

Placing a small tool shed in the Community Orchard

CCC Position as given in correspondence	FoMC Position
Background	
<p>The City Council commissioned the Wildlife Trust to prepare a Management Plan for Midsummer Common. One of its objectives is to create a Community Orchard in a self-contained part of the Common.</p> <p>The City Council as landowner would need to give permission to erect and maintain the shed and base.</p>	<p>Friends of Midsummer Common agreed to take on this task and set out a programme (see http://midsummercommon.org.uk/papers/Orchard.pdf) which was submitted to the West/Central Area Committee and was approved by Councillors and Officers.</p> <p>FoMC now want to put a small shed on the site in which to store the necessary tools and equipment in compliance with the CCF funding grant. Councillors were happy to approve the proposal at their Area Committee meeting in October 2010 (see http://www.cambridge.gov.uk/democracy/ieListDocuments.aspx?CId=117&MIId=384&Ver=4).</p>
Rights of access for workers	
<p>Currently, the proposed Memorandum of Understanding with regard to the Community Orchard has not been completed.</p>	<p>Under section 193 of the Law of Property Act 1925 the public shall have "rights of access for air and exercise" to any common land within the City "provided that (a) such rights of access shall be subject to any ... byelaw".</p> <p>Under the <i>Cambridge City byelaws as to Commons dated 23rd October 1851</i> "every person not lawfully authorised or permitted so to do, who shall dig or plough up any such Common Pasture, or any part thereof" shall commit an offence.</p> <p>FoMC convened a group of public volunteers to carry out the Orchard work and asked the City Council for a formal letter of authorisation to do work on the Common and submitted a draft to Debbie Kaye and the Head of Legal in September 2009. The West/Central Area Committee decided that the necessary permission should be granted before the end of November 2009. Over a year has since elapsed and FoMC is still waiting for this written permission.</p>
The shed	
<p>You have asked for permission to erect an Asgard Annexe metal shed at the Community Orchard on Midsummer Common. The shed is described as a "secure and vandal proof shed". According to the information provided the shed is constructed from weather proof steel with vented roof, integral metal floor and a tough 3 point locking system. The shed height is 1.44/1.34; width 1.83m; depth 0.92m, weight 138kg.</p>	<p>The Council's grant to create the Community Orchard was conditional on the tools and equipment being securely stored. Extensive searches for suitable sheds meeting LPS 1175 Security Rating 1 found only the Asgard Annexe shed.</p>

<p>Although the information supplied does not say so, the following note appears on supplier's information "Please note that before installation can take place, a level, firm, surface will be required. You may have this available (eg. concrete, tarmac, patio) but if not, lay concrete or slabs (50mm/2" thick) before installation. The base must be solid, completely flat and secure. Minimum base dimensions required 1990mm x 1100mm.</p>	<p>FoMC takes the view that the shed is effectively a moveable metal box which only needs to be mounted on a level surface. There is no requirement to have a concrete base. The Council has already provided FoMC with wood shuttering for ground surface levelling.</p>
Rights to carry out works on common land	
<p>Under the Commons Act 2006, the consent of the Secretary of State is required before the following works can be carried out on land registered as common:</p> <ol style="list-style-type: none"> 1. Works that prevent or impede access to or over the land, including: <ul style="list-style-type: none"> • erection of fencing • construction of buildings and other structures • digging ditches and trenches and • building embankments 2. Works for resurfacing the land. Resurfacing consists of laying concrete, tarmac, roadstone, or similar material on the land. 	<p>Under section 9 of the <i>Countryside Act 1969</i> local authorities can do things in the "interests of persons resorting to the common land for open-air recreation". They can provide "facilities and services for the enjoyment or convenience of the public" and they can "erect buildings and carry out works".</p> <p>Part 3 of the <i>Commons Act 2006</i> (which replaces and repeals section 194 of <i>The Law of Property Act 1925</i>) contains provision to prohibit the carrying out of restricted works on certain common land without the consent of the appropriate national authority and makes provision about how consent may be obtained.</p>
<p>Whether such works prevent or impede access will be a question of fact in each case.</p> <p>There are some exceptions to the prohibition on works including</p> <ul style="list-style-type: none"> • works that are carried out under a statute that applies (generally) to common land (for example section 82 of the Highways Act 1980 allows for cattle grids to be installed where common land abuts a road) and • works on any land where those works, or works of a description which includes those works, are carried out under a power conferred in relation to that particular land by or under any enactment; <p>Your note refers to the powers that Cambridge City Council has pursuant to the Cambridge City Council Ac 1985. Section 3 (1) (a) gives the City Council power to set apart such parts of any public open space or common within the city as they think fit for the purpose of games and recreation and for purposes ancillary thereto and adapt the same for those purposes. For or in connection with any of those purposes the Council can erect and maintain pavilions, buildings, works or conveniences.</p>	<p>Under section 38</p> <p>(1) A person may not, except with the consent of the appropriate national authority, carry out any restricted works on land to which this section applies.</p> <p>(2) In subsection (1) "restricted works" are-</p> <p>(a) works which have the effect of preventing or impeding access to or over any land to which this section applies;</p> <p>(b) works for the resurfacing of land.</p> <p>(3) The reference to works in subsection (2)(a) includes in particular-</p> <p>(a) the erection of fencing;</p> <p>(b) the construction of buildings and other structures;</p> <p>(c) the digging of ditches and trenches and the building of embankments.</p> <p>(6) The prohibition in subsection (1) does not apply to-</p> <p>(a) works on any land where those works, or works of a description which includes those works, are carried out under a power conferred in relation to that particular land by or under any enactment;</p> <p>(b) works on any land where the works are carried out under a power conferred by or under any enactment applying to common land;</p>
<p>In the view of our legal section this power would not exempt the proposed shed and foundations from the requirement for Consent under section 38 of the Commons Act.</p>	<p>The Planning Inspectorate's Common Land Guidance Sheet 1a states that "Under section 38 of the <i>Commons Act 2006</i>, you need our consent to carry out any restricted works on land registered as common land under the <i>Commons Registration</i></p>

<p>It should be noted that the shed would be erected by and belong to FoMC and would not be for the use of the public. The shed would be used for the storage of FoMC tools and equipment.</p>	<p><i>Act 1965</i>. ... Restricted works are any that prevent or impede access to or over the land. They include fencing, buildings, structures, ditches, trenches, embankments and other works, where the effect of those works is to prevent or impede access. They also include, in every case, new solid surfaces, such as for a new car park or access road. Guidance sheet 1b goes on to itemise "Works and Processes that do not need consent because they are:</p>
<p>The Works on Common Land (Procedure) (England) Regulations 2007 prescribe the procedure in England for applications to be made to the Secretary of State under section 38 of the Commons Act 2006.</p>	<p>(a) Works that are so small that they do not impede access (b) Works that do not constitute a new impediment to access (c) Works that facilitate access (d) Processes (rather than works) that do not need consent."</p>
<p>When considering whether to grant the application section 39 (1) of the Act requires the Secretary of State to have regard to:</p> <ul style="list-style-type: none"> • the interests of those who have rights over the land (particularly rights of common) and anyone who occupies the land; • the interests of the neighbourhood • the public interest • the protection of public rights of access to any area of land • the protection of archaeological remains and features of historic interest. 	<p>Paragraph 189 of the Explanatory Notes to the Act draws attention to certain automatic exemptions to the prohibition on restricted works. These include, in <i>subsection (6)(a)</i>, an exemption for particular works, or works of a description, which are carried out under a power conferred by or under an enactment in relation to a particular area of common land (for example, some local Acts establish a board of conservators for a common and give it power to carry out certain types of improvement works on the land for which it is established). <i>Subsection (6)(b)</i> exempts works of a description which are carried out under a power conferred by or under an enactment in relation to common land generally (for example, section 82 of the Highways Act 1980 authorises the installation of cattle grids on an area of common land adjoining a road).</p>
<p>Defra has published guidance on applications for consent for works on common land. Not every application for consent to works consistent with the use of the common land will be granted as each application will be considered on its merits.</p>	<p>Under the section 19 of the <i>Cambridge University and Corporation Act 1894</i> the Council has powers to "improve the Commons or some of them so far as may be necessary or desirable for the purposes of health recreation and enjoyment" and to "plant trees and shrubs for purposes of shelter or ornament and fell cut lop and manage the same and any other trees plants and shrubs on the Commons and make and maintain so long as shall be necessary temporary enclosures for the protection of trees shrubs and turf".</p>
	<p>Under section 3 of the more recent <i>Cambridge City Council Act 1985</i>, the Council's powers are extended. They may:</p> <ul style="list-style-type: none"> • set apart such parts of any public open space or Common within the city as they think fit for the purpose of games and recreation and for purposes ancillary thereto and lay out and adapt the same for those purposes; • erect and maintain on any such public open space or Common pavilions, buildings, works and conveniences for or in connection with any of the aforesaid purposes; <p>The statute does not require any person to consent to the works.</p>

	<p>FoMC takes the view that the proposed shed would not impede access to the Common so section 38(1) of the <i>Countryside Act 2006</i> does not apply and the Secretary of State's permission is not needed. FoMC consulted the Common Land Team at the Planning Inspectorate who saw no need to seek the Secretary of State's permission for the work as described and took the view that the Local Authority was being "heavy handed".</p>
Planning Application	
<p>In addition to consent under the Commons Act, the proposed shed would need planning permission.</p> <p>In your briefing note you have quoted Regulations relating to permitted development in support of their view that the shed would not need planning permission. However, this permitted development only relates to development within the curtilage of a dwelling house and so would not apply here (see the Town and Country Planning (General Permitted Development) Order 1995, as amended). The text quoted by FoMC appears to be from the Planning Portal.</p> <p>There is a note at the bottom of the Planning Portal information (not quoted by FoMC) as follows "Please note: the permitted development allowances described here apply to houses not flats, maisonettes or other buildings".</p>	<p>The orchard site is both common land and within a conservation area. It would be wrong to do anything there that other land owners in a conservation area would not be allowed to do.</p> <p>Conservation area. Under Regulations that came into effect on 1 October 2008 sheds of the size proposed are considered to be permitted development, not needing planning permission.</p> <p>Common land. The Planning Inspectorate makes it clear that planning permission is not needed for small works on common land that fall outside section 38 of the <i>Countryside Act 2006</i> - Annex B in Guidance (see http://www.planning-inspectorate.gov.uk/pins/common_land/guidance/docs/guidance_sheet_1a_procedure_1_issues.pdf).</p> <p>FoMC contacted the shed manufacturers and they claim that the shed is not a permanent fixture and so does not require planning permission. FoMC consulted the Common Land Team at the Planning Inspectorate who saw no need for a planning application.</p>
Building regulations	
<p>Sheds can be subject to Building Regulations and I will ask Building Control for advice.</p>	<p>It is FoMC's understanding that small sheds are not subject to Building Regulations.</p>
Granting permission	
<p>As the shed would be on a solid base and erected by FoMC or by Berkeley Homes at the request of FoMC and would be specifically owned by and for the use of FoMC formal permission would be needed from the City Council.</p> <p>This could take the form of a licence on terms acceptable to the Council. These would include:</p> <ul style="list-style-type: none"> rights for the Council to require the FoMC to relocate the shed to a different 	<p>The Council has been quite insistent that the trees, tools and equipment bought from a Council grant belong to the Council. The same would apply to the shed.</p>

<p>location at any time for any reason</p> <ul style="list-style-type: none"> • rights for the Council to terminate at any time for any reason • obligations on the part of FoMC with regard to use, maintenance, repair and insurance of the shed and stored equipment • obligations by FoMC to remove the shed and reinstate the land at the end of the licence period and rights for the Council to remove the shed, reinstate the land and recharge the cost of doing so to the FoMC in the event that the FoMC failed to meet its obligations. <p>The grant of a licence is within the delegated powers of the Director of Community Services, to manage commons, parks, open spaces and amenity areas, including granting and refusing applications for the use of those areas. It may be, however that the Director would want this to be an Executive Member decision, in which case the decision would be made by the Executive Councillor for Arts and Recreation at Community Services Scrutiny Committee.</p>	
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