objections or representations be lodged to the proposed de-registration and proposed common land by the Council, or persons exercising rights of common over it or others, they would need to be considered at a Public Inquiry if the Applicant is unable to resolve them. In such an event the Applicant is most likely to wish the outstanding matters considered as part of the Inquiry scheduled to begin on 17 February.

Defra’s decision on this proposed exchange of common land will be made on the merits of the proposal, and will need to balance all the interests in the common, taking into account all views expressed to it within the prescribed period. It must have regard to the criteria set out in S.16 of the Commons Act 2006. These are :

- a) the interests of persons having rights in relation to, or occupying, the release land (and in particular persons exercising rights of common land over it);
- b) the interests of the neighbourhood;
- c) the public interest, which includes the public interest in :

- nature conservation
- the conservation of the landscape
- the protection of public rights of access to any area of land, &
- the protection of archaeological remains and features of historic interest;

d) any other matters considered relevant.

These criteria will be viewed in the light of the overriding objective of protecting, maintaining or improving the common, and of ensuring that the overall stock of common land is not diminished.

Having regard to the above, I would advise as follows :

- 1) It is of concern that the notification refers to “construction and operation of a 5-turbine wind farm”. This does not reflect the Reaps Moss scheme for which planning permission was sought through Application 2007/125 and which is now to be considered at appeal - it relates to 3 turbines.
- 2) It is considered appropriate, having regard particularly to criterion b) and c) of S.16 of the Commons Act 2006, to lodge objection to the proposed de-registration for reasons outlined in the refusal of planning permission for Application 2007/125.

COMMENTS FROM STATUTORY OFFICERS:

5. SECTION 151 OFFICER

No comments to report.

6. MONITORING OFFICER

No comments to report.

7. HEAD OF PEOPLE AND ORGANISATIONAL DEVELOPMENT (ON BEHALF OF THE HEAD OF PAID SERVICE)

No comments to report.

8. RECOMMENDATION

The Committee are asked to note the decision of the Cabinet which was to authorise Officers to lodge an objection/representation to the proposed de-registration and exchange of common land for the reasons set out in the concluding Paragraph of Section 4 of the above report.

10. EQUALITY IMPACT ASSESSMENT

Is an Equality Impact Assessment required No

12. BIODIVERSITY IMPACT ASSESSMENT

Is a Biodiversity Impact Assessment required	Yes
Is a Biodiversity Impact Assessment attached	No

Application 2007/125 was accompanied by an Environmental Impact Assessment and subject to extensive consultation.

Contact Officer	
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Background Papers	
Document	Place of Inspection
Planning Application files - 2007/125 Bond Pearce letter of 7/10/08	One Stop Shop

7 October 2008

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Our ref:
ER4/NJH3/366090.1
Your ref:

Special Delivery

Dear Sirs

**Application under Section 16 Commons Act 2006
Land at Inchfield Moor**

We are applying to the Secretary of State for Environment, Food and Rural Affairs (Defra) under Section 16 of the Commons Act 2006 to deregister an area of Inchfield Moor Common and to provide replacement land in exchange for the land to be deregistered.

We are required to give you notice of our proposals and are sending you a copy of the attached Notice and Plan in order to comply with that requirement.

Section 16 of the Commons Act 2006 enables the owner of land registered as common land or a town or village green to apply to Defra for the land or part of the land to be released from registration. If the "release land" is more than 200 square metres in area, an application must be made at the same time to register "replacement land" as common land in its place. If the release land is smaller than 200 square metres, a proposal for replacement land may (but need not) be included.

Defra's decision will be based on the merits of the proposal, and will balance all the interests in the common, taking account of all views expressed. Regard must be given to the criteria set out in section 16 of the Act. These are:

- (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, which includes the public interest in:
 - nature conservation
 - the conservation of the landscape
 - the protection of public rights of access to any area of land, and
 - the protection of archaeological remains and features of historic interest;
- (d) any other matter considered relevant.

These criteria will be viewed in the light of the overriding objective of protecting, maintaining or improving the common, and of ensuring that the overall stock of common land is not diminished. This will enable the diversity, variety, and overall extent, of common land to be safeguarded.

Any objections or representations about the proposals should be sent to The Planning Inspectorate by the closing date specified in the notice.

Yours faithfully



Bond Pearce LLP

Enclosures

1. Notice and Plan of Application

Section 16 of the Commons Act 2006

Proposed deregistration of common land/village green at:

Inchfield Moor CL472 Borough of Rossendale and Calderdale County of Lancashire

1. Notice is hereby given that Reaps Moss Limited has applied to the Secretary of State for Environment, Food and Rural Affairs under section 16 of the Commons Act 2006 for land forming part of the above-mentioned registered common land (the "release land") to cease to be so registered.
2. The purpose of this application is to enable construction and operation of a 5 turbine wind farm including access tracks and ancillary development.
3. It is proposed that land (the "replacement land") be registered as common land in place of the release land.
4. The release land is described in the First Schedule to this notice, and the replacement land is described in the Second Schedule. On the plan referred to in paragraph 5 below, the release land is shown edged red, the replacement land is shown edged light green, and the boundary of the common is shown edged in dark green.
5. A copy of the application form and plan showing the location of the lands can be inspected at Todmorden Public Library The Strand, Rochdale Road, Todmorden, Lancashire OL14 7LB between the hours of 10am and 4pm weekdays (not public holidays) until the 10th day of November 2008.
6. Any objections or representations in respect of the proposed deregistration and exchange should be sent in writing ON or BEFORE that date to: The Planning Inspectorate, Room 4/05, Kite Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN.
7. Letters sent to The Planning Inspectorate **cannot be treated as confidential**. They will be copied to the applicant and possibly to other interested parties.

FIRST SCHEDULE

(The release land)

1.12 hectares of land on Inchfield Moor situated on a ridgeline that comprises Tooter Hill, Reaps Moss and Hogshead Law hill edged red and as shown on the plan referred to in paragraph 5 above. The grid reference for the centre of the site is 3892 4227.

SECOND SCHEDULE

(The replacement land)

3.08 hectares of land on the north western edge of Inchfield moor and adjoining South Grain farm as shown on the plan referred to in paragraph 5 and edged in light green.

**Reaps Moss Limited
C/O Coronation Power
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26 September 2008**

Key:

- Release land
- Replacement Land
- Common Land

Scale 1:2500

Date: September 2008

dulas Solutions

Client: Coronation Power

Reaps Moss Wind Farm

Common Land Swap



