



Application Decision

Site visit made on 7 January 2015

by **Michael R Lowe BSc (Hons)**

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 17 February 2015

Application Ref: COM 587

Haven Green, Ealing

Register Unit No. CL 111

Registration Authority: London Borough of Ealing

- The application, dated 29 May 2014, is made under Greater London Parks and Open Spaces Order 1967 (the 1967 Order) for consent to construct works on common land.
 - The application is made by the London Borough of Ealing.
 - The application seeks to retain an electricity substation for a period of 25 years. A temporary consent was granted in 2009 for 5 years.
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Decision

1. Consent is refused.

Preliminary matters

2. This application has been determined on the basis of the written evidence and my site visit, made on 7 January 2015, in the company of Nila Taylor & Lucy Taylor from Ealing Council, Julian Edmongs (Central Ealing Residents' Association), John Lavery (The Open Spaces Society), Victor Mishiku (The Covenant Movement) and Greg Phelan, John Hazelhurst & Will French (Friends of Haven Green).
3. Article 7 of the Greater London Parks and Open Spaces Order 1967¹ provides that a local authority may in any open space provide and maintain a variety of facilities for public recreation and specified activities and, by Article 8, licence such activities. Article 12 limits the exercise of such power on those open spaces that are common land. The local authority shall not, without the consent of the Secretary of State, erect or permit to be erected any building or other structure on or enclose permanently, or permit to be enclosed permanently, any part of a common. Haven Green is registered common land and therefore the provisions of Article 7(bb)² which enable a local authority to provide and maintain exhibitions and trade fairs on open spaces does not apply.
4. I have taken account of the representations from Natural England and objections made by The Open Spaces Society; Carol & Tony Morton (including the petition of 15 local businesses), Simon Peace, Victor Mishiku (The Covenant Movement), L Read (Haven Green Conservation Advisory Panel), Greg Phelan

¹ Confirmed by the Ministry of Housing and Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967 as amended by the Greater London Council (General Powers) Act 1984.

² Amendment inserted by the Greater London Council (General Powers) Act 1984.

(Friends of Haven Green), John Hazlehurst and Julian Edmongs (Central Ealing Residents' Association).

Main Issues

5. 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 Greater London Parks and Open Spaces Order 1967:
 - (1) The interests of persons having rights in relation to, or occupying, the land and in particular to persons exercising rights of common over it;
 - (2) The interests of the neighbourhood;
 - (3) The interests of the public³; and
 - (4) Any other matter considered to be relevant.
6. I have also had regard to Defra's Common Land Consents Policy Guidance⁴ in relation to the determination of applications under section 38 of the 2006 Act, which has been published for the guidance of both the Planning Inspectorate and applicants.
7. It is Government policy for works on common land that consent under section 38 of the 2006 Act should be seen as the gateway which enables the construction of works which are sympathetic to its policy objectives for common land, but reinforce controls on development which are inappropriate or harmful. The policy seeks to ensure works on common land are consistent with its origin, status and character.

Reasons

The interests of those occupying or having rights over the land

8. There are no rights of common registered on the land, which is owned and managed by Ealing Council.

The interests of the neighbourhood and the public interest

9. There is no free standing power under the 1967 Order for the erection of an electricity substation. It could only be authorised as part of a facility that can be authorised, as was the temporary consent granted in 2009 in connection with an ice skating rink. The Council seeks the current consent on the basis of enabling future events, although no specific event is identified. As part of the Council's Arts and Culture Strategy, a 'Love Your Space' initiative encourages local organisations and businesses to apply to use public spaces for events and activities. The substation, it is submitted by the Council, will obviate the need for noisy generators, and is an environmentally and economically sustainable solution to power needs that will enable additional uses that will then increase public access to and enjoyment of the common.
10. Objectors to the application are concerned at the degradation of the common; they say the substation is an eyesore and encourages anti-social behaviour.
11. The substation is surrounded by fencing and shrub planting. The substation has a minimal impact upon the area of land available for recreational use and

³ 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.

⁴ Common Land Consents Policy Guidance (Defra) July 2009.

public access and has no known adverse impact upon wildlife or archaeological interests. Nonetheless, it obstructs the views of the common and is an alien feature within the landscape. It is an urbanising feature in an essentially open setting.

Conclusion

12. I am not satisfied that there is sufficient reason to consent to works that harm the policy objectives of protecting commons from inappropriate development. Whilst I appreciate the potential benefits of the substation to possible future events on the common that would benefit the neighbourhood, I consider that alternative power solutions would be more appropriate to this locality. I therefore conclude that consent should be refused.

Michael R Lowe

INSPECTOR