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Mr Richard Comben
Legal and Democratic Services
Ealing Council
Perceval House
14-16 Uxbridge Road
London
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Your Ref: Legal/RAC
Our Ref: COM 43
Date: 3 June 2009

Dear Mr Comben

MHLG ARTICLE 12: THE 1967 ACT PROPOSED WORKS ON HAVEN GREEN, EALING

The decision in respect of the above application is attached.

The decision does not convey any consent or approval which may be required under any enactment (including byelaws, orders or regulations) other than article 12 of the Ministry of Housing and Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967.

Once an application under article 12 has been determined, the Secretary of State has no further role in relation to the case, and the Planning Inspectorate cannot comment further on the terms of the decision. There is no statutory provision for appeal against the decision but it can be challenged in the courts within 3 months of the date of the decision letter. The procedure for this involves an application to the High Court for permission to apply for judicial review under the Supreme Court Rules.

Copies of this letter are being sent to the Commons Registration Authority of the London Borough of Ealing, the Open Spaces Society, Mr Richard Chilton, Mr Julian Edmonds (Central Ealing Residents' Association), Mr Derek Mulquin, Mr John Hazlehurst, Mr Mark Rutherford and Ms Judy Harris (Ealing Civic Society).

Yours sincerely

Naoual Margoum
Common Land Casework Team

LEGAL SERVICES

04 JUN 2009





Application Decision

Site visit made on 13 May 2009

**By Barney Grimshaw BA DPA
MRTPI (Retd)**

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

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**Decision date: 3 June
2009**

Application Ref: COM43 Haven Green, Ealing

Register Unit No. CL111

Registration Authority London Borough of Ealing Council.

The application, dated 24 October 2008, 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") to construct works on common land.

The works comprise the erection of an electricity substation in an enclosure and surrounded by close boarded timber fencing and trellis. The substation and fencing to cover an area of 21.6 m². and measure 4.5 m. in width, 4.8 m. in length and 2.3 m. in height.

Summary of Decision: The application is granted subject to conditions set out below in the Formal Decision.

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.
2. The application is made by the Council of the London Borough of Ealing.
3. Haven Green Common covers an area of 1.982 hectares and is registered as common land (CL111) under the Commons Registration Act 1965. It is owned by the London Borough of Ealing and is subject to a scheme of management under the Metropolitan Commons Act 1866. There are no rights registered in respect of the land. The common is subject to section 193 of the Law of Property Act 1925.
4. I carried out a site visit on 13 May 2009, accompanied by Peter Smith (Director, Ealing Broadway Business Improvement District Company Ltd), Steve Breen and Marianne Downie (Ealing Council), Judy Harris (Secretary, Ealing Civic Society), John Hazlehurst and Julian Edmonds (both Central Ealing Residents' Association).

5. In this case, the works applied for have already been carried out. I have nevertheless assessed the application against the criteria set out in the legislation without giving any weight to the fact the proposed electricity substation is already in place.

Reasons

6. The stated purpose of the application is to permit the erection of an electricity substation to provide power to run an outdoor ice rink and other leisure, social and cultural events.
7. One of the applicant's key corporate objectives is to ensure the vitality and viability of all its town centres as focal points for leisure, cultural, social, retail and business activity. Ealing Town Centre is designated as a metropolitan town centre, one of only 3 in west London and Haven Green is regarded as a key gateway and arrival point to the town centre. Although it is already well used for informal recreation, restrictions on the provision of new areas for leisure and recreation use mean that the borough has to try and make its existing open spaces "work harder". The provision of the substation will enable the continued provision of a winter ice rink and other leisure, social and cultural events which will increase the range of opportunities for local people and attract new visitors to the area. This in turn will benefit local businesses such as shops, cafés and restaurants.

Main Issues

8. In determining article 12 applications, I am required by section 39 of the Commons Act 2006 to have regard to the following in determining this application:
 - (a) the interests of persons having rights in relation to, or occupying, the common land (and in particular persons exercising rights of common over it);
 - (b) the interests of the neighbourhood;
 - (c) the public interest;¹
 - (d) any other matter considered to be relevant.

Assessment

The interests of those occupying or having over the land

9. There are no rights of common registered with regard to Haven Green and the common is owned by the London Borough of Ealing, the applicant for the proposed works.
10. In accordance with section 193 of the Law of Property Act 1925 all members of the public have a right to access the common both on foot and on horseback. The relatively limited scale of the proposed substation will not in my view

¹ 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.

significantly restrict the public in the exercise of this right although it will of course slightly reduce the amount of common land to which access is available.

The interests of the neighbourhood

11. On behalf of the applicant it is argued that the substation will enable the provision of an outdoor ice rink and festive market and will make it possible for a range of other events and facilities to be accommodated. Examples given include festive and artistic lighting, outdoor cinema and theatre and summer activities such as beach volleyball, roller skating and a climbing wall. These events will attract large numbers of people and thereby contribute to the local economy. Although an ice rink has been provided for the last 2 years, this initially relied on portable generators for power and in consequence had a detrimental effect on the local environment as a result of the noise and fumes also generated.
12. Objectors state that the common is already well used by local people and likely to become more intensively used as a result of residential development that has recently been approved. This being the case, it is argued that it would be in the best interests of the neighbourhood for the maximum amount of open space to be retained. It is also pointed out that the area of the Green near the substation is used for ball games on occasion and there is potential danger if, as is possible, people try to climb the fence to retrieve lost balls.
13. It is also pointed out that the planning permission for the ice rink and market granted in 2007 was only for a 3 year period of which 2 years have already elapsed and that no positive action has been taken with regard to other activities suggested which may in fact never take place. Accordingly, it is possible that after the winter of 2009/2010 the substation may not be needed and it would therefore be inappropriate to permit it for a 25 year period as applied for.
14. On the other hand, the applicant refers to a report commissioned by the council from consultants in 2007 which concluded among other things that Haven Green is an important green space but underused. Specific recommendations in the report included the introduction of a seasonal ice skating rink and a power supply.
15. It is also argued by objectors that the substation has a detrimental effect on the appearance of Haven Green and is therefore not in the interests of the neighbourhood. I deal more fully with the question of the visual impact of the works below (Para. 18).
16. It is difficult in this case to balance the advantages and disadvantages of the proposed works from the points of view of different groups. It is clear from the representations made that many local people value Haven Green as an open space for purely informal recreation. On the other hand, it would appear that the seasonal ice rink has already proved popular and it likely that other events might also be well supported.

The public interest

17. It has not been suggested that the proposed works would affect nature conservation interests and I have no reason to anticipate any adverse effects in

this respect. On behalf of the applicant it is stated that the site of the substation was chosen to be outside the root zone of the surrounding trees so as not to affect their health.

18. The works, which have already been carried out, have a significant effect on the appearance of the area. Objectors point out that the substation is visible from most parts of Haven Green itself and from the surrounding roads and is an alien and unattractive feature in the area. It is situated in a row of mature trees and it is claimed that, even after screen planting matures, it will still stand out as an obtrusive feature. I also noted on my visit that there is no planting on the north and south sides of the substation as there are gates in the fencing which presumably have to be kept clear for access purposes. It is also suggested by objectors that the substation is particularly inappropriate as it lies within a designated conservation area and, when viewed from Haven Green, stands in front of a façade of buildings to the east which is listed as being of architectural significance. On behalf of the applicant it is pointed out that when planning permission was sought for the substation the Planning Officer advised that the works would have only a minimal impact on the character and appearance of the conservation area and no significant detrimental impact on the amenities of surrounding residential occupants.
19. As the proposed substation is relatively small in area it will not significantly restrict public access to the rest of Haven Green. Obviously, its construction will reduce the available area of the common to some extent but, by my calculation, even after allowance is made for the extent of screen planting, the substation will occupy less than 0.2% of the common. On behalf of the applicant it is argued that the facilities that will be provided as a result of the construction of the substation will have the effect of increasing public access to the common, particularly during the winter.
20. I have seen no evidence of any effect the proposed works might have on architectural remains or features of historic interest.
21. Again it is difficult to balance the advantages and disadvantages of the proposed works for different groups. It is accepted that the electricity substation is not a visually attractive feature and, in my view, even after screen planting matures it will still have some detrimental effect on the appearance of Haven Green. On the other hand, the ice rink and other events may well attract large numbers of people, albeit over limited periods and bring significant economic benefits to the area.

Other relevant matters

22. The application seeks consent for the proposed substation for a period of 25 years. I understand that this is linked to a lease already entered into between the council and Southern Electric for a similar period. I further understand that this lease can be determined by either party at any time after 29 September 2013. Also, as stated previously, the planning permission for the ice rink and festive market granted in October 2007 is a temporary one for a period of 3 years only.
23. The application and the notices that were published of it, describe the substation and surrounding fencing as being 3.5 metres wide and 3.8 metres long. It is accepted by the applicants that these dimensions were incorrect as a

result of an error. The actual dimensions of the substation and fencing now in place are 5.7 m. in length and 4.2 m. in width, a total area of 23.94 m². However, I do not think that the error in the application and notices has significantly misled any party or prejudiced their interests as the substation had already been constructed before representations and objections were required to be made. Nevertheless, I think it would be appropriate for a condition to be attached to any consent that is given limiting the size of the substation to its current actual size.

24. Objectors alleged that the available area of the common has been reduced in the past by works such as the widening of the carriageway to the north and the provision of a bus lay-by. Examination of earlier plans of the common would seem to confirm that this is the case. However, I can only assess the current application on its own merits and have therefore given no weight to previous losses of common land except that I have viewed the impact of the present proposals in relation to the area of common currently available.

Conclusions

25. As already stated, it is difficult in this case to balance the advantages and disadvantages of the proposed works from the point of view of different groups and therefore to come to any firm conclusion with regard to their overall effect on the interests of the neighbourhood or the public. This situation is exacerbated by the fact that there is little hard information available regarding events that will be arranged other than the ice rink and festive market which themselves only have planning permission for one further year. This being the case, and bearing in mind the terms of the lease with Southern Electric, it seems to me reasonable to suggest that consent should only be give for a relatively short period at this stage rather than the 25 years applied for.
26. A period of 5 years would seem to be appropriate. This would in my view allow sufficient time for more information to be gathered regarding the level of public use of the ice rink and market and for other events to be organised and assessed. It would also allow time for screen planting around the substation to mature and its full effect to be seen. I therefore propose to give consent for the proposed works for a limited period of 5 years.

Formal Decision

27. Accordingly, in exercise of the powers conferred by Article 12 of the Schedule to the Ministry of Housing and Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967, and of all other enabling powers, consent is hereby given to the works described, subject to the following conditions:
- i) Consent is given for the period of 5 years from the date this decision is issued. Any subsequent extension of this period to be the subject of a further application.
 - ii) The dimensions of the substation and the surrounding fencing to be limited to 5.7 m. in length and 4.2 m. in width.
28. For the purposes of identification only, the location of the works is shown in red on the attached plan.

Barney Grimshaw

INSPECTOR