

IN THE MATTER OF CLAPHAM COMMON

AND IN THE MATTER OF AN APPLICATION UNDER ARTICLE 12 OF THE SCHEDULE
TO THE MINISTRY OF HOUSING AND LOCAL GOVERNMENT PROVISIONAL ORDER
CONFIRMATION (GREATER LONDON PARKS AND OPEN SPACES) ACT 1967

INSPECTORATE REFERENCE: COM/3312935

OPENING STATEMENT ON BEHALF OF LAMBETH BOROUGH COUNCIL

1. Lambeth Borough Council (“the Council”) is making this application (“the Application”) for consent under article 12 of the Schedule to 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 structures on Clapham Common (“the Common”) on a particular parcel to the north-east of the Common, which is known as the event site (“the Event Site”) for the purpose of enabling a music festival-style event (“the Event”) to take place over 3 days between 24 - 26 August 2024. The total time that the structures will be in place is 19 days.
2. The application has received a significant amount of objection, and it is for this reason that the Inspectorate has determined that the application should be held by inquiry. The inquiry will hear a considerable volume of evidence, much of it directed to the actual carrying on of the Event itself. The Council has produced evidence to demonstrate, as I shall deal with, that the effects of the Event are acceptable and that there are substantial benefits which arise from it. While the structures facilitate the Event, nevertheless, the application is for the structures themselves and the principle focus of this inquiry is on their acceptability. It is to be noted that the 1967 Act allows the holding of unenclosed entertainments on open space, including commons, without consent to any physical extent. That is not to say that the facilitative nature of the structures should be ignored, but this is a secondary consideration to whether the structures themselves should be permitted.
3. The Application will bring substantial benefits to the Common and to the Borough. The Event will contribute to the delivery of the Council’s strategy of providing a diverse range of cultural experiences and offers; this is a strategy which has been consulted upon extensively and considered carefully before being adopted by the Council. Music festivals are not to everyone’s taste but they are an important part of the Borough’s cultural experience. They have the ability to foster

community and understanding and shared experience. These are positive effects which touch young and old alike. They have as much role in the culture of Britain as classical music concerts or fun runs. The Council does not pretend that there will be no effects from the Application. Of course there will be, and such effects have been assessed by the Council and will be considered in this inquiry, but they should not be allowed to muddy the undoubted support which should be given to any cultural offer which, without doubt, enhances and lifts local – and wider - cultural identity.

4. The Application will also bring financial support to the Common. The use of the Event Site for the 19 day period is expected to produce £126,000 under the Council's Parks Investment Levy ("PIL"). 80% of this sum will fund improvements to the Common and 20% to other parks which have no source of independent funding. As has been stated, and as objectors recognise, the Council's parks budget has been reduced substantially over the last 10 years. Without the Event, the Common will not benefit from this £126,000 and nor will the other parks – there is no alternative sum which may be diverted to the Common and no one suggests there is. The annual funding for maintenance and improvement of the Common will be significantly enhanced by the PIL contribution. The PIL's use is determined in consultation with the Clapham Common Management Advisory Committee ("CCMAC") – it is, in short, a community-led parks investment pot.
5. On a practical level, the Event Site has, as will be dealt with in the evidence, a grounds maintenance regime which is scheduled to take place over the course of the year involving, for example, aeration, reseeding and topdressing. That, however, costs money and is funded through the Event itself. With no events, that maintenance regime cannot be fully carried out.
6. In addition to the financial support to the Common, the remaining revenue arising from the hire fees – which is expected for the Event to be c. £500,000 – will be used to fund the Council's Event Service ("the Service") through the Council's General Fund (from which the Event Service funding is received). The Service is a non-statutory department of the Council whose function is to deliver the Council's cultural strategy. This involves organising and managing a large range of events including charitable or free events, many of which are of benefit to the disadvantaged and disenfranchised in society. Without events like the Event, the Service could not operate and the Council would not deliver events, to the undoubted detriment to the Borough. Any surplus sums which remain after the costs of the Events Service are deducted will be used for other essential services through the General Fund and, therefore, support the locality by way of the delivery of public services.

7. It has been suggested by the Friends of Clapham Common (“the FCC”) that the Council’s use of the majority of the hire fees for the Service is disproportionate and more of it should go to the Common. The use of 25% for the Common is entirely appropriate, given that the principal function of the Event is the delivery of cultural events, which the Service provides, and, again, any surplus from the Event will be used in the delivery of services to the locality.
8. The Event itself also benefits the local economy, contrary to the FCC’s contentions. The recent assessment of the effects of a similar series of music festival-style events in Finsbury Park shows that the indirect effects of the Event would be worth several £millions to the local economy. This derives from the large number of people who are working at the Event as well as those attending it with significant expenditure on, for example, accommodation and transportation as well as convenience goods. It is not appropriate, as FCC have sought to do, to assess the value to local businesses simply by reference to the Event days themselves. It is the overall benefit deriving from the setting up (known as “the build”) and the dismantling (known as the “de-rig” or “break”) of the Event which must be considered.
9. In short, therefore, there are very many benefits arising from the Event.
10. Before looking ultimately at the issues which are to be considered under s. 39 of the Commons Act 2006 (“the 2006 Act”), I address the main points which have been raised in objection to the application, with particular reference to the FCC’s objections.

Area Used

11. The FCC argue that the Application is proposing the enclosure of more than 10% of the Common for the Event and, as a result, the application is contrary to article 7 of the Schedule.
12. The Council disputes that contention. On a careful measurement of the Event Site area and the Common, the Application is within the 10% limit.
13. The FCC has presented two calculations which, it is argued, establish that the Application will cover more than 10% of the Common. The differences between those calculations and the Council’s calculations are very small in overall terms. Where the subject of calculation is an area (putting it neutrally) of at least 78 has (or 780,000 square metres), this invokes a margin of error which cannot, realistically, lead to the conclusion that article 7’s limit will be breached – indeed, the FCC’s case is that the current site area is only 0.13% (or c. 100 x 10m) too large. Indeed, even

the FCC itself arrives at two separate figures which it promotes as reasonable as well as a calculation by DEFRA.

14. That said, the Council has undertaken a very detailed analysis using advanced GIS calculation methods which allow an overlay of the original Common on modern OS mapping. Mr Crook has provided the evidence for the calculations in his evidence. The calculation relates to “Open Space” as defined by the Act; that is an *inclusive* definition which requires consideration of whether land should properly be regarded as open space within the spirit of that identified in the Act; consequently, land in the control and management of a public authority which would be considered to be open space in reasonable terms should be regarded as open space for the purposes of the Act. The reason why the 1967 Act is taking a broad approach is obvious: the Act applies the 10% limit to the open space in question in order to ensure that the vast majority of the open space which can be used by the public (because it is in the control or management of a public authority) remains so. There is no purpose, therefore, in excluding – as the FCC has – pavements adjacent to or within the Common.
15. There are a number of additional detailed reasons why the FCC’s two calculations are incorrect. Beyond the issue of pavements, other areas have, quite wrongly, been omitted. In part, this is because the FCC has not properly considered what amounts to Common land; as a result, it has wrongly discounted a number of areas (see Nightingale Lane and the Gallops, for example) which are Common land and open space within the meaning of the Act. It has also wrongly omitted from the calculation areas which are obviously open space, on any basis (see, for example, the space around the Holy Trinity Church). These areas of dispute will be considered in the evidence.
16. Finally, despite the differences that exist between the parties, it is certainly possible, as has been done in consenting procedures for other sites, for a condition to be attached to the consent requiring the site area to not exceed 10% of the open space, or, alternatively (if the FCC arguments are found persuasive), of 78.01 ha.

Noise and Disturbance

17. The Event will cause noise; but the important question is whether that level of noise is acceptable.
18. The Event Site has been used for major events for very many years and the Common as a whole for 30 or more years. Against that background, the Council has adopted noise limit guidance which will ensure that noise levels are acceptable for the Event. This guidance has been framed so as to capture both the whole noise spectrum and low frequency noise. The relevant levels have been followed at many other events around the country and their efficacy has been tested. They have

been followed and applied in Licencing Act 2003 procedures and will be applied in the planning application processes.

19. There has been a suggestion by some objectors that the 1994 Noise Council code guidance should be applied; but the limits which are identified as guidance for A-weighted noise measurements, in so far as they distinguish between stadia and other venues, are both out of date and unevicenced. The - still more - circumscribed suggestions for low frequency measurements set out in the 1994 Code (not the full low frequency range) are still less appropriate as a means of setting maximum noise limits; but in any event, for the Common, this guidance would actually be met.
20. There is no suggestion by anyone that the limits set by the Council's guidance would not be achieved during the Event. Arguments in favour of lower noise limits are both inappropriate and unviable and will be dealt with in the evidence.
21. With regard to the overall noise effects of this Event, this is not an application for more days than the 3 days' use. There are commons consent applications in place for 2024 for Moonwalk and the Clapham 10k; the cumulative effects of these will be considered when they fall to be considered and, should an application be made for further events, the effects of those events in tandem with (if approved) the Event and any other event will then be considered by the Secretary of State.

Management and anti-social behaviour

22. There is a wide range of protections in place to ensure the safety and well-being of both attendees of the Event and those living in the vicinity of the Common. The contractual provisions of a successful operator oblige the event organiser to abide by a number of protective provisions contained in the terms and conditions. The operator must obtain an event permit from the Council which will only be granted following a favourable consideration by the Safety Advisory Group ("the SAG"), which is a body made up of major stakeholders with statutory safety duties including the Metropolitan Police, TfL and the Ambulance Service. The permitting process also requires the operator to provide a series of management plans dealing with security, safety, egress and access and land protection.
23. The Event will be obliged to meet all these requirements. It is notable that the SAG has been satisfied with the proposals for previous major events (including those promoted by the current operator, Live Nation Ltd, which has very considerable experience of delivering events of this kind).
24. Through the planning and licensing processes, further management protections are in place. It is to be noted that events like the Event have been granted both licences and planning permission –

the Police and TfL have not objected to these applications. There is, therefore, a broad range of methods by which the proper and successful management of the Event can take place.

Harm to the Environment to the Common

25. The FCC argue that the Event Site would not be adequately restored after the Event. Evidence will be presented to show that appropriate reinstatement can be undertaken to ensure that the Common is capable of being used by the public shortly after the event has taken place. The Event will take place in the summer and cannot be assessed by reference to the difficulties which arose with a previous event known as Winterville.
26. Much of the evidence presented by the FCC relates to what is said to be the damaging effect of a restoration scheme (“the Reinstatement”) undertaken by the Council between Autumn 2020 and Spring 2021. It is said that the Reinstatement had the effect of removing the biodiversity interest of the Event Site and led to issues in respect of both grass quality, ground compaction and nutrient deficiency. Such a characterisation is wrong, given the evidence relating to pre-Reinstatement assessments of the Event Site.
27. More importantly, the question is whether adequate reinstatement of the Event Site can take place. It can. Successful reinstatement has been carried out with smaller events over the recent past (Moonwalk and Luna Cinema) and major events in 2021. More can be done, and, with the funding which is obtained by the Event, the quality of the Event Site can be further enhanced.
28. It is also argued that the holding of the Event will lead to damage to the ecology of the Common through trampling and disturbance. An ecological appraisal of the potential effects to ecology by the Event has been undertaken and the conclusion is that the Event Site is of low ecological value and that consequently any effects on biodiversity will be negligible. Moreover, trees within and adjacent to the Event Site are capable of being adequately protected, as they have been in the past.
29. With regard to effects on other parts of the Common (including the wildflower meadow to the south east of the Event Site and the sapling island planting to the south west), the arguments made by the FCC of the potential for disturbance are unrealistic; there will be defined routes out of and into the Event and the main southerly route to Clapham South tube station lies away from these areas. The suggestion of large scale damage done to the Common cannot be supported.
30. If it is concluded that some protection is required to be made, a condition may be attached to the consent that fencing the areas which concern the FCC is required (they would be small and lightweight); such fencing will also be provided if the Inspector indicates it is necessary – article 9 permits the Council to provide enclosure for purposes protective of the landscape (without consent) without engaging article 12.

31. Additionally, it is argued that there is no provision for toilets along the main routes to the Event so that people would use the Common instead. This is not a particular issue. In order to assist with local residents' perceptions, however, the Council would be content for a condition to be added to any consent relating to the requirement to provide toilets on the main access and egress route.

Transportation

32. The effects on the transport network are acceptable. The evidence is that the public transport system can safely and adequately accommodate the Event. Attendee arrivals are dispersed between three local tube stations (Clapham South and Clapham Common and Clapham North) and are staggered across several hours, while egress is directed to Clapham South only and will be carefully managed. The bus network is predicted to be capable of dealing with visitor numbers and private on-street parking stress would not be markedly affected. There are no objections to the Event from either TfL, the highway authority or the Police.

Restriction on Usage

33. It has been argued that the restriction of the use of the Event Site for 19 days by the public is unacceptable, particularly, it is said, against a backdrop of the multiple other events taking place on the Common. The Common is used for other events. However, these will take place on other parts of the Common. As I have said, applications under article 12 have been made for other events, and any cumulative effects relating to those events will be assessed when those applications are considered. The cumulative effects are not, in any event, significant. For events off the Event Site, many are smaller in scale and a considerable distance from it; the use of those parts of the Common cannot, realistically, be seen as a justification for restricting the use of the Event Site. As for the Event Site's reinstatement, this is not expected to require fencing but any that is required is expected to be localised to small areas and only, at most, for a few days. The 122 days' usage which the Council has calculated for the Common's use as a whole in 2023 is not, in those circumstances, significant and does not make the 19 days' use of the Event Site, unacceptable.

Harm to the Conservation of the Landscape

34. The effect of the Event and its structure on heritage assets and townscape has been assessed by the Council and the Event is considered not to be harmful, largely as a result of its temporary nature, its compatibility with the historic use of the Common for events, the urban nature of the Common and the degree of screening which exists on the Common and its surroundings. This assessment has been shared by planning officers of the Council in respect of the related planning application and by the Inspectorate in respect of large scale events on the Event Site.

Alternatives

35. Before turning to the specific issues which are required to be considered under section 39 of the 2006 Act, the Council has considered whether the Event could take place elsewhere or in a manner which would have fewer effects. It is to be noted that the existence of alternatives is not determinative of whether consent should be granted. It is only one of a panoply of relevant factors – it does not need to be established that there are no other alternatives to the Event for consent to be granted. However, there are no better locations on which to hold the Event. Other locations are either less appropriate in transportation terms (e.g., Streatham), are already fully utilised (e.g., Brockwell Park) or will experience similar noise levels (e.g., Brockwell Park) or are no better in heritage effect terms. A smaller event would have to be very much smaller to make a difference in noise levels (c. 5,000 attendees) and there is no better location for locating the Event on the Common either in noise or heritage terms. As a result, there is no appropriate, or better, alternative.

Conclusion - Section 39 and Commons Consent Policy Issues

36. Section 39 deals with the issues which need to be considered in this case; I do not repeat them as the Inspector is plainly aware of them (see his CMC note). The translation of those issues into a series of points of principle is contained in the Government's *Common Land consents policy*, dated November 2015 ("the Consents Policy"). This is ultimately summarised in paragraph 3.2 of the Consents Policy which provides:

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.

37. 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...

38. The answers to these questions are, the Council says, straightforward; they are all to be answered positively although the only pertinent question, given the structures' temporary nature, is whether the Event maintains or improves the condition of the Common or it confers some wider public

benefit. The Event will maintain the condition of the common, confer wider public benefit, are temporary and will have no significant or lasting impact.

39. Thus, when considering under s. 39 of the 2006 Act: the interests of persons having rights in relation to the Common, there are no formal recorded rights, as has previously been declared by the Inspectorate; the interests of the neighbourhood are not affected in a significant way; the public interest is plainly in favour of the Event (when considering those matters identified in section 39(2)); and there are a series of benefits which are relevant to the Application.
40. As a result, consideration of the issues in this Application plainly favours consent being granted. At the appropriate time, accordingly, it will be respectfully requested that consent is granted.

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