



Application Decision

by **Richard Holland**

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

Decision date: 5 June 2019

Application Ref: COM/3225419

CLAPTON COMMON, LONDON BOROUGH OF HACKNEY

Register Unit No: CL 3

Commons Registration Authority: London Borough of Hackney

- The application, dated 20 March 2019, 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 (i) a new concrete and bitumen footpath bound by concrete edging and a granite kerb measuring 39 m long by 2 m wide and covering an area of 78 m²;
 - (ii) installation of a tree bed using granite kerbs (43 m long by 1 m wide by 0.5 m deep);
 - (iii) installation of a second tree bed using granite kerbs (15 m long by 1 m wide by 0.5 m deep); and
 - (iv) the replacement of hardstanding with grass verge measuring 9 m by 6.5 m covering an area 58.5 m².
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Decision

1. Consent is granted for the works in accordance with the application dated 20 March 2019 and the plans 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 works shall not take place until a written scheme of investigation is prepared and implemented by a suitably professionally accredited archaeological practice in accordance with Historic England's Guidelines for Archaeological Projects in Greater London.
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 made under section 38 of the Commons Act 2006 but 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.

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 (OSS) and Historic England (HE).
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 over the land 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 current access from Craven Walk to the common at Belz Terrace is rarely used, narrow and obstructed by two trees. The works will improve access to the common, particularly for the less mobile, by converting a strip of grass running alongside Belz Terrace into a footpath. Post and rail fencing separating the new footpath from the current access will be replaced with tree beds. A second tree bed to the south-east will be installed on the common and an area of hardstanding returned to grass. The applicant explains that the works form part of a major consultation on highway improvements at Clapton Common and Overlea Road and were supported by 94% of respondents. The OSS does not object to the application.

¹ Common Land Consents Policy Guidance (Defra November 2015)

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.

10. The common is well used for access and recreation being situated next to a school. The applicant has submitted a photograph of a similar scheme recently completed on the common which I agree demonstrates that the works will create a safe, quiet and accessible connection, for local people and the public, from the common to the pavement at Craven Walk. I am satisfied that the works will improve the way the common is currently used. I conclude that the works will benefit the interests of the neighbourhood and the protection of public rights of access by improving access and recreation.

Nature conservation

11. NE confirmed that it has no comments to make about the application. I am satisfied that there is no evidence before me to indicate that the works will harm nature conservation interests.

Conservation of the landscape

12. The works are intended to create a quiet, attractive and traffic free area. The return of existing hardstanding to grass verge will offset the increase in hard surfacing required for the new footpath and the tree beds will form a natural screen separating the footpath from the pavement at Belz Terrace.

13. I conclude that there may be some slight visual impact on the landscape from the new footpath. However I consider that this is mitigated by the grass verge and tree beds and outweighed by the benefits to the public from improved access. I am satisfied that, overall, the works will enhance the landscape.

Archaeological remains and features of historic interest

14. HE comments that the site lies within a Tier 2 Archaeological Priority Area and recommends that archaeological monitoring by a specialist contractor would be appropriate during the groundworks programme so that any remains can be investigated and recorded. The applicant confirms agreement to the recommendations made by HE. I am satisfied that, subject to a condition along these lines, the works will not harm archaeological remains and features of historic interests.

Other matters

15. I agree that the works contribute to the Hackney Transport Strategy 2015-2025 submitted by the applicant.

Conclusion

16. I conclude that the works will enhance public access and recreation 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 granted subject to the conditions set out at paragraph 1.

Richard Holland