

CITY OF WESTMINSTER			
PLANNING APPLICATIONS COMMITTEE	Date 17 May 2016	Classification For General Release	
Report of Director of Planning		Ward(s) involved West End	
Subject of Report	Berkeley Square, London, W1J 6DB		
Proposal	Erection of seven marquees on the north side of Berkeley Square Gardens for a temporary period for antiques and art fairs between 31 August 2016 and 15 October 2016 and for unspecified dates in years 2017 to 2020.		
Agent	Miss Mieka Sywak		
On behalf of	Miss Mieka Sywak		
Registered Number	16/01776/FULL	Date amended/ completed	4 April 2016
Date Application Received	29 February 2016		
Historic Building Grade	II		
Conservation Area	Mayfair		

1. RECOMMENDATION

For Committee's consideration:

Does the Committee consider that there are exceptional circumstances in this case to permit the proposed use on a temporary basis?

2. SUMMARY

Berkeley Square is a Grade II listed Square on the English Heritage Register of Parks and Gardens. It is also protected by the London Squares Preservation Act 1931. The Square is located within the Mayfair Conservation Area and the Core Central Activities Zone as defined by the adopted City Plan.

Permission is sought for the erection of seven marquees on the northern side of the square for a temporary period from the 31 August 2016 until the 15 October 2016. Permission is also sought for marquees in the square annually for a further four years with dates for future years to be confirmed at a later date. The marquees are to be used in association with two international art fairs, The LAPADA Art and Antiques Fair and a contemporary art fair, these fairs have been operating from the square for a number of years with the LAPADA event having taken place in the square since 2009 and planning permission having been granted for both events since

2012.

A separate application has been made to erect 19 marquees on the same part of the Square for a different temporary period (1 June 2017 and 19 June 2017) by the Glamour Awards and the London Real Estate Forum. This application is considered elsewhere on this agenda

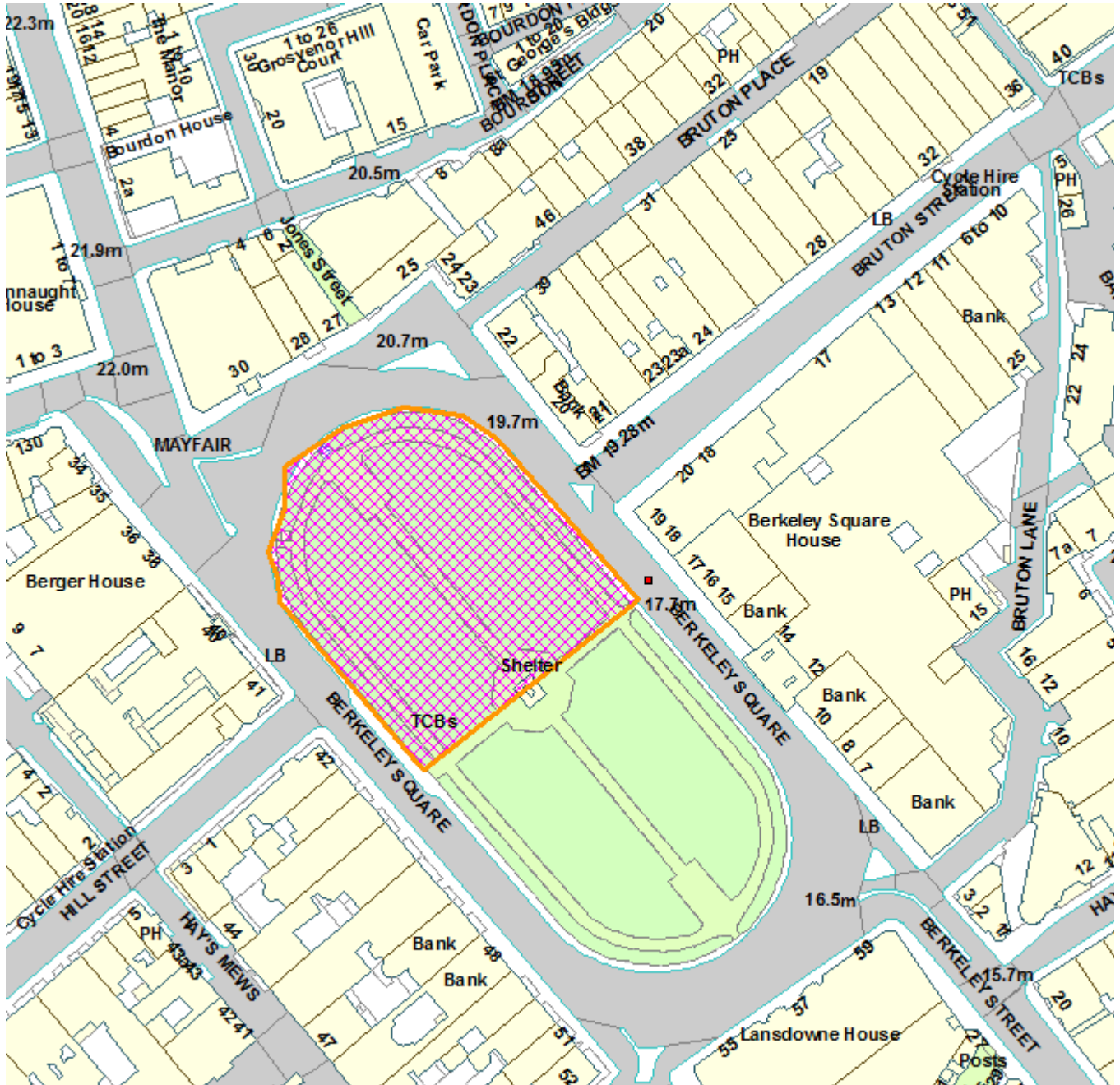
The key issues for consideration are:

- * The impact of the proposed marquees on the special interest of the square.
- * The temporary exclusion of members of the public from part of the square.
- * Whether the proposal complies with the terms of the London Squares Preservation Act 1931.

The City Solicitor has advised that the proposal is unlikely to comply with the terms of the London Squares Preservation Act 1931. However, consideration must also be given to the fact that the proposed fairs are established specialist events which involve many local galleries and businesses.

Given this, Sub-Committees views are sought as to the acceptability of a five year planning permission for the events.

3. LOCATION PLAN



4. PHOTOGRAPHS





5. CONSULTATIONS

HISTORIC ENGLAND

Authorisation to determine as seen fit.

COUNCILLOR ROBERTS

Any response to be reported verbally.

COUNCILLOR CHURCH

Any response to be reported verbally.

COUNCILLOR GLANZ

Any response to be reported verbally.

RESIDENTS SOCIETY OF MAYFAIR AND ST. JAMES'S

Objection – granting the events for five years will lead to a loss of control over the events and result in damage to the amenity space.

CLEANSING MANAGER

No objection.

LEGAL SERVICES

Considers the proposed events are unlikely to comply with the terms of the London Squares Preservation Act 1931.

HIGHWAYS PLANNING MANAGER

No objection.

ENVIRONMENTAL HEALTH

No objection.

SPECIAL EVENTS

Any response to be reported verbally.

THE GARDENS TRUST

Any response to be reported verbally.

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 308

Total No. of replies: 0

No. of objections: 0

No. in support: 0

PRESS ADVERTISEMENT / SITE NOTICE: Yes

6. BACKGROUND INFORMATION

6.1 The Application Site

Berkeley Square is a Grade II listed Square on the English Heritage Register of Parks and Gardens and is also a protected Square under the London Squares Preservation Act 1931. It is a large public square located in the centre of Mayfair within the Mayfair Conservation Area and the Core Central Activities Zone. The square is characterised by mature trees, grassed areas and benches.

6.2 Recent Relevant History

Conditional planning permission was granted on the 2 October 2012 for the 'erection of seven marquees on the north side of Berkeley Square Gardens for a temporary period for antiques and art fairs between the 6 September 2012 and 20 October 2012.'

Permission was subsequently granted on the 26th July 2013 for seven marquees for a temporary period for antiques and art fairs between the 12 September 2013 and the 26 October 2013 and for unspecified dates in 2014 and 2015.'

Permission has also been granted on a number of previous occasions for the use of the square to host other events including the London Real Estate Forum and the Glamour Awards. As already stated a separate application has been submitted by the Glamour Awards and London Real Estate for marquees which is considered elsewhere on this Committee agenda.

7. THE PROPOSAL

The proposal involves the erection of seven marquee structures for a temporary period from the 31 August 2016 and 15 October 2016 to accommodate two international arts fairs, one the LAPADA Art and Antiques Fair, the other a contemporary art fair. LAPADA was founded in 1974 and is an association of antiques and art dealers with 550 members from across the UK.

Permission is also sought for the event to take place annually between 2017 and 2020 with currently unspecified dates. The total floorspace of the marquees equates to 4,148m² of which 3,608m² will be provided at ground floor level and 540m² will be provided on a first floor level within one of the marquees. The LAPADA event has been taking place annually in the square since 2009 with the contemporary arts fair having taken place annually since 2010.

The proposed marquees would cover the northern half of the square, in the same location as the annual events have taken place in previous years. Prior to 2012 the marquee structures were taken down between the two main events and therefore planning permission had not been sought as it was thought the structures were in place for a total period of less than 28 days and therefore benefited from permitted development rights.

In 2012 planning permission was sought for the marquee structures as Special Events advised the impact of the Olympics meant there were concerns with an increase in traffic and other logistical issues if the marquees had to be taken down between the two events.

It was also considered that leaving the marquees in place between the fairs would help alleviate stress upon the Square and allow it to return to its previous condition quicker than might otherwise have been the case. The application was granted consent on this basis and an informative attached stating that the exceptional circumstances resulting from the hosting of the Olympics had been taken into account in determining the application and that the proposal would be considered highly contentious if permission was subsequently sought for the events in future years. However, permission was then granted in 2013 for the event to take place that year and in 2014 and 2015.

The opening hours of the two arts fairs vary according to certain days but they are between the hours of 11.00 and 21.00 (being the earliest and latest opening hours). In addition there are two charity events planned which would close at 00:00 (midnight). These events would be controlled by Special Events and via the licence granted for the charity events.

8. DETAILED CONSIDERATIONS

8.1 Land Use

It is recognised that the events provide a platform for many of the galleries in the surrounding area to present their goods to a much wider audience. Information provided by the applicant states that 29 galleries from within Westminster are to be represented at the LAPADA event with a further 32 from across London, 15 galleries from within Westminster will be represented at the PAD event with a further 5 from London. In 2015 there were 22,000 visitors to the LAPADA fair and 27,000 to the PAD fair.

Policies S22 of the adopted City Plan and TACE 5 of the UDP seek to protect existing and encourage new tourism, arts and cultural facilities within the Central Activities Zone subject to the uses not resulting in an adverse impact on residential amenity or traffic. The proposed arts fairs are considered compatible with the character and function of the area as there are a large number of galleries in the vicinity, many of whom, as stated above will be represented. It is also noted that a large number of letters have been provided by the applicant from local art and antique galleries detailing the benefits of the fairs for their businesses and the profile of London as an international arts and antiques destination.

It is noted that there have been no recorded complaints regarding previous fairs in the square and no objections have been received from neighbouring owners or occupiers in respect of the current proposal. As the events will be run in a similar manner to previous years, it is considered that there is unlikely to be any detrimental impact on residential amenity. It is also not considered the proposal would result in any adverse environmental or traffic impact.

A letter was submitted as part of the application from Lancer Asset Property Management who are the freeholders of the square stating that they consider the LAPADA and PAD fairs as corporate events that have been previously agreed to be held in the square.

There are also charitable events planned which will take place on two of the evenings; one in support of the ARNI Institute (Action for Rehabilitation from Neurological Injury) and the other in support of CLIC Sargent. It is noted that one charity event last year raised £350,000 for Maggie's Cancer Centres and that the charities associated with the LAPADA

fair have raised £1,250,000 in the past three years from charitable events hosted in the marquees.

The London Squares Preservation Act

The Square is protected by the London Squares Preservation Act 1931. The primary purpose of the Act is that protected Squares be preserved permanently as open space. The Act requires that a protected square should only be used for authorised purposes namely for the purpose of an ornamental garden, pleasure ground or ground for rest, play and recreation.

In this particular case the events, although representing a range of commercial antique and art galleries, are open to the public and many tickets are provided free to local residents and businesses and free tickets are also provided to those with subscriptions to various periodicals such as the RA magazine and the Mayfair Times, in addition over 20,000 invitations are distributed through the 115 participating galleries. The temporary marquees occupy just under 50% of the square and remain in situ for just over 6 weeks per year.

It is necessary on each occasion to look at the overall character and scale of what is proposed to be in a protected square. As a general principle, if the predominant use of what is proposed is commercial, rather than recreational, it is likely to contravene the Act. However the use of part of a square for a short period by an event, whether open to the public or private, is considered to fall within the terms of the Act provided it is of a short duration.

In this particular case the two proposed events would involve the erection of structures including 7 marquees on the north side of Berkeley Square for a temporary period between 31 August 2016 and 15 October 2016 and unspecified dates in the years 2017 to 2020. An objection has been received to the application from the Residents Society of Mayfair and St. James's as they consider granting a five year consent will lead to a loss of control over the events and result in potential damage to the square. A condition is proposed requiring the applicant to agree the dates of the fairs in each future year and the events are also controlled by licensing and special events, for these reasons it is not considered a five year consent results in loss of control and the objection on these grounds is not considered sustainable.

The Director of Law has advised that the events are likely to be in breach of the Act, firstly because they do not fall within the 'authorised purposes' set out in Section 3(1) of the Act (see above) and secondly because they fail to preserve the character of Berkeley Square as an open space given that approximately 50% will be occupied by the structures for a period of 46 days.

The Director of Law further advises that the City Council has a duty to enforce the provisions of the Act. However, the City Council has a discretion as to whether or not to prosecute having regard to all relevant circumstances.

8.2 Townscape and Design

Policy S35 of the adopted City Plan states that the City Council will protect 'all open spaces, and their quality, heritage and ecological value, tranquillity and amenity'. Policies ENV14 and ENV15 of the UDP also seek to protect metropolitan open land and public open spaces maintaining them for the benefit of the public, both residents and workers.

Policy DES12 of the UDP seeks to 'preserve or enhance the appearance and integrity of open spaces and their settings'. The policy seeks to resist any development of land forming part of the Royal Parks or public and private squares, and any developments that adversely affect their integrity or appearance. Permission is only likely to be granted for development in parks, gardens and squares if the development is essential and ancillary to maintaining the land as public open space.'

The marquees are large and are considered to have a significant, harmful impact on the appearance of the registered garden, and fail to preserve or enhance the character and appearance of the Mayfair Conservation Area.

In line with guidance in the NPPF, the harm the proposal results in to the designated heritage asset (the Square) needs to be weighed against the public benefits of the proposal. As such, the harmful impact of the structures needs to be weighed up against the relatively short period they will remain in situ balanced against the 28 day permitted development rights and that the proposal is for an established specialist event which supports many local galleries and businesses.

The marquees also feature a number of advertisements, for which advertisement consent is sought. These are relatively discrete and if planning permission is to be granted for the structures, then it is considered that advertisement consent should also be granted.

8.3 Residential Amenity

In amenity terms the main issue is the impact of the proposed event in terms of additional people attracted to the Square and whether this will cause significant additional noise and disturbance.

There are very few residential properties located on the square with the majority of buildings being used as office accommodation on the upper floors. There are also no complaints registered with the Council in relation to the events in previous years and no objections from neighbouring residents in relation to this application. As the fairs will be managed and run in a similar way to previous years it is not considered the proposal would have a detrimental impact upon residential amenity in the vicinity.

It is not considered necessary to include conditions in relation to the opening hours of the fairs or the hours of deliveries as these issues have been effectively managed by the operators and Special Events in previous years. Licenses will be sought for the charity events closer to the time and it is noted that these have been issued without difficulty in previous years.

8.4 Transportation/Parking

It is noted that the events have taken place for a number of years without resulting in any complaints or issues with regard the use of the public highway. It is therefore considered acceptable in highways terms to grant further temporary consent for the events.

8.5 Economic Considerations

It is acknowledged that the proposal will likely provide an economic benefit to local art and antiques galleries.

8.6 Access

Disabled access is provided at the main entrances to the event and potential internal access issues for disabled people are detailed in the information sent out with each invitation.

8.7 Other UDP/Westminster Policy Considerations

Plant

Temporary plant items would be required to support the event. Normally it would be considered necessary for an acoustic report to be submitted to show that the plant would be compliant with City Council policies in relation to the noise levels experienced at the nearest noise sensitive properties. In this instance it is considered that due to the distance from the nearest noise sensitive property, the temporary nature of the event and that there are no recorded noise complaints relating to previous events, an acoustic report would not be necessary. Should permission be granted it is recommended that it is subject to the normal noise conditions.

8.8 London Plan

This application raises no 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

Planning obligations are not relevant in the determination of this application.

8.11 Environmental Impact Assessment

Not relevant to an application of this scale.

9. BACKGROUND PAPERS

1. Application Form
2. Response from Historic England dated 4 May 2016
3. Email from the Residents Society of Mayfair and St. James's dated 28 April 2016
4. Response from Environmental Health dated 22 April 2016
5. Response from the Highways Planning Manager dated 20 April 2016
6. Response from the Cleansing Manager dated 25 April 2016
7. Response from the Head of Legal and Democratic Services dated 27 April 2016

Selected relevant drawings

(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 MATTHEW GILES ON 020 7641 5942 OR BY EMAIL AT CentralPlanningTeam@westminster.gov.uk

10. KEY DRAWINGS



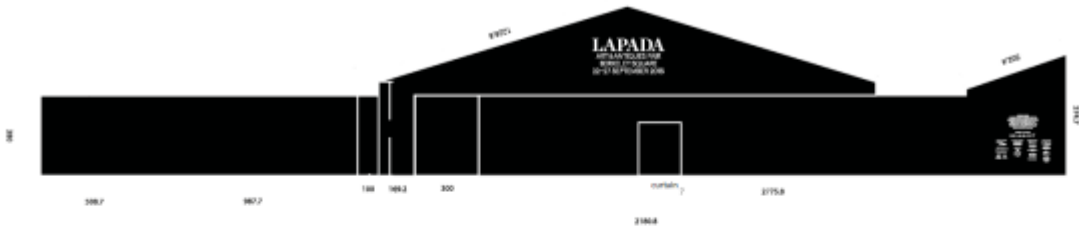
○ - Tree positions

LAPADA
ART & ANTIQUES FAIR
BERKELEY SQUARE

Rev 07 - 25.01.16
LAPADA 2016

1:100 @ A0





A. South
white mac tac vinyl to black pvc banner



B East
white mac tac vinyl to black pvc banner

lapada
sept 15

page 1

scale 1:200

DRAFT DECISION LETTER

- Address:** Berkeley Square, London, W1J 6DB,
- Proposal:** Erection of seven marquees on the north side of Berkeley Square Gardens for a temporary period for antiques and art fairs between 31 August 2016 and 15 October 2016 and for unspecified dates in years 2017 to 2020.
- Reference:** 16/01776/FULL
- Plan Nos:** Site Designation Plan, Drawings: LAPADA 2016 Rev 07, PAD London 2016, PAD Marquee Elevations, LAPADA Marquee Elevations.

Case Officer: Matthew Giles

Direct Tel. No. 020 7641 5942

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 carry out any building work which can be heard at the boundary of the site only:

- * between 08.00 and 18.00 Monday to Friday;
- * between 08.00 and 13.00 on Saturday; and
- * not at all on Sundays, bank holidays and public holidays.

Noisy work must not take place outside these hours. (C11AA)

Reason:

To protect the environment of neighbouring residents. This is as set out in S29 and S32 of Westminster's City Plan: Strategic Policies adopted November 2013 and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R11AC)

- 3 The use of the marquee structures hereby granted permission shall be for a limited period between 31 August 2016 and 15 October 2016 when the structures and associated works shall be removed and the land restored to its former condition.

Reason:

The use is not as set out in DES12 of our Unitary Development Plan that we adopted in January 2007. Use for more than a limited period would be harmful to the objectives of the Plan. (R03AB)

- 4 No vibration shall be transmitted to adjoining or other premises and structures through the building structure and fabric of this development as to cause a vibration dose value of greater than 0.4m/s (1.75) 16 hour day-time nor 0.26 m/s (1.75) 8 hour night-time as defined by BS 6472 (2008) in any part of a residential and other noise sensitive property.

Reason:

As set out in ENV6 (2) and (6) of our Unitary Development Plan that we adopted in January 2007, to ensure that the development is designed to prevent structural transmission of noise or vibration.

- 5 (1) Where noise emitted from the proposed plant and machinery will not contain tones or will not be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 10 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved by the City Council. The background level should be expressed in terms of the lowest LA90, 15 mins during the proposed hours of operation. The plant-specific noise level should be expressed as LAeqTm, and shall be representative of the plant operating at its maximum.

(2) Where noise emitted from the proposed plant and machinery will contain tones or will be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 15 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved by the City Council. The background level should be expressed in terms of the lowest LA90, 15 mins during the proposed hours of operation. The plant-specific noise level should be expressed as LAeqTm, and shall be representative of the plant operating at its maximum.

(3) Following installation of the plant and equipment, you may apply in writing to the City Council for a fixed maximum noise level to be approved. This is to be done by submitting a further noise report confirming previous details and subsequent measurement data of the installed plant, including a proposed fixed noise level for approval by the City Council. Your submission of a noise report must include:

- (a) A schedule of all plant and equipment that formed part of this application;
- (b) Locations of the plant and machinery and associated: ducting; attenuation and damping equipment;
- (c) Manufacturer specifications of sound emissions in octave or third octave detail;
- (d) The location of most affected noise sensitive receptor location and the most affected window of it;
- (e) Distances between plant & equipment and receptor location/s and any mitigating features that may attenuate the sound level received at the most affected receptor location;
- (f) Measurements of existing LA90, 15 mins levels recorded one metre outside and in front of the window referred to in (d) above (or a suitable representative position), at times when background noise is at its lowest during hours when the plant and equipment will operate. This acoustic survey to be conducted in conformity to BS 7445 in respect of measurement methodology and procedures;
- (g) The lowest existing L A90, 15 mins measurement recorded under (f) above;

- (h) Measurement evidence and any calculations demonstrating that plant and equipment complies with the planning condition;
- (i) The proposed maximum noise level to be emitted by the plant and equipment.

Reason:

Because existing external ambient noise levels exceed WHO Guideline Levels, and as set out in ENV 6 (1), (6) and (8) and ENV 7 (A)(1) of our Unitary Development Plan that we adopted in January 2007, so that the noise environment of people in noise sensitive properties is protected, including the intrusiveness of tonal and impulsive sounds; and as set out in S32 of Westminster's City Plan: Strategic Policies adopted November 2013, by contributing to reducing excessive ambient noise levels. Part (3) is included so that applicants may ask subsequently for a fixed maximum noise level to be approved in case ambient noise levels reduce at any time after implementation of the planning permission.

- 6 You must apply to us for approval of the dates for which you seek to erect the permitted marquees in 2017, 2018, 2019 and 2020. Permission must be granted in writing before the marquees can be erected in these years.

Reason:

The use is not as set out in DES12 of our Unitary Development Plan that we adopted in January 2007. Use for more than a limited period would be harmful to the objectives of the Plan. (R03AB)

Informative(s):

- 1 In dealing with this application the City Council has implemented the requirement in the N Planning Policy Framework to work with the applicant in a positive and proactive way. We made available detailed advice in the form of our statutory policies in Westminster's City Plan: Strategic Policies adopted November 2013, 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.

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.