
Application Decision

by **Richard Holland**

Appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: **22 February 2018**

Application Ref: COM/3190800
Clapton Common, London Borough of Hackney

Register Unit No: CL3

Commons Registration Authority: The London Borough of Hackney.

- The application, dated 30 November 2017, is made under Article 12 of the Ministry of Housing and Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967 ('the 1967 Act') for consent to construct works on common land.
- The application is made by Hackney Council (the Council).
- The works of approximately 26 weeks duration to develop the disused toilet block building at the Spring Hill junction of the common comprise:
 - i. conversion to a community hall/café with a footprint of 64.52 square metres;
 - ii. creation of a plyboard finished forecourt area with bicycle racks, cycle repair clinic, flower stall, associated landscaping and low-level (0.75 metre high) chain-link fencing; and
 - iii. erection of temporary Heras fencing around the site enclosing an area of 200 square metres during the period of works.

Decision

1. Consent is granted for the works in accordance with the application dated 30 November 2017 and the plans submitted with it, subject to the following conditions:-
 - i. the works shall begin no later than three years from the date of this decision;
 - ii. the temporary fencing shall be removed within one month of completion of the work.
2. For the purposes of identification only the location of the works is shown in orange on the attached plan.

Preliminary Matters

3. Article 7 of 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 7(1)(a)(vi) specifically refers to centres and other facilities (whether indoor or open air) for the use of clubs, societies or organisations whose objects or activities are wholly or mainly of a recreational, social or educational character. Article 7(1)(d) specifically refers to the provision of meals and refreshments of all kinds to sell to the public. Article 12 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.

4. I have also had regard to Defra's Common Land consents policy¹ 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 policy if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the policy.
5. Planning permission for change of use of the disused public convenience to community hall/café was granted on 14 April 2016 (Application No. 2015/1580).
6. This application has been determined solely on the basis of written evidence.
7. I have taken account of the representation made by the Open Spaces Society (OSS), which does not object to the application.
8. I am required by section 39 of the Commons Act 2006 to have regard to the following in determining applications under Article 12 of the 1967 Act:-
 - a. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
 - b. the interests of the neighbourhood;
 - c. the public interest;² and
 - d. any other matter considered to be relevant.

Reasons

The interests of those occupying or having rights over the land

9. Clapton Common is owned and managed by the London Borough of Hackney Council, the applicant. The commons register shows that there are no registered rights over the common. I consider therefore that the works will not harm the interests of persons occupying or having rights over the land.

The interests of the neighbourhood and the protection of public rights of access

10. 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 interests of public access. The disused and boarded toilet block is situated on a 350 square metres triangular traffic island (the island) on the north side of Upper Clapton Road. It is sectioned off by a chicken wire fence and is described by the Council as derelict. The Council says the island is not used by the public because the toilets have been closed for more than 20 years and the remaining area is overgrown with brambles, making it unsuitable for leisure and recreational activity. For these reasons I consider it unlikely to be an area of the common that is well-used by the public.
11. Conversion of the toilet block to a café and community hall is consistent with the provisions set out in paragraph 3 above and will bring a derelict building back into public use. The associated landscaping works will open up the remainder of the island to public access. However, a public toilet, cycle rack and bicycle repair clinic and flower stall cannot reasonably be described as facilities for public recreation as they are not connected with or facilitate the use of the common for recreation and are not necessary or desirable for persons resorting to the common. Nevertheless, the building has traditionally been used as public toilets and users of the proposed community hall/café will, rightly, expect toilets to be provided. The Council has confirmed that the toilets will be open to the public during café opening hours.

¹ Common Land consents policy (Defra November 2015)

²Section 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.

12. Public access to the island from the surrounding highway will be directly onto the proposed forecourt via two gaps in the proposed chain-link fencing, which will otherwise be unbroken around the island perimeter. The fencing is consistent with that in place around the perimeter of the wider common. Whilst the Council has confirmed that the fencing is intended to be more of a visual demarcation than a physical barrier it will impede access to a certain extent. However, it is more likely to encourage people to enter the island through the gaps provided than to physically prevent them from entering from any other point.
13. It is proposed to erect Heras security/safety fencing around the building during the period of works. This will create a 200 square metre enclosure on the island. Whilst it may be a little used area of the common, public access to the enclosed land will nevertheless be completely prevented during the period of development works, which is expected to be around 26 weeks. However, I am satisfied that excluding the public from the work site in this way is necessary for health and safety reasons and that the extent of the enclosure does not exceed what is reasonable. The security/safety fencing will be removed as soon as possible following completion of the works, which can be ensured by attaching a suitable condition to the consent. I consider that the enclosure will not significantly harm public access interests in the long term. The other works such as the front porch and single storey extension are relatively small and will have little impact on public access or local people's enjoyment of the common.

Nature conservation

14. There is no evidence before me which leads me to think that the works will harm any statutorily protected sites or other nature conservation interests.

Conservation of the landscape

15. The Mock Tudor style building has been a feature in the Clapton Common landscape since the early 20th Century. Its disuse and lack of upkeep in recent times has been detrimental to its appearance. The island on which it sits has become overgrown with brambles, adding to its derelict appearance. The conversion will increase the building's footprint by 20% (from 51.42 to 64.52 square metres) but will not increase its height. The forecourt and bicycle rack will urbanise the appearance of the front of the building somewhat, as will the proposed cycle repair clinic area. The proposed flower stall at the front and landscaping to the rear and sides of the building are likely to have the opposite effect. On balance I consider that the Council's plans to bring the building back into use will improve the general appearance of the island and that the proposals will not harm the landscape.

Archaeological remains and features of historic interest

16. The building is itself a feature of some historic interest, although it has no formal status as such. The works will protect it from falling further into disrepair. There is no evidence before me to suggest that the works are likely to harm any archaeological remains at the site.

Conclusion

17. I conclude that the works are, for the most part, in relation to a facility that a local authority may, under Article 7, provide and maintain for persons resorting to the open space and that they will not unacceptably harm the interests set out in paragraph 8 above. I do not consider it to be in the public interest to withhold consent for elements of the works which are not facilities for public recreation as they will not materially harm the interests either. Consent for the works should therefore be granted, subject to the conditions set out at paragraph 1 above.

Richard Holland



- Conservation Area
- Statutory Listed Buildings
- Locally Listed Buildings
- Trees
- Green space
- Water