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# Application Decision

by **Richard Holland**

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

Decision date: 24 April 2020

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## Application Ref: COM/3210071

### Turnham Green Common, London Borough of Hounslow

Register Unit No: CL49

Commons Registration Authority: The London Borough of Hounslow.

- The application, dated 19 November 2018, 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 construct works on common land.
- The application is made by Hounslow Council.
- The works to create a pre-school children's play garden comprise:
  - i. new Hoggin paving with timber and metal edgings on 85 square metres;
  - ii. 28 metres of hedges;
  - iii. 19 metres of stock fence;
  - iv. 2 x log seats;
  - v. natural play area;
  - vi. potential mounds (on 111 square metres) with area of grass (on 180 square metres);
  - vii. duck sculptures set into the above Hoggin paving; and
  - viii. bulbs on 62 square metres.

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## Decision

1. Consent is granted for the works in accordance with the application dated 19 November 2018 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 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 7(1)(a)(ii) specifically refers to the provision of golf courses and grounds, tracks, lawns, courts, greens and any such other open air facilities as the local authority think fit for any form of recreation whatsoever. Article 12 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<sup>1</sup> in determining this application, which has been published for the guidance of both the Planning Inspectorate and applicants. However,

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<sup>1</sup> Common Land consents policy (Defra November 2015)

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.

5. This application has been determined solely on the basis of written evidence.
6. I have taken account of the representations made by the Open Spaces Society (OSS), Natural England (NE), and Mr George Irvin of Irvin Leisure Limited, none of which object to the application.
7. I am required by section 39 of the Commons Act 2006 to have regard to the following in determining applications under Article 12 of the 1967 Act:-
  - 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;<sup>2</sup> and
  - d. any other matter considered to be relevant.

## **Reasons**

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

8. Turnham Green Common is owned and managed by the applicant, the London Borough of Hounslow Council (the Council).
9. The commons register shows that there are no registered rights over the common. However, Turnham Green Common is traditionally used as a site for a travelling fair and Irvin Leisure Limited runs a funfair on the common twice a year under a longstanding agreement with the Council. Mr Irvin initially objected to the application and raised concerns about the Council's lack of consultation with him about the children's play area proposals which affect an area traditionally used for the parking of funfair vehicles. However, following a meeting with the Council to discuss alternative funfair vehicle parking provision Mr Irvin withdrew his objection.
10. I am satisfied that the works will not harm the interests of persons occupying or having rights over the land and that the fair's traditional use of the common will not be adversely affected.

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

11. Turnham Green Common comprises two parcels of land separated by Town Hall Avenue. The area the subject of the application is a triangle of land at the south western corner of the eastern parcel. It is bounded to the west by a hedge running along Town Hall Avenue and to the south by railings running along Heathfield Terrace. A self-closing gate will be installed in the railings to allow safe pedestrian access. A diagonal footpath marks the third side of the triangle and provides open access into it on foot. The works are to create a play area for local pre-school children to safely enjoy. It is not intended to be a memorial garden but is proposed in conjunction with the family of a child who sadly died in an accident and a small plaque in his memory is to be included.
12. The interests of the neighbourhood test relates to whether the works will impact on the way the common land is used by local people and is closely linked with interests of public access. The triangle is grassed and would seem to be used for general public access. The application plan shows that access from the diagonal footpath will remain open at various points once the works are in place. I consider that whilst the play garden is likely to be used mainly by families, there will be nothing to stop other members of the public from accessing it if they wish to. Furthermore, the triangle occupies only 850m<sup>2</sup> (under 3%) of the common, most of which will remain grassed and available for general public access.

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<sup>2</sup>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.

13. I consider that the play garden will provide a safe recreational facility for families with young children without harming rights of public access over the common. I further consider the triangle to be a suitable site for the play garden as existing fencing and hedging will protect children from the adjacent roads. It will also be away from open areas where it might interfere with established public recreational use and away from the western parcel of the common, which is used for more organised recreational activities including school PE sessions, and where wildflower meadows have been established.

#### *Nature conservation and conservation of the landscape*

14. NE notes that the proposals will not provide any additional nature conservation benefits but welcomes the applicant's intention to use natural materials that should blend in readily with the surrounding park land and advises that the common's value as a green oasis for local residents will not be diminished. There is no evidence before me which leads me to think that the works will harm nature conservation interests and I consider that the proposals will bring an attractive landscaped feature to the common.

#### *Archaeological remains and features of historic interest*

15. The Council's Principal Conservation Officer (PCO) advises that the site sits outside the Archaeological Priority area, which is to the north, but is part of the battlefield area from the Battle of Turnham Green. The PCO considers it unlikely that any excavation will go deep enough to disturb any remnants and I am satisfied that the works are unlikely to harm any archaeological remains and features of historic interest.

#### **Conclusion**

16. I conclude that the works are in relation to a facility that a local authority may, under Article 7, provide and maintain for persons resorting to the open space and that they will not unacceptably harm the interests set out in paragraph 7 above. Indeed, they will be of benefit to the neighbourhood by providing a safe and attractive place for young children to play and for families to enjoy. Consent for the works should therefore be granted, subject to the condition set out at paragraph 1 above.

*Richard Holland*

