
Application Decision

by **Richard Holland**

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

Decision date: **21 November 2017**

Application Ref: COM/3181254

Brook Green, London Borough of Hammersmith and Fulham

Register Unit No: CL 4

Commons Registration Authority: London Borough of Hammersmith and Fulham

- The application, dated 24 July 2017, 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 Hammersmith and Fulham.
 - The works comprise (i) the resurfacing of an existing tarmac path with a flexi paved footpath around 380 m², with 307 m² of current footpath being returned to grass; (ii) resurfacing an existing tarmac path with flexi-pave around 133 m²; (iii) creation of a new footpath surfaced with flexi-pave around 128 m²; and (iv) resurfacing of an existing tarmac cycle route with flexi-pave 82.5 m².
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Decision

1. Consent is granted for the works in accordance with the application dated 24 July 2017 and the plans submitted with it 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. Article 7 of the Ministry of Housing and Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967 ("the 1967 Act") provides that a local authority may in any open space provide and maintain a variety of facilities for public recreation subject to conditions. Article 12 of the 1967 Act 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 Guidance¹ 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 guidance if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the guidance.
5. This application has been determined solely on the basis of written evidence.

¹ Common Land Consents Policy Guidance (Defra November 2015)

6. I have taken account of the representations made by the Open Spaces Society (OSS), Historic England (HE) and Elizabeth Baker.
7. I am required by section 39 of the 2006 Act 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;² and
 - d. any other matter considered to be relevant.

Reasons

The interests of those occupying or having rights over the land

8. Brook Green is owned and managed by the applicant, the London Borough of Hammersmith and Fulham. There are no rights of common registered. I consider therefore that the works will not harm the interests of those occupying or having rights over the land.

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

9. 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 common is a well-used public open space that is enjoyed by the local community for access and recreation. The works involve the resurfacing of existing paths and the creation of a new path along a well-worn desire line. The applicant confirms that the works are supported locally and will benefit the recreational use of Brook Green.
10. In response to a concern raised about the width of the proposed path on the south side of the common, the applicant explains that the works will reduce the width of the footpath to 1.8 m, which is wider than the 1.5 m width needed to allow space for a wheelchair user and walker to pass one another. The current diagonal footpath and proposed new path across the western lawn will provide alternative pedestrian access routes away from the road. I note that those commenting on the application do not object to the works.
11. I consider that the works will improve existing and informal paths on the common and so benefit the interests of the neighbourhood and the protection of public rights of access by facilitating better use of the common for recreation and access.

Nature conservation

12. I am satisfied that there is no evidence before me to indicate that the works will harm nature conservation interests.

Conservation of the landscape

13. The common is mainly laid to grass, with mature London Planes around the perimeter. An area of 307 m² will be returned to grass and the extent of tarmac reduced on the

²Section 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.

southern side of the common. The applicant confirms that the new grass boundary will receive regular maintenance.

14. The paths will be surfaced with a permeable flexi pave material which meets sustainable drainage solutions. The material has been chosen as an improved alternative to the existing impermeable tarmac surface, and is considered sympathetic to the environment.
15. The worn desire line path shown in the photograph submitted by the applicant has badly eroded the surface of Brook Green and is unsightly. I agree that the replacement of tarmac with either grass or flexi pave will improve the general appearance of the common and reduce the current visual impact of tarmac on the landscape. The improvements to drainage will also help better protect the common from damage. I conclude that the works will enhance the landscape.

Archaeological remains and features of historic interest

16. HE comments that as the proposed works are relatively minimal in nature, it seems unlikely on balance that they will have a significant impact upon heritage assets of archaeological interest. I am satisfied that the proposed works will not harm archaeological remains and features of historic interest.

Other matters

17. I note the concern raised about the removal of a post and rail fence. However, the works do not include the removal of the fence. I therefore consider that the fence is beyond the scope of this decision and does not affect my consideration of this application.

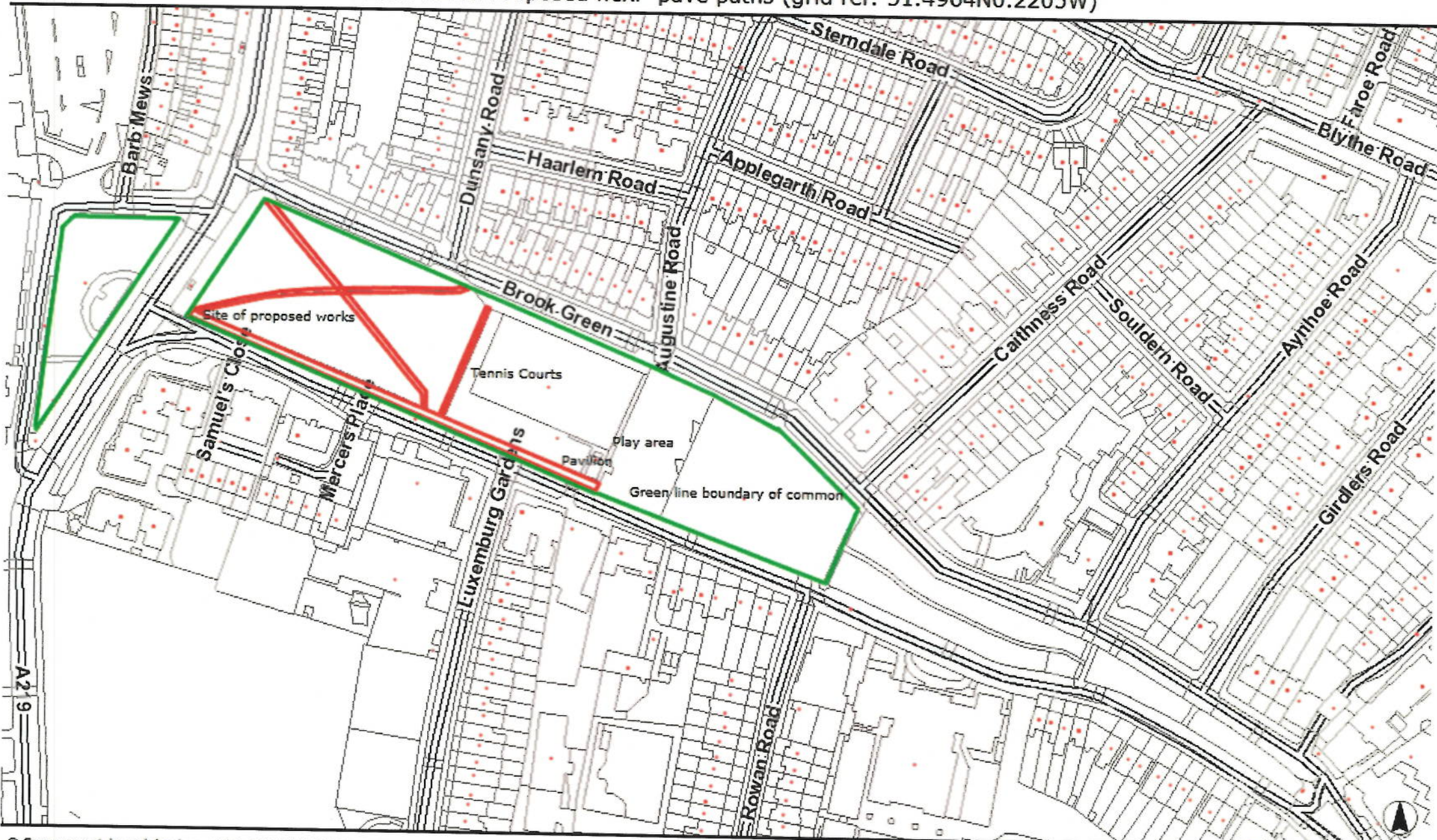
Conclusion

18. I conclude that the works will enhance the recreational value and appearance of Brook Green and will not harm the other interests set out in paragraph 7 above and that they are works 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 is granted subject to the condition set out at paragraph 1.

Richard Holland

London Borough of Hammersmith & Fulham

Brook Green Proposed flexi-pave paths (grid ref: 51.4964N0.2205W)



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