



Application Decision

Site Visit held on 24 September 2019

by **Helen Slade MA FIPROW**

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

Decision date: 26 November 2019

Application Ref: COM/3223744

Clifton Down, Bristol

Register Unit No: CL1

Commons Registration Authority: Bristol City Council

- The application, dated 28 February 2019, 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 Dr Adrienn Tomor, University of the West of England, Coldharbour Lane, BS16 1QY.
 - The works comprise:
 - The construction of a stone-arched pedestrian and cycle bridge over Bridge Valley Road and the creation of associated paths ramps, bridge abutments and piers, and associated lighting;
 - The erection of temporary solid timber or steel fencing around the two construction sites, and the erection of temporary scaffolding to accommodate the bridge construction;
 - The area to be enclosed during the construction works amounts to approximately 8000 square metres by approximately 900 metres of fencing.
 - The area of permanent hard surfacing on the common would be approximately 1330 square metres.
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Decision

1. Consent is refused.

Preliminary Matters

2. Following advertisement of the proposal, representations were received from three parties, two of whom objected. The Open Spaces Society offered no objection.
3. This application has been determined on the basis of the written evidence, and a site visit. Dr Tomor was present at the site visit but merely to point out locations and features mentioned in the application, and to clarify measurements. There was no discussion about the merits of the application. My decision is based on a consideration of the submissions made by the various parties, and my own observation of the site.

Description of the site

4. The site lies in the northern part of Clifton Down adjacent to the junction of Clifton Down Road, Ladies Mile and Bridge Valley Road. It presently consists of open grassland, with shrubs and trees creating cover of varying density, and a number of separate trees. One of the trees is known as the Coronation Oak, planted in 1903, and others form the avenue of trees alongside the pedestrian promenade running parallel to Clifton Down Road on its western side.

5. The Commons Register gives the total area of the common at the time of registration as being 230 acres (or 93.078 hectares). Part of the common lies within, or immediately adjacent to, two nationally designated nature conservation areas: a Special Area of Conservation ('SAC') and a Site of Special Scientific Interest¹ ('SSSI'). It also lies within locally designated landscape planning conservation sites.
6. The owner of the common is The Society of Merchant Venturers, and it is managed by the Downs Committee.

The Application

7. Planning permission for the proposal was granted on appeal against refusal by Bristol City Council. The permission was granted on 16 October 2017 and contains 14 conditions relating to the means of construction, environmental protection issues and landscape matters. Due to the complexity of the proposed development a commencement limit of five years from the date of the decision has been allowed, as opposed to the usual three years.
8. The application for consent under Section 38 of the 2006 Act was made on 28 February 2019 by Dr Tomor, who is the architect of the proposed bridge. The proposed bridge would provide a grade separated crossing for Bridge Valley Road. The access to the bridge from the east would be via a surfaced path commencing on the west side of Clifton Down Road opposite Alderman Proctor's Drinking Fountain and leading to a ramped and shallow-stepped circular path. On the western side, the bridge would be reached by a curving path commencing on Ladies Mile.
9. I note that the application plan showing the area of common land affected does not quite accurately reflect the eastern extent of the proposed path. The eastern boundary of the affected land is shown on the application plan, and on other site location plans included with the application, as adjoining the western side of the Promenade which runs parallel, and to the west of, Clifton Down Road. However the design and construction plans clearly show the proposed path joining Clifton Down Road and I am satisfied that the intentions of the applicant are clear in that respect. No-one is likely to have been prejudiced by the slight error on the application plan, which is of such small scale that it is barely noticeable, but it does mean that the application site encompasses a small length of The Promenade itself. None of the proposed works would appear to impinge on The Promenade itself.

Main Issues

10. 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;² and

¹ Avon Gorge

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.

- d. any other matter considered to be relevant.
11. Section 39(3) provides that consent may be given under Section 38(1) in relation to all or part of the proposed works, and subject to such modifications and conditions relating to the proposed works as are thought to be fit.
12. In determining this application, I have had regard to the latest edition of Defra's Common Land Consents Policy³ ('the 2015 Policy') which has been published for the guidance of both the Planning Inspectorate and applicants. However, every application will be considered on its merits and a determination will depart from the policy if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the policy.
13. I have taken account of the provisions of the 2012-2017 Management Plan for Clifton and Durdham Downs, which includes a Five Year Work Plan ('the Management Plan'), and also The Clifton and Durdham Downs (Bristol) Act 1861 ('the 1861 Act'), and the Clifton and Durdham Downs Bylaws (April 2003) ('the Bylaws').

Reasons

The interests of those occupying or having rights over the land

14. The common was dedicated to the public in perpetuity, by virtue of the 1861 Act, as a place of public resort for the citizens and inhabitants of Bristol, subject to commonable and other rights. However, at the time that the area was registered as common land (1970) no registered rights over the common were claimed. The registration was confirmed undisputed in October 1970.
15. There would consequently be no effect on any party having commonable rights. I deal below with the issue of public access rights.
16. Neither the owners of the land, nor the body which manages the common, has responded to the statutory consultation and I therefore have no means of knowing how, or if, those parties would be affected. I note, however, that paragraph 5 of the Bylaws states that:
- "No person shall on the Downs, without the consent of the Downs Committee, erect any post, rail, fence pole, tent, booth, stand, building or any other structure"*
17. The proposed structure would clearly fall within the categories set out in that paragraph and thus cannot be built without the permission of the Downs Committee. I have seen no evidence of that consent, but that does not prevent me from considering the proposal. Any consent given under Section 38 of the 2006 Act would be subject to any other consents required.

The interests of the neighbourhood

18. The 2015 Policy indicates that issues to be considered in this context include whether or not the proposal will offer a positive benefit to the neighbourhood, whether or not the works would result in the loss of existing use, and whether or not there would be an interference with the future use and enjoyment of the common, whether by commoners, the public or others.

³ Common Land Consents Policy (Defra November 2015)

Whether or not the proposal offers positive benefit to the neighbourhood

19. The applicant claims that the provision of a bridge would bring advantages and benefits to the local community but has not provided any empirical research to support the claims. No letters of support or other endorsements have been submitted other than the rather generalised response from the Open Spaces Society. The advantages set out in the application are as follows:
 - i. To provide a safe crossing of Bridge Valley Road for pedestrians and cyclists;
 - ii. To make the junction accessible for those with wheelchairs and disabilities who are currently unable to use it;
 - iii. To reconnect the two sides of Clifton Down through a physical link and create a key link for the circular pedestrian route around the Downs.
20. In accompanying statements, the applicant also suggests that the actual construction of the proposed bridge would provide a useful learning experience for students of construction, and help to maintain or teach skills associated with the method of construction. Dr Tomor also claims that the nature of the construction would minimise future maintenance costs.
21. The Management Plan for the Downs does not make any reference to the future provision of a safe crossing point in the location of the application, although it does make reference to general access improvements, including provision for more cycling. The current crossing point of Bridge Valley Road accessed by the existing paths is undoubtedly hazardous. It lies on a bend in the said road such that from the path on the inside of the bend it is impossible to see the approaching traffic, and there is little in the way of a refuge for pedestrians at the crossing point. The opposite path, being on the outside of the bend, provides better visibility and consequently it is safer to cross the road from that side. There is also a pavement or footway alongside the carriageway.
22. Slightly further to the north-east, at the actual junction of Bridge Valley Road, Ladies Mile and Clifton Down road, traffic islands do provide some assistance to pedestrians crossing the road who thereby have to cross traffic travelling in only one direction at a time. This crossing point can be accessed on the western side of Bridge Valley Road by the aforementioned footway, and on the eastern side of the road by way of The Promenade.
23. The ability to have a grade separated crossing of the road would be of positive benefit to those pedestrians wishing to cross the road at the site of the proposed bridge, principally those crossing from the east side of Bridge Valley Road, but it would have no significant wider benefit. Furthermore, it is possible to cross the road in relative safety 50-100 metres further north-east along Bridge Valley Road, at the junction I have referred to in the previous paragraph.
24. Cyclists are currently not permitted to cycle on most of the tracks across the Downs as it is contrary to the Bylaws. It is therefore not clear to me under what powers or authority a person on a bicycle would be able to use the proposed bridge. There would presumably have to be some sort of special permission, or an exemption from the Bylaws for any cyclist using the paths created across the Down to access the bridge, but there is no evidence that

this permission or exemption has been sought. Currently, therefore, there would be no benefit to cyclists.

25. The applicant describes the centre of the circular ramped path as a 'meeting point' which would be surfaced and would provide seating. Whilst this might be considered to be a benefit to the neighbourhood, there is no supporting evidence to show that such a facility is required. I am also concerned that the design of the space would make it rather secluded, and it might become a magnet for antisocial behaviour or mis-use. That scenario is unlikely to be considered a positive benefit to the neighbourhood.
26. With regard to the nature of the construction and the alleged educational benefits or skills training, no supporting evidence has been supplied to demonstrate the need for this, however desirable the applicant may feel it to be. This would in any case be a benefit to individuals, perhaps, and not necessarily to the wider public. The on-going benefit of any learned skills to the immediate neighbourhood cannot be demonstrated.
27. Consequently I find that the benefit to the neighbourhood is limited to an unquantifiable proportion of pedestrians.

Loss of existing use or interference with future use

28. As there is no evidence of any rights holders, the loss of any potential future grazing or other use is therefore not relevant in this context.
29. The accessible areas of the proposed works which are currently open grassland, or paths through woodland would be temporarily unavailable to the public during the construction works, but thereafter would not be significantly impacted, although the nature of the surroundings would be changed.
30. The footprint of the bridge piers and abutments would be small and would largely be situated in areas which are not currently easily accessible to the public due to the nature of the vegetation, thereby having minimal impact on accessibility.
31. The area on which it is proposed to construct the circular ramp is currently occupied by scrubby woodland and some larger trees and is, generally speaking, inaccessible. The clearance of this area to construct the ramped access would therefore, in theory, open up a small area of the common which is currently not accessible. However, my reservations about this space are expressed at paragraph 25 above.

The public interest

Nature conservation

32. There are no benefits to nature conservation from this proposal. However, conditions have been attached to the planning permission to ensure the provision of a certain number of bat boxes and to secure replanting of trees to mitigate the loss of those which would need to be removed to enable the construction to take place. The applicant is of the view that the trees which would need to be removed are not of high quality, and I accept, from my observations on site, that this is likely to be true. Nevertheless some habitat would be lost and the planning permission seeks to redress this as far as

- possible. Some planting is also intended to screen or surround the proposed circular ramp.
33. The provision of lighting on the bridge and on the circular ramp would alter the ambience of the area in terms of habitat, and may affect certain species adversely. However, there is other street lighting in the vicinity so this is unlikely to have a major effect.
 34. The proposed works may slightly reduce the area of grassland on the common, but this area is already subject to management for amenity purposes and not for the purposes of nature conservation.
 35. During any construction period it would be likely in my view that there would be significant interference with the surface of the common within the construction area as a whole. This would take some time to recover, but the planning permission contains conditions in relation to prior approval of the overall methodology, and I would expect this to include restoration management.
 36. I consider that, on completion of the proposed works, there would be limited adverse implications in respect of nature conservation in respect of this application. Parts of the Downs are nevertheless managed with nature conservation in mind, and I consider that the planning permission includes adequate measures to mitigate the loss of trees, including replanting, and the erection of bat boxes and the protection of badgers etc.

Conservation of the landscape

37. There are very few structures on the common as a whole, and those that are present are quite small. Principally these consist of some drinking fountains, some shelters and some memorials. Other buildings lie adjacent to the common, but the overall impression is of an extensive open area. This is the essence of the Downs and the introduction of a substantial stone bridge, as depicted in the applicant's collage photographs, would be significant. I consider that the ramped area would be particularly intrusive as that part of the project would have the biggest footprint on the actual land surface.
38. I accept that the planning permission refers to the structure being in keeping with the local built environment, but my focus is whether or not it is in keeping with the landscape of the common. The proposed development would alter the landscape of this part of the Downs in a permanent and lasting way. The provision of lighting and the introduction of hard engineering structures would not be consistent with the immediate surrounding landscape.

Public Access

39. Public access to the application site would be hampered during the construction period (estimated to be between one and five years) and by the final structure due to the ramping of the path and the circular meeting place enclosed by the ramping.
40. Whilst the limitation to public access to the larger, construction site would be temporary, there would be likely to be an extended period of time when the land would have to recover, which would need to be managed.

41. The plans of the proposal would also appear to remove entirely the current access to Bridge Valley Road from the east. Although I consider that this crossing point is currently hazardous from that side, it might be possible to improve the situation in other ways, and thus the proposal as it stands, if implemented, would remove that historic access point for the public.
42. Overall, access to the common would be minimally affected, but in the vicinity of the proposed bridge, access would be permanently altered.

Archaeological remains and features of historic interest

43. No archaeological features have been brought to my attention, and Historic England had no comments to make. There is an historic fountain nearby but this would be unaffected by the development

Overall Assessment

44. The 2006 Act, together with earlier legislation, enables government to safeguard commons for current and future generations to use and enjoy; to ensure that the special qualities of common land, including its open and unenclosed nature are properly protected; and to improve the contribution of common land to enhancing biodiversity and conserving wildlife. The consent process, in respect of applications under Section 38 of the 2006 Act, seeks to ensure that any use of common land is consistent with its registered status, and that works take place on common land only when 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.
45. The application in this case would not appear to maintain or improve the condition of the common. It would be of some wider public benefit in allowing visitors to the common to cross Bridge Valley Road safely if wished, but an adequate crossing point is available a short distance away. Furthermore, if the main issue is highway safety, it may be possible to resolve the matter in a way which does not impact on the common at all. No evidence has been submitted to show that any studies have taken place to ascertain whether a highway management solution could be found instead. This appears to be a premature application for a major engineering answer to a problem which may not necessarily require such an intrusive solution.
46. There would be a lasting impact on the landscape of a type which is not consistent with government policy in relation to the nature of works for which consent under Section 38 would normally be sought.
47. I note that the planning permission contains conditions in relation to the protection of the natural environment. No objections to the Section 38 application have been made by Natural England. I therefore consider that the conditions imposed on the development by the planning permission are considered to be sufficient to offer the necessary environmental protections.
48. However, taking all things into consideration I do not consider that the proposal provides sufficient, evidenced public benefit to outweigh the permanent adverse impact that it would have on the open landscape of the common.

Conclusion

49. Having regard to the criteria and policies set out in paragraphs 10 to 13 above, and all the written representations, I conclude that consent for the works applied for should not be granted. I consider that the benefits to the public are minimal and not outweighed by the adverse impacts of the proposal on the common.

Helen Slade

Inspector