

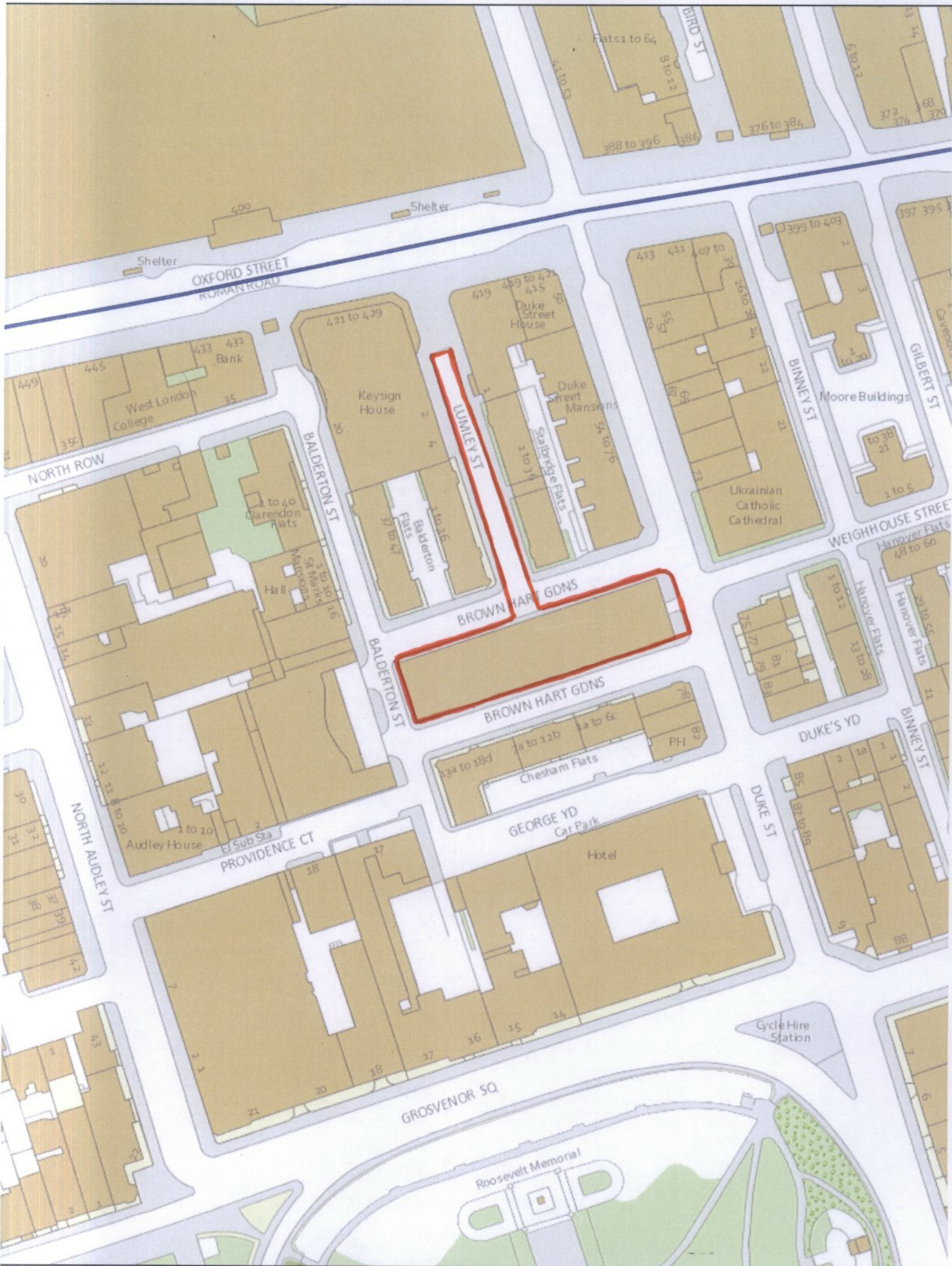
CITY OF WESTMINSTER			
PLANNING APPLICATIONS COMMITTEE	Date 15 September 2015	Classification For General Release	
Report of Director of Planning		Wards involved West End	
Subject of Report	Brown Hart Gardens, London, W1		
Proposal	Use of three areas of carriageway each measuring 12.0m x 2.0m on the west 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). 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). Installation of four plinths for the display of temporary artworks on the Brown Hart Gardens deck.		
Agent	Gerald Eve LLP		
On behalf of	Grosvenor West End Properties		
Registered Number	14/12253/FULL 14/12254/LBC	TP / PP No	TP/13449/17730
Date of Application	12.12.2014	Date amended/ completed	04.03.2015
Category of Application	Other		
Historic Building Grade	Grade II Listed Building		
Conservation Area	Mayfair		
Development Plan Context - London Plan July 2011 - Westminster's City Plan: Strategic Policies 2013 - Unitary Development Plan (UDP) January 2007	Within London Plan Central Activities Zone Within Core Central Activities Zone		
Stress Area	Outside Stress Area		
Current Licensing Position	Not Applicable		

1. RECOMMENDATION

1. Grant conditional permission subject to a S106 legal agreement to require the applicant to meet all costs associated with road closures, the suspension and temporary relocation of residents' parking bays and the removal of parked vehicles from suspended bays, if necessary.

2. If the S106 legal agreement has not been completed within six weeks of the application being reported to the Committee then:

- a) The Director of Planning shall consider whether permission can be issued with additional conditions attached to secure the benefits listed above. If this is possible and appropriate, the Director of Planning is authorised to determine and issue such a decision under Delegated Powers; however, if not
- b) The Director of Planning shall consider whether permission should be refused on the grounds that it has not proved possible to complete a S106 legal agreement within an appropriate timescale and that the proposals are unacceptable in the absence of the benefits that would have been secured; if so, the Director of Planning is authorised to determine the application and agree appropriate reasons for refusal under Delegated Powers.
3. Grant conditional listed building consent.
4. Agree the reasons for granting listed building consent as set out in Informative 1 of the draft decision letter.





BROWN HART GARDENS, W1

2. SUMMARY

This proposal relates to the creation of temporary street markets upon the Grade II listed deck area in Brown Hart Gardens and in Lumley Street. A weekly market of 24 stalls, including a maximum of eight hot food stalls, is proposed on the deck. A quarterly craft and gift market (no cooking) of up to 20 stalls would take place on Lumley Street, and would coincide with the weekly deck market. Neither market would take place on a Sunday. The markets would be open to the public from 11.00 until 16.00. Market setting up would commence at 09.00 and the markets would be removed by 18.00. The Lumley Street market would necessitate the closure of the road and the suspension of a total of 12 residents' parking bays in Lumley Street and on Brown Hart Gardens. The applications also relate to the installation of four plinths for the temporary display of works of public art, at each of the four corners of the Brown Hart Gardens. The proposal does not include details of the proposed art works.

The key issues in this case are:

- The impact of the proposed markets on residents' amenities.
- The impact of the proposals upon residents' parking and on-street parking availability in the area.
- The acceptability of the display plinths, and the principle of public artwork displays, upon the special interest of the Brown Hart Gardens deck.

The proposed markets are considered acceptable in land use terms and subject to appropriate operational conditions, it is not considered that the use would have a material impact upon the amenities of neighbouring residents. Given that the Lumley Street market would take place only four times a year, subject to a S106 legal agreement requiring the applicant to cover the costs associated with temporary road closures and the suspension of residents' parking bays, the scheme is considered acceptable in highways terms. The display of public artwork upon the deck is considered acceptable and it is not considered that the addition of the display plinths would have an adverse impact upon the special interest of the host structure or upon the character and appearance of this part of the Mayfair Conservation Area. The proposals are considered to accord with relevant UDP and City Plan policies and are therefore recommended for approval.

3. CONSULTATIONS

ORIGINAL SUBMISSION:

COUNCILLOR ROBERTS

Concerned about the impact of a weekly market in this residential area; setting up of stalls from 07.00 is too early; markets should operate from 11.00 until 18.00 hours; residents do not wish to see seating and umbrellas on the deck and presumes that residents would be against the intensification of eating and drinking and cooking smells; overcrowding of deck and dangerously steep access stairs.

CROSSRAIL

Do not wish to comment.

GROSVENOR-MAYFAIR RESIDENTS' ASSOCIATION

Any response to be reported verbally.

RESIDENTS' SOCIETY OF MAYFAIR AND ST. JAMES'S

No objection - operating hours should be extended to serve the wider community; objections from "local" residents are unreasonable.

ENVIRONMENTAL HEALTH

No objection but expressed concern about the impact of Sunday trading, particularly with a 07.00 set up.

HIGHWAYS PLANNING MANAGER

Objection: Concern re level of parking suspensions required and practicality of suspending and publicising suspension of residents' parking bays in Lumley Street; no objection to the deck market subject to detailed servicing plan.

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS

No. Consulted: 230; Total No. of Replies: 5.

Land Use

- Increased commercialisation of the deck; the applicant has previously consulted with local residents who advised that they objected to the markets. Residents most affected by the proposal/local residents' association have no representation on the Management Committee and information not readily available.
- Markets should be relocated to other squares e.g. Manchester Square, which should be opened to the public.

Amenity

- Proposals will exacerbate existing problems with noise disturbance to residents; setting up of stalls in Lumley Street already causes disturbance and the operator has done nothing to address this; disturbance from market vehicles.
- People generally like the market, which is well run but noise problems will worsen if the market is on a weekly rather than a monthly basis; market set-up should be from 08.00; no other events should be permitted on the deck.
- No primary cooking should be permitted. Fortnightly food market generates unacceptable nuisance from cooking smells which would be intolerable on a weekly basis. No primary cooking permitted in cafe.
- Overcrowding at the western end of the deck and associated noise disturbance; potential conflict with proposed cafe seating; no stalls should be permitted at the western end of the deck and adjacent to the café.
- Overlooking from deck into neighbouring flats.
- Would exacerbate existing problems with litter generation.
- Increased security risk from additional people visiting this residential area.
- Noise disturbance from rotating plinths.

Servicing

- Impact on air quality from additional market vehicles. The applicant should encourage stall holders to adopt eco-measures e.g. electric vehicles etc.
- Early setting up of stalls will encourage neighbouring shops to move servicing to an earlier time.

ADVERTISEMENT/SITE NOTICE: Yes

REVISED SUBMISSION:

COUNCILLOR ROBERTS

Any response to be reported verbally.

CROSSRAIL

Do not wish to comment.

GROSVENOR-MAYFAIR RESIDENTS' ASSOCIATION

Any response to be reported verbally.

RESIDENTS' SOCIETY OF MAYFAIR AND ST. JAMES'S

Any response to be reported verbally.

ENVIRONMENTAL HEALTH

No objection provided markets operated in accordance with the submitted Operational Management Statement and in compliance with the proposed setting up/close down times.

HIGHWAYS PLANNING MANAGER

Re-iterate previous objections.

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS

No. Consulted: 301; Total No. of Replies: 5.

Five (including three letters from one address)

Parking

- Objection to suspension of residents' parking bays in Lumley Street as vehicle was damaged when parked in an alternative location following a previous suspension; suspension of these bays will affect parking availability in the area.

Amenity

- No objection to markets providing no amplified music played; the disabled persons lift is not used by traders to transfer goods onto the deck, all refuse is removed at the end of the day and details of an emergency contact are displayed at all times when the markets are in operation.
- Re-iterate previous objections relating to cooking smells and the fact that no primary cooking is permitted at the deck café.

Design

- Art works should not be permitted to rotate or incorporate flashing lights (amenity implications).

Other Issues

- Object to the art display plinths/future artworks on safety grounds. Artworks would be located close to steep access stairs to the deck - people looking at the artworks are likely to obstruct the stairs or slip from the stairs leading to risk of an accident.

4. BACKGROUND INFORMATION**4.1 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.

There is a small café 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 is a significant number of elderly residents. Adjacent to the site, at 8 Balderton Street, is the newly opened 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.

The applicant (Grosvenor West End properties) has been operating the markets in conjunction with Shepherd Markets. They have advised that markets have been held:

- 1) on the Brown Hart Garden deck: on a monthly basis (from 21 May 2014 until 11 February 2015) and on a fortnightly basis since then.
- 2) in Lumley Street and on the deck: in December 2013 and April, September and December 2014, when the Lumley Street parking was suspended. No Lumley Street markets have been held in 2015.

4.2 Relevant History

The lawful use of the deck is considered to be a publicly accessed open space (sui generis).

Permission and listed building consent were granted on 28 March 2012 for the construction of a glazed extension at the west end of the deck for use as a café. This permission also involved the installation of new access stairs and glazed lift on the north side of the deck, incorporating a piece of public art; the refurbishment of the deck to include a new water feature; resurfacing; the provision of new fixed and moveable planters, seating and new lighting; alterations to the highway on the north side of the deck, pavements and lighting columns. The application was revised to delete the proposal to use the remainder of the deck for a range of community and commercial events. The permission has been implemented.

An Operational Management Strategy was also approved to ameliorate the impact of the café use. Café customers (eat-in) are prevented from using the public seating on the deck; the sale of hot food and alcohol to take away customers is not permitted; sales of takeaway food are limited to between 11.00 and 18.00 and the opening elements of the café (north and south sides) are to remain closed, except between 11.00 and 18.00, to prevent significant noise outbreak to flats overlooking the deck. Only maintenance and cafe staff can access the deck between 07.30 and 21.00 and only café staff and eat-in customers are permitted to access the deck between 08.00 and 11.00 and between 18.00 and 20.00. Full access to the deck for the general public, and for all café customers, is limited to between 11.00 and 18.00.

These measures were designed to ensure i) that the café did not colonise the deck and occupy space and seating intended for use by members of the general public visiting the deck (but not the café) and ii) to safeguard the amenities of those many local residents living in flats adjoining the deck.

An application (submitted by the café operator) for the placing of tables and chairs on the deck area for use in association with the cafe, was withdrawn on 20 April 2015 due to potential conflicts between the external seating and the proposed market. A new application for tables and chairs has recently been received.

5. THE PROPOSAL

The current proposal incorporates three separate elements:

- i) The use of three areas of the carriageway on the western side of Lumley Street (each measuring 12m long x 2m wide) for the placing of 20 market stalls for the display and sale of goods (Class A1) - on a maximum of four occasions in any one year and not more than once in any calendar month, on any day except Sundays ("Lumley Street market").

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.

- ii) the use of two areas of the Brown Hart Gardens deck, each measuring 23.6m long x 2m wide, for the placing of a maximum of 24 stalls for the sale and display of artisan foods (including hot food takeaway) on no more than one day per week, on any day except Sundays (the "deck market").

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, as currently,

Market stalls on both locations would measure 3m x 3m, and a maximum of 3m at the highest part of the roof.

- iii) 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. The intention is for artworks to be displayed on a temporary "rotating" basis, similar to artworks on the Fourth Plinth in Trafalgar Square. This application seeks permission for the physical works necessary to create the plinths, and for the principle of the artwork displays.

It is proposed that both markets would operate between 11.00 and 16.00, 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 removed by 18.00.

The application has been amended to commence the setting up of stalls at 09.00 hours (originally 07.00 hours), to prevent Sunday market trading and to clarify/limit the number of hot food stalls in the deck market. A more comprehensive Operational Management Plan has also been provided.

6. DETAILED CONSIDERATIONS

The proposal raises a range of material planning issues which are addressed below.

6.1 Land Use

6.1.1 Policy context

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 S1 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 Crossriver 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. It could be argued that the

proposals for the deck would result in the commercialisation of a publically accessible open space, which provides some valuable outside space to local residents and an objection has been received on these grounds. However, an element of commercialisation of the deck space has already been approved through the granting of permission for the cafe use. Given the temporary nature of the markets, and their scale, it is not considered that they would have an adverse impact on local shopping in the area, but could be seen to supplement it. Given the proximity of the sites to Oxford Street, and the nature of the proposals, it is not considered that the markets could reasonably be resisted on the grounds that they would have an adverse impact upon the character of the area. In these circumstances, the market 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 6.3 and 6.4 below.

6.2 Design and townscape

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.

6.2.1 Market stalls

Market stalls design

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.

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.

6.2.2 Works to facilitate the display of public art

The applications seek further approval for the installation of four copper-clad plinths, 20cm in height, bolted to the stone piers on each corner of the Brown Hart Gardens deck.

The applications relate only to these physical works and to the principle of the artwork display programme. The applicant intends to hold further discussions with the City Council regarding details of the "rotating" artwork programme which will be considered by the Management Committee which has been set up in relation to proposed activities on the deck. The committee is involved with a number of parties including the Brown Hart Gardens Liaison Group which represents local residents, businesses and other organisations regarding activities at the site.

Residents are concerned about potential disturbance should the artworks rotate, or incorporate flashing lights. The term "rotating" has been coined by the applicant to denote a series of temporary artworks, rather than physical movement. All subsequent proposals for the installation of works of public art will require separate planning permission and listed building consent and any impact on neighbours' amenities will be assessed at that stage.

The temporary display of public art on the corners of the deck is considered acceptable in principle. The design of the plinths is appropriate and the proposal will not harm the special interest of the listed building or the character and appearance of the Mayfair Conservation Area..

Concern has been raised that additional seating and umbrellas should not be provided on the deck. This does not form part of the current proposal. However, a condition is recommended to that effect.

In conclusion, it is considered that the proposal is acceptable in listed building and conservation area terms and complies with City Plan and UDP policies, including S25 and S28, DES 1, DES 5, DES 9 and DES 10.

6.3 Amenity

The key amenity issues which the proposal raises are noise from the servicing activity generated by the markets (particularly early in the morning), customer noise, potential smell nuisance from the hot food stalls, and loss of privacy to local residents through overlooking from the deck by market customers.

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.

Few comments have been received in relation to the applications. The local amenity society has written in support of the proposal and has suggested an extension of market trading hours. One objector, whilst conceding that the markets are popular and well run, is concerned about the impact of the intensification of the market use. Other objectors state that objections made to the market operators have not been resolved. The objections are addressed in detail below.

i) Noise

a) Customer noise

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 proposed 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).

These restricted trading hours will help to minimise the impact of the markets upon on the amenities of residents in Lumley Street and of flats overlooking the deck. However, it is not possible to limit the number of those market customers visiting the 24 stalls on the deck, many of whom are likely to remain on the deck to consume food purchased at the market. Similarly, it is not possible to restrict the number of customers visting Lumley Street, which is a public highway.

The applicant has been keen to emphasise that no complaints have been received in relation to the market operation to date, although this is contrary to the advice made by objectors. However, Environmental Health officers have confirmed that there is no record of any complaints having been received in respect of the market operations. It is noted that few comments/objections have been received to the applications notwithstanding the wide neighbour consultation.

The submitted Operational Management Strategy includes various measures to ameliorate the impact of the market use, including to prevent amplified music from being played 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.

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.

b) Servicing activity

It was originally proposed that the setting up of market stalls would commence at 07.00 and that all stalls and equipment would be removed between 16.00, when market trading ceases, and 18.30. The revised application involves the setting up of market stalls from 09.00, with all equipment now being removed by 18.00 hours.

One objector expressed concern that the original start-up time proposed (7.00) would be used as a lever by Oxford Street retailers to commence their site servicing at an earlier time to the detriment of residents' amenities. This same objector states that their objection made to the market operator, about noise disturbance from the market set-up has not been satisfactorily resolved.

When considering servicing hours for the deck cafe, it was considered appropriate for servicing to take place from 07.30 hours. The level of additional disturbance associated with the setting up of the market stalls is likely to be considerable, and certainly greater than the potential impact associated with the servicing of the deck cafe. However, the area is close to Oxford Street, which is subject to early morning servicing activity and traffic noise. In this context, and given the revised start up hour (09.00), it is not considered that the level of activity associated with the setting up, or dismantling of the market would have a significant impact upon the amenities of neighbouring residents.

c) Other noise disturbance

One objection has been received in relation to potential noise disturbance from "rotating" plinths. This is a result of a misunderstanding of the proposals. It is the artwork displays which would be rotating i.e. installed on a temporary basis, rather than the plinths.

ii) Overlooking/overcrowding

The approved scheme for 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.

The concern that people visiting the market will be able to look into neighbouring flats, particularly from the western end of the deck, is noted, as are comments about the overcrowding. 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. There is no evidence to suggest that the market use has, to date, resulted in dangerous overcrowding. In these circumstances, it is not considered that the proposals would significantly worsen the existing position.

iii) Smell nuisance

A maximum of eight food stalls would be provided on the deck providing a range of meat, fish and vegetable dishes. Only the occupiers of one residential flat have expressed concern about this issue, noting that no primary cooking is permitted in the deck café, and stating that permission for a weekly market would exacerbate existing problems with smells nuisance which have resulted from the existing markets. However, no other objections have been received on these grounds notwithstanding the fact that the market has been operating on a monthly, then fortnightly, basis for the past 18 months.

Although no primary cooking is permitted in the deck café, no kitchen ventilation/extract ducting was proposed for the café building. This would have been required to extract cooking smells from within the café premises. The café is permitted to serve food on a daily basis, for up to 12 hours each day. Cooking in the deck market would be limited to a maximum of eight stalls, between 11.00 and 16.00 hours, and on only one day a week. The Environmental Health officer considers that the distance from the central deck area to residential properties is sufficient to allow dilution and dispersal of cooking smells. In addition, given the limited number of stalls and the frequency of use, it is not considered that the applications could be refused on smell nuisance grounds.

iv) Cleaning and litter

An objection has been received on the grounds that the proposal would result in increased litter generation.

The applicant has confirmed that all market stallholders will be responsible for removing, and disposing of their own packaging and food waste. However, given the nature of the operation, 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 large numbers of 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 bins alert cleaners when they are full. This is the current arrangement, which will continue, and details form part of the Operational Management Strategy.

v) Other issues

Concerns about anti-social behaviour and loss of security for residents are noted. It is not considered that the markets will materially increase crime opportunities in the area, which are mainly a consequence of the proximity of Brown Hart Gardens to Oxford Street.

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. A condition is recommended to deal with this issue.

Objections have also been received on the grounds that people stopping to look at the art works could obstruct the pavement or could slip from the steep access stairs to the deck, resulting in an increased risk of accidents. While these concerns are noted, it is not considered that the proposal would generate any increased accident risk when compared with people accessing the deck, as currently permitted, or viewing the deck, which is itself an attractive listed structure.

One local resident has requested that no other events be permitted on the deck area. Any proposals for other activities/events, which require planning approval, will be considered on their own merits and it would not be possible to restrict future development proposals as part of the consideration of these applications.

One objector has referred to consultations carried out by the applicant in relation to the market proposals and to the fact that those most affected by the proposals are not represented on the deck Management Committee. This is a matter for local residents and the Grosvenor Estate. However, the City Council has undertaken extensive consultations in relation to the market proposals which have given local residents opportunity to make representations.

One respondent considers that the proposed markets should be relocated to other sites. However, the City Council has a duty to assess the application as submitted.

6.4 Transportation

6.4.1 Servicing/parking

When the weekly deck market is in operation, 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. The Highways Planning Manager has raised no objection to this aspect of the scheme subject to the submission of a detailed Servicing Management Plan.

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, 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 bays on the north side of Brown Hart Gardens. These arrangements would allow for the free flow of traffic around the deck.

However, the Highways Planning Manager has objected to this aspect of the proposal. Whilst the parking from the suspended residents' parking spaces could be temporarily relocated to public parking, (with reduced public parking availability during those times), there is concern that any residents who might park their car in Lumley Street for several days at a time (without visiting the street), could be unaware of the suspension and might be at risk of having their vehicle removed.

In these circumstances, if the proposal is otherwise considered acceptable, the Highways Planning Manager has requested that the applicant be required to enter into a S106 legal agreement to cover all costs associated with the temporary closure of Lumley Street and parking suspensions, including the costs of having to move residents' vehicles, should that be

required. Subject to this, and to a condition requiring the submission of a detailed Servicing Management Plan, it is not considered that the applications could justifiably be recommended for refusal on highways grounds.

It is not considered that the operation of the markets is likely to generate any additional customer parking.

An objection has been received from one motorcyclist, who currently parks in Lumley Street (which is a no-through road with limited traffic movements) who has advised that his vehicle was damaged when relocated as a result of previous parking suspensions. Although this incident is regrettable, permission could not reasonably be withheld on these grounds.

6.5 Economic Considerations

This proposal raises no specific economic issues. The employment opportunities created by the markets are welcomed.

6.6 Other UDP/Westminster Policy Considerations

None.

6.7 London Plan

It is not considered that this proposal raises any strategic issues.

6.8 National Policy/Guidance Considerations

Central Government's National Planning Policy Framework (NPPF) came into effect on 27 March 2012. It sets out the Government's planning policies and how they are expected to be applied. The NPPF has replaced almost all of the Government's existing published planning policy statements/guidance as well as the circulars on planning obligations and strategic planning in London. It is a material consideration in determining planning applications.

Until 27 March 2013, the City Council was able to give full weight to relevant policies in the Core Strategy and London Plan, even if there was a limited degree of conflict with the framework. The City Council is now required to give due weight to relevant policies in existing plans "according to their degree of consistency" with the NPPF. Westminster's City Plan: Strategic Policies was adopted by Full Council on 13 November 2013 and is fully compliant with the NPPF. For the UDP, due weight should be given to relevant policies according to their degree of consistency with the NPPF (the closer the policies in the plan to the NPPF, the greater the weight that may be given).

The UDP policies referred to in the consideration of these applications are considered to be consistent with the NPPF unless stated otherwise.

6.9 Planning Obligations

On 06 April 2010 the Community Infrastructure Levy (CIL) Regulations came into force which make it unlawful for a planning obligation to be taken into account as a reason for granting planning permission for a development, or any part of a development, whether there is a local CIL in operation or not, if the obligation does not meet all of the following three tests:

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development;
- (c) fairly and reasonably related in scale and kind to the development.

Policy S33 of the City Plan relates to planning obligations. It states that the Council will require mitigation of the directly related impacts of the development; ensure the development complies with policy requirements within the development plan; and if appropriate, seek contributions for supporting infrastructure.

For reasons outlined elsewhere in this report, a S106 legal agreement will be required to secure the following:

- an undertaking for the applicant to cover all costs associated with the temporary closure of Lumley Street and parking suspensions, including the costs of having to move residents' vehicles, should that be required. The applicant has confirmed that they are willing to enter into this agreement.

The planning obligations to be secured, as outlined above, are in accordance with the City Council's adopted City Plan and London Plan policies and they do not conflict with the Community Infrastructure Levy Regulations (2010 as amended).

6.10 Environmental Assessment including Sustainability and Biodiversity Issues

The proposal does not raise any biodiversity or sustainability issues. However, the supporting text to UDP Policy SS13 recognises street stalls to be a sustainable form of retailing using far less energy than conventional shops, with most customers arriving on foot or by public transport.

6.11 Conclusion

The proposals are considered acceptable on land use, amenity and design grounds and it is recommended that planning permission be granted subject to appropriate conditions and to a S106 legal agreement dealing with the issue of road closures, parking suspensions and the removal of vehicles from suspended bays, and that conditional listed building consent be granted.

BACKGROUND PAPERS

1. Application forms
2. E-mail from Councillor Roberts dated 14 April 2015
3. E-mails from Crossrail dated 1 July and 20 August 2015
4. Letter from the Residents' Association of Mayfair & St James's dated 26 March 2015
5. E-mails from Highways Planning dated 2 June and 16 July 2015
6. Memoranda from Environmental Health dated 19 March, 2 July and 2 September 2015
7. E-mail from the occupier 10 Stalbridge Flats, Lumley Street dated 30 March 2015
8. E-mail from the occupier 19 Stalbridge Flats, Lumley Street dated 8 July 2015 (enclosures)
9. E-mail from the occupier 7 Balderton Flats, Brown Hart Gardens dated 15 July 2015
10. E-mails from the occupiers 19 Balderton Flats, Brown Hart Gardens dated 1 April, 8 August (two) and 26 August 2015.

11. Letter from the occupier 24 Balderton Flats, Brown Hart Gardens dated 1 April 2015
12. Letter from the occupier 32 Balderton Flats, Brown Hart Gardens dated 17 March 2015
13. Letter from the occupier 3A Chesham Flats, Brown Hart Gardens received 19 March 2015

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS PLEASE CONTACT JOSEPHINE PALMER ON 020 7641 2723 OR BY E-MAIL – jpalme@westminster.gov.uk

DRAFT DECISION LETTER

Address: Brown Hart Gardens, 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). 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). Installation of four plinths for the display of temporary artworks on the Brown Hart Gardens deck.

Plan Nos: Proposed market plan (entitled Lumley Street) dated 16 October 2014; Operational Management Plan dated June 2015; SK (90)LP009 (plinth details only); plinth location plan dated 22 August 2014; plinth detail (dated 11 September 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 All new work to the outside of the building must match existing original work in terms of the choice of materials, method of construction and finished appearance. This applies unless differences are shown on the drawings we have approved or are required by conditions to this permission. (C26AA)

Reason:

To protect the special architectural or historic interest of this 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: Strategic Policies adopted November 2013 and DES 1 and paras 10.108 to 10.146 of our Unitary Development Plan that we adopted in January 2007. (R27AC)

- 3 The markets shall operate in accordance with the details set out in the Operational Management Strategy (June 2015) hereby approved.

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: Strategic Policies adopted November 2013 and STRA 25, TRANS 20 and TRANS 21 of our Unitary Development Plan that we adopted in January 2007 and to protect neighbouring residents from noise nuisance as set out in S24, S29 and S32 of Westminster's City Plan: Strategic Policies adopted November 2013 and ENV 6 and of our Unitary Development Plan that we adopted in January 2007.

- 4 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: Strategic Policies adopted November 2013 and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R13EC)

- 5 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: Strategic Policies adopted November 2013 and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R13EC)

- 6 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: Strategic Policies adopted November 2013 and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R13EC)

- 7 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: Strategic Policies adopted November 2013 and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R13EC)

- 8 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: Strategic Policies adopted November 2013 and ENV 5 of our Unitary Development Plan that we adopted in January 2007. (R05EC)

- 9 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: Strategic Policies adopted November 2013 and ENV 5 of our Unitary Development Plan that we adopted in January 2007. (R05EC)

- 10 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: Strategic Policies adopted November 2013 and ENV 6 and ENV 7 of our Unitary Development Plan that we adopted in January 2007. (R13BC)

- 11 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: Strategic Policies adopted November 2013 and ENV 6 and ENV 7 of our Unitary Development Plan that we adopted in January 2007. (R13BC)

- 12 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: Strategic Policies adopted November 2013 and DES 1 (B) of our Unitary Development Plan that we adopted in January 2007. (R20AC)

- 13 Other than the market stalls hereby approved, no 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: Strategic Policies adopted November 2013 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)

- 14 You must apply to us for approval of a Servicing Management Plan. You must not start work 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: Strategic Policies adopted November 2013 and STRA 25, TRANS 20 and TRANS 21 of our Unitary Development Plan that we adopted in January 2007. (R23AC)

- 15 The market use allowed by this permission is limited until 30 September 2016.

Reason:

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

- 16 You must not display any artworks on the plinths hereby approved without the further consent of the City Council.

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: Strategic Policies adopted November 2013 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)

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: 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.
- 2 This permission is governed by a legal agreement between the applicant and us under Section 106 of the Town and Country Planning Act 1990. The agreement relates to an obligation to meet the City Council's costs in relation to road closures, the suspension of resident's parking bays and the removal of parked vehicles. (I55AA)
- 3 You are advised to contact Sean Dwyer on 0207-641 3326 to discuss the Council's requirements in relation to the discharge of Condition 14.

DRAFT DECISION LETTER

Address: Brown Hart Gardens, London, W1

Proposal: Installation of four permanent plinths for the temporary display of works of public art on the Brown Hart Gardens deck.

Plan Nos: SK (90)LP009 (plinth details only); plinth location plan dated 22 August 2014; plinth detail (dated 11 September 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 All new work to the outside of the building must match existing original work in terms of the choice of materials, method of construction and finished appearance. This applies unless differences are shown on the drawings we have approved or are required by conditions to this permission. (C26AA)
Reason:
 To protect the special architectural or historic interest of this 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: Strategic Policies adopted November 2013 and DES 1 and paras 10.108 to 10.146 of our Unitary Development Plan that we adopted in January 2007. (R27AC)

- 3 You must not display any artworks on the plinths hereby approved without the further consent of the City Council.
Reason:
 To protect the special architectural or historic interest of this 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: Strategic Policies adopted November 2013 and DES 1 and paras 10.108 to 10.146 of our Unitary Development Plan that we adopted in January 2007. (R27AC)

Informative(s):

- 1 **SUMMARY OF REASONS FOR GRANTING CONDITIONAL LISTED BUILDING CONSENT -**
 In reaching the decision to grant listed building consent with conditions, the City Council has had regard to the relevant policies in the National Planning Policy Framework March 2012, the London Plan July 2011, Westminster's City Plan: Strategic Policies adopted November 2013, and the City of Westminster Unitary Development Plan adopted January 2007, as well as relevant supplementary planning guidance, representations received and all other material considerations.

The City Council decided that the proposed works would not harm the character of this building of special architectural or historic interest.

In reaching this decision the following were of particular relevance:
S25 and S28 of Westminster's City Plan: Strategic Policies and DES 10 including paras 10.130 to 10.146 of the Unitary Development Plan, and our Supplementary Planning Guidance: Repairs and Alterations to Listed Buildings.

2 You will need to contact us again if you want to carry out work on the listed building which is not referred to in your plans. This includes:

- * any extra work which is necessary after further assessments of the building's condition;
- * stripping out or structural investigations; and
- * any work needed to meet the building regulations or other forms of statutory control.

Please quote any 'TP' and 'RN' reference numbers shown on this consent when you send us further documents.

It is a criminal offence to carry out work on a listed building without our consent. Please remind your client, consultants, contractors and subcontractors of the terms and conditions of this consent. (I59AA)

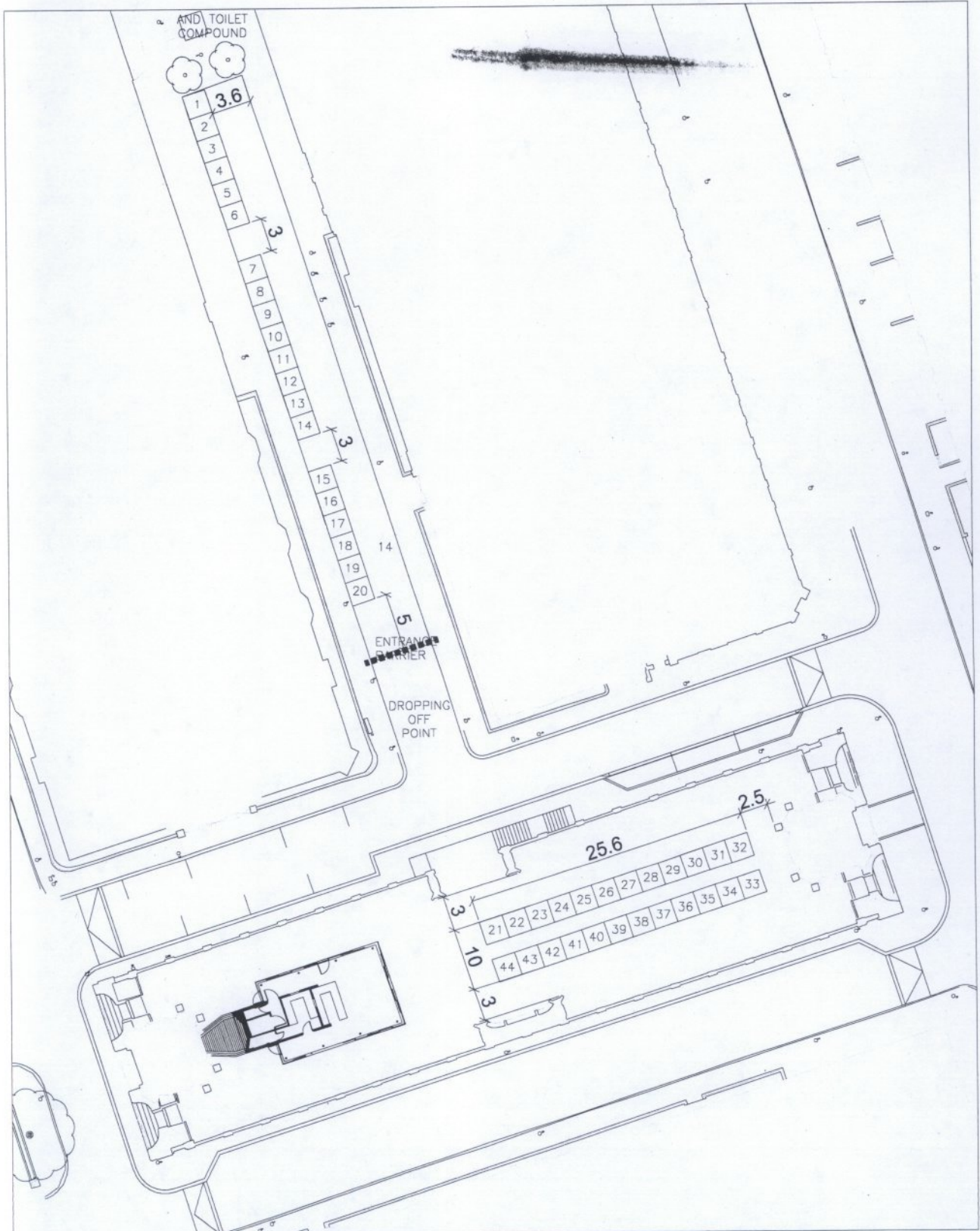
3 You are reminded that all subsequent listed building applications for the display of temporary artworks on the plinths hereby approved will require details of the method of fixing.

Lumley Street

Proposed Plan

CASE COPY

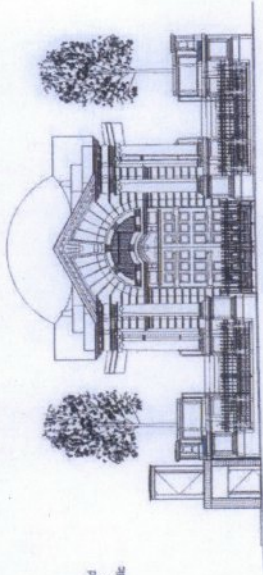
12 DEC 2014



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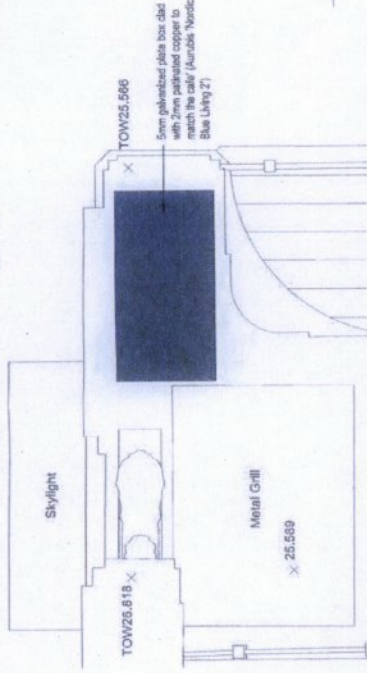
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16 Oct 14

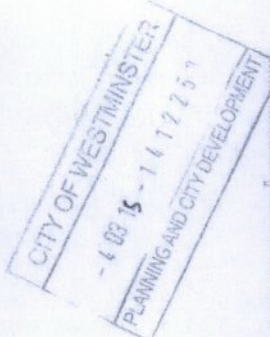


East Elevation 1:100@A1

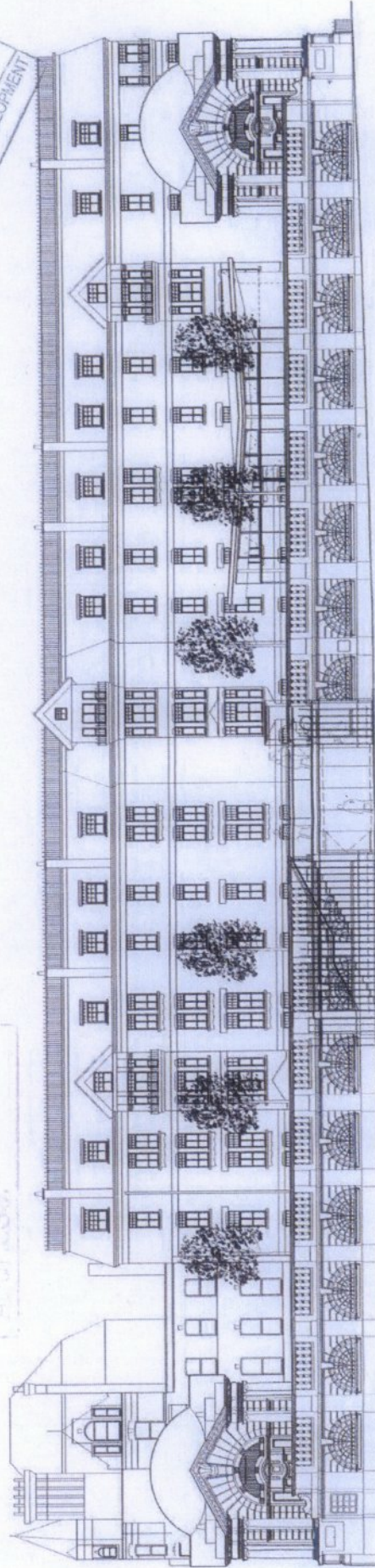
x 22.550



Detail Plan (North East Corner) 1:20@A1
 Refer Plinth Proposal Drawing Date: 11/09/14 For Plinth Detail



West Elevation 1:100@A1



North Elevation 1:100@A1

PLEASE COPY
 TP:
 FULL:
 APPROVE:

Brown Hart Gardens
 P2502825
 Proposed Landscape Works
 Sketch Layout for Copper Plinth
 Elevations and Detail Plan
 28.8.15
 SK/601/P009

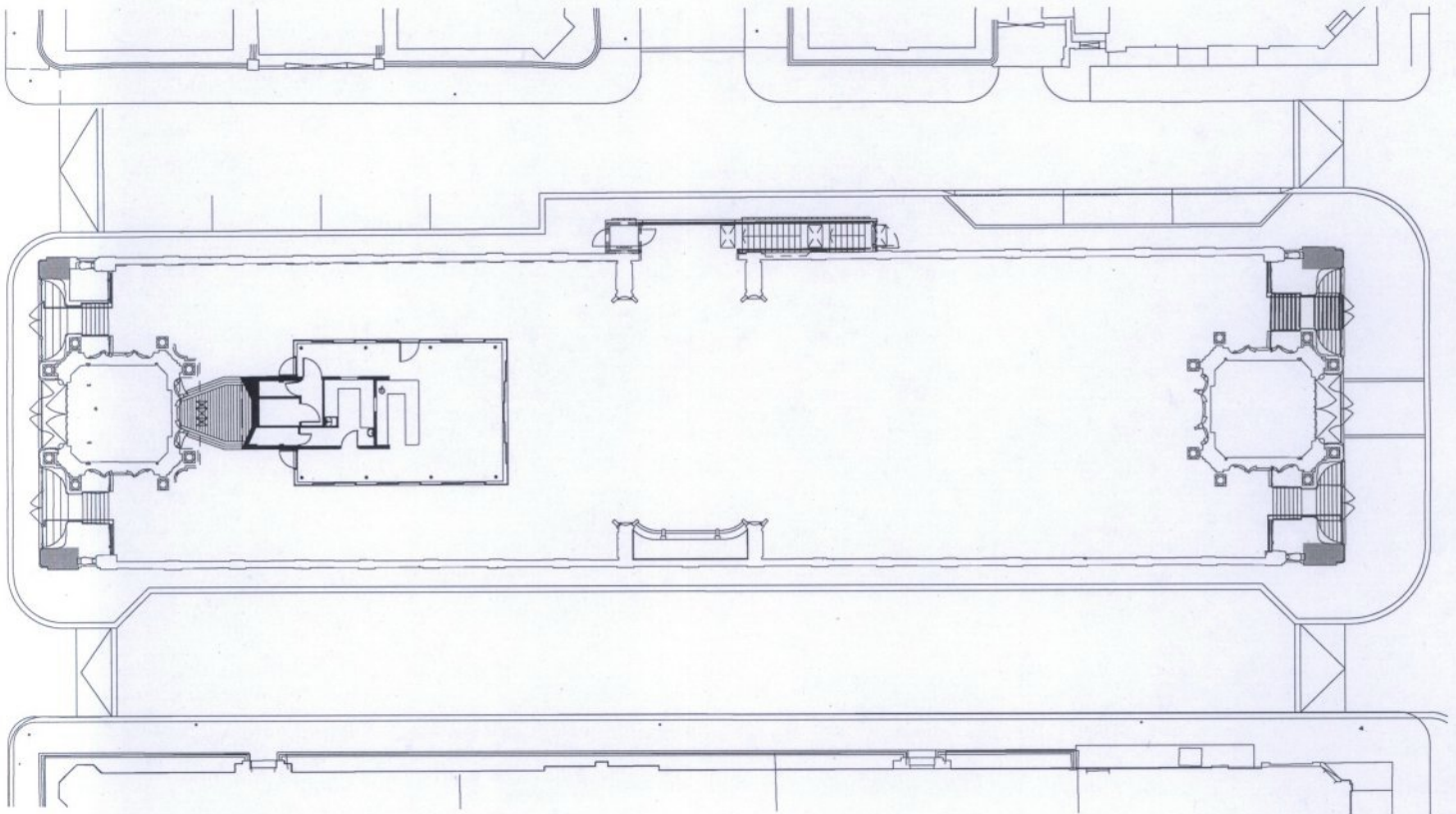
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 www.bdp.com

ARCHITECTURE
 DESIGN
 ENGINEERING
 URBANISM
 SUSTAINABILITY
 LIGHTING
 ACoustICS

Project Name: Brown Hart Gardens
 Date: 28.08.15
 Scale: 1:100

ALL DIMENSIONS UNLESS SPECIFIED IN METERS.
 UNLESS OTHERWISE SPECIFIED, ALL DIMENSIONS SHALL BE TO FACE UNLESS STATED OTHERWISE.
 UNLESS OTHERWISE SPECIFIED, ALL DIMENSIONS SHALL BE TO FACE UNLESS STATED OTHERWISE.

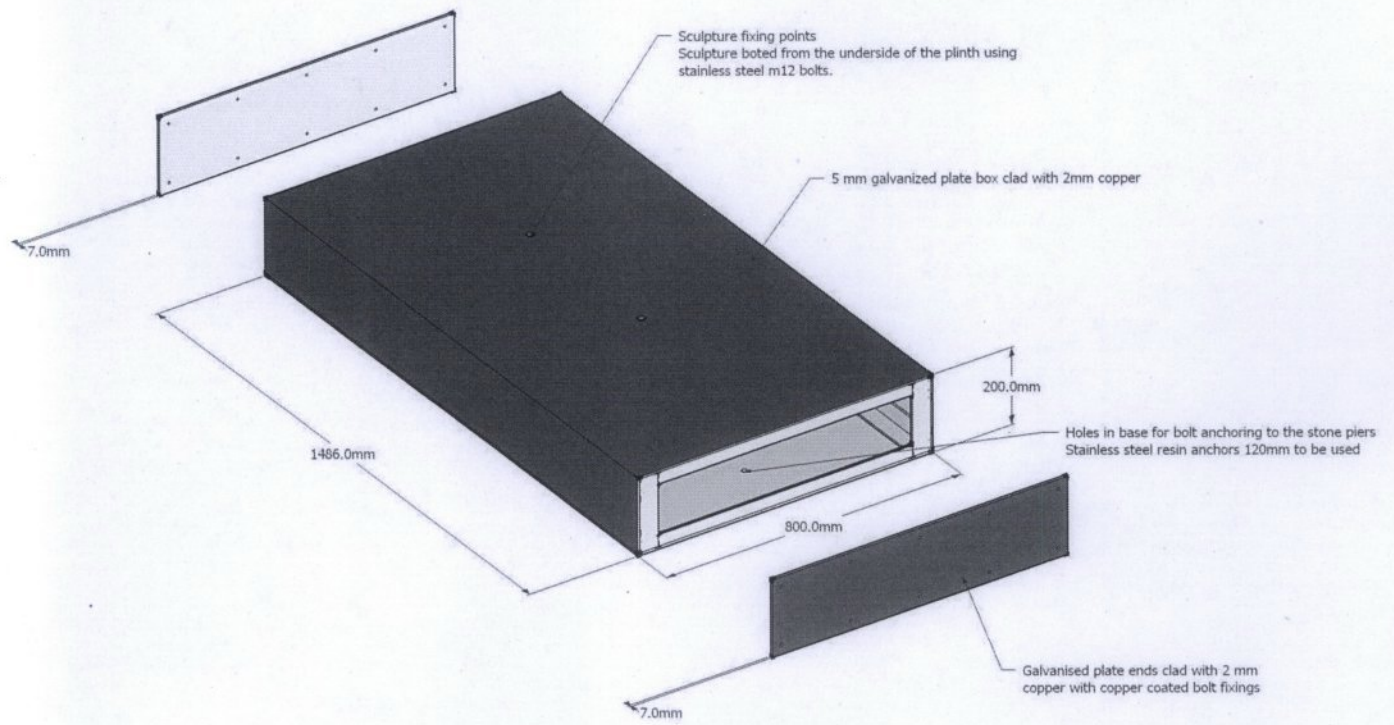
Brownhart Gardens
Plinth Locations



SCALE 1:250 @ A3

22 Aug 14

Plinth Proposal Drawing



Client: *Iain Brunt*
Project: *Brownhart Gardens Sculpture plinths*
Drawn by: *B Young*
Date: *11/09/14*