



Application Decisions

Site visit made on 5 January 2012

by **Alan Beckett BA, MSc, MIPROW**

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 14 August 2012

Application Ref: COM 283

Ramsden and White Slack Common, Shore Moor, Wardle Common and Whitworth & Trough Common, Todmorden, Whitworth, Wardle and Littleborough

Register Units: CL166, CL165, CL 168 and CL172

- Commons Registration Authority: Lancashire County Council (CL165 (part)); Rochdale Borough Council (CL 165 (part)), CL166, CL168); Calderdale Borough Council (CL 172).
- The application, dated 11 July 2011, is made under Section 16 of the Commons Act 2006 (the 2006 Act) to deregister and exchange common land.
- The application is made by Mr Jeremy James Dearden, Lancashire County Council and Rochdale Metropolitan Borough Council.
- **The release land** comprises 29.8 ha of land north and north-east of Watergrove Reservoir, near Rochdale forming part of Ramsden and White Slack Common, Shore Moor, Wardle Common and Whitworth & Trough Common.
- **The replacement land** comprises two areas totalling 3.997 ha. The first area (2.397 ha) is located east and south-east of Long Clough Farm; the second area (1.6 ha) is located east of Duckworth Farm.

Summary of Decision: The application is granted.

Application Ref: COM 284

Wardle Common, Wardle

Register Unit: CL 166

Commons Registration Authority: Rochdale Borough Council

- The application dated 7 July 2011, is made under Section 38 of the Commons Act 2006 for consent to undertake works on common land.
- The applicant is Mr Jeremy James Dearden.
- The works comprise: the moving of earth bunds, the filling of the area with moved material; the landscaping and planting of native species to facilitate the restoration to grazing land of the former Hades quarry. Fencing of the works will be required for up to three years to promote the establishment of vegetative cover.

Summary of Decision: The application is granted.

Application Ref: COM 285

Whitworth & Trough Common, Whitworth

Register unit: CL 165

Commons Registration Authority: Lancashire County Council, Rochdale Borough Council.

- The application dated 7 July 2011, is made under Section 38 of the Commons Act 2006 for consent to undertake works on common land.
- The applicant is Mr Jeremy James Dearden.
- The works comprise: the grading of disturbed land and spoil heaps at the former Landgate quarry; the establishment of native woodland in the vicinity of Landgate Quarry and Crey Farm; the erection of temporary stock-proof fencing (for up to 15 years) to facilitate the establishment of woodland planting; the creation of two

footpaths within the fenced area to facilitate public access; the construction of two stream crossings; the provision of vehicular access controls on the wind farm access track to deter fly-tipping and other such unauthorised access.

Summary of Decision: The Application is granted.

Preliminary Matters

Commons Registration Authorities

1. The applications as made all cite Lancashire County Council as being the Commons Registration Authority (CRA). Lancashire County Council ('Lancashire') has submitted that whereas the register pages for the register units at issue remained with Lancashire, the records for part of CL165, and all of CL166 and CL168 should have been transferred to Rochdale MBC and the records for CL172 should have been transferred to Calderdale BC upon local government re-organisation as there was no straddling arrangement in place for Lancashire to be the CRA for land outwith its own administrative area.
2. I do not consider that the interests of either Rochdale MBC or Calderdale BC have been prejudiced by the application not naming them as CRAs. Rochdale MBC were aware of the proposed access road to the wind farm having considered Coronation Power's planning application, and Calderdale BC has been fully involved in both the previous de-registration and exchange application (COM 133) which related to the proposed wind farm on Long Hill.

Planning permission

3. The applications relate to land on which planning permission has been granted for the construction of 12 wind turbines and ancillary infrastructure. The initial proposal made by Coronation Power included an access road which was to be constructed over Long Hill from Higher Calderbrook Road, Summit to serve the turbine site. An application for the de-registration and exchange of common land on Crook Hill in connection with Coronation Power's initial proposal was granted in April 2011 under reference COM 133.
4. On 23 June 2011, Coronation Power was granted planning permission for the construction of an alternative access road to serve the turbine site. This alternative route will commence at the junction of the A671 with Landgate in Shawforth, Rochdale and will run through Landgate Quarry, Hades Quarry and over Rough Hill to the turbine site.
5. The application COM 283 seeks the de-registration of 29.8 ha of common land which is required for the construction of the access road and which will be occupied by the turbine masts and structures ancillary to the operation of the turbine site. Planning permission for the access road from the west was sought as around half of the new road would follow the course of an existing access track which had served Landgate and Hades quarries. Coronation Power considered that utilising an existing road would negate the need for an access road from the east and avoid the environmental impact of constructing of a new road over Long Hill from Summit.
6. The application under COM 283 seeks the de-registration of further land in the vicinity of the eight wind turbines which were the subject of the application under COM 133 and the de-registration of additional land in the vicinity of the tracks which provide access between the turbines. The additional de-

registration is sought to permit the siting of the turbine bases on land not previously de-registered as a result of the ability to micro-site the positions of the turbine masts in accordance with the planning permission granted.

7. Planning permission for the development of a wind farm at Long Hill was granted following a report made to the Secretary of State by Mr Baird in July 2009. An application for the de-registration and exchange of land to permit the construction of an eight turbine wind farm was granted by Mr Elliott in April 2011 following a public inquiry in July 2010. At both the planning inquiry and the de-registration and exchange inquiry, the issues which I am required to consider were explored fully, and both the report to the Secretary of State and the decision made by Mr Elliott on behalf of the Secretary of State were comprehensive and exhaustive.
8. Since the issue of Mr Elliott's decision, no new evidence has been submitted in relation to the application under COM 283 which would cause me to consider that the conclusions reached by Mr Elliott are unsound or require revisiting. Although I give consideration to the main issues raised by the governing legislation in paragraphs 22 – 58 below, my written decision is relatively brief in comparison to that of Mr Elliott, who gave consideration to a substantial quantity of conflicting evidence.
9. I have reached my decision on the basis of the written representations submitted in this case and on the basis of the accompanied site visit I made on 5 January 2012.

Unilateral undertaking

10. On 15 September 2011 the landowner and the developer of the wind farm made a unilateral undertaking to Calderdale MBC, Rossendale BC and Rochdale MBC under section 106 of the Town and Country Planning Act 1990 to expressly grant rights of common to the Commoners over those parts of the release land which are not required for the operation and maintenance of the wind farm. In addition, an application will be made to the appropriate CRA to register those rights and to re-register de-registered non-operational land in the registers of common land.
11. Furthermore, the unilateral undertaking grants a non-revocable licence to the public for access (on foot and horse) to the access tracks, temporary construction compound and crane hard standings until such time as the land is re-registered as common. A similar licence is also granted to the commoners and their animals to use, pass over and graze the access tracks and crane hard standings until such time as the land is re-registered as common. On the expiry of the life of the wind farm, the land occupied by the turbine masts and other ancillary structures will be re-registered as common land once the turbines have been removed.
12. Lancashire submitted that it could not find a specific provision for the re-dedication of land as common under the current statutes and had concerns as to whether any re-dedication could take place until an application was made under section 6 of the 2006 Act to alter the register. In addition, Lancashire was concerned as to how public rights would attach to the land which was proposed to be re-registered.
13. Coronation Power responded that any rights which attached to the land for which de-registration was sought would attach to the land under the terms of

the express grant to be made by the landowner; that express grant would apply the rights currently recorded in the register to the re-dedicated land. Whether a separate application under section 6 was necessary for those rights to be recorded was a matter to be explored with the appropriate CRA.

14. The dedication of land as common and the dedication of rights over that land is a matter for the landowner and the CRA. Whether those rights become formally recorded in the Commons Register is dependant upon action being taken under section 6 of the 2006 Act to modify the register. The section 106 unilateral undertaking demonstrates the landowner's intention to re-dedicate any de-registered land which is not required for the operation of the wind farm. The unilateral undertaking also demonstrates that the rights of common which will be re-dedicated will be those which currently exist over those parts of CL 166, CL 165, CL 168 and CL 172 which are unaffected by the application.
15. I consider that the proposed section 106 obligation can be taken into account as a material consideration in determining these applications. Further amendments to the Commons Registers which may be required arising from the re-dedication of land is a matter for Coronation Power to explore with the appropriate CRA.

Land ownership

16. In written submissions, Dr R C Barker claimed to be the owner of part of the land which is subject to the application under COM 283. However, the whole of the land subject to the application is registered at Land Registry to be in the ownership of the applicant, Mr Dearden. As the Land Registration Act 2002 operates upon the principle of conclusiveness, I am satisfied that Mr Dearden has registered title to the land in question and is the owner of that land.
17. The proposed de-registration affects part of the publicly maintainable carriageway known as Landgate. It is the view of Defra that the Highway Authority had an ownership interest in part of the land proposed for de-registration and should be a joint applicant. Lancashire agreed with some reluctance to becoming a joint applicant and did not wholly agree with Defra's interpretation of ownership as the interest the highway authority had in the land was a determinable fee simple interest; that is, the Highway Authority's interest would cease if the highway was diverted or extinguished.
18. Lancashire is the Highway Authority responsible for the maintenance and upkeep of Landgate; whilst that fee simple interest is determinable, its interest is current as Landgate remains a publicly maintainable carriageway. Lancashire is also the Highway Authority for a number of public footpaths and bridleways which cross the land for which de-registration is sought. Lancashire pointed out that it is only the Highway Authority for those highways within its administrative area, and that both Rochdale MBC and Calderdale BC may also need to be joint applicants where public footpaths and bridleways within their areas cross the land which is proposed to be de-registered.
19. Lancashire formally joined the application on 10 January 2012¹. Rochdale MBC joined the application in relation to the footpaths and bridleways for which it is the Highway Authority on 16 March 2012 but said that it would take no further part in the application. Calderdale MBC is not required to be a joint applicant as none of the highways for which it is the Highway Authority are affected by the

¹ The application form was dated 21 November 2011 but not submitted until 10 January 2012

application. Lancashire CC (as joint applicant) was given the opportunity to comment on the representations received against the application; no comments were received.

20. Where possible, the Applicant proposes to utilise the existing access tracks which serve Landgate and Hades quarries to provide access to the turbine site. Where this is not possible a new access track will be created within the land for which de-registration is sought. In two locations within the release land (shown as X and Y on the revised application plan appended to this decision) the subsoil of the common is in the ownership of United Utilities. Although the Applicant does not consider that United Utilities are required to be party to the application as the infrastructure located in the subsoil is 20 metres below the surface, rights of common may include a right to the produce of the subsoil in addition to a right to the produce of the topsoil. In such cases, where the ownership of the subsoil has been conveyed and is separate from the ownership of the top soil (as is the case in relation to the strips at X and Y), the application should be joined by the owner of the subsoil.
21. The Applicant has not approached United Utilities to become party to the application. In these circumstances, I consider that the exclusion of the strips of land at X and Y from the application would not render the application misleading or cause prejudice to any of the parties who had made submissions and objections to it. I consider it highly likely that if the application had been originally submitted with X and Y excluded the objections that were received to the application would not have been materially altered, and that if the application had been submitted with the omission of X and Y from the land for which de-registration was sought, such an application would have been capable of satisfying the requirements of the legislation.
22. The Applicant has removed the two strips identified as X and Y from the application which will remain common land; I have determined the application as amended. In these circumstances, strips X and Y will remain protected under the 2006 Act and it will be for the Applicant to consider whether consent under section 38 is required prior to works associated with the access track being undertaken, particularly in relation to strip X which is located on that part of the common to the east of Cray Farm on land which is not currently crossed by the existing access track which serves Hades Quarry.

Main Issues

23. I am, in respect of COM 283, required by section 16 (6) of the 2006 Act and in respect of COM 284 and COM 285 by section 39 (1) of the 2006 Act, to have regard to the following in determining these applications;
 - (a) the interests of persons having rights in relation to , or occupying, the land (and in particular persons exercising rights of common over it);
 - (b) the interests of the neighbourhood;
 - (c) the public interest²;
 - (d) any other matter considered to be relevant.

²Sections 16 (8) and section 39(2) of the 2006 Act provide that the public interest 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.

24. I have had regard to Defra's Common Land Consents Policy Guidance³ ('the Defra guidance'), which has been published for the benefit of both the Planning Inspectorate and applicants. However, each application will be considered on its merits and a determination will depart from the guidance if it appears appropriate to do so. If I consider it necessary to depart from the published guidance, I will explain why I have done so.

Reasons

COM 283

The application

25. The application has been made to facilitate the construction, operation and maintenance of a twelve turbine wind farm on registered common land. Coronation Power recognises that the area of land to be released from registration is greater than that which is being offered as replacement land. However, it is argued that once construction of the wind farm has been completed, the de-registered land which is not required for the maintenance and operation of the wind farm will be re-dedicated as common and re-registered with the same rights of common over the land as currently exist.
26. Coronation Power submit that there will be a net increase in the quantity of common land arising from the proposal, although that net increase will not come about until after the wind farm has been constructed. Prior to re-registration, a licence will be granted for the use by the commoners and the public of the access track which will be constructed as part of the development.

The release land

27. The release land is 29.80ha and is located to the north and north-east of Watergrove Reservoir and the east of Shawforth. The land to be released for the construction of the wind turbines and associated access tracks lies on a ridgeline comprising Rough Hill, Crook Moor, Birching Brow, Stubble Cross Hill, Long Hill, Great Hill and Shore Moor. The land to be released for the construction of the access track commences on Landgate in Shawforth and runs in a generally easterly direction via Landgate and Hades quarries to Rough Hill and the sites of the proposed turbines.

The replacement land

28. The replacement land of 3.997ha is in two parcels. The first parcel is located to the east of Long Clough Farm on the southern slope of Stansfield Hill and is contiguous with land offered as replacement land under Coronation Power's earlier proposal to access the wind farm site from the west⁴. This land is crossed by a public footpath but there is no statutory right of access over the land. This land is improved agricultural land at a lower altitude than the release land.
29. The second parcel lies to the east of Shawforth and Knowsley Farm. It abuts CL165 at its south-eastern corner; a means of access to the replacement land through the current wall that denotes the boundary of the common will be

³ Common Land Consents Policy Guidance (Defra July 2009) - <http://archive.defra.gov.uk/rural/documents/protected/common-land/consent-policy-guide.pdf>

⁴ See COM 133

required for the free movement of the commoners, their animals and the public. The land is semi-improved agricultural land and in character is closer to the release land than the replacement land at Long Clough Farm.

Assessment

The interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it)

30. CL172, CL168, CL166 and CL165 are all subject to a right to graze sheep and cattle and are also subject to a right of turbary. CL168, CL 166 and CL165 are also subject to the right to graze horses. The right to graze other identified livestock also exists over CL166 and CL165. A right to cut and take bracken exists over CL168, whereas a right to take stone also exists over CL166 and CL165.
31. Once a means of access through the boundary wall of the replacement land at Duckworth Farm is provided, those CL 165 commoners affected by the removal of land from CL165 will have direct access to the replacement land from CL 165.
32. Those CL168, CL 172 and CL 166 commoners who are affected by the proposals will enjoy the same rights over the replacement land at Long Clough Farm as they previously enjoyed. The current proposal affects the same CL units as the COM 133 proposal and those commoners affected by the current proposal are the same commoners as were affected by the COM 133 proposal. Under the terms of the order made under COM 133 the rights which existed over the COM 133 release land would be exercisable over the COM 133 replacement land. The rights exercisable over the release land in this application would be exercisable over the contiguous replacement land.
33. Those commoners affected by the proposal would therefore enjoy rights over both the COM 133 replacement land and the replacement land under this application as those commoners are one and the same. Of the 82 registered commoners affected by the application, 14 do not enjoy common rights over CL168; 12 of these commoners only enjoy rights over CL166. For these commoners, access to the replacement land could be achieved by transporting the animals by vehicle; those commoners who do not enjoy rights over CL 168 would not be prevented from having lawful access to the replacement land, although I acknowledge that for those commoners access to the replacement land would not be as straightforward as it would be for those who do have rights over CL168. However, the quantity of grazing land which would be lost from CL 166 as a result of the proposal amounts to just over 1.2% of CL166; no evidence has been submitted from which I can conclude that this loss would have a significant impact upon those who have rights of common on CL166 only.
34. I am satisfied that there would be no loss of rights arising from this proposal, although the exercise of those rights over the replacement land for some commoners may be more problematic than it is for others. However, the four CL units at issue are part of a single extensive parcel of common which has no artificial boundaries within it to separate each individual CL unit from its neighbour. There are boundary markers present on the common, but no fences or ditches which prevent livestock from arbitrarily straying from one CL unit onto another. If livestock belonging to those commoners who do not have

- rights over CL 168 stray onto that CL unit in order to access both the COM 133 replacement land and the additional replacement land from the current proposal, it is unlikely that this will cause any inconvenience to those with rights over CL 168 greater than that which they already experience.
35. No objection or representation to the proposal was received from the owners of the rights on the commons which indicates that de-registration and exchange would not have any adverse impact upon those registered rights.
 36. The proposed wind farm is designed to have an operational life of 25 years and construction is planned to take approximately twelve months to complete. The turbines, ancillary structures and access roads will be built within the release land, and the turbine towers will occupy land which will remain outwith the registered common for the life of the wind farm ('the removed land').
 37. During the construction period, livestock will be excluded from the construction areas (which Coronation Power state will not encompass the whole of the release land) for a period of up to twelve months and will be permanently excluded from the removed land whilst the wind farm is operational. Livestock will also be excluded from areas of ground disturbed by the construction programme to allow that ground to re-vegetate and recover. There will be some disruption to grazing within the release land, but this will be minimal as an irrevocable licence will be granted to commoners and to the public for access to the release land prior to the re-dedication as common of that part of the release land not required for the operation and maintenance of the wind farm.
 38. In absolute terms, the replacement land area is smaller than the release land. The overall effect as a result of re-dedication of the land not required for the operation and maintenance of the wind farm would be a net rise in the quantity of common land and therefore a rise in the quantity of available grazing. It is estimated that once the twelve-month construction period has ended, the re-registration of those areas of the land not required for operation and maintenance of the wind farm will result in a net increase of 2.697ha in the overall size of the common, and that the overall area which can be grazed would increase by 3.86ha. In the medium to long-term the proposal would not lead to a reduction in the stock of common land.
 39. Some fencing will be necessary in the vicinity of the construction area to protect re-establishing vegetation from being grazed, but any fencing would be removed after three years. The grazing area which will be lost through this scheme amounts to just over 1% of the total of the four register units, although the proportion of grazing land lost within CL172 and CL166 (1.36% and 1.2% respectively) is greater than that lost over the common as a whole. Although there will be an adverse impact upon graziers as a result of the construction project, there is no evidence before me from which I could conclude that the impact will be other than short-term and of little significance.
 40. In response to representations made on behalf of Whitworth Town Council, Coronation Power submitted that of those commoners who do exercise their rights over CL165 (within the Town Council's administrative area), the majority graze their animals on the moor top which has been severely degraded by quarrying activities. I note that the access road to the turbines is to be built utilizing the existing access track which served Landgate and Hades quarries and that the part of the common crossed by the current access track is of very

low grazing value - there being little by way of vegetation growth on the track. The proposed scheme is likely to have no significant impact upon grazing on those parts of the common that have been exploited commercially in the past.

Conclusions on the interests of those occupying or having rights over the land

41. Whilst the proposal would lead to an immediate reduction in the quantity of registered common land, the impact upon grazing would not be significant as access to and over the release land for commoners will be granted under a licence from the landowner. In practical terms, it is unlikely that there will be any significant material change other than in the construction areas which will be fenced. In the longer term, once that land which is not required for the operation and maintenance of the wind farm is re-dedicated there will be a net increase in the stock of common land over the four registration units at issue. The fencing required to protect the restored disturbed ground from grazing for a period of up to three years will further restrict grazing activities but I do not consider this will have a significant adverse impact upon grazing on the common.

The interests of the neighbourhood

42. In his decision on COM133, Mr Elliott accepted that the eight-turbine proposal before him would have a serious detrimental effect upon the landscape such that it would have an effect upon the neighbourhood. Although neighbourhood is not defined in the Commons Act 2006, I consider the term applicable to those communities which abut the commons, the inhabitants of which have the elevated ridge of the common as a backdrop to their day to day lives. The installation of a twelve turbine wind farm on that backdrop will have an adverse impact upon the neighbourhood.
43. The proposal seeks to mitigate some of the impacts identified by Mr Elliott by providing for an access to the wind farm utilising the existing access road which served Landgate and Hades quarries. The use of this route would remove the need to make an entirely new road over Long Hill from Summit and will remove any adverse impact the construction of that route would have had upon the inhabitants of Summit.
44. I concur with Mr Elliott's findings regarding the impact of fencing of certain parts of the release land to permit the re-establishment of vegetation cover on ground disturbed by the construction programme. The erection of fencing on otherwise unenclosed land will have an impact upon the character and appearance of the landscape. However, as the fencing is of a temporary nature and will remain on site for not more than three years the impact upon access across the common for residents of the neighbourhood will be limited and will not be significant.

Fly tipping

45. The improvement and use of the proposed access road from Landgate as part of the development may provide an opportunity to reduce the incidence of fly tipping that takes place in the vicinity of Hades quarry; the installation of gates to regulate access along the new access road may have a positive impact upon

the appearance of the landscape and result in benefits to the neighbourhood in this respect.

Amenity

46. The replacement land at Long Clough and at Duckworth Farm is not of the same character as the release land. Both parcels of replacement land are at lower altitudes than the release land and have been improved for agriculture and will provide a different landscape experience compared with the release land. However, the replacement land is likely to be of greater value to those exercising their grazing rights, as the productivity of the replacement land is likely to be greater than of the release land.
47. The replacement land is currently not part of the common and is not access land under the provisions of the Countryside and Rights of Way Act 2000. The public will therefore benefit from increased access opportunities as a result of the proposal. The replacement land at Duckworth Farm is currently separated from the common by a dry stone wall and it is proposed to install a gate or gap within part of the wall to provide access for livestock and the public between the replacement land and CL165.
48. As part of the development, Coronation Power proposes landscaping works to complement those already undertaken at Landgate Quarry and a programme of works to reclaim and landscape Hades quarry. Consent for these works is sought under COM284 and COM285 and those proposals seek to enhance the visual and landscape amenity of the common as a whole.

Hazard to water supplies

49. Whitworth Town Council raised concerns regarding the impact the proposed development would have on water supply and water quality particularly for those living on the lower slopes of the common that relied upon spring water as their source of supply.
50. Whilst I can appreciate these concerns, no evidence has been submitted in connection with this application (nor was any such evidence submitted in connection with COM133) which demonstrates that the construction programme envisaged would have any effect upon water supplies. I note that condition 27 of the planning permission requires the submission of a Private Water Supply Protection Plan to the planning authority prior to the commencement of the permitted works. Taken in conjunction with condition 7 (Construction Method Statement Plan) and condition 16 (Pollution Incident Response Plan), I consider that the conditions placed upon Coronation Power provide sufficient safeguards for the protection of existing private water supplies.

Conclusions on the interests of the neighbourhood

51. The construction of a twelve turbine wind farm will have a serious detrimental effect on the landscape and a consequent adverse impact upon the neighbourhood. Although fencing of certain areas to facilitate construction and to permit disturbed ground to re-vegetate will be visually intrusive and prevent access to certain areas, that fencing will be temporary in nature and any adverse impact upon the neighbourhood will be limited and of no real significance.

The public interest*Nature conservation*

52. In his decision in COM 133 Mr Elliott explored fully the issues regarding the impact the development of the wind farm would have on areas of active and inactive peat and the measures that could be taken to mitigate the adverse impact of the wind farm. These matters were also explored in Mr Baird's report to the Secretary of State which considered Coronation Power's original applications for the development of the wind farm. In both those cases it was considered that whilst there would be some impact upon the peat resource, that impact could be mitigated by the appropriate use of credible engineering methods to limit the impact upon the peat and blanket bog found on site in terms of compression of the peat and loss of habitat.
53. No new evidence or argument has been put forward by any party which would lead me to a conclusion other than those reached by Mr Elliott in COM133 or by Mr Baird in the report to the Secretary of State. I note that conditions 24 (Habitat Reinstatement Plan), 25 (Habitat Management Scheme) and 26 (survey of protected species) attached to the planning permission place a requirement on the applicant to have habitat and environmental protection schemes approved by the planning authority prior to construction work commencing on site.
54. Although there will be some impact upon the peat resource and upon the blanket bog, the planning permission provides for the micro-siting of the turbine towers and ancillary equipment. This allows for the positioning of the turbines within +/- 30 metres of agreed grid co-ordinate positions. The ability to micro-site will allow Coronation Power a degree of latitude in the positioning of the turbines which can be utilised to further mitigate the impact upon peat and blanket bog. Furthermore, it is proposed that any peat excavated as part of the construction works will be relocated within the common as part of a peat restoration programme.
55. Whilst the construction of the wind farm will have some adverse impact upon the peat and therefore on the public's nature conservation interest, the works on site must comply with an approved Habitat Reinstatement Plan and Habitat Management Scheme. I consider that the works proposed by Coronation Power will mitigate to an acceptable level the negative impacts the development will have upon the peat resource on the common.

Public rights of access

56. The release of land from the registered common will lead to a reduction in the quantity of land available for public access. However, the unilateral undertaking provides that the public will have access over the access roads and hard standing areas and that any release land which is not required for the operation and maintenance of the wind farm will be re-dedicated as common. Although a small quantity of the land will be occupied by the operational structures throughout the life span of the wind farm, the quantity of access land that will be lost for that 25 year period will not be significant. A greater amount of land will be unavailable for public access during the construction programme but that will be a short-term loss, which will be offset in part by the opportunity for the public to permanently access the replacement land.

57. Although there will be some areas of the common which will be temporarily fenced to allow disturbed land to re-vegetate and from which areas the public will be excluded from for the duration of the fence, those fences will not otherwise prevent access through and over the common. There will be no fences placed over any of the existing public rights of way on the common and such fencing as will be required in the vicinity of the works will only be present during the initial twelve month construction period or for the duration of habitat restoration works which will be no longer than 3 years.

Conclusions on the public interest

58. The application will have an adverse impact upon the nature conservation interest in the land to be released, however the works proposed will be subject to a Habitat Management Plan and a Habitat Management Scheme. Consequently, any adverse impact will be mitigated. There will be an initial reduction in the area of land available for public access, but that initial reduction will be balanced by the re-dedication of the release land not required for the operation and maintenance of the wind farm. I have already concluded that the application would have a serious adverse impact upon the landscape of the neighbourhood; that conclusion is equally applicable to the public's interest in landscape conservation.

Other relevant matters

59. The application seeks consent for the construction of a new access to a wind farm that already has planning permission and for the construction of four turbines that were not part of COM133. Coronation Power submits that the proposed access from Landgate has a number of benefits over the originally proposed access from High Calderbrook Road.
60. Planning permission and de-registration consent has already been given to Coronation Power for the construction of an access road to the wind farm from the east commencing at a point off Higher Calderbrook Road near to St James' Church. The proposed access road from Landgate would remove the need to construct a road over Long Hill and as the proposed access would repair and improve the existing track from Landgate to Hades quarry, it would have a lesser impact upon the ecology and environment of the common than the permitted road over Long Hill, as well as removing any adverse impact that the eastern access road would have on St James' Church and on Higher Calderbrook Road.
61. Relocating the site entrance to Landgate would also mean that delivery of plant and materials could be undertaken wholly on 'A' roads, and would mean that abnormal loads would not be directed through Littleborough. Coronation Power also propose to extract stone from Middle Hill quarry to be used in the construction of the access roads. Obtaining stone from within the site will reduce the number of heavy vehicle movements through Shawforth. There are a number of aspects to the proposed access from the west which make that scheme less environmentally and socially intrusive than the access considered by Mr Baird and Mr Elliott. I consider that the access road from Landgate is one additional factor to be placed in the balance in favour of granting the application.
62. The unilateral undertaking made by the applicant and Coronation Power will preserve the rights of the commoners and the public for access over the land

for which de-registration is sought. The unilateral undertaking will also lead to the re-registration of those parts of the release land which is not required for the operation and maintenance of the wind farm. The unilateral undertaking will result in an increase in the quantity of land registered as common and will ensure that rights of common over the release land are retained; it is a factor which weighs in favour of granting the application.

63. The benefits to be derived from the generation of energy from renewable sources is also a relevant matter that can be taken into account in reaching a decision on the application. In his report to the Secretary of State Mr Baird noted *"In these cases, I consider the need, particularly the significant gap between existing provision and the targets for renewable energy installed capacity and the very substantial benefits that would arise from the schemes clearly outweigh the adverse effects and as such very special circumstances exist to justify these schemes"*.
64. I concur with Mr Elliott's conclusion that the need for and benefits which arise from wind farm schemes weighed heavily in Mr Baird's recommendation to the Secretary of State. No evidence has been submitted to me which gives me cause to consider that Mr Baird's assessment of the weight to be attached to such schemes was incorrect, and I share Mr Baird's view. The wind farm scheme will play some part in reducing the nation's reliance upon fossil fuels as an energy source and the benefits to be derived from the development of the wind farm should weigh heavily in the balance in favour of granting the application.

Conclusion

65. Having regard to these and all other matters raised in the written representations and with regard to the matters set out in paragraphs 23 and 24 above, I conclude that the application has an adverse impact on those with rights of common, the interests of the neighbourhood and the interests of the public. However, given the benefits that the proposed access from Landgate would deliver compared with the access from Higher Calderbrook Road, the benefits to be derived from the wind farm that will be facilitated by this application, and the provisions made for the continuance of rights for both commoners and the public over the release land, I conclude that it is expedient that the application should be granted.

COM 284

Reasons

The application

66. This application is for the erection of up to 725 metres of fencing to enclose up to 2.73ha of CL166 for a maximum period of three years. In addition the application proposes the grading of spoil mounds within the perimeter of Hades quarry, the removal of rubbish from the site, the placement of rock and subsoil in areas to be filled, the installation of temporary and permanent watercourses; the placement of peat and top-soil to match adjacent areas and the re-vegetation of the site with a mixture of local native species.
67. The works for which consent is sought is required for the restoration of the former Hades quarry. The proposed re-vegetation of the restored land will require the temporary exclusion of livestock; it is envisaged that any fencing

erected in conjunction with the reclamation scheme will be present on site for a maximum of three years. The fencing will be removed as soon as the vegetation is considered to have established sufficiently to withstand unrestricted grazing, but will be removed after three years in any case.

68. The proposed restoration works are subject to condition 30 attached to the planning permission granted to Coronation Power by Rochdale MBC; the proposed works cannot commence until a detailed scheme for the restoration of Hades quarry has been submitted to, and approved by, the local planning authority.

Assessment

Interests of those occupying or having rights over the land

69. CL166 is subject to the right to graze livestock including sheep, cattle, horses, pigs, goats and hens. In addition, one commoner has the right to take stone and three hold a right of turbary. The proposed works will be protected by a stock-proof post and wire fence which will stand 0.97metres (38 inches) high.
70. No submissions have been made from which it could be concluded that the works would have a significant detrimental impact upon those with rights of common. The erection of temporary fencing may hinder livestock management on this part of CL166 although from my site visit, Hades quarry does not appear to provide much by the way of grazing for the commoners; the site is a post-industrial waste which is subject to fly tipping, has one substantial pool of water in part of the former workings and is littered with discarded waste from the quarrying activities which formerly occurred on the site. If there is any grazing to be had within Hades quarry, it would be very limited and livestock are unlikely to venture there when the remainder of Wardle Common offers much better fare.
71. For the duration of the re-establishment of vegetation on the site, the commoners will be excluded from this part of Wardle Common. There is no evidence before me to suggest that the remaining grazing on the common is insufficient for the needs of the commoners or that their exclusion from Hades quarry for a period of up to three years will have anything other than a minimal impact upon their rights. Coronation Power intend to restore the former quarry site so that it has, and is capable of sustaining, a vegetation cover which is of similar composition as the surrounding Wardle Common. Although the commoners will be excluded from Hades quarry for up to three years, once the temporary fencing has been removed, the commoners will have access to 2.73ha of grazing land which is currently sparsely vegetated and is of little value to livestock.
72. I conclude that whilst the proposed restoration works are unlikely to have a significant impact upon the commoners and their livestock (other than the exclusion from the area), the medium term benefits of the proposal could be significant.

Interests of the neighbourhood

73. Hades quarry is described by Coronation Power as being "*a prominent scar on the moorland plateau*". The restoration programme is aimed towards healing that scar and re-vegetating an otherwise exposed post-industrial landscape. The works will also encompass the removal of fly-tipped waste and the removal

of quarry waste which is a hazard for both commoners and visitors to the site. The provision of access controls on the wind farm access road may also discourage fly-tipping at this site although it is recognised that there are a number of possible points from which access to Hades quarry can be gained. Whilst restoration works on the site may limit the incidence of fly-tipping, the works cannot be guaranteed to prevent its recurrence.

74. The restoration of the former quarry workings is likely to bring environmental benefits to the neighbourhood and these benefits sit in the balance in favour of the granting of consent.

The public interest

75. The environmental and social benefits to the neighbourhood likely to arise from the restoration programme are equally applicable to the public, and my conclusions in this respect are the same as regarding the interests of the neighbourhood.
76. The public would be excluded from the site for up to three years. There are no recorded public rights of way which pass through the site which is the subject of this application; consequently, the public would lose access to this part of Wardle Common during the restoration works. However, I consider that impact not to be significant as the area from which the public would be excluded is approximately 1.6% of the total area of Wardle Common. I consider that any temporary adverse impact will be offset by the benefit the public will derive from the restoration of a moorland habitat on the currently despoiled quarry site.
77. There is nothing before me to suggest that the public's nature conservation or archaeological interest would be adversely affected by this proposal.

Conclusion

78. Having regard to these and all other matters raised in the written representations, and mindful of the relevant criteria set out in paragraphs 23 and 24 above, I conclude that there will be an adverse impact upon the commoners from their exclusion from Hades quarry for up to three years; however, given that there is currently very little by way of grazing within Hades quarry that impact will not be significant.
79. The proposed restoration will have a positive impact upon the landscape of the moorland plateau which will be of benefit to the neighbourhood and the public alike. Similar benefits are likely to accrue to both the neighbourhood and the public by the removal of fly-tipped rubbish and the removal of the hazards arising from the industrial waste currently present on the site. I conclude that it is expedient that consent should be given.

COM 285

Reasons

The application

80. This application is for landscape restoration works on 2.38ha of CL165 and for 957metres of fencing to enclose 0.39ha of CL165 for a period of up to 15 years to allow the establishment of new woodland. The work is required to expand the recreational and amenity value of land located between the proposed wind

farm access track and the Landgate Quarry Restoration Project which was completed in 2006.

81. It is proposed to grade the existing disturbed land and spoil heaps to stabilise slopes, reduce ongoing erosion and facilitate native woodland planting which mirrors that already undertaken as part of the Landgate Quarry Restoration Project. New woodland areas will be planted at the junction of the proposed access track and the existing Landgate track and in the vicinity of Crey Farm; it is these new woodland areas which will require stock-proof fencing for a period of 15 years to facilitate establishment of woodland cover.
82. Stiles will be provided to facilitate public access to the fenced areas; existing public rights of way will not be obstructed by the proposed fencing. Two 1.2 metres wide stone footpaths will be created and two stream crossings will be provided to facilitate the construction of the footpaths. Access controls will be provided on the wind farm access track to restrict unauthorised vehicular access to the wider common and to address fly tipping if requested by the local planning authority.

Assessment

Interests of those occupying or having rights over the land

83. CL165 is subject to the right to graze livestock including sheep, cattle, horses, pigs, goats, poultry, hens and geese. In addition, eleven commoners have the right to take stone and eleven hold a right of turbary.
84. Other than the two areas of tree planting, the proposed landscape scheme does not envisage the fencing of the area at issue. Other than 0.39ha of the common which will be fenced the remainder of the area will remain open and available for the exercise of grazing and other rights. No evidence has been submitted to suggest that the proposal will have a significant adverse impact upon those having rights over the common.
85. As less than 0.5% of the available common will be excluded by the proposed woodland planting, I conclude that it is likely that any adverse impact upon the holders of rights of common will not be significant.

Interests of the neighbourhood

86. The proposed restoration works are aimed at enhancing the character and quality of the landscape in the vicinity of the former Landgate quarry and to build upon the work undertaken as part of the earlier Landgate Quarry Restoration Project. The removal of spoil heaps which arose from earlier mineral extraction and the reclamation of land from ongoing urban fringe pressures will improve the character and appearance of the area and go some way to mitigating the impact on and disturbance to the landscape arising from the access track to the wind farm. The provision of footpaths within the reclaimed ground and the provision of stiles to facilitate access to the new woodland areas would maintain access to that part of the common subject to this application.
87. I conclude that the application would have no significant impact upon the interests of the neighbourhood.

Interests of the public

88. The benefits which would accrue to the neighbourhood in terms of improvement to the character and quality of the landscape as a result of the reclamation project would also accrue to the public. There would be no loss of public access to the common as access to and through the planted areas is to be maintained.
89. No specific representations were made in respect of the effect of the application would have on the public interest. There is nothing before me to suggest that the public's interest in nature conservation or archaeological or historic remains would be affected by the proposals. Taking all factors into account, I conclude that there is nothing to indicate that the application would have any significant effect on the interests of the public.

Conclusion

90. Having regard to these and all other matters raised in the written representations, and mindful of the relevant criteria set out in paragraphs 23 and 24 above, I conclude that there will be an adverse impact upon the commoners from their exclusion from the areas proposed for woodland planting although as the area excluded from grazing will be less than 0.5% of the common, that impact will not be significant.
91. The proposed restoration will have a positive impact upon the landscape in the vicinity of the former Landgate quarry which will be of benefit to the neighbourhood and the public alike. There will be no adverse impact upon access to those parts of the common subject of this application. I conclude that it is expedient that consent should be given.

Formal Decisions

COM 283

92. The application to deregister and exchange common land at Ramsden and White Slack Common, Shore Moor, Wardle Common and Whitworth & Trough Common, (register unit Nos. CL166, CL165, CL168 and CL172), is granted in accordance with the terms of the application [Ref: COM 283] dated 11 July 2011 and the plans submitted therewith including the amended plan entitled COM/CH-HQ/s16 Key Plan which is dated 15 May 2012. An order pursuant to section 17 of the 2006 Act will be sent to Lancashire County Council, Rochdale Metropolitan Borough Council and Calderdale Metropolitan Borough Council, and to the applicant.

COM 284

93. In exercise of the powers conferred by section 38 of the 2006 Act, and all other enabling powers, I hereby grant consent for the works in accordance with the application dated 7 July 2011 and the plans submitted with it. For the purposes of identification only the location of the works is shown hatched in red on the attached plan.

COM 285

94. In exercise of the powers conferred by section 38 of the 2006 Act, and all other enabling powers, I hereby grant consent for the works in accordance with the application dated 7 July 2011 and the plans submitted with it. For the purposes of identification only the location of the works is shown in red on the attached plan.

Alan Beckett

Inspector

Attendance at the site visit:

Mr Edward Romaine	Legal Advisor, Coronation Power, Crown House, 108 Aldersgate Street, London EC1A 4JQ.
Mr Andrew Crossley	Steward of the Lord of the Manor of Rochdale, G Crossley & Son, 104 Yorkshire Street, Rochdale.
Ms Rachel Finney	Calderdale Metropolitan Borough Council, Town Hall, Crossley Street, Halifax, West Yorkshire, HX1 1UJ.
Mrs Karen Douglas	Clerk to Whitworth Town Council, Council Offices, Civic Hall, Market Street, Whitworth, Lancashire OL12 8DP.