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By Liv Rickman at 12:49 pm, Jun 26, 2023

Lemon Hall,
Church Street,
Hugh Town
TR21-0JT

25 June 2023

Dear Planning Department,

P/23/036/COU – Holgate's Green, Change of Use

(resubmission of P/22/056/COU)

This is an objection to the application above which contravenes the local plan and greatly damages the recreational use and amenity of Holgate's Green.

There are no substantive **planning** changes in the resubmitted application or the local plan and so this application should be rejected.

The planning process is not a pantomime. Resubmitting an application that was refused should not result in the planning rules being suspended for the summer or a presumption of future acceptance. Instead, the planning department should enforce the decision of P/22/056/COU, and work with the applicant to find a suitable site for their operations.

Many of the planning issues from P/22/056/COU remain open. These are summarised below and there is more detail in the pages that follow.

(A) The Local Plan gives statutory protection to Holgate's Green from non-recreational development (including change of use)

All parts of Holgate's Green are protected as a designated recreational site in the Local Plan. Policy SS4(3) is intended to give designated recreational sites protection from development. It says development that prejudices the use of recreational sites 'will not be permitted.'

This planning application meets the definition of development under the Town and Country Planning Act.

The proposal to trade, park and operate a portable generator and food outlet on Holgate's Green, regularly in the evenings would prejudice the use of a significant portion of Holgate's green in favour of the commercial activities of a small number of street vendors and against the wider public's recreational use of the Green on a permanent basis.

(B) Under the Local Plan, Holgate's Green is not suitable for commercial activities, including mobile food outlets operating from vehicles:

The proposed activities contravene the local plan's spatial policies, as Holgate's Green is not a commercial site.

The proposal to operate mobile food outlets on the green will negatively impact the amenity of the public green and surrounding houses to an unacceptable extent. There are significant pedestrian and highway safety issues with the proposal and a large portion of the green would be affected by vehicle movements. This means that the change of use should not be supported under local plan policy SS4 (1)

(C) The form of this application is unusual as it is made by an individual seeking change of use for a public space owned and maintained by the council for public benefit:

It is not clear how the council can grant change of use permission to an individual in respect of a public green, and how the council would enforce any planning conditions (eg highway safety alterations) on the applicant.

(D) The application lacks detail on what change of use planning consent is being applied for, the impact this would have on Holgate's Green and what measures they would take to mitigate the risk of further commercial activity and development.

The application lacks detail on the extent and impact of the change of use being applied for. There is no information on:

- Whether or how the land designation code of Holgate's Green would change. (Does it remain F2 – Local Community, or become a commercial site?)
- Whether or how Holgate's Green's status as a designated recreational site would be affected.
- Whether the change of use applies to all parts of Holgate's Green or just a part of it and how that part is bounded.
- Whether additional or subsequent street traders would need to apply for separate planning permission, or whether the permission extended to the individual applicant would be granted more broadly.
- Whether the change could give the council (or the applicant) rights to install utilities, hard-standing, lighting etc on the Green once Street Trading becomes an approved activity. This application should not be permitted if it opens the door to further commercial activities on site, and there should be safeguards against this.

Without this information, the scope and impact of this application cannot be assessed. The planning process is open to interpretation and blind assumptions at every stage. These should all have been addressed in the current application

(E) Conditions are needed to improve safety:

This proposal creates conditions which are outside of the Council's street trading policy. The pool of standard conditions applied to street traders would need to be widened to ensure the proposed operations are safe. Ahead of any change of use permission becoming effective, the council should add enforceable trading conditions around the safe use of the generators in public (earthing, refueling, ventilation, training etc.), and the safe use of vehicles (in general) on the public green.

(F) The council is conflicted and not in a position to determine this application fairly.

It is well known that the council is experiencing pressure to find additional locations for mobile food outlets so that it can redevelop the town hall site where two street food outlets currently operate.

Last year the licensing committee (15 members) informally allocated Holgate's Green for the purpose of street trading, added it as an approved site to the policy and received a quotation for the installion of grid protection for the grass, in contravention of the local plan and without public consultation.

The licensing committee granted temporary trading rights to the applicant to operate on Holgate's Green, which were approved ahead of the planning application being considered. This indicates that the council sees the outcome of the planning application as a fait-accompli and that the application process is merely a rubber-stamp exercise.

At a special licensing committee meeting in May 2023, council members received a report recommending that the applicant's street trading license be refused. It said:

> *'it is the view of this officer that this application is not permissible under the [street trading] policy and there is no record explaining why a consent was granted in the previous year which would change this recommendation'*

The applicant has threatened legal action against the council, and at the meeting the members granted the applicant a new street trading licence instead of refusing it.

Following this, the council has permitted the applicant to trade on Holgates Green despite the prior refusal of planning permission.

Given the above, it is my view that the Council is not in a position to give this planning application a fair hearing and reach determination without prejudice. It should therefore pass it to another authority so that the planning process can be used as intended.

For the reasons summarised above and detailed on the following pages, this application should not be approved.

Public Green Spaces are often owned and maintained by the council by default, where the council has a role of guardianship over the space on behalf of the general public. Holgate's green is not owned by the council to carry out its own agenda.

In this spirit, the Council should consult with residents and visitors on whether they want to see commercial activities being introduced on Holgate's Green. If this consultation shows a high level of public support, then site adaptations can be put in place to meet the needs of traders and ensure public safety. There could then follow a transparent and fair site allocation process for all street traders interested in operating there.

On the other hand, if the public consultation reveals that there is not a high level of support for this change on Holgate's Green then the Council could use its powers to ensure that the amenity of the green is protected and enhanced.

The applicants have obviously put effort, thought and money into a smart trailer and I wish them well in finding suitable sites for their venture to thrive, but it should not be on Holgate's Green.

Yours faithfully,

Peter Huxley

A: The Local Plan gives statutory protection to Holgate's Green from non-recreational development

A1 All parts of Holgate's Green are designated as a Rècreation site, and so benefit from statutory protection under Policy SS4(3) which states

> ***'Development that will [..] prejudice the use of a recreational [..] facility, as defined on the Policies Map […] will not be permitted unless it can be clearly demonstrated that there is no longer a need for the facility […]***.

A2 The existence of this planning application shows that the proposed change of use is material and so meets the statutory definition of development (Town and Country Planning Act 1990 sect 55).

A3 The general public currently enjoy unfettered access to all parts of Holgate's Green for recreation. The proposal to allow commercial vehicles to trade on a recreational site on a frequent, regular and permanent basis prejudices the use of Holgate's Green as a public recreational site.

Granting this change-of-use permission would give priority to a different class of user (those operating private commercial businesses) over the general public and is therefore prejudicial.

A4 Examples of how the proposal would prejudice the recreational use of the site include:

i. The operations proposed (including vehicle access) prevents the public from using around a third of Holgate's Green. The proposed trading hours will mean that the use of a large portion of the green will be favourably given to commercial users to the detriment of recreational users. This includes interrupting recreational activities and requiring people to move in order to accommodate the commercial vehicles.

ii. Allowing daily private commercial activity on Holgate's Green will interfere with the community's ability to organise events on Holgate's Green. These frequently make use of the whole of Holgate's Green, not just during Gig Week but on numerous occasions throughout the year. Once a private business enjoys daily rights to trade on Holgate's Green, we must assume that the ongoing permission to trade and park their vehicles will take precedence over ad-hoc community events which need to apply for temporary use of the green. This preferential treatment is prejudicial against the use of Holgate's Green as recreational site for community events.

A5 All areas of Holgate's Green are in regular use. The tables and benches are often all filled up. There are regular community events It cannot be clearly demonstrated that there is no longer a public or community need for any part of the site, which is a necessary condition for change of used under Policy SS4 (3).

A6 The intention of policy SS4 (3) is to provide a greater degree of statutory planning protection to designated recreational sites such as Holgate's Green, as compared with other sites that are not designated recreational sites. The council cannot wilfully ignore the policy by granting permissions that contravene it.

A7 The policy also states other conditions that must be met before the development of a designated recreation site could be permitted, such as sourcing an accessible replacement site of equivalent standard. There is no information in the application on how the applicant or the council would achieve this.

A8 The planning authority should uphold the Local Plan and should refuse this change of use application as it clearly violates Policy SS4 (3).

B: Under the Local Plan, Holgate's Green is not suitable for commercial activities, including mobile food outlets operating from vehicles

B1 This section describes the general unsuitability of Holgate's Green for the proposed change of use for mobile food outlets and the reasons why it should not be supported under policy SS4(1)

B2 The proposal is not appropriately located in accordance with the local plan land use policies and therefore should not be supported under Policy SS4 (1)

i) The local plan policies designate Holgate's Green as a recreational space not commercial space, and therefore the proposal is not appropriately located under the local plan.

ii) Holgate's Green is not inside the retail protection zone, where the local plan polices may fall in favour of commercial use applications such as this. This means that favour should be given to the current beneficiaries of the site – public recreational users.

iii) The local plan has policies to protect the commercial viability of fixed premises, which have much higher year-round overheads than mobile units, including business rates. Permitting mobile vendors to trade on Holgate's Green, with the much less expensive overheads, may make it uneconomic to run businesses like The Bakery Shop Kitchen, Lower Strand. Hugh Town already has too many vacant commercial premises and approving this application may lead to more.

B3 The proposal harms the amenities of the surrounding areas and therefore should not be supported under Policy SS4 (1)

i) It sets a precedent that commercial vehicles should regularly be allowed on the green (which is not a highway) on a permanent basis, turning what is currently a safe public recreational facility with no regular traffic, into one, where large vehicles are regularly moving. This harms the amenity of the Green and means there is less space for children to play, see diagram in B8.

ii) The standalone generator on Holgate's Green is noisy. It causes intrusive noise to nearby properties, the beach area and around half of the green. In the evening, the generator is clearly audible across the whole green and out on moorings in the harbour. This ongoing and constant noise is harmful for the amenity of the sea front area along with Holgate's Green.

iii) Nearby residential properties, (which are not correctly marked on the planning applicant's site map) will suffer a significant loss of residential amenity due to the noise of the generator.

iv) The proposal uses much more of Holgate's Green than first meets the eye. In addition to the 'dead-zone' between the trailer and the West side of Holgate's Green, the proposal requires the tables and benches to be cleared from a significant portion of Holgate's Green (see B8). This includes a large area required for the vehicle and trailer to access the proposed trading site, which requires a large turning circle. This significantly impacts the area available for recreation, resulting in the picnic tables being bunched-up (see B7).

v) The area of Holgate's Green which is proposed to be reserved for street vendors is the most sheltered part of the green, where users would choose to sit to escape the wind.

Photo showing how closely the land rover with generator is sited to residential windows.

B4 The proposal does not maintain pedestrian and highway safety and therefore should not be supported under Policy SS4 (1)

Vehicular access to the trading site is unsafe, being over a curb, across a pavement that has high footfall and in a circle across the main part of the green. It must cross a bus stop where many pedestrians congregate, and busses and taxis often wait, particularly in the middle of the day and afternoon. The Lower Strand is designated as unsuitable for street trading in the street trading policy, which is an indicator that it is a busy and congested part of Hugh Town with large numbers of pedestrians.

B5 For occasional community events, it is possible to clear the Green of the public during the setup of the site involving vehicles with the right safety procedures. Signs are put up, along with other safety cordons. This is not possible to do multiple times each day for the mobile food unit. As a consequence, the proposal would require commercial vehicles to manoeuvre while the public are using Holgate's Green, which creates far greater risk and inconvenience.

B5 There is inadequate access from the highway and the current approach is not suitable.

i) To ensure access, the operator would need to place road cones on the highway. This results in loss of a public parking spaces or bus stop space (depending on time of day). Placing road cones on the highway is not an appropriate solution, and indicates that some highway adaptations are needed.

ii) Traffic builds up while the driver stops to approach the site. On the occasion I watched, a cyclist wove through the waiting traffic (right). It is an unsafe arrangement on the highway, especially for a manoeuvre that is expected to take place daily and sometimes in the dark (there are no streetlights).

B6
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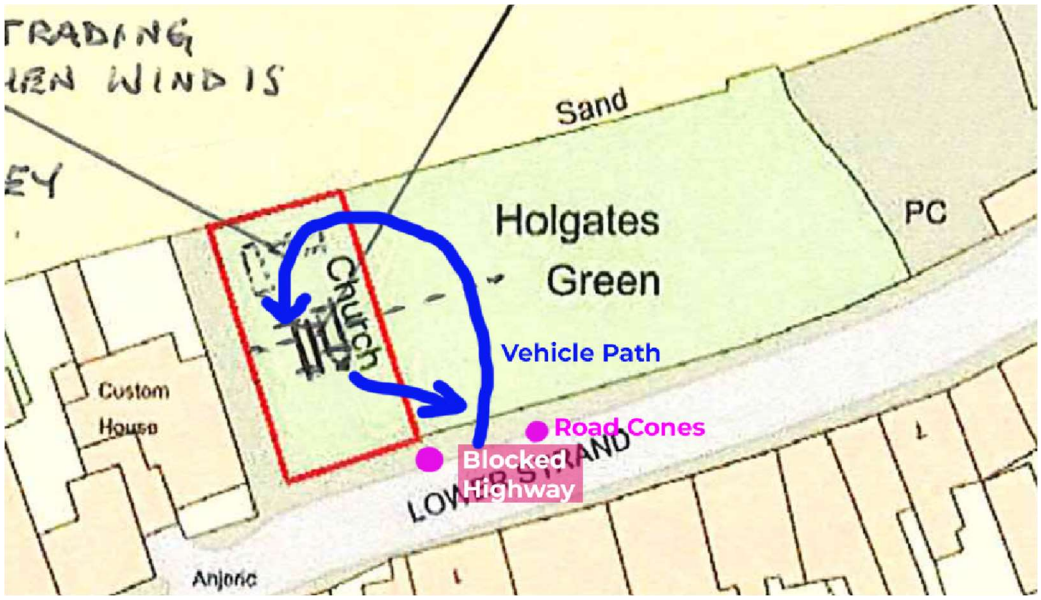
(left – the land rover and trailer block highway in both directions while driver places wood by kerb.)
(right - cyclist weaves through backed up traffic)

B7 Once on the green, the vehicle does a wide pass to reach its trading location, which is both a hazard and annoyance for the public who are using benches and tables for recreational purposes.

The enlarged section shows how close the vehicle and trailer must pass to public users of Holgate's Green (here, someone using a mobility vehicle).

B8

The vehicle and trailer have a large turning circle, so drive over a substantial portion of Holgate's Green to the East of trading site indicated on their application. This impacts the public safety and amenity in these areas.



Vehicle path diagram showing how the vehicle manoeuvres into position, which requires a significant portion of Holgate's Green outside of the proposed trading site; the position of the applicant's road cones and the area of highway that is blocked while the ramps are positioned or removed.

B9 In summary, Holgate's Green is not suitable for frequent commercial activities, including mobile food outlets operating from vehicles. The planning application contravenes the policies set out in the local Plan SS4(1) so cannot be supported.

C - The form of this application is unusual as it is made by an individual seeking change of use for a public space owned by the council.

C1 The application is unusual because it relates to change of use of a public green owned and operated by the council and yet has been made by a member of the public.

By contrast, the recent change of use application for the town hall was made with the Council as the applicant.

It is not clear how the council can grant change of use permission to an individual in respect of a public green, and how the council would enforce any planning conditions (eg highway safety alterations).

C2 There is no information on whether additional or subsequent trading operators need to apply for their own change of use application for Holgates Green, or which aspects of this permission would be generally carried forwards for other commercial operators.

Individual planning permission applications are not intended to be a mechanism for changing the designated purpose of public land. This application should be rejected until there has been a public consultation on the future of Holgate's Green

D - The application lacks detail on what change of use planning consent is being applied for and impact that would have on Holgate's Green.

D1 The application lacks detail on what change of use planning consent is being applied for and impact that would have on Holgate's Green

D2 The description of the application is vague and unclear (not at the fault of the applicant))

' *We apply for a change of use of land for the siting of a mobile hot food takeaway unit*'

There is no information on:

- Whether or how the land designation code of Holgate's Green would change
- Whether or how Holgate's Green's status as a designated recreational site would be affected
- Whether the change of use applies to all parts of Holgate's Green site or just to some part of it, and how that part is bounded.
- Whether additional or subsequent street traders would need to apply for separate planning permission, or whether the permission extended to the individual applicant would be granted more broadly.
- Whether the change could give the council rights to install utilities, hard-standing, lighting etc on the Green once Street Trading becomes an approved activity.

Without this information, the scope and impact of this application cannot be assessed, and the planning process is open to different interpretation and blind assumptions at every stage.

The implications of this planning application being granted permission are potentially much wider than just this one use case, so planning permission cannot be granted without clarification on the status and future of Holgate's Green.

E– The Council's Street Trading Conditions should be widened to resolve Safety issues

E1 This proposal creates conditions outside of the Council's street trading policy, which is designed primarily for trading on the highway and without separate portable generators.

The pool of Standard Conditions set out in Appendix A of the Street Licence policy are insufficient to ensure the safety of this planning application's proposed operations on Holgate's Green.

Below are some additional conditions that should apply in this instance if the change of use is approved. These are operational conditions, but planning permission for change of use should not be granted if the applicant cannot demonstrate that they can meet these conditions.

E2 **Safety of Generator**

To comply with the trading policy (which does not permit standalone generators), the applicant has made custom modifications to a vintage land rover to house a portable generator.

Operating a portable generator in an enclosed space (such as the back of a land rover) is against the manufacturer's operating instructions. Portable generators must only be run in the open air (not enclosed) and situated away from the doors and windows of occupied spaces. This is because they emit very large quantities of carbon monoxide and because they present a potential

fire risk. Carbon monoxide is an invisible odourless gas that is highly toxic and flammable. By running the generator when enclosed in the land rover and with only the rear tailgate open there is a risk that concentrations of carbon monoxide builds up in the vehicle, which could be dangerous for the public nearby, for staff on site and for the applicant when driving the vehicle home.

During the temporary licence operations, there were no hazard signs, the generator was not fenced off. In the event of permission being granted, there would need to be planning conditions requiring constant attendance and signage.

A metal spike is being used to ground the generator, but this is not being driven very far into the ground. The HSE guidelines say that a true ground metal rod must be driven into the ground by at least 1 metre. This clearly is not the case and a better way should be found to ground the vehicle to ensure electrical safety that does not damage the Green.

The council should ensure that conditions are in place to ensure the operations are safe (refueling, transporting hot generator etc)

E3 **Rules for driving on Holgate's Green should ensure it is safer than the highway.**

Before allowing regular vehicle use on council land, the council should make sure there is clarity over which highway rules will apply on the Green and which rules will not. Many of the rules exist to ensure pedestrian and highway safety. It is important that the Green does not become less safe than the highway.

By way of example, the street trading policy prohibits the unhitching of a trailer on the Highway, and yet it seems the unhitching of the trailer is to be permitted on the Green. This shows that the council will not expect the same rules of the highway to apply for vehicles on the Green.

The safe use of vehicle on the green needs specific conditions to ensure the safety of pedestrians is given priority over the commercial activity.

F : The council is not in a position to determine this application fairly and should pass it to another authority to be determined

F1 It is well known on St Mary's that the council is under pressure to find new locations for mobile food outlets to trade in order that the town hall site can be redeveloped, including the outdoor area adjacent to the town hall that currently accommodates two mobile food outlets. Therefore the council is predisposed to approve this change of use application as it would set a precedent that would allow those street traders to be relocated to Holgate's Green and allow them to progress with their own plans at the town hall.

F2 **Holgate's Green (West) was added to the Street Trading policy as an Approved Site, but this did not follow process**

The licensing commitee (consisting 15 council members) determined that Holgates Green is a suitable site for street trading at private workshops on 8th and 9th August 2021 as shown in the meeting papers 27 January 2022 (the most recent meeting)

Extract from Licensing Committee working papers 27 January 2022:

Open Space Sites

20. Discussion was held during the workshops regarding suitable open spaces where street traders could operate safely. The following areas to be considered by members for inclusion within the policy;

Holgate's Green (west) Scillonian Club end	Workshop – Agreed in principle
Parade Park	Workshop – Agreed in principle
Wesleyan Chapel (forecourt)	Workshop – mixed views
Higher Strand pavement	Workshop – Agreed in principle

In the same working papers, the Licencing Committee was presented with a quote for installing a grid type product to protect the grassy areas of potential green open space sites that were identified. Of the four sites, only two sites are grassy (Holgate's Green and Parade Park). Parade Park has no vehicular access, and so would be unlikely to need a grid type product to protect it.

The only site which is grassy, and may need a grid type product to protect it is Holgates Green and this quote shows that the council has been looking at ways of allowing vehicles to access Holgates Green for street trading without following any process on a possible change of this site from recreational to commercial use.

Extract from Licensing Committee working papers 27 January 2022:

26. If the potential green open spaces trading sites identified above are protected via a grid type product, this would cost approximately £1k per location. If this was deemed necessary, then the cost will need to be absorbed within the licensing budget.

F3 At the same meeting (27 January 2022) the licensing committee resolved to put some changes into the Street Trading Policy. These changes are clearly catalogued in the papers and the committee did not resolve to add Holgate's Green as an approved trading site to the street Trading policy. Consequently, in the January 2022 street trading policy, which the licensing committee resolved to approve, the Holgates Green site does not appear as an approved site, nor is it shown on the summary of amendments that was approved at that meeting.

F4 Subsequently a Street Trading Policy has been published by the council (dated February 2022) which includes the addition of Holgate's Green as an approved consent site (additional wording highlighted blue).

Approved 'consent' streets
In 2016 the Licensing Committee approved the inclusion of Porthcressa Bank, (the grassy area and the walkway). In 2022 the Licensing Committee approved an extension to the consented streets to include The Park (Parade Park), Higher Strand pavement and Holgate's Green west (Scillonian Club end).

I do not know by what process Holgate's Green, went from a protected recreational green space, to 'agreed in principle' as a safe place for off street trading at the Licensing Committee meeting, to being added to the Street Trading policy as an Approved Consent Street in February without any public consultation and without any discussion of other relevant considerations. Being a potentially safe site does not necessarily make it suitable under planning legislation.

Irrespective of the process, the preapproval of this application under a temporary licence and the insertion of this site into the street trading policy by all 15 members of the council on the Licencing committee, would indicate that the application cannot be fairly determined by the same council members.

F5 As a further illustration of the council's support for this change of use, it has granted the applicant a temporary street trading licence which is referred to in the first paragraph of the applicant's supporting statement.

It is not clear what process was followed in granting temporary agreement, and why it should be allowed ahead of the determination of this change of use application:

i) There is no concept of 'temporary street trading licence' in the 2022 Street trading policy so it is not clear how this has been granted.
ii) The policy as not advertised online (as it should have been)
iii) The original application did not even mention Holgates Green as the trading site!

F6 The temporary licence was renewed against the advice of the Senior Licensing officer in May 2023 whose report said:

> *'it is the view of this officer that this application is not permissible under the [street trading] policy and there is no record explaining why a consent was granted in the previous year which would change this recommendation'*

The applicant has threatened legal action against the council, and at the meeting the members granted the applicant a new street trading licence instead of refusing it.

F7 I would ask that when determining this application purposes, the short period of permitted trading should be disregarded and not set any precedent for the acceptability of commercial trading on Holgates Green.

It is my firm view that in light of these matters, the Council is not in a position to determine this application fairly and should pass the application to another authority to be considered fairly and on its planning merits.