

<b>CITY OF WESTMINSTER</b>			
<b>PLANNING APPLICATIONS SUB COMMITTEE</b>	<b>Date</b> 02 May 2023	<b>Classification</b> For General Release	
<b>Report of</b> Director of Town Planning & Building Control		<b>Ward(s) involved</b> Marylebone	
<b>Subject of Report</b>	<b>Aybrook Street, London</b>		
<b>Proposal</b>	Use of Aybrook Street, part of Moxon Street and St Vincent Street as a weekly Farmers Market for a temporary period until 14 September 2027.		
<b>Agent</b>	DP9		
<b>On behalf of</b>	London Farmers Markets		
<b>Registered Number</b>	22/04627/FULL	<b>Date amended/ completed</b>	12 July 2022
<b>Date Application Received</b>	12 July 2022		
<b>Historic Building Grade</b>	Unlisted		
<b>Conservation Area</b>	Portman Estate; Harley Street		
<b>Neighbourhood Plan</b>	Not applicable		

## 1. RECOMMENDATION

Grant conditional planning permission for a temporary period.

## 2. SUMMARY & KEY CONSIDERATIONS

The application proposes to continue the temporary use of Aybrook Street and parts of Moxon Street and St Vincent Street as a weekly Farmers Market. The current temporary permission expires in September 2024 and, while it was intended that the market would re-locate to a new position on the corner of St Vincent Street and Cramer Street both on street and within a new semi-enclosed market hall area within the redeveloped site, the market have now advised that the current location has been a success and they would prefer to stay there.

The key considerations in this case are:

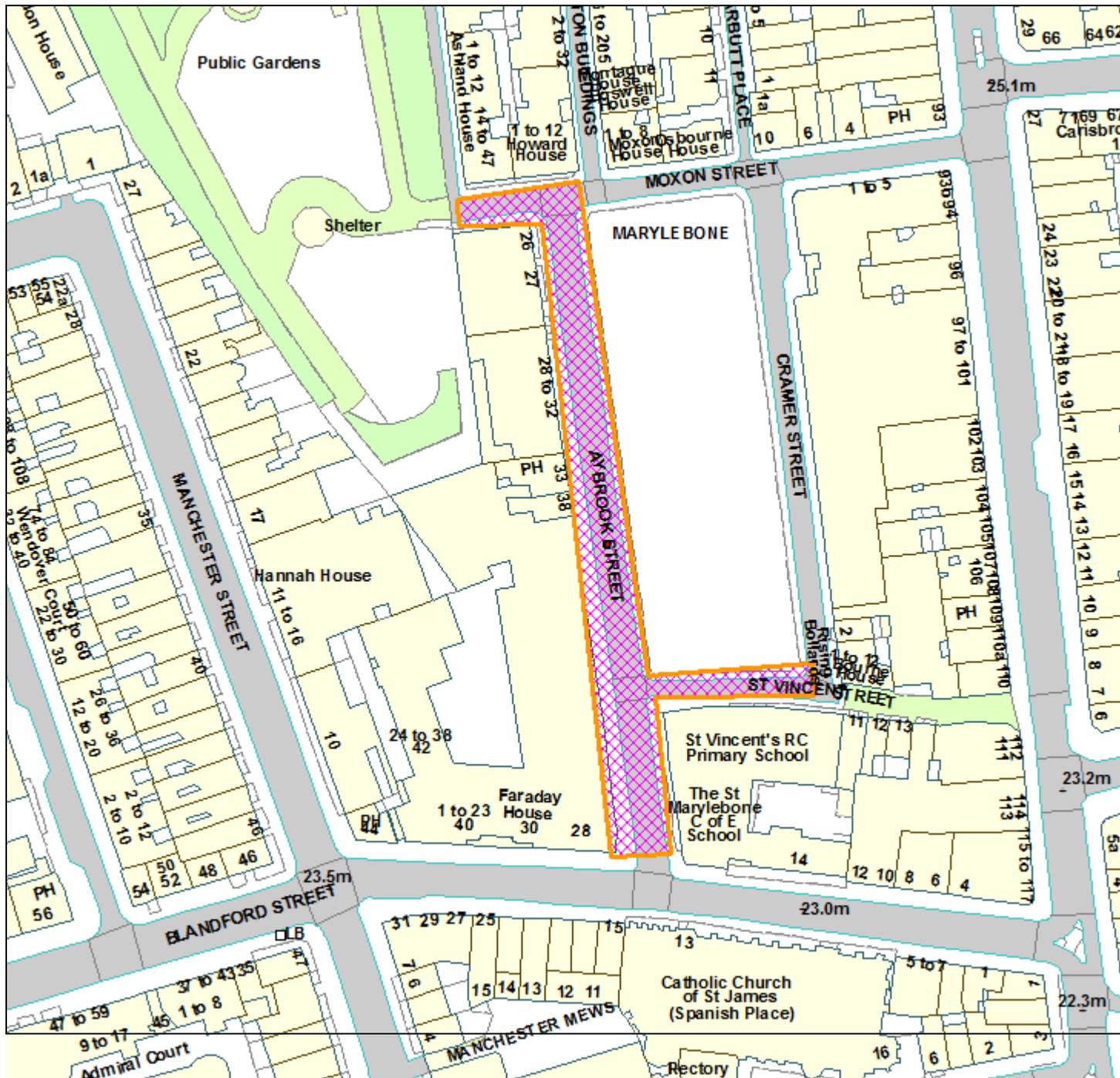
- The impact on the amenity of neighbouring residential properties.
- The acceptability of the proposal in highways terms.

Amenity concerns have been raised by objectors in relation to the noise disturbance caused by the operation of the market. While these are noted, given that there is noise to be expected from such a use and that the market is only on the site for a total of 8 hours a week, the conditions put forward with this recommendation are considered sufficient to adequately mitigate the worst possible impacts.

The impact of the market operation on the highway has been raised as a concern by objectors as well as by the Highways Planning Manager, particularly given that the Marylebone Square redevelopment, once complete later this year, will have vehicle access on Aybrook Street (serving a public car park, private car parking for the residential tenants of the building, building servicing and cycle storage etc.). The applicant has set out how they intend to operate a vehicle marshalling scheme when the market is in operation, which would guide any vehicles through the market to the vehicle entrance of Marylebone Square, and again from this point to the exit of the market. While creating a scenario where pedestrians and vehicles mix in this way is far from ideal, given the mitigation measures put forward by the applicant, it is not considered that permission could be withheld in this instance if these measures are secured by condition.

Concerns have also been raised regarding the necessary traffic management orders required for the continued use of the street as a market. However, these are not concerns that fall within planning legislation and would be secured pursuant to highway/transportation legislation.

3. LOCATION PLAN



4. PHOTOGRAPHS



## 5. CONSULTATIONS

### 5.1 Application Consultations

#### MARYLEBONE ASSOCIATION

Support the Farmers Market application to stay on Aybrook Street.

#### ENVIRONMENTAL SCIENCES

No objection subject to conditions.

#### HIGHWAYS PLANNING

Undesirable but could be considered acceptable: Concerns raised but conditions suggested.

#### WASTE PROJECT OFFICER

No objection subject to condition.

#### ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 185

Total No. of replies: 70

No. in support: 57 (including one support petition, one set of stall holder support signatures, and a support letter from local Ward Councillors.)

No. of objections: 7 (three others of these are objecting to the market being moved to a different location/indoors/to losing the market, but not objecting to the use of the area proposed in this application for the market.)

57 letters of support, including a petition with 97 signatures have been received. A set of signed letters from various market stall holders from the market has also been received in support. The Ward Councillors for Marylebone have also submitted comments in support of the proposals.

The support letters raise the following points:

- Serves local residents,
- Brings community together,
- Supports independent farmers,
- Valuable community resource,
- Indoor space not in the spirit of a market,
- Want indoor space originally for market to be used as new site for a library (instead of leisure centre), and
- Allowing the market to continue trading on street will allow other uses to occupy the intended space within the Marylebone Square development.

Of the objection letters received, three of the are objecting to the loss of the market from the location proposed in the current application and raised the following points: :

- Object to moving the market indoors (entirely indoors), preferring it to remain outside;
- Indoor space better used by another use,
- Market essential for local residents,
- Anything that damages the market must be "*vigorously fought against*", and
- "*Keeping it on the street when it was promised a permanent home needs to be*

*honoured.”*

Of the other objection letters objecting to the current use of the street for the market, residents raise the following concerns:

**Amenity:**

- Noise from set up and take down process is disruptive,
- Set up and take down process from 8am – 4pm, not just market trading hours,
- Market noisy which is disruptive,
- Sunday is the worst day for the market,
- Market stalls result in loss of privacy for residents (on upper ground floor) from customers,
- Stall canopies in front of residents' windows creating a loss of view/outlook,
- Impact on the long-term character of the area [disruption from having the market located here in the long term],
- Threatening taking legal action under Section 82 of the Environmental Protection Act should this application be approved.

**Highways/Waste:**

- Car Park entrance to Marylebone Square development in the middle of Aybrook Street and the proposed escort for vehicles through the market is not suitable or safe,
- Obstruct servicing to Marylebone Square development,
- Market traders block residential entry/exits and bin stores while unloading,
- Mess left on street,
- Residents have to move cars from street,

**Other:**

- Disappointment that there will no longer be space for the market within the new building,
- Impact on property value,
- Consultation period for the planning application is short,
- The proposed period for the market is beyond the time that many new residents (in the Marylebone Square development) will move to the area, imposing a market on them without consulting them is not fair, application being rushed through.
- Objector believes the market has 'license restrictions' preventing it from operating on certain streets adjoining the current location, and requests these restrictions are applied to parts of Aybrook Street where there are residential flats and that it would be discriminatory not to do so,
- Discriminatory that market does not put-up stalls in front of commercial occupiers in the area and only in front of residential occupiers,
- Market should be relocated,
- There are numerous other suitable locations in the immediate area for the market that would not impact residential users,
- Sites identified as 'comparable' are not,
- Errors and omissions in submitted documents, and
- Same company operates market in Notting Hill and had to relocate last year due to unavoidable disturbance to neighbours.

**PRESS NOTICE / SITE NOTICE:**

Yes

## **5.2 Applicant's Pre-Application Community Engagement**

The applicant has not submitted a Statement of Community Involvement and the other application documents do not indicate that engagement was carried out by the applicant with the local community and key stakeholders in the area, prior to the submission of the planning application.

However, the Early Community Engagement guidance only expects such engagement to take place where the proposal may have a significant impact on residential amenity or other noise sensitive receptors. Given that the market use proposed is only for a few hours on one day a week, it is not considered that the proposals would need to comply with the Early Community Engagement guidance.

## **6. WESTMINSTER'S DEVELOPMENT PLAN**

### **6.1 City Plan 2019-2040 & London Plan**

The City Plan 2019-2040 was adopted at Full Council on 21 April 2021. The policies in the City Plan 2019-2040 are consistent with national policy as set out in the National Planning Policy Framework (NPPF) (July 2021) and should be afforded full weight in accordance with paragraph 219 of the NPPF. Therefore, in accordance with Section 38 of the Planning and Compulsory Purchase Act 2004, it comprises the development plan for Westminster in combination with the London Plan, which was adopted by the Mayor of London in March 2021.

As set out in Section 38(6) of the Planning and Compulsory Purchase Act 2004 and paragraph 49 of the NPPF, the application must be determined in accordance with the development plan, unless material considerations indicate otherwise.

### **6.2 Neighbourhood Planning**

The application site is not located within an area covered by a Neighbourhood Plan.

### **6.3 National Policy & Guidance**

The City Plan 2019-2040 policies referred to in the consideration of this application have been examined and have been found to be sound in accordance with tests set out in Paragraph 35 of the NPPF. They are considered to remain consistent with the policies in the NPPF (July 2021) unless stated otherwise.

## **7. BACKGROUND INFORMATION**

### **7.1 The Application Site**

Aybrook Street runs in a north-south direction between Moxon Street (at its northern junction) and Blandford Street (to the south). It is close to and runs parallel with Marylebone High Street.

Aybrook Street is a one-way street along its length, with vehicles permitted to travel in a northwards direction only.

The farmers market had been operating on Moxon Street car park from 2003 (permissions were granted on a temporary annual basis) but relocated to the adjacent Aybrook Street on a temporary basis when construction works started on the car park site.

The market has been granted a number of permissions to operate in its current location on Aybrook Street and part of Moxon Street and Ashland Place (as a temporary location while construction works at the Moxon Street development site were underway) since 2018, as detailed below in the planning history.

## 7.2 Recent Relevant History

Permission was granted at the adjacent Moxon Street Car Park site on 12 January 2016 (RN: 14/10918/FULL) for the 'Erection of a building including excavation works to provide three basement storeys and six above ground storeys for mixed use purposes including up to 79 residential units, retail shops, restaurants, multi-purpose community hall, community space, cycle and car parking, servicing, landscaping, plant and other works. (Site also known as Moxon Street Car Park.)'. This has been amended by non-material amendments granted on 23 October 2018 (RN: 18/08060/NMA) and then again on 20 December 2018 (RN: 18/10490/NMA). That permission has been implemented and is nearing completion.

A resolution to grant permission was made at committee (RN: 14/12506/FULL) on 14 July 2015 to allow the use of the southern part of Aybrook Street, the southern part of Cramer Street and St. Vincent Street as a weekly (Sunday) farmers market. The area sought was for the use of the market in the streets combined with the market hall, as originally intended at the time of the granting of the redevelopment of the Moxon Street car park site. This resolution to grant permission was subject to the completion of a legal agreement securing the funding of all costs required to make changes to the existing parking regulations and traffic arrangements, and to ensure that the layout assessed was only implemented when the redevelopment of Moxon Street is completed. However, the decision has not been issued as the required legal agreement was not completed.

Planning permission was granted on 3 April 2018 (RN: 14/03213/FULL) allowing the use of Aybrook Street and part of Moxon Street and Ashland Place as a weekly (Sunday) farmers' market. This was the first permission for a market to be temporarily located off of Moxon Street Car Park while the site was being redeveloped.

Another permission for the market in the temporary location was granted on 30 July 2019 (RN: 19/04462/FULL). This layout was largely the same as the 2018 permission but included part of St Vincent Street . This permission was time limited for at least 104 consecutive Sunday Farmers Markets from Sunday 14th September 2019. The time period for the market permission was extended by varying Condition 2 of the 2019 permission to allow operation of the market until 14 September 2024, by way of planning permission granted on 29 July 2021 (RN: 21/03812/FULL).

## 8. THE PROPOSAL

The applicant seeks permission to continue to operate the weekly Farmers Market on the same parts of Aybrook Street, Moxon Street and St Vincent Street as were previously permitted while work at the old Moxon Street car park was undertaken. This application is for a temporary period, until 14 September 2027. The submission indicates that the layout proposed would allow for 56 businesses to be positioned on the market.

However, while this is again a temporary permission that is sought, it is no longer the market's intention to move to the new market hall area within the redeveloped site of Marylebone Square when this is completed (on the corner with St Vincent Street and Cramer Street, which was to have fully openable facades to create a semi-enclosed space), and the market no longer intends to occupy the originally intended parts of St Vincent Street and Cramer Street adjoining that corner of the site. There is a separate application at the Marylebone Square redevelopment to amend that permission (RN: 22/04317/FULL) and to alter the use of the relevant part of the site that would have been used by the market. This application is being considered separately.

The applicant advises that the market operating on the streets where it has been while the adjoining site has been redeveloped has been successful and that it would prefer to trade on the streets it currently does.

As before, the market will trade between 10.00 and 14.00 on Sundays, with 2 hours set up and clear up time either side of these hours.

The submitted plan indicates that the space used for market stalls will primarily be along the western side of Aybrook Street, the south side of St Vincent Street, and the western end (on both sides) of Moxon Street around its junction with Aybrook Street. There is space indicated along the east side of Aybrook street for "Emergency space used" for stalls.

## **9. DETAILED CONSIDERATIONS**

### **9.1 Land Use**

#### **Commercial Uses**

City Plan Policy 14 Part F states:

*"New and extended markets will be supported throughout the town centre hierarchy and wider CAZ where any negative impacts on the surrounding area (including the operational requirements of existing businesses in the vicinity) can be mitigated."*

Supporting text para 14.9 sets out that well located, designed and managed markets can add to the diversity, vibrancy and experience of town centres as well as being a source of fresh, affordable, and locally sourced food that supports a healthy diet, complementing the local retail offer. It also states that markets can support small businesses in showcasing their products.

City Plan Policy 15 seeks to maintain and enhance the attractiveness of Westminster as a visitor destination while balancing the needs of those visitors, businesses and local

communities.

Given the site's location within the CAZ and between the Marylebone High Street, Chiltern Street and Baker Street town centre designated areas, the principle of additional retail in this area, albeit a temporary market and only for a few hours each week, is acceptable and in accordance with the aims of City Plan Policies 14 and 15.

## **9.2 Environment & Sustainability**

Issues relating to odour and impacts on amenity are discussed in the residential amenity section of this report below. Given the size and nature of the proposals, it is not considered that there are other environment or sustainability issues which would arise from the proposals that can be considered within the remit of planning.

## **9.3 Biodiversity & Greening**

Given the temporary nature of the market for only a few hours on one day each week, it is not considered that the provision of biodiversity or greening would be practical.

## **9.4 Townscape, Design & Heritage Impact**

Given the temporary nature of the market, the proposal would not have a major impact on townscape.

## **9.5 Residential Amenity**

Records indicate there are residential properties at the southern end of Aybrook Street within Faraday House and on the eastern end of St Vincent Street on this narrower pedestrianised part between the junction with Cramer Street and Marylebone High Street. There are also residential properties on Moxon Street by its junction with Aybrook Street located within Ashland House, Howard House and Moxon House. When completed, the new development at the site of the former car park will also contain 79 new residential flats on its upper floors, fronting all of the streets bounding that site.

The area around the streets in this site also contain a range of commercial uses in the buildings at the norther end of Aybrook Street, the Gunmakers Public House on Aybrook Street, the ground floor at part of Moxon Street as well as the range of commercial uses that will be at basement and ground floor of the new development at the site of the former car park.

St Vincent's Primary School and The St Marylebone C of E School are also located at the southern end of the site on the corner with Aybrook Street and St Vincent Street.

Objections have been received from a number of local residents siting issues with the current market operation relating to noise and disturbance from the set up and take down periods of the market as well as from the operation of the market during trading hours. Objectors also raise points about the market causing a loss of privacy.

### **Noise**

Environmental Health Officers have assessed the application and advised that they have no objection to this application on the basis that the market has not been a source of complaint or concern in recent years, provided the market operators adopt a noise management strategy along the lines of that set out in previous applications.

Planning officers have checked the records available to them regarding complaints and can see only one complaint recorded relating to noise from the market prior to the current application being submitted, which is from October 2019 (and notes that the market sets up from 06:30). There have been no further complaints received that are visible to officers and no other mention of such an early time for the market setting up before this application was submitted. There have however been five noise complaints submitted about the noise from the market since this application has been submitted (complaints made from 13 October 2022 onwards) which Environmental Health Officers have identified. These are complaints from the same address as one of the objectors and the comments and concerns within them largely reflect the comments and concerns raised on this application, particularly relating to noise. Having discussed a site inspection to the complainant/objectors flat with the Officer that undertook this, they have advised that when they visited (at around 08:30 in the morning) the market was setting up, however it was not deemed as a nuisance. At the time the drivers at the time were not seen to cause nuisance issues as, at the time of the visit, they were not offloading any equipment.

The previously agreed noise management strategy has been submitted again with this application. It covers the set up and take down periods of the market and the market period itself and the approach to be taken by the Market Manager towards noise issues. Compliance with this strategy shall be secured by condition (which was not explicitly done before) and, as before, a condition will also be imposed to prohibit the playing of live or recorded music.

There have been some objections received from local residents about the noise from the market, and the set up and take down periods. They note that the noise from the set up and take down periods is for two hours either side of the market operating times so extends disruption for them. They also consider that Sunday is the worst possible day for the market to happen in terms of the negative disturbance it causes. There may be some expected and unavoidable noise from the market, and on occasion this could cause disruption, it is not considered reasonable to withhold permission on these grounds given that the market is only present for one day a week and for a relatively short amount of time. Environmental Health Officers have not received complaints regarding this over the years and they state that they are still happy with the proposals subject to the compliance strategy being followed.

### **Privacy**

An objection has been received on the grounds that the location of the market stalls result in loss of privacy for residents on the upper ground floor of buildings. They consider that market users are afforded views into their flat while using the market and stalls. While they have provided photos of the views out of their windows when the market is operational, it is clear that the upper ground floor windows are too high for any views into the property to be provided. While there may be the possibility for some 'upwards' view from the market to a small part of the flat immediately next to the window

and someone standing in this area could be seen, this is no different to that which is afforded to any other user of the street at any other time. It is therefore not considered that there would be a detrimental impact on privacy as a result of the proposed market and the permission could not be withheld on these grounds.

### **Loss of View/Outlook**

An objection has been received stating that the stall canopies in front of residents windows create a loss of view. The objector has provided photos from market times to demonstrate this. Loss of view is not a planning consideration however, given the nature of the issue demonstrated in the photos it is believed that the objectors concern related to a loss of outlook from the windows as they also note that the canopies are very close to the windows.

The photos demonstrate that the main part of any market stall canopies (gazebos or similar) reach only a small way above the windowsill (approximately to the lowest horizontal glazing bar) and the majority of the window (over 80%) is above the main part of the stall canopies. It is therefore not considered that the positioning of the stalls canopies results to any significant loss of overall outlook for the windows in question, especially as the market is only for a few hours each week. The overall situation for the flats in question is already established by the existing built environment with a large building across the road limiting the outlook from the windows, and the market will not change this substantially enough to warrant withholding of permission. The objection therefore cannot be upheld. The applicant will be encouraged to engage with their stall holders to review the height of their stall canopies should they be particularly tall.

### **Odour**

As before, the market intends to include a number of stalls which provide hot food cooked at their stalls. With previous permission for the market a map has been provided showing that the location of such hot food stalls would be restricted to the section of Aybrook Street where there are no residential properties (the northern end of Aybrook Street, on the east side of the street) and this aspect has been secured by condition. The applicant has provided a map showing new locations for the hot food stalls however these are at the same area of the street, just on the opposite side of the road (now on the west side) in front of commercial uses. It is important to note that the surroundings of the market will shortly change when the new Marylebone Square development opens with commercial units at ground floor and residential on all floors above.

Environmental Sciences have commented that, with regards to this imminent change in the location of residential premises, as the market installs some cooking stalls and not all the stalls would cook, as the market is once a week for a short period, and that as cooking is usually done with LPG or electricity (not charcoal/solid fuels) that the potential impact on proposed residential dwellings is relatively low. They also advise that they would take enforcement action if a Statutory Nuisance is being caused to the occupiers of the flats. The now proposed locations of hot food stalls are considered acceptable in this instance and should issues arise there is scope to alter the locations of these if needed in the future.

### **Impact on Area from Market in the Long Term**

An objector has stated that while at first the market being on Aybrook Street was initially ok, and then due to Covid the more medium term was also bearable, they consider that the long term positioning of the market here is unacceptable due to the long term impact on the character of the area and the associated amenity impacts.

As has been set out above, it is considered that the possible amenity impacts can suitably be managed. It is not considered that the market in this location would have a negative long term impact on the area given that a market has operated adjacent to this street for a significant amount of time prior to the old Moxon Street car park being redeveloped, and the retention of this market on a different adjoining street was intended and approved at the time of the redevelopment. It is therefore not reasonable to withhold permission on the grounds of this point of objection.

## 9.6 Transportation, Accessibility & Servicing

The Highways Planning manager has assessed the proposals. They note that the move of the Farmers Market to Aybrook Street was only ever intended to be a temporary arrangement while the redevelopment of the previous car park site was undertaken. At the time the overall redevelopment of the car park was considered, it was intended that the Farmers Market would be able to go back into the area but in a combination of the community space at the south-east corner of the site and in St Vincent Street and part of Cramer Street, both of which are pedestrianised at this part of the site.

The Highways Planning Manager understands that the Farmers Market has operated successfully on Aybrook Street for several years now and that the market is popular locally, although they note that there are objections to the market as well as many notices of support.

They consider that the proposal for the market to stay on Aybrook Street is undesirable from a highways point of view for a number of reasons. These reasons are that Aybrook Street:

- could otherwise be fully open to traffic,
- includes a significant number of parking bays, which have to be taken out of use on Sundays,
- includes a significant number of parking bays on the east side that have been suspended while construction of the development has been taking place and which are due to come back into use on completion. As there are no parking controls in the area on Sundays any driver would be able to park in these bays on Sundays as things stand,
- is immediately adjacent to St Vincent Street and the relevant part of Cramer Street which are largely pedestrianised,
- will include, once the development is active, an active frontage on Aybrook Street which will have its own needs for access and may include cafes etc that want tables and chairs on the footway where possible (it should be noted that an application for table and chairs around parts of the Marylebone Square Site was recently submitted however was considered premature and withdrawn with the intention of a resubmission at a later date),
- will also include the access to/egress from the remaining public off-street car parking spaces and the off-street parking associated with the residential units

above at the Marylebone Square development. While few drivers are likely to want to use the public parking on a Sunday (because on-street parking in the general area is uncontrolled and therefore free of charge), Highways Planning could not recommend that access to is restricted and also could not recommend that residents be prevented from entering or leaving their own car park while the market was in place. Such an arrangement was never the intention.

An objector has also raised concern that the car park entrance to the Marylebone Square development in the middle of Aybrook Street and that the proposed escort for vehicles through the market is not suitable or safe.

Nevertheless, the application is to keep the Farmers Market on Aybrook Street and the applicant feels that the situation could be managed. They have provided evidence to justify it, citing other markets where some access traffic is allowed during market hours and looking at data from other similar residential car parks to show that there are very few movements in and out of those car parks on Sundays. They are also offering to guide any local traffic through the market using traffic marshals.

However, even with this information from the applicant, the proposals allowing vehicular traffic to move within the market area raises significant road safety issues. These issues would not be raised were the Market to operate in the originally intended location.

Even though there may be some argument made that similar situations have somehow arisen elsewhere and seemingly operate without incident, it is clearly far from ideal to allow the busy and popular market to mix with traffic accessing the new development and any traffic accessing the parking spaces on the east side of Aybrook Street. To allow traffic to mix with pedestrians in this way, even with the suggested guiding of traffic, would be creating an inherent road safety issue that could be avoided should the market be located where originally intended. St Vincent Street is essentially closed to traffic and in front of a school which is closed at the weekends, and once the western section of the public realm works associated with the development has been delivered, it will also be entirely step free. A small section of the southernmost part of Cramer Street is also pedestrianised.

However, even with the above concerns in mind, the Highways Planning Manager understands the benefits of the market and the support it has. Given the low traffic flows that would be anticipated on a Sunday in this area and for the soon to be completed development, it may be suitable to allow the market to continue operating in the current location, provided that there are measures in place to ensure public safety. To that end, they list the following aspects which would need addressing to allow the market to remain on Aybrook Street:

- access to the residential car park, should continue to be allowed. The Council would have to allow residents of the development to be able to get in and out of their own car park should they so desire, but this could only done with some form of supervision in the form of the suggested traffic marshals.
- the public car park should be closed during the relevant times on Sundays. The previous car park was only ever lightly used on Sundays because on-street parking in the area was and still is uncontrolled on Sundays and therefore a driver can park on-street free of charge (although being mindful that this situation could change in theory).

- the parking bays on the east side of Aybrook Street, which have been suspended for some time due to the construction of Marylebone Square but are due to come back into use should be changed so that they are controlled on Sundays, such that they are not in use between 8.00am and 4.00pm on Sundays and drivers, including residents, have to move their cars.

The Highways Planning Manager also notes that a further consequence of allowing the market to continue might be that there would not be sufficient space to allow any new premises that open on Aybrook Street to have tables and chairs outside on Sundays however, that issue would be considered on its own merits as and when applications come in.

Of the points listed above that the Highways Planning Manager has raised in order to address the concerns, only the first (access to/from the residential car park with supervision from traffic marshals) can be controlled under this planning permission. This will be addressed by way of securing compliance with the submitted information on how the traffic marshals would operate. This condition would also serve to overcome the points of objection raised regarding the access to the car park.

The matters raised in the second and third points (closing the public car park and suspending parking bays) cannot be controlled by the City Council as Local Planning Authority (i.e. under planning) however, the matters are controllable by the City Council as Highway Authority. Traffic Management Orders (TMO) will be required to address these two points. There is no risk in allowing the process relating to TMOs to be undertaken wholly under the highway acts and the fees for the TMO (and any other works to the highway) would be secured pursuant to highway/transportation legislation regardless of there being a planning permission in place. The TMO process will not begin until fees have been invoiced and paid. There is therefore no need to secure these aspects via a legal agreement or any other planning mechanism.

An objector has stated that they consider the evidence provided by the applicant, in terms of the comparable markets listed, are not comparable and as a result this information should not be considered. This view is not shared by Officers who consider that the information on this topic is suitable in this instance as it is given as example to be taken into account in the overall decision making process. This objection point therefore cannot be upheld.

An objector has also raised that the closure of the road and operation of the market on Aybrook Street would block servicing for the new Marylebone Square development (both commercial and residential servicing requirements). It is considered unlikely that servicing of the commercial units would occur on a Sunday and any servicing of residential premises (examples listed by the objector include food delivery, online shopping delivery, courier and taxi services) are unlikely to be significantly affected during the limited hours that the road will be closed. Free on street parking (on a Sunday) is available in the immediate vicinity of the building, allowing any such services to utilise this while completing their delivery on foot if needing the pedestrian access to the residential units. Alternatively, the vehicle martial approach may allow for vehicles to be guided through the market in specific circumstances, which would be up to the martial on the day. It is not considered that this objection can be upheld.

Subject to the above condition, the proposal is considered acceptable in highways terms.

### **Accessibility**

Objectors have stated that market traders often block doors when unloading. While it is noted that the unloading (or loading process) is a relatively short period, it is necessary to ensure that access to surrounding buildings is not impeded at any time during the markets operations. A condition will therefore be added to this effect, which is considered to overcome the objections on this point.

### **Parking**

An objector has noted that residents have to move cars from street on market days, due to the parking being suspended, which is inconvenient. While this is noted, as there are no parking restrictions on other on street parking in the area on a Sunday and the time of parking bay suspension is relatively short, it is not considered reasonable for permission to be withheld on these grounds.

### **Waste & Recycling Storage**

Objections have been received from local residents who have raised issue with mess being left on street following the market. The previous permissions for the market included a condition stating: "*You must store and dispose of all waste and materials for recycling and make the storage available to all stallholders.*"

This condition will be included again but updated to include the requirement that all waste and materials for recycling are cleared from the street at the end of the approved market period so as to better address the issues raised by objectors. On this basis, the objections cannot be upheld.

## **9.7 Economy including Employment & Skills**

Whilst the development is of insufficient scale to require an employment and skills plan or a financial contribution to the Westminster Employment Service, it will contribute positively to the local economy through the generation of increased opportunities for local employment, procurement and spending.

## **9.8 Other Considerations**

### **Support for the Market**

A significant amount of support has been received for keeping the market in the current location Aybrook Street. Within these support letters there has also been a supportive petition (with 97 signatures) as well as a set of signed letters from various market stall holders from the market stating that they wish to stay on Aybrook Street. It is also important to note that some of the comments received as objections could be considered supportive of the proposals themselves (detailed in the following section).

The supporters note that they consider the market serves local residents well, brings the

local community together and provide a valuable community resource. They also consider it to support independent farmers. Some of the comments go on to note that the originally intended indoor space in the Marylebone Square development is not in the spirit of a market, and that they want that indoor space to be used as new site for Library (instead of as intended at the Seymour Leisure Centre). The comments regarding the library are noted however these aspects are not under consideration as part of this application. The support from the community for the market is noted.

### **Objections to the Market Being Moved/Closed**

Three of the objection letters are objecting to the loss of the market or its relocation. The objectors raised concerns in relation to moving the market indoors (entirely indoors), claiming that an indoor market would not be in the spirit of a market, that the market must be outside. This is not what the current proposal is for however, it must be noted that the originally intended location for the market included an element of partially enclosed/indoor area as described above. One objector states that "*Keeping it on the street when it was promised a permanent home needs to be honoured.*". Considering the intended home/location was partially inside and on street it is unclear what this statement is intending.

Objectors point out that they consider the market is essential for local residents, and also state that anything that damages the market must be "*vigorously fought against*".

All of these points of objection are not in relation to what is proposed in this application, which is to keep the market where it is, and therefore cannot be considered.

One objector says that the originally proposed indoor space would be better used by another use however, the use of that area is not subject to consideration in this application nor is it within the application site for this submission.

### **Originally Intended Location for the Market**

Objectors have noted disappointment that there will no longer be a space for the market within the new Marylebone Square building, as was originally intended. The permission granted 12 January 2016 (RN: 14/10918/FULL) included a new market hall area within the redeveloped site on the corner with St Vincent Street and Cramer Street. The market originally intended to occupy this space, which was to have fully openable facades to create a semi-enclosed space, along with the parts of St Vincent Street and Cramer Street adjoining that corner. However, they no longer intend to occupy this area and would prefer to remain on the street that they have been occupying most recently. There is a separate application at the Marylebone Square redevelopment to alter the use of the relevant part of the site that would have been used by the market which is being considered separately (RN: 22/04317/FULL). While the disappointment raised by the objector is noted, it is not grounds to withhold permission for this application which related to keeping the market in the location it has most recently been operating.

### **Impact on Property Value.**

An objector has raised concern that the farmers market presence in front of their flat may negatively impact the value of their property. While these concerns are noted, property

value is deemed not to be a planning consideration.

### **Consultation Period Too Short.**

An objector has stated that they consider the consultation period given for the application when it was initially submitted and consulted on (in August 2022) was too short, particularly given that the consultation was issued during summer when many people were away. As always, comments can be made on the application until its determination and therefore this objection is unfounded.

### **Impacted Future Residents not yet in the Adjoining Site**

An objector has raised objection to the fact that the proposed period for the market (until 2027) is beyond the time that many new residents in the Marylebone Square development will move to the area. This would therefore impose a market on them without consulting them and the objector considers this is not fair. They also state that they consider the application is being 'rushed through' as these future residents are not being given the opportunity to comment on the application.

While this is noted, the Council is obliged to consider the application as submitted and is aware that new residents will be introduced close to the market during the temporary period sought. It would be unreasonable to withhold permission on the grounds that in the relatively near future there will be additional residential users on the street who may, or may not, wish to comment on the proposals under consideration now.

### **Positioning of Market Stalls**

An objector has stated that they consider it to be discriminatory that the market does not put-up stalls in front of commercial occupiers in the area, such as The Gunmakers Pub on Aybrook Street or the butchers, fromagerie, flower shop or Marylebone Pub on Moxon Street, and instead only in front of residential occupiers.

The issue of discrimination is not explicitly a planning consideration in terms of policy however, as is clearly set out below, the claim that market stalls are only in front of residential occupiers is not correct. The section of Moxon Street which the objector refers to (east of the junction with Cramer Street) is not within the bounds of the application site for the market, either now or in the past. It therefore falls outside of the consideration of this application. With regards to the comments regarding Aybrook Street, while it is true there is a gap in the layout of the stall in front of the Gunmakers Pub, there are stalls in front of the commercial buildings and educational uses on the northern end (west side) of this street. There are also stalls located outside St Vincent's Primary School and The St Marylebone C of E School which are located at the southern end of the site on St Vincent's Street.

It would therefore not be considered reasonable for permission to be withheld on the grounds raised in this objection point.

### **License Restrictions on Trading Locations**

An objector has stated that they believe the market has "license restrictions" preventing it

from operating on certain streets adjoining the current location, and requests these restrictions are applied to parts of Aybrook Street where there are residential flats. They state that they believe it would be discriminatory not to do so. This is not a planning issue, with licensing being dealt with under separate legislation.

### **Relocation of the Market**

An objector has stated that the market should be relocated as they consider the impacts of it on residents in the area is unacceptable and that Aybrook Street and the immediately neighbouring streets are entirely inappropriate for a market due to the surrounding residential. They suggest that there are numerous other suitable locations in the immediate area for the market that would not impact residential users and have suggested a number of locations such as Manchester Square and Portland Place amongst others as possibilities. While this is noted and there may or may not be other suitable locations for this market, these are not part of the consideration of this application which is restricted to the proposals submitted. The applicant has been asked if they have considered other locations but, while not providing any evidence of their considered other locations, have advised that no where else is suitable and this is their preferred location. It is not possible for the Council to withhold permission on the grounds that there could be other suitable locations for the market, so this objection cannot be upheld.

### **Errors or Omissions in Submitted Documents**

An objector has identified what they believe to be a number of errors or omissions in the submitted documents. Where these errors have been confirmed and were considered relevant, they have been corrected with updated documents.

They have noted that one of the documents claims that the concierge at Faraday House was interviewed about car park usage on Sundays however, the objector states that none of the members of the concierge team at Faraday House are on site on any Sunday. They therefore question how information about the Faraday House car park usage on Sundays can be accurate. The concierge in question has been spoken to confirming this and advising they are not aware of how the data presented could have been gathered. The document in question states "*The concierge in each building was also interviewed to understand current parking occupancy and usage patterns.*". The overall findings of the document in question, which discusses two other building as well as Faraday House and identifies traffic trends in the area and the wider city, are however considered to be correct overall and reflects known trends for vehicle usage. The accuracy of the data in question in the report would therefore not alter the recommendation made for this application. The objection cannot be seen as reason to withhold permission.

### **Action Under Section 82 of the Environmental Protection Act**

An objector has noted that they will take legal action under Section 82 of the Environmental Protection Act should this application be approved. This section relates to reporting matters of nuisance directly to the Magistrates' Court and in this case would appear to relate to the issues of noise created by the market. It is noted that the objector may wish to act on their right to report any noise from the market under this section of

Environmental Protection Act however, it is not sufficient grounds to withhold planning permission. The measures set out above in this report are considered sufficient in planning terms to reasonably and proportionately address issues of excessive noise from the market.

### **Similar Markets Operated by LFM**

An objector notes that the same company that operates the market on Aybrook Street, also operates a market in Notting Hill. They point out that the Notting Hill market has recently had to relocate due to what the objector states was not being able to operate without disturbing local residents. This application must be considered on its own merits. The conditions and approach set out above are considered suitable to sufficiently address possible amenity impacts and as such this aspect of the objections cannot be upheld.

### **9.9 Environmental Impact Assessment**

The proposed development is not of sufficient scale or impact to require an Environmental Impact Assessment.

### **9.10 Planning Obligations & Pre-Commencement Conditions**

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

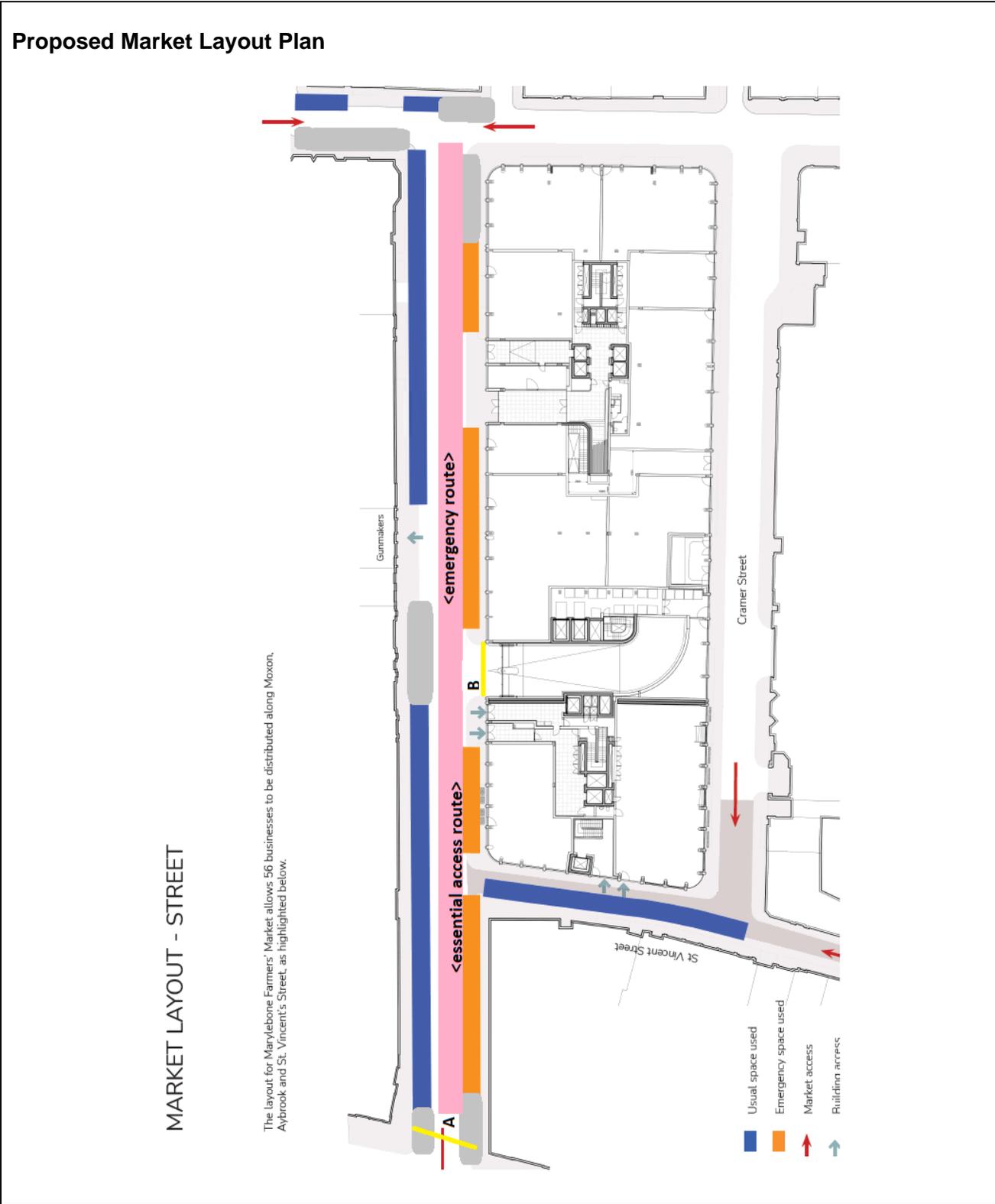
### **10. Conclusion**

As identified by the letters of support for this application, the market is valued part of community life for this area, and beyond. It is therefore a benefit to ensure that the market is provided in this area. The principle of the market use in this location is acceptable and any possible negative impacts have been identified as being able to be suitably managed by way of condition. The application is therefore in accordance with City Plan Policy 14 Part F. While there are concerns regarding the impact of the market on the highway, particularly with regards to vehicular access to the private residential car park in the new Marylebone Square development, it is considered that the management strategy for this aspect put forward by the market is suitable to overcome the concerns and compliance with this strategy shall be secured by condition.

(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](mailto:mhollington2@westminster.gov.uk)

11. KEY DRAWINGS



Locaiton of Hot Food Stalls



**DRAFT DECISION LETTER**

**Address:** Aybrook Street, London,

**Proposal:** Use of Aybrook Street, part of Moxon Street and St Vincent Street as a weekly Farmers Market for a temporary period until 14 September 2027.

**Reference:** 22/04627/FULL

**Plan Nos:** Drawing MOX-DP9-XX-A-01\_0  
(Hot Food Stall Area plan); Drawing 1000001067-C-120-01 (signage plan) ; stall layout plan, titled "MARKET LAYOUT - STREET" ; drawing 1000001067-C-010-01 (street closure plan) ; noise prevention plan titled "Marylebone Farmers Market noise prevention procedure" ; Document from DP9, titled "Additional Information - 07.10.2022 - Farmer's Market - 22/04627/FULL" ; email from Marcus Stuart of DP9, dated 20 April 2023 confirming London Farmers Market will be sole operators.

**Case Officer:** Adam Jones

**Direct Tel. No.** 020 7641  
07779431391

**Recommended Condition(s) and Reason(s)**

- 1 Only the London Farmers' Market can carry out the market use, which shall operate in accordance with the email dated 20 April 2023. No one else may benefit from this permission.

Reason:

Because of the special circumstances of this case we need to control future use of the premises if The London Farmers' Market leaves.

- 2 The Farmers' Market use allowed by this permission can continue until 14 September 2027. After that the land must return to its previous condition and use.

Reason:

We cannot give you permanent permission as the area in question is, and is intended to remain, public highway and Section 130 (1) of the Highways Act 1980 states that "It is the duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority". We also need to assess the effect of this activity regularly to make sure it meets S41 of Westminster's City Plan (November 2016). For the above reasons, and not because this is seen a form of trial period, we can therefore only grant a temporary permission.

- 3 The market shall only be open to the public on Sundays between the hours of 10.00 and 14.00 and not at any other times. No vehicles/stalls in connection with the market shall enter the site before 08.00 and all vehicles/stalls have left the premises by 16.00 hours. Outside these hours the street shall be cleared of all materials, produce, waste, spillages and equipment connected with the market.

Reason:

To protect neighbouring residents from noise nuisance, as set out in Policies 7, 16 and 33 of the City Plan 2019 - 2040 (April 2021) and the Environmental Supplementary Planning Document (February 2022). (R13FC)

- 4 No more than 56 stalls shall be present on the site at any one time.

Reason:

To protect neighbouring residents from noise nuisance, as set out in Policies 7, 16 and 33 of the City Plan 2019 - 2040 (April 2021). (R13ED)

- 5 You must store and dispose of all waste and materials for recycling and make the storage available to all stall holders. The street must be cleared of all waste and materials for recycling connected with the market when the site is vacated at the end of each trading day.

Reason:

To protect neighbouring residents from noise nuisance, as set out in Policies 7, 16 and 33 of the City Plan 2019 - 2040 (April 2021) and the Environmental Supplementary Planning Document (February 2022). (R13FC)

- 6 Any stalls involved solely in the preparation of hot food shall be located towards the northern end of Aybrook Street as shown on drawing MOX-DP9-XX-A-01\_0, titled 'Marylebone Farmers' Market - Hot Food Stall'

Reason:

To protect neighbouring residents from noise nuisance, as set out in Policies 7, 16 and 33 of the City Plan 2019 - 2040 (April 2021) and the Environmental Supplementary Planning Document (February 2022). (R13FC)

- 7 You must display a contact address and telephone number of London Farmers' Market Ltd, and a contact number of the market Manager at the site from 0800 to 1600 every Sunday the market is open.

Reason:

To provide visitors and people in the neighbouring premises with contact details of the applicant, if they have any questions or complaints about the market.

- 8 You must not play live or recorded music on the site, and you must operate the market in accordance with the details set out in the approved noise prevention plan.

Reason:

To protect neighbouring residents from noise nuisance, as set out in Policies 7, 16 and 33 of the City Plan 2019 - 2040 (April 2021) and the Environmental Supplementary Planning Document (February 2022). (R13FC)

- 9 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.

- 10 At all times the hereby approved market is in operation, it must be managed by you in accordance with the operational details as set out in the following documents which demonstrate how your personnel will marshal any motor vehicles which enter and leave the market to and from any buildings on Aybrook Street:
- Document from DP9, titled "Additional Information - 07.10.2022 - Farmer's Market - 22/04627/FULL".

Reason:

In the interests of public safety as set out in Policies 24 and 25 of the City Plan 2019 - 2040 (April 2021).

- 11 None of the hereby approved market stalls, their associated operations or furniture, or any of the process of setting up or packing away the market operations and stalls shall be positioned or undertaken in such a way so as to obstruct any adjoining building entrance or exits.

Reason:

To make sure that there is reasonable access for people with disabilities and the occupants and users of the buildings surrounding the site, as set out in Policy 38 of the City Plan 2019 - 2040 (April 2021).

**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 the City Plan 2019 - 2040 (April 2021), neighbourhood plan (where relevant), supplementary planning documents, the London Plan (March 2021), 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 You are advised that any awnings on the stalls should be positioned so they do not impact on residential windows. Please review any stalls with awnings especially on the southern section of Aybrook Street, running alongside Faraday House where the awnings may impede residents from opening their windows or obstruct their views.

- 3 You are reminded of the need to ensure that all waste and recycling is appropriately removed and disposed of and to clean the street after the market has taken place. Condition 3 of this consent requires that outside of the market hours 'the street shall be cleared of all materials, produce, waste, spillages and equipment connected with the market'.
  
- 4 Before you commence the use of the hereby approved market, you have to secure all traffic orders and/or parking restrictions required by the Council as Local Highway Authority. You are responsible for any associated fees and costs for any necessary traffic orders and/or parking restrictions.

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.