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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: 28 November 2024** |

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| **Application Ref:** COM/3347174  **Monken Hadley Common, New Barnet, Greater London**  Register Unit Number: CL43  Commons Registration Authority: Barnet Council |
| * The application, dated 26 June 2024, is made under Section 38 of the Commons Act 2006 (the 2006 Act) for consent to carry out restricted works on common land. * The application is made by Enfield Council * The works comprise:  1. The excavation of a wetland basin measuring approximately 360m² and approximately 0.8m deep. 2. Construction of a flood bund using the spoil generated on site which covers approximately 325m² no with pipeline running through the bund. 3. The re-grading of the existing stream to formalise an approximately 1400m² wet woodland area. 4. The creation of a footway on top of the bund measuring approximately 50m. 5. The addition of an underground water pipe with manhole cover for inspection approximately 225m long. 6. Temporary heras fencing measuring approximately 250m long covering 0.32ha of the common. |

**Decision**

1. Consent is granted for the works in accordance with the application dated 26 June 2024 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 Monken Hadley Common.

1. all temporary fencing shall be removed and 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 Monken Hadley.

1. For the purposes of identification only, the location of the works is shown in red on the attached plan.

**Preliminary Matters**

1. I have had regard to Defra’s Common Land Consents Policy Guidance (November 2015) in determining this application under section 38, 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.
2. 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), Historic England (HE) and the Greater London Archaeological Advisory Service (GLAAS)
3. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:
4. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
5. the interests of the neighbourhood;
6. 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;
7. any other matter considered to be relevant.

**Reasons**

1. The purpose of the works is to prevent flooding on the common. The applicant explains that the project has been developed with Thames Water in response to known flooding on the Common. A history of flooding incidents in the area has led to the consideration of a “flood storage scheme” within this area of land.

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

1. Enfield Council are the applicant and Monken Hadley Common Trust are the owners of the Common. The common land register records multiple rights to graze one commonable beast over the whole of the land known as Monken Hadley Common.
2. I am satisfied that the applicant has carried out the required consultation and no further comments were received, and the planned works would not interfere with the interest of those occupying or 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. Monken Hadley Common is a large area of common within the area of New Barnet. It is a large area of open green space with footways, ditches and wooded areas. The area of land pertaining to this application is to the northwestern boundary of the common.
3. The planned wetland basin will be designed with “gentle graded slopes” and would not introduce new impediments onto the Common itself. The purpose of the works is to direct floodwater into the basin, so this area of Common would be inaccessible during these times. However, this would likely be the case regardless of the works being carried out, as water already collects in this area during heavy rain.
4. The flood bund is planned to be created from materials excavated on the site in the creation of other works. The bund would introduce a new obstruction onto the common. However, this obstruction would be over an existing deep ditch, which is an area of the Common which is currently hard to access on foot. The bund itself will also have a footway running over it to assist with access over this area of the Common and will mostly be level with the ground on either side of the ditch it crosses. On balance I do not believe the bund would create an unacceptable impediment to access on the Common.
5. The proposed re-grading of the land is largely focussed on the existing area of the Common where water is regularly present and flows through ditches on the Common. The aim is to allow for a more natural course for the water to flow in. As these proposed works are focussed on altering existing ditches and channels present in the Common, they may alter existing natural boundaries in the Common but would not introduce new obstruction into the Common.
6. The proposed footway will run over the new bund and would not introduce any new impediments to access of the Common.
7. The new water pipeline will be largely underground and would not introduce a new obstruction to the Common.
8. The manhole would be level with the ground it is located at and therefore would not offer an obstruction. Additionally, the planned headwalls located where the pipeline meets the flood basin would be level with the gradient of the ditch. Although this would introduce a new artificial element to the Common this would not create an unacceptable impediment to access in this area of the Common.

1. The temporary fencing would impact access, blocking access to the areas of the Common where the works are taking place. However, the impact will be minimal considering the overall size of the Common and the Common will still be accessible via other routes. The fencing is also planned to be temporary in nature. I am satisfied that such fencing is appropriate on health and safety grounds and that it will be removed on completion of the works, which can be secured by attaching a suitable condition to the consent.
2. Overall, I do not believe the works as planned would create any unacceptable barrier to people’s access to and across the common.
3. I am of the view that this area of Common land has recreational value as an open area of green space for walking and for open air activities. The aim of these works is to reduce the risk of flooding on the wider Common by creating a dedicated flood area within the common where these works are taking place and I do not believe the implementation of these works would interfere with the way the common is currently used.
4. NE have been consulted on the application and stated that whilst the works stem from a need for flood alleviation, they believe that benefits are likely to accrue to the Common in terms of its biodiversity, accessibility and landscape appeal. Subject to all the conditions associated with the planning permission being complied with, they have no concerns.
5. OSS ask the applicant if the trust who own the land consider this site as a “source of danger, on the Common” due to the flooding and if their opinion has been sought on the implementation of the works. OSS expressed the view that the applicant should demonstrate that it has obtained the favourable opinion of the Trustees of the common, or no s.38 consent can be granted for fencing.
6. The applicant in response has outlined that “Enfield Council have been working with the Trustees on this project since 2018”, and that “The Trustees have expressed their support for the scheme and have also been working with an external industry expert to provide advice and comments (funded through the scheme)”.
7. I am of the opinion that the works will have a minimal impact on people’s ability to access the Common or to the recreational value of the Common. Furthermore, the works will likely be in the interest of those who use the Common for recreational purposes by mitigating the risks of flooding and their impacts on the common.

***The public interest***

1. As well as the public interest in the protection of public rights of access, the Guidance (November 2015) outlines the public interest in nature conservation, the conservation of the landscape and the protection of archaeological remains and features of historic interest.

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

1. NE have stated that they believe that benefits are likely to accrue to the Common in terms of its biodiversity, accessibility, and landscape appeal.
2. OSS outlined concerns that the diversion of surface water could run the risk of polluted waters being introduced on to the Common. They outline that “Run-off from roads can contain pollutants such as vehicle oils, as well as paint and other waste which is poured into street drains for disposal. There is also the risk that dwellings in Parkgate Crescent will plumb into the surface water drainage system via the sewerage system.” They ask what tests have been done to assess the damage the water could cause.
3. In response the applicant stated that “The runoff which will be diverted into the common was tested in 2022 and showed no signs of major pollutants”. They provide a summary table of the tests conducted supporting this statement.
4. The proposed works would introduce new permanent manmade features on to the Common with the pipelines, manhole cover and footpath over the bund.
5. The manhole cover will be level with the ground and not effect site lines on the Common. Additionally, the pipeline headwall will be set into the back of the ditch where it is located and will also not affect the site lines across the Common. The applicant explains that the footway over the bund will be natural in appearance to fit in with the surrounding visuals of the Common.
6. The proposed works will also alter the natural aspects of the common with the creation of the bund, flood basic and re-grading of the Common.
7. Initially the works will have a large impact on the Common with areas of grass land being excavated and altered. The applicant has also explained that trees would be removed to implement the works.
8. Despite the initial impact the works would have the applicant has outlined detailed plans to restore the Common, such as the planting of wetland scrubs and trees and the reseeding of exposed areas of land.
9. The initial impact on the Common can also be mitigated by attaching the appropriate condition for the restoration of the Common.
10. Overall, I am of the view that the works will not negatively impact on nature conservation interests of the Common or impact the landscape interests of the Common once the land has been reinstated.

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

1. The applicant has outlined that they are unaware of any archaeological features within the proposed works area. HE have been consulted and did not comment.
2. GLAAS have stated the proposed development area is within the possible range of the battlefield for the “1471 Battle of Barnet, one of the most pivotal conflicts of the Wars of the Roses”. There is, therefore, moderate potential “for Medieval archaeology of regional significant material to be present. In addition, the proximity to the bank and ditch earthwork of Hadley Wood thought to date to the Iron Age provides a potential for prehistoric material. Given the lack of current development on the site there may be archaeological remains preserved below-ground.”
3. GLAAS have outlined that the works should only take place under the following conditions:

1: No demolition or development shall take place until a stage 1 written scheme of investigation (WSI) has been submitted to and approved by the local planning authority in writing.

2: For land that is included within the WSI, no demolition or development shall take place other than in accordance with the agreed WSI, and the programme and methodology of site evaluation and the nomination of a competent person(s) or organisation to undertake the agreed works.

3: If heritage assets of archaeological interest are identified by the stage 1 WSI then for those parts of the site which have archaeological interest a stage 2 WSI shall be submitted to and approved by the local planning authority in writing. For land that is included within the stage 2 WSI, no demolition/development shall take place other than in accordance with the agreed stage 2 WSI which shall include:

a) The statement of significance and research objectives, the programme and methodology of site investigation and recording and the nomination of a competent person(s) or organisation to undertake the agreed works.

b) Where appropriate, details of a programme for delivering related positive public benefits.

c) The programme for post-investigation assessment and subsequent analysis, publication & dissemination and deposition of resulting material. This part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the stage 2 WSI.

1. In response the applicant has confirmed that they will adhere to the above conditions set out by the GLAAS.
2. There is no evidence before me to suggest that these interests will be harmed by the proposed works if the above conditions are applied by the applicant.

***Conclusion***

1. In this case I conclude that the works will not prevent public access to the Common and the permanent works will not seriously harm the other interests set out in paragraph 5 above. Consent for the works is therefore granted subject to the conditions set out at paragraph 1 above.

Harry Wood

Plan 1 – Location of works on the common.

