Appendix 1

Response of the Appellant's solicitor to the email of 16th April 2025 from the Council's Legal officer

Council's comments on the Appellant's UU

11. Unfortunately, upon a detailed review of the UU the Council is unable to accept it as suitable document to bind the land with the required obligations. As clarified to the Appellant's solicitor, there are multiple deficiencies within the document, which in the Council's view either fail to secure the obligations, fail to trigger the relevant obligations, or do not meet the Council's policy.

It is most unfortunate that the Council's Legal officer was unwilling to have a phone call with the Appellant's solicitor. Nor would the Council's Legal officer identify deficiencies which she alleged the submitted S.106 Deed to contain. A set of the email exchanges, evidencing efforts of the Appellant's solicitor, is at Annex A.

12. The Council's comments below have been broadly listed in the order the provisions are set out within the UU.

12.1 **Cover Page**

12.1.1 On review of the freehold Title NGL809514 it is noted that the Property is subject to a long lease under the leasehold Title NGL875141. The leasehold proprietor of the Property is ABBEY ROAD ESTATES LIMITED (Co. Regn. No. 02870812). There are no pending applications on the freehold or leasehold titles. A copy of the freehold and leasehold records, along with their respective title plans, can be found in Document A.

Only the Freehold title NGL809514 needs to be bound by the S.106 Deed. This is because the Appeal proposal is the addition of a fifth floor on top of Glebe House; no one but the Freeholder has an interest in that area or is able to carry out the Development.

The Leasehold title, NGL875141, does not include any part of Glebe House above fourth floor level; this is evidenced by the Office Copies for NGL875141 which the Council's Legal officer included in Document A with her Comments.

12.1.2 Pursuant to the Planning obligations: good practice advice, "Normally all persons with an interest in land affected by a planning obligation – including freeholders, leaseholders, holders of any estate contracts and any mortgagees – must sign the obligation." Therefore, the Council will require for the Leasehold owner to be made a party to a S106 agreement as it is entirely within the realm of possibility for the Appellant, or any owner deriving title from them, to sell the property with the benefit of the permission to any or all of the current leaseholders, which would then put the enforcement of the obligations at risk for the Council due to the leaseholder having an interest in the land at the time the s106 Agreement was entered into without being bound by the same. If the Freeholder were to dispose of an interest then the transferee would be bound by the S.106 as a successor in title. Anyone deriving title from the Freeholder (the Appellant) would be bound as a successor in title, as would their successors in title.

12.1.3 No evidence has been submitted to the Council confirming that the Leaseholder's interest in the land has been determined.

12.1.4 Furthermore, on review of the planning application, and perusal of the leasehold Title NGL875141, it is further noted that if granted the Development will affect the roof space of the 4th floor flats. No, it would affect the roof-space above the fourth floor flats. Therefore, arguably, leaseholders of the 4th floor flats under Title Numbers NGL832014 and NGL922149 should be joined as a party to the agreement, to prevent a circumstance where the space above the 4th floor is sold with the benefit of the permission to any or all of the current leaseholders, which would then put the enforcement of the obligations at risk for the Council due to the leaseholder having an interest in the land at the time the s106 Agreement was entered into without being bound by the same. No - If the Freeholder were to dispose of an interest in the space above a fourth floor flat, the transferee would be bound by the S.106 as a successor in title. Anyone deriving title from the Freeholder (the Appellant) would be bound as a successor in title, as would their successors in title.

12.2 **Parties to the Agreement**

12.2.1 Leasehold owners must be added as a party to the S106 agreement. Please refer to paragraph 12.1 above. Not correct – see responses above.

12.3 **Recitals**

12.3.1 As per paragraph 12.1 and 12.2 above, leasehold interests should be set out.

12.4 **Definitions**

12.4.1 Appeal definition is imprecise and requires certainty. The definition of Appeal includes the term Planning Application, the definition of which itself cross-references to Property and Development. There is no lack of certainty as to which planning appeal the S.106 Deed relates to. (The PINS APP/… reference was not available until after the Appeal had been submitted, it could not therefore be included in the S.106 Deed.)

12.4.2 For the avoidance of doubt, definition of the Construction Phase should include the demolition. The Appeal proposal and Development do not include demolition.

12.4.3 Definition of the Implementation Date is not acceptable to the Council. The Council's standard approach, accepted by the developers in countless previous applications is to link this defined term to Section 56 of the Town and Country Planning Act 1990 without any express exclusions, unless such exclusions have been specifically negotiated and agreed with the Council, which in this case they were not.

Furthermore, it is unclear as to what the referred works will entail, and whether or not they will fall within the remit of Section 56 of the Act. If the works do not fall within Section 56 then they would not constitute Implementation. The Council has not offered any reason why the specified works, "works to the existing façade at

fourth floor level of the property", should not be excluded from the definition of Implementation; the Council has not pointed to any "harm" which might result.

12.4.4 Definition of the Construction Management Plan must include provision for the protection and preservation of the listed building during the Construction Phase. No development is proposed to a listed building. The Fitzroy Square Conservation Area Appraisal and Management Strategy (2010) provides urban design principles for new development. It outlines that new development should respond positively to the prevailing form of nearby buildings and frontages in terms of scale and grain, particularly listed buildings, and buildings, spaces and other features identified as making a positive contribution to the conservation area. Furthermore, Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of a Conservation Area when considering applications relating to land or buildings within that Area. Comments misplaced - relevant for assessment of planning applications.

12.4.5 Definition of the Cycle Parking Contribution is imprecise. This contribution requires installation of the cycle stands onto the public highway No, the Contribution would enable the Council to provide such parking facilities and as such the Council's wording for Bike Hanger Contribution will have to be used here. Therefore, the clause will have to be amended to require the Council to expend the contribution on the provision of a bike hanger on the Public Highway in the vicinity of the Development. A S.106 UU cannot impose obligations on the Council. Is is for a Council only to use S.106 Contributions for legitimate purposes.

12.4.6 Definition of the Development is not accepted. The Development should be defined according to the planning application submitted under reference 2024/3123/P and not pursuant to the Planning Permission. It is defined using the words which the Council accepted for the Description of Development.

12.4.7 Definition of Indexed fails to provide a period following which indexation will apply. Wrong – it cites "the figure last published [by the ONS] at the date hereof" , i.e. 15th February 2025 The Council requires for indexation to apply if sums payable under the Agreement are paid more than three months from the date of this Agreement. It does.

12.4.8 Definition of the Monitoring Fees is not accepted. The Council's Monitoring Fees in this matter will amount to £3,120.00 (three thousand one hundred and twenty points) being £624.00 per head of terms, pursuant to paragraphs 6.9 to 6.14 of the Camden Planning Guidance relating to Developer Contributions (March 2019), annexed hereto as Document B. The definition of Monitoring Fee explains that it is 3 x £624 and relates to the obligation at 4.1, 4.2 and 4.6 – i.e. Affordable Housing Contribution, Cycle Parking Contribution and Res-Park Permits restriction.

The CMP obligations at 4.3 include payment of a CMP implementation Support contribution of £4,194. Clause 4.4 relates to further CMP obligations, the payment of a Bond. The Council has not justified why the CMP implementation

Support contribution of £4,194 would not suffice for monitoring of the CMP obligations.

The remaining obligation is at clause 4.5, payment of Monitoring fees. That cannot itself justify a further monitoring fee.

12.4.9 Occupation definition should be amended to Occupation Date in order to give the definition any meaning. No – The meaning of Occupation is quite clear wherever it is used in the Deed.

12.4.10 Definition of the Planning Application is inaccurate as the application was validated on the 25th July 2024. The Council's 2024/3123/P cites Valid dates of both 25-07-24 and 26-07-24. It is reasonable to cite either in the S.106 Deed. This is anyway a "non-point" – it is not of significance in understanding or applying the S.106 Deed.

12.4.11 Definition of the Planning Permission needs to be properly constructed to refer to the Development and to also make it clear that it would be issued by the Secretary of State and not the Council These points are evident by cross-referral to defined terms and the body of the S.106 Deed.

12.4.12 The "Agreement" is not defined under the definition of the Site Plan. The mention of Agreement was evidently a typo.

12.5 **Obligations of the Owner**

12.5.1 The wording set out in bold immediately under each of the obligations listed in clauses 4.1 to 4.6 of the UU is repetitive as it is mostly identical and could have been designed in a way to only be stated once, It is just a matter of preferred style. however in light of the volume of the various fundamental concerns we have raised with this UU we do not propose to also change its structure.

12.5.2 Affordable Housing (clause 4.1 of the Appellant's UU): provisions for payment of the contribution are not specific enough and therefore can be opened to interpretation by the parties. The Council requires for the Affordable Housing Contribution to be paid in full on or prior to the Implementation Date, in accordance with its policy. There is nothing imprecise about the obligations and restrictions in 4.1.1 and 4.1.2.

12.5.3 Cycle Parking Contribution (clause 4.2 of the Appellant's UU): this is secured by the Council as a Bike Hanger Contribution, as per the officer's Delegated Report. The Contribution would enable the Council to provide such parking facilities Provisions for payment of the contribution need to be specific. The Council requires for the Bike Hanger Contribution to be paid in full on or prior to the Implementation Date, in accordance with its policy. There is nothing imprecise about the obligations and restrictions in 4.2.1 and 4.2.2.

12.5.4 Monitoring Fees (clause 4.5 of the Appellant's UU): pursuant to paragraph 6.14 of the Camden Planning Guidance relating to Developer Contributions (March 2019),

monitoring fees are usually payable on the day of completion of the S106 agreement. However, in this instance it should be paid no later than within 7 days from the date of the grant of the Planning Permission. If the Planning Permission is never implemented then there is nothing to monitor. The Council would be aware through discharge of Conditions and its CIL team if carrying out of the development were likely to proceed. Furthermore, as stated in paragraph 12.4.8 above, the amount of the Monitoring Fees set out in the Appellant's UU is incorrect and does not accord with the Council's policy. See responses above about Monitoring fees.

12.5.5 Car Free development (clause 4.6 of the Appellant's UU): The Appellant's solicitor is aware of the Council's standard requirements relating to car free provisions. Yet we note that the Council's standard wording, requiring the Owner to identifying those residential units that in their opinion are affected by the obligation in Clause 4.6.1 and 4.6.2 of the agreement, seems to have been omitted. No, they have not – see clause 4.6.4. This part of the obligation is very important as it enables the Council to effectively monitor the obligation.

12.6 **Other comments**

12.6.1 The term Agreement is not defined in clause 5.4. The mention of Agreement was evidently a typo; it should have been Deed, the term used in the rest of 5.4.

12.6.2 The Appellant's solicitor is aware that the Council's interest rate is 4% above the Base Rate. Consequently, clause 5.6 will have to be amended accordingly to allow for the correct interest rate to be applied. The point of the clause is that interest should apply to late payment; that is secured.

12.6.3 Clause 6.5 of the Appellant's UU is inaccurate. Planning obligations run with the land and may be enforced against both the original covenanter and against anyone acquiring an interest in the land from them. They are also a local land charge for the purposes of the Local Land Charges Act 1975 and as such they must, not "may" as suggested in the Appellant's UU, be registered with the Local Land Charges Register. We trust that the Council will register the S.106 Deed as a Local Land Charge. The word "may" is used in clause 6.5 because a S.106 UU cannot impose obligations on the Council.

12.6.4 Clause 6.7 - Nothing in the agreement says that this is prevented anyway, however including it in the agreement makes it even less clear and fetters the Council's position. The S.106 Deed is not an agreement, it is a UU. It could not fetter the Council's discretion/position.

12.6.5 Clause 6.8 is unnecessary and repeats provision of clause 6.6 in the UU. The duplication was evidently a typo and is not an error of consequence.

12.6.6 The Undertaking remains silence at to the Council's legal fees. The Council spent considerable resource and time in reviewing the Appellant's UU and attempted "in good faith" to engage with the Applicant to negotiate the terms of the agreement. The issue of a Council's request for legal fees in an appeal scenario is not a matter

pertinent to the appeal. With regard to this Appeal - If the Council's Legal officer had been willing to have a phone call with the Appellant's solicitor, the explanations contained in this document would have been given and so the concerns of the Council's Legal officer have been addressed. It is possible that she may have understood how her demand for over £6,000 for her comments was both unreasonable and not appropriate. The Council's Legal officer has not raised valid concerns about the submitted S.106 Deed. Unfortunately, the Council's efforts were not reciprocated. As such, the Council would expect the Appellant to pay Council's legal fees associated with the review of the UU, in accordance with Section 93 of the Local Government Act 2003 and pursuant to the Camden Planning Guidance. To this extent, the Council suggests that the following clause will have to be added to the agreement: -

"The Owner agrees to pay the Council its proper and reasonable legal costs incurred in preparing this Agreement within 7 working days from the date of the Decision Letter if the Appeal is granted and Planning Permission is issued."

12.6.7 In the Council's view, and in accordance with the Planning obligations: good practice advice, leasehold interests affected by the Development must be made a party to the agreement. As a result, the Council will require for a joint and several liability clause to be built into the agreement. See responses above as to why only the Freeholder needs to be party to this S.106 Deed. A "joint and several liability" provision is therefore not applicable.

13 **Summary**

13.1 Upon review of the Appellant's UU, it is unfortunate and disappointing that the Appellant decided not to engage with the Council in any meaningful discussions in relation to a suitability of their UU, as set out in paragraphs above. The planning obligations submitted in the Appellant's Undertaking are not considered to be properly secured and if the planning permission was issued based on the UU submitted, this would prejudice the Council's ability to enforce the obligations. Had the Appellant engaged into the negotiation process, most, if not all, of the issues raised by the Council above could have been resolved and would have been of assistance to the Inspector in determining this Appeal. If the Council's Legal officer had been willing to have a phone call with the Appellant's solicitor, the explanations contained in this document would have been given and so the concerns of the Council's Legal officer have been addressed. It is possible that she may have understood how her demand for over £6,000 for her comments was both unreasonable and not appropriate. The Council's Legal officer has not raised valid concerns about the submitted S.106 Deed.

13.2 For the reasons set out above, the Council does not consider that the submitted UU is sufficient to make the development acceptable in planning terms should the Appeal be allowed and planning permission issued. This has not been demonstrated in any respect.

13.3 Without prejudice to paragraph 13.2 above, the Council submits that it does not consider that the UU would appropriately bind the land with the planning obligations proposed by the Appellant in the UU, and for this reason the Council respectfully asks the Inspector to refuse the Appeal on this basis (notwithstanding the Inspector's view on the remainder of the issues).