



# Application Decision

Site visit made on 1 March 2017

**by Heidi Cruickshank BSc MSc MIPROW**

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

**Decision date: 19/05/2017**

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**Application Ref: COM/3157359**  
**Southampton Common, Southampton**

Register Unit No. CL1

Registration Authority Southampton City Council

The application, dated 19 August 2016, is made under Section 38 of the Commons Act 2006 for consent to construct works on common land.

The works comprise:

- relocation of an existing play area, returning the land to grass;
  - removal of concrete paddling pool and replacement with an interactive water and play facility, shrub areas and screening;
  - permanent and temporary fencing.
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## Decision

1. Consent is granted for the works with modification to some of the matters set out in the application dated 19 August 2016. The consent relates to:
  - relocation of the existing play area, returning the land to grass;
  - removal of concrete paddling pool and replacement with an interactive water and play facility, shrub areas and screening, with new porous surfacing and/or use of existing non-porous pathways;
  - temporary fencing (heras or similar) as required, for up to six months;
  - permanent fencing of black interlaced bow top 1.2 metre high fence on the alignment shown in Drawing No. DW54/01, Revision E, dated 20.02.2017.
2. The works shall begin no later than 3 years from the date of this decision.
3. For the purposes of identification only, the location of the consented works is coloured red on the plan attached to this decision. This is an amended plan to indicate the entire area affected by the application.

## Preliminary Matters

4. At the time of the application for consent to carry out the works the necessary planning application had not been made. However, on 2 February 2017 conditional approval<sup>1</sup> was given by Southampton City Council ("the City Council") for *"Installation of a replacement play area with fencing, associated structures and changes in level, following removal of paddling pool."* The City Council are also the applicants for this consent.
5. The documents submitted with the consent application were part of the documentation used in the planning application. During the planning process

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<sup>1</sup> Reference 16/01883/R3CFL/35113

a revision was proposed to the eastern boundary, alongside Coronation Avenue, and the City Council request that revision be made with respect to the proposed works under the commons consent, it having been a matter raised in response to the consultation process. This is shown on Drawing No. DW54/01, Revision E, dated 20.02.2017.

### **Procedural Matters**

6. I carried out a site visit on the land in question accompanied by a representative for the applicant and two of the parties raising concerns on the matter. Following the site visit I requested some further information in relation to consultation with Southern Water.
7. There was no request to be heard and the application has been determined on the basis of written representations.

### **The Land**

8. Southampton Common ("the common") is registered in the Register of Common Land ("the RCL") under the Commons Registration Act 1965. The common lies within the city boundaries and is surrounded by built-up areas. The western edge is bounded by Hill Lane, with Southampton Old Cemetery ("the cemetery") to the south-west, whilst the northern boundary runs behind properties on Burgess Road. The Avenue, the A33, and Highfield Avenue, the A3035, bisect the eastern part of the common, with the boundary itself formed by smaller roads and the properties thereon. The southern boundary is less well defined, passing around the cemetery and properties and roads on and around Northlands Road.
9. The roads are generally excluded from the commons registration and there are also two areas within the southern part of the common which are left unregistered. One is The Hawthorns Urban Wildlife Centre ("The Hawthorns") and to the north-east of this is The Cowherds Public House ("The Cowherds"). The area of land to which the application relates lies to the north of these facilities, with The Hawthorns being a Study Centre and Cafe, owned by the City Council, providing food and toilet facilities.
10. The land is made up of areas of parkland and woodland with several water bodies. Some of the more open areas appear to be managed and mown and there are areas of ancient oak woodland, along with younger generations of oak, birch and holly. As well as woodland glades there are meadow habitats, with networks of ditches.
11. There are a number of made tracks passing through the common including Coronation Avenue which is a tree-lined avenue running north-west from The Cowherds adjoining the eastern boundary of the application area. In the northern area, from which the play equipment is to be removed, there are some tracks which I understand to be used for cycling testing, as well as adult outdoor gym equipment.
12. The application includes a fenced area with a paddling pool, which was not operational at the time of my visit. There is a building which has been used as an ice-cream kiosk and which is intended to be reused for provision of snacks.

## **Main Issues**

13. Section 38 of the Commons Act 2006 ("the 2006 Act") provides that a person may apply for consent to carry out restricted works on land registered as common land. Restricted works are works which have the effect of preventing or impeding access to or over any land to which this section applies, in particular, the erection of fencing, the construction of buildings and other structures and the digging of ditches and trenches and the building of embankments, as well as the resurfacing of land, which consists of the laying of concrete, tarmacadam, coated roadstone or similar material.
14. In determining this application I have had regard to Defra's Common Land Consents Policy, November 2015<sup>2</sup>. This is published for the guidance of both the Planning Inspectorate and applicants.
15. I am required by section 39 of the 2006 Act to have regard to the following in determining the application:-
  - 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; and
  - d. any other matter considered to be relevant.
16. Section 39(2) of the 2006 Act provides that the public interest includes the public interest in:
  - a. nature conservation;
  - b. the conservation of the landscape;
  - c. the protection of public rights of access to any area of land; and
  - d. the protection of archaeological remains and features of historic interest.

## **Reasons**

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

#### *The landowners*

17. The City Council is the owner of the land and the applicant for consent for the works. The application is made by and on behalf of the Parks Service, which aims to ensure that children, young people and families in all neighbourhood communities have access to outdoor play.
18. I am satisfied that the works would be in the interests of the City Council.

#### *Registered rights*

19. There are no rights registered in the RCL for CL1.

#### *Other rights*

20. The lease of The Cowherds dating from 5 February 2013 is unaffected by the proposed works, except insofar as there will be members of the public using

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<sup>2</sup> Reference PB 14079

the proposed facilities. However, as there appear to have been similar features on the application area over many years, this would not seem to cause conflict. Indeed it may be advantageous to the business to encourage more people into the area.

21. No matters of conflict have been brought to my attention in relation to either the 1983 licence with Southern Water or the 1958 deed with the Southern Gas Board. Due to the intended alteration of the eastern fence alignment, as set out in the planning approval, the access to gate no. 5 from Coronation Avenue would run past an access point associated with the Southern Water facilities. The City Council confirmed that during their planning consultation, which showed the alternative entrance, there was no comment made and, having contacted them in relation to the queries raised by the site visit, no further comment was received.

### *Conclusions*

22. Considering all evidence available to me, I am satisfied that there will be no negative effect on the interests of those occupying or having rights over the common. I shall deal with the public rights separately.

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

23. The intention of the application is to replace the existing concrete paddling pool and play area sited to the north-west of that, returning that area to grass. The paddling pool area is intended as a new play area, with various play and leisure elements, to provide children of all ages and abilities with a play environment that is fun, beautiful, exciting, challenging, educational, eventful, safe and family friendly, in the centre of the city.
24. There was some disagreement as to whether the proposal would achieve this intention, with particular concern at the loss of the paddling pool. The replacement water feature is intended as a year-round play facility, which can be achieved due to the lack of requirement for life guards to be present or for use of chemicals, as would be the case with a replacement pool.
25. It is not my role to decide whether there should be an alternative facility provided; only whether the works for which the application is made should, or should not, be allowed. Although I note the concerns raised I am satisfied that the wider consultation exercise has had a generally positive response. Given the location of the common in the city centre I am satisfied that the outcome intended by the proposed works add something that will positively benefit the neighbourhood.
26. The main concerns related to the effect of the proposed fencing on the trees running alongside Coronation Avenue, with the original intention having been to fence some of the trees within the application area. Having taken account of the issues raised, the planning permission was for the fencing to lie to the south-west of the tree-line minimising potential interference with root systems. I am satisfied that this is appropriate.

## ***The public interest***

### *Public Access*

27. The public have access rights across the common as a whole under the Countryside and Rights of Way Act 2000 ("the 2000 Act"). My site visit included a walk over the wider common. Even on a weekday in March I found the common to be well-used, noting dog walkers, cyclist, runners, people with young children in pushchairs and some sitting to eat their lunch in the fresh air.
28. As the majority of the proposed play area is already fenced, in connection with the existing facilities, I consider that there will be little change to the way in which local people have been using the common. There would be five entrance gates in the proposed fencing, as well as a vehicular maintenance gate, and I am satisfied that this should provide sufficient general access to and across the area. It is intended that dogs will be excluded from the area, with the enclosed nature providing some level of security for those with young children.
29. I am satisfied that the proposed works would have limited negative impact on the general public access on foot, across the common as a whole.

### *Nature Conservation*

30. The majority of the common is designated as a Site of Special Scientific Interest ("SSSI") and the application area is not designated, although immediately adjacent to the SSSI.
31. The SSSI designation arises from the large populations of amphibians, in particular great crested newts *T. cristatus*, which mainly inhabit the Boating Lake, which lies to the north of the application area, during the spring and summer, dispersing over the remainder of the SSSI during the remainder of the year. The great crested newt is nationally rare and the population on the common is one of the largest known in Britain.
32. There are areas of ancient oak woodland, along with younger generations of oak, birch and holly. As well as woodland glades there are meadow habitats, with networks of ditches, which I understand provide terrestrial habitat for amphibians, with newts apparently relying on them during migrations to hibernating sites and for over-wintering.
33. There is a ditch situated within the application area, between the paddling pool and old play equipment area. However, given the existing activity in and this area, it seems unlikely that the proposed changes would negatively impact on this feature from a conservation perspective.
34. I am satisfied that condition 8, imposed by the conditional planning approval, deals appropriately with ecological mitigation in relation to the grassland and the location of the fence.

### *Landscape*

35. There will be an impact on the landscape, not least due to the climbing tower which is likely to be visible from quite a distance. I consider the removal of existing play equipment to the north, with a return of the area to open

grassland, will be an improvement on the existing landscape. A condition on timing of these works has been put in place by the planning approval, as well as for hard and soft landscaping across the site as a whole, with the existing trees to be retained with further landscaping and screening provided.

36. The Design Statement for the proposed play area shows that the new equipment will be more 'rustic' and natural than the older metal equipment. I consider this to be more in keeping with an area of common land.
37. The heras fencing, to be used during the development of the site, is likely to be quite visible, but will only be in place for a temporary period. The intention for the final fencing was for powder-coated green paramesh, with associate planting for screening. However, notes to planning condition 11 set out that this is inappropriate and fencing should respond more to the character of the common.
38. The City Council has subsequently indicated that the fencing is to be black interlaced bow top 1.2 metre high fence. This is the type of fencing already associated with the paddling pool area and I understand it to have been in place for around 15 years. To that extent I consider that it will be 'in keeping'. However, I consider it important that the intended screening planting associated with the original fence design is also carried out in relation to this fencing to continue the more natural features to be introduced by the proposed play equipment. I am satisfied that the Hard & Soft Landscaping requirements under condition 10 of the planning permission will be sufficient to achieve this.

#### *Protection of archaeological remains and features of historic interest*

39. No matters have been put forward regarding concerns in this respect and there is no evidence before me to suggest that archaeological remains or features of historic interest would be affected by the proposed works. However, I note that the planning permission condition 4 requires an archaeological watching brief work programme. I am satisfied that any features will be appropriately protected by this requirement.

#### *Conclusions*

40. The intention of the Common Land Consents Policy is to ensure that the nature of common land is properly protected for current and future generations to enjoy. On balance, due to the location of the common in such a heavily populated area, it is appropriate to provide some different areas and experiences for different users and I am satisfied that there is likely to be a positive impact on the interests of the neighbourhood. There will be a negligible effect on public access, nature conservation and the landscape. Overall, I consider that the public interest is not adversely affected.

#### **Other matters**

41. I consider that concerns regarding other local facilities, such as those at St James Park, are not matters for me. The City Council indicate that they are not directly comparable and that lessons learned from the design and installation have been taken into account.

42. The application refers to the works to improve what seems to be an informal path to the south-east, giving access to The Hawthorns. Concerns were raised in objection regarding the alteration to the gradient of the land in this area; the timing of the works; and, a need for additional scrub clearance. However, the City Council have stated that they are not applying for consent under the 2006 Act and, therefore, I have not considered this matter further.

### **Conclusions**

43. Having regard to the interests and matters set out in the main issues, I am satisfied that the works would be in the interest of the owners and would not adversely affect the public interest or the interests of other occupiers. Therefore, I consider that it is expedient that consent should be given. However, taking account of the landscape and conservation interests in relation to the location of the eastern fence near the trees on Coronation Avenue, I am satisfied that the fence should be moved to the south-west, as set out in the planning proposed layout, drawing no. Drawing No. DW54/01, Revision E, dated 20.02.2017, rather than on the alignment shown by the original commons consent application.
44. Accordingly, in exercise of the powers conferred by section 38 of the 2006 Act, and of all other enabling powers, I hereby give consent to the works applied for, subject to the alteration of the fence alignment, the relevant conditions regarding timescales and other permissions required.

*Heidi Cruickshank*

**Inspector**

