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| **Application Decision** |
| **by Harry Wood** |
| **Appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 29 January 2024** |

# Application Ref: COM/3326940

**LONDON FIELDS, LONDON BOROUGH OF HACKNEY**

Register Unit No: CL 20

Commons Registration Authority: London Borough of Hackney

* The application, dated 27 July 2023, 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 at London Fields Lido comprise:

1. a 488m² building to house a new indoor teaching pool and associated changing/toilet facilities;
2. a 55m² extension to an existing building;
3. a 26m² electrical supply sub-station;
4. a 2.5m high green palisade fence to replace the existing fence along the same boundary line; and
5. landscaping along the boundary fence with additional planting along the base of the fence on the Park side.

# Decision

1. Consent is granted for the works in accordance with the application dated 27 July 2023 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 outlined in red on the attached plan.

# Preliminary Matters

1. Article 7 of Ministry of Housing and Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967 (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.
2. I have had regard to Defra’s Common Land Consents Policy Guidance (Defra November 2015) 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.
3. This application has been determined solely on the basis of written evidence.
4. I have taken account of the representations made by Natural England (NE), Historic England (HE), Open Spaces Society (OSS) and London Fields User Group (LFUG).
5. I am required by section 39 of the Commons Act 2006 (the 2006 Act) to have regard to the following in determining applications under Article 12 of the 1967 Act:-
   1. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
   2. the interests of the neighbourhood;
   3. the public interest: 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.; and
   4. any other matter considered to be relevant.

# Reasons

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

1. The applicant (the Council) is the owner of the land and the common land register records no rights of common. 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

1. 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 the interests of public rights of access.
2. The proposed new indoor teaching pool will sit on the site of an open air paddling pool, which although currently unused, will be permanently lost to public use if the teaching pool is built. In weighing the interests of the neighbourhood, I consider the main issue to be whether the proposed teaching pool is a suitable replacement for the paddling pool.
3. The Council advises that the paddling pool has come to the end of its life. It required extensive maintenance before the end of each season and has been closed since 2019. It was not environmentally sustainable or cost effective to operate due to the significant amounts of water that had to be disposed of twice each week following cleaning. It was never an entirely open access facility as it was only open for approximately 12 to 14 weeks per year from the end of the May Bank Holiday to the first weekend in September, excluding Mondays and Thursdays when it was closed for a full drain down, clean and re-fill.
4. If the Council had proposed to replace the paddling pool with a like-for-like new one meeting current environmental standards the seasonal nature of its availability would remain and it would be out of use for most of the year. The Council instead proposes an indoor pool that can be used all year round. The teaching pool will have a moveable floor, which will allow the water depth to be varied to paddling pool depth in the summer months. The operator will therefore be able to replicate the paddling pool environment on hot summer days and the building doors will open onto the terrace for families to sit out in the open air.
5. One of the main aims of the teaching pool is to provide a facility where the community, particularly children and young people, can learn to swim all year round and the Council will extend its under 18s Free Swimming Programme (FSP) to London Fields Lido when the teaching pool is delivered. The scheme will also allow a currently fenced off part of the site that is not publicly accessible to be used for Park community/volunteer use.
6. I consider that the proposed works will provide improved pool facilities for local people and are in the interests of the neighbourhood.
7. The works are proposed to be built as an ancillary and subservient facility to the London Fields Lido complex, which sits in the north-west corner of the common and does not form part of the green space area. The paddling pool, to which the public has had no access since 2019, and the parks depot area, which will house the sub-station and has been inaccessible to the public since its creation, are adjacent to the Lido pool.
8. I am satisfied that no publicly accessible green space areas of the common will be taken up by the proposed works and I conclude that the works will not harm the interests of public rights of access.

## Nature conservation and conservation of the landscape

1. NE advises that the site is not subject to any statutory designations for nature conservation, although the London Fields Site of Importance for Nature Conservation (SINC) Mapledene conservation area is immediately adjacent to the works area.
2. NE notes that a variety of planting is proposed, including meadow swathes, which has the potential to benefit biodiversity and the nature conservation interest of the common. The works include removal of five trees, to be replaced around the teaching pool terrace or within the common. NE nevertheless advises that, subject to any mitigation proposed as part of any separate planning consent conditions, the proposals have the potential for nature conservation benefits once the landscaping works have matured.
3. The substation will be a brick enclosure that closely resembles the bricks seen on the garden walls that bound the Lido's curtilage. It will have a flat roof and sit below the highest part of the adjacent boundary wall serving neighbouring residential properties to ensure there is no visual harm as perceived from those properties. The existing palisade fence will be removed to enable construction of the new facility and will then be replaced with a new green palisade fence at the end of the build. The Council advises that due to the location of the works, which will be behind the existing depot wall and be screened with the replacement fence and planting, the impact on the landscape will be limited.

11. I am satisfied that the planting may be of some nature conservation benefits and that the proposed works materials and screening will ensure landscape interests are not harmed.

## Archaeological remains and features of historic interest

1. HE compared the proposals with the Greater London Historic Environment Record (GLHER) and 1st Edition OS map and advised that, in view of the nature and extent of the works, archaeological investigation is not appropriate in this case. I am satisfied that the works will not harm archaeological remains and features of historical interest.

***Other matters***

1. LFUG raised concerns that whilst the Council consulted on the indoor teaching pool proposals, there was no prior consultation on whether to instead restore or replace like-for-like the existing outdoor paddling pool. Whilst this may be so, the application proposes the construction an indoor pool on the paddling pool site and has been decided on its own merits.
2. LFUG also raised concerns that whilst access to the teaching pool may be offered free of charge in the short term, it cannot be guaranteed in the longer term if costs have to be recovered. In response, the Council confirmed that it intends to extend its under 18s FSP to London Fields Lido when the teaching pool is delivered and has given no reason to believe that it will not be an ongoing arrangement.

# Conclusion

1. I conclude that the works will benefit the neighbourhood and may be of some benefit to nature conservation interests without harming 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 and consent for the works is granted subject to the condition set out at paragraph 1.

***Harry Wood***

Plan referred to in Paragraph 2
