

CITY OF WESTMINSTER			
PLANNING APPLICATIONS SUB COMMITTEE	Date 3 April 2018	Classification For General Release	
Report of Director of Planning		Ward(s) involved West End	
Subject of Report	Brown Hart Gardens and Lumley Street, London, W1,		
Proposal	Use of three areas of carriageway each measuring 12.0m x 2.0m on the west side of Lumley Street for the placing of 20 stalls as a street market (four times per year and not more than once per calendar month, excluding Sundays) for the sale and display of goods (Class A1) and use of two areas of Brown Hart Gardens deck each measuring 23.6m x 2.0m for the placing of up to 24 stalls for an artisan food market, including hot food takeaway, no more than one day per week (excluding Sundays) for a temporary period of one year.		
Agent	Gerald Eve		
On behalf of	Grosvenor West End Properties		
Registered Number	17/11322/FULL	Date amended/ completed	21 December 2017
Date Application Received	21 December 2017		
Historic Building Grade	II – Brown Hart Gardens deck building		
Conservation Area	Mayfair		

1. RECOMMENDATION

Grant conditional permission for a temporary period of one year.

2. SUMMARY

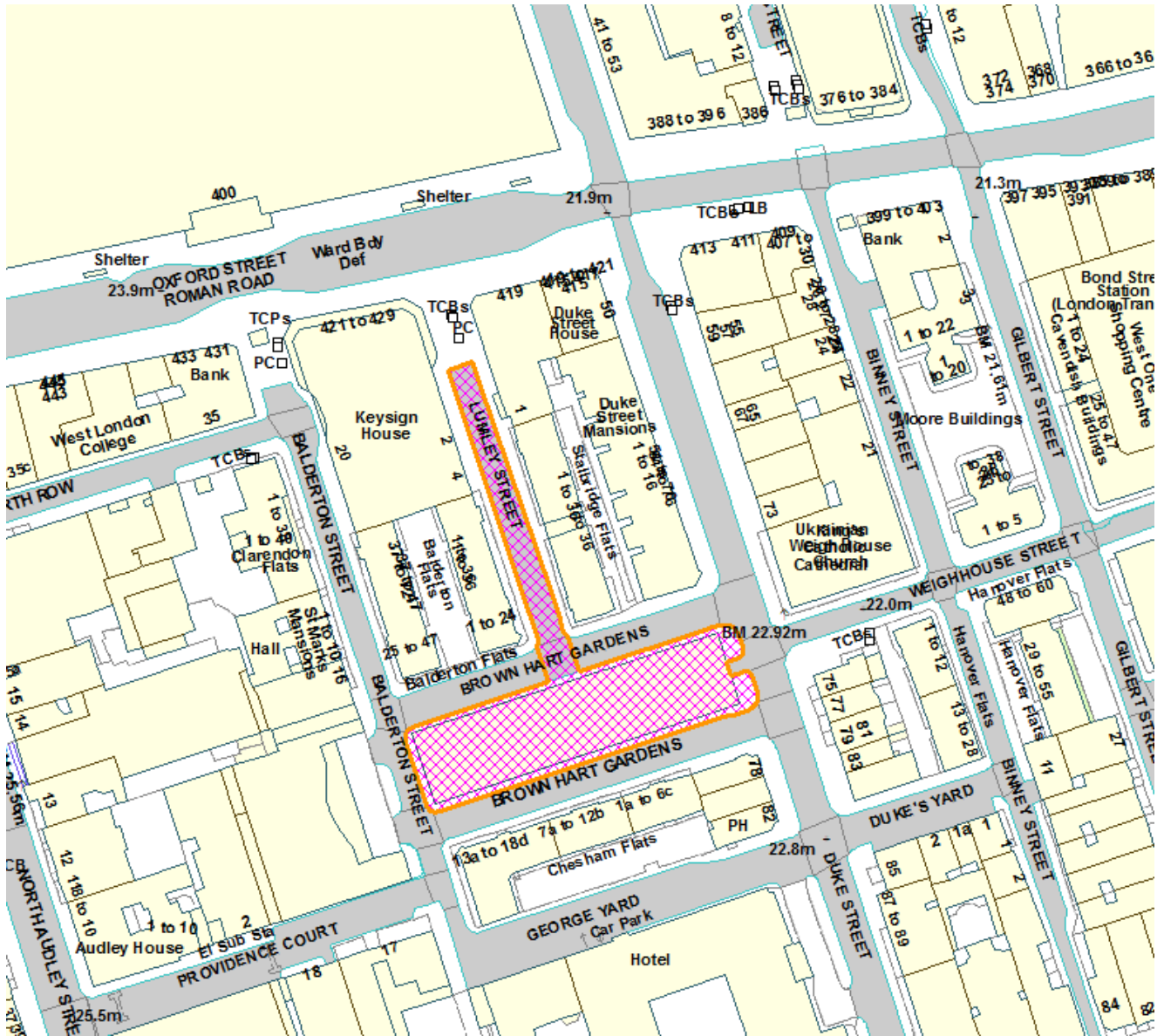
This application is for the renewal of planning permission, approved twice previously, for the creation of two temporary markets comprising a weekly market of 24 stalls, including a maximum of 8 hot food stalls, on the Grade II listed deck area in Brown Hart Gardens, and a quarterly craft and gift market (no cooking) on 20 stalls in Lumley Street which would coincide with the deck market. The markets would be open to the public from 11.00 until 16.00 (excluding Sundays). Market setting up would commence at 9.00 hours and the markets would be removed by 18.00 hours. Operation of the Lumley Street market would necessitate the closure of the road and the suspension of 12 residents' parking bays. The deck market was operating until October 2017 but it appears that the Lumley Street market has never been held since permission was granted for that use. Permission is sought for the renewal of the previous permission, granted in February 2017, pending a change in market operator.

The key issues in this case are:

- The impact of the market operations on residents' amenities and
- The impact of the proposals upon residents' parking and on-street parking availability in the area.

Objections/comments have been received on land use, amenity and highways grounds. As previously, the markets are considered acceptable in land use terms and, subject to operational conditions, it is not considered that the use would have a significant impact on neighbours' amenities. Similarly, with appropriate arrangements for the suspension of parking bays, when required, it is not considered that there would be a significant impact upon on-street parking availability and residents' amenity. Given their temporary nature, the impact of the markets upon the character and appearance of this part of the Mayfair conservation area or upon the special interest of the listed host structure in Brown Hart Gardens would be limited. The scheme accords with relevant UDP and City Plan policies and is recommended for approval for a further temporary period of one year.

3. LOCATION PLAN



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4. PHOTOGRAPHS

Brown Hart Gardens Deck



Lumley Street, looking south towards Brown Hart Gardens



5. CONSULTATIONS

RESIDENTS' SOCIETY OF MAYFAIR & ST JAMES'S

Any response to be reported verbally

ENVIRONMENTAL HEALTH

No objection subject to the submission of a revised Operational Management Plan providing details of measures to minimise potential smell nuisance from the food stalls.

CLEANSING

No objection

HIGHWAYS

No objection

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 178; Total No. of replies: 4

No. of objections: 3; No. in support: 1

Objections/comments received on the following grounds:

- Commercialisation of residential areas
- Previously some noise from setting-up and dismantling of stalls and loading/unloading but accept that market has been well organised and that any problems have been addressed quickly
- Noise disturbance to neighbouring flats
- No amplified music should be permitted; use of mobile phone (or smoking) should not be permitted close to Lumley Street flats
- Previous smell nuisance to Lumley Street flats, primary cooking stalls should be positioned away from Lumley Street with a potential reduction in their number
- No primary cooking or sales of alcohol should be permitted
- Loss of privacy to lower floors of Balderton Flats (east block)
- Residents should not bear the cost of retrieving vehicles that have been towed away unless they have been given advance notice of Lumley Street market dates. Request that notices should be sent to Lumley Street flats/and displayed on notice boards giving the year's craft market dates.
- No parking should be permitted for stallholders except for loading/unloading
- No goods to be hung from street railings; refuse bins to be provided on market days; a market supervisor/security guard should be on duty on market days

- Goods should be removed by 16.30 and stalls by 17.00 hours
- No goods should be transported on the disabled persons lift to the Brown Hart Gardens deck

One letter of support:

- Some commercial activity is required to make the public deck area a going concern and the market is a “low impact” way of achieving this.

PRESS ADVERTISEMENT / SITE NOTICE: Yes

6. BACKGROUND INFORMATION

6.1 The Application Site

The deck in Brown Hart Gardens forms part of a Grade II listed building, located in the Mayfair Conservation Area and within the Core Central Activities Zone. It was built as an electricity sub-station in 1905 with a deck over, accessed from the street via two sets of stairs at the east and west ends of the structure. The deck was laid out as a formal public space and used as such up until the 1980s. After that it was closed, until 2007, when the Grosvenor Estate secured responsibility for the deck and reopened it for use as a public open space between the hours of 11.00 and 18.00 from May - September, and between 11.00 and 15.00 from October - April.

The lawful use of the deck is considered to be a publicly accessed open space (sui generis). There is a small café building at the western end of the deck, erected pursuant to a permission dated 28 March 2012.

The deck is fronted on the north and south sides by residential blocks of social housing occupied by Peabody tenants. There are a significant number of elderly residents. Adjacent to the site, at 8 Balderton Street, is the Beaumont Hotel.

Lumley Street is a no-through road running northwards from the Brown Hart Gardens deck towards Oxford Street. The street is bordered by Peabody flats. There is also an entrance to Oxford Street offices at 1 Lumley Street. The northern end of the street is a cul-de-sac. The pavement beyond, on the south side of Oxford Street, houses a street trading kiosk, cycle racks and refuse bins.

The western side of the highway in Lumley Street provides residents' parking (9 bays). The eastern side of the carriageway is marked by double yellow lines.

6.2 Recent Relevant History

21.12.2015: Permission granted, until 30 September 2016, for

- i) the use of three areas of carriageway each measuring 12.0m x 2.0m on the west side of Lumley Street for the placing of 20 stalls as a street market (four times per year

and not more than once per calendar month, excluding Sundays) for the sale and display of goods (Class A1) – the Lumley Street market

ii) use of three areas of carriageway each measuring 12.0m x 2.0m on the west side of Lumley Street for the placing of 20 stalls as a street market (four times per year and not more than once per calendar month, excluding Sundays) for the sale and display of goods (Class A1) - the "deck market" (14/12253/FULL). This was a regularisation of a use which had operated on an "ad hoc" basis - monthly, fortnightly then weekly for the previous 18 months.

21.12.2015 Listed building consent granted for the installation of four copper-clad plinths, one at each corner of the Brown Hart Gardens deck, for the display of works of public artworks (14/12254/LBC).

5.05.2016 Details of a Servicing Management Plan pursuant to Condition 14 of planning permission dated 21 December 2015 refused (16/02215/ADFULL) – failed to address how far in advance of the market days the parking suspensions will be sought and potential conflict between arriving market stalls and parked cars.

28.02.2017 Permission granted for the renewal of the permission of 21.12.2015 for a temporary period until 28 February 2018 (16/11128/FULL).

The applicants have confirmed that, since the granting of permission in December 2015, the deck market was held weekly from 14 January 2016 until the use ceased in October 2017, when the previous market operator ceased their involvement with the markets. They have also confirmed that the Lumley Street market was last held on 16 December 2015, prior to the granting of the first planning permission.

7. THE PROPOSAL

Permission is sought for the renewal of previous permission for the Brown Hart Garden deck and Lumley Street markets, for a temporary period of one year. The market operator ceased trading in Brown Hart Gardens in October 2007 and the applicant, the Grosvenor Estate, wishes to enter into negotiations with an alternative market operating company.

All details of the market operation are as previously submitted and approved: The Lumley Street market would sell sweets, jewellery, olive oil and gifts. When this market is in operation, nine residents' parking bays on the western side of Lumley Street and three residents' parking bays on the north side of Brown Hart Gardens would be suspended.

The deck market would sell pastries, pancakes, cakes, honey products and rice/noodle dishes and meat/fish/vegetable dishes. When only the deck market is operating, a maximum of six stalls would undertake primary cooking. On those occasions when the Lumley Street market is also operating, there would be fewer stalls on the deck, but a maximum of eight stalls would undertake primary cooking.

No generators would be used to provide power. Any cooking would be done using chafing fuels, gas cartridges or gas cylinders. Market stalls on both locations would measure 3m x 3m, and a maximum of 3m at the highest part of the roof.

The markets would operate between 11.00 and 16.00 (excluding Sundays); with the supplementary Lumley Street market coinciding with the date of the deck market. Setting up of the market stalls would commence at 09.00. All stalls and associated equipment would be removed by 18.00.

8. DETAILED CONSIDERATIONS

8.1 Land Use

UDP Policy SS13 states that proposals for new street markets will be considered with reference to amenity, parking, servicing, highways, cleansing, refuse storage/recycling and licensing considerations and the effect on existing street markets and local shopping facilities.

Policy S18 directs new commercial development to the Core CAZ and designated shopping centres, amongst other specific locations, but states that proposals for new commercial uses must be appropriate in terms of the scale and intensity of land uses and their impact on the character and function of the area. Policy S21 directs new retail uses (floorspace) to the designated shopping centres, amongst other specified locations.

Policy DES12 states that development will not be permitted on or under parks, landscaped spaces and public or private gardens where the open spaces form an important element in the townscape, part of a planned estate or street layout; are characteristic features of conservation areas; provide the setting of a listed building or are of significant ecological value. Under Policy S35, all open spaces and their quality, heritage and ecological value, tranquillity and amenity will be protected.

Policy ENV15 of the UDP states that permission will not be granted for development on public or private open space of amenity, recreational or nature conservation value unless the development is essential and necessary to maintaining or enhancing that land as valuable open space.

The Council's Open Space Strategy SPD 2007 is intended to improve the quality, management, accessibility and use of parks and other open spaces in the city and to provide new facilities where there are deficits in their provision. The strategy acknowledges the contribution of open spaces, and sports and recreational facilities, to the residential environment. The SPD includes a list of protected open spaces. Although the Brown Hart Gardens deck is not included on this list, the SPD makes it clear that all open space is protected, whether or not it is included on the list.

As part of the Cross River Partnership, the City Council is a project partner in the Sustainable Urban Markets project which seeks to explore the potential of street and covered markets as drivers of local economic development.

Although, due to their regular nature, the proposed market uses are considered to constitute development, the policies detailed above are largely concerned with the

permanent displacement of public open space rather than with the effects of temporary uses where, once these have ceased, the space returns to its previous condition.

One objection has been received on the grounds that the proposal represents an unwelcome commercialisation of a residential area. A letter of support has been received from a member of the management committee for Brown Hart Gardens who considers that some commercial activity is required to make the public deck area a going concern and the market is a “low impact” way of achieving this.

The proposals would result in the commercialisation of a publically accessible open space, including the deck area which provides some valuable outside space to local residents, workers and visitors. However, an element of commercialisation of this space has already been approved through the granting of permission for a permanent cafe use and previous permissions for the market use. The markets would supplement and support retail activity in neighbouring Oxford Street and given their temporary nature and scale, it is not considered that they would have an adverse impact upon the character of the area. As previously, the proposals are considered acceptable in principle in land use terms.

The impact of the proposals upon residents' amenity and the local highways network is considered in Sections 8.3 and 8.4 below.

8.2 Townscape and Design

The Brown Hart Gardens deck comprises the roof of a building erected in 1904-05 as an electricity sub-station, concealed by a raised terrace. It was designed by C.S. Peach for the Grosvenor Estate. The list description states:

“An architecturally tasteful disguise for the sunken sub-station, in Edwardian Baroque. Stone paved terrace with garden, surrounded by balustrades and with stone domed and columned pavilions to east and west end, the whole raised over rusticated arcade of lunettes lighting the sub-station below.”

The building makes a positive contribution to the character and appearance of the Mayfair Conservation Area.

The market stalls for the deck on Brown Hart Gardens are supplied by the traders themselves and comprise a gazebo cover with tables and serving points beneath. The stalls for the Lumley Street market are hired by the applicant and comprise a metal frame with plastic canopy and wooden counter top.

One objector has requested a condition to prevent market goods from being hung from street railings. The Operational Management Plan has been updated to ensure that no goods are hung or displayed on the street level railings or on the walls to the deck.

Given their temporary nature, it is not considered that these stalls would have an adverse impact upon the special interest of the listed deck or upon the character and appearance of this part of the Mayfair Conservation Area and the proposals are considered acceptable and comply with relevant City Plan and UDP policies.

8.3 Residential Amenity

UDP policy ENV 13 states that the City Council will normally resist proposals which result in a material loss of daylight/sunlight to existing dwellings and will refuse permission where the resulting level is unacceptable. In addition, developments should not result in a significant increase in the sense of enclosure, or overlooking, and should not cause unacceptable overshadowing, particularly on gardens or on adjoining buildings. Policy S29 also states that permission will be refused for developments that would result in a material loss of residential amenity.

UDP policies ENV6 and ENV7 deal with the subject of noise pollution and vibration from new uses, internal activity and the operation of plant. The policies require the potential for any disturbance to be ameliorated through design features and operational controls. Similarly, policy S32 requires disturbance from noise and vibration to be contained.

The deck, and both sides of Lumley Street, are bordered by a large number of residents living in small flats managed by Peabody. The flats are occupied by a range of tenants including elderly people and families. The blocks face the deck on the north and south sides.

Objections were raised to the original application on amenity grounds including noise and smell nuisance and overlooking. No objections were raised to the 2016 application for the renewal of the permission although one local resident requested various conditions relating to the operation of the deck market. At that time, there was no record of any complaints having been received in relation to the operation of the deck market. It appears that the Lumley Street market has never been held. There is no record of any complaints having been received regarding the markets since the original permission was renewed.

Noise

a) Market operation including servicing activity

Given the nature of markets, and the vagaries of the weather, it is not possible to anticipate the level of customer activity generated by the markets. However, the proposed trading hours 11.00 to 16.00, are relatively short and are less than those permitted for general public access to the deck (11.00 to 18.00).

Few objections have been received to the current application. One respondent has advised that there have been some issues with noise disturbance associated with the setting up and dismantling of market stalls but that any problems resulting from the market operation have been resolved quickly. One objection has been received on the grounds of noise disturbance to the east side of Balderton Flats and the west side of Stalbridge Flats. Others have requested that any permission should include conditions to prevent the playing of amplified music and to prevent the use of mobile phones (or smoking) near to the Lumley Street flats, to require a market supervisor/security guard to be on duty at all times and to require all market goods to be removed by 16.30 and all stalls to be removed by 17.00 hours.

The restricted trading hours proposed will serve to minimise the impact of the markets' operations upon on the amenities of neighbouring residents. The applicants have re-submitted the approved Operational Management Strategy, which any new market operator would be required to comply with. This includes various measures to ameliorate the impact of the market use, including preventing the playing of amplified music and an undertaking that stallholders will not be permitted to operate noisy equipment, including generators. A member of the market operator's management team would be on site at all times.

As Lumley Street is a public highway, where pedestrians are free to use mobile phones (and smoke), it is not possible to make a distinction between that general activity and such activity taking place in association with the market use. Consequently, it would not be reasonable to attempt to control these activities by condition. However, it is not considered that disturbance to local residents as a result of mobile phone use (or smoking) is likely to be significant.

Operating at the busiest times of the day, but not on Sundays, and given their proximity to Oxford Street, it is not considered that the general level of activity associated with the markets would have a significant adverse impact upon the amenities of local residents.

As previously approved, the market stalls would be set up from 09.00, with all equipment removed by 18.00 hours. There is no record of any complaints having been received to suggest that activity associated with the dismantling of the market between 16.00 and 18.00 has resulted in any significant disturbance to local residents or that requiring the markets to be removed by 17.00 hours (as requested by an objector) would have a more beneficial material impact upon residents' amenity. In these circumstances, it is not considered that the suggested restrictions could be justified.

ii) Loss of privacy

One objection has been received on the grounds that the proposals would result in a loss of privacy to residents of Balderton Flats (east block). The approved scheme in 2007, for the deck refurbishment and cafe, approved a seating design which minimised the potential for overlooking from the deck, including fixed perimeter seating and moveable seating/planters in the centre of the deck. These non-fixed elements will be moved to facilitate the erection of the market stalls, which will be confined to the centre and eastern end of the deck. Residents objected to the original application on the grounds that people visiting the market will be able to look into neighbouring flats, particularly from the western end of the deck. However, that potential situation currently exists during the hours that the deck is open to the public. The proposed market trading hours are less than the permitted hours for public access to the deck and would take place on one day a week. In these circumstances, it is not considered that the proposals would significantly worsen the existing position.

Given that the Lumley Street market would be located on the public highway, it is not considered that this use would have a material impact upon the privacy of neighbouring residents. Consequently, it is not considered that the objection on these grounds could be supported.

iii) Smell nuisance

Policy ENV 5 requires new developments to be designed to safeguard air quality and to minimise the potential for smell nuisance. Policy S29 seeks to resist proposals which have an adverse effect on the residential environment.

When the original application was assessed, the Council's Environmental Health Officer considered that as cooking in the deck market would be limited to a maximum of eight stalls, between 11.00 and 16.00 hours on one day a week and as there would be sufficient distance between the deck area and neighbouring flats to enable the dilution and dispersal of cooking smells, that the operation of the market food stalls would be unlikely to result in smell nuisance to residents. No comments were received regarding smell nuisance in relation to the application for the renewal of the permission (approved in February 2017), notwithstanding the fact that the market had been operating on a weekly basis since January 2016.

An objection has been received to the current application from an occupier in Balderton Flats on the grounds that the market use has resulted in nuisance from cooking smells which travel down Lumley Street. This objector has requested that primary cooking stalls should be positioned away from Lumley Street with a potential reduction in their number. Another respondent has requested a condition to prevent any primary cooking, with only the warming-up of pre-cooked food being permitted. As the market ceased operating in October last year, it has not been possible to visit the market or the objector's property to investigate this complaint. However, no other objections have been received on these grounds.

The Environmental Health Officer has confirmed that no complaints have been received regarding smell nuisance. However, they are aware of the objection to the current application and have reviewed the submitted Operational Management Plan. Since the applicant is seeking to engage a new market operating company, they consider that the OMP should be revised to include measures to ameliorate potential smell nuisance from the deck market (which does not require a street trading licence) similar to measures which included in assessments of potential smell nuisance for street trading licences, including details of food type, equipment and fuel used, duration of operation and the location and number of food stalls.

Given the history of market use, subject to the submission and approval of an updated OMP prior to the commencement of the market use, the application is considered acceptable on amenity grounds.

8.4 Transportation/Parking

Servicing/parking

When the weekly deck market is in operation, the applicant advises that servicing would take place in 15-minute time slots between 09.00 and 11.00 and from 16.00 until 18.00. Traders would be allocated a time slot, during which no more than three vans (no lorries) would be in attendance. Servicing would take place in Brown Hart Gardens, as at present. Given the limited number of servicing vehicles present at any one time, no

suspension of parking bays would be required in either Lumley Street or Brown Hart Gardens. These arrangements would not conflict with the agreed servicing arrangements for the deck cafe, which is serviced from Balderton Street.

When both the Lumley Street and deck markets are in operation, on a maximum of four occasions a year, servicing would take place at the same times, using the same system of 15-minute time slots. Again, there would be no more than three vehicles in attendance at any one time. However, Lumley Street would be closed to traffic and all nine residents' parking bays on the west side of the street would be suspended, together with three visitor parking bays on the north side of Brown Hart Gardens. These arrangements would allow for the free flow of traffic around the deck.

There is a regular turnover of visitor parking. Bays operate from 8.30am - 6.30pm Monday to Saturday in this area. As long as parking bay suspensions are advertised sufficiently in advance, there is no objection to these suspensions, albeit that the number of visitor parking bays would be reduced by three.

As previously, the Highways Planning Manager has expressed concern about the number of parking suspensions that would be required to operate a market in Lumley Street, particularly the suspensions of residents' parking bays. With the residents' parking bays, any resident of Zone E could leave their car in a Lumley Street bay but may not necessarily live in close proximity or visit Lumley Street for a number of days. Consequently, more notice would be required of the suspension of these bays. Although there is concern over the reduction in the number of residents' parking bays, this would take place only 4 times per year. The 2015 parking survey (Sunday) showed that only four of the nine spaces in Lumley Street were occupied. Although residents would need to move their vehicles, the parking survey indicates that there would be alternative spaces available in the area.

The Head of Parking Services has advised that no applications were made for parking suspensions associated with a craft market in Lumley Street since the permission was renewed. The applicants have confirmed that this market was last held in December 2015, prior to the granting of the first planning permission. The Lumley Street market could not operate without arrangements for the suspension of parking bays and removal of vehicles having been agreed in advance with the Parking Suspensions Team. An informative is proposed advising the applicants to contact the Parking Team, as has been agreed with them.

One objector considers that residents should not be required to bear the cost of retrieving vehicles that have been towed away unless they have been given advance notice of Lumley Street market dates. They have requested that notices should be sent to Lumley Street flats/displayed on notice boards giving the year's craft market dates. As the City Council has recognised procedures for the advertising and suspension of parking bays and as vehicles parked in Lumley Street may not necessarily belong to occupants of the Lumley Street flats, it is not considered that any additional measures for advertising market dates/parking suspensions are reasonable or necessary.

Given that the deck market will operate without parking suspensions, there is less concern over this weekly market on servicing grounds. However, as previously, a

detailed Servicing Management Plan is considered necessary to formalise the servicing arrangements for both markets.

One respondent has requested that no parking be permitted for stallholders except for loading/unloading. However, any stallholder parking in the area would be subject to the usual parking controls and it is not considered that such a condition would be necessary or reasonable. It is not considered that the operation of the markets is likely to generate any additional customer parking.

8.5 Economic Considerations

Any economic benefits generated by the development are welcomed.

8.6 Access

The Brown Hart Gardens deck is accessible via the original steps and also by way of a wheelchair access lift. These access arrangements remain unchanged.

One local resident is concerned that market traders should not be able to use the access lift serving the deck, to transfer goods from the deck to street level, and vice versa. As previously, a condition is recommended to deal with this issue.

8.7 Other UDP/Westminster Policy Considerations

Cleaning and litter

An objection was received to the original application on the grounds that the proposal would result in increased litter generation. One respondent has requested that refuse bins be provided on market days.

The OMP sets out previous measures relating to refuse disposal and litter generation, which would continue. All market stallholders will be responsible for removing, and disposing of their own packaging and food waste. Given the nature of the operation, it is considered that little packaging waste would be generated and that any waste generated by customers can be accommodated by existing litter bins on the site. However, given the hot food stalls on the deck, there is the potential for existing bins to overflow with food packaging/food waste. To address this concern, a team of cleaners will attend the site on market days to ensure that the bins are emptied when they become full and that no litter remains at the end of the day. Some of the “smart” bins alert cleaners when they are full.

As previously, the Cleansing Manager has requested a condition requiring the submission of details of refuse storage and revised plans showing details of the storage of general refuse, food waste and cooking oil, in accordance with adopted Council protocols. However, as previously, given the arrangements outlined in the OMP, no such condition is considered necessary.

8.8 London Plan

The application does not raise any strategic issues.

8.9 National Policy/Guidance Considerations

The City Plan and UDP policies referred to in the consideration of this application are considered to be consistent with the NPPF unless stated otherwise.

8.10 Planning Obligations

The application does not trigger any planning obligations

8.11 Environmental Impact Assessment

The environmental impact of the assessment is discussed elsewhere in this report.

8.12 Other issues

One objector has requested a condition to prevent the sale of alcohol within the food market. This is a licensing matter and could not justify the withholding of permission.

8.13 Conclusion

Subject to conditions, the proposals are considered acceptable in land use amenity and design terms and the application is recommended for approval. Given the change in market operator, and in accordance with the submitted application, it is recommended that permission be granted for a further temporary period of one year to enable the impact of the market operation to be monitored.

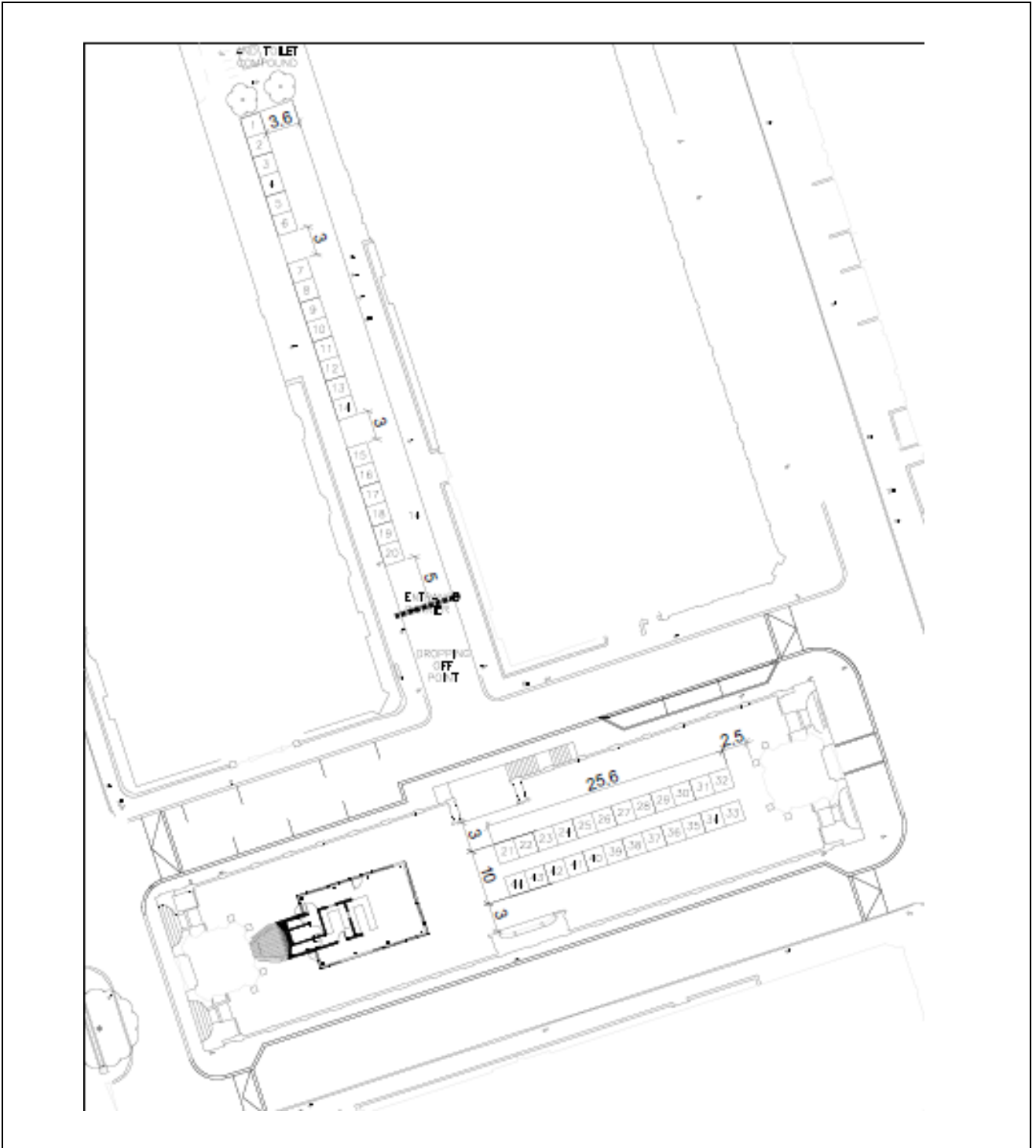
9. BACKGROUND PAPERS

1. Application form
2. Memorandum from Environmental Health dated 21 February 2018
3. Email from Highways Planning dated 27 February 2018 (enclosure)
4. Memorandum from Cleansing dated 4 January 2018
5. Letter from occupier of 19 Stalbridge Flats, Lumley Street, dated 15 January 2018
6. Letter from occupier of 19 Balderton Flats, London, dated 14 January 2018
7. Letter from occupier of 32 Balderton Flats, Brown Hart Gardens, dated 22 January 2018
8. Letter from occupier of flat 32, 129 Park St, dated 11 February 2018
9. Brown Hart Gardens Operational Management Strategy dated March 2018

(Please note: All the application drawings and other relevant documents and Background Papers are available to view on the Council's website)

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT THE PRESENTING OFFICER: PAUL QUAYLE AT pquayle@westminster.gov.uk

10. KEY DRAWINGS



DRAFT DECISION LETTER

Address: Brown Hart Gardens, London, ,

Proposal: Use of three areas of carriageway each measuring 12.0m x 2.0m on the west side of Lumley Street for the placing of 20 stalls as a street market (four times per year and not more than once per calendar month, excluding Sundays) for the sale and display of goods (Class A1) and use of two areas of Brown Hart Gardens deck each measuring 23.6m x 2.0m for the placing of up to 24 stalls for an artisan food market, including hot food takeaway, no more than one day per week (excluding Sundays) for a temporary period of one year.

Reference: 17/11322/FULL

Plan Nos: Proposed market plan (entitled Lumley Street) dated 16 October 2014;

Case Officer: Sara Spurrier

Direct Tel. No. 020 7641 3934

Recommended Condition(s) and Reason(s)

- 1 The development hereby permitted shall be carried out in accordance with the drawings and other documents listed on this decision letter, and any drawings approved subsequently by the City Council as local planning authority pursuant to any conditions on this decision letter.

Reason:

For the avoidance of doubt and in the interests of proper planning.

- 2 You must apply to us for approval of an updated operational management plan to show how you will prevent the market uses causing nuisance for people in the area, including people who live in nearby buildings. In particular, this must include details of the location of the food stalls in the Brown Hart Gardens deck market and any measures to deal with cooking smells. You must not start either of the market uses until we have approved what you have sent us. You must then carry out the measures included in the management plan at all times that the markets are in use.

Reason:

To avoid blocking the surrounding streets and to protect the environment of people in neighbouring properties and to protect neighbouring residents from noise nuisance as set out in S24, S29, S32 and S42 of Westminster's City Plan (November 2016) and STRA 25, TRANS 20, TRANS 21 and ENV 6 of our Unitary Development Plan that we adopted in January 2007.

- 3 The Brown Hart Gardens deck market hereby approved shall take place on a maximum of one day per week (excluding Sundays) and shall only be open to customers between 11.00 and 16.00 hours.

Reason:

To protect neighbouring residents from noise nuisance, as set out in S24, S29 and S32 of Westminster's City Plan (November 2016) and ENV 6 of our Unitary Development Plan that we adopted in January 2007.

- 4 The Lumley Street market hereby approved shall take place on a maximum of four times per year (excluding Sundays) and not more than once in any calendar month and shall only be open to customers between 11.00 and 16.00 hours.

Reason:

To protect neighbouring residents from noise nuisance, as set out in S24, S29 and S32 of Westminster's City Plan adopted November 2016 and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R13EC)

- 5 The setting-up of the markets, including the loading and unloading of goods and market fixtures from vehicles, shall not commence before 09.00 and all goods, fixtures and traders' refuse associated with the market use shall have been removed from the market sites by 18.00 hours.

Reason:

To protect neighbouring residents from noise nuisance, as set out in S24, S29 and S32 of Westminster's City Plan adopted November 2016 and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R13EC)

- 6 A maximum of 20 market stalls shall be located in the Lumley Street market and a maximum of 24 market stalls shall be located in the Brown Hart Gardens market.

Reason:

To protect neighbouring residents from noise nuisance, as set out in S24, S29 and S32 of Westminster's City Plan adopted November 2016 and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R13EC)

- 7 You must not undertake any primary cooking (cook raw or fresh food) and no hot food shall be served within the Lumley Street market.

Reason:

To ensure that occupants in neighbouring properties do not suffer from unacceptable nuisance from cooking smells. This is as set out in S24 and S29 of Westminster's City Plan adopted November 2016 and ENV 5 of our Unitary Development Plan that we adopted in January 2007. (R05EC)

- 8 A maximum of 6 stalls within the Brown Hart Garden market shall be permitted to undertake primary cooking (cook raw or fresh food) except on those occasions when the Lumley Street market is also in operation, when a maximum of 8 stalls within the Brown Hart Gardens shall be permitted to undertake primary cooking and only these stalls can serve hot food.

Reason:

To ensure that occupants in neighbouring properties do not suffer from unacceptable nuisance from cooking smells. This is as set out in S24 and S29 of Westminster's City Plan adopted November 2013 and ENV 5 of our Unitary Development Plan that we adopted in January 2007. (R05EC)

- 9 No mechanical plant, including generators, shall be operated in association with the market use hereby approved.

Reason:

To protect the environment of people in neighbouring properties, as set out in S32 of Westminster's City Plan (November 2016) and ENV 6 and ENV 7 of our Unitary Development Plan that we adopted in January 2007. (R13BC)

- 10 No amplified music shall be played in association with the market operations hereby approved.

Reason:

To protect the environment of people in neighbouring properties, as set out in S32 of Westminster's City Plan (November 2016) and ENV 6 and ENV 7 of our Unitary Development Plan that we adopted in January 2007. (R13BC)

- 11 The access lift serving the Brown Hart Gardens deck shall not be used for the transfer of goods or fixtures associated with the market use.

Reason:

To make sure that the existing access for people with disabilities is maintained set out in S28 of Westminster's City Plan (November 2016) and DES 1 (B) of our Unitary Development Plan that we adopted in January 2007. (R20AC)

- 12 Other than the market stalls hereby approved, no additional structures such as gazebos, umbrellas or tables and chairs shall be provided in association with the market operations.

Reason:

To protect the special architectural or historic interest of this listed building and to make sure the development contributes to the character and appearance of the Mayfair Conservation Area. This is as set out in S25 and S28 of Westminster's City Plan (November 2016) and DES 1, DES 10 (A) and paras 10.108 to 10.146 of our Unitary Development Plan that we adopted in January 2007. (R26FD)

- 13 You must apply to us for approval of a Servicing Management Plan. You must not commence the use until we have approved what you have sent us., You must then operate the use in accordance with the approved Servicing Management Plan

Reason:

To avoid blocking the surrounding streets and to protect the environment of people in neighbouring properties as set out in S42 of Westminster's City Plan (November 2016) and STRA 25, TRANS 20 and TRANS 21 of our Unitary Development Plan that we adopted in January 2007. (R23AC)

- 14 The market use allowed by this permission is limited until 31 March 2019.

Reason:

In order to assess the impact of the use of the market on the amenities of nearby residents.

Informative(s):

- 1 In dealing with this application the City Council has implemented the requirement in the National Planning Policy Framework to work with the applicant in a positive and proactive way. We have made available detailed advice in the form of our statutory policies in Westminster's City Plan

(November 2016), Unitary Development Plan, Supplementary Planning documents, planning briefs and other informal written guidance, as well as offering a full pre application advice service, in order to ensure that applicant has been given every opportunity to submit an application which is likely to be considered favourably. In addition, where appropriate, further guidance was offered to the applicant at the validation stage.

- 2 Your proposals for the Lumley Street market will require the suspension of parking bays, without which, this use cannot be implemented. You should contact Adam Warnes, Head of Parking Services (0207-641-4074) to agree measures for the suspension of the spaces and the removal of vehicles, if necessary.

Please note: the full text for informatives can be found in the Council's Conditions, Reasons & Policies handbook, copies of which can be found in the Committee Room whilst the meeting is in progress, and on the Council's website.