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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: 16 July 2024** |

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| **Application Ref: COM/3334363**  **HACKNEY DOWNS, DOWNS PARK ROAD, E5 8NP**  Register Unit Number: CL16  Commons Registration Authority: London Borough of Hackney |
| * The application, dated 1 December 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:   The remodelling and expansion of an existing depot storage building into a functioning parks depot for storage, office space and welfare facilities. The proposed expansion measures approximately 10m length by 10m wide. In total the depot will cover approximately 67m² |
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**Decision**

1. Consent is granted for the works in accordance with the application dated 1 December 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;

1. the land shall be fully reinstated within one month from the completion of the works;

REASON: To retain access for commoners, public and livestock across Hackney Downs.

1. For the purposes of identification only the location of the works is shown outlined in the red area 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) states 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), Natural England (NE), Alex Goodman, Alice Roberts and Lucy Teather.

**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;
5. any other matter considered to be relevant.

**Reasons**

1. The applicant explains that consent has been requested to bring the existing depot (currently in a state of ill repair) into use and to expand it to increase the facilities available at the site.
2. They outline that Hackney Downs is an urban park in a densely populated area and those living there have limited access to green space. The new facility will allow staff to better maintain the site and its surroundings and aid the provision of recreational facilities for the local community.

***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. Hackney Downs is mainly an open green space which is divided by multiple footways leading to the centre of the park. The Downs contain tennis and basketball courts, a community orchard and toilet facilities.
3. The proposed works sit within a fenced off area just off the southern boundary of the park close to the tennis courts and Stormont House School adjacent to Downs Park Road.
4. The applicant has explained that the extension to the park depot building will sit within the existing depot facility, in an area enclosed by metal fencing that is currently inaccessible to the public.
5. The entrance to the facility grounds is located at one of the footways leading onto the Downs serving as both a pedestrian and vehicular access point to the site.
6. The expansion of the existing structure will introduce a new artificial feature onto the common and will prevent access to the area where it is located. However, the expansion will sit within the existing fenced facility and is linked to the restoration of the current depot. I believe the expansion will not adversely affect public access to the common and will encourage recreational use of the area surrounding the site.
7. NE have stated that the area where works are proposed is within the existing depot yard area and they do not anticipate that, following completion of the works, there will be any impact on the way that people currently access the park and enjoy its recreational facilities.
8. OSS have stated that they have no objection to the works, but asked the applicant to clarify if it was their intention “…to exclude the public from the enclosed works area, under the power conferred by art.7(1).”
9. In response the applicant has highlighted that the existing depot yard area is fully secure with no public access. It is the Council’s intention to continue to restrict public access to the enclosed park's depot.
10. In conclusion I am satisfied that the proposed works will not harm the interests of public access and the way the common is currently used.

***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 Hackney Downs is not subject to any statutory designations for nature conservation, although it is an important area of publicly accessible greenspace in a densely populated urban environment.
3. NE further outline that they do not anticipate any direct benefits to nature conservation from the works and are not aware of any that have been cited by the applicant. However, the building has a relatively low profile being only a single storey high. The works aim to bring a derelict building back into a state of repair and are likely to result in visual improvements to the immediate area where the works are planned.
4. They conclude that due to the location of the works they have no concerns regarding any adverse impacts on the recreational or nature conservation value of the common
5. The expansion will be largely built with a combination of ‘buff facing brick’ and ‘hardieplank cladding’. The materials used for the expansion will be in keeping with the wider features of this part of the common and the restoration of the existing depot building will improve the visuals of 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.

***Other Matters***

1. Alex Goodman and Alice Roberts have offered suggestion that there should be a condition requiring the repurposing of the bowls area for wider public recreational use. They outline that at the moment the bowls areas are largely out of bounds and neglected which is inconsistent with the purposes for which the park is held.

1. In this case the application land is adjacent to but does not appear to include the bowls court. The expansion of the depot is within the depot facility boundaries and the application is not related to the specific recreation activities that take place on the common. It would therefore be inappropriate to include a condition to restrict the recreation activities taking place on this part of the common to the playing of bowls.

***Conclusion***

1. I conclude that the works will benefit the neighbourhood by providing improved recreation facilities for the wider community 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:

