

[REDACTED]
Assistant Director Neighbourhoods
Environment and Streetscene
Residents' Services
London Borough of Lambeth

By email: [REDACTED]

Our ref: TRU0001/SR
[REDACTED]

20 August 2021

Dear Sir,

Temporary event site on Clapham Common between 16 August and 9 September 2021 – Festival Republic

Thank you for your emails dated 17 and 19 August 2021.

The Friends are disappointed that Lambeth are proceeding with their plans to proceed despite the absence of the consent of the Secretary of State. Even at this late stage we urge the authority to change its mind.

We note what you say about the fact that the events have been known about for many months, tickets sold and costs incurred potentially running into many millions of pounds. However, the decision to proceed was only made on 16 August i.e. at the beginning of this week. It is disingenuous of you to suggest that it is simply too late to stop the events because you have not got the consent of the Secretary of State for the Environment. You have accepted since 23 August 2019 in your letter to The Friends of Clapham Common, The Clapham Society and the Open Spaces Society that it was necessary to obtain the consent of the Secretary of State. Your contract with Live Nation/Festival Republic was signed on 15 October 2019 so you had plenty of time to think about the details of the application.

We also note that you suggest that Lambeth may not need consent (*We do not regard it as clear cut ...*) We suggest that this is a red herring. You have had leading counsel's advice in respect of Winterville and agreed with it. If you thought that what you were now proposing was materially different, you would not have applied for the Secretary of State's consent.

Thus it is clear that:

- it is not too late to abandon plans to proceed;
- Lambeth needs the Secretary of State's consent; and
- it has not got it.

In these circumstances, the works should not be proceeding.

Section 39 (7) of the Commons Act 2006 is another red herring. The potential ability to obtain retrospective consent does not affect the position in real time and does not justify Lambeth, as a public authority, in proceeding in defiance of the rule of law. If as we consider will be the case, the Secretary of State does not give his consent, then of course what will have happened will be shown to have been at all times unlawful; and in any event, the objections of local people will have been rendered nugatory because Lambeth have proceeded in defiance of them.

Accordingly, we consider that the Friends are, as we have said, entitled to an injunction.

What however they would wish to achieve if they brought proceedings is a final determination of the issue. Although the issue is simple one, it is not realistic to think that a final ruling could be achieved in the time available. Given the potential costs exposure to the Friends, our client has decided not to proceed. However, it is a very sorry state of affairs when members of a local amenity group have had to raise money to hold their own Council to account and to follow due process in accordance with the rule of law; and where ultimately the superior resources of the Council have, in the time honoured phrase, driven local people from the judgment seat.

In reaching this decision the Friends know that next year Festival Republic wish to stage similar events.

With this in mind, it seems to the Friends that the current application for consent should be determined following a public inquiry. We will write to PINS to request this. As well as what the objectors say, all those matters argued by Lambeth to support its decision will be carefully considered by an Inspector. This means that a decision on this year's events will be forthcoming before the Council makes its application for events in 2022. The determination of that application, should therefore be much more straightforward given that the matter will have been considered in depth in the context of this year's application. The unfortunate situation that has arisen this year will not arise again.

We are grateful for your offer of a meeting. It seems to us that, as regards this year's events, there is nothing more to be said, one way or the other. However, as regards the future, we will be looking for the constructive engagement of Lambeth with the section 38 process and, with that in mind, we think that a meeting will be useful.

In summary:

- Lambeth should not proceed with erecting structures on the Common; however
- for the reasons set out above, the Friends will not seek an injunction; and
- the Friends look to the constructive engagement of Lambeth with the section 38 process.

We are aware of the protests on Clapham Common this week against the unlawful erection of structures on the Common. The Friends are entirely sympathetic to those who simply by their presence on the Common may make the erection of unlawful structures more difficult. The Council have no right to stop them. Absent the consent of the Secretary of State, it seems to the Friends that in these circumstances Lambeth is the one that is acting unlawfully.

The Friends will e mail their members with a copy of this letter setting out the position of the Friends. Whether local people now persist in their protest must be a matter of judgment for them, although we understand that, their point made, there are today on the Common only the usual dog walkers. We cannot claim to speak on behalf of those who may continue peacefully to object to the unlawful structures.

Yours faithfully,

Harrison Grant

HARRISON GRANT