

CITY OF WESTMINSTER			
PLANNING APPLICATIONS SUB COMMITTEE	Date 29 October 2019	Classification For General Release	
Report of Director of Place Shaping and Town Planning		Ward(s) involved West End	
Subject of Report	Open Space, Berkeley Square, London, W1J 6EB		
Proposal	Use of Berkeley Square Gardens for a temporary Forest of Light event for a period of up to 28 days (including construction and clean-up) from 1st November to 20th December (including construction and clean-up) for the next three years (2020, 2021 and 2022).		
Agent	Miss Kelly McCann		
On behalf of	Lillingston Collection		
Registered Number	19/05716/FULL	Date amended/ completed	12 August 2019
Date Application Received	22 July 2019		
Historic Building Grade	Grade II Registered Park or Garden		
Conservation Area	Mayfair		

1. RECOMMENDATION

Grant conditional planning permission between 1st November and 20th December for a temporary period of three years (2020, 2021 and 2022).

2. SUMMARY

Berkeley Square is a Grade II listed Square on the Historic England 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 (Core CAZ).

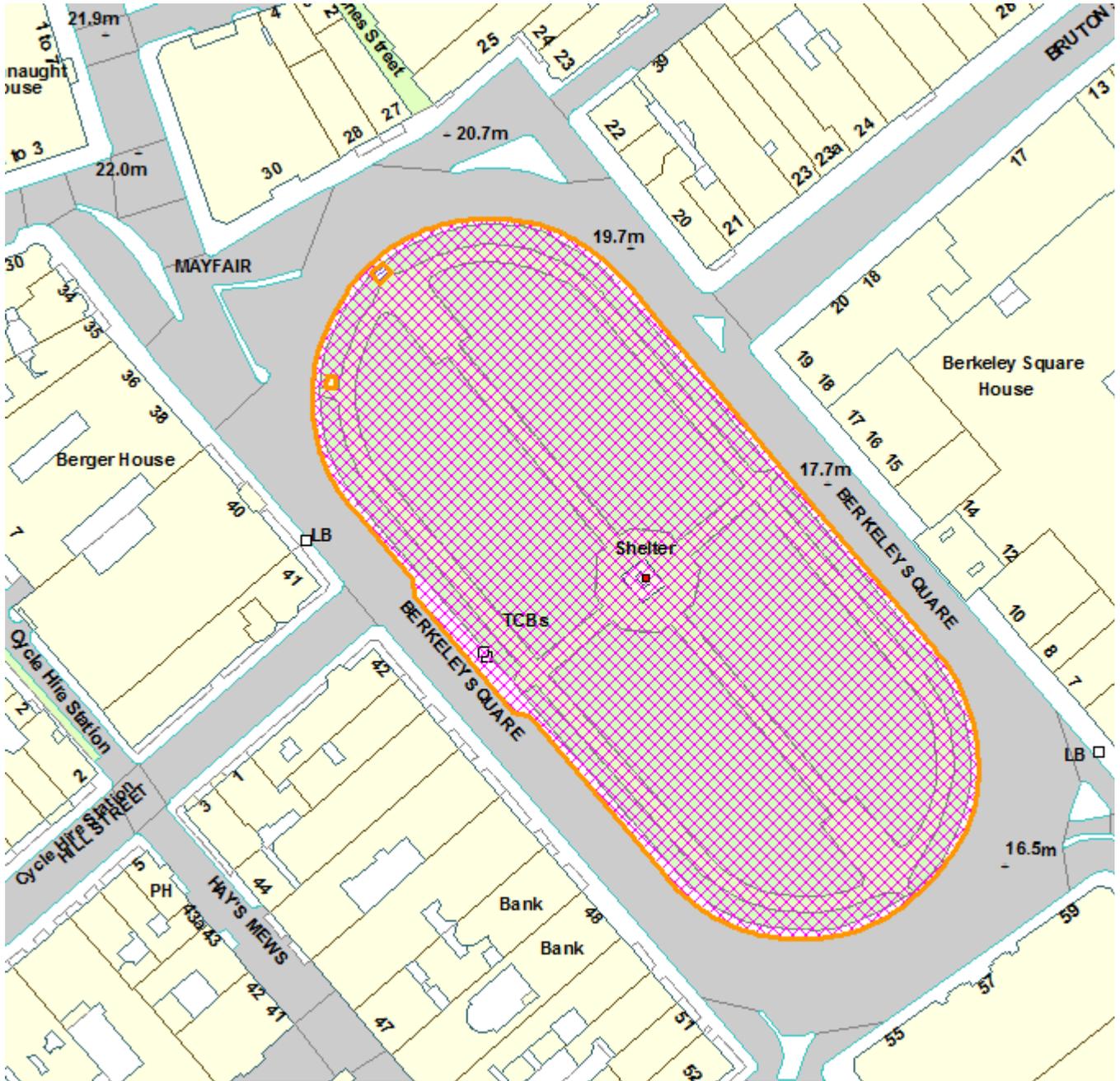
Permission is sought for the holding of an event entitled 'Forest of Light' for a temporary period of four weeks (including set up and take down) between the 1st November until the 20th December 2020. The event involves:

- The erection of decorated Christmas Trees
- The erection of a marquee, entrance and exit arches and an area of decking.
- An enclosure for plant

The application seeks permission to hold the same event for a similar period in the three subsequent years; 2020, 2021 and 2022.

The key issue for consideration is the impact of the event on the special interest of the square and the character and appearance of the Mayfair Conservation Area. It is considered that there is clear and convincing justification for the harm to these designated heritage assets and that the public benefits deriving from the proposed development outweigh this less than substantial heritage harm. Furthermore, the development is considered to be in accordance with the London Squares Preservation Act 1931. For these reasons, it is recommended that temporary permission be granted for a maximum period of 28 days in 2020, 2021 and 2022.

3. LOCATION PLAN



4. PHOTOGRAPHS



5. CONSULTATIONS

MAYFAIR RESIDENTS GROUP:

- Object to a three-year consent. Content with a one-year trial.

RESIDENTS SOCIETY OF MAYFAIR & ST. JAMES'S:

- Any response to be reported verbally.

METROPOLITCAN POLICE:

- Any response to be reported verbally.

ENVIRONMENTAL SCIENCES:

- Any response to be reported verbally.

HIGHWAYS PLANNING TEAM:

- No objection.

WASTE PROJECT OFFICER:

- No objection but requests that it is limited to a one-year trial period.

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 457

Total No. of replies: 1

No. of objections: 0

No. in support: 0

No. neutral: 0

One respondent requested that setup and dismantling works not begin before 10 am.

PRESS ADVERTISEMENT / SITE NOTICE:

Yes

6. BACKGROUND INFORMATION

6.1 The Application Site

Berkeley Square is a Grade II listed Square on the Historic England 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. The central pavilion and a statue at the south end of the garden are both Grade II listed structures

According to records, there are very few residential properties fronting onto Berkeley Square, with the 13 x flats within 48 Berkeley Square being the exception to this predominately commercial part of Mayfair.

6.2 Recent Relevant History

Consent was granted in 2014 (14/01082/FULL) for a series of marquee installations in the north part of the square for events in 2014, 2015 and 2016.

Consent was granted in 2016 (16/00870/FULL) for a series of marquee installations from 2017 the north part of the square for events in 2017, 2018 and 2019.

Consent was granted in 2016 (16/01776/FULL) for a series of marquee installations from 2017 for the north part of the square for events in 2017, 2018 and 2019.

7. THE PROPOSAL

The proposal seeks the temporary erection of a “Forest of Light” – a series up to 100 illuminated Christmas trees, for a period of up to 28 days, between 1st November to 20th December (for the next three years - 2020, 2021 and 2022)).

The 28-day period includes a week for installation, a two-week showcase/festival, and a further week for deinstallation. The event is proposed to operate between 10.00 and 22.00 daily.

The installation is to raise funds for the NSPCC. The event will be free for the public to enter; funds will be raised through the sponsorship of the individual trees. The square will remain free to use within the daytime for Mayfair residents, workers and visitors.

8. DETAILED CONSIDERATIONS

8.1 Land Use

The proposed Forest of Light involves an exhibition of Christmas trees designed by a number of notable artists on behalf of the sponsoring organisations. As such, the Festival is considered a cultural event which is supported by policies S22 of the City Plan and TACE 5 of the UDP. These policies seek to protect existing and encourage new tourism, arts and cultural facilities within the CAZ subject to the uses not resulting in an adverse impact on residential amenity or traffic. It is noted that the Square has been used for various events in previous years, including an art fair, and it is considered that there is unlikely to be any detrimental impact on residential amenity or traffic impact in relation to the current proposal. No objections have been received from neighbouring owners or occupiers in respect of the current proposal, subject to the issue of construction noise. This issue is set out in further detail below.

8.2 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.

Given that access for residents and members of the public to the square will be preserved, and that there will be no charge for entry and exit into the square garden, it is not considered that there would be any contravention of the Act.

8.3 Townscape and Design

Berkeley Square is a formal London Square with a small central shelter. It is characterised by many mature London Plane trees set in 4 equal sized lawns with an oval-plan perimeter path and two axial paths.

The landscape character of the square is light and open with a fully mature and well-established leaf canopy overhead. It was originally laid out in the mid-18th century by architect William Kent.

Sculptures and stone planters are arranged around the square. The sculpture at the south end of the square (Nymph with Pitcher by Alexander Munro, 1858) is grade II listed. The central shelter, a former pump house, is also grade II listed.

The London Plane trees of the square are among the oldest to be found in Mayfair, and were planted in 1789 by Edward Bouverie.

Policy S25 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 erection of the decorated Christmas trees themselves are not considered to have a harmful effect on the character or appearance of the conservation area or the registered garden.

The other elements of the event; marquee, boundary treatment, plant enclosure and signs will have a greater impact.

The marquee is not large and it, along with the other proposed structures including plant enclosure, is considered to have only a minor, harmful impact on the appearance of the registered garden and the character and appearance of the Mayfair Conservation Area.

In considering the application the City Council has a statutory duty to:

- a) Have special regard to the desirability of preserving the setting of the listed buildings within Berkeley Square itself and those that front onto the square (Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- b) Pay special attention to the desirability of preserving or enhancing the character or appearance of the Mayfair Conservation Area (Section 72 of the above Act).

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 and that the proposal is a charitable event which is free for the public to access.

The applicant argues that the public benefits include the charitable aims of the event (raising funds for the NSPCC), and that the event will be free to access. Officers agree that the public benefits derived from this event clearly outweigh the short-lived less than substantial harm to the appearance of the registered garden and the character and appearance of the Mayfair Conservation Area.

There has been no detail submitted regarding the appearance of the marquee, boundary treatment or other structures. It is recommended that the detailed of these elements be secured by condition.

It is anticipated that the event will also feature advertisements, for which advertisement consent will be required.

8.4 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. The event is proposed to operate between 10.00 and 22.00 daily.

There are very few residential properties located on the square with the majority of buildings being used as office accommodation on the upper floors. The only complaint registered with the Council in relation to events in previous years relates to music noise from a marquee used for the Glamour Awards in 2015. However, it is understood that no sound/PA systems are proposed as part of this event, and it is considered that noise from generators can be adequately controlled by the Council's standard noise conditions. No objections from neighbouring residents have been used in relation to this application subject to one concern regarding construction noise and this is addressed by condition.

The applicant has stated that all generators and lights associated with the event will be switched off by 22.00 so as to minimise light and noise pollution experienced by nearby residents, and an area for queuing is proposed within the site to prevent congestion on the public highway. Given the hours proposed it is not considered that the proposal will result in late night noise nuisance.

8.5 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 plant noise complaints relating to previous events, an acoustic report would not be necessary. It is recommended that the permission is subject to the normal noise conditions.

8.6 Access

Access to the gardens would be maintained for daytime use. During the event, the gardens would be accessed by the gate at the south end, with the exit at the north end.

The event would be accessible to wheelchair and pushchair users through a raised timber walkway, ramped at entrance and exit, which creates a route through the square.

8.7 Westminster City Plan

The City Council is currently working on a complete review of its City Plan. Following informal consultation in 2018, the draft plan has been revised and formal consultation was carried out under Regulation 19 of the Town and Country Planning Act (Local Planning) (England) Regulations 2012 between 19 June 2019 and 31 July 2019. Following this consultation period, the City Council is now reviewing the comments received before submitting the City Plan for examination. In the case of a draft local plan that has been published for consultation under Regulation 19 of the Town and Country Planning Act (Local Planning) (England) Regulations 2012, including a second revision Regulation 19 plan, it remains at a pre-submission stage (i.e. has yet to be submitted to the Secretary of State for Examination in Public) and therefore, having regard to the tests set out in para. 48 of the NPPF, it will generally attract very limited weight at this present time.

8.8 Neighbourhood Plans

The examiner's report on the Mayfair Neighbourhood Plan was published on 11 June 2019 with recommendations. The City Council intends to accept all these recommendations and proceed to a local referendum. The publication of the examiner's report means that the Mayfair Neighbourhood Plan is now a material consideration for making planning decisions in the area. However, it will not have full development plan weight until the referendum process has been properly completed.

In relation to events in Mayfair's squares, the plan states:

'MGS 3

Proposals for events in Mayfair's green spaces will only be permitted if the events:

(a) Demonstrate in advance and ensure that:

(i) there is no significant adverse impact on local amenity in terms of noise, pollution, visual amenity, parking, and accessibility to the green space.

(ii) the buildings or structures to accommodate the events adopt high-quality design (including considering visual amenity) that can be expected for such temporary structures.

(iii) in the case of an event which is not for a Local Community Use, the events will only be held in months of the year where public use of the green spaces is most limited – in other words from September – May.

(iv) the cumulative total of days during which more than 40% of the green space in question is inaccessible to the public due to the construction, occupancy, and then dismantling of the structures in question, are both kept to the shortest length of time reasonably necessary, and also do not exceed 40 days in any calendar year.

(v) the event will be open to the public working or residing in Mayfair.

(b) Remediate the green spaces as part of the dismantling of the structures, so that all damage to any aspect of the green space is repaired as soon as reasonably practicable, and the green space is otherwise in the condition pertaining immediately prior to the event taking place or enhanced.

(c) In the case of an event which is not for a Local Community Use, cross-subsidise (from income received from the event) further enhancements to the green spaces over and above the required remediation in (b), for example, by reserving funds to make improvements to listed structures’.

The proposed event is considered to meet these requirements.

8.9 London Plan

This application raises no strategic issues.

8.10 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.

No pre-commencement conditions are recommended to be imposed.

8.11 Planning Obligations

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

8.12 Environmental Impact Assessment

The scheme if of insufficient size and impact to require assessment under the Town and Country Planning (Environmental Impact Assessment) (Amendment) Regulations 2015.

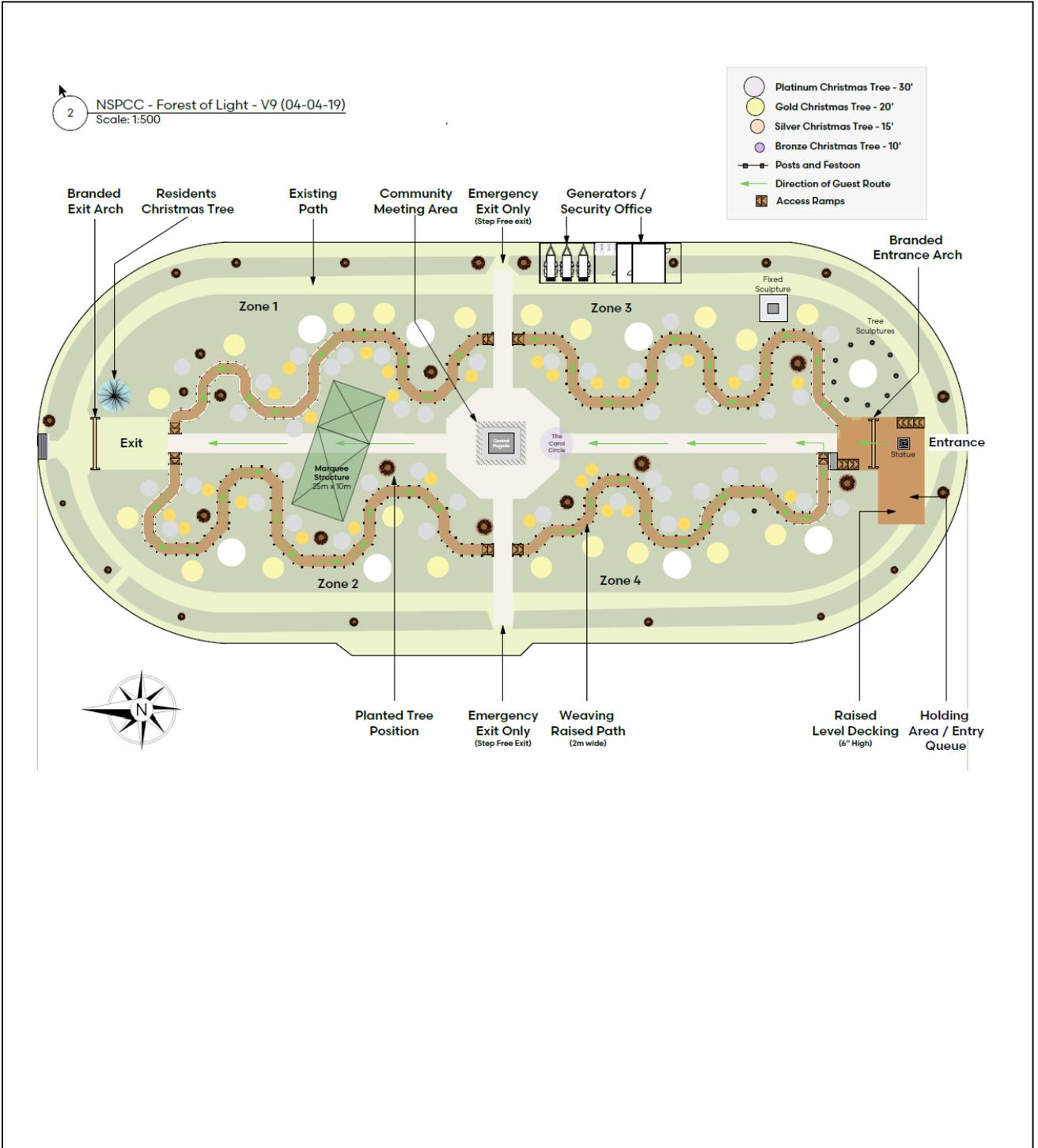
8.13 Other Issues

Discussions are ongoing with the Head of Arboricultural Services to establish whether any conditions will be required in order to protect the roots of the trees within Berkeley Square. Members will be updated verbally at Sub-Committee and any necessary conditions tabled.

(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: MARK HOLLINGTON BY EMAIL AT mhollington2@westminster.gov.uk.

9. KEY DRAWINGS



DRAFT DECISION LETTER

Address: Open Space, Berkeley Square, London, W1J 6EB

Proposal: Use of Berkeley Square Gardens for a temporary Forest of Light event for a period of up to 28 days from 1st November to 20th December (including construction and clean-up) for a temporary period of three years (2020, 2021 and 2022).

Plan Nos: V9 (04.04.19).

Case Officer: Toby Cuthbertson

Direct Tel. No. 020 7641 8705

Recommended Condition(s) and Reason(s) or Reason(s) for Refusal:

- 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 Except for piling, excavation and demolition work, you must carry out any building work which can be heard at the boundary of the site only:
 - o between 08.00 and 18.00 Monday to Friday;
 - o between 08.00 and 13.00 on Saturday; and
 - o not at all on Sundays, bank holidays and public holidays.

You must carry out piling, excavation and demolition work only:

- o between 08.00 and 18.00 Monday to Friday; and
- o not at all on Saturdays, Sundays, bank holidays and public holidays.

Noisy work must not take place outside these hours unless otherwise agreed through a Control of Pollution Act 1974 section 61 prior consent in special circumstances (for example, to meet police traffic restrictions, in an emergency or in the interests of public safety). (C11AB)

Reason:

To protect the environment of residents and the area generally as set out in S29 of Westminster's City Plan (November 2016) and STRA 25, TRANS 23, ENV 5 and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R11AC)

- 3 You must apply to us for approval of drawings of the following parts of the development:

- (i) Boundary treatment to the gardens
- (ii) Structures within the gardens

You must not start any work on these parts of the development until we have approved what

you have sent us.

You must then carry out the work according to these drawings. (C26DB)

Reason:

To make sure that the appearance of the building is suitable and that it contributes to the character and appearance of this part of the Mayfair Conservation Area. This is as set out in S25 and S28 of Westminster's City Plan (November 2016) and DES 1 and DES 5 or DES 6 or both and paras 10.108 to 10.128 of our Unitary Development Plan that we adopted in January 2007. (R26BE)

- 4 (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 (November 2016), 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. (R46AB)

- 5 The use of Berkeley Square for the Forest of Light event, and the installation of structures, plant and boundary treatment associated with the Forest of Light, can only be in place for a maximum period of 28 days between 1st November to 20th December each year in 2020, 2021 and 2022. You must then return the land to its previous condition and use.

Reason:

The use is not as set out in DES 12 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)

- 6 You must not open the Forest of Light to customers outside the following times: between 10.00 and 22.00. All generators and lights associated with the event must be switched off outside of these operating hours.

Reason:

To protect the privacy and environment of people in neighbouring properties, as set out in S29 of Westminster's City Plan (November 2016) and ENV 13 of our Unitary Development Plan that we adopted in January 2007. (R21AC)

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, neighbourhood plan (where relevant), 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.

Item No.
3

- 2 You should send us details of the proposed Christmas tree designs so that we can determine whether they require advertisement consent.