
Application Decisions

Inquiry opened on 15 March 2017

Site visit made on 10 April 2017

by Alan Beckett BA MSc MIPROW

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 3 August 2017

Application Ref: COM 3161430 (Application A) Haven Green, Ealing

Register Unit No: CL111

Commons Registration Authority: Ealing Borough Council

- The application, dated 17 October 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 ('the 1967 Act') for consent to carry out restricted works on common land.
- The application is made by Alison Luff, Council of the London Borough of Ealing, Perceval House, 14 – 16 Uxbridge Road, Ealing.
- The works comprise: the retention of a cycle hub and two close circuit television poles.

Decision: Consent is not granted for the retention of two CCTV poles currently located on Haven Green. Consent is not granted for the retention of the cycle hub currently located on Haven Green.

Application Ref: COM3154071 (Application B) Haven Green, Ealing

Register Unit No: CL111

Commons Registration Authority: Ealing Borough Council

- The application, dated 4 April 2016, is made under Section 16 of the Commons Act 2006 ('the 2006 Act') to deregister land registered as common land. The application is made by Alison Luff, Council of the London Borough of Ealing, Perceval House, 14 – 16 Uxbridge Road, Ealing.
- The release land comprises 188m² of CL111.
- There is no replacement land offered in exchange for the release land.

Decision: Consent is granted for the deregistration of part of Haven Green.

Procedural matters

1. I held a public local inquiry into the applications at the Town Hall, Ealing which opened on Wednesday 15 March. Originally scheduled for only two days, it was necessary to adjourn on the evening of 16 March and resume on Thursday 9 April, the first date that was convenient for the parties. I undertook an unaccompanied inspection of the cycle hub and CCTV poles at issue on the afternoon of 14 March and a final inspection of the common and its immediate surroundings in the company of the parties on the morning of Friday 10 April.
2. In its written submissions supporting the applications, Ealing Borough Council contended that the Section 16 application was its principal application to ensure that there was no doubt that the continued existence of the cycle hub

was lawful and that the Article 12 application was an alternative means of retaining the cycle hub on common land. Both applications appear to have been made in response to Section 41 proceedings being instigated against the Council by the Friends of Haven Green with regard to the cycle hub, the CCTV poles and other matters related to the common. In the documents supporting the applications, the Council sought the granting of the Section 16 application, with the granting of the Article 12 application in the alternative.

3. At the inquiry, the Council's case was advanced on a different footing. For the Council, Mr Westaway asked that consideration should be given to the Article 12 application in the first instance and then, if a conclusion was reached that consent should not be granted under Article 12, consideration should be given to the Section 16 application. This course of action was that contemplated by paragraph 5.17 in Defra's Common Land Consents Policy¹.
4. One area of dispute between the parties was regarding the need for consent to be obtained from the Secretary of State for the cycle hub and CCTV poles. Although the issue of whether consent was required had been raised with the Council by the Friends of Haven Green in September 2011², the Council had been of the view that consent was not required. Although it would appear to have been determined internally within the Council that consent was not required, no reasoning was put forward as to how that conclusion had been reached. It appears that it was the section 41 proceedings which prompted the applications for consent and deregistration.
5. The Council argued that the cycle hub and CCTV poles were facilities that could be provided under Article 7 of the 1967 Act, for which consent under Article 12 was required. If that submission was accepted, then section 38 (1) of the 2006 Act would be of no application³. However, the Council's fall-back position was that if the CCTV poles and the cycle hub fell outside of Article 7 then consideration should be given to whether consent should be given under section 38 (1).
6. However, the Council had not made an application for consent to works under section 38 of the 2006 Act. The application which the Council submitted sought consent under Article 12 of the 1967 Act and I cannot therefore give consideration to the retention of the cycle hub and CCTV poles under section 38 if I conclude that the structures are not ones to which Article 7 applies.
7. The Council placed reliance upon Article 7 (1) (a) (ii), Article 7 (1) (e) and Article 7 (1) (f) of the 1967 Act as justification for the provision of the cycle hub and the CCTV poles, arguing that these were facilities for public recreation on the common. Under Article 7 (1) (a) (ii) the Council can provide and maintain "*golf course and grounds, tracks, lawns, courts, greens and such other open air facilities as the local authority think fit for any form of recreation whatsoever.....*". Under article 7 (1) (e) the Council can provide and maintain "*swings, platforms, screens, chairs, seats, lockers, towels, costumes and any apparatus, appliances, equipment or conveniences necessary or desirable for persons resorting to the open space*". Under article 7 (1) (f) the Council can

¹ Defra, November 2015

² Ealing Broadway Cycle Hub Stakeholder Meeting 27 September 2011

³ See section 38 (6) of the 2006 Act

“erect and maintain for or in connection with any purpose relating to the open space such buildings or structures as they consider necessary or desirable including....buildings for the accommodation of keepers and other persons employed in connection with the open space”.

8. With regard to the operation of the 1967 Act, whilst the Council is empowered to erect *“buildings or structures”* in parks and open spaces under Article 7, the Council’s ability to erect buildings or structures on common land is restricted by the operation of article 12 of the 1967 Act: *“In the exercise of powers conferred by articles 7 and 8 the local authority shall not, without the consent of the Minister (which consent the Minister may give in such cases as he thinks fit), erect, or permit to be erected any building or other structure on or enclose permanently, or permit to be enclosed permanently, any part of a common”*. As the cycle hub and CCTV poles are a *“building or other structure”* erected on registered common land, the consent of the Secretary of State under Article 12 (1) of the 1967 Act is required if the cycle hub and CCTV poles fall within the provisions of Article 7.
9. The cycle hub and the CCTV poles are located on common land. Although the quantity of common land affected by the structures is small (as the footprint of both the CCTV cameras and the pillars which support the roof of the cycle hub are small), nonetheless these structures occupy land over which the public has a right of access under section 193 of the Law of Property Act 1925, or under the Scheme of Management which is applicable to Ealing’s commons or under the Countryside and Rights of Way Act 2000. Any member of the public wishing to take air and exercise on the common has to walk around the CCTV poles as it is not possible to traverse the land on which the poles are located. Similarly, access to the land on which the cycle hub is built is impeded by the supporting pillars and (depending on the time of day and occupancy rate of the cycle hub) the parking of bicycles.
10. During the inquiry it became apparent that one result of the works undertaken by the Council to construct the cycle hub had been that the configuration of the island site on which it sits had been altered and resulted in the island being reduced in size. It was suggested by the Council that the section of currently registered common which is no longer part of the island could be deregistered if the Article 12 application was successful.
11. Calculations made from the drawing at page 171 of the Council’s bundle show that 18.9891m² of the island originally registered as common is now outwith the boundary of the reconfigured island and is now part of the taxi rank access / egress road. As this section of the former island was subject to the original section 16 deregistration application, it was considered that no party’s interests would be prejudiced if this small part of land was deregistered, any such deregistration being dependent upon consent being granted to the Article 12 retention application.
12. I will give consideration to the applications in accordance with paragraph 5.17 of the Common Lands Consents Policy; that is, I will first consider the Article 12 application before turning to the section 16 application, whether in whole or in part.

The Main Issues

Application A

13. Whether the cycle hub and CCTV poles are Article 7 buildings or structures.
14. If the cycle hub and CCTV poles are article 7 structures I am required by article 12 (2) (A) of the 1967 Act to have regard to the following in determining this 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 which includes the interest in nature conservation, the conservation of the landscape, the protection of public rights of access and the protection of archaeological remains and features of historic interest;
 - (d) any other matters considered to be relevant.
15. I will also have regard to the Department for the Environment, Food and Rural Affairs Common Land Consents Policy, which sets out the benefits which common land should deliver, and the outcomes which must be ensured by the consents process. This document has been published for the guidance of both the Planning Inspectorate and applicants. However, the application will be considered on its merits and a determination will depart from the published policy if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the policy.

Assessment – application A

Whether the cycle hub and CCTV poles are article 7 buildings or structures

16. As set out above, the Council places reliance upon article 7 (1) (a) (ii), 7 (1) (e) and 7 (1) (f) as justification for seeking consent under article 12 (1). It is the Council's case that the cycle hub and CCTV poles are "*such open air facilities as the local authority think fit for any form of recreation whatsoever*". In the Council's view, the cycle hub plainly supported recreational activity as cycling was a recreational pursuit. The Council submits that there is nothing in the 1967 Act that restricts the provision of recreational facilities to activities which take place on the common as the Act speaks of "*any form of recreation whatsoever*". There was and is a recognised cycle path over the southern part of the common from Springbridge Road which is signed as a dual use footpath / cycleway and which has recently been widened.
17. The cycle hub and CCTV poles were also considered to be "*apparatus..equipment or conveniences necessary or desirable for persons resorting to the open space*" as a person visiting Haven Green on a bicycle would use the cycle hub for safe and secure storage of their bike. Finally in the Council's view, the hub and the CCTV poles were buildings or structures which were considered necessary to the good management and better enjoyment of Haven Green. The hub provided for the orderly storage of bicycles which would otherwise be locked or chained to whatever piece of street furniture was available on or around the common. The orderly storage of bicycles in the hub

- was preferable to the disordered clutter which had existed before the hub was created. The CCTV poles assisted in the prevention of anti-social behaviour and criminal activity on the common.
18. Both the Open Spaces Society and Miss Zammitt questioned whether the cycle hub and the CCTV poles were structures which could be provided under the provisions of Article 7 and submitted that if they were not then the requirement for consent under Article 12 could not be triggered. In Miss Zammitt's view, Article 7 (1) (a) (ii) relied on by the Council was inapplicable; although the Council considered that the cycle hub was a facility for "*any form of recreation whatsoever*", the facilities envisaged by Article 7 (1) (a) (ii) were for recreation on the common. Cycling was not a recreational activity on Haven Green; the common was too small and although the roads and paths through it may be used as a thoroughfare, such use was not a recreational activity on the common.
 19. I have difficulty in following the Council's reasoning that article 7 has a wide application and could relate to the provision of facilities to support recreation other than on the common. Article 6 of the 1967 Act defines 'open space' to which the Act applies and the provision of facilities for public recreation relates to public recreation within the open space. Although it is not disputed that cycling is a recreational pursuit, the provision of facilities under article 7 (1) (a) (ii) must relate to the provision of facilities for recreation on Haven Green. I heard from the Council's witnesses that the predominant use of the cycle hub was by commuters travelling to Ealing Broadway station; no figures were available to show how many people cycled to Haven Green to take air and exercise on foot, but the overall impression was that few people did so. As a facility to enable recreation on the common, the cycle hub appears to serve a very limited function if it serves any such function at all.
 20. Furthermore, recreational cycling on Haven Green is prohibited by the Council's own byelaws; consequently the cycle hub cannot be a facility to promote recreational cycling on the common as such activity is not allowed. I accept that one of the paths across the southern part of the common is designated as a footpath / cycleway, however this path links Springbridge Road with the cycle hub and the permission given by the Council for cyclists to use this path to reach the cycle hub, the temporary cycle stands and Ealing Broadway station does not extend to the common as a whole, which is subject to the byelaws. I conclude that the cycle hub is not a facility for public recreation on the common and that Article 7 (1) (a) (ii) is inapplicable.
 21. The objectors submit that on the Council's own evidence that the predominant use of the cycle hub being as a commuter facility, the provisions of Article 7 (1) (e) do not apply as that provision relates to the provision of facilities "*necessary or desirable for persons resorting to the open space*". Both Mr Cole and Mr Bunting emphasised that the hub served a dual purpose in that it provided a means of secure storage for those who cycled to Haven Green to enjoy the common in addition to serving the same purpose for commuters.
 22. It is not known how many of the 66 cycle parking spaces located in the hub are used by visitors to the common (as opposed to commuters) although as noted above, there appears to be few who do so; the evidence before me is that the cycle hub is generally full by around 08:00, which suggests that the predominant users of the facility are commuters. For those who do cycle to

Haven Green for the purpose of using the green, the ability to securely store one's cycle is no doubt welcome. Whether it is "*necessary or desirable*" to provide 66 storage places on common land for this purpose is however doubtful; a much smaller number of spaces is likely to have been sufficient to accommodate those who cycle to Haven Green to enjoy the open space. The main purpose of the creation of the cycle hub appears to have been to provide commuter cycle parking facilities with any possible residual recreational use being a secondary consideration. Consequently, I do not consider that the cycle hub falls within article 7 (1) (e) of the 1967 Act.

23. The objectors also consider that article 7 (1) (f) does not apply as the cycle hub does not appear to be a building or structure which is connected to the use of the common; the evidence pointed towards the hub being a facility for commuters and not for those taking air and exercise on the common.
24. One of the reasons advanced by the Council for the retention of the cycle hub is that it prevents the disordered chaining of cycles to trees, lampposts and other street furniture on and around Haven Green and that if the cycle hub was not present then the cluttered street scene which prevailed prior to the construction of the hub would return. Whilst the disordered parking of cycles may have an adverse impact upon the immediate environment of Haven Green, the problem appears to have arisen due to the parking of commuter's cycles and not those belonging to people using the common for air and exercise. The hub was built as part of an initiative to encourage the growth of cycling as part of a commuter journey.
25. The cycle hub is of little or no recreational value to the users of the common; to fall within the ambit of article 7 (1) (f) the building or structure has to be erected in connection to a purpose relating to the open space. Indiscriminate cycle parking by commuters is not a purpose related to the open space but one related to making a journey as a commuter. Unregulated and uncontrolled bicycle parking is clearly an issue in the vicinity of Ealing Broadway station but the point made by the objectors is that a structure to address that issue should not be built on common land when it is of no benefit to the common.
26. Although article 7 (1) (f) is a general clause which permits a local authority a degree of latitude as to the nature of the structure to be erected and the purpose for which it is erected, the building or structure must serve to facilitate recreational activity on the common. I am not persuaded that the cycle hub serves such a purpose as its primary function is to provide for the storage of bicycles belonging to those commuting to Ealing Broadway station. Accordingly, I do not consider that the cycle hub falls within the provisions of Article 7 (1) (f) of the 1967 Act.
27. The Council submitted that Haven Green was used by a cross-section of local people for a wide variety of activities and that the presence of the CCTV poles did not prevent local residents from using Haven Green in the way they were used to. For the Council, Mr Martin's evidence was that the CCTV poles were in place to assist with the prevention and detection of crime and had been positioned so that the views from the cameras were maximised and allowed the cameras to track suspects or to manage outbreaks of large-scale disorder.
28. Mr Martin explained that the 'at rest' position of camera 3 was looking towards the cycle hub and the cycle racks on the south side of the common, but that it

- was possible to move the camera to focus on other parts of Haven Green. Camera 3 was in the optimal location to monitor activity around the cycle racks opposite the cycle hub and to obtain 'face on' views of people passing along the formal paths on the south side of the common. In contrast, camera 2 was fixed in position and provided a view of as much of the green as possible.
29. Mr Martin's evidence was that both cameras were important for the prevention and detection of crime and moving them from their current locations to the periphery of the common would reduce the field of view of the cameras and reduce the impact the cameras would have. It was the Council's case that the CCTV poles did not impede access to the common and that their presence was of public benefit as they assisted in keeping the common safe and secure for all users.
 30. In objecting to the granting of consent, the objectors submitted that the presence of electronic surveillance devices on Haven Green detracted from the special quality of the common as common land. The placing of CCTV poles on the common to deal with theft from the cycle racks or the monitoring of activity at bus stops was inappropriate; such surveillance could be carried out from other locations around Haven Green without the cameras having to be located on the common.
 31. The objectors' view was that Haven Green was a vibrant public place and no less safe, for those resorting to it for air and exercise, than nearby streets or shopping malls were for ordinary pedestrians and shoppers. It was submitted that the CCTV poles were unnecessary for members of the public to be able to enjoy the common for informal recreation or air and exercise.
 32. I heard that the cameras were part of a chain of cameras in the immediate vicinity of the common by which the Council could monitor the progress of any individual around Haven Green, Broadway and Springbridge Road. On the grounds that the question was hypothetical, Mr Martin refused to be drawn on where the optimal position for the CCTV cameras would be if they were not located on common land.
 33. Although the current position of the cameras may be considered to be optimal, the question still remains as to whether the cameras should be located on the common. Given the presence in the area of a number of other CCTV cameras which provide surveillance capabilities in the immediate vicinity of Haven Green, it is likely that cameras located around the common, but not on it, could provide similar coverage of the cycle racks or the common as a whole.
 34. In relation to the CCTV poles, the pole supporting camera 2 might be primarily to assist in deterring anti-social behaviour on the common, but the principal function of the pole supporting camera 3 appeared to be the prevention of theft from the unauthorised temporary bike stands on the southern part of the common. As these stands were predominantly used by commuters, camera 3 did not support recreational activity on the common.
 35. It is not disputed that both CCTV cameras provide a surveillance capability for parts of the common. However it would be possible for members of the public to engage in informal recreation on the common if the CCTV cameras were not present, and it is highly unlikely that informal recreation on the common would cease if the CCTV poles were removed. As the CCTV poles do not appear to be

structures which are connected with or facilitate use of the open space for recreation, are not necessary or desirable for persons resorting to the open space and do not facilitate use of the open space, I consider that the CCTV poles and cameras do not fall within the provisions of Article 7 of the 1967 Act.

Conclusion on Application A

36. I conclude that the cycle hub and CCTV poles are not Article 7 structures and consequently fall outside the provisions of the 1967 Act such that consent under article 12 cannot be granted.

Application B

37. Section 16 (1) of the 2006 Act provides, amongst other things, that the owner of any land registered as common land may apply for the land ('the release land') to cease to be so registered. If the area of the release land is greater than 200m² a proposal must be made to replace it with other land to be registered as common land or as a town or village green.
38. In this case the amount of land affected by the application is less than 200m² and no other land ('replacement land') has been offered. There was some debate between the parties as to the methodology which had been employed to arrive at the quantity of land proposed for deregistration. The Council's methodology produced two separate estimates which differed due to the scale and age of the plan measured; these measurements were 175m² and 188m². The measurements conducted on behalf of the Ealing Cycling Campaign showed the island to be 191m². Although the objectors disputed these measurements, no evidence was submitted to show that the area covered by the cycle hub was in excess of 200m².
39. The land to be deregistered is that part of Haven Green on which the cycle hub is built. The cycle hub occupies the whole of the island site at the south-eastern corner of the common with the island site being separated from the remainder of the common by a taxi rank access road. The Council have made the application for de-registration in order to ensure the lawful continuation of the cycle hub which has been built on registered common land without the consent of the Secretary of State.

The Statutory Requirements

40. I am required by section 16(6) of the 2006 Act to have regard to the following in determining this application:
- (a) the interests of persons having rights in relation to, or occupying, the release land;
 - (b) the interests of the neighbourhood;
 - (c) the public interest;
 - (d) any other matter considered to be relevant.
41. I will also have regard to published policy in relation to the determination of applications under section 16. Paragraph 5.3 of the Common Land Consents Policy has this to say in relation to cases where no replacement land is offered: *"In considering an application which does not propose replacement land, the*

Secretary of State is required to have particular regard..to the extent to which the absence of such a proposal is prejudicial to the interests specified in section 16 (6) (a) to (c) (i.e. the 'private interests' the interests of the neighbourhood and the public interests). In general, the Secretary of State will grant consent where no replacement land is offered only in exceptional circumstances. Such circumstances are most likely where a wider public interest is being served by the deregistration which may mitigate the prejudice caused by the loss of the release land. An example is the creation of a slipway or a lifeboat station, or the provision of a disabled access ramp to a village hall. Even in such cases, land should be offered in exchange unless there is a compelling reason why this is not possible) (e.g. the registered land is surrounded by development and it is not possible to provide replacement land which would be integral to the site). It follows that an application for de-registration where no replacement land is offered is most unlikely to be granted if no compelling public interest is served by the deregistration."

Assessment

The interests of persons occupying or having rights in relation to the release land

42. There are no rights of common exercisable over Haven Green and there are no persons who occupy the land. The Council is the owner of Haven Green and has made the retrospective application for consent to be granted for the retention of the cycle hub. The public has a right of access to the land for informal recreation.
43. The Council submitted that the creation of the cycle hub had no impact upon the public's rights as the island on which the hub stands has historically not been used for informal recreation and there is a long history of the site being used for the parking or storage of bicycles. Ordnance Survey maps show that the land on which the cycle hub is located has been isolated from the remainder of Haven Green by access roads since at least 1915 and a 1957 plan for the re-configuring of the taxi rank access road shows that the land was in use for cycle storage at that date. An aerial photograph from 1971 also demonstrated that the land was in use for cycle storage at that date. At the time the application was made for the registration of the common and at the time the registration was confirmed, the land at issue appears to have been in use for the parking of bicycles. In the Council's submission, previous use of the land for bicycle parking is likely to have limited the opportunity for members of the public to engage in recreational activities on the land.
44. The objectors submitted that the fact that the Council have at some point surfaced the land and erected bike stands on it is of no relevance; the land is and remains part of the common to which the public has a right of access. The occupation of the land by parked bicycles limits that access when bicycles are present as do the locking mechanisms when bicycles are not present.
45. Whilst members of the public may not find the island site conducive to informal recreation (due to the size of the island and the proximity to motor vehicles), the island provides a means by which other nearby parts of the common can be accessed. If the land was deregistered the public's ability to cross over the land to access the remainder of Haven Green would not be diminished; the north – south access which is currently available between the rows of parked bicycles would remain. Deregistration of the island site would not prevent members of

the public from being able to pass through or over the site as a means of access to the remainder of Haven Green.

46. I conclude that de-registration of the island site would not have an adverse effect upon those having rights in relation to the release land.

The interests of the neighbourhood

47. I heard from the representatives of a number of groups and from a number of individuals who may be regarded as being representative of the interests of the neighbourhood. The Friends of Haven Green (FoHG), the Ealing Civic Society (ECC) and the Central Ealing Residents Association (CERA) all made representations against the retention of the cycle hub together with individual representations made by Miss Zammitt, Mr Mishiku and Dr Jones. I also heard from the representative of the Ealing Cycling Campaign who spoke in favour of the retention of the cycle hub. In addition, a number of third party representations were made both in support of and objection to the retention of the cycle hub.
48. Many of the responses in favour of the retention of the cycle hub state that prior to its construction and the provision of the temporary cycle stands, bicycles were parked in a haphazard manner by being chained to any available street furniture. This state of affairs had a negative impact upon the neighbourhood which the hub and other parking facilities have addressed. These correspondents considered that the existence of the hub brought benefits to the neighbourhood in terms of less clutter. Conversely there are those within the neighbourhood who consider that the cycle hub spoils the view of Haven Green and is part of the creeping urbanisation around the common.
49. The retention of the cycle hub would therefore be of positive benefit to some in the neighbourhood whereas for others it would have an adverse impact. It is common ground between the parties that cycling as a means of transport has the potential to deliver benefits to those who cycle and to others as a result of a reduction in dependence upon motorised transport. It follows that measures taken to facilitate greater use of pedal cycles can thus be beneficial to the wider community in terms of reduced traffic congestion and atmospheric pollution. The benefits to the neighbourhood of cycling as a means of transport may therefore be substantial.
50. There is no doubt that the cycle hub is a well-used facility; as noted above, the evidence is that the hub is generally full by 08:00 each morning and that occupancy rates are around 92%. The cycle hub allows for bicycles to be stored in an orderly manner which mitigates the need for bikes to be locked to items of street furniture in or around Haven Green which created hazards for pedestrians and other users. The evidence before me is that the physical appearance of the neighbourhood surrounding Haven Green and the common itself has benefited from the orderly and organised storage of pedal cycles.

The public interest

Nature conservation

51. The design of the cycle hub took into account the existence of mature trees on the site and although there had been plans to fell two trees and re-plant with replacements, a planning condition required the retention of these trees. The

island site is within a designated conservation area and the trees which stand on the site are the subject of a Tree Preservation Order. The trees are also the subject of the March 2012 Tree Management and Landscapes Enhancement report. The nature conservation interest in the mature trees on site appears to have been fully considered as part of the development of the cycle hub.

52. There is no evidence to suggest that deregistration of the island site would have an adverse effect upon nature conservation. Although deregistration would remove the protection afforded to the land by its designation as common land, I consider that there are sufficient protections in place for the trees on the site to ensure that the nature conservation interest of the site would not be adversely affected by deregistration.

Conservation of the landscape

53. The objectors contended that the cycle hub obstructed views across the common particularly from the forecourt of Ealing Broadway station and that the position and nature of the cycle hub visually enclosed the views to the north of the common. In response, the Council argued that consultation on the design of the cycle hub had been extensive and the final cycle hub as built reflected the concerns raised by local interest groups during the design process. It was submitted that the pitch and height of the roof had been designed to sit just below the tree canopy to ensure that the view across the common to the north was maintained.
54. Photographs of the site taken before and after the construction of the cycle hub were submitted and I had the benefit of seeing the cycle hub for myself. It is clear from both the photographs and from my site visit that views across Haven Green during the summer months would be restricted by the tree canopy and the presence of taxis lining up on the access road. I concur with the Council that as the roof line of the cycle hub is at the level of the tree canopy it does not serve to lessen the views to the north. I accept that during the winter months, when the trees are bare of leaves, the view to the north would not be as open as it was prior to the construction of the hub. However, I am not persuaded by the objectors' submission that the cycle hub 'encloses' the view of the common. As noted above, the hub has been designed to maintain the mature trees already present on the site and in this respect, its design and construction has been undertaken to minimise its impact upon the landscape. When viewed from the northern end of Haven Green, the roofline of the cycle hub is partly lost within the tree canopy and partly lost in the urban development on the southern boundary of the common.
55. With regard to the view of the common from the entrance to Ealing Broadway station, irrespective of the outcome of these applications, that part of the cycle hub which is immediately opposite the station is built on land which is not part of the registered common; the view one would have from the station entrance is therefore unaffected by the outcome of these applications.
56. I do not consider that deregistration of the island site would have an adverse impact upon the conservation of the landscape of Haven Green.

Public rights of access

57. Haven Green is subject to a public right of access for air and exercise under section 193 of the Law of Property Act 1925. In addition, the common is

- subject to a scheme of management made under the provisions of the Metropolitan Commons Act 1866. Furthermore, under the provisions of the Countryside and Rights of Way Act 2000, the public has a right of access on foot to all registered common land; this clearly includes the land on which the cycle hub is built.
58. Consequently, under various statutory provisions, the public has a right of access to the part of Haven Green subject to this application. The cycle hub has the effect of impeding public access over that part of the common on which the cycle hub is built.
59. The cycle hub is not a structure which is intrinsically linked to the management of the common. The cycle hub forms part of the Ealing Broadway Transport Interchange centred on the railway station on the opposite side of the road from Haven Green. The evidence before me is that the cycle hub is usually full at or before 08:00 and remains fully occupied or at near full occupancy rates throughout the working day. This suggests that those using the hub are predominantly if not wholly commuters.
60. The cycle hub provides facilities to meet a growing demand from commuters for a safe and secure location to park a bicycle as part of a commuter journey into central London. It is not disputed by any party that cycling is a cleaner, healthier and more sustainable mode of transport than by car and it is highly likely that once Crossrail commences operations, the demand for secure cycle storage will increase as passenger numbers travelling to and from Ealing Broadway increases.
61. One argument advanced for the retention of the cycle hub was that this part of the common had long been used for the storage of bicycles as demonstrated by the 1957 plan for the re-design of the taxi rank layout and the 1971 aerial photograph. Although this part of the common may have been used for cycle storage at the time of registration, this does not negate the protection afforded to registered common land either under the Metropolitan Commons Act 1866 or subsequent legislation.
62. There was much debate at the inquiry as to alternative locations for the cycle hub and although a number of alternative sites were canvassed by the objectors as ones which could have accommodated the cycle hub, none of these sites were in the direct control of the Council; each of the alternative sites would have required extensive negotiations with freeholders and leaseholders to secure the site for cycle parking even on a temporary basis. Whilst the Haven Green site may have been the only readily available land on which to locate the cycle hub, the sites status as part of a registered common conflicts with the erection of a permanent building which is not intrinsic to the common. Deregistration of that part of the common on which the cycle hub has been built would resolve the conflict that currently exists between the nature of the building and the land on which it is located.
63. Deregistration of the island site will not affect the public's rights of access to the remainder of Haven Green nor the right of access over the island site. Although it was suggested that deregistration would permit the Council to accrue a substantial site on the fringe of the common which could then be developed, there is no evidence before me that such claims have any substance behind them.

Archaeological remains or other features of historic interest

64. There is no evidence before me that there are archaeological remains or other features of historic interest which would be adversely affected by the deregistration of the release land.

Other relevant matters

65. Miss Zammitt contended that the application was flawed as the Council had not consulted the Church Commissioners. Under the terms of the indenture by which the common had been transferred to the Council's predecessor, the Church Commissioners retained an interest in the land; the terms of the indenture were that the common could not be "*broken up or aliened*" without the consent of the Church Commissioners. A further argument was that the indenture could be a relevant charge on the land for the purposes of section 16 (9) of the 2006 Act which would require the consent of the proprietor of the charge.
66. The Council had undertaken a search of the Land Charges Act 1972 register and had not discovered any such charge having been made against its landholding. There is therefore no registered charge over Haven Green of the type described in section 16 (9) or 16 (10) of the 2006 Act. The proposed deregistration does not in my view alienate or break up the common; ownership of the land would remain with the Council and deregistration would not lead to the common being physically broken up. I do not consider that the section 16 application to be flawed.

Conclusions

67. Section 16 (7) of the 2006 Act states that in cases such as this, where the amount of common land proposed to be deregistered is less than 200m² and no replacement land has been offered, particular regard should be paid to the extent to which the absence of replacement land would be prejudicial to the interests (a), (b) and (c) set out in paragraph 40 above. The Common Land Consents Policy at paragraph 5.3 states that consent for deregistration where no replacement land is offered will only be granted in exceptional circumstances such as where a wider public interest is being served by the deregistration which may mitigate the prejudice caused by the loss of the release land. Furthermore, it is expected that exchange land should be offered unless there is a compelling reason why this is not possible such as when the registered land is surrounded by development and it is not possible to provide replacement land integral to the site.
68. Haven Green is a metropolitan common which sits within the centre of Ealing. The common is surrounded by urban development and the Council is not in control of any other land adjacent to the common which it can offer as replacement land, other than highway land to which the public already has a right of access. It was submitted by the objectors that the Council's lack of ownership of adjacent land was irrelevant; the Council had compulsory purchase powers and could acquire land such as the BBC car park to offer as replacement land.
69. Whereas the Council could exercise its powers of compulsory purchase over the former BBC car park the value of the land as replacement land would be questionable as the car park is an artificial structure engineered over a railway

embankment. Notwithstanding the possibility that the Council could exercise its powers for compulsory purchase of adjacent land it has not done so and no replacement land is offered. As Haven Green is surrounded by development this provides a compelling reason as to why no replacement land has been offered.

70. The question arises as to whether there are any 'exceptional circumstances' in this case as to why consent for deregistration should be granted where no replacement land is offered. Paragraph 5.3 of the Consents Policy provides examples of what may be considered to be 'exceptional circumstances': "*Such circumstances are most likely where a wider public interest is being served by the deregistration which may mitigate the prejudice caused by the loss of the release land. An example is the creation of a slipway for a lifeboat station, or the provision of a disabled access ramp to a village hall*".
71. In this case, it would appear that the loss of the release land would not have any significant adverse effects upon the interests set out in paragraph 40 above. Although there is likely to be some prejudice to the public interests as a result of a loss of registered common, deregistration of the land would prevent a return to haphazard cycle parking in and around Haven Green, would allow the cycle hub to remain and to continue to deliver wider benefits to the neighbourhood and to the public in terms of an improvement in air quality and a reduction on the reliance of sections of the public on motorised transport, both of which accords with other aspects of public policy which seeks to encourage a shift towards sustainable and integrated transport.
72. The circumstances of this case are perhaps unique in that the land at issue is both at the centre of a built up area in west London and opposite a major commuter station which is likely to see an increase in passenger traffic with the introduction of Crossrail. The benefits which would accrue to the public and the neighbourhood in terms of an improvement in air quality and a shift towards sustainable means of transport lead me to conclude that this is an exceptional case of the type envisaged in the published policy, where consent for deregistration should be granted without the offer of replacement land being made. Therefore I conclude that the application should be granted and an Order of Deregistration should be given.

Alan Beckett

Inspector

APPEARANCES

For Ealing Borough Council

Mr N Westaway of Counsel

Who called:

Mr C Bunting MBA DMS ADCME Assistant Director of Leisure

Mr C Cole MA, MSc MCILT Transport Projects and Policy Manager

Mr O Martin CCTV Manager

For the Ealing Cycling Campaign:

Mr P Mynors FICE FCIHT MTPS

Objectors

Friends of Haven Green Mr W French

Mr G Phelan

Central Ealing Residents Association Mr S Morley

Ealing Civic Society Mr T Miller

Open Spaces Society Mr J Lavery

Ms F Zammitt

Mr V Mishiku

Dr M Jones

Inquiry Documents

1. Bundle of papers relating to consultations on the design of the cycle hub; H-B Designs Ltd 31 January 2017.
2. Transport for London comments on Central Ealing Neighbourhood Plan.
3. Application Decision COM638.
4. Application Decision: COM 505.
5. Crossrail Act 2008 Schedule 7.
6. Metropolitan Commons Act 1866 Scheme with respect to Ealing Commons and Borough of Ealing Bye-laws with respect to Ealing Commons.
7. Copy of Mr Mishiku's letter of objection dated 9 May 2016.
8. Opening statement of Mr Mynors on behalf of Ealing Cycling Campaign.
9. Correspondence between Miss Zammit and My Mynors regarding methodology for measuring the area of the island site.
10. Copy of the application to register Haven Green as common land (application 288) dated 27 June 1968.
11. Extract from Haven Green Conservation area Character Appraisal.
12. Transport for London press release regarding Mayor of London funding for areas around Crossrail Stations.
13. Copy of Indenture between the Ecclesiastical Commissioners and the Ealing Local Board dated 22 November 1878.
14. Central Ealing Neighbourhood Development Plan Report of Examination 20 March 2017.
15. Dated copy of letter from Save Ealing's Centre regarding Crossrail application PP/2013/5387 dated 11 August 2014.
16. Revised proof of evidence of Mr Miller dated 31 March 2017.
17. Closing statement on behalf of the Open Spaces Society.
18. Closing statement on behalf of the Friends of Haven Green.
19. Closing statement on behalf of central Ealing Residents' association.
20. Closing statement on behalf of Ealing Cycling Campaign.
21. Closing statement on behalf of Ealing Borough Council.

Order

On behalf of the Secretary of State for Environment, Food and Rural Affairs and pursuant to Section 17 (1) and (2) of the Commons Act 2006, **I HEREBY ORDER** Ealing Borough Council, as Commons Registration Authority for the area in which the release land is situated:

- (i) to remove the release land from its register of common land, by amending register unit CL 111 to exclude the release land specified in the Schedule.

Schedule – the Release land

Colour on plan	Descriptions	Total Extent
Edged red	188m ² of land comprising the island site on the south-eastern corner of Haven Green.	188m ²

Location plan of release land (not to scale)

