

Dated:

8 January 2025

**20 Busby Place
London
NW5 2SR**

Response to Council's Statement
of Case
Appeal against refusal of
planning application
2022/1143/P

1. INTRODUCTION

- 1.1 This response is submitted following receipt by the Appellant of the Council's statement of case dated 18 December 2024. The defined terms originally used in the Appellant's Statement of Case apply in this response unless stated otherwise.
- 1.2 This Response is structured to address the Council's comments on the four reasons for refusal as follows:
 - 1.2.1 Reason for Refusal 1 – Low cost housing;
 - 1.2.2 Reason for Refusal 2 – Standard of accommodation;
 - 1.2.3 Reason for Refusal 3 – Bike Store;
 - 1.2.4 Reason for Refusal 4 – Car-free development

2. REASON FOR REFUSAL 1 – LOW COST HOUSING

- 2.1 Paragraph 9.4 of the Appellant's Statement of Case states "*The Appellant has obtained formal advice from Planning Counsel on this matter. That advice dated 5 August 2024 is appended as **Appendix 6** to this Statement of Case and should be referred to in full.*" Appendix 6 was duly submitted with the Appellant's Statement of Case.
- 2.2 This was not even the first time that opinion had been shared with the Council, as it was sent to Mr Fitzpatrick and others at the Council on 6 August 2024 (prior to the refusal of the Application) in the hope of resolving this matter without the need for an appeal.
- 2.3 In the interests of the Inspector's time the Appellant will not repeat Counsel's opinion other than to say that the interrelation between policies H4 and H10 are addressed in considerable detail. The Appellant does not consider the submissions articulated by Counsel to have been properly addressed, let alone overcome by the Council's statement of case.
- 2.4 The suggestion by the Council that Counsel's opinion is incorrect due to a misplaced comma (which is correctly shown at para 17 of Counsel's opinion but simply a typographic error in the summary found in section 9.5.1 of the SoC) suggests that the Council may not even have read Counsel's opinion. This is clearly an example of unreasonable conduct by the Council and we note they have not provided their own legal opinion to rebut the Appellant's.

3. REASON FOR REFUSAL 2 – STANDARD OF ACCOMMODATION

- 3.1 No further submissions.

4. REASON FOR REFUSAL 3 – BIKE STORE

- 4.1 The Appellant agrees with the Council's list of suggested conditions at their Appendix I and note that the Council accepts that this would address the reason for refusal.

5. REASON FOR REFUSAL 4 – CAR-FREE DEVELOPMENT

- 5.1 The Appellant has provided a signed and dated Unilateral Undertaking. Given the straightforward nature of the Unilateral Undertaking the Appellant does not consider meeting the Council's legal fees to be reasonable or proportionate. The Council provided detailed comments on the Unilateral Undertaking on 5 December 2024 (please see Appendix I) and

therefore its comments at para 2.21 that "*as such, the Council has not review the Unilateral Undertaking and cannot confirm whether this reason for refusal has been overcome*" is clearly untrue. We again consider this to be an example of unreasonable conduct by the Council

6. **CONCLUSIONS**

6.1 For the reasons set out in this statement, the inspector is respectfully invited to allow the appeal.

6.2 The Appellant has also separately submitted an application for costs based on the Council's unreasonable conduct in this matter.

APPENDIX I

From: Anna Trafford <Anna.Trafford@Mishcon.com>
Sent: 06 December 2024 13:47
To: Annie Kelly <Annie.Kelly@camden.gov.uk>
Cc: Tom Barton <Tom.Barton@Mishcon.com>
Subject: RE: s106: 20 Busby Place: 2022/1143/P - S106 Agreement (1709840) [MDR-MISHCON_LIVE.FID321457]

Hi Annie

Thank you for your comments on the UU. To address the points raised in your email:

1. Affordable Housing Contribution - It is noted that the Council does not consider that the draft UU overcomes the first reason for refusal. As stated in my email of 18 November, it remains our client's position that no affordable housing contribution is required and therefore the first reason for refusal is not valid.
2. Compensation - As you say, as any indemnity would be linked to the nature of the obligations in the undertaking, this is a minor point. We therefore do not consider the omission of such a provision a sufficient reason not to agree the draft UU.
3. Monitoring Fee - In light of the nature of the obligations secured, we do not think it would be appropriate or necessary to pay a monitoring fee.
4. Legal Fees – The draft UU is a short standard form document and as such there is no need for our client to cover the costs of reviewing the same.

In summary, our client maintains its view that the UU as drafted overcomes the fourth reason for refusal and that, as there is no affordable housing contribution due, there is no need for the UU to

address the first reason for refusal. If you have any other comments, please let me know. Otherwise, we wait to receive a copy of the Council's representations in due course.

Kind regards

Anna

Anna Trafford

Associate

Mishcon de Reya LLP

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From: Annie Kelly <Annie.Kelly@camden.gov.uk>

Sent: 05 December 2024 16:08

To: Anna Trafford <Anna.Trafford@Mishcon.com>

Cc: Tom Barton <Tom.Barton@Mishcon.com>

Subject: RE: s106: 20 Busby Place: 2022/1143/P - S106 Agreement (1709840) [MDR-MISHCON_LIVE.FID321457]

WARNING: External Email

Hi Anna,

We will be making representations to the Inspector that the Unilateral Undertaking does not include the Affordable Housing Contribution and it therefore would not be acceptable to the Council without that inclusion as it doesn't overcome the reason for refusal.

We also note clause 5.4. has been omitted. This is a standard provision. As the Owner is willingly agreeing to enter into this UU, there should not be any issue with agreeing not to make any claim for compensation. Further, it is only correct that the Council should be indemnified for any liability arising as a result of a breach by the owner. Having said that, the indemnity is only applicable when there has been a breach, and it will ultimately be limited by the nature of the obligations in the agreement.

In addition, there is no provision within the UU to pay the Council's legal and planning monitoring fees. It is standard practise that appellants pay the Local Authorities legal fees for reviewing UUs as submitted UUs may not overcome the reasons for refusal that have been identified as being potentially able to be overcome via an appropriate UU or bilateral agreement. This costs local authorities and will ultimately and unfairly fall on the taxpayer if appellants do not pay legal fees on appeal. The requirement to pay both legal and monitoring fees is further set out in paragraph 6.8 to 6.14 of Camden Planning Guidance on Developer Contribution Guidance. We therefore ask again for you to undertake that these fees will be paid.

Finally, we note that you have removed reference in the recitals to the planning and appeal application references. It is helpful to include these references in the recitals for ongoing monitoring purposes.

We would prefer to present the Inspector with an agreed UU, however if these points cannot be agreed then we may need to submit further comments to the Inspector on these points.

I look forward to hearing from you.

Kind regards

Annie Kelly
Legal Assistant

Telephone: +442079746890

From: Anna Trafford <Anna.Trafford@Mishcon.com>

Sent: 18 November 2024 15:47

To: Annie Kelly <Annie.Kelly@camden.gov.uk>

Cc: Tom Barton <Tom.Barton@Mishcon.com>

Subject: RE: s106: 20 Busby Place: 2022/1143/P - S106 Agreement (1709840) [MDR-MISHCON_LIVE.FID321457]

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Dear Annie

Thank you for your email.

As part of the appeal application, a signed copy of a s106 unilateral undertaking (the "UU") has already been prepared and submitted to the Planning Inspectorate. The Council was provided with a copy of the UU via its Planning Appeals email address on 23 October.

The UU contains car-free obligations, which we agree addresses the fourth reason for refusal. In regard to the first reason of refusal, it remains our client's position that no affordable housing contribution is required. As to the second reason for refusal (in relation to the standard of accommodation), it does not appear that the proposed s106 agreement would address this point.

It is therefore unclear on what basis our client's input into a further s106 is required, but if you have any specific comments on the UU submitted then please share them.

Kind regards

Anna

Anna Trafford

Associate

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From: Annie Kelly <Annie.Kelly@camden.gov.uk>
Sent: 18 November 2024 10:35
To: Tom Barton <Tom.Barton@Mishcon.com>
Subject: s106: 20 Busby Place: 2022/1143/P - S106 Agreement (1709840)

WARNING: External Email

Dear Mr Barton

I hope you are well.

I act for the Council's planning department in relation to the s106 agreement on the above planning appeal and understand you are the solicitor acting on behalf of the applicant.

I have been instructed to draft a s 106 agreement with Heads of Term included: car free and an affordable housing contribution of £231,000.

These obligations effectively address the first, second, and fourth reasons for refusal of the application referenced 2022/1143/P. The agreement would be entered into on a without prejudice basis and would only come into effect if the inspector allowed the appeal.

If your client wishes to proceed to negotiation of the s 106 agreement please provide an undertaking for our costs. We anticipate the costs as being £3,315.00 made up of £2,043.00 as to our legal fees, a one-off monitoring fee of £1,248. (being £624.00 per head of term), and £12 for Land Registry Charges. If negotiations become protracted and costs exceed the £2,043.00 fee we will charge on a £350 per hour basis until such time as the matter is completed. I will provide you with an invoice when I send you the engrossment copies of the Agreement for signature.

Kind Regards

Annie Kelly
Legal Assistant

Corporate Services
London Borough of Camden

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Web: camden.gov.uk

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London N1C 4AG





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