

**TOWN AND COUNTRY PLANNING ACT 1990  
ACQUISITION OF LAND ACT 1981**

**INQUIRY INTO:**

**The London Borough of Haringey  
(Wards Corner Regeneration Project)**

**Compulsory Purchase Order 2016**

**Proof of Evidence of**

**Gary Saunders  
Independent Market Expert**

**on behalf of Haringey Council**

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## **SECTION 1: Personal Particulars and Professional Background**

- 1.1. I am Gary Saunders, Managing Director of Saunders Markets Ltd. I have been personally involved in the management of markets and retail related events for thirty years. I am the second generation of my family to work within the industry. The length of time I have spent within the industry has allowed me to gain extensive knowledge of the factors that affect small independent traders and the factors that have a direct effect on a market.
- 1.2. The core business of Saunders Markets Ltd is the management of open air retail sites containing small independent retailers. We currently operate at six regular locations comprising 11 trading days per week and deal with approximately 650 individual lettings to traders per week. We also manage other areas of business such as the operation of seasonal pop up markets within shopping centres and town centres, as well as large Bank Holiday events. The final division of our business is the provision of short term market management arrangements, alongside a consultancy service for both private and local authority clients.
- 1.3. We have two recent experiences of hands-on market relocations: the first is having managed the successful relocation of the Western International Sunday Market in 2008. This involved moving approximately 300 traders to a new location with all of the associated planning and negotiations for each individual trader. Secondly, we are the management team at the New Covent Garden Market, where we are in the middle of a complete market rebuild whilst the entire market continues to operate. This has required two large relocations of 200 retail traders and 38 wholesale traders so far, the latest relocation was in March 2017. Further relocations of the whole market (400 retail traders and 60 wholesale traders) are planned throughout the remaining build plan until completion in 2022.
- 1.4. Although both of these relocations concern a mix of open air traders with portable stalls and indoor wholesale traders, the issues of location planning, continuity, trust, maintaining customer awareness, communication and rental negotiations are factors that apply to all small independent traders alike, including those in the Seven Sisters Market.

## **SECTION 2: Role and Objectives of the Proof**

2.1. There are five main objectives of the proof:

- i. To review the existing state of affairs and operations at the current Seven Sisters Market (“the Market”), which I consider in Section 3;
- ii. In Section 4 I examine the Licence Fees paid by the Traders in the past, their current fees and the rent structure proposed by the DDV in the Temporary Market and the New Market Area;
- iii. In Section 5 I assess whether the undertakings provided by Grainger in the Section 106 agreement (“s.106”, CD4/28) and the Draft Deed of Variation (“DDV”, CD4/38) serve their purpose of offering a viable plan and all reasonable assurances that as many Traders as possible and as want to will successfully navigate the two transitions from the Market to the Temporary Market and from there to a thriving and buoyant New Market Area;
- iv. In Section 6 I consider the report on the Market produced by Urban Space Management in 2008 (CD11/6);
- v. Finally, in Section 7 I respond to issues in the Market Traders’ Statement of Case (CD7/4) which relate specifically to the Market. I also address the Wards Corner Coalition scheme.

2.2. I was approached by Mr Kiddle of Grainger in February 2017 to draft this Proof of Evidence. I was asked to comment on the current state of the Seven Sisters Indoor Market and on the obligations for re-providing the Market set out in the s.106 agreement between Grainger and the Council. I was also asked to make any recommendations I judged necessary for expanding and improving the s.106 obligations to ensure the success of the New Market Area.

2.3. Since February 2017, I have carried out a very detailed analysis on the existing s.106 obligations. All of the recommendations that I judged were important to the Market and its Traders have been accepted and incorporated in the DDV across a number of drafts. Without waiving privilege on these documents, my advice has resulted in the following changes, among others, now contained in the DDV:

- i. Establishing the scheme of Licence Fees for the duration of the Temporary Market and the New Market Area;
- ii. Guaranteeing the location of the Temporary Market at Apex House;
- iii. Guaranteeing the Traders’ New Market Area stalls will be the same size as their current stalls;

- iv. Guaranteeing the Traders' Temporary Market stalls will be the same size or at least 90% of their current stalls;
- v. Advising that the relocation should be free to Traders and that the budget should not be linked to the rateable value of their stall.

- 2.4. I confirm that the DDV reflects my advice and that I support the content of the DDV entirely. If I did not support the obligations or approach taken in the DDV towards the Market, I would have advised Grainger and the Council of this and I would state the nature of my objection in this Proof.
- 2.5. I am now confident that all reasonable protection and guarantees have been provided in the s.106 and DDV and that the Traders and the Market stand the best possible chance of surviving and thriving in the New Market Area under the Order Scheme.
- 2.6. My comments are based on the DDV dated 16<sup>th</sup> June 2017 (CD4/38); should any changes be made to the DDV thereafter, I reserve the right to deal with those changes in my oral evidence.
- 2.7. I confirm that the evidence I have prepared and provide for this inquiry is true and I confirm that the opinions expressed are my true and professional opinions.

### **SECTION 3: Review of the Existing Market Operation**

- 3.1. Here I review the Market's current state and how it is operated. I discuss the Order Scheme and Grainger's obligations towards the Market in Sections 4 and 5. Photographs of the Market are attached at Appendix 1.
- 3.2. The current Seven Sisters Indoor Market ("the Market") is a collection of independent traders ("the Traders") who have created a vibrant retail and social environment within a rundown building. Having grown up around markets and making a career out of their management, I have a vested and personal interest in the survival and expansion of markets. As successful as the Market is, however, it is apparent to me that change is inevitable and indeed required. The current building and its associated services are in urgent need of modernisation. This was noted as far back as 2008 in the "Seven Sisters Market Report" compiled by Urban Space Management ("the USM Report", CD11/6), which I examine in detail in Section 6.

#### **i) Brief History of the Market**

- 3.3. The Wards Corner Department store opened in the first decade of the twentieth century and traded until 1972. The current market format emerged in 1984 and has been in operation continuously ever since. I summarise here a brief history of the Market (largely taken from the USM Report):
  - i. The Market was set up in 1984 and was run by an individual trader, Mr R Oakley, on a 20 year lease (p.7, USM Report);
  - ii. In 1984 the traders were mainly White British, before expanding to include Asian, Afro-Caribbean and African traders (p.7);
  - iii. In 1996 there were several black or ethnic minority traders but no Spanish-speaking traders when USM visited the Market (p.7);
  - iv. In 1996 the Market was stalling, as were many other markets at the time: there were a lot of vacant units at the back of the Market and few customers (p.7);
  - v. The Latin American presence in the Market began in about 2000: Latin American traders from the Elephant & Castle Shopping Centre market needed space and moved into the Market, along with Colombian and Brazilian traders from Finsbury Park (p.8);
  - vi. In 2001, Mrs J Oakley took over the operation of the market and the lease from LUL. On 15<sup>th</sup> September 2006 she had a five year lease on the Market running from until 2011 (p.7);

- vii. By 2008, 23 of the 46 traders originated from Latin America and were mainly Spanish speaking and a “few units” were vacant (p.8).

**ii) The Operation of the Market**

- 3.4. The Market is currently owned by London Underground Ltd (“LUL”) and is leased to Market Asset Management Seven Sisters Ltd (“MAMSSL”), which has operated the Market since September 2015. MAMSSL recently concluded a new lease with LUL for five years at £60,000 p.a. plus small inflationary increases each year.
- 3.5. The Market is accessed via three small entrances directly off the Tottenham High Road and a double door rear entrance for servicing. The Market has a gross internal area of 9,730 sqft. Of this gross space, 6,200 sqft is rentable by Traders; 408 sqft is made up of a management office and toilets (giving a total area in use for stalls and services of 6,892 sqft). The remaining 2,838 sqft is circulation space for customers. This means that 70% of the gross internal space is used for stalls and services and 30% for circulation. This is not uncommon for older markets. Modern best practice, however, is to construct new market halls with a ratio of used space to circulation space of 55:45.
- 3.6. The result of the Market’s high proportion of used space is a cramped feeling in the aisles between stalls when it is busy. One view is that this bustle adds to the ambience and character of the market. The other is that narrow crowded spaces put off potential casual customers and shortens their visits. In my view, the modern practice of allowing more circulation space creates a much more pleasant and inviting environment for customers. As discussed below, one benefit of the Temporary Market and the New Market Area is that they provide far more circulation space, creating more room for more customers to enter the Market, more room for seating and a more attractive space.
- 3.7. There are 60 individual units of approximately 100 sqft. These units are created by using wooden frameworks to subdivide the Market’s internal space. Whilst this gives the Market the “non-chain store” feel which is so refreshing, these units are in need of updating as I discuss below (paras 3.13-21).
- 3.8. The units are rented on short term licences either as single units, or they can be joined together to form a larger space. The USM Report notes that in 2008, the 60 units were used for 36 separate businesses (p.1). Gradual creeping extensions and unauthorised mezzanines have significantly increased the “official” rented size of some stalls, however. As these extensions are not permitted under the terms of the Traders’ licences and as the individual sizes of these have not been formally measured, they have not been taken into account in any discussions. As I explain below, the current management company is working to address the Traders’ use of additional space (on which they do not pay rent).

- 3.9. Licence fees are charged per square foot (“sqft”) of space. The majority of Traders pay average fees of £60/sqft per year, for units within the market and which do not face onto the High Road (“internal” units). Nine units have frontage directly onto the High Road (“front” units) and these Traders pay an average of £64/sqft per year.<sup>1</sup> It is very normal to have variations in rents charged within a market; Traders’ licence fees can be affected by their location within the market, their product, negotiations and other factors. I discuss this further in Section 4.
- 3.10. VAT is not charged on Traders’ licence fees and there is no additional service charge: all “services” such as rubbish removal and building upkeep are included in the licence fee. All Traders save one are exempt from NNDR (business rates). Electricity is paid for directly by the Traders through individual meters. Traders heat their own stalls (often through electrical heaters).
- 3.11. As of 16<sup>th</sup> June 2017, the Market is fully let and there is a waiting list of 14 traders offering a range of products and services, including a bakery, hairdressing, legal services and clothing. Eight of these self-identify as Hispanic or South American.
- 3.12. The short term licenses give no security of tenure and can be terminated by the market operator on seven days’ notice or by the licensee on 28 days’ notice.

### **iii) Condition of the Market Hall**

- 3.13. The condition of the building is detrimental to its future. It is apparent that the lack of signage, the cramped feeling within the market and ongoing health and safety legacy issues that require addressing are all contributing to the feeling of a “patched up” market rather than a forward looking enterprise. From my own visits to the site I can confirm that the Market looks tired, run-down and in need of investment.
- 3.14. I have been provided with a “Repairs Assessment Summary Report” prepared by CBRE (“Repairs Report”, Appendix 2). The brief was “to establish the general condition and prepare approximate budget costs for essential repairs to keep the market premises running safely as a market hall for the next 10-15 years” (p.2). The Repairs Report summarises the current position as follows:

Generally the property was found to be in very poor condition and the remedial works we have recommended are extensive and substantial in nature and cost. If the works are not dealt with in the near future, deterioration will continue and the works would be likely to cost more to remedy in the future. Some of the works should be attended to especially urgently, in particular the matters relating to health and

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<sup>1</sup> The nine “front” units range in both size and rent: from 72 sqft to 520 sqft and in rent from an anomalous £51/sqft to £77/sqft. I have taken the average of these to reach £64/sqft.

safety, including repair and reconfiguration of the electrical systems, fire alarm and detection systems, replacement of rotten and dislodged fascias, and repairs to uneven walkways and flooring. (p.3)

3.15. Appendix III lists the necessary works and estimated costs and here I set out the more significant tasks from a market operator's point of view:

- i. Replacing the incoming electricity mains supply, which is "very old", "beyond its design life" and "frequently overloads";
- ii. Replacing the electrical distribution system and metering to all parts of the Market: the current system "has been expanded without adequate design or documentation", "subtenants/licensees have bypassed sub-meters and increased loading on the system without consent... a source of fire or electrocution risk";
- iii. Demolishing and rebuilding to an appropriate standard the unauthorised "mezzanine storage decks/upper floors/ceilings";
- iv. Replacing the "defective and inefficient" heating system, gas intake, boiler and its controls;
- v. Replacing the fire alarm system throughout the building: the "current system is not certified" and parts of it are of "different ages";
- vi. Replacing the lighting throughout the building;
- vii. Remedying the lack of ventilation which is currently "inadequate";
- viii. Repairing the damaged parquet flooring and carpeting throughout;
- ix. Refurbishing existing women's and men's toilets and installing an accessible toilet;
- x. Rebuilding the unit partitions; and
- xi. Undertaking a refurbishment and demolition asbestos survey.

3.16. The Repairs Report lists many other issues which may be more structurally significant, but these are the ones which would stand out in particular to a market operator. Further, it is clear that these repairs would be to "make do" and keep the market hall going: the Report stops short of estimating the far larger sums that would be needed to address the fundamental issues with the whole building:

As mentioned above, we have not included for repairs to the corner building to the left (South) of the market premises or the offices/residential properties above the market premises. However it was clear from a cursory inspection of these excluded parts that

they were vacant and in very poor condition. They were derelict and no longer wind and water tight. We are advised that leaks (caused by roof and cladding failure) to the excluded upper parts above the market hall have resulted in water ingress and damage within the market premises. We have not included cost for the repairs required to the upper parts, but the costs would be substantial and easily run into the tens if not hundreds of thousands of pounds. Ultimately, repairs to the parts above the market hall would be required to facilitate the safe continued use of the market premises. We consider this needs urgent attention. (p.4)

3.17. It is clear, therefore, that there are significant and pressing issues that would need investment and attention in the Market in the absence of the Grainger scheme.

3.18. Since October 2016 there have been meetings of the “Seven Sisters Market Traders – Steering Group”, attended by Traders, Grainger and MAMSSL, to discuss the Market’s future and maintenance issues (see Minutes appended to Ms Johnson’s Proof). During these meetings, the following issues have been raised by Traders or management as needing attention, many of which mirror those identified in the Repairs Report:

- i. “Leaking roof” leading to some Traders placing buckets in their stalls (Minutes, 24<sup>th</sup> November 2016);
- ii. Electrical systems being “overloaded” (Minutes, 24<sup>th</sup> November 2016; 6<sup>th</sup> April 2017);
- iii. Unsafe/unlawful storage arrangements and mezzanines (Minutes, 2<sup>nd</sup> March 2017);
- iv. Defective heating system which “never worked correctly”, and the “very old boiler” (Minutes, 24<sup>th</sup> November 2016);
- v. Defective fire alarm systems (Minutes, 2<sup>nd</sup> March 2017);
- vi. Inadequate extraction/ventilation systems producing unpleasant smells (Minutes, 2<sup>nd</sup> March 2017);
- vii. “Defective flooring” (Minutes, 2<sup>nd</sup> March 2017; 6<sup>th</sup> April 2017);
- viii. The toilets are repeatedly vandalised: locks broken, hand dryers pulled off the walls and towels stolen (Minutes, 2<sup>nd</sup> March 2017);
- ix. The need for increasingly intense pest control (rats and cockroaches) (Minutes, 24<sup>th</sup> November 2016; 2<sup>nd</sup> March 2017; 6<sup>th</sup> April 2017); and
- x. Poor rubbish clearance and some Traders’ poor food hygiene in catering units (Minutes, 2<sup>nd</sup> March 2017; 6<sup>th</sup> April 2017).

3.19. Individual Traders have also shown an awareness of the need for renovations, in responses to a “Market and Shop Business Survey” conducted by URS in 2012 as part of the Equality Impact Assessment undertaken by Aecom for Grainger’s May 2012 planning application (“the 2012 Business Survey”, CD11/4). Traders were asked 22 questions about their situation and views on the Order Scheme in 2012.

3.20. Answers to Questions 16 and 17 – asking for “comments regarding the effects of the proposed development” – included:

- i. “I think works will attract new costumers [sic]”;
- ii. “Clients would enjoy a nicer place. This is not nice as how it is now. This is very old. What we need is to maintain the business that are running at the moment [sic], and maintain the same rent. Put it nicer, [sic] All this looks dirty”;
- iii. “People will be happier as new place will be prettier”;
- iv. “More clients, place will be nicer”.

3.21. It is therefore very clear that the Market is in need of significant investment even to maintain its current state and without addressing deeper structural issues. Traders and management have long been aware of numerous systemic and cosmetic issues which detract from the Market’s ability to appeal to customers.

#### **iv) The Composition of the Market**

3.22. The composition of a market often changes and is subject to “churn” as traders come and go. This is a normal and healthy aspect of life in a market and this Market is no different.

3.23. There are 38 Traders in the Market at present. The current make-up of the Market by business is:

- i. 36% services, hairdressers, nail bars, money transfer, lettings and legal advice;
- ii. 22% general retailers including DVDs, home-wares, fabric and fashion;
- iii. 22% food and produce, including a butcher, mini-supermarket, and fruit and vegetables;
- iv. 20% hot food traders (who also have seating areas).

3.24. The March 2017 Diversity Monitoring Baseline Study (“2017 Diversity Study”, CD4/36, p. 14) states that ethnic make-up of stall holders is predominately

“Hispanic/Latino/Spanish”: 23 out of 31 respondents or 76%. This group occupies approximately 83% of the total space in use.

3.25. The USM Report states that:

- i. When the Market was established in 1984, the tenants were initially White British, before expanding to include Asian, Afro-Caribbean and African traders;
- ii. In 1996, when USM visited the Market there were several black or ethnic minority traders, but no Spanish-speaking traders;
- iii. The USM report noted in 2008 that 23 out of 46 the Traders were either Latin American or Spanish speaking; the remaining 13 Traders were English, Afro-Caribbean, European or African (p.8).

3.26. It is therefore clear that over the years there have been significant changes to the composition of the Market as a whole. This trend has continued, with a number of changes to the list of Traders over the past five years, as can be seen from Schedule 7 of the s.106 agreement, compiled in July 2012. Schedule 7 lists 38 Traders, of which only 14 were still operating from the Market in February 2017. The other 24 units have changed hands, many more than once since July 2012.

3.27. This general process of “churn” in the Market is also demonstrated by two surveys of the Market, one in 2012 and one in 2017: both surveys document young businesses of less than two years’ standing, as well as more established businesses, some of which have been there for over ten years.

3.28. The 2012 Business Survey shows that, of the 35 businesses which responded to Question 4 (“How long has the business operated at Seven Sisters market”):

- i. Three answered “less than 12 months”;
- ii. Four had been there for “more than 12 months but less than 2 years”;
- iii. Three answered “more than 2 years but less than 5 years”;
- iv. 17 said “more than 5 years but less than 10 years”;
- v. Eight businesses answered “more than 10 years”.

3.29. The 2017 Diversity Study states that, of the 20 businesses which responded to the question “How many years has your business been trading”:

- i. One business answered “less than 12 months”;
- ii. Two answered “between one and two years”;

- iii. Three answered “between two and five years”;
- iv. Five answered “between five and ten years”;
- v. Nine had been operating from the Market for “more than ten years”.

3.30. This data suggests that the Market is performing well and is in robust health. The Market is clearly not static: Traders come and go over the years, regularly setting up new businesses. There is also a core of well-established businesses of some years’ standing and (as of 16<sup>th</sup> June 2017) there is a waiting list of 14 traders ready to occupy vacant stalls. These are all positive signs in a Market.

#### **v) Trading Hours and Services**

3.31. The Market’s trading hours are:

9 am to 7 pm Monday – Thursday

9 am to 8 pm Friday and Saturday

Sunday (closed)

3.32. Sunday opening is under review. Sunday trading is undoubtedly beneficial: it is a far busier and more profitable trading day than Monday. I am instructed that there are many Traders who have expressed a wish to trade on Sundays in meetings with Grainger’s Mr Kiddle. There is a security issue, however, in that the stalls are not all individually lockable (although the Market itself can be locked). So those who cannot or do not wish to trade on a Sunday would leave their stalls vulnerable if the Market is opened up on a Sunday and they were absent. It is therefore an all-or-nothing situation: seven days a week or no Sunday trading.

3.33. Seven day trading can be very demanding for independent sole traders: some Traders will not be able to open every day of the week even if they wished to. I have experience where a market operator has tried to enforce seven-day trading and been unsuccessful, damaging his relationships with his traders in the process. Flexibility is therefore essential when trying to introduce additional trading days and it should not be compulsory under the licences for the Temporary Market or the New Market Area. I note here that the Temporary Market and the New Market Area will have individually lockable stalls and I consider the impact of having 52 additional and profitable trading days on Licence Fees (para. 4.109).

3.34. The Market has good loading and delivery facilities. There is also limited parking available, although I note that the other Markets surveyed in Section 4 below do not have trader or customer parking, save for Wood Green which is part of a larger shopping centre and there is access to a multi storey car park. I discuss the situation in the Temporary Market and New Market Area below (para. 5.172).

## vi) Current Management of the Market

- 3.35. It is apparent that the Market has been somewhat lacking in structured management over the last few years. The issues which have arisen appear mainly to have come about prior to MAMSSL's term as operator, although the uncertainty around the Market's future will have made its position difficult as well.
- 3.36. These issues arising out of lax management practices include the unlicensed and unauthorised construction of mezzanine areas above units; the gradual incursion of permanent structures onto the Market's public areas; and unauthorised alterations to services, including alterations to electricity supplies. The Traders' ad-hoc and unauthorised changes to units and services will need addressing in the current Market and in the new Market. I understand this is being tackled by management through discussions with individual Traders, explaining the need to stay within the area specified on their Licence and for which they pay fees.
- 3.37. I do not mention these issues in order to criticise previous or present managements but as part of the picture which demonstrates that the Market has not been controlled or managed in a manner that would maximise its potential. It has the look and feel of a market that lacks direction and structure, where the individual traders have created the best environment out of what they have, with nobody considering how the Market operates or presents itself as a whole.
- 3.38. Graphic examples of this include the signage and entrances to the Market, which are shabby, out of date and very hard to see (Appendix 1). The Market's prime position next to a busy Underground station entrance has not been exploited to anything near its full potential. Instead only the Traders who occupy the few stalls which front directly onto the High Road have been allowed to benefit from the Market's prime location, arguably to the detriment of the rest of the Market.
- 3.39. This has been the case for many years: the USM Report noted in 2008 that "The entrances are not easy to pick out and are cluttered with signage. External signage for the market is incoherent, often out of date and barely visible" (p.11). It is also borne out by online reviews:
- i) London Town Information notes that "Even though it's right next to Seven Sisters Tube, you could easily walk past the covered Seven Sisters Market if you didn't know it was there. Hidden away behind a row of shops, the white double doors are the only indication from the outside that it's there"<sup>2</sup>;

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<sup>2</sup> [http://www.londontown.com/LondonInformation/Shopping/Seven\\_Sisters\\_Market/6dc3/](http://www.londontown.com/LondonInformation/Shopping/Seven_Sisters_Market/6dc3/)  
accessed on 9<sup>th</sup> May 2017.

- ii) The most recent Trip Advisor review on 30 September 2015 calls it: “A Hidden Treasure: ...Good job I had google maps [sic] on my phone as could easily have walked past without realising it was there - but once inside what a great find”<sup>3</sup>.

3.40. From my own visits I confirm that the Market desperately needs an attractive, eye catching entrance; the benefit of this simple change to make the Market visible to casual visitors on the High Road would be enormous. I address the proposed changes in Section 5, which I believe will hugely improve the current situation.

3.41. Similarly, the Market has no social media presence. There is a very basic website which gives details of opening times, address and a list of business types.<sup>4</sup> There is a social media presence for opposition to the Order Scheme (such as the Wards Corner Community Coalition Facebook page) and protesting the loss of the Market, there is no organised promotion of the Market itself as a place to shop and support. Again, in 2008 the USM Report stated that

The market managers [the Head Leaseholder] do not undertake marketing for the market as a whole. That is left to the individual traders e.g. there is no website for the market, but several of the traders advertise in Latin American newspapers as a group. (p.8)

3.42. I have little doubt that much of the Market (all except the High Road units) receives very little passing or casual trade and instead relies heavily on existing customers and word of mouth.

3.43. The Market would therefore benefit enormously from a coordinated marketing program, which should be run by the Market Operator using material supplied by Traders. Using social media to promote markets has proved to be very successful, particularly through Facebook. At the top end of the spectrum for indoor venues, Borough Market has 83,000 “likes” on its Facebook page and Greenwich Market has 11,000 “likes”. Even outdoor markets like North Weald in Essex, Dagenham, or Wellsbourne in Warwick have in excess of 10,000 “likes” each.

3.44. Once a Facebook page is “liked” by a Facebook user, the user receives updates on that page’s activity and becomes a prospective customer. This provides the markets with excellent opportunities to update these potential customers on dates when the markets will be held (and locations if appropriate); on new products or stalls in the markets; on special events, promotions or competitions. Social media is also an opportunity for spreading word about the markets’

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<sup>3</sup> [https://www.tripadvisor.co.uk/ShowUserReviews-g186338-d2470227-r315141299-Seven\\_Sisters\\_Indoor\\_Market-London\\_England.html#CHECK\\_RATES\\_CONT](https://www.tripadvisor.co.uk/ShowUserReviews-g186338-d2470227-r315141299-Seven_Sisters_Indoor_Market-London_England.html#CHECK_RATES_CONT) accessed 10<sup>th</sup> May 2017.

<sup>4</sup> <http://sevensistersmarket.co.uk/visit.html> accessed 12<sup>th</sup> June 2017.

existence and attracting new customers. Using Facebook as an example again, when a Facebook page is “liked” by an individual, this is visible to their “Facebook friends” who will then learn about the market. Of course it is impossible to quantify the percentage of any given market’s customers which derives from a social media presence but it is absolutely clear that having an interactive presence can have a real impact on a market’s prosperity.

3.45. The Traders have also identified this need to advertise the Market, as shown by answers to Question 15 of the 2012 Business Survey: “What additional measures, if any, do you feel will be necessary so that your business can continue to operate in the longer term?”

- i. “To advertise the business and allow the busuness [sic] to maintain the same prices, so same clients can afford it”;
- ii. “More advertisement will atrtract more customers [sic]”;
- iii. “Enable old customers to find us”.

3.46. At present the Market does not hold many formal events, but there are casual and ad-hoc gatherings on many evenings, usually on Fridays and Saturdays. There is great scope for social events to be a way of publicising the Market and relocations.

3.47. Of course, better marketing does not require new premises; I mention it here to explain the current situation and to demonstrate yet again the enormous scope for improving and streamlining this Market. I address the DDV obligations for advertising below (paras 5.126-133): the Market Facilitator will be responsible for advertising the Temporary Market and New Market Area. I am confident that this will be very helpful as the Market undergoes the relocations.

## **vii) Conclusions**

3.48. In summary, my conclusions on the Market’s state are that:

- i. The Market is unique, vibrant and trading to capacity: Traders are being successful in difficult conditions.
- ii. The Market has very little appeal to anybody not already using it. The entrances are extremely poor and undefined, which does not encourage a casual shopper. There is scope to create a high profile, modern, clean, spacious market which can only encourage additional footfall.
- iii. The condition of the building means that change is inevitable and indeed required in order to secure the future of the Market (see Section 4).

- iv. The Market is not operating at anything like its business potential: it lacks direction, leadership and a basic marketing plan. This is not a criticism but an indication of the scale of the opportunities available.

3.49. In my view, this Market is ripe for change and development to enhance its current offering and composition, not to change it. The DDV guarantees discussed in Sections 4 and 5 provide every reasonable assurance that this Market can relocate successfully back into the New Market Area and thrive. This Scheme represents the Traders' best possible opportunity to keep and improve their Market.

## SECTION 4: Licence Fees

- 4.1. In this section I examine the current and previous licence fees charged in the Market and examine comparable situations in nearby markets. I then address the provisions in the s.106 agreement between the Council and Grainger (“the s.106”) and in the Draft Deed of Variation (“DDV”). These provisions fix the Traders’ licence fees throughout both relocations until two and a half years into the opening of the New Market Area.
- 4.2. In summary, my conclusions are:
- i. I am as certain as I can be that the Traders can cope with the Licence Fees fixed in the DDV. In fact, over the five years under the fixed scheme, some Traders will pay less than they do now. Among Traders whose fees increase, including VAT the largest increase is 33.55% over five years.
  - ii. Without the Order scheme, licence fees will almost certainly increase whatever happens to the Market – whether on a “do nothing” basis, or with repairs on a “make do” basis, or under the WCC scheme. VAT is also very likely to be added on to licence fees in any repairs situation.
  - iii. Under any of these options, Traders’ licence fees are likely to be higher than under the Order scheme.
  - iv. Although there is an element of speculation here – given that this is some years away – my instinct is that, in the long term, this trend would continue: the Traders’ fees would be lower under Grainger’s scheme and profits higher than under the “do nothing”, “make do” or WCC options.

### **i) The Current Rent Situation in the Seven Sisters Market:**

- 4.3. I am instructed that LUL leases the Market to the current market operator MAMSSL for £60,000 p.a.
- 4.4. As noted above, the USM Report states that since 2001 the Market had been operated by the “Head Leaseholder”, on a five year lease from 15<sup>th</sup> September 2006 until 2011. The Head Leaseholder was also charged £60,000 p.a. for the lease of the Market from LUL (p.7). The market operator rent has therefore been at the same level for at least a decade, although I understand that it is now subject to small annual increases to reflect inflation.
- 4.5. MAMSSL charges the Traders licence fees which equate to an average of **£64/sqft p.a.** for “front” units facing the High Road (a premium position) and an average of **£60/sqft p.a.** for units inside the Market. This includes services charges (upkeep of the building, rubbish removal and so on). Traders pay electricity fees

individually according to usage in addition. All Traders save one are exempt from NNDR (business rates). MAMSSL is not VAT-registered and therefore does not charge the Traders VAT.

- 4.6. These figures of £60 and £64/sqft have been the average licence fees for at least several years, certainly before MAMSSL took over the market operator lease in early 2015. In my experience it is unusual for market operators to bother with the hassle of raising traders' licence fees if they are not planning to continue operating that particular market. Almost every licence fee rise will involve a degree of negotiation and discussion with most traders and it is therefore a time consuming and delicate exercise. I therefore assume that the licence fees were set at their present levels some time before, possibly some years before, the previous market operator, the Head Leaseholder, stopped operating the Market.
- 4.7. I note that the 2008 USM Report states that in May 2008
- “a central unit in the market (of around 95 sq. ft) rents at between £72-85/week, with the majority of historic traders being on the £72/week. Units fronting the High Road are charged at a higher rate than this, roughly double the indoor amount by area” (p.9).
- 4.8. Paying £72 per week for an entire stall (not per square foot) is a total of £3744 per annum. Dividing £3744 by 95 sqft gives a licence fee per square foot of £39.41 p.a. for an internal unit. The report says that for “units fronting the High Road” the charge is “roughly double”, giving a rough figure of around £80/sqft p.a. for a “front” unit on the High Road.
- 4.9. A licence fee of £39.41/sqft for “internal” units appears to me to be mathematically correct and sounds reasonable for 2008 and this kind of market. However, I believe that the USM Report may be incorrect in asserting that the “front” units paid a fee that was “roughly double” the “internal” units, so around £80/sqft. I have never seen any documents or figures which suggest that the “front” units paid this in the past. Indeed, the “front” units now pay an average of £64/sqft.
- 4.10. It is not impossible that licence fees for “front” units were previously at £80/sqft and have since decreased below this to current levels. It seems extremely unlikely, however, and particularly given that the fees for “internal” units have remained at £60/sqft, which is higher than the 2008 levels of £39/sqft. USM have therefore, in my view, made an error in calculation somewhere with regards to the “front” units.

- 4.11. Therefore as I believe that USM have made a mistake and given that they do not provide any evidence for their assertion that “front” units pay “roughly double”, I do not place any reliance on it.
- 4.12. I also note that USM rely on an average licence fee figure of £31/sqft p.a. (p.9). I am unclear how USM have reached this figure. From the report it appears to have been calculated by estimating the overall annual income from a fully-let market at £190,000 and dividing that income across the 6,150 sqft of space which was then available to let to Traders: £190,000 divided by 6,150 equals £30.89, which was then rounded up to £31/sqft.
- 4.13. It is entirely unclear, however, how or why USM adopted an overall income estimate of £190,000. Further, it is unclear why they used that unconfirmed estimate to calculate rent per square foot per year, when they have quoted a specific and concrete figure of £72 per week for a 95 square foot stall, producing a licence fee of £39.41/sqft p.a. I also cannot understand the basis on which USM have divided £31/sqft into “a service charge of around £17/sq. ft and a rent of around £14/sq. ft” (p.9).
- 4.14. USM’s figure of £31/sqft p.a. therefore does not appear to be based on any concrete figures obtained from the market operator or Traders themselves and is inconsistent with the only specific figure quoted in the Report. It therefore does not appear to me that it is correct that in 2008 Traders were charged a licence fee of £31/sqft; I think that USM have made a mistake in their calculations.
- 4.15. As I am unable to unpick the calculations which led to this figure of £31/sqft and as I consider that it is mistaken, I have not used it in my analysis of previously charged and current licence fees in the Market.
- 4.16. Assuming, however, that the 2008 USM Report is accurate with regard to the quoted figures of £72 per week for an “internal” stall of 95 sqft, therefore, there has been a rise in licence fees charged in the Market from £39.41/sqft to £60/sqft for “internal” units. This represents a rise in licence fees of 52.25% for “internal” units between 2008 and 2015 (at the latest). Given the scale of this increase for “internal” units, it seems likely that “front” units were also charged at a lower rate than at present and that there was also an increase in licence fees for “front” units to their present average of £64/sqft. However, as I have set out above, there is no reliable evidence for what “front” units were paying in 2008 and this is therefore only an assumption.
- 4.17. Since at least 2015, there has been no increase in licence fees.

## ii) Analysis of the Current Situation

- 4.18. In terms of the market operator's lease, in my view a market operator's annual lease fee of £60,000 is extremely low and well below what this sort of market ought to be fetching and certainly below what it could be fetching with appropriate investment and attention. This very low rent is likely to be due to the building's state of disrepair and dilapidation. The existing market hall is in clear need of refurbishment. I note that the USM Report reached a similar conclusion on the situation nine years ago: "We consider that the current rent paid to LUL is pretty low as it reflects the poor state of the building" (p. 12).
- 4.19. The circumstances of uncertainty over the Market's redevelopment will also have contributed significantly to the development of the current unsatisfactory situation. There has been some kind of development application or scheme which would affect the Market going through the planning process for nearly a decade. No market operator or landlord would invest in such a building in the short to medium term. The current situation – however unsatisfactory – was allowed to continue with short term fixes, rather than the significant long term investment that this Market would need if it were to remain in the current building. I agree with the USM Report where it notes that the risk that the Traders can terminate their licences on 28 days' notice would significantly reduce any incentive for managers to undertake the necessary works (p.4).
- 4.20. Similarly, in terms of the Traders' licence fees, I believe that the £60/sqft and £64/sqft averages have been charged for so long through a number of factors; a significant one is the uncertainty regarding the development of the Market. The arrival of the new management company in 2015 will also have affected the rent and kept it lower than might otherwise have been charged in a stable permanent market. In 2008, USM concluded that "the traders currently enjoy the benefits of a low rent. Here this is for a number of reasons, including the management style, condition of the building and the rent to LUL not being too onerous" (p.11). It appears that relatively little has changed since then.
- 4.21. I am instructed that when MAMSSL took over the Market lease from the previous operator in 2015, rents were at their current low level and management practices were somewhat lax and in disarray, as is often the case when management of a market changes hands. Particular issues have arisen with regard to Traders using more space than permitted under their licence (particularly by encroaching on communal space) and there have also been health and safety issues. I understand that MAMSSL have been seeking to address these over recent months.
- 4.22. MAMSSL have clearly therefore decided not to raise licence fees during its first years as market operator in these circumstances of uncertainty over the Market's

future and a change in management practices. In my view it is a sensible business decision for a market operator not to raise licence fees and so avoid increasing the scope for tension and difficult relations with their traders in already potentially difficult circumstances.

4.23. I think this is why the licence fees are at their current static levels. It is clear that the Market can sustain these fees given that it is currently at full capacity and has a waiting list of 14 traders. In my view, however, it is entirely clear that the Traders can expect licence fee increases in the near to medium future under any circumstances, irrespective of whether:

- i. The Market simply continues as it is, without Grainger's scheme or any refurbishments, on a "do nothing" basis;
- ii. Refurbishment works are carried out on a "make do" basis within the existing shell; or
- iii. Refurbishment works on the lines envisaged by the Wards Corner Coalition scheme (also called the "Alternative Scheme").

**i. Option 1: "do nothing"**

4.24. The first situation, that the Market continues without any investment at all, seems extremely unlikely to me from a market operator's point of view. A rational investor holding an asset like the Market (either the premises or the lease) would not simply allow it to continue to degenerate further over the years without making any effort to ensure a continuing return on their investment.

4.25. However, even if the market operator or landlord failed to invest at all in the Market, rents are almost certain to increase over the next few years anyway. The Market appears to be undervalued by comparison with similar operations elsewhere and the existence of a waiting list of traders suggests that demand outstrips supply for space, putting upward pressure on licence fees.

4.26. Although predicting licence fee increases in this situation over the next five years is hard, the facts that the Market is full and there have been no increases for years strongly suggest that current rents could be raised. In my view, this would be done in increments to achieve fee levels of, conservatively, around £75 – £80/sqft for the "internal" units and around £100/sqft for "front" units after five years. This is about in line with roughly similar operations elsewhere (see Table at para 4.61). This equates to rises of 25–56.25%, around 8% p.a. across the Market.

4.27. On this note, I am informed by MAMSSL that a licence fee rise is expected in the short term, most likely during winter 2017-18. The planned increase for 2017 is

10%, raising the rent to £66/sqft for “internal” units and £70.40 for “front” units, with a further 10% increase planned for 2018, to £72.60/sqft for “internal” units and £77.44 for “front” units.

4.28. Any rises after this in the current situation will be in line with inflation. This is unsurprising given that fees have remained static for at least two years, probably longer. It is obviously unreasonable for Traders to assume that they can continue at the current rates indefinitely.

**ii. Option 2: “Make Do” basis**

4.29. In terms of the second situation – the Market being left as it is with only those refurbishments necessary for maintaining the building – I refer to CBRE’s “Repairs Report” (Appendix 2). As discussed above in Section 3, it is clear from the Repairs Report that these repairs would be merely to “make do”: keeping the market hall going but not addressing the fundamental issues with the building as a whole.

4.30. Even within the scope of assessing the repairs necessary to keep the Market going, the Repairs Report also makes clear that there are associated costs which have not been included. The Repairs Report notes that “We have not included costs for re-installing and re-fitting each stall/ retail unit to the bespoke requirements of each licensee” nor for “the replacement of any Landlord's fixtures or fittings which may be missing from the properties, which we have not been made aware of” (pp. 3-4).

4.31. Further, the Repairs Report expressly limits itself to considering the cost of works “undertaken in a single phase. Staged completion may increase costs above those reported here” (p.5). There is neither a budget for Trader compensation for lost business whilst the works are being done, nor for relocating them to a temporary market to enable trading continuity.

4.32. The Repairs Report also notes that

To complete the scope of works we have allowed for in this report, it would be necessary to relocate the subtenants/licensees for the duration of the works, which we consider will be approximately 20 weeks on site. There would therefore be additional costs to consider associated with such re-location and provision of alternative accommodation during the works. We have not included any costs in this report for re-locating or providing the subtenants/licensees with alternative accommodation during the works. (p.5)

4.33. All Traders would therefore need to leave the Market for between four and five months during the refurbishment period. This means that additional sums would

be needed for relocating the Traders or subsidising their lost income during the refurbishment period. Alternatively, Traders would be at risk of being unable to trade for four to five months and losing custom. It should therefore be noted that either my licence fee calculations for this scenario may be too low to fund the costs that would actually be incurred by this refurbishment (certainly if it were to be done to the level of guarantees in the DDV), or that the refurbishment puts the Traders at serious risk.

4.34. CBRE's estimate is £1,239,000 for the "make do" works needed to keep the building functioning (including VAT, given that the property is not elected for VAT). On this basis I have calculated the licence fees required to finance these works. If an operator were to take a 10 year lease at the current rent and fund the "make do" works – allowing for the capital repayment, operating costs and a margin for the operator – I estimate that fees would need to rise to £85/sqft (plus VAT) for "internal" units and £112/sqft (plus VAT) for "front" units to make it viable. This equates to immediate rises of, respectively, 70% and 110% including VAT. I have set out my workings for these calculations at Appendix 3.

### **iii. Option 3: the Wards Corner Coalition Scheme**

4.35. The third situation – refurbishment as envisaged by the Wards Corner Coalition scheme – would also mean that the current rates for the market operator's rent and Traders' licence fees would rise.

4.36. If the Market were to remain in the current building, then any long term future agreement between landlord and market operator would be certain to contain a schedule of works which would require significant capital investment into the fabric and upkeep of the building. If the Order scheme had not been brought forwards, I do not think that the Market would be allowed to continue in its present dilapidated, shabby state, well concealed from passers-by and without any coordinated marketing or public presence.

4.37. This would have significant upward pressure on licence fees in two ways:

- i. The level of investment and refurbishment which would be required would undoubtedly create enormous pressure to increase the licence fees charged to Traders. It is inconceivable that any investor would be able or willing to absorb the costs of carrying out these extensive building works in order to maintain the Traders' current licence fees.
- ii. Any capital investment of this type (and, for clarity, the same applies to Option 2, considered above) would almost certainly result in the building being brought into the VAT scheme by whoever funds the project, in order to recoup the 20% VAT charged on building costs. This would

result in Traders then being charged VAT on their licence fees. Charging the Traders VAT is therefore, realistically speaking, almost inevitable although it would be a business decision for whoever took on the project. I cannot imagine a situation where an investor would spend the large sums required to refurbish a market and elect not to recoup the 20% VAT incurred on building costs, especially at these levels.

- 4.38. A report by Arcadis has estimated the likely costs of undertaking the WCC scheme are around £3,091,000 for the market hall alone (see Mr Fourt's Proof). The only indication of costs given by the WCC is "A provisional costing has suggested the vision may cost up to £13 million" (Design and Access Statement, p. 93).
- 4.39. The WCC scheme also gives no details about rent, saying only that "the Trust has a commitment to the existing licence holders to keep their rent fair and reasonable... Based on current assumptions it is hoped the rental value will not be subject to further increase, however once market factors are better established this may change" (Design and Access Statement p.91). It is clearly envisaged that there will be some increase in licence fees, therefore, but no indication of the scale of the increase.
- 4.40. The lack of detail available for the WCC scheme makes calculating future licence fee levels extremely difficult. As I discuss in Section 7 below, the main issue with this scheme is that there is no definite relocation and continuity plan. There is a reference to the Market being relocated into the "corner building" during the works but, by my calculation, this will only accommodate 37% of the Traders.
- 4.41. Given the levels of estimated investment required for this scheme, it is inconceivable that there would not be an upward pressure on licence fees. Licence fees would have to rise, even though the WCC is proposing to manage the market internally and there would therefore be no need to have a profit margin for a market operator.
- 4.42. I believe that there would be – as an absolute minimum – an increase in licence fees to the levels of the fixed scheme of Licence Fees set out in the DDV (discussed below): £75/sqft for Zone A units, £65/sqft for Zone B units and £80/sqft for catering units. I say that this would be the minimum increase because these are genuine figures which have been arrived at after negotiation between a developer willing to fund the project and an operator willing to take a lease; these are figures supporting a live and viable project. With the best will in the world to the Traders, I do not believe that the WCC would be able to charge less.
- 4.43. In fact, it is far more likely that the WCC scheme would require much more significant increases. I note from Mr Fourt's proof that, with the income provided by the DDV-guaranteed licence fees, the WCC scheme is unviable and would make

a loss. The need to avoid making a loss, never mind achieving any profit, will place significant additional upward pressures on licence fees. I also repeat that the business continuity aspect of the WCC scheme remains unproven: this is a major threat to the on-going viability of the Market.

4.44. In my view, therefore, it is inevitable that Traders would be charged higher licence fees in the Market's medium term future:

- i. Even if nothing is done to the Market, given the period of time for which the fees have been static, any market operator is likely to begin testing the waters to see what the Traders could afford and MAMSSL is likely to raise the fees this winter;
- ii. The Market desperately needs investment and cannot continue in its present state for much longer: the investment required would be certain to lead to increased licence fees;
- iii. Any investor is equally certain to seek to recoup VAT costs of the necessary improvements by registering the building in the VAT scheme, such that Traders would therefore be charged VAT.

4.45. Therefore, even supposing that Grainger's scheme never goes ahead, it is my opinion that licence fee rises are near inevitable. If any refurbishment of the Market is undertaken, which is the more likely scenario, then not only will there be basic licence fee increases but VAT is certainly going to be added on top. The only reference to rent levels within the WCC scheme is to "keep rent levels fair and reasonable".

### **iii) Future Rent Levels: Comparator Markets**

4.46. When considering possible future rent levels for the Market, other indoor markets can be studied as comparator cases but these are of limited value. Every management company or operator appears to apply different criteria as to how they arrive at their current rent levels and there are many different factors at play. This makes it very difficult to compare markets directly to any useful extent. Everything is negotiable and nothing is public; in particular traders are not obliged to reveal their turnover or other details to the market operators.

4.47. Below, I examine the rents charged in four different London indoor markets. I have chosen Nags Head and Wood Green because they are very close to the current market and are of similar kinds. The markets at Tooting and Tooting Broadway are further away but are of a very similar nature; indoor markets with operators subletting to small independent traders. All of these markets have a very diverse ethnic mix with African and Asian traders strongly represented.

- 4.48. There is a market at Elephant and Castle which has previously had a significant Latin American element, although this has declined and no single ethnic group is now dominant. It is currently awaiting redevelopment and is not comparable in any useful way with the current Seven Sisters Market: among other factors it has many outdoor stalls and there are fewer traders. It should be noted however that an outdoor unit does cost £88/sqft on an all-inclusive basis.
- 4.49. **Nags Head, Holloway** is perhaps the closest in type and location to the current market. The stalls are very similar in nature to those in the current Market: fresh produce, commodities such as DVDs and clothes and some beauty stalls such as nail bars, although there are no business services such as letting agents. There are approximately 60 units. The management company uses a system of individual rents for each Trader and there is a degree of negotiation for each individual stall. A typical rent at Nags Head is £138/sqft p.a. and each stall is 64 sqft. This includes all services and business rates, save electricity which is charged separately. VAT is not charged. The rent varies and depends on factors such as current supply of space, required opening hours and the proposed commodity for the stall. There is always a premium payable for cooked food stalls, as custom is usually good at these stalls.
- 4.50. In terms of security arrangements, each stall is individually lockable and the market has CCTV coverage. There are three loading bays available for servicing and deliveries to the market. There is no trader or customer parking.
- 4.51. From a trader's point of view, Nags Head is a successful market and this relatively high rent level reflects the demand and vitality of this retail environment. There are a couple of vacancies but not many. The market is open every day of the week.
- 4.52. The current market building at Nags Head does require some updating and investment as it has become rather shabby, particularly its access points, frontage and public entrances. The owners are in the process of improving the building, with particular attention being paid to the public facing areas and signage. They have also recently updated their website, which is now well-designed, informative and uses Twitter, Facebook, Google+, Instagram and YouTube.<sup>5</sup> This is a particular issue for the Seven Sisters Market, which is hard to identify, has poor signage and very limited online presence aimed at promoting the Market itself.
- 4.53. **Wood Green Market** is contained within an area of Wood Green Shopping Centre. It is relatively local, at just under two miles from the current Market and has over 20,000 sqft of net rentable space for traders' stalls, which is far larger than Seven Sisters Market. There are 78 units/stalls in the market. Wood Green

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<sup>5</sup> <http://nagsheadmarket.com/> accessed on 1<sup>st</sup> June 2017.

is operated by Capital & Regional, which developed this market in an area of the Shopping Centre that was deemed unsuitable for their existing tenant base, as it was a large rear corner plot with limited access. It is open every day of the week (with shorter hours on Sunday). The traders have access to loading bays and there are some subsidised trader parking spaces within the complex. There is also public parking in the multi-storey car park near the shopping centre.

- 4.54. Capital & Regional currently charge £40 sqft p.a. plus VAT. This does not include services: electricity and business rates are charged in addition. The “stalls” at Wood Green are very permanent in nature and have the appearance of small shops. There is not much fluidity or turnover of traders, perhaps one or two per year. Every stall is occupied and there is a waiting list of businesses ready to step into stalls which become vacant. The building is well kept up and has no present need for investment. The website is up-to-date and gives details of the stallholders, opening times, events, a floor plan and so on.<sup>6</sup>
- 4.55. I believe that the full market occupancy and waiting list signals that Wood Green is perhaps undervalued but it serves a purpose for the owners of the property. The space used for the market is unattractive to any single commercial entity who might rent it as a traditional shop space. The operator is therefore making a far better use of its space by renting it out comparatively cheaply as a fully let market. I note that in the USM Report the Wood Green market is listed as charging £91/sqft p.a. (p.10). This is a useful indication of just how significantly circumstances can change in a market over such a period of time.
- 4.56. In my view, Wood Green is something of an anomaly in terms of its low rent. It should be noted however, that VAT is charged and the rent does not include business rates or any services, unlike the other markets considered here.
- 4.57. **Tooting Market** is operated slightly differently from Wood Green and Nags Head markets, in that the operator here has over recent years made a concerted effort to improve the offer within the market. This particular operator places much emphasis on offering a wide mix of stalls selling otherwise unrepresented and unusual products and has offered rent incentives along with a very active marketing strategy to assist with this. The model appears to be successful as they will be adding 7,000 sqft of retail space to the market in June 2017. Hot food stalls are charged a premium as they provide a reliable income stream.
- 4.58. There are around 50 units of 100 sqft each, with rents varying between £55 and £80 sqft. This includes business rates but excludes electricity, which is paid separately. VAT is not charged. Their turnover rate of traders is around one or

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<sup>6</sup> <https://www.themall.co.uk/wood-green/shop/market-hall/> accessed on 1<sup>st</sup> June 2017.

two per year and there are currently no vacant stalls. As at Nags Head, there are three loading bays available for servicing and deliveries to the market. There is no trader or customer parking.

4.59. The market is promoted through a lively and well-designed website giving details of its stalls, opening hours, events and information for prospective stallholders.<sup>7</sup> It is a successful market and I note from the website that it has been repeatedly praised over the last 12 months:

- i. Winner of the “Best Small Indoor Market” award at the Great British Market Awards 2017;
- ii. Winner of the TimeOut Love London, 2016;
- iii. Winner of the “Wandsworth Business of the Year” category and “Highly Commended” in the “Best Independent Retailer” category at the Wandsworth Business Awards 2016.

4.60. **Tooting Broadway Market** is also very similar to Seven Sisters in its mix of stalls, which include some fresh produce, clothing and home ware stalls, although this market also lacks the service-based stalls in Seven Sisters Market. The operator currently charges £70 sqft, including business rates but not electricity. VAT is not charged. It has no vacant stalls. It is open seven days a week.

4.61. The market hall is rather old and there is a need for investment in the medium to longer term future but the need is nothing like as pressing as it is for the Seven Sisters market. There are two loading bays available for servicing and deliveries to the market. There is no trader or customer parking. The market promotes itself through a Twitter account with 1,600 followers. The account is very active in posting photographs, event details, reviews and re-tweeting followers’ posts to create an impression of a successful market.

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<sup>7</sup> <https://tootingmarket.com/> accessed on 1<sup>st</sup> June 2017.

**Table: Comparison of Markets with Seven Sisters Indoor Market**

<b>Market</b>	<b>Licence Fee /sqft p.a.</b>	<b>VAT</b>	<b>Average unit size</b>	<b>Days Open</b>	<b>Services in addition</b>	<b>Other</b>
<b>Seven Sisters</b>	£60 (av.)	No	100 sqft	6 days	Rent includes "service charge" Electricity separate	Investment needed No vacancies
<b>Nags Head</b>	£138	No	64 sqft	7 days	Electricity separate	Investment needed Few vacancies
<b>Wood Green</b>	£40	Yes	250 sqft	7 days	Electricity separate	No vacancies
<b>Tooting</b>	£55 – £80	No	100 sqft	7 days	Electricity separate	No vacancies
<b>Tooting Broadway</b>	£70	No	Unknown	7 days	Electricity separate	No vacancies Business rates included in rent

**iv) Recommendation for a Rise in Licence Fees**

4.62. As set out above, in my view, the current licence fees are relatively low compared with what the market operator should be able to charge for a market of this type and in this prime location. These fees would also be unsustainable in the future in any event, given the almost certain requirement for significant investment in the fabric of the building in the near to medium term future. An increase from £60/sqft and £64/sqft would therefore be inevitable, regardless of whether Grainger’s scheme takes place or not.

4.63. The Order Scheme offers an undoubted opportunity to maintain and grow this market, both whilst it is in the Temporary Market and when it returns to the New Market Area. Among other factors, the planned improvements to the quality and safety of the built environment of the New Market Area will be significant and are very likely to prove of great benefit to the Market’s ability to attract visitors. The increased emphasis on the public entrances and the improved signage will certainly attract additional footfall compared with the current situation (discussed above). Mr Beharrell’s Proof provides detail on how the frontage design will “provide a high degree of visibility for the market and the opportunity for extensive signage” (para. 4.5.4, also 3.3 and 4.3.2; and see my Appendix 4).

4.64. From the drawings and plans that I have seen, these improvements in the quality of the built environment, signage, public access and so on will also apply to the Temporary Market.

- 4.65. Indeed, the Market is currently so well-concealed from the casual passer-by and is in such clear need of refurbishing, that any improvements to its visibility and upkeep would be likely to attract more customers. As discussed above, the Market's prime location right over a busy underground station and next to numerous bus routes is almost entirely squandered at present; the potential for attracting more customers is obvious. USM came to the same conclusion in 2008: "there is likely to be very little passing trade... that limits the economic impact that the market can have for its traders. They would make more money, as would the manager, if there were more of a retail environment... created" (p. 11).
- 4.66. Increases in footfall and customer numbers through the physical improvements, in addition to the business improvements brought about by the role of the Market Facilitator (discussed below), will undoubtedly increase levels of trade. Traders' profits would therefore be likely to rise. (I should note that I have not seen figures for any current Traders' turnover or profit levels: there is no obligation on Traders to provide these to the market operator).
- 4.67. Advertising the Market's move to the Temporary Market and its return to the New Market Area – for example through a planned social media campaign – would also attract new customers. As an example from my own experience, an unexpected consequence of the recent Flower Market relocation at New Covent Garden in March 2017 was a dramatic upsurge in members of the public attending what was previously a predominantly wholesale market, entirely due to media exposure and increased social activity. I deal with advertising in Section 5.
- 4.68. With the Temporary Market to ensure continuity during the construction period and the subsequent relocation to a permanent, purpose-built home, Grainger's proposals do everything possible to secure an enhanced future for the Market.
- 4.69. On this basis, a modest rise in licence fees for Traders would be therefore entirely reasonable in my view. The ideal situation would be to raise the fees and fix them throughout the two relocations until the New Market Area is well-established as a thriving market and I discuss the DDV obligations on this below (paras 4.80-102).
- 4.70. Markets are rarely static and there will inevitably be a degree of "churn" among stall holders over these two relocations until the Market is settled into the New Market Area. Any new traders entering the Temporary Market or the New Market Area will have their fees set by the Market Operator in the usual way and the success or failure of those traders can all be gathered as invaluable evidence of what licence fees the New Market Area units can command.
- 4.71. By around two and half years into the occupation of the New Market Area, the Market Operator will be well placed to assess what licence fees the Traders can sustain in the new circumstances of the New Market Area. It will then be entirely

appropriate for the Market Operator to be released from the structure of fixed licence fees applied to the original Market Traders and to begin setting fees at whatever levels the New Market Area stalls command.

- 4.72. In my experience of both indoor and outdoor markets, no financial information is shared between the market traders and the management companies or landlords, so all licence fee-related decisions are made on the perceived situation, anecdotal evidence and the individual operator's experience of that specific market. The only true indicators of the viability of any market are whether there are traders who are paying their rent and the levels of vacant stalls.
- 4.73. All of the market agreements are short term (usually 12 months) and include a four week break clause. If trade diminishes to a sufficiently low level, then traders simply walk away and it is not worthwhile for the operator to pursue defaulting traders for unpaid rent, given the inevitable adverse publicity and the fact that it is very unlikely that the operator would ever recover any unpaid rent.
- 4.74. It is therefore very important to emphasise that setting a viable rent is therefore in the Market Operator's interests just as much as it is in the Traders'.
- 4.75. One reason for saying that the rise in licence fees should be modest is in order to allow Traders to adjust to the introduction of VAT, which is not currently charged in the Market. I am instructed that this will be charged in the Temporary Market and the New Market Area.
- 4.76. The Market Facilitator should address with individual Traders their options over whether to register for VAT and managing VAT-related administration. It will be vital for individual traders to consider whether to absorb the cost of VAT and take a reduction in profits, or whether to register for VAT but have to pass on an increase in prices to their customers.
- 4.77. It is much too complicated an exercise for this Proof to address the issue of VAT now in relation to the situations of individual Traders; it is enough for me to state that the Traders would have options as to how they deal with VAT and this would be part of the Market Facilitator's discussions.
- 4.78. As I have explained above, in my view it is essentially inevitable that Traders would have to cope with the introduction of VAT on their licence fees in the medium to long term future, whether the Order Scheme goes ahead or not. So whilst at least some of the Traders (those who cannot reclaim it) will therefore experience an increase in their business expenses, VAT is inevitable in any event. It is also a tax and not a rise in licence fees as such. In my analysis of the figures below I have therefore expressed licence fees as "EX plus VAT".

4.79. Practically speaking, it is therefore important to acknowledge that VAT will be charged, so that Traders can prepare for this increase in their business expenses. However, it should be noted:

- i. That this increase was essentially inevitable and should not be attributed to Grainger or the Order Scheme per se;
- ii. The increase should not be overemphasised;
- iii. The application of VAT is a major reason why the Licence Fees will remain fixed until 30 months into the New Market Area, as set out below.

**v) The Licences Fees Obligations in the DDV**

4.80. The DDV is an enormous improvement from the Traders' perspective, providing absolute certainty on licence fees over the crucial periods and well into the New Market Area, along with generous discounts for the early stages of both relocations. This will greatly assist the Traders in establishing their businesses in the Temporary Market and the New Market Area.

4.81. Schedule 2 of the DDV (p.7) sets out the Licence Fees for the Temporary Market and the New Market Area in detail and for several different situations:

**Licence Fee** means the following licence fee which (in each case) is based on the current average licence fee in the Market being £60 per sqft or, if the opening of the Temporary Market is significantly delayed through no fault, action or omission of (or by) the Developer, such other licence fee as may be agreed in writing between the Developer and the Council PROVIDED THAT each licence fee shall be subject to an increase of two percent (2%) per annum for:

- i. so long as the Temporary Market is in operation in the case of each Accepted Qualifying Trader; and
- ii. the first thirty (30) months from the opening of the New Market Area to the public in the case of each Accepted Qualifying Temporary Market Trader:

<b>Temporary Market</b>	
<b>Nature/Location of Unit</b>	<b>Licence Fee (£/sqft) (excluding VAT)</b>
Mezzanine	35
Zone A (as marked 'Zone A' (for illustration purposes) on drawing number 160176-3DR-CO-00-DR-TN-0001 P01 appended to this Deed)	75
Zone B (as marked 'Zone B' (for illustration purposes) on drawing number 160176-3DR-CO-00-DR-TN-0001 P01 appended to this Deed)	65
Any unit providing catering services to the public (including the preparation of food on the premises)	80
<b>New Market Area</b>	
<b>Nature/Location of Unit</b>	<b>Licence Fee (£ / sqft) (excluding VAT)</b>
Zone A (i.e. those units shaded blue on drawing number SK551 Rev A appended to this Deed)	75
Zone B (i.e. those units shaded red on drawing number SK551 Rev A appended to this Deed)	65
Any unit providing catering services to the public (including the preparation of any food on the premises)	80

4.82. I discuss below in Section 5 how the DDV categorises the Traders and who comes within the categories of “Accepted Qualifying Trader”, “Accepted Qualifying Temporary Market Trader” and so on. Here I simply deal with the figures for the Licence Fees.

4.83. As can be seen from the draft plans at Appendix 5, in both the Temporary Market and the New Market Area “Zone A” units will be premium units which will have the highest levels of exposure in the Market. “Zone B” units will be further from the entrances and without any direct exposure to the street; the licence fees are correspondingly slightly lower.

4.84. As discussed in detail below, the Temporary Market will be in the redeveloped Apex House and its location right next to the current Market is vital to ensure the continued success of the Temporary Market. Apex House is not the same shape as

the current Market hall. In order to guarantee accommodation for all current Traders in the Temporary Market and an equivalent net space of 6,200 sqft, it will be necessary for some Traders to be relocated onto a mezzanine floor.

- 4.85. As discussed below, the Market Facilitator will work with individual Traders nearer the time to identify which businesses rely less on casual customers and so will be least affected by being on a mezzanine floor. For example, business services (like letting agencies, hairdressers or money transfer agents) rely far less on casual passers than juice bars and hot food stalls. It is a reasonable and appropriate measure to offer a substantial discount for businesses that will be located on the mezzanine floor, to offset any initial loss of business and to give the business time to advertise and become established in the Temporary Market (there will be no mezzanine floor in the New Market Area).
- 4.86. Traders who “provid[e] catering services to the public (including the preparation of any food on the premises)” will be on a flat rate of £80. I am instructed that these Traders will all be in prime locations, as these businesses rely heavily on casual passing trade, and will not be on the mezzanine. From a market operator point of view, hot food stalls are very desirable near entrances or at highly visible points in a market, as they are very popular and serve to draw in customers. I am therefore satisfied that there will be no Traders providing food on the mezzanine level (or a less accessible location) and yet still paying a higher rate of £80.
- 4.87. As set out above, current Licence Fees are £60/sqft for “internal” units and £64/sqft for “front” units.
- 4.88. On moving to the Temporary Market the first three months will be a “licence fee-free period” (see “Offer”, Sch. 2, p. 9, DDV), during which time there will be no rent charged to “Accepted Qualifying Traders” (those Traders who are in the Market for three months before the Closure Notice and accept the offer of relocation to the Temporary Market: see “Qualifying Trader”, Sch. 2, p. 9, DDV and below).
- 4.89. After the first three months licence fee-free period, the following licence fees will then be charged:
- i. Traders on the mezzanine will pay £35/sqft p.a.;
  - ii. Traders in Zone A will pay £75/sqft p.a.;
  - iii. Traders in Zone B will pay £65/sqft p.a.;
  - iv. Caterers (who will be in prime locations) will pay £80/sqft p.a.  
(see p.7 DDV)
- 4.90. A 2% increase per year will be applied to these fees. Assuming a build time on the New Market Area of two and a half years, this means that the licence fees will increase by 2% twice whilst the Temporary Market is in operation.

4.91. On relocation to the New Market Area, traders who had been in the Temporary Market for over three months by the date of the New Market Area Scheme (“Qualifying Temporary Market Traders”, Sch. 2, p.9 DDV) will pay the fixed licence fees discounted by 30%:

- i. Traders in Zone A will pay £52.50/sqft p.a.;
- ii. Traders in Zone B will pay £45.50/sqft p.a.;
- iii. Caterers will pay £56/sqft p.a.

4.92. These fees will apply for the first 18 months in the New Market Area. Again, a 2% increase will be applied on every anniversary of the New Market Area move and the application of these new Licence Fees. After 18 months, the 30% discount will expire and all Licence Fees will revert to the Licence Fees given in the table:

- i. Traders in Zone A will pay £75/sqft p.a.;
- ii. Traders in Zone B will pay £65/sqft p.a.;
- iii. Caterers (who will be in prime locations) will pay £80/sqft p.a.

4.93. These Licence Fees will then continue for another 12 months, making a total of 30 months into the New Market Area which is governed by the DDV.

4.94. Below I present two tables showing what these fees would mean in practice for the seven most common categories of Traders:

- i. Traders in “internal units” on £60/sqft who move to Zone B for both the Temporary Market and the New Market Area;
- ii. Traders in “internal units” on £60/sqft who move to Zone A for both the Temporary Market and the New Market Area;
- iii. Traders in “front units” on £64/sqft who move to Zone A for both the Temporary Market and the New Market Area;
- iv. Catering Traders in “internal” units;
- v. Catering Traders in “front” units;
- vi. Traders in “internal” units on £60/sqft who move to the Temporary Market mezzanine and then Zone A in the New Market Area;
- vii. Traders in “internal” units on £60/sqft who move to the Temporary Market mezzanine and then Zone B in the New Market Area.

4.95. I have calculated what the rent would be per sqft after the five years of the DDV licence fee scheme, including the 2% annual increases and on each alteration to the fees. I have compared this with five years under the current rents of £60 and £64/sqft, plus a 2% annual increase, and calculated the percentage differences

between what Traders would pay on current rents and under the seven different scenarios in Grainger's scheme. Table 1 excludes VAT and Table 2 includes VAT.

4.96. When making these calculations I have made the following assumptions:

- i. The current fees of £60/sqft and £64/sqft increase by 2% p.a.;
- ii. I have ignored the two projected 10% increases in 2017 and 2018 announced by MAMSSL;
- iii. No VAT is added to the current fees, even though I still believe that VAT will be introduced on Traders' fees even without Grainger's scheme;
- iv. A move to the Temporary Market of 1st January 2018 (for simplicity);
- v. Temporary Market fees therefore begin on 1st April 2018, and the 2% increases therefore occur on 1st April 2019 and 2020;
- vi. Two and a half years in the Temporary Market before the move to the New Market Area on 1st June 2020;
- vii. The 30% discount on New Market Area fees lasts from 1st June 2020 until 30th November 2021, with a 2% increase occurring on 1st June 2021;
- viii. The full New Market Area fees commence on 1st December 2021 and the first 2% increase on those fees occurs on 1st December 2022 before the expiry of the fixed fee regime on 1st January 2023.

**Table 1: Licence Fees across the Five Year Period (excluding VAT)**

	<b>TOTAL/SQFT</b>	<b>TOTAL/ 100 SQFT STALL</b>	<b>PERCENTAGE DIFFERENCE</b>
<b>Current Internal</b>	<b>£317.78</b>	<b>£31,777.71</b>	
<b>Current Front</b>	<b>£338.89</b>	<b>£33,888.77</b>	
<b>i. Internal to Zone B</b>	£287.42	£28,741.83	<b>-9.55%</b>
<b>ii. Internal to Zone A</b>	£331.58	£33,157.50	4.34%
<b>iii. Front Units to Zone A</b>	£331.59	£33,158.50	<b>-2.16%</b>
<b>iv. Internal to Catering</b>	£353.67	£35,366.83	11.29%
<b>v. Front to Catering</b>	£353.67	£35,366.83	4.36%
<b>vi. Internal to T.M. Mezzanine to Zone A</b>	£243.89	£24,388.50	<b>-30.26%</b>
<b>vii. Internal to T.M. Mezzanine to Zone B</b>	£221.62	£22,161.50	<b>-23.25%</b>

**Table 2: Licence Fees across the Five Year Period (including VAT)**

	<b>TOTAL/SQFT</b>	<b>TOTAL/ 100 SQFT STALL</b>	<b>PERCENTAGE DIFFERENCE</b>
<b>Current Internal</b>	<b>£317.78</b>	<b>£31,777.71</b>	
<b>Current Front</b>	<b>£338.89</b>	<b>£33,888.77</b>	
<b>i. Internal to Zone B</b>	£344.90	£34,490.20	8.54%
<b>ii. Internal to Zone A</b>	£397.89	£39,789.00	25.21%
<b>iii. Front Units to Zone A</b>	£397.90	£39,790.20	17.41%
<b>iv. Internal to Catering</b>	£424.40	£42,440.20	33.55%
<b>v. Front to Catering</b>	£424.40	£42,440.20	25.23%
<b>vi. Internal to T.M. Mezzanine to Zone A</b>	£265.94	£26,593.80	<b>-16.31%</b>
<b>vii. Internal to T.M. Mezzanine to Zone B</b>	£292.66	£29,266.20	<b>-7.90%</b>

4.97. I have set out my detailed calculations for Table 1 and Table 2 at Appendix 6.

- 4.98. I acknowledge that all these calculations use as the “base” figure the average rents currently paid for the “internal” and “front” units. There will, of course, be some differences between what individual Traders currently pay and the average figure. Against that, it is clear that licence fees in the Market are, in any event, on an upward trajectory and, however matters proceed from here, anyone paying “below average” licence fees can expect to see material increases in their rent to contribute fairly towards the costs of the essential investment in the Market.
- 4.99. Thus, even when comparing current rents to the proposed fees including VAT, Table 2 shows that the largest increase over the five years of fixed fees is 33.55% for those Traders in “internal” units with catering businesses, followed by Traders in “front” units with catering businesses with a 25.23% increase over five years. An increase of 33.55% over five years is an average increase of 6.71% per year. It can also be seen that, even including VAT, two categories of Traders will pay less than under current rents (those in internal units who go to Zone A or Zone B via the Temporary Market mezzanine).
- 4.100. If one sets VAT to one side, using the figures in Table 1, four out of the seven categories will pay less than their current rates. Traders in internal units who go to Zone A via the Temporary Market mezzanine will pay 30.26% less over the five years than at present and those who move to Zone B via the mezzanine will pay 23.25% less.
- 4.101. Further, on the basis of the figures calculated above, under Grainger’s scheme the Traders will be paying lower licence fees than under the “do nothing” option, the “make do” option or the WCC scheme (see paras 4.26; 4.34; 4.42-43):
- i. “Do nothing”: internal units at between £75 – £80/sqft and “front” units at around £100/sqft;
  - ii. “Make do”: £85/sqft (plus VAT) for “internal” units and £112/sqft (plus VAT) for “front” units;
  - iii. “WCC scheme”: using the fixed DDV figures as a minimum, the WCC scheme makes a loss. It is therefore certain that the licence fees would have to be higher than those in the fixed DDV scheme, although I am unable to say how much higher given the lack of detail on the intended business model and the intention not to use a market operator.
- 4.102. Finally, I note that the New Market Area Scheme must include “an obligation to set licence fees in the New Market Area at a level that is consistent with the Council’s policy objective to attract and promote local independent traders” (Sch. 2, p.9, DDV). This requires Grainger to ensure that the Market Operator does not set fees likely to drive out Traders after the Licence Fee period of five years is

over. I refer to Ms Johnson's Proof for details of the Council's policies which are relevant to attracting and promoting local independent traders.

**vi) Analysis of the Licence Fees Structure**

4.103. In my view, the Licence Fees across both relocations and for 30 months into the New Market Area, plus the three months' Licence Fee-free period and a 30% reduction for the first 18 months of the New Market Area, will be of enormous value to the Traders. In the first place, it provides five years of certainty regarding their most significant business expense; this is valuable knowledge for any business. In the second place, it provides a cushion for any Traders who experience any drop in turnover due to disruption caused by the Market's relocation or the movement of their unit within the Market. Thirdly, this commitment provides reassurance that they will not be subjected to much higher rents to pay for their hugely improved trading conditions during those first five years.

4.104. Unsurprisingly, answers to the 2012 Business Survey of Traders in the Market demonstrated that affordable licence fees were a major concern. Question 14 asked "Do you have any additional comments on the proposed measures for permanent relocation of the market?" and answers included:

- i. "Put the place nicer, more classy, but keeping the rents affordable";
- ii. "We could keep our business keeps [sic] having the same space, and keep the same rent";
- iii. "Keep same rent";
- iv. "...It looks that it will be for upper class people who will be able to afford it and no for for [sic] the working class people that works here [sic] and have a sense of community helping each other";
- v. "Better conditions, and affordable";
- vi. "Affordability."

4.105. Question 15 asked "What additional measures, if any, do you feel will be necessary so that your business can continue to operate in the longer term?" and answers included:

- i. "...allow the busuness [sic]to maintain the same prices, so same clients can afford it";
- ii. "We want to get guaranty of same sizes of shops and same rent rate";
- iii. "Affordable and good location";

iv. “[Worried it] will be more expensive”.

4.106. The Traders can therefore now be secure in the knowledge that they will not be deliberately priced out of the New Market Area in order to make way for a different kind of market. This should go a long way to calming Traders’ fears and allow them to focus on the unique and exciting opportunities for their businesses.

4.107. The offer of a three month licence fee-free period in the Temporary Market, along with the business assistance to be provided by the Market Facilitator, is a very good offer. As described below, the relocation of the Covent Garden Flower Market included an identical rent-free period. Easing the financial pressures on traders by suspending rent for a short period has previously been found to be of great assistance when settling traders into a new temporary location. Similarly, a 30% reduction for 18 months on a known and achievable rent is a fair reduction for a reasonable period to allow traders to re-establish themselves in a new permanent location.

4.108. Although there is no figure that could guarantee the Temporary Market’s or New Market Area’s success, fixing the Licence Fees to these figures is the safest reasonable option.

4.109. As can be seen from these calculations, the highest increase will be borne by catering Traders of 33.55% over five years, or an average of 6.71% p.a. I stress that this applies to caterers only; running a catering business in a market is a proven trade which therefore often attracts a premium in rent and I am confident that this group will be able to manage an increase in fees on this scale. Further, in my view, it is also more than likely that they – and the four other groups of Traders with their smaller increases – will be able to cope with these licence fees because:

- i. These increases will be structured over a period of around five years – assuming at least two and a half years in the Temporary Market whilst the New Market Area is built – with three months fee-free and an 18 months 30% discount. There will therefore be time for Traders to adjust.
- ii. The Temporary Market and the New Market Area will both be open for trading on Sunday, adding another 52 profitable trading days per year.
- iii. The improvements in built environment, signage, visibility, advertising and business assistance from the Market Facilitator, in both the Temporary Market and the New Market Area, are very likely to attract new customers and increase trade levels and the Traders’ profits.

- iv. Traders have already weathered a significant rise of 52.25% for “internal” units (and I assume that “front” units’ licence fees have also risen) between 2008 and 2015, with none of the anticipated benefits of the Grainger scheme. In addition, there have been no licence fee increases since at least 2015: Traders cannot realistically expect to remain at the same licence fees indefinitely.
- v. These predetermined Licence Fees are very much in line with fees charged in other London markets (as set out in the Table above).

4.110. As I have mentioned, no Traders have provided figures for turnover or profit levels (they are not obliged to). Nevertheless, I am as confident as it is possible to be that the Traders will not be priced out of the New Market Area and that as many as want to continue trading in the Temporary Market and the New Market Area will be able to afford it.

4.111. After the first 30 months in the New Market Area, the Market Operator will set the licence fees for all Traders. As I mentioned above, determining what those fees should be will have been made easier by the passage of time: two and a half years into the New Market Area’s operation will have given it time to establish its own market value. Traders come and go in any market through a natural process of “churn”, as this happens the Market Operator will gain experience of what rents it is possible to charge for units in the New Market Area. Again, it is vital to remember that it is in the Market Operator’s interests to only charge what Traders can afford to pay.

4.112. As I noted above, Traders should also be comforted by Grainger’s obligation to set licence fees consistent with the Council’s policy objective to attract and promote local independent traders, which extends beyond the Licence Fee period of five years and provides permanent protection.

4.113. In my view, this set of Licence Fee commitments for the period from the Temporary Market relocation until long after the move to the New Market Area is a powerful and very welcome reassurance to Traders that this relocation process has every chance of ensuring a full, thriving and successful New Market Area.

#### **vii) Fees for New Traders in Temporary Market or New Market Area**

4.114. In terms of any new incoming trader who takes a licence for a Temporary Market unit after it begins operating, they will have their licence fees set by the Market Operator after negotiations in the normal way. There can only be one rent rise per year for any Temporary Market trader, irrespective of when they began trading from the Temporary Market (para 2.9, Sch. 3, DDV). As I have discussed, any professional operator will not charge more than the market can tolerate; it is

better use of resources to invest in the current traders in any market, rather than repeatedly seeking new traders. Having the operator set new traders' licence fees therefore does not pose any risk to the success of the Temporary Market. In any event, it would not be reasonable for Grainger to limit licence fees chargeable by the Market Operator for new traders arriving after relocation; this is a commercial matter for negotiation with the trader. Limiting the operator to one rent rise per year is in line with my experiences of other markets.

- 4.115. On the relocation to the New Market Area, those Licence Fees and the 30% reduction will apply to all "Qualifying Temporary Market Traders" (those who have been trading from the Temporary Market for the three months before the New Market Area Scheme is submitted; see "Qualifying Temporary Market Trader", Sch. 2, p. 9 DDV and discussed below). Grainger has a discretion to make any non-Qualifying Temporary Market Trader an identical offer for a fixed Licence Fee and 30% discount (para 7.10, Sch. 3, DDV) but there is no requirement to do so.
- 4.116. As with the Temporary Market, any new incoming trader who takes a New Market Area licence after the final relocation will have their licence fees set by the Market Operator after the usual process of negotiation and only have one rent rise per year (para. 7.7, Sch. 3, DDV). The Market Operator will therefore be in control of the licence fees, save for Grainger's obligation to ensure that New Market Area licence fees are at a level "consistent with the Council's policy objective to attract and promote local independent traders" (see "New Market Area Scheme", Sch. 2, p.9, DDV).
- 4.117. The Council and Grainger therefore retain oversight of the fees charged by the Operator, even after the first 30 months in the New Market Area, whilst the specific fee levels are for the Operator himself. This is entirely reasonable in my view, in protecting the current and any incoming Traders whilst not setting the exact licence fees chargeable by the Operator to new traders.

## **SECTION 5: Grainger's Obligations under the s.106 Agreement and Draft Deed of Variation**

- 5.1. In this section I consider the undertakings given by Grainger in the s.106 agreement with the Council ("the s.106") and in the Draft Deed of Variation ("DDV"). The purpose of this section of the Proof is to assess whether the undertakings are sufficient to provide all reasonable assurances that as many Traders as possible from the current Market will successfully navigate the two transitions: first, from the Market to the Temporary Market and, second, from the Temporary Market to a thriving and buoyant New Market Area.
- 5.2. In summary, in my experience the levels of support provided by Grainger to the Traders in relocating to the New Market Area are unprecedented in their thoroughness and commitment to delivering the New Market Area.
- 5.3. I will examine the following issues:
- i) The Obligation to Provide the New Market Area
  - ii) The Market Facilitator
  - iii) The Need for a Temporary Market
  - iv) The Location of the Temporary Market
  - v) The Total Size of the Temporary Market
  - vi) Closing the Current Market
  - vii) The Offer to relocate to the Temporary Market
    - a. The Definition of a "Qualifying Trader"
    - b. The Traders' Period for Considering the Offer
    - c. The Release Sum
    - d. The Content of the Relocation Offer
  - viii) Advertising the Temporary Market and the New Market Area
  - ix) The Size of the New Market Area
  - x) The Layout of the New Market Area
  - xi) The New Market Area Scheme
    - a. The Definition of a "Qualifying Temporary Market Trader"
    - b. The Period for Considering the Offer
    - c. Traders who do not relocate
    - d. The New Market Area Offer
  - xii) Closing the Temporary Market
  - xiii) Other Matters
- i) The Obligation to Provide the New Market Area**
- 5.4. Grainger has committed to providing a New Market Area as an integral part of the Development which has been given planning permission by the Council. The "New Market Area" is defined in the DDV as "that part of the ground floor of the

Development intending to comprise a net internal area of at least eight hundred and sixty five square metres (865 sqm) and to be suitable for local independent traders by way of a replacement of the Market” (Sch. 2, p.8, DDV).

- 5.5. Below I set out the two situations in which Grainger’s obligation to provide the New Market Area could fall away under the present s.106 and DDV. In my view, neither is likely to ever arise and the Traders are suitably protected if they do arise, as I will now explain.
- 5.6. The first situation, under which Grainger might not be obliged to provide the New Market Area is that the “Market Condition” must be fulfilled; otherwise there is no “requirement to enter into the Market Lease or provide the New Market Area” (para. 3.3(a), Sch. 3, DDV).
- 5.7. Fulfilling the Market Condition means that “no later than 12 months before Practical Completion” of the Development, Grainger must receive an offer from a “Market Operator” to enter into the “Market Lease” to run the New Market Area (or a binding and unconditional agreement to enter it) (Sch. 2 p.8, DDV).
- 5.8. Under the DDV, Grainger commits to using “Reasonable Endeavours to appoint the Market Operator” (para. 3.2, Sch. 3; “Reasonable Endeavours”, Sch. 2, p.9 DDV). “Market Operator” is “an experienced indoor market operator able to demonstrate a sufficient track record in the successful management of indoor markets and who is approved by the Developer” (Sch. 2, p.8, DDV). “Market Lease” is defined as a “Lease of the New Market Area to be entered into between the Developer and the Market Operator” (Sch. 2, p.8, DDV), incorporating the Heads of Terms in Schedule 8 and with regard to Grainger’s obligations under the DDV. These Heads of Terms specify that the Operator would be responsible for the cost of fitting out: the New Market Area would be provided to “shell condition”.
- 5.9. Once Grainger has received such an offer from a Market Operator, fulfilling the Market Condition, Grainger must then use “reasonable endeavours” to enter into the Market Lease (para. 3.3, Sch. 3, DDV).
- 5.10. The second situation, when Grainger’s obligation to provide the New Market Area might fall away is if, despite an offer from a Market Operator, there is neither a signed Market Lease nor an agreement to enter into it by six months before Practical Completion. Again, in this situation, Grainger is not required to provide the New Market Area or enter into a Market Lease (para. 3.3(b), Sch. 3, DDV).
- 5.11. There is no requirement to appoint the Market Operator or agree to enter into the Market Lease before the Temporary Market is opened.
- 5.12. As the Market is fully occupied at present and the Temporary Market will open

fully let, or at least close to fully let, I am confident that the improved premises, business support and marketing will improve trading conditions. This will result in a buoyant Temporary Market and an attractive proposition for an operator considering whether to enter into an agreement for the New Market Area.

- 5.13. In my view, it is very unlikely that Grainger would not receive an offer from a suitable Market Operator to operate the new Market Area. Grainger's commitment to use "reasonable endeavours" to appoint a Market Operator is a useful and helpful obligation. This should give comfort to Traders that Grainger's commitment to a successful New Market Area is sincere and that the arrangements for managing this stage of identifying a new Market Operator are reasonable and sufficient. There is therefore only a very low risk that the Market Condition would not be fulfilled.
- 5.14. Similarly, there is only a very low risk that the second situation would occur – that Grainger would fail to enter into a Market Lease with a Market Operator by six months before Practical Completion.
- 5.15. The success of the Temporary Market will be a factor in how eager or not a Market Operator would be to sign a lease for the New Market Area. If the Temporary Market has been trading well and is at capacity plus a waiting list, then a Market Operator is more likely to be keen to take on a lease for the New Market Area, with the prospect of a full and vibrant market. If the Temporary Market was trading particularly badly then the prospect of the New Market Area might become less attractive and there may be difficulties in identifying a company willing to sign the New Market Area lease. However, given the current full occupation of the Market plus waiting list, the levels of support for Traders in the DDV and the competitive Temporary Market Licence Fees set by Grainger, there is every reason to think that the Temporary Market will be a success.
- 5.16. In my view, Grainger will not have difficulty in appointing a Market Operator: the proposed Heads of Terms for the contract with the Market Operator (Sch. 8, s.106) are reasonable and any realistic operator would find them attractive.
- 5.17. I am instructed that it is very likely that MAMSSL, the current operator, is willing to continue acting as Market Operator for the New Market Area. MAMSSL has written Grainger a letter expressing its interest in concluding the Market Lease and I am instructed that negotiations are already well under way (see letter appended to Mr Kiddle's Proof). It is therefore highly likely that the Market Operator for the New Market Area has already been identified.
- 5.18. In any event, if the Traders ever became concerned that the Market Condition or the Market Lease will not be fulfilled and that the New Market Area is in jeopardy, the Traders could nominate a company to be the Market Operator. The DDV

provides that the Market Operator could be “nominated by any other organisation or individual” (see “Market Condition”, Sch. 2, p.8, DDV). This should provide comfort that Traders can take steps to prevent the Market from being permanently closed because Grainger could not agree a Market Lease.

- 5.19. Finally, I note that the obligation on Grainger to provide the Temporary Market is separate to the need to find a Market Operator for the lease of the New Market Area. Even if Grainger cannot find a Market Operator for the New Market Area, Grainger still has to provide the Temporary Market in the meantime, so the Traders’ immediate future is secured.
- 5.20. In my view, the obligations provided by Grainger in the s.106 and DDV are sufficient and reasonable to protect the Traders’ interests and give reasonable assurance that this stage of the process will succeed. Traders can therefore be confident that their interests are protected.

## **ii) The Market Facilitator**

- 5.21. Here I examine the role of “Market Facilitator” as set out in paragraph 2.1, Sch. 3 of the DDV and how it is likely to assist with the relocation process for the Market. I further address facets of the role below as they become relevant.
- 5.22. The “Market Facilitator” is defined as “Quarterbridge of 2 West Stockwell Street” (Sch. 2, p.8, DDV). Quarterbridge Ltd is a sister company to MAMSSL (the current market operator) and the Market Facilitator will be the same individual as the market operator. I am instructed that Grainger will meet Quarterbridge’s fees incurred in performing these DDV obligations (such as advertising the Market). I am satisfied that these obligations will be carried out and to an appropriate standard. I do not anticipate that any issues will arise as a result of the same individual being both the Market Operator and the Market Facilitator; I believe that the attention required by the Facilitator role will be delivered. There was always going to be significant overlap between the two roles; it may be beneficial that the same individual performs both roles, as the Facilitator could guarantee the delivery, as Operator, of any negotiations (such as fit out requirements).
- 5.23. The Market Facilitator has a specific obligation to “promote the interests of non-English speaking traders in the Temporary Market and the New Market Area”. The Market currently has a bilingual manager who speaks both Spanish and English; this is essential for ensuring clear lines of communication between non-English speaking Traders and the operator during the relocations. Information about the relocations needs to be effectively communicated and there will be issues requiring negotiation and compromise. Good communication will be vital to maintaining good and effective relationships and easing tensions during a period of change.

- 5.24. The most important role of the Market Facilitator, apart from ensuring these communication channels, will be finding a method of harnessing the strength of the ethnic atmosphere and appeal of these Traders as a whole and tapping even further into the pool of current and potential customers attracted by the social, cultural and commercial package offered by the Market.
- 5.25. There are markets which make a feature out of their ethnic or cultural background but I have not been able to identify any indoor markets which make similar use of their background as a marketing device. There are indoor markets which are pre-dominantly made up of one ethnic group or another – for example, Wood Green has a high proportion of ethnically Asian traders. This is not followed through, however, in terms of marketing this group of traders as an “Asian Market” with a unique selling proposition (“USP”) linked to Asian culture.
- 5.26. There are the well-known examples of outdoor and travelling French, Italian and German markets which do exploit their ethnic integrity as part of their USP through a variety of methods. Examples include common themes across the market stalls (such as the Germanic-style, ski-resort-like huts of the seasonal German Christmas market on the South Bank), or in the range of products on offer, or the traders’ backgrounds (like the farmers’ markets where most traders are selling their own fresh produce). Traders in these kinds of markets have identified their group’s USP and taken steps to enhance this potential to differentiate themselves from other markets and increase their attractiveness and interest to customers. Advertising reflects this aspect of the market’s identity and traders are recruited and encouraged to remain with an eye to bolstering and improving the market’s cultural selling point.
- 5.27. There is an opportunity for the Seven Sisters Market to apply these principles from these markets and harness its ethnic integrity to its own advantage, so as to increase its appeal both to members of the Latin-American community and more broadly. The role of the Market Facilitator should be used to explore this opportunity with the Traders.
- 5.28. As part of the obligation to “provide appropriate business support and advice to” Traders and others working in the Market, I would expect the Market Facilitator to work with each individual Trader in order to make sure they understand how to prepare for the relocation. In particular, the Market Facilitator needs to address how the individual can move his or her business so as to keep closure to a minimum. This is of particular significance as cash flow is extremely important to Traders and must be maintained and protected as far as possible. I would expect the Market Facilitator to make sure each Trader has an individually-tailored moving plan; many of the factors will be generic to all but some (such as the cafés) will require much more detail.

- 5.29. Any pro-active, professional market operator will provide business support to new traders (as required by para. 2.1(b), Sch. 3, DDV) and the Market Facilitator's previous undertakings and experience will provide the templates for this kind of support. I would expect the Market Facilitator to continue and build on any previous successful initiatives that they have used to support new traders entering their markets.
- 5.30. It is good practice for facilitators and market operators to use resources to build relationships with existing traders with a view to keeping them, rather than constantly seek to replace traders. Vacant stalls in a market create a risk of stagnation or decline. Filling voids as they arise becomes crucial for the overall well-being of the market and all parties involved, in which case supporting a new trader benefits all parties.
- 5.31. The obligation on the Market Facilitator to assist local independent traders interested in trading from a vacant stall in either the Temporary Market or New Market Area is therefore sensible. It stands to benefit the current Traders, in that the Market would remain full and maintain momentum, to the benefit of all.
- 5.32. In my view, the obligations to appoint and procure that the Market Facilitator provides the advice and support set out above are sensible and appropriate. The overall objective of the Market Facilitator is "maximising the number of Traders and other independent local traders who elect to trade from the Temporary Market and the New Market Area." I am satisfied that the current obligations in the DDV, the Market Facilitator role and the individual appointed will assist considerably with achieving that objective.

### **iii) The Need for a Temporary Market**

- 5.33. The Temporary Market is to be the interim location for the Market whilst the New Market Area is being constructed, avoiding the need to shut the Market during the construction of the New Market Area.
- 5.34. In the DDV the Temporary Market is defined as
- "a temporary market (having a net internal area of no less than eight hundred and sixty five square metres (865 sqm)) to be provided in part of the ground floor of the property known as Apex House as shown on drawing number 160176-3DR-CO-00-DR-TN-0001 P01 as is attached to this Deed or, in the case of a Force Majeure Event which prevents occupation of Apex House as a temporary market, such other location within the Council's administrative area as may be agreed in writing between the Developer and the Council." (Sch. 2, p.10)
- 5.35. 865 sqm equates to 9,310 square feet ("sqft").
- 5.36. The DDV requires Grainger "not to permanently close the Market (as part of the

Development) unless and until the Temporary Market has been Practically Completed and is ready for occupation” (para. 2.2, Sch. 3).

- 5.37. Providing a Temporary Market from which the Traders can operate during the New Market Area’s construction is absolutely crucial to the goal of maintaining the Market in its current form. If no provision were made for a temporary market and the intention was simply that the Market would shut during any refurbishment period and re-open afterwards, the Market simply would not survive in its current form and you might as well be starting again from scratch.
- 5.38. There is no way that small independent traders of this kind could tread water without an income stream during any significant period of closure before returning to a re-opened market. Even if some Traders were determined to hold on and wait for the Market to reopen, it is almost certain that many would not be able to. In reality, Traders would very probably make the decision to relocate and the group would disperse to other markets. It would then be virtually impossible to reassemble the original group of traders, especially if their relocation was proving successful. It would be virtually guaranteed that the present community would have been lost during the construction or refurbishment period. As I stated above, I do not feel that the WCC’s Alternative Scheme has addressed these important matters at all convincingly.
- 5.39. Traders who responded to the 2012 Business Survey raised the same concern. Question 13 asked “what additional measures, if any, do you feel are needed so that your business can continue to operate during reconstruction?” Answers stressed the need for a temporary location with similar transport links during any redevelopment or refurbishment:
- i. “Be relocated to somewhere we can carry on the business in the meantime”;
  - ii. “Reallocate [sic] it to somewhere else in the meantime”;
  - iii. “Transitory location close to current location”;
  - iv. “Relocate within the local area with high level of commuting as we have here...”.
- 5.40. Traders also expressed the specific concern that, without a temporary location, the Market would not be able to re-establish itself after a period of closure:
- i. “...During reconstruction the closure of business will make customers go somewhere else. It is not guaranteed that clients will come back when new development is ready”;
  - ii. “Stay[ing] closed during all that time will be highly negative for the business”.

- 5.41. It was also suggested that Traders would be unable to support themselves if there was no trading during the refurbishment period:
- i. “...If reconstruction would happen, in the meantime, to compensate we would need 2 million GBP to divide between all of us and have a monthly rent for the two years, while the works happen.”
  - ii. “Minimum 2million between all traders for support over two years - 62 units to be divided between. Too expensive outside with the compensation proposed. Want to keep the community together ...”
- 5.42. Grainger’s obligation to provide a Temporary Market is therefore invaluable to ensuring the continuity of the Market whilst the New Market Area is under construction; it should provide real comfort to the Traders.

#### **iv) The Location of the Temporary Market**

- 5.43. Grainger has accepted my advice that Apex House should be designated as the location of the Temporary Market. I note that the DDV refers to the Temporary Market being in “part of the ground floor of the property known as Apex House or, in the case of a Force Majeure Event...such other location within the Council’s administrative area as may be agreed” (Sch. 2, p. 10). Apex House is immediately across the road from the current Market. I note from Mr Kiddle’s Proof that the demolition works at Apex House have already begun and that construction is expected to complete in early 2020.
- 5.44. The immediate proximity of Apex House to the Market’s current and future permanent home is absolutely crucial to my support for the relocation scheme as it provides continuity for the Market in the closest possible location.
- 5.45. As I explain further below, in addition to the location of Apex House, the Market will benefit enormously from being in Apex House as a newly fitted-out market hall with all the benefits of increased circulation space, more natural light, new and clean fittings, improved and safer services, more attractive and visible entrances, better advertising and signage and so on. These benefits of being in a brand new hall must be stressed as it is my opinion that – even with the Market moving across the road – they create a fantastic opportunity for the Traders to increase their customer base and profits.
- 5.46. Apex House is across the road from the present site: it is therefore not directly above the underground station and some customers may need to cross the road to reach it. However, any disadvantages are far outweighed by the benefit to the Traders’ business continuity from its proximity. I have already discussed above that the Market does not take advantage of its location above the underground anyway; this will change in the New Market Area.

- 5.47. I am instructed that Apex House has been discussed as the Temporary Market site at meetings of the Market's Steering Group (discussed in Mr Kiddle's evidence). A letter in March 2017 from Steering Group member Ms M. C. Hinestroza de la Ossa confirmed that "100% of traders had been consulted" and thought that this would be a suitable location for the Temporary Market (appended to Mr Kiddle's Proof).
- 5.48. I firmly believe that the Apex House/New Market Area proposal from Grainger offers the Traders their best chance of continuing the Market as close to its present form as possible whilst also dramatically improving their conditions. As I have discussed above, the situation of the Market in its current location and state is untenable due to the condition of the building and the below-market rates charged by landlord and market operator. Even without Grainger's proposal, something in that equation would have to change soon, at the Traders' expense and without the extensive protections offered by Grainger.
- 5.49. I should note that the original s.106 agreement was silent on the Temporary Market's location. I was instructed that Apex House was the intended location and I advised that it was essential to give as solid a guarantee as possible that the Temporary Market would be in Apex House, given its importance. My advice was accepted and the DDV now guarantees that the Temporary Market will be in Apex House, barring force majeure events, in which case it will be in "such other location within the Council's administrative area" as is agreed in writing (Sch. 2, p.10, DDV). This is a significant improvement to the current s.106.

**v) The Total Size of the Temporary Market**

- 5.50. Grainger's obligations in the s.106 and the DDV are clearly designed to ensure that the community of current Traders survives. The obligations on Grainger ensure that, essentially, all of those currently trading in the Market and still trading at the relocation stage are guaranteed a stall in the Temporary Market. The size of the Temporary Market is therefore clearly crucial: there must be enough space to accommodate all existing Traders and Grainger cannot assume that any Trader would decide not to relocate.
- 5.51. Within any market, the rentable space for stalls is always significantly less than the total gross available space. This is to allow space for customers to move between stalls, for fire exits, public toilets and a management office, among other matters. Older market halls tend to use more room for traders' stalls but modern best practice is to increase the amount of free space. As a general rule of thumb for newly fitted out or newly built market halls, 55% of the total available area is used for traders' stalls and the remaining 45% is required for circulation and safety purposes. Improving the customer experience is one reason for this (cramped spaces and corridors between stalls are unwelcoming to casual customers) and health and safety requirements are another reason (in the event

of a fire, for instance, it must be possible to easily leave the building). I would expect these rough proportions to apply to the Temporary Market and the New Market Area, as newly fitted-out or refurbished market halls.

- 5.52. I am instructed that the current Market has a gross internal area of 9,730 sqft: 6,200 sqft is used for stalls and 408 sqft is used for services. 70% of the total area is therefore used for stalls and services and 30% for circulation. This is common for older markets but in consequence, however, the Market is beset by problems which have developed over the years: in particular the gangways between stalls are narrow and cramped and there are no communal areas.
- 5.53. I am instructed that the Temporary Market will have a total gross internal area of 12,472 sqft and a total net internal area of 7,740 sqft. The Temporary Market will therefore have more trading space than the current Market and there will be more space overall, in line with best practice and a 55:45 division. The current draft floor plans for the Temporary Market showing Zones A and B for Licence Fee purposes are at Appendix 5.
- 5.54. The drawings show that the Temporary Market backs onto a lockable courtyard of around 1,000 sqft. I am instructed that Grainger owns this space and it will be available to use as part of the Temporary Market as seating, communal space and other similar uses. The addition of 1,000 sqft of outside communal space is a fantastic opportunity for the vibrant community life of the Market to flourish.
- 5.55. At a later stage it will be necessary to agree a floor plan showing the Traders' relocation into their individual stalls, services, communal spaces and so on. It is not possible to allocate the exact locations of individual stalls at this stage, not least because it is not reasonable to expect Traders to commit to relocation now.
- 5.56. Grainger must consult each Trader moving into the Temporary Market "about the proposed location of his unit within the Temporary Market and to have regard to any reasonable representations and views that are received" (para. 2.4, Sch. 3, DDV). This consultation must happen at least two months before the "Temporary Market Offer Date", the deadline for Traders to accept the relocation Offer.
- 5.57. It is reasonable and appropriate for Grainger and the Operator to consult with the Traders and consider their specific needs for their business and ideas about where they want to be in the Temporary Market. However, it is vital that Grainger and the Operator retain the final decision over how the businesses will be located across the Temporary Market, to be able to make the best decisions for the Market as a whole. The timing of this consultation is also appropriate: no later than two months before the Temporary Market Offer Date. The Traders will be able to give their views about their stall location before they make their decision on the offer and will have an idea of what the Temporary Market will

look like. Grainger and the Market Operator will then have two months to make the final decision on the Traders' locations within the market, allowing them to make final plans for a rapid and efficient relocation.

- 5.58. Of course, the fine details of this will need consideration at these later stages. There will also be a vital ongoing role for the Market Facilitator to play in this process, as part of providing "appropriate business support and advice" to Traders (para. 2.1, Sch. 3, DDV and see below).
- 5.59. As a very general observation, there is a precedent for the grouping together of hot food traders and outlets. A "food court" style area with shared seating works well and will encourage the community aspect of the market. This may also double as a communal space for entertainment and events, which would also contribute to the community atmosphere of the market.
- 5.60. The internal layout will, of course, be required to comply with relevant building regulations and health and safety regulations. This will affect the size of public walkways, fire escapes, drainage, ventilation and the construction of mezzanines.
- 5.61. Clearly there will need to be detailed plans worked out for the Temporary Market stalls and their individual fitting out. In my view, at this stage it is not necessary for Grainger to provide additional obligations in terms of the final design of the Temporary Market or its layout in the formal legal agreement; the Traders' interests are sufficiently protected by the formal obligations.

**vi) Closing the Current Market**

- 5.62. Grainger may not close the Market unless and until the Temporary Market has been provided and is ready for occupation (para. 2.2, Sch. 3, DDV). Grainger must serve a "Closure Notice" on the Council and all Traders operating stalls in the Market at least six months before the Commencement of the Development (para. 1.1, Sch. 3, DDV; see also p.2 s.106).
- 5.63. The Closure Notice must include the "Closure Date" for closing the Market, which can be no less than six months after the date of the service of the Closure Notice (Sch. 2, p.6, DDV). It must also state, as at the date of the Closure Notice:
- i) the name of the occupier of each unit;
  - ii) the rateable value of each unit;
  - iii) the size of each licensed unit; and
  - iv) the Temporary Market Offer Date.
- 5.64. The requirement that the Temporary Market must be ready to occupy before the Market may be closed protects the Traders' interests, it provides reassurance

that, whenever the Closure Notice might be served and whatever the Closure Date might be, the Market cannot be closed until the Temporary Market is ready. The Traders can therefore be confident that the Market will not be allowed to suffer a prolonged period of closure between the current Market closing and the Temporary Market being ready for occupation. Although it is inevitable that there will be a short period for physically relocating the stalls, during which the Market will not operate, this obligation ensures that this is no longer than necessary.

- 5.65. The requirement that the Closure Notice gives Traders a minimum of six months' notice before the Market is shut is an appropriate length of time to keep Traders informed, to allow them to consider their position and make arrangements.
- 5.66. The inclusion of each stall's size, occupier and rateable value in the Closure Notice is also a sensible provision. Identifying the rateable value for each stall means that each Trader knows what his or her individual Release Sum would be, in the event that he or she declines relocation.
- 5.67. Setting out the licensed size of each stall gives the upper limit to the stall size that any Trader might expect to rent in the Temporary Market and the New Market Area. This information is also useful in a second way: I am informed by MAMSSL and from my own visits to the Market that there are a number of stalls trading from a larger area than permitted under the terms of their licence. For example, some Traders have constructed unauthorised mezzanines or are using corridor space for their catering businesses. MAMSSL is working to address these issues now and to ensure Traders understand that they only pay for use of a defined area and that they may only trade within that area. It is prudent to begin this now; to delay would store up problems for when relocation approaches, an already stressful period.
- 5.68. It is very important that Traders understand the actual size of their licensed unit and what they can therefore reasonably expect to be allocated in the Temporary Market or New Market Area.

#### **vii) The Offer to Relocate to the Temporary Market**

- 5.69. I will now examine the issues raised by the "Offer" that Grainger is obliged to provide to every "Qualifying Trader" in the Market at the date of the Closure Notice. First I deal with the definition of a "Qualifying Trader", then the defined period for accepting or rejecting the Offer. Thirdly, I look at the "Release Sum" payable should a Trader decide not to accept the Offer to relocate. Finally, I look at the four aspects of the Offer defined in the DDV.

##### **a. The Definition of a "Qualifying Trader"**

- 5.70. Looking first at who will receive an Offer to relocate: under paragraph 24.4, Sch. 4

of the s.106, Grainger will offer “each Trader” a stall in the Temporary Market. “Traders” are defined as those individuals listed in Schedule 7 as occupying stalls in July 2012. There have been a significant number of changes in the Market over the past five years: of the 38 Traders listed in the s.106 only 14 were still in the Market in February 2017. The configuration of stalls and businesses has also undergone some changes. Most stalls have therefore had at least one change in occupation and Schedule 7 of the s.106 is therefore no longer accurate.

- 5.71. The DDV states that a “Qualifying Trader” is a “Trader who: a) is operating a stall at the Market as at the date of the Closure Notice; and b) has been operating a stall at the Market without interruption for a period of three months immediately preceding the date of the Closure Notice” (Sch. 2, p.9, DDV).
- 5.72. Grainger also has the discretion to offer non-Qualifying Traders a space in the Temporary Market on the same terms as Qualifying Traders (para 2.7, Sch. 3, DDV) although this only becomes relevant if there is room in the Temporary Market after all Qualifying Traders have been accommodated (given the express obligation to offer all “Qualifying Traders” a stall).
- 5.73. I have examined the DDV obligations to ensure that Grainger is required to provide an alternative site for all of those Traders who give the Market the composition, community and cohesion which it enjoys today and which are so highly valued by Traders and their customers. I am satisfied that the preservation of the current balance of businesses, and the community created by that balance, is the purpose of Grainger’s “Offer” of free relocation, a stall of the same size (or at least 90%) of the Trader’s current stall and a three month licence-fee free period.
- 5.74. It is therefore reasonable to require a Trader to have been trading from the Market for three months before the Closure Notice, in order to benefit from the generous Offer package. A minimum term of three months in the Market would ensure that the Trader was a part of the life of the current Market and intended to continue trading and contributing in the Market’s temporary home.
- 5.75. Imposing a longer qualifying period before a Trader could receive an Offer of free relocation might discourage new traders from taking a vacant stall in the current Market, should any arise before relocation. Traders who were considering whether to take a lease in the current Market before the relocation would be aware that there would be a move in the immediate future and that they would risk bearing some or all of the relocation costs themselves. This would create significant risk and uncertainty for local independent traders who otherwise might be willing to rent units which become vacant between the date of the Inquiry and the Closure Notice.
- 5.76. This uncertainty could put the viability of the Temporary Market at risk before

relocation even took place: it would increase the possibility of vacant stalls at the time of the move. Vacant stalls always carry a risk to a market and particularly on relocation. As mentioned above, the success of the Temporary Market may also have an impact on market operator companies' willingness to take on the Market Lease of the New Market Area. It is therefore in the interest of the Traders, the Market Operator and Grainger to have a full and thriving Market at the time of the move to the Temporary Market. Further, as the desire is to protect and encourage local independent traders, there would be no reason to expose them to the risk of paying for relocation; this could only lead to void spaces in the Temporary Market. It is therefore of real benefit to the survival of the Market that the qualifying period is as short as three months.

5.77. In my view, therefore, it is reasonable that a Qualifying Trader need only have been trading in the current Market for three months before the date of the Closure Notice in order to receive an Offer, in line with my recommended period for accepting the Offer as set out below.

**b. The Traders' Period for Considering the Offer**

5.78. I now examine the period of time for the Traders to consider the Offer.

5.79. The DDV is a significant improvement on the previous position under the s.106 from all parties' perspective: the Traders are now guaranteed to receive the Offer at least six months before the Market is closed. The Traders' deadline for accepting the Offer is three months before the Closure Date. The guaranteed minimum period for considering the Offer is therefore three months.

5.80. Grainger must give Qualifying Traders the Offer with the Closure Notice (para. 2.3, Sch. 3, DDV). This Notice must be served at least six months before the "Closure Date", when the Market must be closed and the Temporary Market ready to occupy (paras 1.1 and 2.2, Sch. 3 and "Closure Date", Sch. 2, p.6, DDV). Traders will therefore be made the Offer at least six months before the Closure Date.

5.81. The period for considering the Offer runs from when it is served until the "Temporary Market Offer Date", three months before the Closure Date (see "Temporary Market Offer Date" p.10 and "Closure Notice" p.6, Sch. 2, DDV). So, if the Closure Notice is served the minimum of six months before the Closure Date and the Temporary Market Offer Date is three months before the Closure Date, the minimum for the Qualifying Traders to consider the Offer will be three months. The Notice could be served more than six months before the Closure Date, in which case the period for consideration would be longer.

5.82. Calculating the Temporary Market Offer Date backwards from the Closure Date is a sensible and reasonable mechanism. It provides enough time for the Traders to make their decision and it provides Grainger and the Market Operator with the

certainty of knowing which Traders need relocating to the Temporary Market.

- 5.83. Dealing first with the needs of the Traders: if the Closure Notice is served at least six months before the Closure Date, there will certainly be floor plans and visuals of the Temporary Market available (as it would have to be nearing completion, to be ready by the Closure Date). It might not be finished enough, however, for Traders to be able to picture themselves trading in it, particularly if Grainger served the Closure Notice more than six months before the Closure Date.
- 5.84. By providing that the Traders' decision period runs until three months before the Closure Date, the DDV provides reasonable assurances that the Temporary Market will be in a sufficiently completed state for Traders to view it before making their decision. The three months also provide a reasonable period for Traders to take advice from the Market Facilitator or any other source. They will also have time to consider matters such as their stock deliveries, relocation issues and their business case for moving.
- 5.85. In my view, the DDV provides sufficient guarantees that Traders will be able to make an informed decision on whether to accept the Offer or take the Release Sum.
- 5.86. The needs of the Traders to view the Temporary Market must be balanced with those of Grainger and the Market Operator to plan the relocation and to let vacant stalls if Traders choose not to relocate. Imposing a time limit for accepting the Offer will allow Grainger and the Market Operator to plan effectively the relocation for all remaining Traders and to fill any vacant stalls with new applicants to keep the Temporary Market thriving and buoyant.
- 5.87. Further, I note again that the level of assistance being offered in relocating gives the Traders a very high chance of not only surviving but also improving their trading conditions. Given this, it is entirely reasonable for the Traders to have a timeframe for deciding whether to accept the Release Sum or the assistance to relocate being offered, in order that the Market Operator and Grainger can take all necessary steps to protect the interests of the Market as a whole.
- 5.88. In my view the arrangements for closing the Market are suitable and provide all reasonable assurances to the Traders that this stage of the process will be completed as smoothly as possible.

### **c. The Release Sum**

- 5.89. If the Traders decide not to relocate to the Temporary Market, they will be paid the Release Sum, which is the rateable value of the Traders' units at the date of the Closure Notice (see "Closure Notice" p.6 and "Release Sum" p.10, Sch. 2, DDV). Under the DDV Grainger must pay the Release Sum within 28 days of the

Qualifying Trader signing the Release document (para 2.6(a), Sch. 3, DDV). Traders therefore have one opportunity to accept the Release Sum, at the moment of deciding whether or not to relocate to the Temporary Market. There is no equivalent Release Sum for a Temporary Market Trader who does not relocate again to the New Market Area.

- 5.90. I am not aware of any examples of closing or relocating markets in which a similar release fee was offered, especially as an alternative to a relocation package. In my experience, if a trader decides not to relocate with a market, they simply give up their lease or licence and leave the market; there is no compensation payable. It is unusual to have the relocation options that the Traders have with Grainger.
- 5.91. Further, at present the Traders' licences can be terminated by either party on very short notice – the market operator must give one week's notice and Traders must give four weeks – and no compensation would be payable whatsoever. The obligation to pay the Release Sum to Traders who decide not to relocate to the Temporary Market and who are relinquishing their licences is therefore generous.
- 5.92. Traders who elect not to relocate also receive assistance from the Market Facilitator, who will “assist individuals working at the Market to find suitable alternative employment” if they decide not to move to the Temporary Market (para. 2.1(f), Sch. 3, DDV). This offer of assistance will be of great benefit to departing Traders. An experienced Facilitator will have contacts within the industry and will be able to advise on opportunities which will suit the individual Trader. It is unusual in my experience to find such assistance being offered when such a viable relocation plan is in existence.
- 5.93. Overall therefore, I am satisfied that these obligations provided by Grainger provide all reasonable assurances that as many Traders as possible will elect to move to the Temporary Market and will be able to transition successfully.

#### **d. The Content of the Relocation Offer**

- 5.94. With regard to the Offer itself, under paragraph 24.4, Sch.4 of the s.106, Grainger must offer each “Trader” “a stall in the Temporary Market” with “a three month rent-free period in the Temporary Market.” This obligation is significantly expanded under the DDV: Grainger must make each “Qualifying Trader” an “Offer” (para. 2.3, Sch. 3), which must include:
- (a) free relocation (including all reasonable removal costs and expenses but excluding any dangerous or unlawful or unauthorised equipment) from the Market to the Temporary Market;
  - (b) a Licence of a unit in the Temporary Market, which shall: (i) have the benefit of all Services; (ii) be no less than ninety percent (90%) of

the size of the Qualifying Trader's unit in the Market; (iii) be of an appropriate layout having regard to the Qualifying Trader's unit in the Market;

- (c) a three (3) month licence fee-free period in relation to his unit in the Temporary Market commencing on the date when the Qualifying Trader's unit in the Temporary Market is first opened to the public; and
- (d) the Licence Fee for so long as the Temporary Market is in operation.” (see “Offer”, Sch. 2, p.9 DDV)

5.95. I now consider the “free relocation” obligation and the unit size and services/facilities in the Temporary Market. I have considered Licence Fees in Section 4.

#### **i. Free Relocation to the Temporary**

5.96. Under the current s.106 Grainger was to provide the total rateable value of the Market as a “Traders Financial Assistance Sum” (p.4, s.106, “TFAS”), which was to be paid to the Council and then distributed among the Traders. For those who wish to relocate, it was to be a “contribution” to the moving costs (para 24.3, Sch. 4, s.106).

5.97. In my view, the DDV now provides a better and more secure deal from the Traders’ perspective by replacing the TFAS and simply offering “free relocation (including all reasonable removal costs and expenses but excluding any dangerous or unlawful or unauthorised equipment) from the Market to the Temporary Market”. This is a great opportunity to smooth the transition to Apex House for the Traders. If an individual Trader decides not to relocate, he or she will be paid the rateable value of their stall as a “Release Sum” (Sch. 2, p.10 DDV).

5.98. From the Traders’ perspective, the DDV is a significant improvement in two respects on the s.106:

- a) The s.106 provides that financial assistance from Grainger “is provided by way of a contribution towards the costs incurred by the Traders in relocating” (para 24.3, Sch. 4, emphasis added). The DDV guarantees a “free relocation (including all reasonable removal costs and expenses...” (“Offer”, Sch. 2, p.9);
- b) The s.106 provides that the budget for the relocation was to be drawn from the TFAS, which was “the aggregate rateable value of the Market” (p.5 s.106). The DDV no longer links the relocation budget to the rateable value of the Market. This is sensible in my view, as there is no logical link between a stall’s rateable value and the probable cost in relocating it to the Temporary Market.

- 5.99. In my view, it is preferable that the process of moving should be administered and paid for directly by Grainger, as provided in the DDV, rather than the Council distributing small individual sums to each Trader as in the original s.106. A centrally run process provides greater assurance to all parties that all of the Traders' equipment and stock will be moved safely and that every Trader will be installed in as close to their current position as reasonably possible. Further, engaging a professional moving company to move the Traders has attendant subsidiary benefits, such as insurance should anything be damaged in the move.
- 5.100. At a later stage there will need to be detailed plans for the precise process of moving the Traders: the packing process; the sequence in which Traders move across; the date of the move (including dates to avoid); a suitable reopening date (ideally to coincide with an appropriate festival or holiday to enhance the reopening event) and so on. This will ensure the smoothest move possible and to minimise the time when trading would be suspended. The actual process of moving stock and equipment will require a careful inventory of the stalls' contents and the use of a central contractor to deliver it to the Temporary Market.
- 5.101. I am told that Grainger have contacted removals company J.A. Steel & Son to obtain a quote and to discuss the removal process from the Market to Apex House in detail. I attach at Appendix 7 a letter from the company setting out its experience, qualifications, details of their visit to the site and key factors for consideration. I have spoken with a company representative and am satisfied that the company has extensive experience of commercial moves. In particular, they are aware of the need for a rapid, resource-intensive move; this is important given the Traders' need to reopen quickly to maintain business continuity. I am satisfied that J.A. Steel & Son are suitable to carry out the relocation process.
- 5.102. I am instructed that Grainger continues to set aside the rateable value of the Market (the former s.106 TFAS) as a relocation budget, around £201,000 (see Mr Fourt's Proof). I am also instructed that the Mayor has pledged £284,000 towards the costs of temporary relocation (see decision appended to Ms Johnson's Proof). This provides a relocation budget of £485,000. Further I am instructed that Grainger has committed to pay the full costs should they exceed this budget (subject to Sch. 2, p.9, DDV: "excluding any dangerous... equipment").
- 5.103. J.A. Steel & Son has estimated £1,000 - £1,500 to move each stall. Assuming £1,500 per stall across 60 individual units is a total of £90,000. Even if this budget were to be exceeded by 100%, it is clear that the funds allocated will be enough and leave plenty to spare for the New Market Area relocation and advertising costs.
- 5.104. In March 2017 I was involved in the Covent Garden Flower Market: this cost around £100,000 to move 38 traders using 50,000 sqft of trading space and

significantly more equipment than the Seven Sisters Market. We used eight 7.5 tonne vehicles and approximately 40 staff. The move commenced on Saturday lunchtime and all equipment was in place for the units to be open for trading on Sunday evening. This kind of speed is essential for ensuring business continuity.

- 5.105. I am therefore confident that the kind of move required by the Traders is feasible and also that the budget of £485,000 and the proposed moving company are suitable for the Temporary Market and the New Market Area relocations.
- 5.106. The DDV states that Grainger will pay all reasonable removal costs “excluding any dangerous or unlawful or unauthorised equipment”. This limitation is entirely reasonable in my view.
- 5.107. From my visits to the Market, it seems very likely that at least some of the Traders have old or outdated equipment, and there may well be issues with other Traders’ apparatus which I did not identify. It seems very likely that some equipment will be out of date or non-compliant with health and safety regulations by the time of the relocation. Some Traders would therefore have to invest in equipment in the short to medium term anyway. It would be unreasonable to expect Grainger or the Market Operator to bear, as ostensible relocation costs, business development costs of Traders which would have been incurred in any event over the next few years. Further, it would not be appropriate for Grainger to assist Traders in continuing to use equipment which might be unsafe or non-compliant with health and safety regulations.
- 5.108. It is individual Traders’ responsibility to have appropriate tests conducted on their equipment and obtain all appropriate certificates (such as PAT tests for electrical items or certificates for gas cookers). Before the relocation I would expect the Market Operator to remind Traders of this. I would also expect the Market Operator to do a full audit of all equipment before the relocation and identify equipment that will not be moved on safety grounds. It remains the Traders’ responsibility to get the appropriate checks done.
- 5.109. Grainger’s exclusion of paying moving costs for “any dangerous or unlawful or unauthorised equipment” is therefore appropriate and reasonable.
- 5.110. I note from Mr Kiddle’s Proof that Grainger has created a “Community Engagement Strategy” (CD4/35). This Community Engagement Strategy has led to the creation of the Market Steering Group, discussed above. Meetings are attended by Traders, Grainger and MAMSSL to discuss the Market’s future, daily maintenance and management issues. The Strategy also encourages meetings between Grainger and individual Traders to discuss the needs of specific businesses in beginning to plan for the Temporary Market relocation. All Traders have been invited to an individual meeting: there have been 28 meetings so far

and I am instructed that Grainger continues to try to arrange these meetings with the remaining Traders. This is a good beginning to what will need to be a detailed and ongoing process.

- 5.111. It should also be remembered that some Traders may cease trading between the date of the Inquiry and the Closure Notice or that Traders may choose not to relocate. It is therefore not reasonable at this stage to expect Grainger and the Traders to discuss in precise detail what the Traders' moving needs are, when they might not be relocating at all.
- 5.112. Given all this, the current provision for "free relocation (including all reasonable removal costs and expenses but excluding any dangerous or unlawful or unauthorised equipment)" is appropriately detailed and does not need to be any more specific at this stage.
- 5.113. I am satisfied that the formal obligations provided by Grainger are sufficient to provide all reasonable assurances that the relocation to the Temporary Market will be successful. The relocation package offered by Grainger is comprehensive and in line with my recent experience of the Flower Market move.

#### **ii. Unit Size and Facilities in the Temporary Market**

- 5.114. The size of the Temporary Market as a whole is discussed above; here I address the issue of the size of Traders' individual units.
- 5.115. The s.106 agreement provided that the Traders would be offered "a stall in the Temporary Market": there was no guarantee that the stall would be the same or a comparable size. This was insufficient to protect the Traders' need to secure a stall as close in size as possible to their current unit, so I advised that, as far as possible, individual unit sizes should be maintained across both the Temporary Market and New Market Area. My advice resulted in the current DDV obligations.
- 5.116. The DDV is therefore a significant improvement on the previous agreement; Grainger must
- "use reasonable endeavours to provide each Accepted Qualifying Trader with a unit in the Temporary Market which is no smaller than the Accepted Qualifying Trader's licensed unit in the Market PROVIDED THAT in any event each Accepted Qualifying Trader shall be provided with a unit in the Temporary Market which is no less than ninety percent of the size of the Accepted Qualifying Trader's licensed unit in the Market" (my emphasis, para. 2.5, Sch. 3)
- 5.117. The "Offer" definition repeats the fall-back guarantee of 90%: Grainger must offer each Qualifying Trader a unit "which shall... be no less than ninety percent of the size of the Qualifying Trader's unit in the Market" (Sch. 2, p.9, DDV).

- 5.118. As set out above, the Temporary Market at Apex House will have 12,472 sqft gross space, with 7,740 sqft of available trading space rentable to Traders (the current Market has 6,200 sqft of available trading space). I am therefore satisfied that there will be sufficient net space to accommodate all of the current Traders.
- 5.119. As discussed above in Section 4, the Temporary Market will not be the same shape as the current Market. Using the latest floor plans for the redeveloped Apex House (Appendix 5), I can confirm that all Traders can be accommodated in stalls which are at least the same size as their current units. I conducted this exercise without considering which business would go in which units, however, as this will be subject to individual discussions with all of the Traders.
- 5.120. Given the shape of Apex House, it may therefore be difficult to provide every Trader with exactly the same floor space and layout and position in the Temporary Market as their current unit. There will need to be an element of compromise and negotiation over the size and position of some Traders' units. In my view, it is therefore acceptable to allow a 10% degree of tolerance over the size of each Trader's Temporary Market unit.
- 5.121. A 10% degree of tolerance will allow Grainger and the Market Operator, in consultation with the Traders, to make the best possible decisions on the positioning and layout of the Traders' units, in the interests of the individual Traders and the Market as a whole. Grainger, of course, remains throughout under the obligation to use "reasonable endeavours" to provide each Trader with a Temporary Market unit which is "no smaller" than their current unit. The fall back guarantee that a Temporary Market unit will be no less than 90% of the relevant current unit's size provides additional assurance that every Trader will be relocated into a unit of at least a comparable size with their current one. A 10% difference in a 100 sqft unit is unlikely to have a significant impact on a Trader's ability to run their business. It should also be remembered that the Licence Fees are calculated per sqft: if the Trader's unit is smaller, their Licence Fee will be lower.
- 5.122. The Traders can therefore be confident that Grainger will not pay mere lip service to "trying" to provide Temporary Market stalls of equal size to their current units and will not be able to "get away with" offering much smaller units. It is also necessary to bear in mind that the Temporary Market is only a temporary solution and that the New Market Area will be slightly larger than the Market.
- 5.123. The definition of "Services" obliges Grainger to provide "water, electricity, telecommunications, decoration (painting), flooring and (as appropriate) gas and drainage" (Sch. 2, p.10, DDV). This obligation is entirely sufficient at this stage and covers the standard services that I would expect to see provided. I am instructed that each individual stall will have a means of securing it, probably

roller shutters. Some Traders will also require extraction (businesses including food preparation, salons and nail bars) and either tiling or stainless steel on their walls for preparing food. These matters (such as extraction and other detailed business-specific matters) will be the responsibility of the Market Operator and will only become clear once the detailed plans are made for individual units. It is therefore reasonable that such matters are not detailed in the s.106 or DDV.

5.124. Finally, I should again mention that some units will be on a mezzanine level (this is the case in the current Market, although this is not permitted under the terms of the Traders' agreements). As set out in Section 4, there will be significant discounts on mezzanine units to offset any loss of trade and I expect the Market Operator and Facilitator to work with the Traders to identify businesses which rely less on casual customers and are therefore less likely to experience a decline in turnover through being on the mezzanine. Precise locations should therefore not be dealt with in the s.106 agreement but it would be best practice to adopt the approach suggested here. Of course, Grainger and the Operator make the final decision on Traders' locations in the Temporary Market (para. 2.4, Sch. 3, DDV).

5.125. I am therefore satisfied that the DDV provides all reasonable guarantees to the Traders in respect of individual units' size and facilities in the Temporary Market. Overall, I am satisfied that the relocation "Offer" provides appropriate assistance to the Traders as they relocate to the Temporary Market.

#### **viii) Advertising the Temporary Market and the New Market Area**

5.126. The DDV provides at paragraph 2.1 that the Market Facilitator "works with the Traders in order to...

(e) advertise the proposed relocation from the Market to the Temporary Market and from the Temporary Market to the New Market Area (as the case may be) so as to raise awareness about the proposed location and opening of the Temporary Market and the New Market Area, respectively;

(f) advertise the Temporary Market and the New Market Area once each facility has been opened to the public".

5.127. As discussed in Section 3, the Market lacks coordinated marketing, has very poor signage and is well concealed behind unobtrusive swing doors. It also lacks a coordinated online and social media presence.

5.128. In my view this whole redevelopment is a real opportunity for the Temporary Market and the New Market Area, working with the Market Facilitator, to attract significantly more customers and to encourage casual visitors. Effective advertising will be essential in helping to carry customers from the Market across to the Temporary Market and then to the New Market Area. A deliberate and

sustained advertising effort by the Market Facilitator in concert with the Traders therefore has the potential to be of significant benefit to the Market as a whole.

- 5.129. I would expect the Market Facilitator to begin addressing this issue early on, especially social media. The use of social media is also an issue that should be included in the business support package delivered by the Facilitator throughout the Market's time in its temporary home and into the New Market Area.
- 5.130. From my own experience, social media can be of great assistance to both outdoor and indoor markets. For example, Facebook pages created and managed by my company for our markets have between 5 and 10,000 "likes", with some posts reaching over 100,000 people. Engaging with social media sites like Facebook enable us to advertise effectively information like dates for markets, new stalls, special events, as well as the basic task of keeping current customers engaged and returning to the market and attracting new clientele. Our North Weald Market Facebook page has 8,000 "likes" and is used by traders and customers interactively to promote the market. It is a much-emphasised policy of Saunders Markets Ltd that we engage actively with social media and we have found it highly effective.
- 5.131. Social media advertising is an issue that really must be driven by the market management team; in my experience individual Traders rarely have the experience or the impetus to initiate and sustain successful social media campaigns. It is most effectively driven at an "overall market" level, rather than an "individual trader" level.
- 5.132. Driving forward the issue of advertising the Market – physically and online – makes obvious commercial sense and would be in all parties' interests. It is therefore sensible that the DDV specifically allocates responsibility to the Market Facilitator for this important aspect of the process.
- 5.133. Without waiving privilege, I note here that the previous drafts of the DDV did not mention advertising. I advised that I would expect an identified individual to take responsibility for advertising the relocations; my advice was acted on in specifically incorporating this obligation into the DDV.

**ix) The Size of the New Market Area**

- 5.134. The New Market Area is defined in the DDV as:

“that part of the ground floor of the Development intending to comprise a net internal area of at least eight hundred and sixty five square metres (865 sqm) and to be suitable for local independent traders by way of a replacement of the Market.” (Sch. 2, p.8, DDV)

- 5.135. The New Market Area (the gross size of which can be increased to 11,270 sqft

(see the indicative layout appended to Mr Beharrell's proof) to provide a rentable retail area of 6,200 sqft and 5,070 sqft for circulation space) would comply with the modern approach discussed above of 55% of the total available area for Traders' stalls and the remaining 45% for circulation and safety purposes. The New Market Area will therefore provide exactly the same amount of space for Traders' units and provide the much needed additional space for corridors, services and health and safety.

5.136. I am therefore confident that all of those currently trading in the Market can be accommodated in the New Market Area.

**x) The Layout of the New Market Area**

5.137. Under paragraph 7.2, Sch. 3 of the DDV, Grainger must

“No later than two months before the New Market Offer Date, consult with the Temporary Market Traders about the internal layout of the New Market Area (including the proposed locations of their individual units within the New Market Area) and... have regard to any reasonable representations and views that are received...”

5.138. As with the Temporary Market, it is appropriate to include a requirement to consult the Temporary Market Traders on layout and their units' location in the New Market Area, as the Traders' input may throw up possibilities that had not been identified or thought to be viable by the Operator. A professional operator would have open lines of communication with Traders on matters such as this and I would expect a process of repeated consultation as the layout evolves.

5.139. It is likely that the most contentious issue will be which Traders obtain which positions in the New Market Area; at this point the overall good of the market tends to become secondary to each individual's needs. In order to ensure that the best possible decisions are made for the Market as a whole, the Market Operator must retain overall control of the layout process. It is therefore appropriate that Grainger's obligation is to “have regard to” Traders' views.

5.140. As with my observations on the Temporary Market, it will be necessary at a later stage to produce a floor plan showing the Traders' units in their exact New Market Area locations. I would expect Grainger and the Market Operator to consider this in much greater detail at a later stage and, as with the Temporary Market, the role of the Market Facilitator will be essential in providing “appropriate business support and advice” to traders (para. 2.1, Sch. 3, DDV). I also would expect the “fit out” of any new market, as with the Temporary Market, to be addressed in detail at a much later stage. The internal layout will, of course, be required to comply with relevant building regulations and health and safety regulations. This will affect the size of public walkways between the stalls, fire

escapes, drainage, ventilation and mezzanine levels above individual stalls.

5.141. In my view, at this stage it is not necessary for Grainger to provide additional obligations in terms of the New Market Area's final design or fit out; the Traders' interests are sufficiently protected, particularly by the obligation to consult.

**xi) The New Market Area Scheme**

5.142. In this section I consider the provisions regarding the New Market Area Scheme, which is a document to be submitted by Grainger to the Council which sets out the rateable value of each Temporary Market stall and the offer that Temporary Market Traders will receive for their final units in the New Market Area.

5.143. Under paragraphs 7.4-5, Sch. 3 of the DDV, the New Market Area may not be occupied until the New Market Area Scheme has been approved by the Council, and the New Market Area must then be operated in accordance with the Scheme.

5.144. Below, I comment on aspects of the New Market Area offer. As these New Market Area obligations are identical in most respects to those for the Temporary Market, my conclusions are the same. I am satisfied that the obligations provided by Grainger and to be imposed on the Operator will be sufficient to ensure that as many Traders as possible relocate to a thriving New Market Area.

**a. The Definition of a Qualifying Temporary Market Trader**

5.145. As with the Temporary Market, the obligation to make an Offer for a Licence of a New Market Area unit is limited to "Qualifying Temporary Market Traders", although there is a discretion to make an equivalent offer to any trader who does not qualify. A Qualifying Temporary Market Trader is defined as a Trader operating in the Temporary Market for three months before the submission of the New Market Area Scheme (Sch. 2, p.9 DDV).

5.146. The requirement that a "Qualifying Temporary Market Trader" has been operating in the Temporary Market for three months before the submission of the New Market Area Scheme is reasonable and appropriate for the same reasons as given above for the definition of the "Qualifying Trader". All relocations carry with them an element of risk. Success will be best assured, however, by ensuring that the Temporary Market is thriving and busy at the time of the relocation, with no vacant stalls and traders making profit and able to pay the licence fees. If the same favourable offer is given to all Temporary Market Traders of three months' standing before the New Market Area Scheme's submission, this will provide certainty and encouragement to any new traders considering whether to take a unit in the Temporary Market in the months leading up to the relocation.

5.147. Committing, in particular, to provide a free relocation and all the advantages of

the Market Facilitator's experience with the previous move, will be of great assistance in ensuring that, should any Temporary Market units become vacant, there will be traders to fill them. Temporary Market Traders who receive the assistance of a free relocation will also be under less financial pressure when the New Market Area opens and have therefore a greater chance in making a success of the New Market.

5.148. It is therefore important to make this offer to as many Traders operating from the Temporary Market as possible – not just those Traders who moved from the Market – in order to protect the interests of the Market as an entity. It is very much in the interest of all parties – Traders, Market Operator and Grainger – that the final move to the New Market Area is a success.

#### **b. The Period for considering the Offer**

5.149. The period for considering the offer is similar to that for the Temporary Market: a minimum of three months and possibly longer.

5.150. The New Market Area Scheme must include the “New Market Offer Date”, which is “the date by when the offer of a Licence must be accepted (or declined) being the date which is three (3) months before the date when the New Market Area is projected to open to the public” (Sch. 2, p.9, DDV).

5.151. There is no fixed date for making the Traders their New Market Area offers. However, Grainger must provide the Traders with at least six months' notice of the New Market Area's opening date and the Temporary Market closure (para. 2.12, Sch. 3, DDV). Grainger must also “submit the New Market Area Scheme to the Council no later than six months prior to the projected opening of the New Market Area to the public” (para. 7.3, Sch. 3, DDV). Grainger is also prohibited from operating the New Market Area “otherwise than in accordance with the approved New Market Area Scheme” (para. 7.5, Sch. 3, DDV).

5.152. Although not expressly stated, it seems clear that the intention is to mirror the obligations for the Temporary Market and provide the Traders with their New Market Area Offers at least six months before the Temporary Market closes and the New Market Area opens. On that basis, Traders will have three months for considering the offer before the New Market Offer Date. I am therefore satisfied that Traders will have sufficient time to consider their New Market Area offers.

5.153. This arrangement is therefore appropriate, for the same reasons as with the Temporary Market. In summary:

- i) Traders are provided with the offer details in good time;

- ii) Traders will have a minimum of three months for considering the offer, by which point the New Market Area is likely to be sufficiently advanced that they can see their unit location and make an informed decision;
- iii) Having a cut-off point for accepting the offer assists the Market Operator: he can recruit any replacement traders to ensure a full Market on relocation and also plan the logistics for an efficient relocation.

**c. Traders who do not relocate**

5.154. Should a Qualifying Temporary Market Trader not wish to take a stall on these terms, the Market Operator can then offer that stall “to such other person as it shall determine” (para. 7.9, Sch. 3, DDV). Clearly this is sensible in order to ensure that the Market remains at full capacity and continues to thrive.

5.155. If a Trader does not wish to take a New Market Area unit, the Market Facilitator must “assist individuals working at the Market to find suitable alternative employment” if they decide not to move to the Temporary Market and/or the New Market Area (para. 2.1(f), Sch. 3, DDV). As noted above, this commitment could be of great benefit to Traders who choose to leave the Temporary Market before the New Market Area move.

**d. The New Market Area Offer:**

5.156. The New Market Area Scheme must include:

An obligation to offer Qualifying Temporary Market Traders:

- (1) A Licence of a unit in the New Market Area which shall:
  - (A) Have the benefit of all Services;
  - (B) Be of an appropriate layout having regard to: i) the Qualifying Temporary Market Trader’s licensed unit in the Market in the case of a Qualifying Temporary Market Trader who had a Licence of a unit in the Market; or ii) the Qualifying Temporary Market Trader’s licensed unit in the Temporary Market in the case of a Qualifying Temporary Market Trader who had a Licence of a unit in the Temporary Market but not the Market;
  - (C) Subject to (D) below, a licence fee which equates to the Licence Fee for the first thirty months from the opening of the New Market Area;
  - (D) A licence fee which equates to a discount of thirty percent less than the Licence Fee for the Reduced Licence Fee Period.
- (2) Free relocation (including all reasonable removal costs and expenses but excluding any dangerous or unlawful or unauthorised

equipment) from the Temporary Market to the New Market Area.  
(Sch. 2, p.8-9, DDV).

5.157. Further, the DDV provides that Grainger will

“provide each Accepted Qualifying Temporary Market Trader with a unit in the New Market Area which is no smaller than:

(a) the Accepted Qualifying Temporary Market Trader's licensed unit in the Market in the case of an Accepted Qualifying Temporary Market Trader who had a Licence of a unit in the Market; and

(b) the Accepted Qualifying Temporary Market Trader's licensed unit in the Temporary Market in the case of an Accepted Qualifying Temporary Market Trader who had a Licence of a unit in the Temporary Market but not the Market.”

(para. 7.8, Sch. 3)

5.158. This largely mirrors the Offer for the Temporary Market and my conclusions are the same.

5.159. The “Services” obligation is sufficient at this stage; again any remaining matters (such as extraction and other detailed business-specific matters) will be the responsibility of the Market Operator and only arise once the detailed plans are being made for individual units. It is therefore reasonable that such matters are not detailed in the s.106 or DDV.

5.160. In terms of size and layout: Grainger must provide each Accepted Qualifying Temporary Market Trader with a unit no smaller than their Market unit (for those who had a Licence in the Market), or than their Temporary Market unit (for those arriving after the Temporary Market move). It is appropriate to guarantee that the New Market Area will provide Traders with at least the same amount of trading space as the current Market.

5.161. Grainger also provides a commitment that each Qualifying Temporary Market Trader’s unit in the New Market Area will “be of an appropriate layout having regard” to the Trader's licensed Market unit (if they had one) or Temporary Market unit (if they arrived after the relocation). It will be really helpful to Traders that the layout of their New Market units will relate to the Traders’ original units, which they will have been able to customise and adapt over time. This is not something often guaranteed during relocations as it necessitates extra effort and discussions; in my view this obligation demonstrates Grainger’s efforts to make the relocations as successful for Traders as possible.

5.162. Of course, the detailed plans and negotiations for each individual Trader are far in the future at this point. At this stage, the obligation is reasonable and sufficient to protect the Traders’ interests.

- 5.163. The “free relocation” offer is identical to that discussed above (paras 5.96-113). As with the Temporary Market, given the unknown factors, the current obligation has an appropriate level of detail and it is not feasible to be more specific at this stage. As before, it is clear that Grainger and the Operator are aware of these matters and I am confident that they will be addressed at the appropriate time.
- 5.164. At this stage, I am satisfied that the obligations are sufficient to provide all reasonable assurance that the move to the New Market Area will be successfully carried out. Also, the Operator and the majority of the Temporary Market Traders will have experienced the relocation to the Temporary Market. I would expect both parties to apply the experience learned then to this second move.
- 5.165. I am therefore satisfied that the content of the Offer set out in the “New Market Area Scheme” definition gives sufficient and appropriate detail at this stage and gives all reasonable protection to the Traders’ interests. These obligations are likely to create a situation in which Traders make a successful return to a thriving New Market Area.

#### **xii) Closing the Temporary Market**

- 5.166. The arrangements for closing the Temporary Market mirror those for closing the current Market. Grainger cannot close the Temporary Market until the New Market Area has been “Practically Completed and is ready for occupation” (para. 7.6, Sch. 3, DDV). The Market Facilitator is under an obligation to assist Temporary Market Traders to keep trading for as long as the Temporary Market is open (para. 2.1(c), Sch. 3, DDV). The Traders are also to be given at least six months’ notice of the Temporary Market’s closure (para. 2.12, Sch. 3, DDV). These obligations provide important reassurance that the inevitable period of closure for physically relocating the stalls will be no longer than necessary.
- 5.167. Finally, “from the opening of the New Market Area to the public,” Grainger may not “operate the Temporary Market” (para 7.12, Sch. 3, DDV). This obligation ensures that Grainger does not develop two markets at the same time after the relocation to the New Market Area (one in the New Market Area and one in Apex House). This protects the current Traders from Grainger creating intense local competition by allowing a second market to develop in Apex House.

#### **xiii) Other Matters**

- 5.168. Here I address four matters which are outside the scope of the s.106 agreement.
- 5.169. **Opening Times:** as discussed in Section 3, I am instructed that the Temporary Market and New Market Area will be open on Sundays, making the Market open seven days a week. The opportunity to trade on another 52 prime days is valuable, however it should not be compulsory to trade seven days a week, as the

pressure can be too great. Small traders must be able shut one day a week. With the individually lockable units, I am confident that this will be possible in both the Temporary Market and New Market Area.

- 5.170. **Residential Implications:** I am instructed that there are no relevant restrictions in the planning permissions for either Apex House or the New Market Area which might unduly restrict the Temporary Market or New Market Area's opening hours or delivery patterns as a result of the flats above.
- 5.171. **Servicing and Delivery facilities:** I have seen drawings and plans for the servicing and delivery facilities for both Apex House and the New Market Area. Apex House provides four loading bays: two within the service yard and a minimum of one each (depending on the size of vehicle) on Seven Sisters Road and Stonebridge Road. The servicing of the Market will require a detailed plan but I am satisfied that the facilities are appropriate for the Market's needs. Three of the markets surveyed above (paras 4.49-61) have less in the way of servicing space and all still function well. The New Market Area will have two loading bays in Suffield Road, directly adjacent to one of the Market entrances. There will also be a secure service road that Traders will have access to for deliveries: this contains space for two 11-metre lorries and three vans. Through the combination of these facilities I am satisfied that that the Traders will be able to service their units comfortably with the assistance of a detailed servicing plan.
- 5.172. **Parking:** I am instructed that there will not be any parking available specifically for the Market, either Traders or customers. Although the Market currently has limited parking facilities, three out of four of the Markets surveyed do not have any at all (Section 4). In my view, this is a luxury and not a prerequisite for a successful market: loading and servicing facilities are far more important, particularly given that the Market enjoys such excellent public transport links.

## **SECTION 5: Conclusions**

- 5.173. In summary, the obligations in the s.106 and the DDV are comprehensive, generous and reasonable. Every stage and every aspect of the relocation process, the occupation of the Temporary Market, and the relocation to the New Market Area has been carefully considered. The obligations relating to each stage are necessary and useful. There are no further improvements to be made to the existing obligations that I can identify, nor can I think of any additional precautions which would further assist in ensuring the Market's continued success throughout this process.
- 5.174. Looking beyond the legal obligations, this is a unique opportunity to create something exciting: a new and inviting environment for this popular Market which will ensure its continued and greater success. The Market has suffered for decades from underinvestment and the USM Report concluded that "visually there is a big lack of spark in the market while the ambience is often the very opposite – it is lively with music and activity at most times" (p. 11). This scheme presents the chance to create a physical setting worthy of that atmosphere.
- 5.175. I can positively confirm that I believe that the DDV and s.106 present the Traders' best possible and likely opportunity for creating a secure and bright future for their Market.

## **SECTION 6: Consideration of the 2008 “Seven Sisters Market Report” by USM**

- 6.1. The New Deal for Communities commissioned the “Seven Sisters Market Report” on the Market which was compiled by Urban Space Management in May 2008 (CD11/6), to which I have referred above. This Report has been repeatedly referred to in the Market Traders’ Statement of Case. Many of its assumptions and conclusions were appropriate in the circumstances of 2008. However, the position in 2017 is different in many crucial ways: the Report’s conclusions on future rent levels and the Market’s viability are no longer relevant.
- 6.2. The Market described by USM in 2008 is very similar to today, as I have noted throughout this Proof: the sore need for investment; the poor condition of the building; the comparatively low rents; the vibrancy of the atmosphere; the Market’s invisibility from the street and so on.
- 6.3. Grainger’s scheme in 2008, however, was entirely different. First, the development brief for the site at the time “did not include the market as a given” and, as a consequence, “not a single retail unit in the Grainger ground floor design is as large as the current market” (p. 16). Grainger’s scheme in 2008 was for individual retail units along Seven Sisters Road, the High Road and West Green Road of varying sizes. There was no unit specifically design to replace the Market hall, as noted in the Report: “not a single retail unit in the Grainger ground floor design is as large as the current market” (p. 16). This can be clearly seen from the draft floor plan for the 2008 application (Appendix 8).
- 6.4. Given the premium rent levels on the High Road, USM concluded that “the best option to evaluate is whether this market could occupy the Seven Sisters Road or West Green Road sides” (p.13). Even when combined, however, these two areas of retail space only provided 9,149 sqft in gross space, producing approximately 5,489 sqft in retail space. Neither option would therefore have accommodated all of the Traders, who needed at least 6,150 sqft in 2008. This clearly had an impact on USM’s viability assessment, given the loss of at least some of the Traders.
- 6.5. I discussed in Section 4 my criticism of USM’s estimate of Traders’ licence fees in 2008: by my calculations USM is wrong to state that the licence fee was £31/sqft (see USM Report, pp. 8-9). On the figures cited, the licence fee p.a. was actually £39.41/sqft. As a result USM’s calculations based on a fee of £31/sqft are incorrect. Also I have noted that these fees for “internal” units have increased by 52.25% since 2008 and I assume that there will similarly have been a fee increase for “front” units (as explained above at para. 4.9-11). This is clearly sustainable as the Market is fully let with a waiting list of 14 traders.
- 6.6. At Section 5.b, USM estimates that Traders’ fees will rise to around £90/sqft, an increase of 197% from £31/sqft. These calculations are totally irrelevant in 2017:

- i. Traders' Licence Fees have now been fixed, as per Section 4;
  - ii. The average licence fees presently paid by the Traders are £60/sqft and £64/sqft, so the percentage increase is inaccurate anyway;
  - iii. USM had to rely on rent figures /sqft for Grainger's 2008 plan, based on having multiple smaller units and nothing the size of the Market hall. This is a significant difference from the present position: Grainger is now obliged to provide a single Market space to shell condition, which the Market Operator will fit out.
  - iv. USM assumed an additional service charge of £3/sqft and an additional cost of £15/sqft through the Market Operator passing on its running costs – this is not the case under the fixed scheme of Licence Fees;
  - v. USM assumed that the Traders would have to pay increased business rates of £10/sqft, an increase of ten times their position in 2008. I am instructed that only one Trader currently pays business rates: every other Trader will be exempt as their premises are below the current rateable value threshold of £12,000.
- 6.7. Crucially, in the circumstances considered by USM, there was no provision for a Temporary Market: "The development time span means that impetus and momentum would be lost. The traders all need to continue operating their businesses now and would not sustain a break of 2-3 years. It is more likely that the fragility of individual businesses would mean that many would simply close down" (p.4). As set out above, the Temporary Market is an essential element of the Grainger scheme: without it, the Market would be lost.
- 6.8. All of these factors led USM to conclude that "we think that it will not be sensible or economically viable to relocate this market to the [2008] scheme" (p. 20) and advised that "the future viability of the trader in the Seven Sisters Market is not dependent on operating in this location. There is a chance of saving the traders by moving them to alternative locations". This is certainly not my view in the circumstances of 2017: I am satisfied that the Market has a unique opportunity to relocate and thrive in the New Market Area.
- 6.9. In my view, therefore, the USM Report provides useful background and history for the Market. It also shows that the majority of Traders have already weathered a significant increase in licence fees. However, the Report's conclusions on the Market's viability, on rent increases and other such matters cannot be relied on in any meaningful way when considering the current Scheme. These conclusions are based on facts, estimates and circumstances which have changed enormously over the intervening nine years.

## **SECTION 7: Response to the Market Traders' Statement of Case and the Wards Corner Coalition Scheme**

- 7.1. I have been provided with the Statement of Case on behalf of the Seven Sisters Market Traders. Every issue raised by the Traders which is specific to the Market in its capacity as a market (rather than as a community centre or human rights issues) has been addressed in detail in the above sections.
- 7.2. In this section I identify these issues and state where my opinion on them can be found in my report, where I am qualified to give an opinion. Paragraph numbers refer to the Market Traders' Statement of Case. I also address the Wards Corner Coalition Scheme (also called the "Alternative Scheme"), as set out in the Design and Access Statements ("DAS") submitted with that planning application.

### **i) The Traders' Statement of Case**

- 7.3. Paragraph 11(a) and (b) refer to websites recognising the Market as a "significant London tourist attraction" and to a statement by former Mayor Boris Johnson's spokesperson in support of the Market. I append screenshots of these websites and the text of the statement at Appendix 9.
- 7.4. Paragraph 46 (a), (b), (c) and (d) all reference incorrect and outdated licence fee estimates. Section 4 sets out my detailed commentary on Grainger's updated commitments on the Licence Fees: as I have shown the increases in fees will be nothing like 300% (I note that I am not qualified to address the points on Equality Impact Assessment issues).
- 7.5. Paragraph 46(a) states that the existing rents in the market are approximately £31/sqft per year but that the "likely future rent payable by market traders" would be "around £90/sqft per year". I have explained in Section 4 that I do not understand where USM have got the figure of £31/sqft p.a. from: it seems to me to be wrong. My calculations suggest that rents in May 2008 were £39.41/sqft p.a. for "internal" units, the majority of the Market.<sup>8</sup>
- 7.6. The USM Report's calculations on the likely future rent payable by market traders were made in significantly different circumstances from the current situation, as I set out in Section 6. The bases for the calculations of an increase from £31/sqft to £90/sqft are no longer relevant.
- 7.7. Paragraph 46(b) is based on an incorrect understanding of the former s.106 which, in any event, has been superseded by the DDV's Licence Fees scheme and

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<sup>8</sup> As I explain above (at para. 4.9-11) I do not believe that licence fees in 2008 were "roughly double" (£80/sqft) for "front" units (given that they are now an average of £64/sqft), although it is very likely that they would have been charged more than "internal" units on £39.41 and less than the current £64/sqft.

the obligation to have regard to the Council's policies on the Market ("New Market Area Scheme", Sch. 2, p.8-9 DDV). I have also discussed above that it is in the Market Operator's interest to maintain the current mixture of the Market, in that preserving traders is a better use of resources than seeking new ones and in that there is a lot of untapped potential in this unique combination of Traders from Latin America and other unusual nationalities and cultural groups.

- 7.8. Further, as set out above (para. 4.5), current licence fees are, on average, £60/sqft for internal units and £64/sqft p.a. for units fronting the High Road. I do not understand the figure of 300% increase, unless it is a mistake in calculating the percentage difference between £30 and £90/sqft (an increase of 200%). This miscalculation of a 300% rent increase is also mentioned at paragraph 60, as evidence that the Traders "are likely to lose their businesses and livelihoods". As I set out in Section 4, in my view it is as certain as it can be that the Traders will be able to weather the Licence Fee increases proposed in the DDV: the worst case scenario is an average of 6% increase per year across the five years.
- 7.9. Paragraph 46(c) states that an increase in rent from £30/sqft to £90/sqft would "decimate the existing Market by pricing out the current Traders and removing Latin American, Afro-Caribbean, African and other BME business owners". In Section 4 I noted that I have not seen figures for individual Traders' turnover or profits but that the Market has already had an increase in licence fees from £39.41/sqft to £60/sqft for "internal" units and from an unknown rent to an average of £64/sqft for "front" units. Clearly this has not decimated the Market and there is still a vibrant mix of cultures present: it is full and there is a waiting list of 14 traders.
- 7.10. Paragraph 50 states that the "Council has...overlooked the findings in the Urban Space Management Report *"the impact of the increased costs means the new development is unviable for the existing market business"*." I have analysed the USM Report in Section 6: the Report's conclusions on the Market's viability and estimated increases in rent or costs from 2008 are no longer relevant to the 2017 situation: circumstances are very different.
- 7.11. Paragraph 54 states that "the available evidence strongly suggests that, for the vast majority of market traders, the Order Scheme is unlikely to enable their continued trading". As mentioned above, the evidence cited in the Statement of Case regarding rent is incorrect and this statement is based on an incorrect reading of the superseded s.106 agreement. The DDV, in my opinion, provides every reasonable assurance that every Trader who wants to make the relocations will be able to do so and continue trading.
- 7.12. Paragraphs 87-92 argue that the s.106 fails to secure the future of the Market. The licence fee figures cited are again based on a mistaken understanding that

current Market rents are £31/sqft. The quoted percentage increases are therefore incorrect, even on the previous s.106, and are superseded in any event by the Licence Fees in the DDV.

- 7.13. Paragraph 88(c) argues that the s.106 would not enable a “significant proportion” of Traders to relocate, citing in support data from the 2012 Market and Business Survey (presented in the Equality Impact Assessment by Aecom, taken from Question 11 of the Survey, CD11/4). These questions and answers are based on outdated proposals which have been superseded by the DDV obligations. I remain confident, as I have described in detail in Section 5, that the Traders will be supported in continuing their businesses in the Temporary Market and New Market Area.
- 7.14. Paragraph 89 states that any suggestion that the long-term future of the Market is secured “by reasons of projected increased footfall or spending is also fundamentally undermined” by a statement made to the Planning Sub-Committee on 25<sup>th</sup> June 2012 that “*there could be no certainty around this issue as it was not possible to predict how successful the new market would be*”. Of course it is right that predicting how successful the New Market Area will be is difficult and cannot possibly be a certainty. In my view, however, the anticipated improvements in the built environment, a coordinated marketing and advertising plan, a more visible and eye-catching entrance, and the longstanding community support already enjoyed by the Market mean that I am as certain as I can be that the Market has every chance of thriving in its temporary and permanent homes.
- 7.15. Paragraphs 121-127 state that there are alternative plans and locations for the development. Insofar as this argument relies on the Wards Corner Coalition scheme for re-providing the Market, I discuss my concerns with this below. In summary, these are:
- i. There is very little detail in the Design and Access Statements that I have seen which describe the plan: there are therefore no guarantees or obligations to the level of detail gone into by the DDV.
  - ii. The WCC plan to use the corner building as a Temporary Market for the Traders has not been thought through in any serious way: using the entire corner building would not be enough space to house the current Traders, and the scheme only suggests using the ground floor. The total gross area of all three floors is 620 sqm, or 6,674 sqft. The Traders' stalls alone need 6,200 sqft even without space for circulation and services.
  - iii. As set out above (paras 4.39-40), there is no detail given on rent although it is hinted that an increase will be necessary. Using the

rough figures I have estimated that the WCC scheme would necessitate an increase to at least the fees in the DDV scheme and probably much higher, given the viability issues.

- iv. There are no guarantees of the kind given in the DDV: nothing on provision of services in the Temporary Market, nothing on stall size in either the Temporary Market or the New Market Area, nothing about how long Traders would have to decide if they wanted to accept the offer, no guarantees on licence fees and so on.

7.16. Insofar as I am qualified to address them, I am therefore confident that my Proof addresses the objections raised in the Traders' Statement of Case.

### **ii) The Wards Corner Coalition Scheme**

7.17. At this point I note that there are no alternative proposals at all providing any kind of detail along the lines of the DDV and s.106 agreement. The only other scheme of which I am aware is that set out in the Wards Corner Coalition's planning application. I have seen the Design and Access statement for this scheme (CD9/15) but it contains so little practical detail that it is difficult to compare it in any meaningful way with the Grainger plans. Here I pick out three key issues with the WCC scheme as presented in the DAS.

7.18. There are no other comparable guarantees in any other scheme that the Traders would be protected in returning to a refurbished Market as they are under the current s.106 and DDV. A market operator that had to spend significant sums on refurbishing a market would be able to terminate every licence in the Market and refurbish the Market without the cost and distraction of trying to keep the current Traders trading. The market operator could then seek new traders to fill the new Market in keeping with the development style. As I have explained, this would be unusual but possible: the market operator can terminate any licence on a week's notice and the Traders need reassurance that this would not happen. Under the Grainger scheme, the Traders are protected.

7.19. In terms of protecting the Traders' continuity of business during refurbishment, I note that the WCC DAS proposes relocating the Traders to the "corner building" during their proposed works (pp. 76-77, DAS). It appears that the plan is to use only the ground floor of the corner building to house the Traders (the first and second floors are intended to be used as flats and an art gallery).

7.20. There is nothing like enough space to house the current Market here: even using the entire corner building would be insufficient. Drawings in the WCC DAS indicate that the total gross area of all three floors is 620 sqm, or 6,674 sqft (pp. 42-44, DAS). Traders' stalls alone need 6,200 sqft even without space for circulation and services.

- 7.21. I cannot emphasise enough how important the Temporary Market is to my support for the Grainger scheme. Without having a pre-prepared space which is properly set up as a functioning market hall with appropriate services, enough room, easily accessible by the public, and close to the existing Market, the Market and its community of Traders would be at a serious risk of simply disintegrating. I have already described how difficult it would be for these Traders to survive without trading for anything more than a couple of weeks.
- 7.22. In my view, the issue of providing a temporary market is a serious weakness in the WCC scheme. On the information available, the WCC scheme has not grasped the scale of the issues involved in re-providing the Market or keeping the Market trading whilst refurbishment takes place. There are no guarantees for Traders that they would be able to trade anywhere during any renovations period, neither are there any indications of how long that renovation period might be. Far from guaranteeing the Market's continued existence, the WCC scheme poses a risk to it.
- 7.23. I have set out my estimates for the licence fees that would need to be charged in a WCC refurbished market above at paragraphs 4.42-43. The DAS provides very little detail but it seems to me simply inevitable that there would be rent increases. Again, there are no comparable guarantees to the Grainger scheme that the licence fee increases would be limited to anything like the competitive DDV rates.
- 7.24. In my view, the WCC scheme does not present a comparable alternative to the Order Scheme. The guarantees given in the DDV and s.106 are essential to protecting the continued success of the Market. The fact that there are no similar guarantees in any other plan for the Market's future, indeed that there is no other plan at all with this level of detail at all, is a crucial consideration. In terms of risk reduction for the Traders, the Order Scheme presents far greater security than any alternatives. A scheme which fails to match all of the obligations provided by Grainger would be far riskier to the Market's chances of survival.

## **SECTION 8: Conclusions and Summary**

- 8.1. The purposes of my proof are to review the state of the Market; to assess Grainger's commitments to a fixed scheme of Licence Fees and possible alternatives; and to review and comment on the obligations in the s.106 and DDV for re-providing the Market in the New Market Area. I also consider the 2008 USM Report and respond to the Market Traders' Statement of Case and the Wards Corner Coalition Scheme.
- 8.2. My overall conclusion is that the Market clearly needs significant investment and this Order scheme offers the best, most comprehensive and safest route to achieving the goal of a flourishing, reinstated Market in the same location.
- 8.3. In Section 3, I review the Market and conclude that the Market is unique, vibrant and trading to capacity: Traders are being successful in difficult conditions. However, the Market has very little appeal to anybody not already using it; the entrances are poor and undefined and do not encourage a casual shopper.
- 8.4. The poor condition of the building means that change is inevitable and necessary to secure the Market's future: it is simply not feasible for the Market to continue operating indefinitely without investment. The Market is therefore not operating at anything like its business potential: it lacks direction, leadership and a basic marketing plan. This is not a criticism but an indication of the scale of the opportunities available. There is a chance to create a high profile, modern, clean, spacious market which will only encourage additional footfall.
- 8.5. This Market is ripe for change and development to enhance its current offering and composition, not to change it. This Order Scheme represents the Traders' best possible opportunity to keep and improve their Market.
- 8.6. In Section 4 I discuss licence fees, which were always going to be a major concern for the Traders. Grainger has committed to a fixed scheme of Licence Fees, beginning in the Temporary Market and ending after 30 months in the New Market Area (including a 30% discount for the first 18 months). The Licence Fees under this scheme are capped and represent a manageable increase. This decision is a huge benefit to Traders in terms of business planning: the years of certainty that this provides will be of real value as the Traders settle into their new Market.
- 8.7. I am confident that these figures and incentives are affordable and give the New Market Area every chance of success. In fact, under the fixed scheme, some Traders will pay less than they do now. For Traders whose fees increase, even including VAT the largest increase over and above present average rents is 33.55% over five years. I am as confident as I can be that as many Traders as want to will be able to continue trading in the New Market Area.

- 8.8. Without Grainger's scheme, licence fees will almost certainly increase whatever happens to the Market – whether it continues as it is on a “do nothing” basis, or with repairs on a “make do” basis, or under the WCC scheme. The addition of VAT to Traders' licence fees is, realistically speaking, inevitable in any situation involving repairs. Under any of these alternative options, Traders' fees are likely to be higher than under the Grainger scheme.
- 8.9. Although there is an element of speculation – given that this is some years away – my instinct is that, in the long term, this trend would continue and the Traders' fees would be lower under Grainger's scheme than under the other options.
- 8.10. It is very important to emphasise that setting a viable rent is therefore in the Market Operator's interests just as much as it is in the Traders': market operators need to keep their markets full and bustling. I am therefore confident that, even after the first 30 months in the New Market Area, the Licence Fee levels will not suddenly increase beyond the budget of the Traders. Comfort can be taken from the obligation to set Licence Fees at “a level that is consistent with the Council's policy objective to attract and promote local independent traders”.
- 8.11. In Section 5 I analyse the provisions of the s.106 and DDV proposed by Grainger. There are critical issues that must be addressed for the Market to successfully relocate and thrive in its final location. All of these issues have been considered and addressed in the s.106 and DDV obligations. I would go as far as to say that there are no further reasonable additions to the s.106 that I can identify.
- 8.12. The obligation to create the new Market is met by the s.106 and DDV, with current floor plans showing enough space to relocate all Traders matching their existing use of floor space in the New Market Area, hence the guarantee of an identically sized stall in the New Market Area. Grainger must give six months' notice before closing the Market and the Temporary Market at Apex House must be ready for occupation. I have discussed the importance of a rapid relocation with a moving company and I am confident this can be achieved. This will allow business continuity which is crucial to maintaining customer support and Traders' cash flow.
- 8.13. The location of the Temporary Market is crucial to delivery of the New Market Area; Apex House and its proximity to the Market and the New Market Area are vital to the Market's retaining its identity over the relocations. The Temporary Market is going to provide more floor space than is available in the Market: the latest floor plan shows 12,472 sqft of gross internal area providing 7,740 sqft of rentable space (compared with 6,200 sqft now). The Operator will be able to accommodate all existing Traders with a degree of flexibility. This demonstrates a real willingness on Grainger's part for the project to succeed, as too often this is space that is sacrificed to commercial pressures.

- 8.14. The relocation Offer will be offered to a) any Trader who is operating a unit at the date of the Closure Notice and b) has been operating a unit for three months before the Closure Notice. This guarantees that all current Traders will be offered a position in the Temporary Market, ensuring that the current cultural, ethnic and retail balance is going to be preserved. The Offer to Qualifying Traders also specifies free relocation, guarantees “reasonable endeavours” to ensure an equal size of unit (with a minimum of 90%), a three month rent-free period and fixed Licence Fees. This constitutes a comprehensive package of inducements all designed to enhance the success of the relocation.
- 8.15. The Closure Notice will be issued six months before the closure of the Market and Traders will have a minimum of three months to decide if they wish to accept the Offer, which protects all parties. The Trader will be able to see the Temporary Market in a nearly-finished state and the Operator will have time to recruit new traders if necessary. A “Release payment” is unusual; Traders do not have security of tenure and the Operator could serve notice and carry out the refurbishment with an empty building. Instead, Grainger has developed a plan that gives every opportunity for the Market to survive and flourish.
- 8.16. The Temporary Market cannot be closed until the New Market Area is ready for occupation. This provides the same levels of protection and continuity as the previous relocation. The process for Traders moving from the Temporary Market to the New Market Area largely mirrors the move to the Temporary Market. This provides the same level of comfort for the final relocation and I am confident that all of these incentives along with a discounted and known rent give the New Market area the optimum chance of a successful launch.
- 8.17. The proposed New Market Area layout (the gross size of which can be increased to provide a total floor area of 11,270 sqft, providing around 6,200 sqft of rentable space and more than the current Market) demonstrates a desire to ensure the Market’s survival when commercial pressures often dictate the reduction of the space available. The redevelopment provides the opportunity to open up the Market; it will have a larger frontage with more units directly facing the High Road. This is also a chance to improve the kerb appeal drastically.
- 8.18. The Market Facilitator role and the requirement to advertise both relocations is a significant asset to the Market and its future. The Market lacks a coordinated marketing strategy and largely relies on word of mouth and existing customers. There is an opportunity to embrace the Latin American culture within the Market and widen its appeal to this demographic and the wider public.
- 8.19. The Traders will also benefit from the business planning aspect of the Market Facilitator role, which will be especially important when considering whether to register for VAT to mitigate the inevitable addition of VAT to their rent. I would

expect the Facilitator to produce a detailed plan, tailored to each Trader, showing timelines and key stages of the relocation along with the intricate details of how the relocations will work. The Facilitator should also work with Traders who require additional support in developing their skill sets.

- 8.20. There is an opportunity when finalising the internal layout of both markets to make improvements, especially around seating for catering units and the encouragement of the social aspect. In both of these areas the Market lacks any coordinated thought as the layout has grown organically over time. The requirement to consult with the Traders will ensure that all aspects are covered.
- 8.21. In summary, in my experience the levels of support provided by Grainger to the Traders in relocating to the New Market Area are unprecedented in their thoroughness and commitment to delivering the New Market Area.
- 8.22. In Section 6 I consider the 2008 USM Report and its conclusions. First, it seems to me that there is an error in the calculation of the licence fees payable in 2008: the figure of £31/sqft should have been roughly £39.41 for “internal” units. Secondly, the Report provides useful background for the Market and shows that Traders have already weathered a significant increase in rent. The Report’s conclusions, however, on the Market’s viability and rent increases cannot be relied on when considering the current Scheme. These conclusions are based on facts, estimates and circumstances which have changed enormously over the nine years since the Report was written.
- 8.23. In Section 7 I consider the Market Traders’ Statement of Case and briefly analyse the Wards Corner Coalition scheme for re-providing the Market. The Traders’ Statement of Case is largely based on a misunderstanding about the licence fees currently payable. It is also responding to proposals superseded by the DDV. I am confident that I have addressed these issues in my Proof and the Traders can be confident that their interests are protected under the s.106 and DDV.
- 8.24. In terms of the WCC scheme, on the information available it does not practically guarantee the re-provision of the Market at all, let alone with anything like the detail of the Order scheme. Significantly, the plans for temporarily installing the Market in the “corner building’s” ground floor do not provide enough space: the entire corner building would not be enough, let alone the ground floor.
- 8.25. The Order Scheme is a unique opportunity to secure the long term future of the Market. Change is inevitable and this development provides a fantastic opportunity to create a new Market, while allowing for business continuity in the closest possible temporary location. These conditions are unlikely to present themselves again. The DDV obligations are comprehensive and will give the Market every chance to relocate and thrive in a new, permanent home.