Neutral Citation Number: [2016] EWHC 1454 (Admin)

Case No: CO/2278/2016

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22 June 2016

Before :

THE HONOURABLE MR JUSTICE SUPPERSTONE

- -

Between :

THE QUEEN **on the application of** **THE FRIENDS OF FINSBURY PARK**	**Claimant**
- and -	
HARINGEY LONDON BOROUGH COUNCIL	**Defendant**
- and -	
(1) FESTIVAL REPUBLIC Ltd **(2) LIVE NATION (MUSIC) UK Ltd**	**Interested Parties**

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- -

Richard Harwood QC (instructed by **Messrs Harrison Grant**) for the **Claimant**
Philip Kolvin QC and Ranjit Bhose QC
(instructed by **Haringey LBC Legal Services**) for the **Defendant**
Robert McCracken QC and Juan Lopez
(instructed by **PBC Licensing Solicitors**) for the **Interested Parties**

Hearing dates: 8 & 9 June 2016

Reasons for the order of the court
made following the hearing on 9 June 2016

- -

Approved Judgment

Mr Justice Supperstone :

Introduction

1. This is an application for permission to apply for judicial review to quash the decision of Haringey London Borough Council, the Defendant, ("the Council") made on 18 March 2016 to hire Finsbury Park ("the Park") to Festival Republic Ltd, the First Interested Party ("Festival Republic") for the Wireless festival ("Wireless") on 8-10 July 2016.

2. The Friends of Finsbury Park, the Claimant, are the Friends organisation for the Park, recognised by the Council.

3. Wireless is promoted by Live Nation (Music) UK Ltd, the Second Interested Party ("Live Nation"). It holds a premises licence dated 16 December 2013 ("the Premises Licence"), granted under the Licensing Act 2003 ("LA 2003").

4. On 6 May 2016 Patterson J ordered that the matter be listed for a rolled-up hearing.

5. At the conclusion of the hearing on 9 June 2016 I granted permission and dismissed the claim. I gave brief reasons for my decision and stated that I would give fuller reasons in writing, which I now do.

The Relevant Background

6. The Park is a 115-acre public park adjacent to the London Boroughs of Hackney and Islington. It was originally formed pursuant to the Finsbury Park Act 1857, opening in 1869. It is now owned by the Council.

7. The Park has played host to large scale events, including commercial concerts, attended by tens of thousands of people, for many years.

8. Wireless was first held in Hyde Park from 2005 to 2012 and at the Queen Elizabeth Olympic Park in 2013. It has been held in the Park in 2014 and 2015.

The Council's Events Policy

9. The Council's policy towards events in the Park is contained in the Council's Outdoor Events Policy ("the Events Policy") which came into effect on 7 January 2014. It applies to all parks and open spaces in the Borough, with additional controls applicable in the Park.

10. Section 4 is headed "Scale and Type". Having defined events by reference to size (more than 10,000 being defined as "Major"), s.4.1.3 provides as follows:

> "Where the organiser is seeking a premises licence for an event the final attendance numbers will be set as part of the premises licensing process."

11. Section 5 is headed "Event Application, Booking and Approval Process". Section 5.1 (Application Process) provides, so far as is material:

> "5.14 Event applications must be received within the lead time stipulated below to allow sufficient time for the event consultation and application process to be completed. Should applications not be received within these lead times, it will be at the discretion of the events team as to whether… proposals can be considered.
>
> (An application for a major event is to be received a minimum of 9 months before the event).
>
> 5.16 Applications will be checked for completeness and, if verified in line with this policy, will be subject to consultation. Consultation will involve all stakeholders, including Friends Groups, Area Parks Managers, Ward Councillors, Cabinet Member for Environment and the members of the Haringey Safety Advisory Group. Other consultees may be added where appropriate to the specific park or open space."

12. Section 5.2 (Approvals and Debriefs) provides:

> "5.2.1 Once the consultation is completed and having reviewed all the supporting documentation the Council will give an in principle agreement. This in principle agreement will be subject to compliance with any pre-event conditions, payments and licensing. Failure to meet these or any conditions will result in the approval being withdrawn. In such circumstances the Council will not be liable for any costs incurred by the event organiser.
>
> 5.2.2 Where the proposed event is due to take place in Finsbury Park then the following additional controls shall be applied:
>
> …
>
> - Where the organiser is seeking a premises licence for an event the final attendance numbers will be set as part of the premises licensing process.
>
> …
>
> - Event space for major scale events will be agreed through the event planning process.
>
> 5.2.3 If a proposed event should meet any of the criteria set out below then authority is sought from the Cabinet Member prior to giving an in principle agreement:
>
> - Expected attendance is over 10,000
>
> …

> 5.2.4 Once approved, events will be promoted through the following means:
>
> …
>
> - Holding a stakeholder meeting with the event organiser in attendance for any major or large licensed event two months prior to the event taking place."

(The reference to "premises licensing" is a reference to premises licenses granted under the LA 2003).

13. Section 7 (Community Safety) sets out a series of duties imposed upon, or requirements of, organisers of events which include requirements to produce a risk assessment of the hazards and risks associated with the event (7.1.2), the training and briefing of staff and that all those in a security role must be Security Industry Authority qualified (7.13), and consideration of the public's route to and from their event (7.1.4).

Live Nation's Premises Licence

14. As part of its application for a premises licence in 2013 Live Nation submitted, inter alia, an Event Management Plan, a Crowd Management and Security Plan, a Medical Management Plan, a Waste Management Plan, a Noise Management Plan, a Show-stop Procedure, Health and Safety Rules for contractors engaged by it, and an Alcohol Management Plan. All these documents were published as part of the application, and were uploaded to the Council's website.

15. The Claimant made representations on the application in a letter dated 20 November 2013.

16. The application was considered by the Council's Special Licensing Sub-Committee on 16 December 2013 when the Sub-Committee decided to grant the Premises Licence for "Regulated Entertainment: Plays, Films, Live Music, Recorded Music, Performance of Dance and Anything of a Similar Description", subject to 116 separate Conditions.

17. Annex 2 (Conditions consistent with the Operating Schedule) commences with three unnumbered conditions which include the following:

> "The licence will be limited to a maximum of 5 event days in any calendar year.
>
> Before an event takes place, the event management plan will be finalised to the satisfaction of the Licensing Safety Advisory Group."

18. Specific conditions set out in Annex 2 include the following:

- No.2 – planning meetings will be held in advance of events with the Council and other agencies to ensure that they are satisfied with the arrangements.

- No.12 – a comprehensive and satisfactory traffic management plan ("TMP") must be agreed with the Police, the Council and other impacted local traffic authorities. The condition continues:

  > "Without the agreement of all parties to the TMP one month before the event, the event cannot take place."

- No.30 – the consent of the Licensing Authority must be given for the proposed event to take place.

- No.31 – unless otherwise agreed with the Council, the total number of people to be accommodated for the purposes of the Premises Licence, in any event site at any one time shall not be more than 49,999 (including security, staff, performers, and employees).

- No.33 – no event shall continue beyond 10.30pm.

- No.35 – there will be no changes to finalise [sic] agreed EMP 1 month before the proposed event.

19. Annex 4 to the Premises Licence attaches the licence plan. It is the area within which the licensable activity is permitted to occur.

20. During the course of a premises licence, any person may apply to the licensing authority for a review of that licence (LA 2003, s.51-53).

21. Wireless took place in 2014 and 2015 in accordance with the licence and the conditions.

Wireless 2016

22. On 27 July 2015, following complaints about Wireless 2015, the Council's Overview and Scrutiny Committee agreed to set up a review "to reflect on and understand the impact of recent large events that have taken place in Finsbury Park, such as the Wireless Festival".

23. The Claimant gave evidence for the review on 24 August 2015. They stated that they were not opposed to all events in the Park, but their position was that large-scale events such as Wireless are unacceptable because of their scale and unmanageability.

24. The Report to the Overview and Scrutiny Committee was published in early October 2015.

25. On 3 December 2015 the Council e-mailed Park stakeholders and ward councillors (including the Claimant) a "general notification for application – Finsbury Park Concerts – Wireless Festival – application no. HGY02419". Later that day the Council advised that the application was incomplete and "subject to further scrutiny by the Council that will require discussion with Festival Republic before it would be ready for the consultation phase".

26. By letter dated 17 February 2016 the Council advised the Stakeholders (including the Claimant) that it had received an application from Festival Republic to host two major

events in the Park in July 2016: a charity concert on 2 or 3 July (which was subsequently withdrawn) and the Wireless Concert on 8-10 July 2016. The letter set out a number of specific proposed improvements, that "we are requesting to be made" which include event timings, vehicle movements within the Park, site security, entrance processes, and responding to enquiries or complaints by residents. The letter continued:

> "Please be assured that if these events go ahead, the above is by no means the extent of all planned improvements. Further discussions will take place over the coming months between all the relevant statutory bodies and stakeholders to ensure that events are well managed and safe, with as limited an [e]ffect on the local area [as] possible."

27. Notice of the consultation was given on 17 February to the Claimant (and also generally via Event APP) with responses required before 2 March 2016. Consultees were told that the request was "to use Finsbury Park". The events involved an on-site start for preparation on 25 June and the site being cleared on 15 July, with a music event on two stages on 2 July (including a community/charity event) and a two or three stages music event on 8-10 July. The maximum number of attendees was 45,000. Details of marquees, staging or other temporary structures were "still tbc, but it will be a similar concert layout for structures as the 2015 events".

28. On 22 February 2016 Mr Tom Palin, Chair of the Claimant, e-mailed the Council requesting copies of the application documents including the noise management plan and the plan and area map. On 23 February the Council replied that this would not be possible as the documents listed "are commercially sensitive and hold information which is not for public view" and that "the site plan is still being developed". On the same date the Claimant requested the documents pursuant to the Freedom of Information Act/Environmental Information Regulations. The Council responded that they were not the Council's documents to share so the Claimant would need to make a FOI request to Festival Republic.

29. On 24 February Ms Catherine West, the local MP, wrote to the Council stating that she had been "contacted by a number of local residents concerned that the application… is only subject to a 10 day stakeholder consultation period". She expressed her concern that "10 days is a very short window for responses on such an important issue" and urged the Council to extend the consultation period and widen participation to local residents who, she said, bear the brunt of the disruption. She mentioned her objections to the original proposals and identified a range of problems with the Festival.

30. On 1 March the Claimant submitted their objection to the application including complaints about the lack of information. The Claimant's response was forwarded to the Council under cover of a letter from its solicitors dated 1 March in which it was contended that the Council did not have legal power to proceed as it proposed. On 7 March the Council replied that it relied on s.145 of the Local Government Act 1972.

31. On 18 March the Council approved the application made by Festival Republic to hold the Wireless Festival.

32. By letter dated 23 March the Council provided the report to the Leader of the Council dated 18 March, along with its Appendix 1 (but omitted Appendix 2). They also provided "the record of the decision which he made in this matter". The report set out the opening times of the event (para 1.4). The section headed "Reasons for decision" included at para 4.5

> "The Council remains committed to improving the experience for local residents and is continuing to work with partners in all three boroughs to ensure these events go ahead and residents see improvements in the delivery from 2015."

33. By letter dated 24 March 2016 the Council's Licensing Team Leader provided in redacted form some of the information requested by the Claimant, but not the Site Schedule nor the risk assessments or other documents requested by the Claimant.

34. On 13 May members of the Stakeholder Group were invited to a meeting on 25 May at which the details of the draft event plans for Wireless would be presented and feedback for the Safety Advisory Group invited. On 20 May members were sent a "Key Areas" document which summarised the current provision in relation to, *inter alia*, Planning Management, Venue and Site Design, Crowd Management, Traffic Management, and Noise. It also offered the possibility of a further meeting on 31 May, should group members wish to meet, in order to provide comments to the final Safety Advisory Group meeting on 9 June; alternatively, members were given the option of sending in any points and the Council's offices would ensure they were raised at the meeting on 9 June.

35. At the meeting on 25 May, attended by Mr Palin and Councillor Carter on behalf of the Claimant, a PowerPoint presentation was given and a number of matters discussed. The minutes of the meeting note that

> "Those in attendance stated that there would be no need to hold a further stakeholder meeting on 31 May."

The Grounds of Challenge

36. Mr Richard Harwood QC, on behalf of the Claimant, advances four grounds of challenge:

    i) Having chosen to carry out consultation on the proposal, the Council failed to carry out the consultation in accordance with the Sedley rules and the legitimate expectation created by its Outdoor Events Policy since consultees were denied access to the application, were not provided with sufficient information or time to make an adequate response and were positively misinformed about the proposals.

    ii) The Council failed to deal with the application as a key decision (including in advance publicity) and to record the decision and to make the officer report, decision and background documents available as required by the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, regulations 8-14 and the Council's Constitution.

iii) The Council's decision to close part of the Park for the purposes of the Festival is unlawful since it contravenes:

a) the restriction upon the size of the area which may be closed under Article 7 of the Schedule to the Ministry of Housing and Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967;

b) the restrictions on the duration for which a park may be closed to the public, in whole or in part, in s.44 of the Public Health Amendment Act 1890.

iv) The Council failed to have regard to a relevant consideration, its own Finsbury Park Management Plan, and that the number of persons attending the event exceeds the limits in that plan.

The Parties' Submissions and Discussion

37. I agree with Mr Philip Kolvin QC, who appears for the Council, that although the challenge as to *vires* is Ground 3, it is logically the first ground to consider.

Ground 1: Challenges to the Council's Legal Powers

The Legislative Provisions

38. Section 44 of the Public Health Amendment Act 1890 ("the 1890 Act") provides:

> "[A local authority] may on such days as they think fit (not exceeding 12 days in any one year, nor four [six in London] consecutive days on any one occasion) close to the public any park or pleasure ground provided by them or any part thereof, and may grant the use of the same, either gratuitously or for payment, to any public charity or institution, or for any agricultural, horticultural, or other show, or any other public purpose, or may use the same for any such show or purpose; and the admission to the said park or pleasure ground, or such part thereof, on the days when the same shall be so closed to the public may be either with or without payment, as directed by the [local authority], or with the consent of the [local authority] by the society or persons to whom the use of the park or pleasure ground, or such part thereof, may be granted…
>
> Provided that no such park or pleasure ground shall be closed on any Sunday."

39. The Ministry of Housing and Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967 ("the 1967 Act"), applies to the powers of local authorities with respect to parks and open spaces. "Open space" as defined in the Schedule "includes any public park, heath, common, recreation ground, pleasure ground, garden, walk, ornamental enclosure or disused burial ground under the control and management of a local authority".

40. Article 7 of the Schedule authorises the use of open space in London for the provision of entertainment provided that the area set aside does not exceed one acre or one tenth of the open space, whichever is greater:

> "(1) A local authority may in any open space—
>
> …
>
> (b) provide amusement fairs and entertainments including bands of music, concerts, dramatic performances, cinematograph exhibitions and pageants;
>
> …
>
> provided that
>
> …
>
> (ii) the part of any open space set apart or enclosed for the use of persons listening to or viewing an entertainment (including a band concert, dramatic performance, cinematograph exhibition or pageant) shall not exceed in any open space one acre or one tenth of the open space, whichever is the greater."

41. Section 145 of the Local Government Act 1972 ("the 1972 Act"), contained within Part VII to the Act, is headed "Miscellaneous Powers of Local Authorities". It provides as follows:

> "145 – **Provision of entertainments**.
>
> (1) A local authority may do, or arrange for the doing of, or contribute towards the expenses of the doing, of anything (whether inside or outside their area) necessary or expedient for any of the following purposes, that is to say—
>
> (a) the provision of an entertainment of any nature or of facilities for dancing;
>
> (b) the provision of a theatre, concert hall, dance hall or other premises suitable for the giving of entertainments or the holding of dances;
>
> (c) the maintenance of a band or orchestra;
>
> (d) the development and improvement of the knowledge, understanding and practice of the arts and the crafts which serve the arts;
>
> (e) any purpose incidental to the matters aforesaid, including the provision of refreshments or programmes and the

> advertising of any entertainment given or dance or exhibition of arts or crafts held by them.
>
> (2) Without prejudice to the generality of the provisions of sub-section (1) above, a local authority—
>
> (a) may for the purposes therein specified enclose or set apart any part of a park or pleasure ground belonging to the authority or under their control;
>
> (b) may permit any theatre, concert hall, dance hall or other premises provided by them for the purposes of sub-section (1) above and any part of a park or pleasure ground enclosed or set apart as aforesaid to be used by any other person, on such terms as to payment or otherwise as the authority may think fit, and may authorise that other person to make charges for admission thereto;
>
> (c) may themselves make charges for admission to any entertainment given or dance or exhibition of arts or crafts held by them and for any refreshment or programmes supplied thereat.
>
> (3) Sub-section (2) above shall not authorise any authority to contravene any covenant or condition subject to which a gift or lease of a public park or pleasure ground has been accepted or made without the consent of the donor, grantor, leassor or other person entitled in law to the benefit of the covenant or condition.
>
> (4) Nothing in this section shall affect the provisions of any enactment by virtue of which a licence is required for the public performance of a stage play or the public exhibition of cinematograph films, or for boxing or wrestling entertainments or for public music or dancing, or for the sale of alcohol.
>
> (5) In this section, the expression 'local authority' includes the Common Council."

Submissions and Discussion

42. Mr Harwood submits there is no general power (absent specific statutory authority) to close the Park. All three provisions in the 1890, 1967 and 1972 Acts apply to shows and entertainments in local authority controlled public parks. The 1972 Act provides a general power to provide cultural and leisure facilities, whilst the 1890 Act contains specific protections and the 1967 Act is specific to the circumstances of London. Section 145 of the 1972 Act (and the related provisions) does not override other restrictions on the use of local authority land. Section 145 is, Mr Harwood submits, a power for the local authority to provide or subsidise entertainment and the arts (see sub-section (1)). The power contained in sub-section (2) is an ancillary power permitting the local authority to use parks and certain buildings to host those

entertainment activities permitted by sub-section (1). It does not address the issue of closing a park to the public. Mr Harwood notes that paragraph 27 of schedule 14 to the 1972 Act specifically provided for the application of s.44 of the 1890 Act to all local authorities; and that both Article 7 of the Schedule to the 1967 Act and s.44 of the 1890 Act have been amended since the passing of the 1972 Act by the Greater London Council (General Powers) Act 1978 in respect of their application to London parks.

43. Mr Harwood submits that s.44 of the 1890 Act and Article 7 of the Schedule to the 1967 Act are expressly about closures, whereas s.145 of the 1972 Act is primarily about local authority financial powers; and that the power to enclose or set apart is ancillary. Section 145 of the 1972 Act does not contain an unrestricted power to close a park. It cannot be interpreted as having impliedly repealed s.44 of the 1890 Act and/or Article 7 of the Schedule to the 1967 Act. Accordingly s.145 of the 1972 Act does not provide authority to close part of the Park on its own and must be exercised alongside or in any event in a manner which is consistent with the specific and material restrictions on the closure of part of the Park in s.44 of the 1890 Act and Article 7 of the Schedule to the 1967 Act.

44. The Council accepts that neither the Schedule to the 1967 Act nor the 1890 Act would empower it to allow the Park to be used for Wireless, given that parts of the Park will be closed for the period from 30 June to 15 July 2016 and that, for parts of this period some 27% of the Park will be closed.

45. However I reject Mr Harwood's submission that s.44 of the 1890 Act and Article 7 of the Schedule to the 1967 Act have the effect that the Claimant contends. I consider that s.145 of the 1972 Act, of itself and standing alone, provides the Council with the necessary power to permit Wireless 2016 to take place in the Park.

46. On a proper analysis of the legislative provisions, as Mr Kolvin submits, each of these Acts creates different powers for different places subject to different limitations.

47. There is express power under s.145(2)(a) to "enclose or set apart" any part of a park. I agree with Mr Kolvin that "enclosing" an area in a park must mean or entail closing it to the public, otherwise this would be an unnecessary provision. Sub-sections (2)(b) and (c) make clear that the power includes closing the park in question to members of the public, save for those who pay for admission. In any event s.145(1) confers on the council an express power to do "anything" that is necessary or expedient for the purposes of the provision of an entertainment "of any nature". I accept Mr Kolvin's submission that includes closing the Park to the extent and for the time necessary to set up and take down the event infrastructure, and to hold the event safely for the benefit of those members of the public who wish to buy tickets to attend it. Wireless 2016 is an event that falls within s.145(1)(a) and (e).

48. Section 145 replaced section 132 of the Local Government Act 1948, which conferred a similar power to provide, or provide for, entertainment of any nature. However it is to be noted that the limitation on how much of the park may be closed or set aside in s.132(2)(a) is not reproduced in s.145 of the 1972 Act. The specific power in s.145(2) is also without any limitation on the period of time during which such enclosure or setting aside may continue.

49. Section 145 does not state that its exercise is subject to any other enactment, or that it is to be read or qualified by any such enactment, whether in London or elsewhere in England and Wales. It applies to the individual London boroughs and also, significantly, to the City of London (see sub-section (5)).

50. I also accept Mr Kolvin's submission that the power contained in s.44 of the 1890 Act is an additional power that an authority may rely upon should it so choose. This is made clear by s.341 of the Public Health Act 1875 (despite the partial repeal of that section by paragraph (2) of Part 1 of the Third Schedule to the Public Health Act 1936). Similarly Article 7 of the Schedule to the 1967 Act provides the Council with a power in addition to any other power that it possesses (see Article 20 of the Schedule).

Ground 1: consultation

51. The applicable principles are not in issue. In *R (Moseley) v Haringey London Borough Council* [2014] 1 WLR 3947, Lord Wilson (at para 25) endorsed the submission of Mr Stephen Sedley QC (as he then was) in *R v Brent London Borough Council, ex p Gunning* [1985] 84 LGR 168, accepted by Hodgson J, as to the essential basic requirements if the consultation process is to have a sensible content. Hodgson J said, at p.189:

> "… First, that consultation must be at a time when proposals are still at a formative stage. Second, that the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response. Third, … that adequate time must be given for consideration and response and, finally, fourth, that the product of consultation must be conscientiously taken into account in finalising any statutory proposals."

52. Mr Harwood submits that the Council failed to consult on the application as promised in the Outdoor Events Policy and acted in breach of principles (2) and (3).

53. The Outdoor Events Policy refers to a "comprehensive application and approval process" (para 5.1.3). The Claimant complains that the application was not made available to consultees. The two documents provided on 17 February 2016 contained little information as to what part of the Park would be used, noise levels and how the event would be managed. Some of the information, the Claimant contends, was said to be positively misleading. The Council's letter identified some improvements that were being requested but without saying whether they had been agreed. The start time for the Friday was there said to be 3.30pm, but consultees were not told that the gates would open two hours earlier, whilst children were at a nearby school. The report to the Leader contained important details about the event which were denied to consultees, in particular the timings of the event.

54. Further, the Claimant contends that inadequate time was provided for consultation. A 10-day period (in practice 14 days) was inadequate to comment on a major application. The period between application and the event was set by the policy at 9 months for major events so that there was sufficient time for the event consultation and application process. The policy envisaged a reasonable consultation period with

more time for consultation on major applications. The 9-month minimum period between the request and the event was not adhered to.

55. The Council does not accept these criticisms. What the Claimant's submission fails to take into account is the extent of the consultation which had taken place in the past. This was the third occasion on which the Claimant had been consulted on the Wireless annual event. It was consulted on both the 2014 and 2015 events, and it had taken part in the Overview and Scrutiny Committee's 2015 Finsbury Park Events Scrutiny Project Review. The Claimant had also been consulted on the application for Live Nation's Premises Licence in 2013. Moreover it was a member of the Stakeholder Group, and as such consulted on the draft Event Management Plan ("EMP") for Wireless in both 2014 and 2015. In these circumstances the Claimant was informed as to the nature and size of Wireless; the part of the Park within which it would take place, namely the area set out in Annex 4 to the Premises Licence; and operational matters.

56. I consider it important to appreciate that the scope of the consultation was as to the holding of Wireless 2016 "as a matter of principle" (see the Council's Events Policy, para 5.2 set out at para 12 above). The scope of the consultation was not about operational matters of event planning or safety. These matters were to be considered subsequently, as they were in relation to Wireless events in 2014 and 2015, at which time the Claimant would be involved as a member of the Stakeholder Group.

57. The Claimant complains that it was not provided with the site plan. If it had been, it would have made representations about the differences between the site plan for Wireless 2015 and what was being proposed for 2016 (which includes a moat and second fence in additional to the steel wall) (see second witness statement of Mr Palin at paras 3 and 13-14). However, section 5.1.6 of the Events Policy does not provide that the application made by an operator, or any supporting documents, will be shared with stakeholders. It is the "Application" that is to be consulted upon (see para 11 above). The EMP and other documents on operational matters would be the subject of ongoing scrutiny by the Safety Advisory Group, which would also include consideration of the "site plan" (that is, the precise "event space" to be agreed through the EMP (see section 5.2.2, 7th bullet point of the Events Policy at para 12 above)).

58. I reject the allegation that "some of the information was positively misleading". The letter of 17 February 2016 accurately stated that some improvements had been requested. As for the statement that the event start time would be 3.30pm, but not saying that the gates would be open 2 hours earlier, I agree with Mr Kolvin that the Claimant must have realised that the gates for an event, to be attended by 45,000 people, would have to open some time in advance of the first act.

59. The 14-day period allowed for consultation was a similar length to the period allowed in relation to Wireless 2014 and 2015. There was no complaint in those earlier years, and indeed the Claimant did not take issue with the period of consultation in 2016 until weeks after the consultation had closed in the "Draft/Statement of Facts and Grounds" attached the pre-action protocol letter dated 20 April 2016 .

60. I am satisfied that the consultation was adequate for its purpose.

61. If, contrary to my view, there should have been more, or a longer period of, consultation, I consider, in the light of the consultation that there was this year and in previous years in relation to essentially the same event, it is highly likely that the outcome for the Claimant would not have been substantially different (Senior Courts Act 1981 s.31(2A)).

Ground 2: whether the application was a key decision and whether the Council breached the 2012 Regulations and its Constitution.

62. Two issues fall for consideration under this ground. First, whether the Council failed to deal with the application as a key decision. Second, whether the Council failed to record the decision and to make certain documents available as required by the 2012 Regulation and its Constitution.

Issue 1: Whether the application was a key decision

63. Regulation 8 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 provides:

> "8 – Key decisions
>
> (1) In these Regulations a 'key decision' means an executive decision, which is likely—
>
> (a) to result in the relevant local authority incurring expenditure which is, or the making of savings which are, significant having regard to the relevant local authority's budget for the service or function to which the decision relates; or
>
> (b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the relevant local authority.
>
> (2) In determining the meaning of 'significant' for the purposes of paragraph (1) the local authority must have regard to any guidance for the time being issued by the Secretary of State in accordance with section 9Q of the 200 Act (guidance)."

64. Where a decision maker intends to make a key decision, that decision must not be made until the authority has given publicity in connection with the key decision as required by Regulation 9.

65. In the Statement of Facts and Grounds (at para 41) the Claimant contended that the application was a key decision by reference to both sub-paragraphs (a) and (b) of Regulation 8(1). However Mr Harwood limited his oral submissions to sub-paragraph (a).

66. The report to the Leader, which was stated to be a "Non-Key Decision", included the following:

> "4.2 … Income derived from events are very much at the heart of sustaining the Parks Service rather than exposing it to further cuts which would mean a lower standard of parks maintenance across the borough and within Finsbury Park itself.
>
> 4.4 … The proposals are now reduced to one weekend rather than 2 weekends and whilst this is positive in reducing disruption, it is of concern in terms of significantly reducing the amount of income available to the council to reinvest in the park and would lead to a reduction in the wider cultural and economic benefits of events in the borough.
>
> 5.3 The rejection of this application would have significant implications for the Parks Service budget and reduce the opportunity for reinvestment into Finsbury Park."

67. Mr Harwood submits that it follows from the fact that the decision would have significant implications for the budget for the relevant service that it was a key decision.

68. Mr Kolvin submits that the decision does not result in the Council incurring significant expenditure or making significant savings within the meaning of the Regulations. What it does is that it results in the Council earning an income.

69. Mr Harwood submits that they amount to the same thing: a substantial financial impact on the service budget.

70. I do not accept this is so. I agree with Mr Kolvin that the fact that the income would help the Council meet its Parks Budget does not mean that the decision is a key decision, or that, if the decision was made not to allow Wireless, this would be likely to result in any savings, far less significant savings.

71. The Parks Budget for 2016/17 includes an income target for all events of £545,000. The Council's case is that the budget is not set because the Council has, or thinks it may receive, a booking for any particular event, including Wireless. In any event the events income has exceeded £750,000 for each of the previous two years.

72. It was in my view correct to designate the decision as a "Non-Key Decision", and the Leader was correct to treat it as such.

Issue 2: Failure to record the decision and to make certain documents available.

73. The Claimant contends that documents have not been made available before the decision or after it which affected the ability of the Claimant to take part in the consultation process and to understand the decision which was subsequently made. Following an executive decision (whether key or non-key) a statement of the decision must be made with a record of the reasons for the decision and details of any alternative options considered and rejected (Regulation 13(2)). A copy of the decision and the report considered by the individual member has to be made available to members of the public and on the Council's website (Regulation 14(1)). The documents available for inspection and on the website have to include the background

papers (Regulation 15). Background papers are also required to be listed by the Council's Constitution: Part 4, Section D, para 8; and Part 5, Section D, para 1.4(u)). Further Mr Harwood submits that under the Council's constitution (Part 4, Section D, rule 22.1) the report should have been available for public inspection at least 5 clear days before the decision was taken. Mr Harwood emphasised that "the very purpose of a legal obligation conferring a right to know is to put members of the public in a position where they can make sensible contributions to democratic decision making (*R (Joicey) v Northumberland County Council* [2014] EWHC 3657 (Admin), per Cranston J at para 47).

74. The Claimant complains that the decision statement failed to include reasons and alternative options beyond the assertion that the report was attached to it. The report itself was not published or made available. The only document listed was the Outdoor Events Policy, which was a published document. Background papers, including the application itself and plans that were submitted with it, were not listed or made available.

75. The Council accepts that the report should have been published 5 clear days before the decision was taken, and it was not. However the decision has now been made available, along with the report, which contains the reasons for it. As to the making available for inspection of background papers, it was a matter for the opinion of the "proper officer" (Regulation 2(1)) what papers, if any, these constituted. No *Wednesbury* challenge to his decision on that issue has been made out. The Claimant was not entitled to see the EMP, which had not been provided to the Leader.

76. I consider it highly likely that the outcome for the Claimant would not have been substantially different if the conduct complained of had not occurred (s.31(2A) Senior Courts Act 1981). There was nothing in the decision or the report that would, in my view, have led to any further representations by the Claimant that would have made any substantial difference to the outcome.

Ground 4: Failure to have regard to a material consideration

77. The Claimant contends that the Council failed to have regard to an obvious relevant consideration, namely its own management plan for the Park which limited the size of events to 40,000 people (see the Finsbury Park Management Plan 2013-16 ("the Management Plan"), section 9.11. The numbers attending the event was relevant to the decision to hire out the park. The figure of 45,000 was the figure given to the Leader (Report, para 1.4), but the Leader appears to have been unaware that the 45,000 figure was in excess of the figure in the Management Plan.

78. Mr Kolvin submits that this ground is misconceived. The Management Plan was produced in 2012. At section 9.11 it records limits on the numbers who may attend an event in the Park as had been decided by the Council's Executive in December 2002, to which policy the Management Plan expressly referred. The December 2002 policy was replaced by the Events Policy adopted by Cabinet on 17 December 2013. This policy provides that where the organiser is seeking a premises licence for an event the final attendance numbers will be set as part of the premises licensing process (see sections 4.1.3 and 5.2.2 at paras 10 and 12 above). The Council's policy was thereby brought into line with the Licensing Act 2003 (see Report to Cabinet dated 17 December 2013 on Proposal 2 at para 7.5).

79. Mr Harwood submits that no licence was being sought as one was already in place. The fact that no new licence was being sought is immaterial. Live Nation had applied for a licence in 2013, which had been granted with a condition imposing maximum attendance limits of 49,999 (see para 18 above). In accordance with that condition the maximum attendance number, as noted in the report to the Leader, is to be 45,000, which is the same as in 2014 and 2015. The maximum attendance limit of 49,999, prescribed by the current Premises Licence and condition No.31 continue to operate for Wireless 2016. Accordingly there was no failure to have regard to a material consideration as alleged by the Claimant.

80. If, contrary to my view, there was any failure to have proper regard to the 40,000 figure in the Management Plan, I consider it to be highly likely that the outcome for the Claimant would not have been substantially different in the light of the fact that in 2014 and 2015 there was an attendance of 45,000 and the Premises Licence permits a maximum attendance of 49,999.

Conclusion

81. I consider

    i) this application is arguable and I grant permission on all grounds.

    ii) Grounds 1, 2, 3 (first issue) and 4 are not made out.

    iii) Ground 3 (second issue) is, to a limited extent, made out but I consider it to be highly likely that the outcome for the Claimant would not have been substantially different if the conduct complained of had not occurred.

82. Accordingly, for the reasons I have given, this claim is dismissed.