



Application Decision

by **Richard Holland**

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

Decision date: 07 October 2020

Application Ref: COM/3248291

NORTH MILLFIELDS COMMON, LONDON BOROUGH OF HACKNEY

Register Unit No: CL 21

Commons Registration Authority: London Borough of Hackney

- The application, dated 14 February 2020, 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 Hackney.
 - The works comprise:
 - construction of a new 4m wide shared cycle track, approximately 504m in length;
 - construction of enhanced entrances at the western entrance, opposite Cornthwaite Road, (current area 192 m², proposed 465 m²) and at the Lea Bridge Road/Chatsworth Road junction (current area 136 m², proposed area 210 m²);
 - eastern entrance will be redesigned to align better with the Lea Bridge which leads into the 'Mini Holland' cycle track;
 - removal of the existing cycle track between the public space adjacent to Lea Bridge (Lea Bridge Road) and Chatswood Road. This area will be grassed over (approximate area 554 m²);
 - planting of new low level shrubbery and trees, installation of lighting columns and the removal of iron fencing to be replaced with boulders (570 m long and spaced at 1.5 m); and
 - temporary heras fencing of approximately 330 m and 240 m for a 4 month duration.
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Decision

1. Consent is granted for the works in accordance with the application dated 14 February 2020 and the plan submitted with it subject to the following conditions:
 - i. the works shall begin no later than three years from the date of this decision; and
 - ii. the temporary fencing shall be removed within one month from the completion of the works.
2. For the purposes of identification only the location of the works is shown coloured red on the attached plan.

Preliminary Matters

3. The application was originally made under section 38 of the Commons Act 2006. However, the applicant has since accepted that it is more properly an application 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. 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 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. The OSS has suggested that the works may not need the consent of the Secretary of State. However, an application for consent has been made and it has been determined on its merits.

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.
6. I have taken account of the representations made by the Open Spaces Society, Councillor Vincent Stops, Sonja Jones, Kathryn Phillips-Miles and Victoria Sholund.
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 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;² and
 - d. any other matter considered to be relevant.

Reasons

The interests of those occupying or having rights over the land

8. The common is owned and managed by the applicant. There are no rights of common registered. I am satisfied that the works will not harm the interests of those occupying the land and the interests of those having rights is not at issue.

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 applicant explains that the works will be located 10 m north of the common's southern boundary with Lea Bridge Road and form part of a new cycle scheme to link with the London Borough of Waltham Forest's 'Mini Holland' scheme. The scheme aims to provide a segregated cycle lane which removes cyclists from the main flow of traffic on Lea Bridge Road and encourages the use of sustainable transport by providing a safe and more pleasant environment. Temporary fencing is required to secure the site and protect the public while construction works are taking place.

¹ Common Land Consents Policy Guidance (Defra November 2015)

² 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.

10. Those commenting on the application were concerned about the danger to young children and pets from the removal of fencing, conflict between walkers and cyclists, the introduction of inappropriate highway infrastructure, reduced access for walkers and other users as priority is given to cyclists, and the removal of a quiet, shady and grassed part of the park.
11. In response, the applicant explains that the works are for a shared track comprising 2 m for pedestrians and 2 m for cyclists. The existing 'western' track between the River Lea and Chatsworth Road will be removed and grassed over. The new track is better aligned with the wider cycle track network and, as provision is made for cyclists travelling westbound, it is considered that only cyclists travelling eastbound will use the track. While the track may be used by some commuters, the works are considered an alternative to Lea Bridge Road and not a replacement; more experienced users travelling at speed are likely to use Lea Bridge Road. The track is aimed at encouraging new and less confident/experienced cyclists. It is not anticipated that any highway engineering measures to reduce speed are needed. The track is also intended to improve access to the common for wheelchair users and parents with pushchairs. The removal of fencing will allow access at any point from the footway while preventing illegal vehicle encroachment. Alternative fenced and open areas are available further within the common and those not wishing to use the track will still be able to walk in the shade.
12. I accept that the temporary fencing is needed to maintain health and safety and will be removed upon completion of the works. I note that concerns have been raised about the potential conflict between different users and safety, particularly the increased risk of children running onto Lea Bridge Road. However, the area of the common affected by the proposed works is already partly used as a cycle track. The fenced playground provides a safe area for children's activities, as do areas further away from Lea Bridge Road. The works will extend the track on the common to offer an alternative to Lea Bridge Road, while the width/division of the track is intended to ensure safe access for all users. I am satisfied that the issues raised have been addressed by the design of the works and consider that the removal of fencing will further improve access to the common along its southern boundary without compromising safety. The works are limited to a small area of common (less than 3% of the total common) and have no impact on the rest of the common. I am satisfied that the works will, overall, not adversely interfere with local people's use of the common and it is likely that access will be improved for all users, including the less able such as wheelchair users.

Conservation of the landscape and nature conservation interests

13. The applicant explains that the works will be constructed of arborRaft to avoid damage to a line of mature London Planes and additional planting, consisting of trees, scrub and low level planting, will enhance biodiversity. Entrances will be improved and an existing cycle path removed and grassed over.
14. Among the concerns raised are that the works may lead to a loss of mature trees, the boulders are not in keeping with the local architecture which is predominantly Victorian or Edwardian, increased light pollution and the loss of a grassed area to paving. In response the applicant confirms that the line of mature trees adjacent to Lea Bridge Road will not be removed and low level planting is in addition to existing trees. There is already lighting along the existing western track. Lighting will be installed on the northern side (edge) of the new cycle track to ensure safety as, due to the presence of trees, existing lighting from the road is too low. A dark sanctuary for wildlife will be maintained as light spills mainly between the track and the road.

The boulders will add a natural, organic and permeable demarcation of the highway and common.

15. Natural England did not make any substantial comments on the application as it noted that the works were in the public interest. I am satisfied that there is no evidence before me to indicate that the works will harm nature conservation interests. The works will introduce additional hardstanding which I consider is mitigated to some extent by additional planting and the return of the existing hardstanding track to grass. The addition of boulders in place of the fencing is likely to be visually less appealing but it will increase the openness of the common; it is Government policy that commons should be open and unenclosed. I accept that the lighting is needed to maintain the safety of those using the track and do not consider it likely to adversely impact the landscape given the existing lighting already in place on this part of the common. Overall, I conclude that the works are generally in keeping with the character of what is an urban common and any limited impact on the landscape from the additional hardstanding and the removal of the fencing is outweighed by the improvement to public access.

Archaeological remains and features of historic interest

16. The applicant advises that there are no known archaeological remains. I am satisfied that there is no evidence before me to indicate that the works will harm archaeological remains and features of historic interests.

Conclusion

17. I conclude that any limited impact on the conservation of the landscape is outweighed by the improvements to public access on the common and will not harm the other interests set out in paragraph 7 above. The works are those that a local authority may, under Article 7 of the 1967 Act, provide and maintain for persons resorting to the open space. Consent for the works is therefore granted subject to the conditions set out at paragraph 1.

Richard Holland

