



Application Decision

Inquiry opened on 17 May 2011

By Barney Grimshaw BA DPA MRTPI (Rtd)

An Inspector appointed by the Secretary of State.

Decision date: 9 June 2011

Application Ref: COM 193 Shepherds Bush Common

Register Unit: CL 26

Registration Authority: London Borough of Hammersmith and Fulham

The application, dated 20 September 2010, 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 works comprise:

- a single storey building housing a café, public toilets, baby changing facilities and an electricity sub-station, to occupy an area of 157.9m²;
- the creation of 2 new children's play areas; one for pre-school age children (under 5s) of 419m² and one for older children (5-16 year olds) of 664m², both containing play equipment and surfaced primarily with a combination of safety surface and grass and surrounded by 1.2m high mesh fencing with lockable gates;
- a new pedestrian footpath network surfaced with resin bound gravel;
- a cycle path surfaced mainly with macadam and with curved stainless steel barriers at entrance/exits to direct cyclists away from pedestrian crossing points;
- a stone paved plaza around the existing war memorial and a duplicate bronze plaque mounted on a freestanding stone base;
- the creation of 4 shallow mounded grass areas;
- a cast iron drinking fountain set in an area of resin bound gravel;
- new lighting columns, litter and dog bins, cycle stands, sign boards, benches and removable anti-ram bollards
- temporary fencing, 2m high around works being carried out for a period of 12 months.

Summary of Decision: The application is granted in part and subject to conditions.

Preliminary Matters

1. 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 a number of conditions. 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 or enclose or permit any part to be permanently enclosed.

2. The application is made by the Acting Director of Resident Services on behalf of the London Borough of Hammersmith and Fulham (LBHF).
3. Shepherds Bush Common covers an area of 3.132 hectares and is registered as common land (CL26) under the Commons Registration Act 1965. It is owned by the London Borough of Hammersmith and Fulham. There are no rights registered in respect of the land. Under Section 193 of the Law of Property Act 1925, members of the public have rights of access to the common for air and exercise.
4. I held a public inquiry into this application on Tuesday 17 and Wednesday 18 May 2011 at Hammersmith Town Hall. I made an unaccompanied site inspection on Monday 16 May. It was agreed by parties present at the inquiry that a further formal inspection was unnecessary.

Reasons

5. The stated purpose of the application is to allow the refurbishment of the common in such a way as to restore the cohesive quality of the space and to preserve and build on its existing landscape heritage in a way that is appropriate for the 21st century. It also aims to support the diverse communities that surround it by creating a sense of place and a destination that caters for the recreational and leisure needs of both current and future generations.
6. The 7 main aims of the proposed scheme are said to be:
 - A landmark open space with clear routes and links to the surrounding town centre
 - A meeting place for all
 - Somewhere for adults and children to relax and enjoy themselves
 - A catalyst for further town regeneration
 - A safe place
 - Socially inclusive
 - A venue for community events.

The Main Issues

7. I am required by Section 39 of the Commons Act 2006 (the 2006 Act) to have regard to the following in determining this application:
 - (a) the interests of persons having rights in relation to, or occupying, the land;
 - (b) the interests of the neighbourhood;
 - (c) the public interest;¹
 - (d) any other matter considered to be relevant.

¹ Section 16(8) 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.

8. I will also have regard to published guidance in relation to the determination of applications of this sort².

Representations

9. In response to the advertisement of the application³, a total of 80 representations were received, 78 of which contained objections. A further 16 representations were received subsequently, 15 of which contained objections.
10. Although this response includes a substantial number of objections to the proposed works, it should be noted that almost all the objections only related to specific elements of the application and most respondents agreed that the common would benefit from some improvements and indeed welcomed many elements of the proposed works. The two elements that attracted by far the most objections were the proposed felling of trees, in particular two mature trees in the south western corner of the common, and the provision of a café. Other objections related to the provision of mounded areas, the loss of the existing dog exercise area, the relocation of the electricity sub-station, the loss of existing tennis courts, paving around the war memorial and the proposed children's play areas. Not all of these objections relate to works which are included in the application or which require specific approval under the 1967 Act, even though they are included in the overall scheme for the improvement of the common.

Assessment

11. Shepherds Bush Common is an intensively used open space in a large, densely populated urban area. It performs a valuable function in an area where green open space is in short supply. However, its current appearance is somewhat shabby, its layout poor and some of the facilities it provides seem to require renewal. In general terms, therefore, I agree that it is in need of refurbishment and improvement. I also accept that most of the works for which consent is sought are consistent with the use of the land as common land, taking account of the nature of the area in which it is situated, and would have a beneficial effect on the interests described in paragraph 7. These are also the elements of the proposed scheme that are least controversial and are supported by the majority of those who have made representations. In particular, I see no reason why consent should not be granted for the following works included in the application:

- the creation of 2 new children's play areas;
- the new pedestrian footpath network;
- the new cycle path and associated barriers;
- the drinking fountain;
- new lighting columns, litter and dog bins, cycle stands, sign boards, benches and removable anti-ram bollards.

I have therefore concentrated in the assessment which follows on other elements of the application the advantages of which are less clear cut and which have attracted objections from some respondents.

² Common Land Consents Policy Guidance, July 2009, Defra.

³ A public notice appeared in the H&F News on 21 September 2010. This notice omitted reference to some of the works proposed and therefore the application was re-advertised in H&F News on 22 March 2011.

The interests of persons occupying or having rights over the land

12. The common is owned by LBHF, which is also the applicant for the works. There are no rights registered in respect of the land. However, the public have a right of access to the common for air and exercise under provisions of the Law of Property Act 1925 and the Countryside and Rights of Way Act 2000. It was also argued on behalf of the Open Spaces Society (OSS) on the basis of a judgement made by the House of Lords in 1897⁴, that the borough council does not itself occupy the common but holds it in trust for the public.
13. The electricity supply company, EDF, occupies the existing sub-station sited on the common. It is proposed that this facility will be re-sited as part of the works and the company does not object to this proposal.
14. The proposed works will restrict the public's right of access only in as much as the proposed children's play areas will be fenced and locked at night and the proposed café building will also prevent public access to a small area of the common. Access will also be restricted temporarily for up to 12 months while works are carried out. On the other hand, it is proposed that fencing will be removed around the war memorial, a dog exercise area, the existing children's play area and the existing tennis courts. Overall, it is my view that the proposed works would not have an adverse effect on the public's right of access to the common. Other aspects of the public's interests are considered later.
15. Overall, it is my view that the works applied for will not have an adverse effect on the interests of persons occupying or having rights over the land or on the public's right of access to it. However, in order to ensure that public access is not unduly limited, I intend to impose a condition to the effect that temporary fencing should remain in place for no longer than 12 months.

The interests of the neighbourhood

16. Shepherds Bush Common is situated in a very busy urban area visited by large numbers of people from a wide area for a variety of purposes every day. In this context it is not easy to define the appropriate neighbourhood the interests of which should be considered. Clearly the interests of those owning and occupying residential and business properties adjoining the common are important but the interests of visitors from further afield and those who merely cross the common must also be considered.
17. In a survey carried out in 1998, it was found that around 70% of visitors to most small parks and open spaces in the borough lived within about 400m of the park. However, this did not apply to the two larger parks, Bishops and Ravenscourt Parks, or to Shepherds Bush Common which had wider catchment areas, with 70% of visitors living within about 1000m. This means that effectively the whole of the Addison and Shepherd's Bush Green wards of the borough are within the catchment area of the common and parts of several other wards. The population of those two wards alone was over 21,000 in 2001, according to census statistics. The area around the common also clearly attracts large numbers of people for work, shopping and entertainment. It would appear therefore that the neighbourhood of the common is relatively wide, very populous and quite varied. I have tried to bear this in mind when assessing the merits of the application but have also sought to give most

⁴ Lambeth Overseers v London County Council.

weight to the interests of those living closest to or otherwise being most affected by the common.

18. It is apparent from the views expressed in written responses and at the inquiry that most people feel that it would be in the interests of the neighbourhood for some improvements to be made to the common. Various surveys also seemed to confirm that the common is currently perceived to be performing poorly and that people are dissatisfied with the quality of facilities it offers. Objections almost all relate to details of the scheme of works proposed.
19. An Audit of Open Spaces and Outdoor Recreation Facilities in the borough, carried out in 2006, identified a deficiency of play areas for both younger and older children, particularly in the north where the common is located. A Residents' Survey, carried out in 2008 found that Shepherds Bush Common was the 4th most visited green space in the borough but also had one of the highest levels of dissatisfied visitors. The common rated lowest in the borough for children's play areas, seating, tennis courts and wildlife/nature areas. It also rated lowest for the appearance and maintenance of lawns, flower displays, trees and shrubs, play surfaces and lighting. When respondents were asked for suggestions for new or better facilities that could be provided, café and toilet facilities were the most requested and play facilities also figured strongly.
20. The results of these surveys informed the brief for the design of the scheme to improve the common and the design itself. Also, further consultations were undertaken during the preparation of the scheme and a number of amendments made before the final plan was put forward. Nevertheless, the proposals still attracted a large number of objections, particularly regarding the two aspects already referred to, the loss of trees and the café building.

The loss of trees

21. The proposed redevelopment scheme involves the felling of 12 of the 102 existing trees on the common, 4 of which are already dead or dying and 5 are small trees. Thirty one new trees are proposed to be planted as part of the scheme, mainly London Plane trees.
22. Particular concern was expressed about the proposed felling of two mature trees near the south-western corner of the common, a horse chestnut and an ash. It is proposed that these should be felled to allow the construction of a shallow mound, similar to others proposed at the other corners of the common, in order to guide pedestrian flows around the corners of green space to reduce the wear of the grass and to add variation to the topography. It was felt by many objectors that the benefit of the mound for this purpose, even if successful, was a high price to pay for the loss of the mature trees which have considerable impact on the appearance of the area and which are particularly effective in screening the common from the heavy traffic on adjoining roads. It was also felt that these trees had significant nature conservation value and I refer to this aspect later (paras. 31-34)
23. On balance, it is my view that the interests of the neighbourhood would be adversely affected by the felling of the horse chestnut and ash trees near the south-western corner of the common to an extent that would not be offset by the possible advantages of the construction of a mound in this area.

The café

24. The likely impact of the proposed café, toilets and sub-station building was also a matter of great concern to most objectors. On behalf of LBHF it was argued that a café and toilets had been identified as being needed by the 2008 survey and that this would provide a valuable meeting place for the local community. It would be complementary to the adjacent play areas, offering parents and carers a place to sit and converse in sight of children playing. It was also generally accepted that public toilet facilities were needed in the area and the proposals offered the opportunity for a managed facility to be provided without ongoing expense to the public purse. In addition, the building would enable the relocation of the electricity sub-station and the demolition of the existing building thereby opening up a major gateway to the common from the north-west.
25. Objectors pointed out that there is already a large number of cafés and similar establishments in the area, many immediately adjacent to the common, some of which are perceived to be struggling to survive. This led them to suggest that another café was not needed and to concerns that, if a café was provided it might not succeed. This in turn caused fears that, if the café closed or only opened at limited times, the unoccupied building would provide shelter and cover for public drinkers, rough sleepers and various forms of anti-social behaviour which already caused problems on the common. Further concern was also expressed about the council being involved in accommodating and/or supporting a commercial venture which might adversely affect existing businesses in the area. Feasibility studies commissioned by LBHF regarding the viability of a café did not demonstrate a clear business case for the café and suggested that it might appeal only to a limited market especially during winter months.
26. The council stated that it would be a condition of any lease for the café that it should open all the year round for a minimum of 10 hours per day and it was suggested that the council could afford to offer the lease on favourable terms which would make it an attractive business proposition although of course it would have to comply with legislation preventing public support giving the operator an unfair competitive advantage over other businesses. It was also stated that cafés operated successfully at some parks in the borough, for example, Bishops and Ravenscourt Parks. Objectors argued that these parks are not similar to the common as they are large parks, closed at night and not having other cafés in close proximity.
27. Although the development of the café would include the provision of much needed public toilet facilities, objectors felt that those proposed were very limited and unlikely to be available at times of most need, particularly late at night.
28. It was also suggested by objectors that the relocation of the electricity sub-station at considerable public expense was an inappropriate use of public funds. The existing sub-station building was considered by many not to be an unattractive building, albeit currently in a somewhat dilapidated condition, and not regarded as a significant visual or physical barrier to access to the common.
29. The detailed design of the proposed café building was also criticised by some objectors, although some thought it acceptable. It was pointed out that the design was not finalised and the council has retained control over the details of

its appearance pursuant to a condition of the planning permission already granted. In any event, most objectors seemed more concerned about the principle of providing the café building rather than the details of its design.

30. On balance, it is my view that the potential damage to the interests of the neighbourhood resulting from the construction of the proposed café and associated facilities outweighs the benefits of their provision.

The public interest

Nature conservation

31. The whole of Shepherds Bush Common is a designated Site of Local Importance for Nature Conservation. An ecological study, carried out for the borough council by Grontmij Ltd, concluded that the proposed redevelopment works would not greatly alter the habitat types present and would not change the overall ecological value of the area. It was however suggested that any demolition or tree felling work should take place outside the period March-August to avoid disturbance of nesting birds. Natural England was consulted regarding the proposals and raised no objection.
32. As already mentioned, objectors were particularly concerned about the loss of two mature trees near the south-west corner of the common, partly because of their perceived landscape value but also on account of their nature conservation importance. It was pointed out by objectors, including a consultant tree surgeon and the London Wildlife Trust that these trees are particularly important as they support a richer variety of wildlife than the proposed new trees which will in any event take many years to reach a similar state of maturity.
33. The felling and planting of trees does not require specific consent under the 1967 Act and is not therefore part of the application. However, the only reason that the felling of the trees in the south-west corner of the common is proposed is to enable the construction of a low mound that does require consent. It was generally accepted that, if the mound is not constructed, the trees will not be felled.
34. Overall, it is my view that the proposed works would have no major adverse effect on the nature conservation value of the common but the loss of the two mature trees in the south-west corner would nevertheless be unfortunate and result in a local loss of value which might never be recovered.

Landscape

35. Overall, it seems that it is generally accepted that the proposed works will improve the appearance of the common as a result of the rationalisation of the pedestrian and cycle routes, removal of fencing and clutter, the replacement of seating and other furniture and planting of additional trees. However, several people objected to the provision of mounds on the grounds that the common was historically a flat open space and that it would be inappropriate to introduce such contrived alien features. On behalf of LBHF it was argued that the proposed mounds were very shallow with a maximum height of 900mm or less and would not interrupt the open nature of the area and that there are in fact already some mounds of a similar height within the common. It was also felt that the mounds would perform an important function in guiding pedestrian traffic as well as adding visual interest and would thereby enhance the appearance of the area.

36. In fact, most of those who objected to mounds referred in particular to the proposed mound at the south-west corner of the common and when considered in detail it would seem that these objections stemmed largely from the fact that construction of this mound would necessitate the felling of the two mature trees already referred to.
37. The construction of the café building would also introduce a new feature into the landscape and views regarding this varied considerably. Arguably, any potential detrimental effect could be offset by the detailed design of the new building and the removal of the existing sub-station building, perceived by some to be something of an eyesore.
38. Some objectors felt that the areas of paving proposed in proximity to the main entrances/exits of the common were excessively large and detrimental to the open green character of the area. However, it was explained on behalf of LBHF that it was necessary to provide spaces for people to wait for an opportunity to cross the busy adjoining roads. Other objectors suggested that the spaces provided might not be large enough. On behalf of LBHF it was also pointed out that the net effect of the package of proposals put forward would be an increase of 410m² in the amount of open green space on the common.
39. In my view, the proposed works will improve the appearance of the common overall and, in general terms, I do not believe that the introduction of shallow mounds or the café building would have a significant adverse effect on the landscape. The size of the proposed paved areas at the main entrance/exit points also seems reasonable in the light of the large amount of pedestrian and vehicular traffic in the area. However, it does seem doubtful whether the benefits of constructing a mound in the south-west corner of the common are likely to be sufficient to outweigh the effect of the loss of the mature trees that would be required.

Public access

40. As already discussed, the proposed works will not have a significant adverse effect on public access to the common itself (paras. 14 & 15). In addition I see no reason why the works would affect public access to any other areas.

Archaeological remains and features of historic interest

41. There is no evidence available of any archaeological remains that might be affected by the proposed works and English Heritage has been consulted and raised no objection. The common does not lie within an archaeological priority area identified in the Urban Development Plan and no condition concerning archaeology was attached to the planning permission for the proposed works. However, it was suggested on behalf of the Fulham and Hammersmith Historical Society that it was nevertheless possible that early archaeological remains might be present on the site and that this should be taken into account when any excavations are made. In response the council has undertaken that a requirement for an archaeological watching brief will be included within the contract for the construction of the scheme. This would seem to represent a very reasonable way forward and I propose to include a condition in any consent given to ensure it takes place.
42. The war memorial on the common is a Grade 2 listed monument. The proposed works include the repair and refurbishment of the monument and its setting and were generally welcomed by those making representations regarding the

application. A few people were concerned that proposals included a larger paved area around the monument although photographs showed that the existing area was not adequate to accommodate the large numbers of people who congregate there for Remembrance Day services. I note also that the proposed works to and around the monument required separate consent under the Planning (Listed Buildings and Conservation Areas) Act 1990, which has already been granted. Overall it is my view that the proposed works will enhance the appearance and setting of the monument.

Other relevant matters

43. A number of objectors complained that the consultation process leading to the preparation of the proposed scheme had been inadequate and/or flawed. Nevertheless, all the requirements required in connection with the application itself have been complied with and there is therefore no reason why it cannot be determined. It is also apparent that a significant amount of consultation was undertaken and, although I have noted the criticisms made relating to this, I do not think it is appropriate for me to comment in any detail about the manner in which this was done. I am however satisfied that the written representations submitted and the statements made at the inquiry have enabled me to fully consider all the arguments for and against the application.
44. Some objectors expressed concern about the proposed colours of the surfacing of the children's play areas which appeared very bright in the illustrations presented by the council's consultants. The council assured objectors that details such as this were not yet finalised and they would consider a more muted colour scheme.
45. A number of objectors opposed the loss of the existing tennis courts and the dog exercise area. However, these works do not require consent under the 1967 Act and are not therefore part of the application. I have accordingly not considered these matters except in as much as they are linked to other proposals which do require consent.
46. One objector drew attention to the fact that one of the notices of the application described the proposed barriers to direct cyclists away from pedestrian crossing points as being 30m in length. This would appear to have been a typographical error as it was confirmed on behalf of LBHF that the barriers are in fact proposed to be about 3m long and are shown as such on the plans accompanying the application. It does not appear to me that anyone has been misled or had their interests prejudiced as a result of this error and the barriers did not attract any specific objections. I therefore do not propose to take any further action regarding this matter.

Conclusions

47. Having regard to the interests set out in paragraph 7 above, I conclude that most of the proposed works would not adversely affect those interests. However, it is my view that the possible benefits that would result from the construction of the proposed mound in the south-western corner of the common are outweighed by the disadvantages to the interests of the neighbourhood and the public caused by the consequent loss of two mature trees which would result in damage to the landscape and nature conservation value of the area. I therefore do not propose to give consent for the construction of this mound. In addition, although I accept that the proposed café and associated facilities could bring some benefits, it would also bring

potential disadvantages as a result of the risk of exacerbating current problems on the common and damaging nearby businesses. I am therefore not satisfied that the construction of the café building meets the criteria required and I propose to exclude it from the consent.

Formal Decision

48. Accordingly, in exercise of the powers conferred by Article 12 of the 1967 Act and of all other enabling powers, consent is hereby given to the works described with the exception of:

- the construction of a single storey building housing a café, public toilets, baby changing facilities and an electricity sub-station;
- the construction of a mound in the south-western corner of the common.

In addition, this consent is given subject to the following conditions:

- temporary fencing erected while works are being carried out shall remain in place for a period of no longer than 12 months;
- any contract for the construction of works covered by this consent shall include suitable arrangement for monitoring to identify any archaeological remains that might be discovered.

Barney Grimshaw

INSPECTOR

APPEARANCES

For the Applicants

Douglas Edwards	Queens Counsel, representing the London Borough of Hammersmith and Fulham (LBHF)
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Who called:

Ian Turkington	Grontmij Ltd, consultants to LBHF
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Marlene Pope	Project Officer, LBHF
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Objectors

Andy Slaughter	MP for Hammersmith
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Virginia Ironside	Save Shepherd's Bush Streets
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Keith Whitehouse	Fulham and Hammersmith Historical Society
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Fergus Kinmonth	Norland Conservation Society
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Camilla Broadbent	Greenside Residents Action Group
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Susie Gretz	Local resident
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Melanie Whitlock	The Hammersmith Society
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Caroline Davis	Granville Mansions Association
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Andrew Kruk	Charecroft Tenants and Residents Association
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Bernard Selwyn	The Open Spaces Society
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Jane Charteris	Friends of the Scrubs
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DOCUMENTS

1. Proof of Evidence of Marlene Pope, LBHF and supporting documents.
2. Proof of Evidence of Ian Turkington, Grontmij Ltd and supporting documents.
3. Proof of Evidence of Andy Kruk on behalf of Charecroft Tenants and Residents Association with supporting documents and 4 photographs.
4. Proof of Evidence of Caroline Davis on behalf of Granville Mansions Association with supporting documents.
5. Proof of Evidence of Camilla Broadbent on behalf of Greenside Residents Action Group.
6. Proof of Evidence of Virginia Ironside on behalf of Save Shepherd's Bush Streets.
7. Proof of Evidence of Bernard Selwyn on behalf of the Open Spaces Society.
8. Proof of Evidence of Fergus Kinmonth on behalf of Norland Conservation Society.
9. Statement of Melanie Whitlock on behalf of the Hammersmith Society.
10. Statement of Andy Slaughter MP.
11. Statement of Jane Charteris on behalf of the Friends of the Scrubs.
12. Statement of Nicholas Fernley on behalf of Hammersmith and Fulham Historic Buildings Group.
13. Hammersmith and Fulham Parks and Open Spaces Survey, 1998, extract and associated notes on Shepherds Bush Common catchment area.
14. Café specifications, Bishops and Ravenscourt Parks.
15. Hammersmith and Fulham Conservation Area Character Profile, 2000, extract.
16. Hammersmith and Fulham UDP, 2007, extract.