

Committee(s):	Date(s):
Markets Committee	22 July 2015
Subject: Farmers' Market – St Bartholomew's Hospital	Public
Report of: Director of Markets and Consumer Protection	For Information
Summary	
<p>Bart's Health NHS Trust has asked London Farmers' Markets (LFM) to operate a weekly farmers' market in the grounds of St Bartholomew's Hospital, West Smithfield.</p> <p>The market will operate from 9 am to 2 pm on Wednesday of each week and will supply regional food from farm businesses and small food producers.</p> <p>LFM are about to submit a formal planning application to the City for the market and have asked for written confirmation from the Director of M&CP whether the proposed market conflicts with the City's market rights before proceeding with the application.</p> <p>Recommendation(s): Members are asked to note the report.</p>	

Main Report

Background

1. Bart's Health NHS Trust has asked London Farmers' Markets (LFM) to operate a weekly Farmers' Market in the courtyard in the centre of St Bartholomew's Hospital (Bart's), West Smithfield.
2. LFM operate retail markets at 21 locations across London that enable farmers to sell their products directly to the public.
3. LFM seeks to increase farm incomes, and provide high quality local /seasonal foods to urban communities and encourage sustainable methods of food production. LFM support traditional animal breeds and heritage fruit and vegetable varieties; encourage Londoners to take a greater interest in food production and rural issues and provide advice to farmers about what to grow, how to grow it, and how to market local produce.
4. Producers come from within 100 miles of the M25 and are required to raise, grow or bake everything they sell.
5. LFM have been in discussion with the hospital trust and have produced a planning design access statement (see Appendix 1) which they have submitted to the City's Planning Team for comment. The Comptroller and City Solicitor has given legal opinion on the proposed market (see Appendix 2)

Current Position

6. LFM's planning design access statement envisages the market operating every Wednesday between 9am and 2pm and imposes the following operating conditions on market users.
 - a no arrival rule on site before 7am
 - a quiet set up policy- no music, no shouting. (stalls making a noise can be removed from the market)
 - a no trading before 9am rule
 - a market layout to provide requested access points through the market
 - enforcement of market rules on what can be sold
 - the end of trading at 2pm
 - a clean up policy so the site is left tidy and rubbish is taken away by traders
7. The Farmers' market is a retail market that will not commence until after Smithfield Market has ceased trading each day. Access for vehicles supplying the Farmers' market will not need to use any of the roadways bounding Smithfield Market and should not therefore cause an obstruction to vehicles using the wholesale market.

Proposals

8. LFM are about to submit a formal planning application to the City for the farmers' market and have asked for written confirmation from the Director of M&CP whether the department has any objection to the market on the grounds of potential conflict with the City's market rights. The Director intends to confirm that the City has no objection to the market. Since it will not conflict with the City's Markets' wholesale activities and there are already a number of small 'street markets' within seven miles.

Corporate & Strategic Implications

9. The operation of a Farmers' Market would provide access to fresh produce for residents and City workers, which supports the City's Health Improvement agenda, as well as opportunities for small businesses to trade at the market
10. Links to:-
 - Corporate Plan "To provide valued services, such as education, employment, culture and leisure, to London and the nation"
 - City Together Strategy "supports our communities"; "is vibrant and culturally rich"

Implications

11. There are no financial or HR implications arising from this proposal. Legal opinion is given in Appendix 2.

Conclusion

12. Members are asked to note the content of this report.

Appendices

- Appendix 1 – LFM – Design and Access Statement
- Appendix 2 – Comptroller and City Solicitors advice

Don Perry

Head of Business Performance
Market and Consumer Protection

T: 020 7332 3221

E: [Donald.perry@cityoflondon .gov.uk](mailto:Donald.perry@cityoflondon.gov.uk)

Design and Access Statement West Smithfield Farmers Market at Bart's' Hospital

The weekly farmers' market will supply regional food to local people and in the process instil a sense of community. The area will benefit from the linking up of urban communities with farm businesses and small food producers, as local residents and workers are able to buy food direct from the people who produce it.

Sites Current Use

The site is a courtyard in the centre of Bart's Hospital Trust, West Smithfield. At present, vehicles including ambulances use it for access. There will be no vehicle access once the courtyard development is finished, apart from farmers' market vehicles. There is a fountain, shelters and benches where people sit. The site is located close to the centre of West Smithfield and Farringdon.

The site is an open, level, tarmac surface surrounded by hospital buildings.

Sites proposed use

The weekly farmers market requires no permanent physical alterations to the site. The farmers market would take place every Wednesday between 9am and 2pm. The farmers market is a good example of sustainable development by having minimum impact on its surroundings. The sites closeness to existing retail outlets is convenient for pedestrians, hospital staff and patients and gives them a good choice of healthy food. The market is managed by London Farmers Markets. We bring a manager who is always present on site for the duration of the market to ensure a successful market operation. This is achieved through the following duties;

- Enforce a no arrival rule on site before 7am
- Enforce a quiet set up policy- no music, no shouting. (stalls making a noise can be removed from the market)
- Enforce a no trading before 9am rule
- Set up market layout to provide requested access points through the market
- Enforces market rules on what can be sold
- Enforces the end of trading at 2pm
- Enforces our clean up policy so the site is left tidy and rubbish is taken away by traders

Market stalls on average are 3m wide and are roofed with canvas material and weighted down, and they come in a range of attractive colours. The market would have approximately 25 to 30 stalls each week.

The market layout is designed to give maximum benefit to pedestrians and to maintain the existing layout of the square. Emergency Access will always be possible through the market; stalls can be moved in seconds if required. If wider emergency access was required at some time in the future this could be arranged with only a week's notice.

Appendix 1

The market is located within the courtyard at Bart's, with access for pedestrians through the King Henry VIII Gate at the North-West end. The market is accessible for disabled and elderly people. We aim to have the least amount of impact on any of the neighbouring properties and the least disturbance to patients and staff at Bart's. Temporary signs would indicate that a market takes place on Wednesdays and which areas they should not park in. As the market takes place in a courtyard with previous vehicle access, there is always the chance that a car could park in the market area before the market sets up. If this situation occurs, space is left to allow the car to leave if the car owner returns in market hours. Our vehicles would enter via the Henry VIII gate and exit onto Little Britain.

The market stalls will be arranged around the courtyard, their backs to the centre alongside the covered shelters, with stalls along the kerbs with their backs to the buildings, facing them. This allows enough access for pushchairs and wheelchairs to move freely around the market and for emergency access.

Public transport to the site is excellent with direct rail and bus links only a few minutes' walk away.

The farmers market complements the existing retail in the area by offering only local produce, permitted within LFM's rules. We know from experience that farmers' markets increase sales for local businesses. This boost to the local economy has been welcomed by many businesses that have seen a boom in customers. Many businesses have told us directly that their sales have increased on market days.

The overall appearance of our markets is perceived by many to enhance and improve the environments we work in, if only for a very limited amount of time. For five hours each Wednesday the courtyard would turn into a hive of local community activity. Neighbours, patients and hospital staff get to meet each other and the event encourages a sense of community. By having limited trading hours we increase the chances that the local community will come together and get to know each other. The limited trading hours also protect the amenity for our neighbours on the area that could be concerned about the market starting too early or finishing too late.

The market adds to the mix of local activity and strengthens West Smithfield as a place to visit by offering another interesting attraction. The market is also keen to work with Bart's Health, creating special events such as healthy eating cooking demonstrations, which all build stronger community links and foster a sense of ownership of the market by the local community. The market makes use of what is an under used and undervalued space and turns it into a vital community resource. The farmers market puts the 'village' back into West Smithfield, by giving the area an anchor, where the community can gather.

The surrounding area; immediately to the north outside the Henry VIII gate is West Smithfield with its restaurants, cafes, and Smithfield Market. Beyond this, Charterhouse Street and Farringdon.

To the East; Little Britain and the Museum of London.

West; Farringdon street, Holborn Viaduct and south, Newgate street and St Pauls.

Legal Opinion

Thanks for your request for advice regarding the proposed farmers' market at Bart's Hospital. A number of ancient markets are protected under common law from 'disturbance' (in other words, competition) from any rival market held within a distance of six and two-thirds miles. The common law distance was supplemented in relation to the City of London by a charter of Edward III dated 1327 which provides that no market could be created within 7 miles circuit of the City. These 'market rights', or 'market franchise rights' are a type of private property right to have a concourse of buyers and sellers.

The applicant's Design and Access Statement proposes that the market would take place every Wednesday, and another application document describes "a full range of farm products including meat, eggs, fruit, vegetables, dairy, cheese, fish, baked goods, honey, preserves and plants". Smithfield Market is open Monday to Friday and trades in meat. The City Corporation is also the market authority for Billingsgate Market (trading in fish etc on Tuesday to Saturday) and New Spitalfields Market (trading in fruit and vegetables on Monday to Saturday). All are within a 7 mile radius of the proposed market.

Case law has established an irrebuttable presumption that if a rival market is held within the actionable distance of a lawful market, and on the same day, then it will be a disturbance of the lawful market. In other words damage can be presumed without having to prove it. What amounts to a rival market is a question of fact in each case.

Smithfield, Billingsgate, and New Spitalfields Market are wholesale markets, for the sale of produce to retailers or businesses, and generally anyone other than the standard consumer. The applicant's document '2012 General Proposal' includes a statement: "We do not permit wholesalers or middlemen". As the proposal is for the farmers' market at Bart's Hospital to operate on Wednesday though, this would arguably be disturbing the City Corporation's market rights in respect of:

- Smithfield (if meat is on sale);
- Billingsgate (if fish is on sale); and
- New Spitalfields (if fruit and vegetables are on sale).

In theory, an injunction could be obtained to restrain a rival market. However there are potential difficulties in seeking to enforce our rights by injunction. A court may be unwilling to grant an injunction supporting what is really a monopolistic practice which potentially could be argued to be inconsistent with modern competition law.

Therefore, unless it is considered that the farmers' market at St Bart's would cause serious damage to one of the Corporation's markets, the appropriate action would be to consider, in consultation with the Market's Department and the Town Clerk's Department, whether we would wish to licence the farmers' market. Further, we should bear in mind that where markets have recently been granted planning permission, for example as I understand at One New Change and near the Gherkin, that a consistent corporate approach will best protect the City Corporation's legal rights and reputation.