

Application Decision

Site Visit held on 20 September 2020

by **Helen Heward BSc Hons MRTPI**

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

Decision date: 11 November 2020

Application Ref: COM/3246988**Durdham Down, Bristol**

Register Unit No: CL5

Commons Registration Authority: Bristol City Council

- The application received on 27 February 2020 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 Jonathon Baker, on behalf of The Downs Committee, c/o Democratic Services, City Hall, Bristol, BS1 5TR.
- The works comprise:
 - The demolition of existing public conveniences;
 - The erection of a building to comprise café, public conveniences and education booth with hard surfacing provision for outside seating;
 - Temporary fencing enclosing a construction area of 687m²;
 - The total area of the permanent building and surfacing to be 205m².

Decision

1. Consent is granted.

Preliminary Matters

2. I carried out an unaccompanied site visit on 20 September 2020.
3. A previous application, COM/3221451, for the same scheme of works was refused in September 2020. This application has been submitted to address concerns raised in that decision. There is nothing in the Commons Act 2006 to prevent an applicant making another application.
4. In the documents before me, there are references to a total area of building and surfacing of both 200m² and 205m². The difference is not significant. The previous Inspector referred to 205m². I too have considered this larger area so that I have considered the greatest potential implications.
5. The Applicant confirmed that Drawing "DC2-ED04 Rev-" is the application map.
6. I have reached my decision on the basis of the evidence presented in the current application and from my site visit observations of the site and locality. The application includes a copy of the planning permission¹ for the proposal with all of the conditions attached; information about the costs and financing of the building and the likely costs and profits of the operation of the café. Other evidence that I have had regard to includes the provisions of The Clifton and Durdham Downs (Bristol) Act 1861 ('the 1861 Act') and the Clifton and

¹ Bristol City Council Planning Permission : 18/04727/F

Durdham Downs Bylaws (effective 11 April 2003) ('the Bylaws'). I have also had regard to representations made in relation to this application.

7. Over 50 representations have been received. Objectors include the Open Spaces Society and the Sneyd Park Resident's Association (SPRA). Representations in support include letters from the British Zoological Society and the Avon Wildlife Trust.
8. Many objectors complain about the application process, including the advertisement of the application and notification of interested persons. These include that residents of houses and flats of an area close by and the SPRA were not notified and that information at a public meeting on 27 January did not amount to notice that an application was being considered.
9. Some objectors state that they have been unable to view the application documents due to the Covid-19 situation. Under the Commons Act 2006 the applicant is responsible for advertising the application and making the documents available for public inspection. The application was advertised in the Bristol Post on 7 February 2020. The applicant advises that the documents were lodged with Bristol City Council at City Hall in February 2020 and over a month before lockdown and has provided a letter confirming the publicity and notifications undertaken.

Description of the site

10. The application site is in the south-west corner of an area of land registered on the Commons Register ('CR') as Durdham Down. The common is owned by The City Council of Bristol and managed by a joint committee (the Downs Committee). The site includes a public toilet block, accessed via a hard-surfaced path from the adjacent highway (Seawalls).
11. The total area of the common is 85.793 hectares. The application site is in a corner, in an area of peripheral grass and woodland which appears to be mainly used for informal recreation. There are several sports pitches on a more central area close by.
12. The site is also adjacent to the top of the Avon Gorge, a Site of Special Scientific Interest ('SSSI'). There is a relatively large hard surfaced area for road-side parking, and an extensive paved viewpoint which affords spectacular views of the historic Clifton Suspension Bridge and the Gorge in general.

The Application

13. The application is for the demolition of the toilet block and replacement with a new larger building to house toilets, café and education booth together with an external decking area on which seating would be placed. The total area of buildings/development would cover 205m².
14. The application also proposes temporary Heras-type safety fencing to enclose an area of 687m² for the construction period of approximately 24 weeks.

Main Issues

15. 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
 - d. any other matter considered to be relevant.
16. 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.
17. 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.

Reasons

a) The interests of those occupying or having rights over the land

18. The CR indicates that there are several commoners with rights to graze significant numbers of sheep between them. There is no dispute that these rights are exercised infrequently, and symbolically, at five yearly intervals.
19. A very small area of common in a peripheral location would be affected. No objections have been made by any party benefitting from rights of common on, over or across the land and the evidence indicates that the rights are not generally exercised. The proposed works would have a negligible effect on the grazing rights.

b) The interests of the neighbourhood

20. The 2015 Policy indicates that issues to be considered include whether or not the works would result in the loss of existing use; whether or not the outcome intended by the proposed works would add something that will positively benefit the neighbourhood and whether or not there would be an interference with the future use and enjoyment of the common by commoners, the public or others.
21. There is a general expectation of some positive benefits on the neighbourhood. Nevertheless there is no obligation for this to be the case and the interests of the neighbourhood either positive or negative would need to be put in the overall balance. There is no official definition of neighbourhood, as well as local inhabitants it could include all likely to use the common.
22. The existing toilet building is roughly 50 years old. It is a relatively small flat roof building. It is outdated, rundown and has been subject to some vandalism and misuse. It is open 24 hours a day and used by people who are in the locality for many reasons including informal recreation, coming to take in 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.

³ Common Land Consents Policy (Defra November 2015)

- view or for sports. The toilets have been subject to some antisocial behaviour, particularly during hours of darkness.
23. The proposed development would incorporate replacement toilets. Toilets would remain available 24 hours a day and free of charge. The facility would be staffed from 08.00 to 19.00 Monday to Saturday, and 10.00 to 16.00 on Sundays and Bank Holidays. At other times they would be monitored by infra-red CCTV. There would be no loss of existing use.
24. On the day of my site visit there were many people in the area, some admiring the view and some relaxing on the grass, others playing sport, games and taking exercise. I saw several people use the existing toilets in a relatively short time. The access to the existing men's toilet is at the rear. Bounded by a wall and overhung by tree canopies, this access felt somewhat unsafe.
25. The availability of other facilities on Stoke Road and elsewhere might be accessible to some but would not provide a convenient amenity for the needs of many users of the southern end of the common, particularly the less able.
26. There are changing facilities available for organised sports, but it would seem reasonable to presume that people playing sports on pitches at the southern end of the common would still make use of both the existing and the proposed replacement toilets.
27. Letters in support of the application from individuals, walking groups, and the Ramblers Association attest to the need for facilities for many different groups using the common and locality, including the elderly and children. They attest to the poor quality of the existing toilets.
28. The replacement toilets together with improved management and supervision would be an improvement and of benefit to people informally exercising, strolling and recreating in the locality, as well as people visiting to take in the views of the Gorge and Clifton Suspension Bridge. They would make the facilities more attractive and usable for the many different user groups. Some objectors are worried about access to toilets becoming restricted, but the applicant advises that facilities would be available at all times. Overall, the replacement toilets would result in an improvement to safety and amenity which would benefit young and old, the able and less able, and be consistent with aims of a 2012-2017 Management Plan to ensure that anti-social behaviour is controlled, and its impact reduced. These would be positive benefits for the neighbourhood.
29. Objectors state that the locality is valued for peace, beauty, birdsong and dark night skies and consider that the presence of the café would result in nuisance. The previous Inspector noted the quietness of this area. My visit was on a warm sunny Sunday afternoon. I observed a steady flow of traffic and cars parked alongside the road in several areas, particularly close to the viewing platform for the Gorge. Traffic noise was apparent in the background hum of this green urban lung. An ice cream van parked close to the toilets was busy with a queue of customers. The locality had the feeling of a popular, well-used urban greenspace. Some objectors to this application acknowledge that the locality and the Seawalls promenade are particularly busy at weekends. Some refer to the traffic, including cars, coaches and commercial vehicles parked as a "ring of steel" and an intrusive volume of existing traffic.

30. I have no doubt that the proposed café with external tables on the proposed decking area would receive custom and attract some additional people to this area. But like the previous Inspector I do not think that it can be concluded that more people would necessarily be detrimental, and I note that the size of the café is limited, and the external seating area would only provide for a limited number of tables and chairs.
31. A verdant residential suburb to the north of the common includes the designated Sneyd Park Conservation Area (CA). On my visit I found that those dwellings immediately north of this part of the common are in the main some distance from the site of the application, and largely screened from it by boundary screening, trees and mature woodland. I also note that the CA excludes the row of dwellings closest to the common. The café and external seating area would face away from this area. I very much doubt that there would be any discernible visual or audible impact arising from the café within this area generally.
32. One property, Towerhirst, has a number of windows at first floor level and above offering views toward the site. These windows would enable occupants to take advantage of an outlook over this corner of the common. In winter and periods of low daylight, the building would be at its most noticeable when lights are on. In summer there could be people sat the tables on the far side of the building, but they would largely be screened from Towerhirst by the building.
33. The education booth would provide a covered space for teaching and educating during bad weather. The 2012-2017 Management Plan aims include providing the maximum opportunities for education and enjoyment of The Downs, and to ensure that they are well managed and well resourced. The education booth is designed to provide a base for the Avon Gorge and Downs Wildlife Project (AGDWP). This is an organisation set up to protect the wildlife interest of the Avon Gorge and Downs and raise awareness and understanding about the importance of the area for people and wildlife.
34. The booth would be used to facilitate the operation of the wildlife project and its various events, promote access, understanding and knowledge of important characteristics of the area. It would also provide for an interpretation space about the wildlife of the Avon Gorge and Downs. Information about the activities of the AGDWP includes that each year they teach approximately 1500 primary age school children, some coming to the Downs for education sessions in the spring and summer. They also run a programme of public events during the year including talks, family events and walks, many of which start at Seawalls.
35. A number of star-gazing evenings on the Downs have also been held since the Downs became a Dark Skies Discovery Site. Such events can attract up to 100 people. The application includes details of many other existing types of events held in the locality, including coach trip visits to the viewing area for the Clifton Suspension bridge.
36. The education booth would be the closest part of the development to Towerhirst. Undoubtedly, the ambience and appearance would change. But with an internal area of 7m² plus a restricted undercover outdoor decked area, the capacity and uses would be limited. There is nothing to say that the area could not presently be used by the Avon Gorge and Downs Wildlife Project and other individuals or groups of people for open air lectures, picnics and the like.

37. Moreover, the planning permission includes a number of conditions to protect the amenities of residents and the locality, including requiring that all patrons, customers and members of the public vacate the building outside of the hours 08:00 to 19:00 Monday to Saturday and 10:00 to 16:00 on Sundays and Bank Holidays.
38. A condition about lighting has been imposed to safeguard the amenities of adjoining residential occupiers, the appearance and character of the area as well as local ecology. It requires that prior to the commencement of development a detailed lighting scheme and predicted light levels by a suitably qualified lighting engineer shall be submitted and approved in writing by the Local Planning Authority. The report should include details of all internal and external lighting (including any decorative lighting and security lighting within external amenity/access areas) and associated light spill plans unless otherwise agreed in writing by the Local Planning Authority.
39. Artificial lighting to the development must conform to requirements to meet the Obtrusive Light Limitations for Exterior Lighting Installations for Environmental Zone - E2 contained within Table 1 of the Institute of Light Engineers Guidance Notes for the Reduction of Obtrusive Lighting, GN01, dated 2005. Zone E2 relates to areas of rural low district brightness such as sparsely inhabited rural areas, villages or relatively dark outer suburban locations.
40. A planning condition to safeguard the amenity of nearby premises and the area generally restricts the rating level of any noise generated by plant and equipment to at least 5dB below the background level as determined by BS4142: 2014 Methods for rating and assessing industrial and commercial sound.
41. From the level of use and traffic I observed, and the number of cars parked in the locality I think it unlikely that the proposal would generate a significant level of traffic, activity or noise that would materially change the existing character and amenities of the neighbourhood.
42. The applicant agrees that there has been a particular litter problem this year post the Covid-19 lockdown. Objectors acknowledge that some litter is from "fast food debris". I find no reason to doubt that the café could not manage its own litter and waste production.
43. The Inspector who determined the previous application was concerned that there was insufficient information about the viability of the proposal to give certainty about aspects of the scheme which could affect the likely impacts upon the neighbourhood.
44. A 2020 cost assessment included in this application indicates a construction cost of £373,662 confirms that Bristol City Council holds £375,000 on reserve for the Downs Committee. This indicates sufficient funding to demolish the existing toilets and construct the new building.
45. The applicant advises that the existing toilets cost circa £12,500 per year to clean and maintain, additional costs from vandalism etc can take them to in excess of £20,000.
46. It is intended that the venture should be self-funding, including the management, maintenance and upkeep of the new toilets. Any surplus would contribute to the costs incurred in the general management of the common, in

the face of government funding cuts which have resulted in lower contributions from the local authority for that purpose.

47. The Stoke Road café building is owned by the Downs Committee. Centrally located within the common it offers a broadly comparable model for the proposed café and the accounts of that café have been used as a guide for projections for the proposed café. These accounts demonstrate that following two years of breaking even and making a small loss the Stoke Road café made a healthy profit in 2019. The business plan for the proposed café assumes a slightly smaller turnover to that achieved at the Stoke Road café in 2019, and slightly higher consumable costs.
48. The two cafés might share some similar customer groups but are over 1Km apart. The Stoke Road café benefits from a more central and busy location and the proposed café would benefit from being close to the Zoo and existing parking and the viewing platform for the Clifton Suspension Bridge and Gorge. There are other cafés too, including on Whiteladies Road, but that is not to say that there is no need or demand for the proposed café.
49. There is little evidence to doubt the applicant's assessment of the financial soundness and viability of the proposal, nor to say that a café operating in the proposed building would not be able to achieve a similar result or that low winter turnover would threaten viability.
50. The building design indicates that it would be a sustainable structure with energy conservation. There is little evidence to say that the management of the toilets would unduly add to the costs of the enterprise, that the business could not finance an operation requiring staff on hand for up to 11 hours a day on most days of the week and the monitoring of a CCTV.
51. The replacement toilets, café and education booth would improve facilities and services and contribute to supporting the function of the area for open space use as a place of public resort for the citizens and inhabitants of Bristol and would be consistent with the Management Plan aims.
52. The applicant has demonstrated the financial arrangements and assumptions. There is no substantive evidence to the contrary. I am satisfied that the evidence in this application allays concern that a similar situation to the one that exists at present; or that a dilapidated structure which is not attractive and may be the target for vandals would be likely to arise.
53. I conclude that with the environmental controls afforded by the planning permission, the proposal would not be likely to adversely affect the interests of neighbouring residents and occupants. Overall the proposal would positively benefit the neighbourhood and the future use and enjoyment of the common by commoners, the public and others.

Loss of existing use or interference with future use and enjoyment of the common

54. One objection is that the Downs should not have a commercial enterprise on it. The applicant advises that the café is to be run as a social enterprise. In any event, there are no express provisions in the 1861 Act which prohibit the operation of a commercial enterprise. The Act provides for Bylaws to be made, and Paragraph 6 of the current Bylaws states that '*No person shall on the Downs, without the consent of the Downs Committee, sell or offer or expose for*

sale, or let to hire, or offer or expose for letting to hire, any commodity or article.' This would appear to provide for the running of a commercial premises or business with the consent of the Downs Committee.

55. There is no evidence that rights holders exercise their rights over the area of the common affected by the application except symbolically on rare occasions. The amount that the increase in the built footprint of the building would reduce the area available for possible grazing in the future would be tiny in relation to the overall area. The temporary loss of potential grazing of the fenced off construction site for health and safety reasons would also be insignificant.
56. The proposed building would be open to the public during operational hours and toilets would be available at all times. The public would have access to the site at all times, and to the building for a large part of each day. Temporary fencing would interfere with public access during the construction period of approximately 24 weeks.
57. There would be no loss of toilet use and the facilities would be improved. Given my findings on the viability of the proposal I find no reason to conclude that the future use and enjoyment of this part of the common would be adversely affected.

The public interest

Nature conservation

58. The building would have a green roof although the application does not claim the building to have any particularly special benefits for nature conservation in itself. The proposed works would reduce very slightly the area of grassland on the common, but the affected area is down to grass and subject to a relatively high level of use by people accessing the toilets and there is no evidence that it is important for the purposes of nature conservation. The planning permission includes a number of conditions designed to ensure that nature conservation interests are adequately protected, including control of lighting. The applicant would need to discharge and comply with the requirements of these conditions.
59. Comments have been made in relation to the proximity of the site to the Avon Gorge Site of Special Scientific Interest. Natural England made no adverse comments. The Avon Wildlife Trust consider that the education booth, with information about the wildlife and ecology of the Downs and Gorge, including the varied habitats and unique species, will encourage people to experience and appreciate nature.
60. There would be no direct adverse implications in respect of nature conservation and the proposal would indirectly benefit a wide range of nature conservation interests on the common and in the locality.

Conservation of the landscape and features of historic interest

61. As with the previous application many objectors object to effects of the proposed building on the surrounding landscape. The building would be larger but that it is not to say it would have a greater impact or be more intrusive.
62. Situated on the site of the existing toilets at the edge of the common, the building would not be in a prominent position. It would stand alone and would

not interfere with the setting and views of the Gorge and Clifton Suspension Bridge.

63. The existing toilet block building is utilitarian in design and not attractive. Adaptations for accessibility including a ramp and rails add more detracting elements, when seen from the front. It has a negative effect upon the visual amenity of the neighbourhood.
64. Constructed of glass and timber the new building would have a lightweight and airy feel. It would be larger, but the contemporary design is understated and would appear transparent in part. It would be a discrete coherent development designed to meet specific needs and would not appear as piecemeal development.
65. Its use would change the ambience and the appearance of this corner of the common, but I have already found that the planning permission would mitigate impacts, including limiting lighting to a level appropriate to sparsely inhabited rural areas, villages or relatively dark outer suburban locations.
66. The present toilet block does nothing to enhance the setting of Towerhirst and a drinking fountain, both Grade II Listed structures. The proposed new building would be sufficiently distanced from them to ensure that their setting would not be harmed, and the removal of the existing building would be an enhancement. The drinking fountain would be restored to working with new paving around it as part of the scheme.
67. I conclude that the replacement building would result in a visual enhancement to the landscape and restoration of the listed fountain would be an enhancement of a feature of historic interest.

Public Access

68. Public access to the application site would not be prevented by the proposed works except at certain times of the day and, temporarily, during the construction period.

Archaeological remains

69. There is no evidence to suggest harm to archaeological remains.

Other matters

70. There is little evidence to say that the proposal would have a material adverse effect upon the trade of existing businesses.
71. The application does not propose car parking. Any such proposal would be for consideration if and when it was proposed. When considering the planning application the Council found there to be sufficient parking on Circular Road that this would not cause a significant highways issue. There is no clear evidence that the proposed building would attract large numbers of extra vehicles but, if problems arose, the local authority and the Police have powers to deal with unauthorised or illegal parking.
72. Matters relating to structural stability, flooding and drainage would be subject to other statutory controls. There is some concern that granting consent would set a precedent, but each application must be considered on its own merits and with regard to the legislation.

Conclusions and decision

73. 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.
74. 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.
75. I conclude that the proposal would not be likely to adversely affect the interests of neighbouring residents and occupants, would positively benefit the neighbourhood and the future use and enjoyment of the common by commoners, the public and others and would not harm the future use and enjoyment of this part of the common. There would be no direct adverse implications in respect of nature conservation and the proposal would indirectly benefit a wide range of nature conservation interests. The replacement building would result in a visual enhancement to the landscape and restoration of the listed fountain would be an enhancement of a feature of historic interest.
76. Having regard to the criteria set out in paragraphs 15 to 17 above, and all the written representations, I conclude that consent for the works applied for should be granted.

Helen Heward

Inspector

