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| **Application Decision** |
| **by Harry Wood** |
| **Appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 1 March 2024** |

# Application Ref: COM/3325380

**WELL STREET COMMON, LONDON BOROUGH OF HACKNEY**

Register Unit No: CL 33

Commons Registration Authority: London Borough of Hackney

* The application, dated 27 June 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 an existing play area comprise:

1. additional play equipment, predominantly constructed from wood and metal;
2. rubber safety surfacing (140m²);
3. rubber grass matrix safety matting (242m²);
4. a play mound (124m² maximum height 1.2m) with a slide and tunnel;
5. additional seating; and
6. boulders.

# Decision

1. Consent is granted for the works in accordance with the application dated 27 June 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 Susan Childs.
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

1. The applicant (the Council) explains that Well Street Common is an urban park located within inner London. The common is in a densely populated residential area with a high proportion of social housing with little or no access to private green space. Three primary schools are in close proximity to the common. The existing play facilities are inadequate for the local community, consisting of a single set of swings, a small climbing structure and a few wooden stumps. Children frequently queue to use the existing facilities.
2. The Council has embarked on a project to refurbish the Borough’s play areas to broaden their appeal to a wider range of children and to help Hackney to meet its commitment as a Child Friendly Borough. Four sites, including Well Street Common, are included in in Phase 2 of the project.

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

1. 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 application land extends to 1280m² (approximately 1.4% of the common) and is already used as a children’s play area. It is unfenced and bordered by a network of pathways, which act to contain it within a defined area. It is not proposed to increase the footprint of the play area but to add new features into the existing space. It will remain unfenced, but areas of longer meadow grass will be grown around the edges to frame it as a play area. Gaps of shorter grass will be left between the meadow grass areas for ease of access.
3. The three existing play structures are situated in the central and northern half of the area. The proposals will make better use of the available space and will extend play structures into the south-eastern part of the play area.
4. Ms Childs suggests that one of the joys of Well Street Common is that it is mainly a clear expanse of trees and grass in a built-up urban environment and that adding clutter such as play structures detracts from its enjoyment as an open space. She suggests that there is sufficient play equipment in nearby Victoria Park and that children playing in Well Street Common might enjoy just playing on the grass.
5. Whilst I accept these points, the proposed new play structures will be situated on a part of the common that is already used as a play area. Furthermore, the play area is located near to the edge of the common with an access point direct from the residential Groombridge Road and does not interrupt a more central open area of the common.
6. I consider that the proposed works will provide improved play facilities for local children without impinging on use of the wider common and are in the interests of the neighbourhood.
7. I am satisfied that no additional 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 it has been identified as Site of Importance for Nature Conservation (SINC). Nevertheless, NE does not anticipate that the works will have any significant adverse effects on the overall biodiversity of the common and I am satisfied that the works will not harm nature conservation interests.
2. The site is not subject to any particular landscape designation but the proposed works will inevitably have a visual impact to a certain extent.
3. The Council explains that the improvements to the play area will be in keeping with the common as an urban park. The height of the equipment will be kept to a minimum, whilst still providing children with the opportunity to find an elevated position and to climb. The use of safety surfacing will also be kept to a minimum and the use of rubber matrix tiles, where practical, will allow grass to grow through and help to keep the play area as green as possible. Tree planting through the area will help to incorporate the play space into the common and the grass meadow areas are intended to soften the edge of the play area to help it visually blend in.
4. I am satisfied that the landscaping measures proposed will minimize the visual impact of the play structures and that the landscape interests will not be seriously harmed.

## Archaeological remains and features of historic interest

1. HE suggested that the proposed stone circle layout design (the boulders element of the works) might be reconsidered in favour of alternative design ideas that better reference authentic local heritage. In response the Council explains that the use of boulders in play schemes as playable elements is now very common and is not intended to be historically accurate or to dilute the heritage value of the site.
2. HE also sought clarification as to the depth of excavations required to install the play structures, advised that an archaeological Written Scheme of Investigation (WSI) should be prepared and further advised that an Archaeological Watching Brief (AWB) should be carried out during the works. In response the Council confirms that the maximum depth of any play equipment excavations will be 0.75m, which is less than the originally envisaged 1m, and that an AWB will be carried out in conjunction with a prepared WSI.
3. I am satisfied that the Council has addressed HE’s issues and adherence to HE’s advice will ensure that the works will not harm archaeological remains and features of historical interest.

# Conclusion

1. I conclude that the works will benefit the neighbourhood by providing improved play facilities for local children without seriously 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
