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| **Application Decision** |
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| **by Harry Wood** |
| **Appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 10 May 2024** |

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| **Application Ref: COM/3330007**  **HACKNEY DOWNS, DOWNS PARK ROAD, E5 8NP**  Register Unit Number: CL16  Commons Registration Authority: London Borough of Hackney |
| * The application, dated 21 September 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 carry out works on common land. * The application is made by the London Borough of Hackney Council. * The works comprise:  1. extension of the parks unenclosed play area of 1,636m², including 496m ² of meadow; 2. creation of an approximately 80m ² tarmac path linking the existing play area & its extension; 3. laying of approximately 120m² rubber matrix tile safety surfacing and approximately 62m² of play gravel; 4. the play area extension will include a range of play equipment including swings and climbing structures, seating and planting. |
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**Decision**

1. Consent is granted for the works in accordance with the application dated 21 September 2023 and the plans submitted with it subject to the following conditions:
2. the works shall begin no later than three years from the date of this decision;

REASON: To provide certainty to users of Hackney Downs Common

1. 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. I have taken account of the representations made by the Open Spaces Society (OSS) and Natural England (NE).

**Main Issues**

1. 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:
2. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
3. the interests of the neighbourhood;
4. 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
5. any other matter considered to be relevant.

**Reasons**

1. The applicant explains that consent for similar works had already been granted under application reference COM/3314783 however the plan has been reconfigured due to variations of an easement with United Kingdom Power Network.
2. Hackney council want to improve the play opportunities for children and improve the commons recreational value for the local community as the common is located in a densely populated area.

***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.
2. 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.

***The interests of the neighbourhood and public access***

1. The interests of the neighbourhood relate to whether the works will unacceptably interfere with the way the common land is used by local people and is closely linked with interests of public access.
2. The surrounding common of the land related to this application already includes many play areas and other recreational facilities. Areas falling outside of this application have been fenced with access points for the safety of young children using the play areas.
3. The applicant has explained that the extension to the parks play area covered in this application is unenclosed and in part be made up of natural meadows mainly to the west of the play structures. These will be flat surfaces designed with the intent of keeping the play area as an open space and will not affect public access to the common.
4. The tarmac path linking the new and existing play areas will also be a flat surface and will not affect access to or across the common. This is also the case with the rubber matrix tile and play gravel.
5. The addition of new play equipment and structures will introduce artificial barriers onto the common. However, the site is already an established play area with similar structures and access across and through the common can still be achieve around these structures and on established pathways on the common. In my opinion the addition of these new structures will not affect access to the common.
6. OSS have stated they are content with the new plan for the works and NE have stated that they do not believe the works will affect public access.
7. In conclusion I am satisfied that the proposed works will not harm the interests of public access.

***Nature conservation and Conservation of the landscape***

1. As well as the public interest in the protection of public rights of access, I must also have regard to the public interest in nature conservation, the conservation of the landscape and the protection of archaeological remains and features of historic interest.
2. NE advises that the site is not subject to any statutory or non-statutory designations for nature conservation and from the information available to them, they do not anticipate that the works will have any significantly adverse effects on the common’s overall biodiversity or the landscape.
3. The applicant has advised that two trees stand in the area of the planed works and that these will be relocated as part of the programme for the works.
4. The new play equipment and seating will mainly be made with wood with some metal features. This when combined with the planting of meadows and other natural structures, as well as eight new trees, will mean that the works will be in keeping with the visuals and features of the surrounding common.
5. The rubber matrix tile, play gravel and new tarmac path will introduce artificial features onto the common however on balance this will be lessened by the introduction of the new natural elements to the common and they are in keeping with material already present at different areas on the common.

1. I am satisfied that nature conservation interests will not be harmed by the works and I consider that overall, the works will have little to no impact on landscape interests.

***Protection of archaeological remains and features of historic interest.***

1. The applicant has stated that there are no archaeological features within the proposed works area. Historic England and the local authority archaeological service have been consulted and not commented.
2. There is no evidence before me to suggest that these interests will be harmed by the proposed works.

***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 6 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

Figure 1 – Outline of area for works:

