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# Application Decision

by **Richard Holland**

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

Decision date: **29 July 2016**

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## **Application Ref: COM 773 Clapham Common, London Borough of Lambeth**

Register Unit No: CL73

Commons Registration Authority: The London Borough of Lambeth.

- The application, dated 25 January 2016, 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 Lambeth (the Council).
- The works to refurbish the sports zone adjacent to Rookery Road comprise:
  - i. resurfacing totalling 2647.6 m<sup>2</sup> with Type 2 open textured porous macadam and associated line marking of 2x netball courts and 1x joint netball, basketball and volleyball court;
  - ii. 235.2m of 3m high metal twin mesh rubber insulated fencing around the court area, enclosing 3279.6 m<sup>2</sup>;
  - iii. 8x 12m high floodlight columns supporting a total of 16 2kw floodlights around the sports zone and adjacent skate park; and
  - iv. 1x bicycle rack, benches and litter bins within the fenced area and 1x bicycle rack outside the fenced area.

## **Decision**

1. Consent is granted for the works in accordance with the application dated 25 January 2016 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 gates in the fencing shall be kept unlocked at all times.
2. For the purposes of identification only the location of the works is shown in red on the attached plan.

## **Preliminary Matters**

3. Article 7 of the 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 7(1)(a) (ii) specifically refers to the provision and maintenance of courts, greens and such other open air facilities as the local authority think fit for any form of recreation whatsoever (being facilities which the local authority are not otherwise specifically authorised to provide under this or any other enactment). Article 12 of the Greater London Parks and Open Spaces Order 1967 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. I have decided the application with the Article 7(1)(a) (ii) provision in mind.

4. I have also had regard to Defra's Common Land consents policy<sup>1</sup> 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 the refurbishment of the sports zone was granted on 18 March 2016 (Application No. 15/06949/RG3).
6. This application has been determined solely on the basis of written evidence.
7. I have taken account of the representations made by Paolo Ballardini and Elizabeth Brown, Peter Schmitt, Tony Solway, Frederick Uhde, Gabrielle Voumard, John Willis, Ana Vrkljan, Friends of Clapham Common (FCC), Natural England (NE) and the Open Spaces Society (OSS).
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 Greater London Parks and Open Spaces Order 1967:-
  - 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;<sup>2</sup> and
  - d. any other matter considered to be relevant.

## **Reasons**

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

9. Clapham Common is owned and managed by the London Borough of Lambeth Council, the applicant. There is nothing in the commons register to indicate that there are any 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***

10. These interests are closely linked with the public interest in rights of access, although the interests of the neighbourhood test relates more specifically to whether the works will impact on the way the common land is used by local people. A number of objectors have suggested that the area of land occupied by the courts has increased considerably in recent times and I accept that this may be so. However, it remains the case that the proposals directly impact only on an area of the common already occupied by netball and basketball courts. Whilst the courts have fallen into some disrepair and disuse, the proposals are nevertheless consistent with the Council's powers under Article 7 to provide certain open air facilities, such as courts, for public recreation.
11. Some objectors are also concerned that the proposals will impact on the wider neighbourhood use of the common, especially after dark when the lit area may encourage antisocial behaviour which in turn may discourage those wishing to visit the area of common around the sports zone. However, no independent evidence has been presented to support the assertion that a well-lit area may attract anti-social behaviour; indeed, it seems to me that the reverse is more likely to be true and that well lit, well used facilities will deter offensive behaviour. I understand objectors' concerns about the effect of light pollution on their enjoyment of the common but I am satisfied that the

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<sup>1</sup> Common Land consents policy (Defra November 2015)

<sup>2</sup>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.

design of the floodlighting chosen by the Council and restrictions on the times when it is switched on (which I deal with in more detail at paragraph 17 below) will ensure, as far as possible, that this is kept to acceptable levels. I consider that the neighbourhood interests in the common will not be seriously harmed by the proposed works.

### ***The public interest***

#### *The protection of public rights of access*

12. The sports zone is not currently fenced so there is the same unrestricted public access over it as there is over the rest of the common. The proposed fencing will bring an end to unrestricted access. However, the Council has advised that the five access gates in the proposed fencing, one of which will be fully Disability Discrimination Act 1995 compliant, will be kept unlocked at all times. I am therefore satisfied that whilst the proposed fencing will restrict public access, it will not actually prevent it.
13. The purpose of the fencing is primarily to prevent balls from straying off the court into the café/skateboard area to the north, Long Pond to the south and Rookery Road to the east. Fencing the south easterly positioned court will also protect players from the drop off at the southern end where the court is raised slightly above ground level. I accept that the fencing will serve these purposes and protect players and also motorists and pedestrians using Rookery Road without preventing public access to the courts.
14. There will be a charge for those wishing to use the courts. Some objectors are concerned that this will discourage participation by those on low incomes who will thus be denied access to the facilities. Whilst I acknowledge this concern, I must recognise that Article 10 of the 1967 Act allows the local authority to make such reasonable charges as it thinks fit for recreational facilities provided under Article 7.

#### *Nature conservation*

15. Some objectors are concerned that the proposed floodlighting will have a detrimental impact on local wildlife; particularly bat colonies, which use the area and adjacent Long Pond when they seek to feed at night. There are also some concerns about the impact of the lighting on nesting birds. However, NE advised that they do not see the works as having a detrimental effect on the biodiversity of the common as a whole. Furthermore, the planning permission is conditioned to limit the times that the floodlights are on, in part to safeguard the interests of protected species. I conclude that 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*

16. The proposals constitute a significant change to the current facilities and relate to an area of the common that is already hard-surfaced for netball/basketball use and that the current facilities are in some disrepair. I therefore give some weight to the argument that refurbishment may improve the visual impact of the current facilities. It has been suggested that this area of common 'goes to bed at dusk'. However, the site is not in a central position within the common; it is adjacent to Rookery Road and near its junction with the busy A3 Long Road, both of which are lined by street lights that remain on throughout the night. In this respect I consider that the proposed floodlighting will have a lesser impact here than if the site was more centrally placed on the common.
17. However, objectors are also concerned that the proposals go beyond refurbishment of the existing facilities and constitute a transformation of the recreational space into a sports arena, the size and prominence of which will harm the appearance of the common. I agree that the physical presence of the proposed 3m fencing and the eight 12m high floodlighting poles will cause some harm to the appearance of the common. I also accept that the floodlighting itself will be an alien feature in the common which will intrude to some extent into the night time landscape. Such harm however has to be weighed against the benefits to users of the common who wish to take advantage of the proposed improved recreational facilities. As I have said at paragraph 13 above, the fencing is needed to contain balls within the court. It is clear that the Council has sought to minimise the effects of light pollution as the floodlighting it has chosen has been designed to comply with the

Institution of Lighting Professionals guidance for an *Environment area E2 "Low district brightness" – village or relatively dark outer suburban location*. It is a condition of the planning permission that the floodlights are correctly installed and that a maintenance plan is submitted to, and approved by, the Council before they are used. A condition also limits the times that the floodlights can be switched on to between 16:00 and 22:00 hours. With these safeguards in place I am satisfied that, so far as possible, the amount of light intrusion will be kept to a minimum and the impact of the floodlights on the character and appearance of the common will not be so unacceptable that consent should be refused.

#### *Archaeological remains and features of historic interest*

18. There is no evidence before me to suggest that the works will unacceptably harm any archaeological remains or features of historic interest.

#### *Other matters*

19. Objectors are concerned about the impact of the proposals on the living conditions of local residents in terms of light and noise pollution. However, these are matters to be considered during the planning application process and are outside the scope of what can be considered when deciding this application for works on common land. Problems of anti-social behaviour taking place in neighbouring residential properties during events on the common and the cost of the works are also not matters that I can take into account.

20. Objectors have suggested that the proposals are more suited to the tennis courts at the Clapham South area of the common where there is a precedent for high fencing, flood lighting and charging for use. The Council has advised that this site is already at capacity. Furthermore, creating equivalent facilities there would involve the loss of green space, which is not the case with this application. In any case, the application must be determined on its own merits and on the basis of what is proposed.

#### **Conclusion**

21. I have taken account of the objections to the application. However, for the reasons set out above I conclude that the works are 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. However, to ensure unrestricted access to the facilities in line with the Council's intentions I shall attach a condition requiring the gates to be kept unlocked at all times.

22. I conclude that consent for the works should be granted, subject to the conditions set out at paragraph 1 above.

**Richard Holland**

# Site of Proposed Works on Clapham Common



- Clapham Common Buildings
- ▭ Clapham Common Boundary
- ▭ Site Of Proposed Works



1:4,827  
Date: 19/01/2016