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# Application Decision

Site Visit conducted on 23 May 2022

**by Rory Cridland LLB (Hons) PG Dip, Solicitor**

**an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs**

**Decision date: 16 June 2022**

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## **Application Ref: COM/3293941**

### **Clapham Common**

Register Unit No: CL73

Commons Registration Authority: London Borough of Lambeth

- The application, dated 25 February 2022, is made under Article 12 of the Greater London Parks and Open Spaces Order 1967.
  - The application is made by Lambeth London Borough Council ("the applicant") to construct temporary works on common land.
  - The application seeks consent for the creation of temporarily enclosed fenced sites for five temporary events permitted under Article 7 of the Greater London Parks and Open Spaces Order 1967, for fixed periods of time on the grassed areas of Clapham Common. Temporary structures include event stages, big top style tents, marquees, gazebos, concession stands, event gantries, event related obstacles, toilets and welfare facilities, back of house cabins and plant enclosures.
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## **Decision**

1. Consent for the erection of temporary structures to include fencing, event stages, big top style tents, marquees, gazebos, concession stands, event gantries, event related obstacles, toilets and welfare facilities, back of house cabins and plant enclosures to facilitate the BHF London to Brighton Bike Ride (17-19 June 2022 (3 days)); the Luna Cinema (19-25 July 2022 (7 days)); and Colourscape (6-22 September 2022 (17 days)) on parts of Clapham Common (Register Unit CL73) is granted in accordance with the application dated 25 February 2022 and accompanying plan.
2. For the purposes of identification only the locations of the relevant works are shown on the attached plan.
3. For the avoidance of doubt, consent for the works proposed for Moonwalk (6-19 May 2022) and Cancer Research UK Race for Life and Pretty Muddy (27-28 May 2022) as set out in the application dated 25 February 2022 is not granted for the reasons set out below.

## **Preliminary Matters**

4. A number of representations received refer to a separate application made by the applicant for a different event which it proposed to hold in August 2022 (i.e. Festival Republic 2022). The application for that event was subsequently withdrawn and I have not considered it in my reasoning below.
5. Representations from the Friends of Clapham Common refer to previous events that have taken place on Clapham Common ("the common") for which consent was not sought.

However, whether or not consent has been sought previously for other, past events does not affect my consideration of the present application.

6. The application identifies two potential sites for the Luna Cinema (referred to as option 1 and option 2). The applicant confirmed in its written correspondence that it no longer wished to proceed with option 1 and that only the option 2 site was being put forward for consideration. I have dealt with the application on that basis.

### **The Application**

7. The application, dated 25 February 2022, seeks consent for temporary fencing and other structures in order to facilitate a number of events during the summer of 2022. The events are listed below:
  - (i) Moonwalk: 6-19 May 2022 (14 days);
  - (ii) Cancer Research UK Race for Life and Pretty Muddy: 27-28 May (2 days);
  - (iii) BHF London to Brighton Bike Ride: 17-19 June 2022 (3 days);
  - (iv) Luna Cinema: 19-25 July 2022 (7 days); and
  - (v) Colourscape: 6-22 September 2022 (17 days).
8. The application was received approximately two and a half months before the start date of the first event listed, and around three months before the start date for the second event. As Common Land Guidance Sheet 1a (version updated 16 March 2021) makes clear, the earliest timescale for determination of an application would be three months, where no exchange of written representations is needed and around five months where, as in the present case, such an exchange is necessary. It also makes clear that in cases where a site visit is required this can extend to around ten to twelve months.
9. Clearly, on any measure, the earliest date on which a decision on this application could be expected would be well beyond the date on which many of the events listed in paragraph 7 were intended to take place.
10. The application is not retrospective; it was made in advance of the works, albeit not in a reasonable timescale for the decision to be made. In addition, all the proposed works are temporary and at the time of writing, the first two events have already taken place and any works associated with them removed. As a matter of principle, there is no good reason to provide consent for something which no longer exists. It follows that the outcome for those works must be that the consent is not granted.
11. Accordingly, the remainder of my decision relates solely to the events listed in paragraph 7 (iii), (iv) and (v).

### **Description of the land**

12. The common covers a large area (around 78 to 81 hectares) and is registered as common land (CL73) under the Commons Registration Act 1965. The common is owned by the applicant and is sited in a highly populated urban area in London. It is bounded to the north by the busy A3, to the east by the A24 and with the A205 running along and through the western boundary. Beyond these busy roads are a number of residential streets as well as industrial, retail and leisure areas.

## **Main Issues**

13. Article 12 of the Greater London Parks and Open Spaces Order 1967 (“the 1967 Order”) restricts the erection of any building or other structure on any part of a common to which the 1967 Order applies without consent from the appropriate national body. In determining such applications, Defra’s Common Land Consents Policy (November 2015) advises that regard should be had to matters under section 39 of the Commons Act 2006 (“the 2006 Act”). These include:
- a. the interests of those occupying or having rights over 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 matter considered to be relevant.
14. 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.

## **Reasons**

### ***The interests of those occupying or having rights over the land***

15. The common is owned and managed by the applicant who states that the fences and structures are needed to fully enclose the event sites, facilitate the staging of the events, and to provide food, drink, welfare and toilet facilities. The applicant explains that the events enable it to generate income which is then used to fund projects across the common including maintaining it to a good standard. I accept that this would be in the interests of the applicant.
16. There are no rights of common recorded over the land and, subject to my further consideration on the impacts on public access rights below, there is nothing which would indicate that the proposed works would negatively impact on any others occupying or having rights over the land affected. Consequently, I am satisfied that the proposed works would not negatively impact on the interests of those occupying or having rights over the land.

### ***The interests of the neighbourhood***

17. The applicant explains that the common has a long history of hosting commercial and charitable public entertainment, leisure and recreation events permitted under Article 7 of the 1967 Order. I accept that all three of the remaining events planned for 2022 would promote use and enjoyment of the common for both nearby residents and the wider public and, as such, would be of positive benefit to the neighbourhood.
18. However, I also note the various concerns raised in relation to the effect that the proposed events would have on nearby residents including in terms of increased noise

pollution, the impact of the proposed fencing on visual amenity and the potential for further restriction to the areas affected due to damage incurred to the surface of the common.

19. I accept that some of the events will draw large numbers of people, resulting in increased noise levels which may prove to be an annoyance to those residing nearby. However, it is the proposed works themselves (ie the erection of the fencing and other temporary structures) that the application is concerned with, and not the noise generated as a result of holding the events – something the council will have taken into account in deciding on whether to permit the holding of the event. Any additional noise generated by the erection of the fences or other structures will be minimal and is, in my view, unlikely to materially impact on the interests of the neighbourhood.
20. Likewise, while I acknowledge that large areas of Heras fencing and other structures would have some impact on visual amenity, in the present case it is clear that fencing and structures proposed are limited - both in the area they would cover and the time they would remain on site. Furthermore, the events would be staggered so that there would be sufficient time to ensure that any fencing and structures associated with earlier events was removed before new fencing was erected elsewhere. Accordingly, while I accept there would be some effect on visual amenity, I do not consider it would materially impact on the interests of the neighbourhood.
21. Turning then to the potential for further restrictions on areas of the common which become damaged as a result of the erection of the fences and other structures, I note that the applicant proposes a number of mitigation measures to reduce the likelihood that such damage would occur. I am satisfied that the proposed mitigation would help safeguard against such damage arising and in view of the limited periods of time that the proposed structures and fencing would remain in situ, accept that any impact is unlikely to result in significant damage to the common. Accordingly, I consider any further restrictions which are likely to result would be of short duration.
22. Overall, while I accept there would be some negative impacts on the interests of the neighbourhood these would not be significant and would be limited in duration. On balance, I do not consider the erection of temporary fencing or associated structures for the periods proposed would have a materially negative impact.

### ***The public interest***

#### *Nature conservation and conservation of the landscape*

23. The common is recorded as a Site of Importance for Nature Conservation and I acknowledge that where damage was to occur to the surface of the common as a result of the proposed fencing and structures, it has the potential to negatively impact on biodiversity.
24. However, the events are, in the main, located of parts of the common where NE have advised that there are no known areas of high-level biodiversity and, as I have noted above, the applicant has proposed a number of mitigation measures to limit damage to the surface of the common. Furthermore, I note that the structures proposed would be temporary and would be located in different areas of the common.
25. In addition, while I note NE does not envisage any benefits to nature conservation arising, there is similarly no robust evidence which would indicate that the proposed fencing or other structures would have a negative impact on existing biodiversity.

26. Accordingly, I do not consider that the works proposed would result in any significant impact on nature conservation.
27. Nevertheless, I acknowledge that the fencing and other temporary structures would result in some visual impact and impede views across parts of the common. They would appear prominent in close up views and incongruous alongside the open and spacious nature of the parts of the common where they were erected. However, these impacts would be highly localised and limited in duration. Overall, I do not consider they would have a materially negative impact on the public interest in conservation of the landscape.
28. Furthermore, I am mindful that for the BHS Bike Ride event and the Luna Cinema, the proposed fencing and structures would remain in place for around 3 and 7 days respectively and in the case of Colourscape around 17 days. These are modest periods and in all three cases the area of common affected would be relatively limited. Overall, I do not consider that they would materially detract from the overall enjoyment of those visiting the site.
29. Accordingly, I am satisfied that there would not be a materially negative impact on the public interest in nature conservation or the conservation of the landscape.

*The protection of public rights of access*

30. The public have rights of access both under the Metropolitan Commons Act 1896 as well as under section 193 of the Law of Property Act 1925 which includes access for informal recreation. It was clear from my site visit that the site is well used by both individuals and groups, including numerous schoolchildren, and that the common provides an important area of urban greenspace for people to enjoy both formal and informal recreation activities.
31. The application proposes to restrict access to various parts of the common for a further 27 days (excluding set up/take down) during the summer of 2022 (3 days for the BHS London to Brighton Bike Ride; 7 days for the Luna Cinema; and 17 days for Colourscape). None of these would be consecutive and the proposed works would occupy different areas of the common.
32. While I acknowledge the proposed fencing and other structures associated with the planned events would, to some extent, inhibit access to parts of the common, this would be for limited periods and would not result in more than 10% of the common be unavailable for public use at any one time.
33. Furthermore, in the case of the Luna cinema, the fenced area would be located on a large, grassed area where it is reasonable to assume many people gather for sitting, picnicking and for enjoying other informal recreation activities. The restricting of access over this area would negatively impact on access and recreation for those wishing to enjoy such activities. However, I note that it would occupy less than half of this grassed area and there are other areas available for such activities to take place. In view of the limited time that the proposed fencing and other structures would be in place, I consider the overall impact is unlikely to be significant or materially affect the enjoyment of the majority of those wishing to use the common for general recreation.
34. Likewise, the fencing and structures proposed for the Colourscape event would be located towards the eastern side of the common and would again be of limited size and duration. It is, in my view, unlikely to have any meaningful impact on those wishing to use the common for recreation. Similarly, the BFH bike ride site, while somewhat larger in area would be located towards the southern side of the common in a relatively contained site.

Overall, I do not consider it would have a significant impact on the use of the common more widely.

35. Nevertheless, it is clear that each of the sites will have some impact on public access and would restrict the way people access and enjoy the common. However, in view of their limited duration and extent, I am satisfied that the overall impact would remain within acceptable levels.

*Archaeological remains and features of historic interest*

36. The application was accompanied by a heritage statement which identifies the nearby heritage assets (including a number of listed buildings and the Clapham Conservation Area) and considers the impact of the proposed fencing and other temporary structures on their significance. It concludes that, in view of their overall design and temporary nature, there would be no material harm to their significance either during or after the erection of the temporary structures. I note that Historic England was consulted on the application and have raised no concerns and in view of their limited extent and duration, I see no reason to conclude otherwise.
37. No below ground excavation is proposed and there is nothing which would indicate that any buried archaeological remains would be affected.
38. On the evidence before me, I am satisfied that the proposed works will not result in harm to archaeological remains or features of historic interest.

*Conclusion on the public interest*

39. While I note there would be some temporary visual impact and a restriction on public access over parts of the common for limited periods of time, overall, I consider there would be no materially prejudicial impact on the public interest.

**Other relevant matters**

40. I note that the proposed works would enable events to proceed which would provide cultural, charitable and social engagement opportunities for different public audiences. They would also increase the variety of ways the common can be used and enjoyed by the public. This would provide a public benefit which I consider weighs positively in favour of the proposal.
41. I have also had regard to the various other concerns raised by local residents and other interested parties. While I acknowledge that overuse of the common for commercial activities has the potential to negatively impact on the site as a valuable and irreplaceable resource, I note that all of the events proposed fall within the powers available to local authorities under Article 7 of the 1967 Order to provide and maintain facilities for public recreation.
42. Furthermore, the fact that there are other entertainment venues elsewhere or that the events proposed might take business away from other local businesses does not provide sufficient reason to withhold consent. Similarly, there is nothing to suggest that the proposed works would have any meaningful impact on levels of antisocial behaviour, which I note will have been taken into account by the council when deciding on whether or not to grant licenses for the events proposed. In addition, I do not consider the designation or otherwise of part of the common as an 'events site' impacts on my reasoning above.



43. A number of representations raise concerns with the applicant's notification procedures. However, the applicant confirmed as part of the application that the relevant notification requirements were complied with, and that notices were posted on site and in local newspapers. I have seen nothing which would lead me to conclude otherwise or that the publication requirements for the application were deficient.
44. I have also had regard to the concerns raised that consenting to the proposed works would set a precedent for other, similar works intended to facilitate other events on the common. However, each application should be considered on its own merit. As such, I do not consider that the granting of consent for the works proposed would set any meaningful precedent for future applications.

### **Overall Conclusions**

45. I have found above that the erection of the proposed fencing and other temporary structures would not harm the interests of persons having rights in relation to, or occupying, the land. I have also found that it would not have a materially negative impact on the interests of the neighbourhood.
46. Furthermore, I do not consider it would negatively impact on the public interest in nature conservation, the conservation of the landscape or on archaeological remains or features of historic interest. While I acknowledge there would be some localised visual impact and a restriction on public access over some small areas of the common for limited periods of time, this needs to be balanced against the cultural, charitable and social engagement opportunities that arise from the facilitation of the events proposed. Overall, and taking into account the limited periods of time that the proposed structures would remain in place, I do not consider there would be any significant impact on the public interest in granting consent for the fencing and other temporary structures proposed.
47. Accordingly, for the reasons set out above, and having had regard to all other matters raised, I conclude that consent should be granted for the erection of fencing and structures associated with the 3 remaining events, those being the BHF London to Brighton Bike Ride (17-19 June 2022 (3 days)); the Luna Cinema (19-25 July 2022 (7 days)); and Colourscape (6-22 September 2022 (17 days)) as set out in the application and accompanying plan.

*Rory Cridland*

INSPECTOR

