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| **Application Decision** |
| Inquiry held on 13-16, 21-22 & 26-29 June 2023  Site Visit conducted on 2 August 2023 |
| **by Rory Cridland LLB (Hons) PG Dip, Solicitor** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 5 October 2023** |

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| **Application Ref: COM/3312935**  **Clapham Common – Festival Republic 2024**  Register Unit No: CL73  Commons Registration Authority: London Borough of Lambeth |
| * The application, dated 9 December 2022, is made 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 consent to construct temporary works on Clapham Common. * The application is made by the London Borough of Lambeth (“the Council”). * The application seeks consent for the creation of an enclosed fenced site for a temporary music and entertainment event permitted under Article 7 of the 1967 Act, for a fixed period of time on the grassed areas of Clapham Common with associated temporary structures. The temporary structures include a main music stage, two secondary music stages, big top style tents, concession stands, welfare and toilet facilities, back of house cabins and plant enclosures, together with the blocking off of one tarmac path, with the provision of a substitute path for pedestrian use outside the event site perimeter.  |  | | --- | |  | |
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Decision

1. Consent for the creation of an enclosed fenced site for a temporary music and entertainment event permitted under Article 7 of the 1967 Act, with associated temporary structures including a main music stage, two secondary music stages, big top style tents, concession stands, welfare and toilet facilities, back of house cabins and plant enclosures, together with the blocking off of one tarmac path and the provision of a substitute path for pedestrian use outside the site perimeter on the grassed areas of Clapham Common (Register Unit CL73) is granted in accordance with the application dated 9 December 2022 subject to the Condition set out in Schedule 1.

**Preliminary Matters**

1. A number of Objectors raised concerns that other areas of the Common will also be enclosed including for car parking, cycle parking, and for the provision of toilets and other facilities for those attending the events. However, the Council confirmed at the Inquiry that such enclosures are not included in the application.
2. All measurements referred to in this decision letter are approximate unless otherwise stated.

**The Application**

1. The application seeks consent for temporary fencing and other structures in order to facilitate three major music events proposed to be held on Clapham Common (“the Common”) during August 2024. The events would last for a total of three (3) days over the August Bank Holiday weekend (24 - 26 August 2024) but access to the site would be restricted for up to 19 days (12 - 31 August 2024) to enable the setting up and removal of the proposed works.
2. The proposed enclosure would result in the blocking off of a tarmacked path and its replacement with a temporary substitute along the perimeter of the site located around 45m away from the existing one. The application explains that the blocked off path would be kept open for the majority of the set up and removal works with a controlled access point for event vehicles.

**Description of the land**

1. The Common covers a large area and is registered as common land (CL73) under the Commons Registration Act 1965. It is owned by the Council and is sited in a densely 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.
2. Within its boundary are various ponds, paths, structures and areas for formal and informal recreation including grassed sites suitable for ball games and picnicking, shaded areas, a children’s playground, a paddling pool and other recreational facilities. It also includes a number of areas of high and medium ecological sensitivity, with a number of established areas of wildflower. Parts of the Common have recently been designated by the Council as a Local Nature Reserve.

**Main Issues**

1. Article 7(1)(b) of the 1967 Act permits a local authority to provide, amongst other things, bands of music and concerts in any open space to which the Act applies provided that the part of any open space set apart or enclosed for such use does not exceed one acre or one tenth of the open space, whichever is the greater.
2. Article 12 of the 1967 Act restricts the erection of any building or other structure on any part of a common or open space to which the Act applies without consent from the appropriate national body. It follows that in considering whether or not to grant consent, I must be satisfied that any such consent would not result in the enclosure of an area of land which would exceed the spatial limit imposed by the 1967 Act.
3. Furthermore, in determining such applications, Defra’s Common Land Consents Policy (2015) (“the 2015 Guidance”) advises that regard should be had to the matters listed in 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.

1. 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 size of the open space*

1. The application seeks consent to enclose around 78,995 sqm of the Common. The Objectors contend that this would exceed the spatial limit imposed by Article 7(1)(ii) of the Act.
2. In considering whether this is the case, it is first necessary to identify the area of open space to which the act applies. In many cases, this will be straightforward and can be established by reference to the registers prepared under the Commons Registration Act 1965 (“the 1965 Act). However, the Register of Common Land for Clapham Common created under the 1965 Act is no longer available, having been lost during, or subsequent to, the transfer of functions and responsibilities from the Greater London Council (“the GLC”) to the London Borough of Lambeth.
3. The application form indicates that the total area of registered common land is 83.03 hectares. However, this is based on the Council’s digital mapping of the 1877 Commons Inclosure map (“the 1877 Map”) onto a modern map base. While I accept the 1877 Map provides a useful starting point, it depicts an area of open space which has changed considerably in the intervening period. I agree with the main parties that it does not provide a reliable basis upon which to calculate the area of open space for the purposes of the 1967 Act.
4. The Friends of Clapham Common (“the FoCC”) have directed me towards records contained in the Defra common land database which indicate that the Common consists of an area of around 78.17 hectares. However, the database was not compiled for the purpose of identifying the precise area of registered common land. While the information it contains was in some cases taken from the commons registers, in others it was not. While I accept that it provides a broad indication of the Common’s overall size, it does not provide conclusive evidence on the extent of the open space for the purposes of the 1967 Act.
5. In such circumstances, I consider a more pragmatic approach is necessary which involves assessing the extent of the open space at the current time and reaching a judgment on whether the extent of enclosure applied for would exceed the spatial limit.
6. Article 6 of the Act defines open space as including ‘any public park, heath, common, recreation ground, pleasure ground, garden, walk, ornamental enclosure, or disused burial ground under the control or management of a local authority’. While this definition is somewhat broad and encompasses a wide range of spaces, it must be read in the context of the purpose of the 1967 Act which was to secure uniformity in the law applicable to such spaces and to facilitate public recreation.
7. Neither of the main parties has commissioned a detailed, independent survey of the current area of open space. While I note the FoCC has prepared its own survey, this is based predominantly on ownership and is limited in its methodology. In contrast, the Council’s mapping exercise is somewhat more robust and takes some account of the use and function of the land in its present condition. It essentially sets out what the Council considers is its best case in terms of the size of the open space and provides a useful starting point when approaching this issue. It has produced a figure of around 792,959 sqm. However, the inclusion by the Council of a number of areas is disputed by the Objectors. I consider these areas further below.

*Four short sections of footway opposite Eagle Pond*

1. These four short sections of footway comprise an area of around 1,681 sqm and are essentially part of the pavement. While I note these areas were included in the 1877 Map (and that they fall under the same land registry title number as the main area of the Common) they are indistinguishable from the pavements that sit alongside the highway. They are separated from the main area of open space by the busy A26 and appear neither cohesive with, nor functionally related to, the Common. While I accept they form part of the *public realm*, their main purpose is to provide pedestrian access alongside the busy road. They do not, in my view, fall within the meaning of open space for the purposes of Article 6 and should be excluded from the Council’s calculation.

*Pavements and footways (including the area outside Clapham Common tube station)*

1. The Council has included a number of other pavements and footways in its calculation of the area of open space which amount to around 21,028 sqm. These are similar to the four short sections of footway considered above in that they generally provide access for pedestrians along the edge of the highway. However, unlike those areas, in many cases these pavements and footways are located directly alongside the boundary of the Common[[1]](#footnote-2).
2. While they differ from each other in a number of respects, they are similar in so far as they provide a safe space for pedestrians to travel alongside these often busy roads. Many are separated from the main area of open space by boundary features including post and rail fencing, metal fencing or simple posts driven into the ground, although in some areas they are more open. However, in all cases there is a clear delineation between them and the main area of open space.
3. While I note that some of the areas may have been included in the 1877 mapping of the Common, in view of its scale it is unclear whether the cartographer intended these to be within or outside the main area of the open space. In any event, both their use and function will have changed in the intervening period. While I acknowledge that some registration authorities registered pavements and highways as part of the registration process undertaken as part of the 1965 Act, there is no evidence to indicate that the GLC did so. In view of the definition of common land set out in Section 22 of the 1965 Act, it is just as likely that they were excluded. In terms of their current function, it is clearly more related to the safe functioning of the highway than to the area of open space.
4. The Council has suggested that these areas might be classed as walkways for the purposes of Article 6 of the 1967 Act. I do not agree. Walks in this context are recreational walks and I do not accept that it was the intention of Parliament or the GLC to include pavements alongside highways as areas of public open space to which the Act applies.
5. While I acknowledge there is a physical relationship between these areas and the area of open space in as much as they are adjacent to each other, they are, in my view, clearly distinguishable from the walkways within the main common boundary which provide a means of travelling through the open space for recreational users as opposed to providing safe transit alongside the highway. While they might facilitate walking and running, their function is little different to that of any other pavement elsewhere in London. They are clearly separate and outside the main area of open space. I also observed that unlike the pathways located within the main area of open space, these footways contained large amounts of highway signage and other highway-related paraphernalia reinforcing their more functional relationship with the highway.
6. In my view, most casual observers passing along these pavements would consider themselves situated on part of the public highway, outside but adjacent to the main area of open space. I am not therefore persuaded that these areas fall within the definition of open space for the purposes of the 1967 Act and, as such, consider they should be excluded from the Council’s calculation.

*The area outside Clapham Common tube station*

1. The area of land situated outside Clapham Common tube station consists of a number of grassed areas, ornamental planting along with some additional areas of hard landscaping. While the main parties agree that the areas of grass should be included, the FoCC object to the inclusion of the areas of hardstanding and footways which essentially form the entrance to the underground station.
2. I agree with the FoCC that this area is a busy throughway and is neither functionally nor visually related to the main area of open space. While I acknowledge these areas of hardstanding and footways provide routes through the grassed areas, they are clearly intended to facilitate access to the surrounding shops and highway network (or the tube station itself) and cannot reasonably be considered to be areas of open space within the meaning of the 1967 Act. Accordingly, they too should be excluded from the calculation of open space.

*Grass paddocks along Nightingale Lane*

1. These consist of some areas of pavement in front of Hightrees House, some areas of nearby ornamental planting and a small area of trees and paving immediately west of Alderbrook Road. It also includes some more extensive areas of grass further along Nightingale Lane. In total these areas equate to around 2,500 sqm. However, although they are located in close proximity to the Common, they are neither visually nor functionally associated with it. Indeed, my impression on site was that they are more closely associated with the built environment and essentially consist of soft landscaping.
2. While I accept that the grassed areas further along Nightingale Lane may have once formed part of the Common, they are now crossed by numerous driveways providing access to the residences beyond. They are clearly separate from the Common and provide little in the way of functional open space at the present time. Having viewed these areas as part of my site visit, I concur with the FoCC that while they add visual amenity to this part of Lambeth, they are functionally different to the main area of open space and should be excluded from the Council’s calculation.

*The Paddocks*

1. The Paddocks consist of what is essentially around 6,200 sqm of highway verge, separated from the main area of open space by a busy road. While I acknowledge they will have at one time formed part of the Common, and are clearly depicted in the 1877 Map, their function and use has changed over time. They are currently isolated areas of green space surrounded by pavements, roadways and drives and provide limited, if any, opportunities for general use and recreation by members of the public. They are, in many ways, similar to the grassed areas along Nightingale Lane and while they provide a pleasant break in the built environment, they provide little in the way of functioning open space.
2. On balance, and in the absence of any clear evidence that they are used as areas for general recreation, I consider they too should be excluded from the definition of open space for the purposes of the 1967 Act.

*Holy Trinity Churchyard*

1. The Holy Trinity Churchyard is located along the north eastern part of the Common to the north of the busy A7. It is generally open and accessible to the public and appears as a cohesive, albeit separate, part of Clapham Common. Under the terms of an agreement dated 27 March 1963 made between the Church and the Council, the area is managed as an open space and garden or recreation ground under the Open Spaces Act 1906.
2. While I note the FoCC’s contention that the area is not one functionally enjoyed in the same way as the open space around it, the 1963 agreement is clearly intended to ensure the site is used for such purposes. I therefore consider it should be included when calculating the total area of open space for the purposes of the 1967 Act.

*The Polygon*

1. The area around the Polygon comprises 3 separate segments, the first of which consists of an area of unenclosed green space towards the southeast corner. It is common ground that this area is part of the open space and is connected to the Common and capable of use for various forms of recreation. The second area, to its west, comprises an area of ornamental planting and essentially forms part of the soft landscaping intended to provide some visual relief to the nearby built form. While I accept it is an area of green space, I do not consider it is open space within the meaning of the 1967 Order.
2. The third area consists of an area of around 1,786 sqm of hardstanding, which the Council has suggested should be included as it provides opportunities for dog walking, sitting and general recreation. However, this area is paved over, is neither visually nor functionally related to the main area of open space and contains seating that faces away from the Common. Furthermore, I noticed on entering how evident it was that one had left the main area of open space. While I acknowledge the area forms part of the public realm, I do not consider it forms part of the open space for the purposes of the 1967 Act. Accordingly, I consider this area should be excluded from the Council’s calculation.

*Gravelled area along Windmill Drive*

1. This consists of a small, gravelled area located beyond the barrier at the end of Windmill Drive which all parties accept has been used for parking by residents for a number of years. While I note the concerns raised by the FoCC as to whether it is capable of being used as functional open space, it is clearly located within the main area of the Common and is, to a large extent, indistinguishable from many other areas of the open space. Even though I do not have detailed evidence on the extent of the parking on this site, I see no reason in principle that its use at times by local residents for parking would necessarily be incompatible with its role as public open space.
2. Furthermore, I heard evidence during the Inquiry that this area was now subject to an agreement between the Council and nearby residents whereby it will shortly cease to be used as an area for parking. On balance, I see no reason to exclude it from the Council’s calculation.

*Cycle track*

1. There was some discussion during the Inquiry as to whether the cycle track which bisects the Common should be included in the Council’s calculation of open space. Additional evidence was submitted which indicates that, at the time the cycle track was constructed, the Public Services, Amenity Services and Town Planning Urgency Sub-Committee gave authorisation for an application to be made to the Secretary of State under Article17(2) of the 1967 Act to alienate land from the Common in order to construct a cycleway.
2. Furthermore, my attention was drawn to the records contained in the common land consents database (otherwise known as the ‘pink slips’) which records details of decided common land applications going back a considerable period of time. This contains an entry (Entry 1687) which indicates an application was made under the 1967 Act in October 1984 in relation to 0.155 hectares of the Common for purposes related to a cycle route. Furthermore, it indicates that approval was granted for the application in April 1985. It does not, however, give any indication as to what was applied for, its extent or indeed whether the consent granted was for the alienation of this area of land.
3. While I acknowledge that this all adds weight to the assertion that the Council followed through on its stated intention, it does not demonstrate that this area was alienated from the open space. It is, by itself, insufficient to warrant the removal of the land from the calculation of open space for the purposes of the Act.
4. It is common ground that the route is heavily used by cyclists, particularly during the morning and evening rush hour. However, I observed during my site visit that it was used by both pedestrians and cyclists at other times of the day. It is clearly located within the main area of open space and intended to facilitate access through it for both recreational and commuting purposes. On balance, I see no reason that it cannot be both part of the open space and used by cyclists for commuting purposes. Accordingly, I consider it should be included in the calculation of the area of Open Space for the purposes of the 1967 Act.

*Conclusion on the size of the open space*

1. The calculation of the area of open space for the purposes of the 1967 Act is not an exact science. In the absence of a detailed, cartographical survey it will inevitably involve an element of judgment. However, taking the Council’s own figure of 792,959 sqm and removing those areas which I have found should be excluded (approximately 33,195 sqm), I consider the Council has, on the evidence before me, demonstrated an area of open space of approximately 759,764 sqm. I return to this matter further below.

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

1. There are no rights of common recorded over the land. Furthermore, no objections or representations have been received from those who have rights to occupy the land. Subject to my consideration of the effect of the proposed works on public rights of access below, there is nothing which would indicate that the proposed works would negatively impact on any others having rights over the land affected or the Common more widely. Consequently, I do not consider that the proposed works would have a detrimental impact on the interests of those occupying or having rights over the land.

***The interests of the neighbourhood***

1. The FoCC, along with a number of other Objectors, contend that the proposed works would, or at least have the potential to, give rise to a significant and lasting adverse impact on the interests of the neighbourhood. However, while I acknowledge there will be some adverse impacts on the interests of the neighbourhood, I do not agree they would be either significant or lasting for the following reasons:

*Noise, litter, traffic and antisocial behaviour*

1. Many of the concerns I heard related to the effect that the events themselves would have on the surrounding area – for example, noise, litter and various forms of anti-social behaviour. I also note that the events are likely to attract large numbers of people, resulting in increased traffic and other disturbance.
2. However, many of these effects arise out of the type of event being proposed as opposed to the erection of the structures themselves. It is the effect of the proposed works (i.e. the fencing and other temporary structures required to facilitate the events) that this application is primarily concerned with, and not the noise or other disruption which might result from the holding of the events themselves. These are matters that are more appropriately considered as part of the licensing and planning regimes, where the views of the local community can be considered alongside those of other consultees.
3. While I accept that the setting up and removal process is likely to prove to be an annoyance to some local residents and businesses, the structures are, to a large extent, intended to help manage the events and ensure the safety of both the participants and other users of the Common. They would remain on site for a maximum of 19 days and any noise, traffic or other disruption generated during set-up and removal would be experienced within the context of the busy urban area. In my view, it is unlikely to result in any significant level of disturbance to those living and working nearby and would not materially impact on the interests of the neighbourhood in this respect.

*Displacement onto other areas of the open space*

1. The FoCC have suggested that the enclosure and restrictions on access to the application site would result in the displacement of users onto other areas of the Common and damage to other parts of the open space. However, while I agree that restricting use over one part of the Common is likely to result in the increased use of other parts of it, the remaining area of open space is large, well suited to various forms of recreation and likely to be able to accommodate reasonably high levels of displacement. There is no robust evidence to indicate that overuse of any particular site would increase to such a level that damage was likely to occur. Indeed, it is more likely that any displacement would be spread around different parts of the Common and any resultant effects subsumed within the pattern of general usage.
2. I am not therefore persuaded that the effect of displacement would have any material impact on either the interests of the neighbourhood or on the fabric of the Common more generally.

*The effect of enclosure*

1. The Common has a long history of hosting various commercial and charitable events, public entertainment, and other leisure and recreation activities. This is clearly what was intended by the 1967 Act and Parliament’s recognition of the important and varied role that areas of open space play in the metropolitan area. This is also acknowledged in the 2015 guidance which notes that commons deliver a number of recreational benefits including providing open space for surrounding communities and use for a wide range of organised activities.
2. Furthermore, it is clear that the variety of events held on the Common provides opportunities for those living nearby to participate in cultural and social events which are valued by many people within the local community. These events draw people to the area, benefitting both the local community and some of the businesses within it.
3. However, the erection of 3m high solid steel shield perimeter fencing around the application site would appear in stark contrast to the more open and spacious surroundings. Its height and overall scale would be somewhat overbearing, particularly up close, and would create a sense of enclosure for those walking along the adjacent routes. Indeed, it was referred to by a number of those giving evidence as ‘the prison fence’ – a term which reinforced the view that it would result in physical, social, visual and symbolic impacts for regular users of the Common.
4. Furthermore, it is at these peak times - during the school holidays and over the bank holiday weekend - that use of the Common by those living nearby can be expected to increase. Excluding people from the application site for almost three weeks at this time of year would clearly prevent local people from using the common in the way they are used to. This would be contrary to the 2015 guidance and would adversely impact on the interests of the neighbourhood.
5. Nonetheless, I am mindful that the proposed works would be limited to this part of the Common and their impact would be short-lived. Sufficient areas of the Common would remain available to those living and working nearby to ensure that any negative impacts were not significant.
6. Overall, while I consider the enclosure of the application site for the period proposed would have some adverse impacts on the interests of the neighbourhood, this harm is considerably tempered by the limited area of the Common affected and the limited duration of the proposed works.

*Conclusions on the interests of the neighbourhood*

1. Consequently, while I acknowledge the erection of the proposed works would result in some adverse impacts on the interests of the neighbourhood, for the reasons set out above, I do not consider they would be significant or long-lasting.

***The public interest***

*Nature conservation and conservation of the landscape*

1. The Common is not subject to any national landscape designation. However, it is clearly an important area of greenspace in this otherwise densely populated part of London. It is also recorded as a Site of Importance for Nature Conservation with parts having recently been designated as a Local Nature Reserve. It contains a number of areas of high ecological sensitivity and I acknowledge that where damage was to occur to these areas, it has the potential to negatively impact on nature conservation.
2. However, the Ecological Impact Assessments carried out in both 2018 and 2020[[2]](#footnote-3) (“the Salix Ecology Assessments”) identify the application site itself as an area of low ecological sensitivity and conclude there would be little significant impact expected from the occasional large-scale public event.
3. While I acknowledge that the erection of the proposed works would result in some additional soil compaction and damage to the surface of the application site, I heard evidence from all parties that high levels of compaction and damage already takes place throughout the year - as is to be expected on a popular part of the Common used for a variety of activities. There is no robust evidence which would indicate that the erection of the structures for the periods proposed would materially increase the levels of compaction or damage to any significant extent.
4. Furthermore, while I note the concerns raised by the FoCC and others in relation to the reinstatement works carried out in 2020 and 2021, including in terms of the seed mix used, the post-reinstatement reports commissioned by the Council indicate that, overall, the works undertaken have been very successful[[3]](#footnote-4). While they acknowledge there were some initial difficulties in establishing the grass sward[[4]](#footnote-5), these have generally been addressed and, as a result, the surface will now be more resilient to use for major events[[5]](#footnote-6).
5. In any event, the fact remains that this was an area of low ecological sensitivity prior to those works being carried out and remains so. That is, at least in part, one of the reasons the Council has sought to locate major events on this part of the Common – away from the more sensitive ecological sites.
6. I note that there have been a number of biodiversity improvements to other parts of the common since the Salix Ecology assessments were carried out. However, none of those sensitive areas are located on the application site itself. Furthermore, I note that the Common is used by thousands of people throughout the year, with some estimates indicating it is used regularly by around 40,000 individuals.
7. While I acknowledge there is a small risk that some areas of high and moderate ecological sensitivity outside the application site (including areas M6 and H3) could be damaged, for example by people straying off the paths and trampling on these areas, there is no robust evidence which would indicate that the risk would be any greater than at any other time of the year. I see no reason that, with suitable management measures in place, for example by directing people towards the main tracks and routes, these areas would be at any significantly greater risk. Indeed, should the Council consider it necessary, it is open to them to take measures to protect these areas – including by erecting fencing under Article 9 of the 1967 Act. I do not therefore consider this would provide sufficient reason to withhold consent for the works proposed.
8. A number of Objectors also expressed concerns as to whether adequate restoration of the application site would be possible within a reasonable period of time. While I acknowledge the extent of reinstatement works required will vary, not least as a result of weather conditions at the time, the Council has proposed a number of mitigation measures to limit damage to the surface of the Common and to ensure that, where damage does occur, adequate provision has been made to ensure suitable repair/reinstatement takes place. These include measures to protect the surface of the Common as well as securing damage deposits from event organisers, inspections before and after events, and agreed programmes of repair. There is no robust evidence before me which indicates that these measures would not be effective and that reinstatement of any damage could not be achieved within a reasonable timescale.
9. On balance, I am not persuaded that the proposed works would adversely affect the public interest in nature conservation and find no harm in this respect.
10. Turning then to the public interest in the conservation of the landscape, no trees would be lost and all of the proposed works would be temporary. Furthermore, I noted during my site visit that the tree cover in this area significantly reduces the visibility of the site from the wider area. This, coupled with the temporary nature of the structures and the scale of the areas within which they are situated, means that the effect of the proposed works would be highly localised and would not be harmful to the wider landscape.
11. Nevertheless, I acknowledge that the fencing and other temporary structures would result in some visual impact and impede views across this part 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 seen in the context of the surrounding urban area, would be clearly temporary in nature and would be erected on an area where regular users were used to seeing events take place.
12. Accordingly, even though I have found that there would be some adverse visual effects, these would be short-lived and localised. They would not, in my view, result in any material detriment to the conservation of the landscape.
13. Consequently, I do not consider the proposed works would have a significantly detrimental effect on the public interest in nature conservation or conservation of the landscape.

*The protection of public rights of access*

1. The public has rights of access under section 193 of the Law of Property Act 1925 which includes access for informal recreation. I heard considerable evidence during the Inquiry about how the application site is well used by both individuals and groups, including numerous schoolchildren, for a range of formal and informal activities. Indeed, it is common ground that it comprises one of the largest single areas of grassland on the Common.
2. The application proposes to restrict access to the area for around 19 days during August 2024. However, while I acknowledge the proposed works would inhibit access to the application site during a period when it could be expected that overall use of the Common would increase, members of the public would continue to have access over the remainder of the Common for formal and informal recreation, albeit that some parts would still require pre-booking.
3. Furthermore, even though I accept that during the event days themselves, some members of the public may not wish to access the Common due to the associated noise, disruption and concerns around anti-social behaviour, this would be for a limited period of time and it would be open for those who wished to use the remainder of the site for air and recreation, to do so. I have seen no robust evidence which would indicate that previous large events held on the site have had a significant effect on public access over other parts of the Common or the ways in which they are used by members of the public for general recreation.
4. Moreover, while it is clear that the fencing of the application site for a period of 19 days would have some impact on public access, in view of its limited duration and extent, any effects would be neither significant nor long lasting. I am satisfied that, so long as any enclosure does not exceed the spatial limit imposed by the 1967 Act, the overall impact on public access would remain within acceptable levels.
5. I accept that it is possible that there will be some further restrictions on access while any damage to the surface of the Common that did occur was remedied. However, in view of the safeguards proposed by the Council to limit the potential for such damage, any additional restrictions are likely to be of short duration.
6. The FoCC have also argued that in order for the proposed events to take place further areas of the common will have to be enclosed. They point to the areas for queuing, provision for toilets, cycle parking and areas to be enclosed for ecological protection. Even though all of these areas would fall outside the application site, I acknowledge that they would have the potential to result in additional impacts on public access over the Common. However, these areas, even taken together, are very small and any restrictions would remain in place for a very limited period of time. They are unlikely to have any meaningful or lasting impact on public access over the Common more generally. They do not in my view provide sufficient reason for withholding consent.
7. Consequently, while I acknowledge that there would be some restrictions on public access as a result of the proposed works, these would be temporary and limited in both their extent and duration. As such, I do not consider they would be significant.

*Archaeological remains and features of historic interest*

1. The application was accompanied by a heritage statement[[6]](#footnote-7) which identifies nearby heritage assets and considers the impact of the proposed fencing and other temporary structures on their significance. While it recognises that the proposal would result in some change to how these assets are experienced and appreciated, it concludes that, in view of its temporary nature, it would not materially harm the heritage context.
2. I agree with that overall assessment. While I acknowledge the concerns raised by some of the Objectors in relation to the Church of Holy Trinity, there is no robust evidence to indicate that the erection of the fencing and structures proposed would have any meaningful impact on the significance of this asset, either architecturally or in terms of understanding its role in the anti-slavery movement.
3. Furthermore, any effects would be temporary and I note that Historic England was consulted on the applications and has raised no concerns. Likewise, no below-ground excavation is proposed and there is nothing that would indicate that any buried archaeological remains would be affected.
4. On the evidence before me, I conclude that the proposed works would not result in harm to archaeological remains or features of historic interest.

*Conclusions on the public interest*

1. I have found above that the proposed works would not be detrimental to the public interest in nature conservation or the conservation of the landscape. Similarly, I am satisfied that the proposed works will not result in any lasting harm to archaeological remains or features of historic interest.
2. I have, however, found that there would be some adverse visual impact as a result of the size and scale of the proposed perimeter fencing. Likewise, the proposed temporary fencing and structures would also have an adverse impact on public access and would restrict the way people access and enjoy the common. However, as I have made clear above, in view of their limited extent and duration, I do not consider these impacts would be significant.
3. In considering the public interest, I am mindful that the events being proposed fall within the types permitted by the 1967 Act and are intended to encourage and facilitate public recreation on the Common.
4. Overall, while I acknowledge there would be some harm, I consider that the proposed works would not be significantly detrimental to the public interest.

***Other Relevant Matters***

*Financial benefits*

1. The Council has argued that the proposed event would result in a significant financial benefit for local businesses, pointing to a 2018 study into the economic impact of major events at Finsbury Park[[7]](#footnote-8). While I accept that the Council’s evidence indicates that the holding of major events *can* result in a number of economic benefits to nearby businesses, no local businesses have provided first-hand evidence on these matters either way. In the absence of any up-to-date and reliable information on the economic benefits that holding such events on the Common has on the surrounding area, it is difficult to assess the extent of that benefit. Accordingly, the weight that I can afford to it is limited.
2. I heard considerable oral evidence during the Inquiry that the proposed event would generate a much-needed financial receipt for the Council which would be used to fund the Council’s events team and for the ongoing maintenance of the Common (as well as other open spaces within the Borough more generally). Be that as it may, these are budgetary matters for the Council and whether or not an event generates income for the Council is not a determinative factor when considering whether or not to grant consent for works on common land.
3. I have noted the concerns raised in relation to the use of the proceeds generated by the events. However, I consider the Council is best placed to decide how to use any income generated from the use of the Common and, for reasons similar to those already set out above, I do not consider this is a matter that would have any material bearing on the determination of the application.

*Cumulative impacts*

1. A number of Objectors raised concerns in relation to the increase in the number of temporary events being held on the common. Indeed, I agree that an overuse of the common for commercial activities has the potential to negatively impact on the site as a valuable and irreplaceable resource. However, the 1967 Act clearly envisages a range of activities taking place on metropolitan commons and I note that the events which would be facilitated by the works proposed fall within the scope of those permitted by the 1967 Act.
2. While I acknowledge that there may be some cumulative effects that result from the carrying out of works to facilitate the holding of numerous events throughout the year, both on the application site and the wider Common, at present the programme and location of these other events is unclear. Any cumulative impacts resulting from the proposed works and those required to facilitate other events, can be better considered if, and when, such applications are made and full details known.

*Consideration of alternatives*

1. The 2015 Guidance makes clear that the Secretary of State will wish to know what alternatives have been considered to the application proposal. It is for an applicant to provide evidence sufficient to show that alternatives have been considered and provide reasons as to why they have been rejected. However, this must be approached on a proportionate basis and does not require an applicant to cast a wide net, trawling potential alternative sites outside its area which might be able to accommodate the proposed event. Indeed, the requirement to consider alternatives must be seen within the context of what is being sought, in this case the erection of temporary fencing and other structures to facilitate a major music event on a part of the wider area of open space.
2. In the present case, it seems to me that a proportionate consideration of alternatives might reasonably consist of an exploration of alternative sites within its area or a reduction in the extent of the area to be enclosed. In relation to the former, while I note the varying views presented on potential alternative sites, I heard evidence from a number of the Council’s witnesses as to why these alternative sites were not appropriate, with reasons given including accessibility by public transport, availability of the sites and issues of capacity to hold the number of attendees expected to attend. While I accept that there may be other sites within the area that are capable of hosting events of this size, there are equally good reasons why the Council has chosen this site over the others. In my view, it is clear that the Council has considered those other sites and provided reasons as to why they were rejected. I am therefore content that the Council has met the policy requirement in this respect.
3. Turning then to the potential reduction in the area to be enclosed, it is clear that the Council has sought to take advantage of the maximum area of enclosure allowed for by the 1967 Act. However, this is understandable in view of the fact that the 1967 Act itself seeks to strike a balance between the ability of a local authority to enclose a site to provide entertainment and the rights of those who wish to use the Common for other purposes to be able to do so. I do not therefore consider it is necessary for the Council to adduce further detailed evidence on this point.

*Local opposition*

1. I heard a considerable amount of oral evidence from local residents who raised a variety of concerns including the effect that holding large-scale events on the Common has on the enjoyment of their property, their ability to use the Common, and the effects of noise, litter, vandalism and other anti-social behaviour. I acknowledge that these are significant issues that require careful consideration and management by both the Council and other agencies including the police. However, as I have made clear above, these are matters more appropriately addressed through the planning and licensing regimes, where the views of the agencies responsible can be taken into account alongside those of the community.
2. I also note the concerns expressed by residents who had little faith in a system whereby the Council, who is also the applicant, is responsible for considering these matters. However, as a matter of public law, the Council is under a duty to approach these matters independently and I have seen nothing which would indicate that it has not done so in the past nor would continue to do so in the future.
3. I also heard evidence from a number of Objectors as to the effect that the closure of nearby tube stations would have on those travelling in this part of London. However, the closure of tube stations during major events is intended to help manage pedestrian traffic flows and is done in the interests of safety.
4. Overall, while I acknowledge the concerns of local residents, I do not consider these matters provide sufficient reason to withhold consent for the works being sought.

*Cultural and social engagement opportunities*

1. I note that the proposed works would enable events to proceed which would provide cultural and social engagement opportunities for different public audiences. They would increase the variety of ways the Common can be used and enjoyed by the public and draw people from a diverse range of ages and backgrounds. This would provide a considerable public benefit which I consider weighs positively in favour of the proposal.

**Overall Conclusions**

1. The 2015 Guidance makes clear that the government wishes to see common land delivering a range of benefits while ensuring they are safeguarded for current and future generations to use and enjoy. In order to achieve these aims, the consent process seeks to, amongst other things, ensure the stock of common land is not diminished, that its use is consistent with its status and that works take place only where they maintain or improve the condition of the common or where they provide some wider public benefit. This is consistent with the overall aims of the 1967 Act which explicitly permits the holding of concerts on areas of metropolitan open spaces, including commons.
2. 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 an adverse impact on the public interest in nature conservation, the conservation of the landscape or on archaeological remains or features of historic interest.
3. However, I have found that it would result in some adverse impacts on the interests of the neighbourhood, some localised visual impacts and would result in a restriction on public access over the application site for a period of 19 days. While I acknowledge these impacts would be noticeable by the local community and members of the public wishing to access the application site, particularly over the bank holiday weekend, in view of their limited duration and spatial extent, I do not consider they would be significant. Indeed, a sufficient area of the Common would remain available to be enjoyed by those who may wish to undertake alternative recreational activities should they so wish.
4. Likewise, while I do not consider the proposal would improve the condition of the Common, I see no reason that, with suitable management processes in place, the condition of the application site, and indeed the Common more widely, would not be maintained.
5. Nevertheless, the application seeks consent to enclose approximately 78,995 sqm of land, an area representing around 10.4% of the open space. Similarly, the Council’s alternative plan, (submitted during the Inquiry[[8]](#footnote-9)) would equate to the enclosure of around 10.3% of the open space. In either case, the land to be enclosed would exceed the spatial limit imposed by the 1967 Act, albeit only marginally so.
6. As I have made clear above, calculating the area of open space is not an exact science and in the absence of any detailed cartographical survey will inevitably involve an element of judgement. In the present case, the exceedance is not significant, involving less than 1% of the open space and clearly within a reasonable margin of error. Furthermore, I note the Council has indicated a willingness to reduce the enclosure to within the spatial limit imposed by the Act.
7. While I note the FoCC’s contention that whether the application site consists of more than 10% of the open space is a matter of primary jurisdictional fact, I see no reason that the Council could not bring the area of land to be enclosed within the spatial limit. Indeed, it has not only expressed a clear willingness to do so but - with the submission of its alternative site plan – has demonstrated that it is possible to do so without materially altering the overall impact of the works being applied for.
8. Accordingly, in view of the limited harm I have identified above, and taking into account the positive cultural and community benefits that would arise from the use of the Common for varied recreation as envisaged by the 1967 Act, I conclude that consent should be granted.
9. However, in order to ensure that any enclosure remains within the spatial limit imposed by the 1967 Act I consider it necessary to impose a condition limiting the extent of the enclosure to no more than 75,976 sqm. Furthermore, in order to ensure that any potential impacts remain within the parameters assessed as part of the application, I consider it necessary to also include wording that will ensure that any such enclosure is located within the boundary of the application site as shown on the application plan. Together, I am satisfied that this would ensure that any potential effects would be no greater than those already considered.

Rory Cridland

INSPECTOR

**Schedule 1**

Condition:

1. No more than 75,976 sqm of the Common shall be enclosed by the works hereby permitted. All works shall be carried out within the red line boundary shown on the plan submitted with the application entitled ‘Section J Plan v1.0’ (a copy of which is provided for illustration purposes at Schedule 2).

**Schedule 2**

**A map of a city

Description automatically generated**

**APPEARANCES**

FOR THE COUNCIL

Mr Matthew Reed KC

Instructed by the Head of Legal Services, London Borough of Lambeth

Called:

Mr Kevin Crook, BSc (Hons), DMS

Ms Lucy Zaman, BA (Hons)

Mr Dani Fiumicelli, BSc (Hons), MSc, MCIEH and MIOA

Ms Emily Kingston, BA (Hons)

Mr Andrew Poynter, BSc (Hons), FArborA, MICFor, MCIHort, CEnv

Mr Paul Franklin, BSc, MPhil, MCIEEM

Mr Rudy McDonald

Mr Richard Brookes, BSc (Hons), MTP (UC), MRTPI, IHBC

FOR THE Friends of Clapham Common

Mr Douglas Edwards KC and Mr Mark O’Brien O’Reilly

Instructed by Harrison Grant Ring

Called:

Mr Ed Alnut

Ms Emma de Cassan

Mr David Hedges-Gower

Mr Michael Kermer

Ms Samantha Walker

**OTHER INTERESTED PARTIES WHO SPOKE AT THE INQUIRY**

Mr Jeremy Clyne

Professor Goldman

Mr Muscatt

Cllr Ben Curtis

Mr Andrew Fingret

Cllr Inglis-Jones

Mr Peter Schmitt

Mr Andrew Smith

Mr Alec Davidson

Ms Emma de Cassan

Mr Brice Macinnes

Mr Philip de Cassan

Mr Simon Millson

Mr Mark Leffler

Mr Jon Spencer Silver

Mr Joseph de Souza

Ms Felicity Lawrence

Cllr Linda Bray

Mr Simon Saville

Mrs Shirley Kermer

Mr Tom Graham

Mr Martyn Hooton

**DOCUMENTS SUBMITTED AT THE INQUIRY**

1. Applicant’s Opening Statement (LE.01)
2. The Friends of Clapham Common Opening Statement (LE.02)
3. Lambeth Borough Council Joint Urgency Committee Minutes dated 15 October 1984 (LE.03)
4. BBC News Report on Brockwell Park dated 6 June 2023 (LE.04)
5. Evening Standard News Report on Brockwell Park (undated) (LE.05)
6. Screenshot of Council LVT Mapping - highways layer (LE.06)
7. Freedom of Information Act response from London Borough of Lambeth dated 6 June 2023 (LE.07).
8. Email dated 25 May 2023 from DEFRA (Rural Payments) regarding background information on Defra’s common land database (including excerpt of registered commons in the Greater London area) (LE.08)
9. Clapham Common Summer Season Commercial Events Concession Contract 2020 – 2024 - Appendix B. Statement of Requirements (Specification) (LE.09)
10. Note from FoCC on issues arising from the re-examination of Mr Crook and accompanying screen shots (LE.10)
11. Extract from DEFRA’s Common Land consents database (‘Pink Slips’) (LE.11)
12. Alternative Site Plan (LE.12)
13. Comparison Plan and CAD screenshot (LE.12.1)
14. R (on the application of Holborn Studios Ltd) v Hackney LBC [2017] EWHC 2823 (Admin) (LE.13)
15. Cycle Route 5 – quiet (LE.14)
16. Proposed location of portable toilets (LE.15)
17. Plan showing areas considered by Lambeth Council to be open space forming part of Clapham Common, which are disputed by FoCC (LE.16)
18. Agenda of Joint meeting of the Public Services, Amenity Services and Town Planning Urgency Sub Committee dated 15 October 1984 (LE.17)
19. Minutes of Joint meeting of the Public Services, Amenity Services and Town Planning Urgency Sub Committee dated 15 October 1984 (LE.18)
20. Report to Joint meeting of the Public Services, Amenity Services and Town Planning Urgency Sub Committee dated 15 October 1984 (LE.19)
21. Muir, R (on the Application of) v. Wandsworth borough Council [2016] EWHC 3053 (admin) (LE.20)
22. R (Muir) v. Wandsworth Borough Council [2018] EWCA Civ 1035 (LE.21)
23. Note From K Crook on Tooting Beck Common (LE.22)

END

1. and are indicated in purple in document reference LE.16. [↑](#footnote-ref-2)
2. CD06.03 and CD06.08. [↑](#footnote-ref-3)
3. CD7.02. [↑](#footnote-ref-4)
4. CD07.03 and CD07.04. [↑](#footnote-ref-5)
5. CD7-05. [↑](#footnote-ref-6)
6. CD3.02 [↑](#footnote-ref-7)
7. The Fourth Street Report 2018. [↑](#footnote-ref-8)
8. LE.12. [↑](#footnote-ref-9)