

---

# Application Decision

**by Richard Holland**

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

**Decision date: 10 June 2016**

---

**Application Ref: COM 772**  
**Clapham Common, London Borough of Lambeth**

Register Unit No: CL73

Commons Registration Authority: The London Borough of Lambeth.

- The application, dated 21 January 2016, 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 Clague LLP for the London Borough of Lambeth.
- The works comprise the conversion of the vacant public toilets at The Polygon, within the existing 70m<sup>2</sup> footprint, to:
  - i. a single independent toilet for Transport for London (TfL) employees;
  - ii. a large cafeteria area with a small kitchen;
  - iii. toilets for public use, including disabled and baby change facilities;
  - iv. an external disabled access ramp; and
  - v. temporary safety/security fencing around the building during the conversion works.

## Decision

1. Consent is granted for the works in accordance with the application dated 21 January 2016 and the plans submitted with it, subject to the following conditions:-
  - i. the works shall begin no later than three years from the date of this decision;
  - ii. the public toilets shall be open during café opening hours;
  - iii. the TfL toilet shall cease to be available for use should the public toilets close permanently; and
  - iv. the temporary fencing shall be removed within three months of 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. The published notice says that no fencing is required whereas the application form includes a proposal for temporary safety/security fencing to secure the site boundary during the conversion works. I accept that the notice was intended to convey that the proposals include no permanent fencing. I am satisfied that no party has been unduly prejudiced by the wording of the notice and that the validity of the application is unaffected.
5. 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 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. Planning permission for the change of use of the public convenience to Use Class A1 was granted on 18 November 2015 (Application No. 15/05017/RG3).
6. This application has been determined solely on the basis of written evidence.
7. I have taken account of the representations made by the Open Spaces Society (OSS), Natural England (NE), Friends of Clapham Common (FCC), Ms Fionnuala Sullivan and Mr Frederick Uhde.
8. 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***

9. Clapham Common is owned and managed by the London Borough of Lambeth, the applicant. There is nothing in the commons register to indicate that there are any registered rights over the 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***

10. The interests of the neighbourhood test relates to whether the works will impact on the way the common land is used by local people. The proposal includes the provision of toilets for use only by TfL staff. TfL is meeting part of the cost of the conversion and any

---

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

<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.

earnings generated will go the local authority. It is doubtful whether the proposed conversion could go ahead if it were not to include a commercial element. The disused public toilets building currently provides no practical benefit to the neighbourhood. The café toilets will be open to the public and users of the common, as well as to café customers, so the conversion will re-instate a facility consistent with the provision of '*conveniences necessary or desirable for persons resorting to the open space*'. Indeed, as the modern toilets will include separate baby changing facilities they may be an improvement on the facilities previously available. The building's conversion to a café is consistent with the '*provision of meals and refreshments of all kinds to sell to the public*' and, although it is disputed by those objecting to the application, I accept the applicant's contention that the proposed café use is likely to add to people's enjoyment of the common.

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

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

11. The building sits on a former grassed area of Clapham Common which is separated from the main body of the common to the south by the B303 road. The area is now hard surfaced following the recent stopping-up of the road to the building's eastern side and wider hard surfacing works for pedestrian use. The proposed works are largely confined to the footprint of the existing toilet block building except for a small additional area to be used for a disabled access ramp. Users of the common are currently able to walk uninterrupted all around the outside of the building and will be able to do so following the works. The safety/security fencing in place during the works will surround the building but from the plans submitted there is no reason to think that it will stop pedestrians from continuing to do this. I consider therefore that the works will not unacceptably harm public rights of access to and within the common.

#### *Nature conservation*

12. NE considers it unlikely that the works will have a detrimental effect on landscape, access or the biodiversity of the common as a whole. There is no evidence before me which leads me to think that the works will harm any statutorily protected sites or other nature conservation interests.

#### *Conservation of the landscape*

13. The application site is at the northern tip of the common and, apart from the bulk of the common to the south, lies within a largely urbanised setting. The conversion works will give a more contemporary look to the old building and since the area adjacent to the plot is hard surfaced I consider that the converted building is unlikely to look out of place. I note that a condition of the planning permission requires that the external surfaces of the converted building shall match those of the existing building. I therefore conclude that the works will not be out of keeping with the surroundings and will not harm the landscape.

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

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

#### *Other matters*

15. OSS and Mr Uhde have raised concerns that the works constitute a change from proposals included in the Clapham Common Masterplan. They are also concerned about the planning permission granted for the building's change of use to Class A1 use. However, these are matters for the local planning authority. The application before me is for consent to

carry out works and must be determined on that basis and in the context of the policy outlined in paragraph 5 and the interests set out at paragraph 8 above.

16. Objectors are concerned about the proposal to provide a toilet for the exclusive use of TfL staff as such private use of facilities is not consistent with the purposes for which applications may be made. I accept that this is a relevant point. However, as I have said at paragraph 10 above, I consider that the proposals will benefit the neighbourhood. Nevertheless, it remains the case that a small portion of the new building will be given over to exclusive private use by TfL which will not benefit users of the common; this weighs against the application. However, the provision of a café and public toilets and the benefits for users of the common that will result outweighs this disadvantage. However, it would not be acceptable for the TfL toilet to remain available for use should the café and/or public toilets cease to operate; a condition to this effect will therefore be attached to any consent. A condition is also needed to ensure that the public toilets are open during café opening hours.
17. Mr Uhde has also raised concerns about the Council's alleged unauthorised hard surfacing of the site and promotion of activities elsewhere on the common. The existing hard surfacing does not form part of the application before me so is not something I can take into account. The carrying out of alleged unlawful works and activities on common land is a matter for the courts.
18. Mr Uhde has further raised concerns about the use of fencing to screen café refuse bins. No such fencing is proposed and does not form part of the application to be determined. However, it is a condition of the planning permission that details of waste and recycling storage are to be approved by the local planning authority.
19. Mr Uhde and FCC have suggested that some re-grassing of hard surface at the site should be required in exchange for the area to be taken up by the disabled access ramp. However, I have concluded that the proposed works will not unacceptably restrict public access nor harm the appearance of the common.

## **Conclusion**

20. I have taken account of the objections to the application. However, for the reasons set out above I conclude that the works 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. I further conclude that they will not unacceptably harm the interests set out in paragraph 8 above; indeed the provision of a café, public toilets and baby changing facilities will be of benefit to the neighbourhood. I do not think it would be reasonable to withhold consent simply because a small part of the proposed works will not benefit users of the common. Consent for the works, subject to the conditions set out at paragraph 1, should therefore be granted.

**Richard Holland**

# Site of Proposed Works on Clapham Common



