

# **Ministry of Housing and Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967**

## **Common Land Consent Application Ref. Com 3312935**

Statement of Case of the London Borough of Lambeth

19 April 2023

### **Introduction**

1. This Statement of Case sets out the case of the London Borough of Lambeth ('the Council') in its application for Ministerial consent under application reference COM 3312935.
2. The application seeks consent 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') for the erection of temporary structures and fencing in connection with the holding over the August Bank Holiday weekend 2024 on part of Clapham Common ('the Common') of a public music entertainment event to be promoted by Festival Republic ('the FR Event'). The FR Event would be open to the public over the 3 days of 24, 25 and 26 August 2024 (the Saturday/Sunday/Monday). Allowing additionally for the time taken by the set-up and the removal (or 'de-rig') of the various temporary installations, the total duration of the FR Event is 19 days.
3. This statement of case is divided into the following sections:
  - A. Summary of the application proposal and the consents regime more generally that applies to the holding of large events on the Common;
  - B. Legal and national policy framework for the making of a decision on an application made under Article 12;
  - C. Key issues arising from the application and the objections to it:
    - i. The extent of the Common taken up by the FR Event;
    - ii. Attendances, income and benefits associated with the FR Event;
    - iii. Management of the FR Event;
    - iv. Noise;
    - v. Turf/ground cover;
    - vi. Ecology and trees;
    - vii. Transport;
    - viii. Historic interest and heritage .
  - D. Conclusion.

## **A. Summary of the application and the operation of the applicable consents regimes**

4. The application seeks approval for the temporary installation of structures and fencing in connection with the holding of the FR Event, as detailed in sections 8-11 of the application form.
5. The FR Event is proposed to be held on an area of the Common, referred to here as 'the Event Site', that has come to be used by the Council over a number of years for the holding of various public events. A map (marked 'section J Plan') showing the location of the Event Site edged in red is included with the application. Large-scale music entertainment events that have been held on the Event Site over the August Bank Holiday in recent years have included South West Four Weekender/House of Common in 2019 and Festival Republic's three one day festivals (Yam Carnival, RTRN II Dance and ALT+LDN) in 2021.
6. The precise size of the Event Site in relation to the area of the Common is a matter that has been put in issue by objectors. The Council's case in this respect is summarised in section C(i) below.
7. For the FR Event, the proposed temporary structures include a music main stage, two secondary music stages, one big top style tent, concession stands, welfare and toilet facilities, back of house cabins and plant enclosures. A plan (marked 'Event Site Plan') showing the location as currently proposed of these structures within the Event Site is included with the application.
8. The proposed temporary fencing includes the erection of 1084.43 metres of 3m high solid 'Steelshield' perimeter fencing. At various locations around the perimeter for emergency exits and main entrances/exits, sections of Heras fencing are proposed which make up 525m in length. Secondary types of fencing and hoarding are proposed to be installed within the Event Site. Solid perimeter fencing is necessary for the safe management of an event of the nature and scale of the FR Event, including ensuring that the permitted daily attendances are not exceeded. In addition, an event promoter will not put on a ticketed event if people can gain much of the benefit of the event without purchasing tickets.
9. The Council is the freehold owner of the Common, including the Event Site. However, the Council does not decide on an informal or ad hoc basis to use its own land to hold public events or to allow others to do so. Rather, the principle of the use of the Common, and other open spaces within the Borough, for public events is the subject of an adopted formal policy framework that underwent public and stakeholder consultation, namely the Events Strategy 2020-2025 as adopted by the Council's Cabinet on 14 September 2020. The consultation exercise was conducted between March and May 2020. Some 604 individuals and organisations participated, with responses covering four key questions asked by the Council and other matters that participants wished to raise. The responses received were subject to detailed analysis and reported to Cabinet as part of its decision-making process.
10. The Events Strategy 2020-2025 is supported by an Events Policy 2020-2025 that provides practical and operational guidance to event organisers about the Council's requirements that need to be satisfied before permission is able to be given for the holding of public events in its parks and open spaces. The Events Policy 2020-2025, introduced in July 2020, replaced the Council's previous events guidance. It draws upon a 'best practice' template drawn up by a regional working group of the charity Parks for London and sets out a hierarchy of requirements for events of different sizes as measured by the maximum daily attendance figure.

11. As the Events Policy 2020-2025 explains, there is a detailed and comprehensive approvals regime that is applied to anyone wishing to hold a public event on the Common, including events that are organised by the Council itself.
12. The present application for Ministerial consent under Article 12 forms one of a number of different types of application relating to the holding of public events on the Common.
13. Applications for permission to hold public events on the Common (and on other public open spaces) are overseen by the Council's events service, known as EventLambeth. EventLambeth will wish to be satisfied as to the detailed arrangements for the management of an event before an event permit is able to be issued. An event permit is a written permission issued by a Council events officer to an event organiser that sets out the terms on which the Council consents to a specified event taking place. The extent of the steps that need to be gone through to obtain an event permit will depend on, essentially, the nature and scale of the proposed event.
14. Any event planned for the Common that is projected to have a daily attendance of 20,000 or more is described in the Events Policy 2020-2025 as a 'major event'. As explained in the Events Policy, major events attract the highest degree of scrutiny before they can receive an event permit from EventLambeth. In order to obtain an event permit, major events require the submission to the Council of an extensive suite of documents dealing with the detail of how the specific event will be managed. A full list of the matters required to be documented for major events is at **Appendix 1**. The information that is submitted enables an assessment to be undertaken of the safety and security of a major event and the management of the event for both event attendees and, importantly, the wider community. Arrangements (including licensable activities where relevant) for proposed major events on the Common are assessed both by the Council and by a range of external bodies through the operation of the Lambeth Event Safety Advisory Group ('SAG'). The core membership of the SAG includes officers from relevant Council services, the Metropolitan Police, the emergency services, NHS England and Transport for London ('TfL'). The SAG meets on a regular basis and as and when required. The approval of the SAG needs to be recorded as being given before an event permit is able to be issued.
15. Those events (of which the FR Event is one) that propose the carrying on of licensable activities will, in addition, require the obtaining of a premises licence from the Council as licensing authority. The premises licence will, amongst other matters, regulate the hours of operation, noise limits, public safety measures and the sale of alcohol. A premises licence has been granted covering events held on the Common between 1 June and 15 September in each of the years 2021 to 2024. This will apply to the FR Event.
16. EventLambeth will also submit applications for planning permission for the use of the Common over a period of time for the holding of public events, typically making one application for events proposed to be held in the spring and summer months, and a separate application relating to winter events.

## **B. Legal and policy framework for applications under the 1967 Act**

17. The law, and national policy in the shape of the November 2015 Common Land consents policy, that applies to applications for consent under the 1967 Act to carry out restricted works on land registered as common land is set out below.
18. The Council will wish to refer to the following Secretary of State application decisions: Hackney Marshes, 4 April 2011, COM 205; Clapham Common, 16 June 2022, COM/3293941; Streatham Common, 16 June 2022, COM/3293911; and Tooting Bec Common, 30 November 2022, COM/3263104.

19. Article 12 of the 1967 Act provides:

*12 Restriction on exercise of powers under articles 7 and 8 in relation to commons*

*(1) In the exercise of powers conferred by articles 7 and 8 the local authority shall not, without the consent of the Minister . . ., 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.*

*(2) Nothing in this article shall be deemed to require the consent of the Minister to—*

*(a) the maintaining or re-erecting by, or with the permission of, a local authority of any building or other structure erected on a common before the date of operation of this order; or*

*(b) the continuing by, or with the permission of, a local authority of any permanent enclosure of part of a common made before that date;*

*and any such building or structure, or permanent enclosure, shall be deemed to have been lawfully erected or made (as the case may be).*

*(2A) Sections 39 and 40 of the Commons Act 2006 apply in relation to an application for consent under paragraph (1) as they apply in relation to an application for consent under section 38(1) of that Act.*

*(2B) Section 41 of that Act applies in relation to the carrying out of works in contravention of paragraph (1) as it applies to works carried out in contravention of section 38(1) of that Act (and as if references to consent under that provision were to consent under paragraph (1)).*

20. By applying ss. 39 - 40 of the Commons Act 2006 ('the 2006 Act'), in determining applications made under Article 12 of the 1967 Act regard should be had to the following matters:
  - a. The interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
  - b. The interests of the neighbourhood;
  - c. The public interest; and,
  - d. Any other matters considered to be relevant.
21. Section 39(2) of the 2006 Act provides that the 'public interest' includes the public interest in:
  - a. Nature conservation;
  - b. The conservation of the landscape;

- c. The protection of public rights of access to any area of land; and
  - d. The protection of archaeological remains and features of historic interest.
22. Under s. 193 of the Law of Property Act 1925, members of the public shall have rights of access for air and exercise to any land which is a metropolitan common as defined; this applies in the current case. The rights do not include the right to draw or drive a vehicle upon the land, as defined.
23. By regulations 2 and 20 of the Works on Common Land, etc. (Procedure) (England) Regulations 2007 (“the 2007 Regulations”), regulations 5 – 17 of the 2007 Regulations apply in relation to an application under article 12 of the 1967 Act as if it were an application under s. 38(1) of the 2006 Act.
24. In determining an application for consent under s. 39, the Secretary of State will apply the *Common Land consents policy*, dated November 2015 (‘the Consents Policy’).
25. Under the heading, *Protecting Commons – our policy objectives*, the Consents Policy states as follows:
- 3.1 The 2006 Act, along with earlier legislation on common land, enables government to:*
- *safeguard commons for current and future generations to use and enjoy;*
  - *ensure that the special qualities of common land, including its open and unenclosed nature, are properly protected; and*
  - *improve the contribution of common land to enhancing biodiversity and conserving wildlife.*
- 3.2 To help us achieve our objectives, the consent process administered by the Planning Inspectorate seeks to achieve the following outcomes:*
- *our stock of common land and greens is not diminished so that any deregistration of registered land is balanced by the registration of other land of at least equal benefit;*
  - *any use of common land or green is consistent with its status (as common land or green), so that...*
  - *...works take place on common land only where 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.*
26. Paragraph 3.2 has been interpreted by the Court in *Open Spaces Society v Secretary of State for Environment, Food and Rural Affairs* [2022] EWHC 3044 as follows:
- paragraph 3.2 provides that inspectors will seek to achieve the outcome that such works take place only where*
- (i) they maintain or improve the condition of the common or*
  - (ii) they confer some wider public benefit and are either*
    - (a) temporary in duration or*
    - (b) have no significant or lasting impact (emphasis added).*
27. In respect of alternatives, the Consents Policy states as follows:
- 4.3 The Secretary of State will wish to know what alternatives have been considered to the application proposal. For example, if an application proposes the erection of temporary fencing to prevent livestock from wandering on to a road passing across a common and causing accidents, the Secretary of State may want to know whether the applicant has explored the*

*option of asking for a temporary speed limit to be introduced on the appropriate stretch of road to mitigate the risks of an accident whilst preserving the open nature of the land, or for warning signs to be introduced (e.g. warnings of cattle on road) or traffic calming applied, that would have the effect of slowing down traffic. If these options were considered and rejected, the Secretary of State may seek an explanation.*

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28. The approach to this part of the policy was dealt with in *Open Spaces Society* case. The Court held [56]:

*Therefore under the Policy applicants for consents must adduce evidence of the alternatives they have considered and, if they have rejected them, they should generally offer a proper explanation as to why they have done so. The intensity of how alternatives are explored will depend on the circumstances. These may demand a robust exploration of alternatives. In some cases, however, an inspector may depart from the Policy and decide that an applicant need not consider alternatives or explain why specific alternatives have been rejected. Consistently with principle, if an inspector takes this course, she should set out why she has departed from the paragraph 4.3 requirement for applicants for consent under the 2006 Act to do this.*

29. At paragraph [69] the following was also stated:

*It is for the applicant to produce evidence sufficient to persuade an inspector that alternatives have been properly considered and rejected. With a section 38(1) application these might include Mr Laurence's off common and replacement alternatives.*

30. The Consents Policy also states, in part, as follows:

*4.4 When an application is assessed, the following criteria will be considered:*

***The interests of persons having rights in relation to, or occupying the land (and in particular persons exercising rights of common over it)***

*- Exercise of rights — What effect will the proposals have on the ability of commoners or other rights holders to exercise their rights? What alternatives have been explored that might reduce the impact of the proposals on the exercise of commoners' rights?*

*-Rights of access — What effect will the proposals have on other rights holders, such as those with rights of access across the land?*

*-Loss or benefit — Would the proposals cause any financial loss to rights holders, and if so, do benefits to the right holders outweigh the loss or, if not, what steps have been taken to address it?*

***The interests of the neighbourhood***

*- Positive benefits — Will the proposed replacement land, or outcome intended by the proposed works, add something that will positively benefit the neighbourhood?*

*- Loss of existing use — Will the loss of the release land or the construction of the works mean that local people will be prevented from using the common or green in the way they are used to? For example, will the loss of the release land reduce the area of the cricket pitch below a*

*viable threshold, or the works interfere with a regular riding circuit (particularly if any replacement land cannot mitigate the loss)?*

*- Future use and enjoyment — Will the removal of the release land from its status as common land or green, or the construction of the works, interfere with future use and enjoyment (whether by commoners, the public or others) of the land as a whole (e.g. will fencing sterilise part of the land, rendering it practically inaccessible)? Is it likely or possible that the release land could cease to be available as a means of access between other parts of the land as a whole (e.g. the exclusion of a vehicular access way from a green would enable the owner to fence off the access way from the green on either side, or otherwise exclude access to it)?*

### **The public interest**

*4.5. The public interest is defined as including 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.*

*- Recreation and access — What effect will the proposals have on those wishing to use the common for recreation and access? Where works are intended to restrict access to part of the common, e.g. fencing, how will the public continue to have access to that part after the works are in place e.g. will the fencing include stiles, gates, where the Secretary of State will consider her duty under the Equalities Act in particular, etc? In the case of deregistration and exchange, the Secretary of State would not normally grant consent where the replacement land is already subject to some form of public access, whether that access was available by right or informally, as this would diminish the total stock of access land available to the public. In the case of any exchange, it will be assumed that the release land will cease to be available for recreation and access, unless a legally binding provision is intended to be made to assure continued use.*

*- Nature conservation — Are there potential benefits to nature conservation from carrying out the proposals? Does Natural England or any other competent person agree with the assessment of any proposed benefits? It may be appropriate to consider indirect benefits — for example, if the works will facilitate the continuation of sustainable grazing systems, which in turn deliver environmental benefits. In relation to any exchange, what will be the impact of the replacement land in relation to nature conservation compared with the release land?*

*- Impact on the landscape — What will be the impact on the landscape if the proposals proceed? Is the landscape in a specially designated area, such as a National Park or Area of Outstanding Natural Beauty? Will the impact include an adverse effect on the enjoyment of the remaining part of the common or green (e.g. if development of any release land might spoil the view or impair the conservation of wildlife on the remaining part)? What consideration has been given to minimising any impact by good design (e.g. in relation to a fencing scheme, minimising the extent of new fencing by utilising the existing boundaries of the common and avoiding the creation of sterile land between the traditional boundary and the new fence line)?*

*- Protection of archaeology — Will the proposals help protect archaeological remains and features of historic interest (particularly if there are such features on any land being deregistered)?*

*- Local heritage — How do the proposals fit into the historical context? For example, in relation to an ancient common, uniformly described in historical documentation with well-defined boundaries, what effect would they have on the local heritage?*

### **Any other matter considered to be relevant**

4.6 This criterion allows other issues to be taken into account when assessing an application. It may include looking at the wider public interest, which may arise, for example in relation to a major infrastructure project.

4.7 In assessing these considerations, the Secretary of State will take into account any matter which is relevant. She will not necessarily rely on the applicant, supporters and objectors to bring all such matters to her attention, but will also rely on experience and insight to draw appropriate conclusions. For example, she will not assume that, because no-one objects to an application, there are no adverse impacts, but will consider what impacts might arise, taking into account these criteria, and applying knowledge and experience, together with information available in representations, to make a judgement. If necessary, if there is doubt about the extent of any impact, she will consider using her powers to conduct a site visit or public inquiry, or to seek professional advice, in order to improve understanding of the merits of the application.

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### **Works on Commons under s. 38**

5.7 Commons should be maintained or improved as a result of the works being proposed on them. The Secretary of State sees section 38 as conferring additional protection on common land, rather than enabling common land to be used for purposes inconsistent with its origin, status and character. In other words, consent under section 38 should be seen as a gateway, which enables the construction of works which are sympathetic to the continuing use and enjoyment of common land, but which reinforces controls on development which are inappropriate or harmful.

### **Are the works consistent with the use and enjoyment of the land as common land?**

5.8 In deciding whether to grant consent to carry out works on common land, the Secretary of State will wish to establish whether the proposed works are consistent with the use and enjoyment of the land as common land. For example, an application for works which facilitate grazing of a common by a rights holder will be considered to be consistent with the future use of the land as common land (and will then be considered on its merits against the statutory criteria and this policy), whereas an application for works to extend a private dwelling onto common land will be considered not to be consistent with the future use of the land as common land, and will normally be refused.

### **Works relating to vehicular ways across common land**

5.9 Where it is proposed to construct or improve a vehicular way across a common, consent will be required under section 38 if the works involve the 'laying of concrete, tarmacadam, coated roadstone or similar material' (other than for the purposes of repair of the same material)<sup>15</sup>. Such an application may be consistent with the continuing use of the land as common land, even where the vehicular way is entirely for private benefit, because the construction will not in itself prevent public access, or access for commoners' animals. However, by its very nature, paving will have an impact on the enjoyment of the common, by reducing the area available for recreation and grazing, by causing harm to habitat, perhaps by affecting drainage, and by introducing an urbanising feature into what will normally be an essentially open and natural setting. The Secretary of State takes the view that, in some circumstances, a paved vehicular



way may be the only practical means of achieving access to land adjacent to the common. Where an existing unsurfaced means of access is already in use, a sympathetic paving proposal may be aesthetically preferable.

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#### **Works including means of access across fencing and other boundaries**

5.12 Where consent is sought to fencing or other boundary features (such as walls and railings), the Secretary of State will expect an application to include provision for any means of access across the structure for general public use to conform to British Standard BS 570916 (or the current standard at time of application). An applicant should justify any departure from the British Standard (e.g. to take account of local circumstances or traditional features). The Secretary of State may impose a condition in a consent requiring structures to be compliant.

#### **Works with an underlying public benefit**

5.14 Some proposed works on common land do not benefit the common but nevertheless there is a potential underlying public benefit, for example works for the generation of sustainable energy, or at a more local scale, the laying out of a cycle path to improve sustainable travel opportunities, or the installation of statutory undertakers' apparatus.

5.15 Infrastructure projects: The Secretary of State wishes to promote sustainable energy generation in an appropriate setting, but equally, her policy is to ensure that the stock of commons is not diminished, that works on common land must maintain or improve the condition of the common, and the use must be consistent with its status as common land (see Part 0 above). To balance these issues her expectation is that applications for such infrastructure projects on common land are more likely to be successful under section 16(1), so that an exchange of land is proposed and can be considered on its merits. An application for consent to such works under section 38(1) will rarely be granted unless there are convincing reasons why an application under section 16(1) cannot or ought not to be pursued. (See also the Secretary of State's policy in relation to vehicular ways across common land in paragraph 5.9 above.)

5.16 Improvements to public services: Similarly, works may be proposed in relation to common land which do not benefit the common, but confer some wider benefit on the local community, such as minor works undertaken by a statutory undertaker (e.g. a water utility) to provide or improve the public service to local residents and businesses. In such cases, our expectation is that applications for such purposes on common land are more likely to be successful under section 16(1), so that an exchange of land is proposed and can be considered on its merits. However, consent under section 38 may be appropriate where the works are of temporary duration (such as a worksite), where the works will be installed underground (such as a pipeline or pumping station), or where their physical presence would be so slight as to cause negligible impact on the land in question (such as a control booth or manhole), and the proposals ensure the full restoration of the land affected and confer a public benefit. (See also the Secretary of State's policy in relation to vehicular ways across common land in paragraph 5.9 above.)

31. The Council will make reference in its evidence to the Common land guidance sheets (particularly, 1a, 1b, 1c, 2d, 3, 4 and 6) and the Government's web-based guidance.
32. In the annex to guidance sheet 1a, it is noted that fencing and structures consistent with the use and enjoyment of the land as common land will be regarded as a best option for which a s. 38 application may be needed:

*Alteration or extension to the type of works described in (a) which is consistent with the use and enjoyment of the land as common land (or which causes negligible detriment to the common).*

*DETAIL:*

*(a) Fencing*

*Any fencing that is consistent with the use and enjoyment of the land as common land.*

*Examples might include:*

- *Boundary fencing on the common for conservation or management purposes.*
- *Fencing as part of an agricultural management scheme (e.g. livestock grazing).*
- *Animal health and welfare. Hefting and re-hefting of sheep. Public safety.*
- *Woodland management scheme.*
- *To facilitate the improvement of an SSSI.*
- *Fencing around a visitors' car park or construction compound.*

*(b) Buildings and other structures*

*Replacement/extension/construction of buildings/structures, particularly small ones, that are consistent with the use and enjoyment of the land as common land (e.g. sporting and recreational use).*

*Examples might include:*

- *Sports club facilities.*
- *Cricket nets.*
- *Canoe club platforms.*
- *Storage sheds for maintenance equipment.*
- *Greenkeepers' huts.*
- *Visitor facilities.*
- *Formation of a cricket pitch, play area/playground, golf green.*
- *Storage facilities for cricket club. Sports surfaces.*
- *Skateboard park.*
- *Small bus shelter.*
- *Landscaping schemes/enhancement works.*
- *War memorial.*

33. It is apparent from the statutory and policy materials set out above that in reaching a conclusion about the application of the factors specified in s39 Commons Act 2006, it will be necessary to consider whether the holding of the FR Event would maintain or improve the condition of the Common or confer some wider public benefit, and whether the works associated with that event would be either temporary in duration or have no significant or lasting impact.

34. Before setting out the Council's case under a number of headings that address the substance of these considerations, it is first necessary to address the preliminary matter of whether the physical extent of the Common that would be taken up by the FR Event exceeds 10% of the total area of the Common. Article 7(1) of the 1967 Act limits the extent of any open space that may be set apart or enclosed for the use of persons listening to or viewing an entertainment to one acre, or one-tenth of the open space, whichever is the greater.

### **C(i) The extent of the Common taken up by the FR Event**

35. The Event Site is 78,995.82 sq m in area.
36. Save for vehicle and pedestrian movements to and from the Event Site, the FR Event would take place wholly within the Event Site. Vehicles that are needed to service the FR Event would either enter the Event Site and then leave again or, if they need to park, including overnight, would be accommodated either within the Event Site or on the 'funfair' site, which is a hard-surfaced area on the south west of the Common that is accessible from The Avenue, without crossing the Common from the Event Site.
37. No part of the FR Event is expected to involve the temporary enclosure of any part of the Common outwith the Event Site. For the event that was held on August Bank Holiday 2021, an additional area of Heras fencing was installed outside the Event Site in order to manage queuing for COVID-19 testing. That additional queuing area will not be required in connection with the FR Event.
38. The holding of the FR Event would necessitate the temporary closure to the public of one tarmac path, which crosses the north-western corner of the Event Site, during the days when the FR Event is open to the public and for parts of the installation and 'de-rig' periods. A substitute temporary path suitable for pedestrian use would be provided that follows a similar route to the closed path, enabling pedestrians to continue to walk via pathway across that part of the Common.
39. The point has been raised that events such as the FR Event cause the Event Site to be unavailable for a period of time after 'de-rig' is completed, because of damage to the ground that in turn means land needs to be taken out of public access. This is dealt with in section C(v).
40. Determining the precise spatial extent of the Common is complex and involves an element of judgement. The original map defining the area of the Common dates from 1877. Since then, some areas have been lost to development or to road building and some areas outside the bounds of the Common as per the 1877 map have since been incorporated into the Common. No map is available to support the entry on the Register of Common Land dating from 1968, when the Common was in the ownership of the Greater London Council. It is noted that the Friends of Clapham Common ('the Friends') rely, inter alia, on the area figure for the Common provided by DEFRA. The Council will address the detail of the DEFRA figure in its evidence.
41. In November 2022 the Council reviewed the question of the extent of the Common that can be considered to be available for public events applying the 10% provision. The detail of the mapping exercise that was undertaken will be addressed in evidence but, in summary, the Council's position is:

- a. The area shown as Clapham Common in the 1877 map amounts to 847,019.38 sqm. However, this area included Trinity Churchyard, Windmill Place and The Rookery, none of which are common land. Discounting these areas produces an area of 833,045.67 sq m;
  - b. It is accepted by the Council that certain further parcels of land within that 833,045.67 sq m should be discounted for the purposes of calculating the one-tenth area, as those parcels do not have public access and/or are not available for recreational use. The parcels discounted by the Council total some 42,422.89 sq m;
  - c. The 'net' result, on the Council's calculations, is an area for the Common of 790,622.78 sq m, one tenth of which would be 79,062 sq m.
42. It is acknowledged that the Friends have calculated the area of the Common in a different way to the Council, and that whilst there is acceptance in principle by both parties that certain areas, such as land given over to roads, should not be included for the purposes of working out the one tenth figure, there may be points of detailed difference between the Council and the Friends as to the precise areas to be excluded. These matters will need to be addressed in evidence.
43. It is the Council's case that the Event Site, occupying a little less than 10% of the area of the Common, leaves a very substantial amount of open space available for recreation and leisure activities of a range of types. The point raised against the Council that the management of events 'spills over' beyond the Event Site, in both spatial and temporal terms, is addressed above.
44. It is the Council's case that an event area space in the north east quadrant of the Common, which is proximate to Clapham Common underground station and through road routes, and which abuts the mixed use area of Clapham Old Town, represents the optimum location within the Common in terms of minimising the impacts of an event of the nature and scale of the FR Event.
45. Extending that analysis to other open spaces within the Borough, such as Streatham Common and Brockwell Park, other sites where an event of a comparable nature could better be accommodated are not able to be identified. This is due to factors such as the sizes of alternative open spaces, the degree of accessibility from public transport and suitable access points, the ability safely to marshal event attendees, the topography and landscape of the terrain and the proximity of supporting services and facilities. It is also necessary to consider the extent to which other sites are fully utilised. Brockwell Park, for example, which is the only park that EventLambeth considers would, realistically, be capable of accommodating an event such as the FR Event, has a full annual schedule of events including a variety of music festivals and the two-day community event, the Lambeth Country Show.

**C(ii) Attendances, income and benefits associated with the FR Event**

46. The premises licence granted by the Council for the years 2021 to 2024 that applies to the FR Event limits the number of attendees (which will include ticket holders and guests) on any one day to a maximum of 39,999 on each of Saturday and Sunday, and to a maximum of 19,999 on Bank Holiday Monday, and on any day to such lower number as may be stipulated by the SAG.

47. The need to generate income from a range of sources, including assets owned, is an inescapable aspect of the position in which local authorities find themselves as regards levels of funding, and the increasing demands, for their services. As the owner of the land, the Council generates income from charging for the use of the Event Site, including by way of hire fees and application and administration charges. In addition to payment of hire fees, event organisers need to pay a Parks Investment Levy ('PIL'), which is charged at a fixed percentage (currently 25%) of hire fees. The PIL is ring-fenced for spending on open spaces within the Borough. For events, including those on the Common, the spend of PIL is currently divided 80% for spend on the Common on projects as agreed between the Clapham Common Management Advisory Committee ('CCMAC') and the Parks Service, and 20% for smaller parks where no events are held. The PIL is able to fund projects on the Common such as additional litter-picking, boundary protection bollards, new bins, biodiversity projects, refurbishment of the Bandstand and provision of playground equipment and outdoor gym equipment. The 2021 Festival Republic event generated some £63,000 by way of PIL.
48. Income from events is applied towards the costs of running the Council's events service. Those costs will include funding and supporting community events, and providing community events training. If there is a surplus from income, it will be applied to the provision of other Council services.
49. Importantly, whilst events such as the FR Event generate income for the Council, they are actively enjoyed by the people who attend. The Council's evidence will address the detail of the demographics of ticket sales in respect of the Festival Republic event held in 2021. Of course, the acts who appear at a music festival will not appeal to everyone, in the same way that an opera or ballet event 'in the park' (as run in many urban locations in the UK) will not appeal to everyone. Events of the nature of the FR Event form part of the cultural fabric of the Borough, and provide a valuable opportunity for people who like what Festival Republic do to experience live music. One of the Council's strategic principles, endorsed by Cabinet in approving the Events Strategy 2020-2025, is to deliver a borough-wide programme of cultural events. The holding of the FR Event aligns clearly with the objective of the provision in the borough of a wide range of arts, events and sport, that is, something for everyone.
50. The Council will also address in its evidence the other public benefits deriving from the holding of the FR Event, including temporary local employment and the potential for local spend by attendees and event workers on goods and services, including hotels and food and drink establishments.

### **C(iii) Management of the FR Event**

51. As noted in section A of this statement of case, major events are subject to a raft of detailed regulation in order for EventLambeth, for the SAG, and for the Council as licencing authority, to be satisfied about the way in which a specific event is proposed to be run. Major events are subject to review after the event has concluded, in order to identify any areas where changes could usefully be made to the detail of operating procedures.
52. The Council's evidence will set out the operational detail associated with the holding of the FR Event.

53. The Council acknowledges that local residents and others do have concerns about the potential impacts of an influx of event attendees to the locality, and it takes those concerns seriously. The Council would observe that attendance at any public event, whether a sporting or cultural or any other type of event, will be reflective to some extent of wider society, such that it has to be recognised that it is impossible to eliminate all instances of behaviours that may be considered by others to be challenging or unacceptable. That said, the Council's case is that the measures that it puts in place, including for review post-event, are both reasonable and appropriate.

#### **C(iv) Noise**

54. The sound level and quality of an outdoor music event is an important aspect of the experience of those attending the event and will be critical to the enjoyment of the event. A minimum level of sound is essential in order for an event of the scale of the FR Event, with up to 39,999 in attendance on any one day, to be viable. If the sound quality is too poor, whether by reference to volume or other attributes, the event simply cannot happen. The Council recognises, however, that the potential for generation of noise nuisance is a significant concern for local residents, and that a specific group of residential properties and other premises will, by virtue of their proximity and/or orientation to the Event Site, be liable to be more affected.
55. The Council will set out in its evidence how, during an event of the type of the FR Event, the generation of sound is subject to a process of monitoring and management by technical specialists during sound checks and performances, in order to generate the best possible sound output for attendees whilst operating within limits of the noise management plan that is required, as a condition of the premises licence, to have been approved by the Council in advance of the event. In addition to the overarching noise management plan, the premises licence imposes a number of specific conditions relating to sound generation, including bass levels and the requirement for the appointment of an acoustic consultant who is to be available to the Council's noise officer (and the nominated premises licence holder is obliged by licence condition to act on reasonable instruction from either the consultant or the noise officer regarding noise levels).
56. The noise management plan will require an event such as the FR Event to operate within the Council's 2016 Guidance on the Control of Sound at Outdoor Events. The Council's case is that those 2016 Guidelines are reasonable and appropriate for modern outdoor music events of the scale of the FR Event, and that the same cannot now be said of the then Noise Council's national code of practice dating from 1994 that is referenced in some of the objections. That code of practice was not updated consequential upon the introduction of the Licensing Act 2003 regime and does not fetter the associated ability of local licensing authorities to determine in any particular case what limits they consider to be appropriate for the management of specific events.
57. During an event of the scale and nature of the FR Event, noise monitoring would take place at multiple locations and complaints received via, for example, a telephone hot line can be investigated and responded to during the event. Complaints received are reported on to the Council as licensing authority. In its evidence the Council will address the nature of complaints received from previous August Bank Holiday music events, including any patterning to those complaints in relation to the location of particular receptors.

58. As regards the point made by objectors that the fabric of listed building structures may be placed at risk by vibration from an event such as the FR Event, this is not accepted by the Council. The Council will address in its evidence the resilience of structures to the effects of vibration and the extent to which vibration transmitted through the ground and via the air in sound waves would be capable of affecting built forms.

### **C(v) Turf/ground cover**

59. Objections to the application have put in issue the compaction of the turf in the part of the Common used for larger scale events. The Event Site is given over to grassland, and the soil there is of shallow depth and low nutrient content.
60. The Council acknowledges that the holding of a public event, 'Winterville', in December 2018 resulted in churning of the grassland and that the adversely affected area of the Common needed to be closed off to users in order to allow for recovery work to be undertaken and properly to take effect. In that instance, recovery of the grassland was compounded by a long period of drought in the following year. By contrast, the drier conditions associated with events held in the summer months mean that there is no basis to expect a 'Winterville' scenario to be replicated in the case of the FR Event.
61. Temporary tracking is laid in order to reduce ground compaction by the vehicles that are needed to service an event of the nature and scale of the FR Event. Some element of compaction by footfall from event attendees cannot be avoided, any more than compaction from other users of the Common, whether through activities such as informal games or simply dog-walking could be avoided. It is not accepted by the Council that the holding of the FR Event would result in permanent degradation of the ground of the Common. Where considered necessary, the Council's Parks Service undertakes repair and/or restoration works. It is not accepted by the Council that the remediation treatment of the Event Site that has been carried out in recent years would be suitable only for a sports pitch or golf fairway. The Council's position is that the treatments that have been applied, informed by specialist advice, are appropriate for the Event Site and have improved the resilience of the sward. Works have included new drainage measures, levelling work and re-seeding with a hard-wearing grass mix, which has improved post-event recovery.

### **C(vi) Ecology and trees**

62. The ecology of the original Common has been substantially altered over the past 200 years or so through drainage and other works and through the extensive use of the Common during WWII for allotments and military use.
63. The ecological value of the Event Site was assessed in 2018 and again in 2020. The purpose of the assessment was to identify areas of the Common with ecological features which might be susceptible to high levels of public use during events. Areas within Clapham Common were classified as low, moderate or high ecological sensitivity. The Event Site was identified as an area of low ecological sensitivity. Areas of medium or high ecological sensitivity, such as ponds, woods and meadow land, are located outside the bounds of the Event Site.

64. It is noted that the objection lodged on behalf of the Open Spaces Society alleges that the holding of events has caused “serious damage to the common and its ecology”, but no particulars have been provided of how the ecology of the Common, as distinct from the turf, is said to be damaged by the holding of events. The issue of ground compaction is addressed in section C(v) above. The Event Site is comprised of amenity grassland habitat with trees around the edges and some isolated trees within the footprint. Amenity grasslands generally consist of few species, compounded by fertilised soil and a management regime that discourages either structural or species diversity. Consequently, the value of the habitat can be considered of low value to biodiversity. The impact of trampling during an event is not expected to have a significant long-term effect on biodiversity. The Council’s position is that potential ecological impacts that may be identified are capable of being properly managed.
65. As regards trees, the Event Site is not within a woodland part of the Common. In relation to individual scattered trees within the Event Site, or trees that are proximate to it, the Council’s position is that potential impacts on trees are capable of being adequately managed. These matters are the subject of assessment through a combination of the planning application process and the terms of issue of the event permit by, for example, the approval of a Tree Protection Plan and the imposition of a tree protection zone around an individual tree.

### **C(vii) Transport**

66. The Event Site is near to Clapham Common and Clapham South Underground stations. Clapham North Underground and Clapham High Street Overground Station are approximately 600m to the north-east of the Common. Clapham Junction rail station is approximately 650m north-west of the Common. The Common is served by local bus routes that run either along Rookery Road or along its northern, eastern and western edges. Public transport connectivity from the Event Site is notably better than from other public open spaces within the Borough such as Streatham Common and Brockwell Park.
67. Given the nature of the event and the likely prevailing demographic profile of attendees, the majority of those attending the FR Event are expected to travel by public transport. Data for the South West Four Weekender/House of Common event in 2019 indicated, for example, that public transport accounted for 71% of all arrivals to that event, with 11% walking, 1% opting to cycle, 8% travelling by some form of taxi service and only 9% either using a car or being dropped off by car.
68. During the days of an event such as the FR Event when the public are in attendance, the entry and exit of pedestrians at various times from public transport facilities can be managed by TfL as necessary on safety grounds. This enables account to be taken of transport infrastructure constraints, such as the layout of the ‘island’ platforms at Clapham Common Underground and the capacity of particular stations in the vicinity. As noted above, TfL is a member of the SAG. A transport and traffic management plan is one of the required components of the Event Safety Management Plan, which is required to be approved as a condition of the premises licence.
69. Comprehensive transport monitoring data is available to the Council in relation to the South West Four Weekender/House of Common event held on August Bank Holiday 2019. The data was supplied pursuant to the discharge of a condition attaching to the planning permission for that event, which was the most recent event held pre-pandemic of a comparable scale and nature to the FR Event. In assessing the planning application for events in summer 2021 (which



included the August Bank Holiday 2021 event promoted by Festival Republic) the Council was able to be satisfied about the transport impacts of that event, both in terms of event attendees and the delivery and servicing arrangements for major events.

70. The Council sees no basis on which to suggest a materially different assessment, at a strategic level, as regards the transport impacts of the FR Event. The consents regimes that operate, in particular the assessment of a planning application, and the requirement for approval under the premises licence of an Event Safety Management Plan, provide a mechanism where specific points of detail that may arise can be addressed, such as arrangements for signage, cycle usage or taxi drop off.

### **C(viii) Historic interest and heritage**

71. The Event Site is located within the Clapham Conservation Area, a designated heritage asset in the terms of the National Planning Policy Framework 2021 ('NPPF'). In the exercise of planning powers, the Council as local planning authority has special duties as regards conservation areas and listed buildings by virtue of sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Whilst the present application is not concerned with the exercise of planning powers, the Inspector may nonetheless be assisted by the approach to impacts on designated heritage assets articulated in the NPPF.
72. The Clapham Conservation Area is substantial in extent, certainly compared to the nearby conservation areas such as The Chase, Abbeville Road and Clapham High Street. The conservation area is mixed in character and appearance, encompassing the eastern half of the Common, the commercially-focussed Clapham Old Town to its north east side, and properties along the Common and a network of streets in predominantly residential use extending further back from the Common.
73. The Council acknowledges that the fact that an event is temporary could, in some cases, nonetheless cause harm to the significance (as that term is understood for the purposes of the NPPF) of a conservation area. The FR Event would have a temporary physical and visual presence on the Common, in particular by virtue of the perimeter fencing and other associated structures necessary for the delivery of the event. However, it is the Council's case that no harm would be caused to the significance of Clapham Conservation Area. This is due to factors including the following: the localised and temporary effects of the FR Event; the Common's role over a long period of time as a location for a variety of public activities forming part of its historic interest; the large scale of the conservation area and the degree of diversity in use and landscape/townscape character within it; the screening effect of intervening built form between the Event Site and large parts of the area to the north and east of the Common; and the screening effect of existing mature vegetation, including the presence of full leaf cover in the month of August.
74. Harm is not identified to the significance of the next two most proximate conservation areas (The Chase and Clapham High St in Lambeth) by the holding of the FR Event, or to the Clapham Conservation Area that falls administratively in the London Borough of Wandsworth. A number of statutorily listed buildings are within the vicinity of the Event Site, and there is potential for the settings of those buildings to be affected. However, the temporary visual or other experiential effects of an event such as the FR Event, coupled with the nature of those settings themselves, is not considered to result in harm to the significance of those assets.

75. Finally, it is acknowledged by the Council that the FR Event will be visible in some views within and across the Common, in particular by virtue of the associated fencing requirements. However, such impacts would be temporary. The large extent of the landscape area as a whole, and the effects of distance, and the screening or filtering effects of existing mature vegetation, would mean that there would either be no impact, or only a limited impact, on views during the relevant event period.
76. No impact on any archaeological assets is contemplated.

## Conclusion

77. This statement of case has set out the background to the application and the criteria to be applied to its determination, followed by the Council's position in respect of the key considerations.
78. As regards the issue of alternatives, the Council's position is that there are no alternative ways of delivering the FR Event either in terms of the erection of temporary structures and fencing which it requires, or in terms of it being able to be accommodated on public open space elsewhere in the borough.
79. Applying the test in paragraph 3.2 of the Consents Policy, the Council's position is that the FR Event would not result in permanent degradation of the condition of the Common and that even if that were not to be accepted, it is clear that the FR Event would confer a wider public benefit. The structures and fencing that are proposed are temporary and in any event do not cause a significant or lasting impact.
80. Applying the criteria in s39 Commons Act 2006 as articulated in the Consents Policy to the FR Event:
  - a. Interests of persons having rights in relation to the Common: the Council's position is that the rights of users of the Common are not compromised by the FR Event, in that the 1967 Act permits the holding of such an event provided that no more than 10% of the Common is thereby set apart or enclosed. The Council's case is that this condition is satisfied, leaving some 90% of the Common available for other users for the duration of the FR Event. No financial loss accrues to persons having rights in relation to the Common.
  - b. Interests of the neighbourhood: the required works would result in demonstrable public benefit, and would not interfere with the use of the Common in the way that local people have been used to, nor would they compromise future ability to enjoy the Common.
  - c. Public interest: in terms of the factors falling to be considered as amplified by the Consents Policy:
    - i. Recreation and access: as noted at (a) above, the larger part of the Common remains available for recreation and access, and the FR Event taking place on the Event Site is itself a form of recreation;
    - ii. Nature conservation: no adverse impact has been identified;
    - iii. Impact on the landscape: no adverse impact has been identified;
    - iv. Protection of archaeology: no adverse impact has been identified;
    - v. Local heritage: no adverse impact has been identified.

- d. Any other matter considered to be relevant: the Council has not identified any other factor that would militate against the granting of the application. The proposed works are temporary in nature, the Common is restored to its previous use after deinstallation, and confer a public benefit. Paragraph 5.16 of the Commons Policy expressly recognises the scope for the granting of consent in such circumstances.

81. The Council will invite the Inspector to grant the application.

82. The Council's list of documents will be provided through the core documents listing process.

# **Ministry of Housing and Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967**

## **Common Land Consent Application Ref. Com 3312935**

### **APPENDIX 1**

Major events are required to produce an Event Management Plan that includes information on the topics listed below:

- Event safety policy
- Event details;
- Venue design;
- Temporary structures;
- Audience capacity and profile;
- Performance details;
- Admissions;
- Refuse;
- Water;
- Sanitary facilities;
- Fire precautions (and evacuation times);
- Electrical systems;
- Flown/hung equipment;
- Radio channels;
- Contractor accreditation;
- Contractor competency safety and information;
- Crowd management;
- Transport management;
- Contingency planning;
- Opening and egress plans;
- First Aid plans (including nearest A&E and hospitals);
- Event organiser insurance;
- Residents' letter (where necessary);
- Complaints and Event Liaison Team numbers.

Further subject-specific plans may be generated in connection with the overarching event management plan, for example:

- traffic and transport management plan;
- access /egress plan;
- crowd management plan;
- crime prevention/reduction plan;
- fire safety management plan;
- food safety management plan;
- noise management plan and a sanitary facilities plan.