

**Commons Act 2006
Application Reference Number: Com/3154071
Section 16 Application to Deregister Common Land**

**Greater London Parks and Open Spaces Order 1967
Application Reference Number: Com/3161430
Article 12 Retrospective application to retain precompleted works**

Haven Green, London Borough of Ealing

Hearing

March 15 & 16 2017

Statement by the

Friends of Haven Green

SUMMARY

**Friends of
Haven Green**



Keeping Haven Green at the Heart of Ealing

1. Haven Green is an historic area of open land in the heart of Ealing town centre. The people of Ealing have enjoyed use of it as common land since medieval times. For much of history the Green was owned by the Bishops of London and the Ecclesiastical Commissioners but it was transferred to the Ealing Local Board in 1877 'as a recreation ground for the inhabitants of Ealing'. Haven Green was designated as common land in 1968.
2. Its proximity to Ealing Broadway Station – a sub regional transport hub facing increasing passenger growth - has led to a chipping away of the common land and loss of its open space functions. This process began when the railway was built, but pressures have intensified in recent years, especially with the construction of Crossrail. The value of the green as amenity space has been eroded by the taxi shelter, road and path widening and surfacing, bus shelters and bus parking.
3. Since 2000 the London Borough of Ealing has commissioned batteries of consultants to advise on the options for managing the growth. Their reports examined the problem from a transport perspective, and none considered the protections Government legislation affords the Green as common land.
4. The current applications concern the latest initiative to manage the growth of passenger to the station. It concerns a cycle hub for cyclists to park their bikes as part of their daily commute.
5. Public responses to the 2011 planning application to install the hub alerted LBE to its duty to apply to the SoSEFRA for consent for this work as it affected common land, but these warnings went unheeded. Planning consent was granted and the work commenced. Further complaints to the Council and then the Local Government Ombudsman were dismissed. The current applications have only been made following FoHG's initiation of court proceedings.
6. This was a last resort for FoHG which strongly recognises the benefits of cycling as a healthy and sustainable means of transport. However DEFRA guidance is that when local authorities are involved, only groups like ours can enforce the 2006 Planning Act and its objective of safeguarding common land for future generations to enjoy.
7. FoHG objects to the two applications that will be the subject of the hearing. Our starting point in both applications is Paragraph 3.2 of DEFRA's Guidance which states that the consent/approval process is in place to ensure the following outcomes are achieved:
 - 'our stock of commons and greens is not diminished ...;
 - any use of the common is consistent with its status ...'.
 - works take place on common land only when they maintain or improve the condition of the common or where they confer some wider public benefit and are either temporary in duration or have no significant or lasting impact. ...;
8. We say that the cycle hub manifestly does diminish the nation's stock of common land. The structures and clutter of parked cycles detract from previous open views across the land that is typical of common land in many parts of London. The use of

the hub for commuters to park their bikes is not commensurate with the purpose of the Green and by no stretch of imagination can it be argued that the works maintain or improve the condition of the common land.

9. Turning now to each application:

10. COM/3161430: Retrospective s.38 consent for the Cycle hub and access road.

- a. Para 5.8 of DEFRA guidance explains that when s.38 consent is sought, the SoS would expect works to confer *additional* protection on common land. S.38 applications must be sympathetic to Defra's policy objectives. The cycle hub constitutes a use of the common land for commuter parking which is inconsistent with its status.
- b. Paragraph 5.13 of the guidance states that consent will not normally be granted for permanent buildings on common land because such development is incompatible with the future use of the common land. Although only the word 'buildings' is used, a QC's opinion is that it applies to all structures or erections – including bicycle stands.
- c. Para 5.16 of the guidance says infrastructure projects on common land are more likely to be successful under s.16 of the Act so that an exchange of land can be considered. 5.16 goes on to say an application under s.38 will rarely be successful unless there are convincing reasons why an application under s.16 cannot be pursued.
- d. No convincing reasons have been offered by the Council or its supporters as to why only this site could be used. Alternatives exist and a number have been proposed by LBE and its supporters. They include the car park next door, or its undercroft, the station forecourt, the basement of Villiers House and Springbrdge Road carpark. The best option would be within Ealing Broadway Station itself. LBE appears to discount all these alternatives on cost grounds but they ignore Schedule 7 of the Crossrail Act which gives planning authorities powers to require Crossrail to modify its plans where they adversely impacted on local amenity or traffic flow as is clearly the case here. Despite requests, LBE chose not to use these powers.
- e. FoHG believes that for all these reasons COM/3161430 should therefore be REFUSED.

11. COM/3154071: Application under S16 of the Commons Act 2006 to deregister as common land the cycle hub.

- a. DEFRA's Guidance is very clear that the total stock of common land should not be diminished so that an application to deregister common land should offer appropriate replacement land. If the area to be deregistered exceeds 200m², an application must include an offer of replacement land. Even where the area is less than 200m², paragraph 5.2 of the Guidance says the SoSefra normally expects exchange land to be offered.

- b. Various suggestions of the precise area of the land that would be deregistered have been made, and the correct figure is unclear. Even if we accept the Council's view that the land is below DEFRA's 200m² threshold, at 179m² or 188m² or the 191m² suggested by Ealing Cycling Campaign, it is only just so. We say that DEFRA's guidance is national guidance and covers all types of common land, including relatively large areas in rural locations. Haven Green is a small area of common in the heart of a densely developed part of the capital. The value of this Common land to existing and future communities as amenity space for recreation and access is clearly far greater than it would be in more rural locations. This needs to be reflected in the protection it enjoys. It should not be considered for deregistration without an exchange being offered.
 - c. But In this case, anyway, there is undeveloped land – the BBC car park – adjacent to the common which could be offered as an exchange. Whether or not this would be of equal advantage is debatable, but the fact is LBE has not even proposed it and given no serious reason why it should not do so.
 - d. In short, the installation of the cycle hub is not sympathetic to Defra's policy objectives for common land, no replacement land is being offered for them and the Council has made little effort in its application to claim there are exceptional reasons why the hub must be on common land in this prominent location. For all these reasons we say COM/3154071 should also be REFUSED.
12. We end with a final point about the drawn out process leading up to this hearing – a process that dates back to 2011. These applications were made only in response to court proceedings that FoHG initiated against the Council. Getting here has entailed huge expenditure in cost and time both for FoHG and the Council. Approval of either application now would endorse this way of working and deter groups like us in future from taking on the role DEFRA's guidance gives them. It would carry significance not just for Haven Green but for common land elsewhere in Ealing and, indeed, anywhere in London facing similar pressures for land. Consent for the hub will encourage Councils to disregard established procedures and expropriate any other common land in their ownership. They would expect, if ever called to justify their behaviour, to be able to declare they acted in the public good. Local authorities would start to feel themselves as the sole arbiters on how our commons are managed. They will undermine the very basis of Commons legislation.