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# Application Decision

**by Richard Holland**

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

**Decision date: 26 January 2016**

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## **Application Ref: COM 741**

### **Tooting Bec Common, London Borough of Wandsworth**

Register Unit No: CL30

Commons Registration Authority: The London Borough of Wandsworth.

- The application, dated 30 September 2015, is made under Article 12 of the Ministry of Housing and Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967 for consent to construct works on common land.
- The application is made by the London Borough of Wandsworth.
- The works comprise:
  - i) a 34 square metres extension to the rear north west facing elevation of the existing Bedford Hill cafeteria building to house the kitchens and a single DDA compliant toilet with baby changing facilities; and
  - ii) a temporary work site area of 750 square metres enclosed by approximately 110 metres of 2.4 metres high plywood sheet hoarding (temporary fencing).

## **Decision**

1. Consent is granted for the works in accordance with the application dated 30 September 2015 and the plans submitted with it subject to the conditions that the works shall begin no later than three years from the date of this decision and that all temporary fencing shall be removed on completion of the works.
2. For the purposes of identification only the location of the works is shown in red on the attached plan.

## **Preliminary Matters**

3. Article 7 of the Ministry of Housing and Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967 provides that a local authority may in any open space provide and maintain a variety of facilities for public recreation subject to conditions. Article 7(d) specifically refers to the provision of meals and refreshments of all kinds to sell to the public. Article 7(e) specifically refers to the provision and maintenance of swings and any apparatus, appliances, equipment or conveniences necessary or desirable for persons resorting to the open space. Article 12 of the Greater London Parks and Open Spaces Order 1967 provides that in the exercise of powers under Article 7 the local authority shall not, without the consent of the Minister, erect, or permit to be erected, any building or other structure on any part of a common.
4. I have had regard to Defra's Common Land consents policy<sup>1</sup> in determining this application, which has been published for the guidance of both the Planning Inspectorate

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<sup>1</sup> Common Land consents policy (Defra November 2015)

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.

5. This application has been determined solely on the basis of written evidence.
6. I have taken account of the representations made by the Open Spaces Society (OSS), Natural England (NE), Friends of Tooting Common (FTC) and Mr H Rawson.
7. I am required by section 39 of the Commons Act 2006 to have regard to the following in determining applications under Article 12 of the Greater London Parks and Open Spaces Order 1967:-
  - 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 interest;<sup>2</sup> and
  - d. any other matter considered to be relevant.

## **Reasons**

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

8. Tooting Bec Common is owned and managed by the London Borough of Wandsworth, the applicant. There are no registered rights of common. I consider therefore that the works will not harm the interests of persons occupying or having rights over the land.

### ***The interests of the neighbourhood***

9. The interests of the neighbourhood test relates primarily to whether the works will impact on the way the common land is used by local people. The land concerned is already the site of a cafeteria and historical maps of Tooting Bec Common show that there has been a refreshment facility at the site since the early 1900s. The proposed works are intended to improve the existing facilities by providing a relocated kitchen and toilet suitable for the disabled with baby changing facilities which will be available to cafeteria patrons and users of the common during cafeteria opening times. The Friends of Tooting Bec supports the provision of a public toilet.
10. I consider that the works will benefit the neighbourhood by providing upgraded facilities for the convenience of all users, many of whom will be local, thereby enhancing their enjoyment of the common.

### ***The public interest***

#### ***The protection of public rights of access***

11. The cafeteria sits near the boundary of the common in the centre of a generous area of hard-standing. To the rear of the building lies a wooded area abutting the rear gardens of properties in nearby Hillbury Road. To the front, looking across the common, the cafeteria is positioned near a footpath junction from which all corners of the common can be

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<sup>2</sup>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.

accessed. Users of the common are currently able to walk uninterrupted all around the outside of the building and the applicant has advised that this will continue during construction and thereafter. I consider therefore that the works will not unacceptably harm public rights of access. Indeed, it is likely that they will encourage greater recreational use of the common and will be in the public interest. This is a view shared by the OSS.

#### *Nature conservation*

12. NE, which has not objected to the proposals, has advised that Tooting Bec Common is designated as a Site of Importance for Nature Conservation (SINC). It has been identified in the local authority plan as being of local biodiversity value as a large open space with extensive areas of woodland and grassland, serving a part of south London lacking good wildlife sites. The extension of the cafeteria will theoretically impinge on approximately 34 square metres of SINC land, although in practice the extension will occupy land that is already hard-standing.
13. The planning permission for the cafeteria extension (Application No. 2012/1184) requires nearby trees, in particular the two oak trees to the west and north of the cafeteria, to be protected during the construction works. Vehicle movements associated with the works (deliveries of building materials and removal of waste, etc.) will be restricted to the path between Bedford Hill and the cafeteria. Temporary storage of building materials and waste will be restricted to the hard surfaced area immediately to the east of the building and no incursion onto the adjacent grass will be permitted.
14. I consider that suitably robust plans are in place to protect nature conservation interests during construction and I am satisfied that the proposed extension will not impinge on land that is not already hard surfaced. I therefore conclude that the proposals will not unacceptably affect the interests of nature conservation.

#### *Conservation of the landscape*

15. Extending the cafeteria will have some impact on the landscape. However, as there has traditionally been a cafeteria at this location and the extension materials are required by the planning permission to match the existing building, I conclude that the works will not be out of keeping with the common and will not unacceptably harm the landscape.

#### *Archaeological remains and features of historic interest*

16. There is no evidence before me to suggest that the works will unacceptably harm any archaeological remains or features of historic interest.

#### **Conclusion**

I have taken account of Mr Rawson's opposition to the application. However, for the reasons set out above, I conclude that the works will not unacceptably harm the interests set out in paragraph 7 above and that they are a facility that a local authority may, under Article 7 of the Ministry of Housing and Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967, provide and maintain for persons resorting to the open space. Consent for the works should therefore be granted.

**Richard Holland**