The Planning Inspectorate

Application Decision

Inquiry opened on 21 November 2017

by Mark Yates BA(Hons) MIPROW

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

Decision date: 25 January 2018

Application Ref: COM/3163648

Butts Close, Hitchin

Register Unit: CL 57
Registration Authority: Hertfordshire County Council

- The revised application, dated 26 January 2017, is made under Section 38 of the Commons Act 2006 ("the 2006 Act") for consent to carry out restricted works on common land.
- The application is made by Mr Crowley of North Hertfordshire District Council ("the Council").
- The application is for works on the common to construct a tarmac access road and associated low level post and rail fence.

Decision

1. Consent for the works is refused.

Preliminary Matters

2. I held a public inquiry into the application on 21-22 November 2017 at Hitchin Town Hall after undertaking an unaccompanied visit to the site. I made a further visit to the site accompanied by the interested parties following the close of the inquiry. The correspondence submitted after the close of the inquiry has been circulated to the relevant parties for information.

3. For the purpose of identification only the location of the proposed works is shown on the attached plan.

4. Over 40 representations were submitted in response to the advertisement of the application. These on the whole object to the proposed works.

Main Issues

5. I am required by Section 39 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 land (and in particular persons exercising rights of common over it);

   (b) the interests of the neighbourhood;

(c) the public interest[1];

(d) any other matter considered to be relevant.

Reasons

The application

6. The application relates to the proposal to construct a tarmac access road along with a 2 foot high fence on its western side. This road would have a width of 4.5 metres and an approximate length of 80 metres. The Council is willing to plant a low level or more substantial hedge to screen the road from the remainder of the common. Further, the Council does not object to the proposed fencing being excluded from any consent granted or replaced by bollards. One of the objectors, Mr Riley[2], considers that a 2 metre high hedge should be planted if consent is granted for the road. The width of the access road is intended to accommodate two-way traffic and any hedge or barrier would be to the side of the road.

7. The Council wishes to construct an additional car park in connection with the Hitchin Swimming Centre and Archers Gym ("the Centre"). This car park would be served by the proposed access road across the common from the present car park off Fishponds Road. Whilst the application does not relate to the car park itself, the Council acknowledges that the need for the additional car park is a matter that should be considered as this is the reason for the access road. The size of the car park will be determined at a later date but it appears that it would accommodate between 69 and 106 vehicles[3]. This issue does not impact upon the dimensions for the access road. However, the level of traffic over the road will be influenced by the size of the car park.

The interests of those occupying or having rights over the land

8. Butts Close is a single area of land which falls within different registered units in the register of common land. The land subject to the application is owned by the Hitchin Cow Commoners Trust. The Trust do not object to the proposal and have agreed to sell the land in question to the Council if this application is approved and planning permission is granted for the development. No rights of common are registered and there is nothing to suggest that any other rights over the land would be adversely affected by the proposed works.

9. There is a hard surfaced footpath across the common which is located a short distance to the west of the proposed access road. The Council enjoys a right of access over the footpath, including for vehicular traffic. Mr Crowley says there are about 10 vehicular trips over the footpath per week. Access for larger vehicles will continue via the existing access route in the absence of a turning circle in respect of the proposed access road.

The interests of the neighbourhood

10. I address the potential benefits arising from the proposed works and the impact of these works on the use and enjoyment of the common when

[1] 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.
[2] Representing the Friends of Butts Close
[3] The application for planning permission has not yet been submitted

considering the application in relation to the public interest. However, I accept that users of the Centre are likely to comprise to a large extent of people who could be viewed as living in the neighbourhood. I do not consider there to be any additional matters that specifically relate to the interests of the neighbourhood.

The public interest

11. Paragraph 3.2 of the Common Land consents policy issued by the Department for Environment, Food and Rural Affairs outlines one of the outcomes sought is that "*works take place on common land only where they maintain or improve the condition of the common or where they confer some wider public benefit and are either temporary in duration or have no significant or lasting impact*".

12. There is no suggestion that the works will improve the condition of the common. However, it is the Council's view that the works will benefit the public, including local residents. The Centre is a public facility owned by the Council and managed by Stevenage Leisure Limited. It includes a 25 metres indoor pool, 50 metres (seasonal) outdoor pool, gym and dance studios. The Council says the current car park at the Centre is insufficient to meet demand, particularly at busy times[4].

13. The Council also refers to the parking of vehicles on occasions by people making use of the common and the potential benefits of the additional car parking provision for these people. However, no evidence has been provided to support any such need and I consider that the application should be considered in light of the benefits for users of the Centre.

14. The need for additional parking provision for users of the Centre has to be assessed against the concerns of the objectors, which primarily relate to the conservation of the landscape, protection of public rights of access and nature conservation.

The need for additional parking provision

15. A considerable amount of the evidence presented to the inquiry related to the need for additional parking provision at the Centre. It is apparent that there has been a significant increase in the number of members of the Centre and an increase in swimming lessons since 2010. Mr Riley believes that this is proof that the success of the Centre is not hampered by the size of the present car park.

16. Mr Crowley refers to the Archers fitness survey where parking was cited as the most common reason for people leaving in 2016-17. Mr Bliss, the Centre Manager, clarifies that this information was obtained from phone interviews undertaken when people cancelled their membership. These interviews do not capture all of the people who cancelled their membership during this period. Nor does this information reveal how long people were members at the Centre before they cancelled their membership.

17. A car park study was recently undertaken which aimed to generally span a week during the school summer holidays and a week after the summer holidays had finished. Both weeks covered the period when the outdoor pool was open. Although demand can be significantly higher when this pool is in use, Mr Crowley points to the relatively cool weather during the period covered

[4] There are 93 spaces at the car park

by the survey. It is apparent that during spells of hot weather and high demand temporary provision has in the past been made for additional vehicles to park on Butts Close.

18. The survey shows the level of occupancy within the car park for each 15 minutes of the day. It also shows the entrance and exit times for vehicles. Even allowing for the original discrepancy regarding the number of parking places available, the overall occupancy figures at particular times were in excess of 100% for the car park[5]. The average length of stay is stated to be 1.5 hours. In terms of those vehicles staying for 5 minutes, when the car park was at over 85% occupancy, Mr Crowley believes that this is mainly attributed to people looking for a space and then leaving. However, there could equally be other reasons, such as people being dropped off or collected.

19. Although not entirely clear from the photographs provided, Mr Crowley draws attention to some instances of vehicles parking illegally within the car park and this was supported by his personal observations on occasions. In contrast, Mr Riley says the cars not shown in designated bays are accessing or leaving the car park. Whilst the objectors at the inquiry do not dispute that there is a need to resolve issues surrounding the busy Centre car park, they point to other potential solutions that could alleviate the problem.

20. Mr Crowley outlines that a barrier system was previously used to regulate vehicles using the car park but there were problems with the system. On occasions it led to congestion and queues forming. It operated to prevent people leaving until they had obtained a token from the Centre. Parking charges are now levied and enforced. Visitors are able to claim back the £1 fee for parking of up to 3 hours. Centre members can park free on display of a badge. Mr Crowley says the data indicates that the majority of car park users are making use of the Centre facilities. Only between 7 and 11% of people do not typically claim back the £1 fee and they may fail to do so for a variety of reasons. Nonetheless, it could be the case that some people leave their cars in the car park on occasions beyond the period of their use of the Centre in order to attend to other matters in Hitchin. The traffic data shows that 96% of people are staying for up to 3 hours and there are a minority of people who park in excess of 8 hours.

21. In terms of Mr Riley's suggestion that an automatic number plate recognition system could be employed, Mr Crowley does not consider that it can be used in this case. Nonetheless, the car park is subject to periodic checks by parking enforcement officers and there could be some merit in limiting the period that Centre users and members can park, to potentially less than 3 hours, which is likely to free up spaces. This in turn will deter use by anyone not using the Centre and particularly those people who park over a long period**.** However, I accept that this alone may not significantly reduce demand at the Centre car park.

22. Mr Riley says the Council previously considered extending the car park northwards over the grass area fronting onto Fishponds Road when the application for planning permission for the dance studios was considered in 2012. The planning application report notes the concerns raised by Council Officers and members of the public about the loss of trees and the potential damage to other trees from the proposed works. This meant that the proposed 20 places were not pursued. However, it is apparent that the Lairage car park

[5] As demonstrated by the calculations of Mr Riley

("Lairage") was considered at the time to be a realistic option at peak times. The report states at paragraph 4.3.10 that "*The applicant has further set out that if the extension is permitted, then provision will be made to re-fund customers' parking charge if they do park in the Lairage car park to further encourage the use of this car park for overspill demand*". The report also notes that the Lairage is only open until 19:00 hours.

23. I do not know whether a refunding system was originally implemented in the manner outlined in the Council's planning report. Although Centre members are able to use the Lairage free of charge, the number of people presently doing so is small. The objectors' question whether this arrangement could be advertised to a greater extent. It is nonetheless apparent that this car park is generally underused in comparison to other car parks in the town. The Council says factors that contribute to its overall underuse are its location, poor access and high parking costs. In terms of its location, I walked steadily from the Centre via Elmside Walk to this car park in around 5 minutes at the end of the accompanied site visit. However, I accept that a further amount of time will be spent by people driving to the Lairage because the Centre car park is full. The Council do not consider this to be a long-term solution as the car park is mainly provided for people accessing the town centre shops and there is no guarantee that it will continue to be made available for Centre members.

24. There is an overspill car park at Hitchin Town Football Club on the northern side of Fishponds Road. This car park is convenient for Centre users and there is a pedestrian crossing opposite the Centre, irrespective of whether people choose to cross at this point. However, the poor condition of the allocated part of the car park was evident during the accompanied visit. Mr Crowley also says that it is not available on match days and there is a cost to the Council of presently £6,500 per annum. He states there is no certainty that this arrangement will endure. No information has been provided of how many people make use of this car park when attending the Centre. It is quite probable that the use is limited to the times when there is no available space in the Centre car park. The position of this overspill car park may limit the present use of the Lairage by Centre members.

25. Mr Crowley says there are low levels of use of the bike racks provided on Elmside Walk, which can accommodate 16 bikes. The cycle facilities are basic racks for people to lock their bike. When I undertook the unaccompanied visit in the morning there were a number of bikes parked but during the afternoon accompanied visit there were none. No initiatives have been undertaken to encourage members of the public to use sustainable modes of transport to the Centre, such as discounted admission. It cannot be said that any such measures would significantly reduce the number of people driving to the Centre and Ms Dring pointed, in closing for the Council, to other potential reasons for the degree of cycling use. However, I consider that some incentives could have been explored in order to try and persuade people to not drive to the centre.

26. Consideration has been given to the existing surfaced footpath being used to serve the proposed car park. It would need to be widened in places and provision made for it to link the existing and proposed car parks and this would have some impact on the common. Although it is clearly preferable to have just one surfaced road across the common, the Council is concerned about the pedestrian use co-existing with an access road to a car park. The current vehicular use of the footpath is very low.

The conservation of the landscape

27. Butts Close lies within a conservation area and extracts have been provided from the Character Statement of 26 July 2011 for this area. In the summary it is noted that Butts Close is the centrepiece of the conservation area. In contrast, reference is made by the Council to the unsightly nature of particular features that border the common to the east.

28. Mr Crowley says that consideration was given to the use of grasscrete for the access road but this was ruled out due to the anticipated level of use. Although it is possible that some form of surface dressing could be implemented to lessen the visual impact of the tarmac surface, no viable proposal was presented at the inquiry. Nonetheless, when considered in conjunction with the existing tarmac path, I consider that the access road would have a significant visual impact on the common. This proposal would lead to there being two hard surfaced roads across the common in close proximity to each other.

29. The Butts Close Greenspace Action Plan ("GAP") published by the Council describes the common as an area of open landscape. The fencing and potential hedge would detract from the open nature of the common. However, the absence of these features needs to be balanced against the safety of members of the public using the common.

Public rights of access

30. There is a right of access for the public over the common in accordance with Section 193 of the Law of Property Act 1925. The fencing and any hedge to screen the proposed road would restrict access to an area of common comprising of the road and the remainder of the common to the east. I find this to be the case irrespective of the extent of the present use of this part of the common. Although the Council makes reference to three access points, these predominantly relate to those provided for vehicles. Bollards could to some extent retain a sense of openness and preserve access for the public as well as preventing cars from accessing the remainder of the common. However, there may still be some potential risks to the public, particularly children, from the vehicular use of the proposed access road. There would also be a lack of screening of the road if no hedge was planted.

Nature conservation

31. The GAP document outlines that there are no wildlife designations in respect of the common. Butts Close is stated to be semi-improved grassland with limited species diversity. No comments have been made by Natural England in response to the application. Mr Riley and Mr Sellicks draw attention to sightings of bats, hedgehogs and common garden birds. However, it is apparent that the bats were seen in trees to the south of the proposed access road. No trees are scheduled to be removed from the common and the impact of any lighting proposed for the car park is a planning matter, which may be the subject of conditions. The application before me does not include the provision of lighting on the common.

32. Mr Sellicks refers to the potential risks associated with pollutants being washed down the access road following rain, and particularly during spells of cold weather. He says that pollution originates from both noxious gasses and particulate matter from vehicle exhaust fumes. This in turn would have an

impact on fauna and flora in the area and the nearby pond. Whilst Mr Sellicks has provided a wide range of information regarding these matters generally, there is no information before me to indicate the potential impact in terms of this specific site. Further, details provided for the Council reveal that the access road could be constructed in a manner that would limit its environmental impact.

Other matters

33. Reference is made in the Character Statement to the tranquillity of Butts Close in contrast to the heavily trafficked Bedford Road. I noted during my visits to the site the busy nature of the surrounding roads and there may be some additional noise at times from the existing car park. However, the noise becomes less pronounced further within the common. The access road would lead to vehicles passing close to the existing well used footpath across the common and this will impact upon the experience presently enjoyed by the public. I have concluded above that the screening of the road would impact upon the use and open nature of the common.

34. Whilst I note the contents of the other Section 38 Decisions provided, I do not find that they have any significant relevance to my determination of this application.

Conclusions

35. There is nothing to suggest that any party occupying or having rights over the common would be adversely affected by the proposed works. I accept that there is presently a need for additional car parking provision to accommodate people making use of the Centre. In this sense there will be some benefit for the neighbourhood and wider public arising out of the construction of a new car park and the associated access road. However, it is apparent that use by people not using the Centre and those who park over a certain length of time impacts upon the capacity of the present car park at times.

36. There are clearly issues in relation to the existing use of the overspill car park at Hitchin Town Football Club. Nonetheless, the Lairage is nearby and the evidence is supportive of it having spare capacity to accommodate users of the Centre. No attempt has been made to encourage people to use more sustainable modes of transport and only members of the Centre can park free of charge at the Lairage. The latter is contrary to the statement made by the Council when planning permission was granted for the dance studios. Whilst it cannot be determined whether particular proposals will assist in reducing the demand on the Centre car park, they could have been trialled or explored further. These issues mean that I do not agree with the Council's submission that substantial weight should be given to the public interest argument.

37. The proposed access road would have a detrimental impact on the landscape of the common. This is particularly evident in light of the close proximity of the existing hard surfaced path, which is used on a limited basis as a vehicular means of access. It will also have an impact on the extent of the common available for the public to use. Although there may be some benefits in the presence of a fence and hedge, or alternatively bollards, there are also disadvantages in these being pursued.

38. Having regard to the issues outlined above, I conclude that the benefits arising from the proposed access road and associated car park are outweighed by the

impact that the works would have on the nature and use of the common presently enjoyed by members of the public. It follows that I conclude that the application should be refused.

Mark Yates

Inspector

APPEARANCES

For the Council:

Ms E. Dring	Barrister instructed by the Council

She called:

Mr S. Crowley	Contracts and Project Manager for the Council

Additional Supporter:

Mr J. Bliss	General Manager of the Centre

The Objectors:

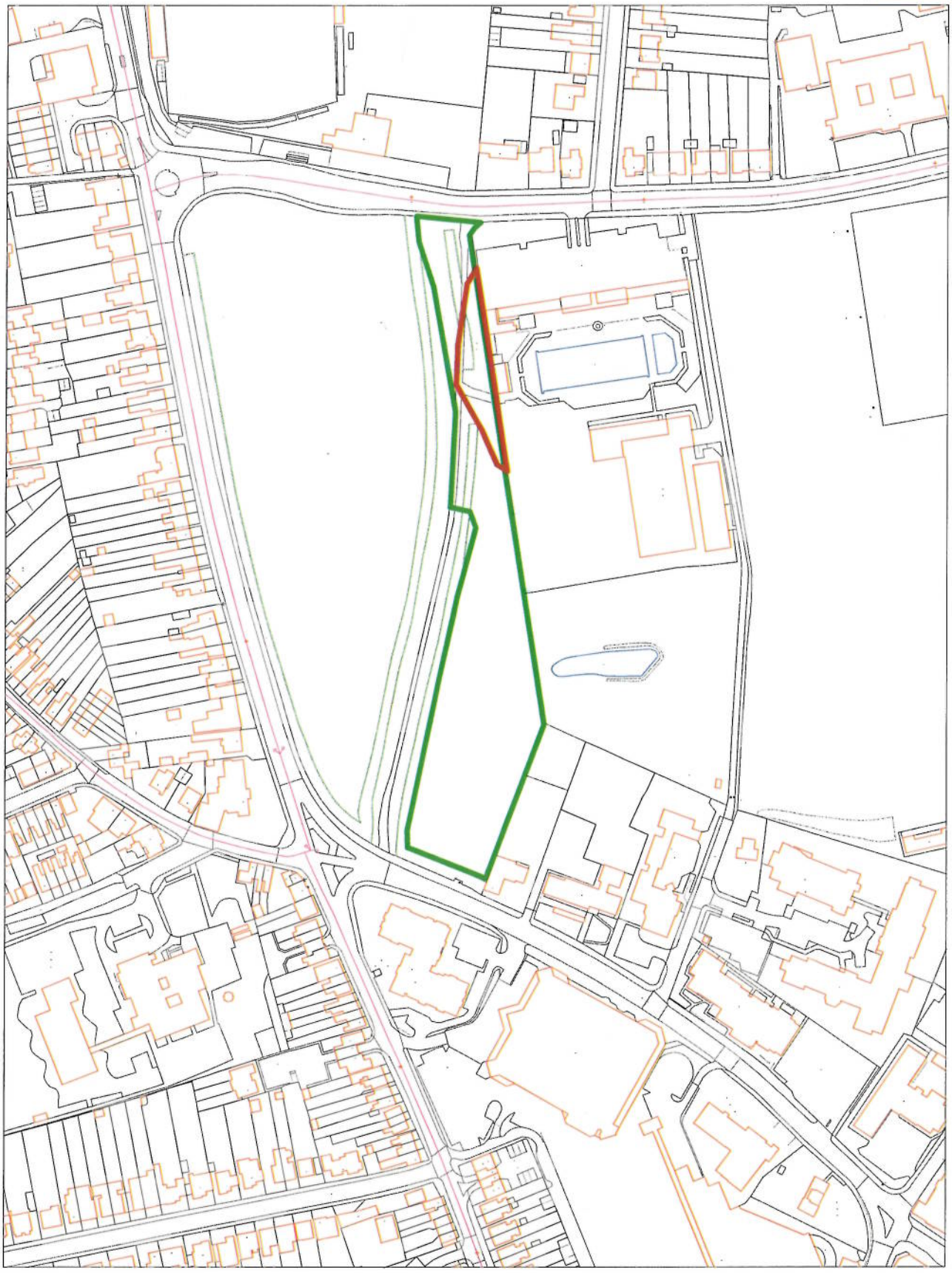
Mr N. Dodds	
Mr T. Riley	Representing the Friends of Butts Close
Mr B. Sellicks	Chairman of the Hitchin Forum

DOCUMENTS

1. Opening statement on behalf of the Council
2. Email of 21 November 2017 regarding data capture
3. Email of 19 October 2017 providing details relating to the proposed access road
4. Closing submission for the Friends of Butts Close
5. Closing statement on behalf of the Council
6. Post inquiry correspondence from Ms Eddleston, Mr Riley, the Council and Mr Dodds

NORTH HERTFORDSHIRE DISTRICT COUNCIL

Proposed Works - Butts Close Hitchin - Access Road Proposed Works (Red) - Common Land (Green)



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