



# Application Decision

by **Richard Holland**

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

Decision date: 27 July 2018

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## Application Ref: COM 3195966

### Play Area, Orton Waterville, Cambridgeshire

Register Unit No: CL79

Commons Registration Authority: Cambridgeshire County Council.

- The application, dated 12 February 2018, is made under Section 38 of Commons Act 2006 (the 2006 Act) for consent to carry out restricted works on common land.
  - The application is made by Orton Waterville Parish Council.
  - The works to extend an existing children's play area comprise:
    - (i) installation of 5 additional items of play equipment (cantilever basket swing, seat cradle/junior swings, comet seesaw, thunder inclusive roundabout and adventure trail made up of 2 rubber stepping stones, inclined beam, burmah bridge, tyre walk, balance beam, wobble log and crossed chain walk) over 275 sq. metres;
    - (ii) 50 metres of 1.2 metre high single bow-top fencing with access gate to enclose the new area and link with existing similar fencing; and
    - (iii) temporary safety/security Heras fencing enclosing 435 sq. metres (encompassing the existing and new play areas) for the duration of the installation works.
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## Decision

1. Consent is granted for the works in accordance with the application dated 12 February 2018 and application plan (as amended), subject to the following conditions:-
  - i. the works shall begin no later than three years from the date of this decision; and
  - ii. all temporary fencing shall be removed within one month of the completion of the works.
2. For the purposes of identification only the location of the works is shown in red on the attached plan.

## Preliminary Matters

3. Following the advertising of the proposals the application plan was amended by the applicant to show a revised play equipment layout. The revised layout does not require additional land or fencing. All parties making representations about the application were given an opportunity to comment on the amended plan and I am satisfied that no party wishing to comment on the application has been prejudiced by the amendment.
4. I have had regard to Defra's Common Land Consents Policy<sup>1</sup> in determining this application under section 38, 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.

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<sup>1</sup> Common Land Consents Policy (Defra November 2015)

5. This application has been determined solely on the basis of written evidence.
6. I have taken account of the representations of support made by Peterborough City Council (the City Council), Reverend Sid Bridges, Susan Day, M Kirke and Viv Stafford and I note that the Open Spaces Society does not object to the application. I have also taken account of the representations of objection from Paul and Pam Froggitt, John and Sally Hammerton, Judith Oswick and Ivor Rollings.
7. 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;<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. The common land is owned by the applicant, Orton Waterville Parish Council (the Parish Council), which has confirmed there is no rights section to the common land register and therefore no registered rights over the land. There is no evidence before me to suggest that the works will harm the interests of those occupying or having rights over the land.

### ***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 unacceptably interfere with the way the common land, which is also known as Plegan Place and The Gannocks, is used by local people and is closely linked with interests of public access. The application is to extend an existing playground near the centre of the common, indicating that this part of the common is already established as a play area for local children. I consider that the play equipment is intrinsically related to the enjoyment of the common and that the proposals are in keeping with the traditional use of the land.
10. The Parish Council says the proposals are in response to a request from local residents for more play equipment to be added to the existing three pieces and the representations of support indicate that at least one such request was made. The City Council has advised that its Strategic Play Provision Report highlights the need for this area to be upgraded and considers that the proposals would benefit local residents. The objecting parties contest the need for additional play equipment. I consider that fencing is necessary to prevent dog fouling within the playground and to protect children from dogs running loose on the common. The extension will fence 275 sq. metres of land that is currently freely accessible to local people and the general public alike. Objectors are concerned that it represents an 18% reduction in flat grassed area of the common that is freely accessible. Whilst this may be the case, the sloped and treed areas of the common are also available for public access and when these areas are taken into account the area to be enclosed is approximately only 3.8%.
11. The fencing will clearly restrict public access to the application site to some extent. However, having regard to the opposing views, I consider the provision of additional play facilities to be in the interests of the neighbourhood and will meet the needs of the local community. This outweighs the restriction on public access especially bearing in mind that the fencing will include a gate so access to this part of the common will not be prevented altogether. No other arguments have been

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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.

made to show that the proposed extension of the existing playground would be detrimental to the interests of the neighbourhood or public access.

12. The Heras fencing will temporarily enclose a considerably larger area than the extended playground and have a greater impact on access over the common. However, it will be removed once the works are completed, which is expected to be approximately 3 weeks. I conclude that the temporary fencing is necessary for the period of works and will impact on the interests of the neighbourhood and wider public access for only a short period.

### ***Nature conservation and archaeological remains / features of historic interest***

13. Natural England and Historic England were consulted about the application but did not comment. There is no evidence before me that leads me to think the works will harm the above interests.

### ***Conservation of the landscape***

14. The common has no special landscape designation. The 50m of new bow-top fencing will be green to blend in with the surroundings as much as possible but the access gate will be yellow and is intended to stand out. This will have some visual impact. However this colour scheme is consistent with the existing fencing and gate, which it will adjoin. Similarly, the additional play equipment will be seen in the context of the existing equipment. I am satisfied that any visual impact will be outweighed by the benefits from the increased amenity value of the common that the improved recreational facilities will bring.

### ***Other matters***

15. The objecting parties have raised concerns about the cost of the proposed works and the conduct of the Parish Council in consulting about the proposals before the application was made. These are not relevant matters in the determination of the application. The objectors have also made reference to existing children's play facilities within the locality and argue that therefore the application is not justified. They also say that the results of the Parish Council's 2017 survey show that residents are content with the current provision of play equipment. However, the age range of those who responded to the survey is unlikely to accurately reflect the views of families with young children living in the parish. As I have said, I am satisfied that the provision of additional play equipment on the common will meet the needs of the local community. Reference has also been made to applications for works which are permissible only if they do not enclose more than 10% of the area of the common land. However, the 2006 Act places no such restriction on applications, which must be considered on their individual merits.

### ***Conclusion***

16. I conclude that the proposed works will benefit the interests of the neighbourhood by enhancing play facilities on the common and will not significantly harm any of the other interests set out in paragraph 7 above. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**



Scale 1:1250



Rear of 49 The Gannocks

Orton Waterville  
Peterborough  
PE2 5DZ

Supplied by: Peterborough City  
License number: 100031961  
Produced: 09/02/2018  
Serial number: 1946612

Plot centre co-ordinates: 515834.296192  
Download file: Rear to 49 The  
Project name: Rear 49 The Gannocks