

**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 FRIENDS OF CLAPHAM COMMON

Introduction

1. This Statement of Case is submitted by and on behalf of the Friends of Clapham Common (“the Objectors”). It has been prepared in accordance with paragraph 27 of the Inspector’s Requirements for the Virtual Inquiry, dated 31 March 2023.
2. The Objectors were provided with a copy of the Statement of Case of the Applicant, the London Borough of Lambeth (“LBL”), on 19 April 2023. However, in breach of para.22 of the Inspector’s Requirements, LBL has failed to include on its application website or otherwise “copies of all documentary evidence relied upon”. No explanation for this omission has been forthcoming. As such, it may be necessary for the Objectors to supplement or to amend this Statement of Case when LBL has addressed their omission in this respect.

Approach to the determination of the application

3. LBL, at section 8 of its Statement of Case, has set out what it considered to be the “legal and policy framework” for the determination of the application. What is there set out by LBL is in large measure not controversial so far as the Objectors are concerned.
4. In particular, it appears to be common ground that, in determining the application, the Inspector should:
 - a. apply the statutory considerations set out in s.39(1)-(2) of the Commons Act 2006;
 - b. apply the Secretary of State’s policy as it is set out in the Common Land Consents Policy (November 2015), as it was construed by Sir Ross Cranston in *Open Spaces Society v Secretary of State for the Environment, Food and Rural Affairs* [2022] EWHC 3044.

The extent of the Common to be enclosed for the Festival Republic Event

5. It appears to be common ground that the extent of enclosure of Clapham Common for the proposed event may not exceed “one acre or one-tenth of the open space, whichever is the greater” (see Sch.1 para.7((g)(ii) of the 1967 Act).
6. The Objectors submit that (a) the burden of proving that the area of proposed enclosure falls within the prescribed parameters is on LBL and (b) unless LBL discharges this burden of proof, the application should be dismissed. Plainly and as a matter of law, the Inspector cannot approve an application for enclosure of common land where the extent of that enclosure is unlawful.
7. LBL has, in its statement of case at paras.35-45, sought to explain how the area of proposed enclosure is, in its view, “a little less than 10% of the area of the Common” (para.43).
8. LBL’s conclusion and the basis of assessment is not accepted.
9. In particular, (a) the use of an 1877 Map as the starting point of the extent of the Common for the purposes of the 10% calculation is not accepted and (b) in any event, even if it were, the extent of deductions made by LBL to reflect the extent of the functional Common now is not accepted to be complete and comprehensive. When properly considered even on LBL’s basis of calculation, the extent of Common to be enclosed exceeds 10% of the whole.
10. It will be submitted that the calculation needs to be based on the extent of the registered Common. The plan accompanying the registration is said by the Applicant now to be lost. However, and be that as it may, the DEFRA Commons Register England (2000) gives the area of the registered Common as 78.01ha. If LBL’s statement of the area of enclosure is taken to be correct (which it is not), then it exceeds 10% of the registered Common. The Objectors will demonstrate that this and other evidence of the true extent of the Common for the purposes of the statutory calculation show that the proposed area to be enclosed exceeds 10% thereof (and exceeds substantially one acre).
11. Moreover, the Objectors do not consider that it has been shown that the area to be enclosed will be 78,995.82 sq.m. It is not clear whether any outer fencing is proposed but such fencing has been a standard security feature of the site in the past. It is not

clear how areas for queuing outside the boundary of the event will be managed. Event organisers have also been seen to be permitted the use of extra enclosed areas for staff and contractor parking. LBL is put to strict proof in respect of the extent of enclosure.

12. The Objectors will submit that the extent of proposed enclosure has not been shown to be and is not within the lawful statutory parameters. As a result, the application should be dismissed for this reason alone.

Statutory and Policy Considerations

13. The Objectors will raise the following matters in respect of the statutory and policy considerations.

Interests of Persons having rights in relation to Clapham Common

14. The public has inter alia a right to access and use Clapham Common for “air and exercise” (see s.193 LPA 1925).
15. The Objectors will explain the use made of the area proposed to be enclosed. The Objectors will explain that the area is used extensively in particular by communities closest to the Common, many of whom are deprived, are without private amenity space and who depend on the Common for exercise and well-being. The affected area of the Common is used inter alia for informal games of football and other ball games, for informal recreation (including walking, dog walking, and socialising). These activities cannot practically be displaced elsewhere without putting undue pressure on the rest of the Common. The area proposed to be enclosed is the only open area of grassland within the Common that is not presently allocated or zoned for particular uses. This makes the area of particular importance for informal activity. Users will be precluded from accessing the area proposed to be enclosed for the duration of the event (including the setting up and de-rigging period). Furthermore, the Objectors do not accept that the restoration of the site will be such as to facilitate the resumption of the full range of current uses. This is a substantial disbenefit to those who have a right to use the Common.

16. Moreover, the effects of the event interfere with use of the wider Common, including as a result of noise, dropping of litter and other types of behaviour that cannot practically be controlled by LBL or the operator.
17. The location of the proposed enclosure will also obstruct a well-used public pathway which crosses the Common.
18. As addressed below, that the scheme will deliver benefits to users of the Common as a result of investment is not accepted.

Interests of the Neighbourhood

19. The Objectors will describe the communities who surround the Common and which are closest to the proposed area to be enclosed. The use made and importance of the affected area of the Common to those communities will be described as will the adverse effect of the enclosure and the event which it is to facilitate on those communities.
20. The Objectors will explain the significant adverse effects in terms of (a) noise, (b) antisocial behaviour (which cannot be practically controlled) and (c) access to public transport as a result of the proposed event. The Objectors will show how these matters adversely impact on the use of the Common and on the amenity of the wider neighbourhood. These impacts cannot be realistically managed or mitigated.
21. The Objectors will contend that the event delivers limited material benefits to only a limited range and number of local businesses, and furthermore is not supported by or has a deleterious effect on many. The Applicant is put to proof that there is a financial benefit to local businesses.
22. The proposed event is not directed toward the local community or neighbourhood, and has, historically, attracted a proportionally low level of patronage by inhabitants of the local neighbourhood. It is promoted nationally. Although a small proportion of expected attendees may be residents of the neighbourhood in which the enclosure is to be located, the adverse effects on the interests of the neighbourhood do not outweigh any benefits.
23. The Objectors do not accept that there is a net added value to the public purse as a result of the event and do not accept that funds generated by LBL mitigate the adverse effect on the Common, nearby open space or, more generally, the interests of the

neighbourhood. The lack of transparency in the Applicant's intention and level of commitment for use of the revenue generated by events on the Common, and the large costs associated with securing the necessary permissions for holding the event, make the overall fiscal picture less than clear.

24. The Objectors also do not accept that there is a significant value to local jobseekers.

The Public Interest

25. With regard to the public interest in nature conservation, it is not accepted that the proposed event has been shown to cause no material harm to nature conservation interests. LBL's approach to management of the site proposed for enclosure and its reinstatement following the last major event held there is such that the site itself has been left largely denuded of nature conservation value. However, the wider Common, including areas close to the proposed enclosure and event are of particular value including as Local Nature Reserves. The proposed area to be enclosed is part of SINCO4, a Borough Grade 2 Site of Importance for Nature Conservation. It is not accepted as LBL claims that no material adverse effect on the nature conservation value of the wider area or that any risk thereof is capable of practical management or mitigation. The Objectors will demonstrate that the true position is to the contrary. Nature conservation interests will be materially and adversely affected.

26. With regard to the conservation of the landscape, poor management and inappropriate works of purported restoration by LBL following the Winterville event from November 2018 to January 2019 and subsequent festival events, is such that the composition of the soil and surface medium at the area of the proposed enclosure is such that proposed restoration is unlikely to be achieved, at least in the short to medium term. This will have a visual and "townscape" impact, which will be adverse together with impact on its usability.

27. Lorry and vehicle tracking over the wider Common causes similar harm. This harm is exacerbated when, as has happened in the past, events lorries do not use any protection at all.

28. The enclosure itself, and the conduct of attendees over the wider Common, also generates a harmful visual and landscape impact for the duration of the event and afterwards.

29. The Objectors do not advance as part of their case impact on archaeology and the historic environment. It is understood that others who object will be doing so.
30. The Objectors will submit that the enclosure and the event it is to facilitate will have an adverse effect on the factors identified as being relevant to the public interest.

Common Land Consents Policy

31. The Objectors will address the Government's policy in full and in particular those elements of the Policy that provide guidance in respect of the statutory considerations.
32. The Objectors will show that LBL has not properly considered alternatives to the proposals in term of both alternative locations, sizes, and forms of event. The works for which consent is proposed are not works which are "needed" for the proper functioning of Clapham Common and the exercise of public rights over it. The Objectors will show that LBL has not properly met para.4.3 of the Policy.
33. Moreover, the Objectors will show that proposals do not "maintain and improve the condition of the Common" nor do they confer a "wider public benefit". The impacts are in several respects not temporary and will have a significant and lasting effect. The proposals do not meet or further the Government's objectives for Common land.

Conclusion

34. The Objectors will show that the application should be dismissed.