**##  
Application Decision**

**By Richard Holland**

**Appointed by the Secretary of State for Environment, Food and Rural Affairs**

Decision date: 12 October 2021

**Application Ref: COM/3275163**

**Central Parks, Southampton**

Register Unit No: CL 3

Commons Registration Authority: Southampton City Council

\* The application, dated 12 May 2021 is made under Section 38 of the Commons Act 2006 (‘the 2006 Act’) for consent to carry out restricted works on common land.

\* The application is made by Southampton City Council.

\* The works comprise Palmerston Park: Permanent 46 m extension of existing knee rail. East Park (north east corner): Permanent 73.5 m of bespoke ‘organic’ design steel knee rail. East Park (south): Lay 25 m² of permanent open textured bound rubber crumb surfaced path. West Park: permanent 178.65 m of bespoke ‘organic’ design steel knee rail.

##  
Decision

1.Consent is granted for the works in accordance with the application dated 12 May 2021 and accompanying plan, subject to the condition that the works shall begin no later than three years from the date of this decision.

2.For the purposes of identification only the location of the works is shown in red on the attached plan.

Preliminary matters

3.I have had regard to Defra’s Common Land Consents Policy (Defra November 2015) in determining this application under section 38, which has been published for the guidance of both the Planning Inspectorate and applicants. However, every application will be considered on its merits and a determination will depart from the policy if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the policy.

4.This application has been determined solely on the basis of written evidence.

5.I have taken account of the representations made by Natural England (NE), the Open Spaces Society (OSS) and Southampton Commons and Parks Protection Society (SCAPPS).

6.I am required by section 39 of the 2006 Act to have regard to the following in

determining this application:

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

\* the interests of the neighbourhood;

\* the public interest. (Section 39(2) of the 2006 Act provides 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.);

\* and any other matter considered to be relevant.

Reasons

*The interests of those occupying or having rights over the land*

7.The land is owned by the applicant, Southampton City Council (the Council). There is one right of common registered to Hampshire County Council to dig marl over part of the land comprised in this register unit. The applicant confirms that the right is not exercised. I therefore consider that the proposed works will not harm the interests of those occupying or having rights in relation to the land.

*The interests of the neighbourhood and the protection of public rights of access*

8.The interests of the neighbourhood test relates to whether the works will unacceptably interfere with the way the common land is used by local people and is closely linked with interests of public access. The applicant explains that the works are needed to address the problem of mud paths caused by people taking short cuts on the common instead of using the formal paths. The worn paths have revealed hazardous subterranean stones and resulted in surface flooding, soil erosion and compaction over tree root zones which is detrimental to the health and longevity of the trees. The works will discourage use of the paths, allowing restoration and recovery of these areas and increasing the amount of quality green open space available. The rubber surfaced path is needed to connect the park walk entrance with the central path; knee rails are considered unsuitable at this location as the length of rails needed would impede free movement.

9.The formation of the rubber surfaced path will improve access. The knee rails will, however, restrict access over the common, although only to a small extent. Nevertheless, I accept that, by encouraging people to use the formal paths and discouraging the use of short-cuts, the rails, together with the rubber surfaced path, will help the grass areas to recover and increase the amount of green space available for public recreation and access. The works will, therefore, make the common a more enjoyable place for people to visit.

*Nature conservation, conservation of the landscape and archaeological remains and features of historic interest*

10.The applicant explains that the works will allow areas of the common to be treated, benefiting the soil environment and trees. The remedial works include over seeding with grass mix to restore the common. The knee rails are bespoke to fit the existing design palette of the park and allow for uninterrupted views across it. The green coloured rubber path is an open textured construction and free draining across its surface.

11.SCAPPS raises concerns about the impact of the length of steel knee rails along Commercial Road (West Park) on the landscape character, particularly the retention of the open spatial ‘flow’ on the south boundary of the park. It considers that half the length may be sufficient at this location to resolve or reduce the present wear. In response, the applicant believes that, by not taking the rail up to the existing formal paths, new desire lines would be created where the knee rail ended and the low height would not hinder the visual connection across the park.

12.The applicant submitted a response from Historic England confirming that it did not wish to offer any comments. However, NE comments that the proposals regulate the way visitors currently use the park to help maintain its historic Grade II\* listed status. The applicant explains that the colour and material of the path is intended to differentiate it from the historic path layout and maintain the integrity of the original design heritage.

13.I am satisfied that there is no evidence before me to indicate that the proposed works will harm any archaeological remains or features of historic interest. I note that NE comments that the site will benefit in terms of its overall nature conservation value. The rails have a slender and open structure and are not unattractive. I consider that both the rails and the rubber path have been designed to be sympathetic to the landscape and will improve the condition of the common by preventing and treating damage to the soil and trees and in helping to overcome the problem of unsightly mud paths. I conclude that the works will conserve the landscape.

Other matters

14.The OSS question whether the application is needed and is of the view that if the works are not restricted works, then no application may be made. However, applicants should satisfy themselves that consent is needed for works. In this case, an application has been made and it has been decided on its merits.

Conclusion

15.I conclude that the works will make the common a more pleasurable place to visit, improve the health of trees and will not harm the other interests set out in paragraph 6 above. Consent is therefore granted for the works subject to the condition set out in paragraph 1.

Richard Holland

Map

Description automatically generated