

## **Thurrock Flexible Generation Plant Development Consent Order**

### **Commons Act section 16 application process: submission of commons act process documents to the DCO examination.**

As requested by the Examining authority, the Applicant hereby submits into the DCO process a copy of all of the representations received by the Planning Inspectorate in relation to the consultation on the section 16 commons application, and the Applicant's response thereto.

#### **1 PROCESS**

- 1.1 A Section 16 Application under the Commons Act 2006 (the Application) to deregister Walton Common and another small area of land for the purposes of the DCO Development and offer replacement land was made to the Planning Inspectorate in April 2021. The Application was published and representations were received from Natural England, Historic England and the Open Spaces Society. Copies of these are attached.
- 1.2 Thurrock Power Limited (TPL) responded to the representations on behalf of the applicant on 25 June 2021 and a copy of this is attached as well. These documents are being provided to the Examining Authority to ensure that all the information is available to the Examining Authority when considering granting powers of compulsory acquisition over common land within the order limits, which is special category land, in the DCO application.
- 1.3 Since TPL submitted their response on the 25 June we have received confirmation from the Planning Inspectorate that TPL's response has been provided to Natural England, Historic England and the Open Spaces Society and that they have until 26 July to submit further comments. If they submit further comments these will be provided to TPL and TPL will be given a final opportunity to respond to those comments.
- 1.4 As part of TPL's response, TPL requested that the site visit and subsequent determination of the Application was delayed until after the determination period for the DCO had passed. This is to prevent a scenario where the Common Land Exchange Order is made before the decision on whether or not to grant the DCO because the deregistration is only required in order to facilitate the DCO development.
- 1.5 The Planning Inspectorate have confirmed that the date for the site visit has been cancelled and they have requested that we inform the ExA of our request. This submission complies with that request. We have not been informed of the date when the re-scheduled site visit will take place.

#### **2 SUBSTANCE OF REPRESENTATIONS**

- 2.1 Under exception of a technical point regarding the nature of the rights in Walton Common and how these appear on the register (which is explained further below), the representations made in the commons process are the same in substance those made in the DCO process. In the case of Historic England, the same points have been made in both processes and there is considerable duplication with submissions made to the DCO process.
- 2.2 In respect of the Applicant's response to the representations, these are self-explanatory but we make an additional submission below which we hope will be helpful to the Examining Authority.
- 2.3 The Open Spaces Society have raised a query as to whether all those with rights of common have been consulted on the Application. Strictly this relates solely to the commons application and not the DCO Examination process, however, we have set out below a full response to this point.
- 2.4 The common land registered parcel CL228 has been common land since at least 1892 when the Commons Regulation (West Tilbury) Provisional Order Confirmation Act 1893

(1893 Act) was made to confirm a provisional order. The 1893 Act provided that there would be an adjustment of rights over the common and that a valuer would determine these. This happened in 1895. There were compensation provisions included for any person suffering loss as a result of the adjustment of rights.

- 2.5 The adjustment of rights resulted in 500 stints being created. The stints need to be purchased in order to be able to exercise the rights. The West Tilbury Commons Conservators (the Conservators), were created pursuant to the 1893 Act to manage the common. The Conservators continue to manage the common and administer the purchase of the stints on an annual basis. The sole purchaser of the stints are the Coles (who are formally the applicant for the section 16 consent although TPL is administering the process).
- 2.6 Notwithstanding the requirement to register all common land pursuant to the Commons Registration Act 1965 (the 1965 Act) it is the 1893 Act that governs the regulation of the common. This is evidenced by the fact that the 1893 Act has not been repealed and a note in the land section of the common land register states that "*the land comprised in this register unit is regulated by a provision order confirmed by the Commons Regulation (West Tilbury) Provisional Order confirmation*". Unfortunately the very bottom of the page has been omitted from the copies provided so the sentence stops part way through but nonetheless it makes it clear that the common land in the register is governed by the 1893 Act.
- 2.7 Furthermore during the registration process pursuant to the 1965 Act the appointed commons commissioner rejected a claim for a right on the basis that no stint money had been paid (page 5 of his decision which is in the appendices to the Common Land Report). He also notes that the then Secretary of the Conservators supported the registrations as determined by the commons commissioner because they accorded with the information available to the Conservators. This can only mean that the registration of the rights at this date reflected those who had purchased the rights of common *for that year*. It is not clear why the rights were noted on the register as being attached to land as this is clearly not the case when the stints are to be purchased annually.
- 2.8 Consequently the only people needing to be served with notice of the application being made were the Conservators, via the Clerk, as the body in charge of managing the common, the stint holder(s) and the land owner. This was done. Due to the unusual nature of commons register entry in this case, the section 16 application and the DCO statutory consultation process however took a risk-averse approach to consultation. All those people on the common land register including their successors in title and all new property owners where the land mentioned in the common land register has since been developed for housing were consulted in order to ensure that no defect in consultation was created. Nobody responded to this consultation stating that they believed that they had any right over the common land other than the landowner and sole stint holder.
- 2.9 We will provide to the Examining Authority any further comments received from the objectors after 26 July and will continue to inform the Examining Authority of the progress of the Application until the close of the examination.