

Date: 26<sup>th</sup> May 2021  
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By Email

Dear Common Land Casework Team

**APPLICATION FOR DEREGISTRATION OF WALTON COMMON AND  
PROVISION OF LAND IN REPLACEMENT**

**Commons Act 2006: Section 16  
Consultation: S16: Commons Act 2006  
Location: Walton Common, West Tilbury, Essex**

**Background**

I am writing in response to the consultation on the application made by Burgess Salmon; on behalf of Thurrock Power Limited (A Statera Energy Group Company). It is Natural England's understanding that the application is to release 10.1 ha of land known as Walton Common which will be used for the development of a power station. They offer replacement land a short distance north and adjacent to the railway line; this will comprise 11.6 ha. The replacement land will be contiguous with Parsonage Common.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

Natural England's statutory responsibility relation to 1 (2) of the Commons Act 2006 is to provide advice to the Secretary of State and therefore the Planning Inspectorate with advice on the public interest of the common.

Walton Common is one of several commons that make up West Tilbury Commons; this is regulated under the 1876 Commons Act. The Act regulating this common was passed on the 29 June 1893 and provides for access, recreation and where permissions are granted the playing of games. Walton Common along with a number of the West Tilbury commons is also subject to rights of common to which Section 193 of the Law of Property Act 1925 may be applied. By virtue of s15 of the Countryside and Rights of Way Act 2000, rights that were originally conferred on the

neighbourhood can be enjoyed by the public generally and we believe that this includes a right of access on horseback.

There are no statutory designations affecting Walton Common with regard to nature conservation.

The applicant has consulted with Natural England prior to submission of the application to the Planning Inspectorate and comments in response to those made by NE have been included in the most recent Common Land Report produced in April 2021. Conversations have also taken place subsequent to this where NE have discussed outstanding concerns which form the basis of the response below.

Natural England advises, that when land owners or managers review the management and usage of commons, that they give due regard to both the needs of wildlife and the public interest. Where changes in management have an implication for the accessibility on common land, the decision making process should take account of “the least restrictive option”, as well as the opinions of both the local community and of user groups. We consider that it is good practice that the land manager follows a process of decision making based on [A Common Purpose: a guide to Community Engagement](#) which is supported by a number of agencies including Natural England.

Further, any planned infrastructure should be in accordance with equalities legislation and consider the diversity of the needs of all users including the less able.

### **Wider Consultation**

We are not aware of any wider consultations specifically related to this application although in their common land report the applicant has stated that the *‘the proposal to deregister the common land and offer exchange land had previously been consulted upon as part of the development consent order process which is being used to secure consent to construct the proposed development.’* Our understanding from the documents provided is that this consultation has included the West Tilbury Commons conservators and members of the public living locally.

### **Our Response**

The Secretary of State’s Guidance for Common Land Consent Policy states that the process should aim to achieve the following outcomes:

Our stock of common land and greens is not diminished — that, on balance, any deregistration of registered land is balanced by the registration of other land of at least equal benefit

In making our response we have been mindful of the guidance given above and we have referred to Defra’s Common Land Consents Policy Guidance as a framework in providing our response to your consultation. This framework is shown in bold below:

### **What effect will the proposals have on those wishing to use the common for recreation and access?**

As set out in our pre application response the new common falls short of the Fort Hill Road by approximately 100 metres. This represents the closest point to the community of Tilbury. The applicant includes a proposal for a permissive route across the field to provide access from the Fort Hill Road onto the new area of

common. Following notification of the submission of the application we are aware that the intention remains to deal with this separately at some point in the future.

We have in our previous advice to the applicant asserted that this has the potential to be an exceedingly important route for members of the local community of Tilbury to access the common. The intention to provide a permissive route only is not in our view suitable as it will provide no certainty in law. Such routes with no basis in law can be revoked at any time by the landowner and should this route be revoked or removed at any time people from this community will need to walk some 1.7km in order to access the common from the opposite (eastern) boundary.

As part of pre application consultations we suggested that a further area of replacement land could have been offered or an agreement to create a Public Right of Way affording secure and convenient access for the local community. This would ensure that in line with the common land consents policy benefits to the neighbourhood could be fully realised. Our understanding is that there are currently no plans for either of the above suggestions to be taken forward.

We also noted that a small piece of Walton Common will not be de-registered which was somewhat surprising as due to its small size and potentially isolated location it will no longer in our view provide any real public value as common land should the application receive consent. The applicant recognised this as part of our discussions but as we understand it they felt they were prevented from deregistering this area as it was in excess of the area needed to accommodate the proposed development.

**Are there potential benefits to nature conservation from carrying out the proposals? Does Natural England or any other competent person agree with the assessment of any proposed benefits?**

Although the exchange land is not subject any statutory designations for nature conservation the applicant has carried out reviews and survey reports that have shown that the site provides habitat for eighteen species of birds with conservation concern breeding within the survey area, including Cetti's Warbler. They concluded that overall, the breeding bird groups were considered to be of district-level importance. Further they reported that the area supports populations of adder, grass snake, common lizard and slow-worm. Also, that Water vole field signs, indicating their presence, were also found in the ditches during some surveys.

The replacement land is currently cultivated arable land and the intention is to plant a seed mixture that is representative of the NVC community present within the release land. The applicant maintains that the provision of a similar grass sward and the incorporation into the same land ownership would enable the land to be at least of equal benefit.

Whilst at some point in time the new area of common might acquire similar benefit in terms of nature conservation interest, we feel that this is dependent on a number of factors including subsequent ongoing site management. Whilst we acknowledge that mitigation works are proposed for any loss of habitat and/or displacement of protected species over the whole site as part of the DCO, given the current status of the land as arable and the difference in location we would only envisage equal benefit being obtained via a set of clear measures that relate specifically to the replacement land, such as that contained in a dedicated site plan.

In the absence of such a plan or an ambition to provide one within the application documents we do have concerns that that the area will not be able to achieve the

level of equal benefit to biodiversity envisaged by the applicant and required as part the common land consents process.

**What will be the impact on the landscape if the proposals proceed? Is the landscape in a specially designated area, such as a National Park, or area of outstanding natural beauty? Will the impact include an adverse effect on the enjoyment of the remaining part of the common or green? (E.g. if development of any release land might spoil the view or impair the conservation of wildlife on the remaining part)? What consideration has been given to minimising any impact by good design (e.g. in relation to any fencing scheme, minimising the extent of new fencing by utilising the existing boundaries of the common?)**

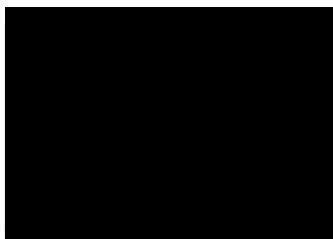
The West Tilbury Commons do not sit within a designated landscape. Walton Common is affected by the urbanising influence of the existing power plant and the applicant has provided extensive information regarding landscape and Natural England agrees with this analysis. The applicant plans to improve the screening between the railway and the replacement land through tree planting / hedging and this has the potential to create an improvement in terms of tranquillity and visual appearance.

### **Summary**

The deregistration of Walton Common and proposal for replacement land within the application have the potential to enhance the offer for the local residents of Tilbury in terms of providing an area of open space for access and informal recreation. It also has the potential to provide an area of nature conversation interest which not only meets with the commons land policy in terms of providing exchange land of equal value, but also contributes to the overall measures that have been set out by the applicant to ensure that there is no net biodiversity loss arising from the wider development associated with the DCO. In our view the lack of proposals for any convenient or legally secure access will prevent such potential being reached and in that respect bring into question whether or not the conditions for de registration and registration of new common land are being fully met.

The applicant has stated within the report document that *'the landowner is content that the land can be managed for both agricultural production and fulfil neighbourhood access and recreation requirements*. The development of a more detailed plan setting out how this will be achieved alongside nature conservation interests is something that we feel is currently lacking within the application and this needs to be developed and agreed in consultation with the landowner, the West Tilbury Common Land Conservators and representatives from the local community of West Tilbury.

Yours sincerely



Ralph Barnett  
For and on behalf of Natural England

Footnote

### **Protected species**

We have not assessed this application and associated documents for impacts on protected species. Should the applicant be successful in obtaining consent they should take note of the following if they have not already done so.

Natural England has published [Standing Advice](#) for Local Planning Authorities on protected species. The Standing Advice includes a habitat decision tree which provides advice to planners on deciding if there is a 'reasonable likelihood' of protected species being present. It also provides detailed advice on the protected species most often affected by development, including flow charts for individual species to enable an assessment to be made of a protected species survey and mitigation strategy. The Standing Advice should not be treated as giving any indication or providing any assurance that the proposed development is unlikely to affect the protected species present on the site; nor should it be interpreted as meaning that Natural England has reached any views as to whether a licence is needed (which is the developer's responsibility) or may be granted.

If you have any specific questions on aspects that are not covered by our Standing Advice for Protected Species or have difficulty in applying it to this application please contact us with details at [consultations@naturalengland.org.uk](mailto:consultations@naturalengland.org.uk)