

DATED

31 October

2012

**(1) DAVID KUTNER and FRANCESCA KUTNER**

-and-

**(2) CLOSE BROTHERS LIMITED**

-and-

**(3) STRATA RESIDENTIAL LLP**

-and-

**(4) THE MAYOR AND BURGESSES OF  
THE LONDON BOROUGH OF CAMDEN**

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**DEED OF VARIATION**

Relating to the Agreement dated 18 May 2012  
Between the Mayor and the Burgesses of the  
London Borough of Camden,  
David Kutner and Francesca Kutner,  
Close Brothers Limited and Strata Residential LLP  
under section 106 of the Town and  
Country Planning Act 1990 (as amended)  
Relating to development at premises known as  
**TOWN HOUSES  
ON WILLES ROAD AND GRAFTON ROAD  
LONDON NW5 3LE**

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Andrew Maughan  
Head of Legal Services  
London Borough of Camden  
Town Hall  
Judd Street  
London WC1H 9LP

Tel: 020 7974 1918  
Fax: 020 7974 2962

THIS AGREEMENT is made on the 31 day of October 2012

**BETWEEN**

- i. **DAVID KUTNER and FRANCESCA KUTNER** both of 56D Upper Montagu Street London W1H 1SN (hereinafter called "the Owner") of the first part
- ii. **CLOSE BROTHERS LIMITED** (Co. Regn. No. 195626) whose registered office is at 10 Crown Place London EC2A 4FT (hereinafter referred to as "the First Mortgagee") of the second part
- iii. **STRATA RESIDENTIAL LLP** (Co. Regn. No. OC325510) whose registered office is at 36 Grosvenor Gardens London SW1W 0EB (hereinafter called "the Second Mortgagee") of the third part
- iv. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of Town Hall, Judd Street, London WC1H 9LP (hereinafter called "the Council") of the fourth part

1. **WHEREAS:**

- 1.1 The Council the Owner the First Mortgagee and the Second Mortgagee entered into an Agreement dated 18 May 2012 pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended).
- 1.2 The Owner is registered at the Land Registry as the freehold proprietor of the Property with Title Absolute under title number NGL924717 subject to a charge to the First Mortgagee and the Second Mortgagee.
- 1.3 The Owner is the freehold owner of and is interested in the Property for the purposes of Section 106(9) of the Act.
- 1.4 The Council is the local planning authority for the purposes of the Act and considers it expedient in the interests of the proper planning of its area that the Development of the Property should be restricted or regulated in accordance with this Agreement.

1.5 A new Planning Application in respect of the Property and to amend the Original Planning Permission was submitted to the Council by the Owner and validated on 5 September 2012 for which the Council resolved to grant permission conditionally under reference 2012/3161/P subject to the conclusion of this Agreement.

1.6 This Agreement is made by virtue of the Town and Country Planning Act 1990 Section 106 (as amended) and is a planning obligation for the purposes of that section.

1.7 Without prejudice to the terms of the other covenants contained in the Existing Agreement the parties hereto have agreed to vary the terms of the Existing Agreement as hereinafter provided.

## 2. **INTERPRETATION**

2.1 All words and phrases defined in the Existing Agreement shall have the same meaning in this Agreement save where the context otherwise dictates and for the avoidance of any doubt the Existing Agreement shall remain in full force and effect save as varied by this Agreement.

2.2 All reference in this Agreement to clauses in the Existing Agreement are to clauses within the Existing Agreement.

2.3 In this Agreement the following expression shall unless the context otherwise states have the following meaning now allocated to it.

2.3.1 "Agreement" this Deed of Variation

2.3.2 "Existing Agreement" the Section 106 Agreement under the Town and Country Planning Act 1990 (as amended) dated 18 May 2012 made between the Council the Owner the First Mortgagee and the Second Mortgagee

- 2.4 Where in this Agreement reference is made to a clause schedule or recital such reference (unless the context otherwise requires) is a reference to a clause schedule or recital of this Agreement.
- 2.5 Headings are for ease of reference only and are not intended to be construed as part of this Agreement and shall not be construed as part of this Agreement and shall not effect the construction of this Agreement.
- 2.6 Unless the context otherwise requires references to the singular shall include the plural and vice versa.
- 2.7 References in this Agreement to the Owner and Mortgagee shall include their successors in title.

### **3. VARIATION TO THE EXISTING AGREEMENT**

- 3.1 The following definitions contained in the Existing Agreement shall be varied as follows:

3.1.1 "the First Planning Application" a planning application in respect of the Willes Road Development of the Willes Road Site submitted to the Council and validated on 5 September 2012 under reference number 2012/3161/P

3.1.2 "the Second Planning Application" a planning application in respect of the Grafton Road Development of the Grafton Road Site submitted to the Council and validated on 23 March 2012 under reference number 2012/1571/P

3.1.3 "Willes Road Development" the addition of a basement (Class C3) in conjunction with the erection of 2 x 3-storey town houses fronting Willes Road previously approved on 18/05/2012 (Ref. 2012/1549/P) as

an amendment to planning permission granted on 13/05/2008 (Ref: 2007/4426/P) for refurbishment and restoration of the sports centre to provide 2 swimming pools, learner pool, gym & studio spaces including internal and external alterations to the building; works of conversion, partial demolition and extensions to provide 10 self-contained flats and 1 x 4 bed town house on Grafton Road and 3 x 3 bed town houses on Willes Road as shown on drawing numbers:- 0110 Rev A, 1410 Rev C, 1411 Rev B, 1412 Rev B, 2410 Rev B, 3410 Rev B, 3411 Rev B; Basement Impact Assessment Report by Edge Structures dated 29 August 2012; Topographical Survey drawing JKK7218\_1 Rev C; Site Investigation Report ref. C11019 dated Aug 2007; Code for Sustainable Homes Pre-Assessment Report by Stroma Certified; Sustainable Design and Construction Statement & Energy Statement by eb7 dated 27th June 2012; Arboricultural Impact Assessment by ACD dated 19 Oct 2012; Construction Management Plan by Kutner Associates dated March 2012; ~~Design detail drawings:- 3210 Rev A, 3211 Rev A, 3212 Rev A, 3213 Rev A, 3214 Rev A, 3215 Rev A, 3216 Rev A, 3217 Rev A, 3218 Rev A, 3219 Rev A~~



3.2 Recital 1.6 contained in the Existing Agreement shall be deleted and replaced with the following:-

1.6 The First Planning Application for the Willes Road Development for development at the Willes Road Site was submitted to the Council and validated on 5<sup>th</sup> September 2012 and the Council resolved to grant permission conditionally under reference number 2012/3161/P subject to the conclusion of this legal Agreement.

3.3 The following definition shall be added to the Existing Agreement:-

3.3.1 "the Grafton Road  
Permission"

a planning permission referenced 2012/1571/P  
granted for the Grafton Road Development in  
the form annexed hereto

3.3.2 "the Willes Road  
Permission"

a planning permission referenced 2012/3161/P  
granted for the Willes Road Development  
substantially in the draft form annexed hereto

3.4 In all other respects the Existing Agreement (as varied by this Agreement) shall  
continue in full force and effect.

#### 4. PAYMENT OF THE COUNCIL'S LEGAL COSTS

4.1 The Owner agrees to pay the Council (on or prior to completion of this Agreement) its  
reasonable legal costs incurred in preparing this Agreement

#### 5. REGISTRATION AS LOCAL LAND CHARGE

5.1 This Agreement shall be registered as a Local Land Charge

**IN WITNESS** whereof the Council has caused its Common Seal to be hereunto affixed and  
the Owner the First Mortgagee and the Second Mortgagee have executed this instrument as  
their Deed the day and year first before written

**EXECUTED AS A DEED BY  
DAVID KUTNER  
in the presence of:**

)  
)  
)



.....  
**Witness Signature**

*A. Tanel*

**Witness Name**

*ANDREA TANKEL*

**Address**

*17 GOSFIELD ST.*

**Occupation**

*LONDON W10 6HE*

*SOLICITOR*

CONTINUATION OF SECTION 106 AGREEMENT RELATING TO  
TOWN HOUSES ON WILLES ROAD AND GRAFTON ROAD LONDON NW5 3LE

EXECUTED AS A DEED BY  
FRANCESCA KUTNER  
in the presence of:

)  
)  
) f k .

.....  
Witness Signature ANOREA TANKER  
Witness Name 17 GOSFIELD STREET  
Address LONDON W1W 6HE  
Occupation SOLICITOR

EXECUTED AS A DEED BY  
CLOSE BROTHERS LIMITED  
Under a Power of Attorney  
Dated 18 May 2011

)  
)  
)  
)

.....  
Authorised Signatory

.....  
Authorised Signatory  
RICHARD MURKIN  
In the presence of:

.....  
Witness Name..... Gemma Nosworthy  
Witness Address..... 10 CROWN PLACE  
Witness Occupation..... LONDON  
EC2A 4FT  
Credit Administrator

CONTINUATION OF SECTION 106 AGREEMENT RELATING TO  
TOWN HOUSES ON WILLES ROAD AND GRAFTON ROAD LONDON NW5 3LE

EXECUTED AS A DEED  
by STRATA RESIDENTIAL  
LLP acting by:

(a) High Conille  
duly authorised by EVOLVE FUND SERVICES  
LIMITED to sign on its behalf as member whose  
signature is witnesses by:

Witness signature.....[Signature]

Witness name.....ELIZABETH BIRCHLEY

Witness Address.....LEMON TREE HOUSE, WENTWORTH CREB 3QG.

(b) [Signature]  
duly authorised by GFS DESIGNATED MEMBER  
1 LIMITED to sign on its behalf as member whose  
signature is witnesses by:

Witness signature.....[Signature]

Witness name.....12 STEELTON MATTHEW MORLEY

Witness Address.....31 MERRION CLOSE, TN4 9TJ

THE COMMON SEAL OF THE MAYOR )  
AND BURGESSES OF THE LONDON )  
BOROUGH OF CAMDEN was hereunto )  
Affixed by Order:- )

R. Alexander  
Authorised Signatory





Autor LTD  
28-29 Great Sutton Street  
London  
EC1V 0DS

Tel 020 7974 4444  
Fax 020 7974 1930  
Textlink 020 7974 6866

planning@camden.gov.uk  
www.camden.gov.uk/planning

Application Ref: **2012/3161/P**

30 October 2012

Dear Sir/Madam

**DRAFT**

**FOR INFORMATION ONLY - THIS IS NOT A FORMAL DECISION**  
Town and Country Planning Act 1990 (as amended)

**DECISION SUBJECT TO A SECTION 106 LEGAL AGREEMENT**

Address:

**Site to rear of Kentish Town Sports Centre  
Willes Road  
London  
NW5 3DS**

Proposal:

**DECISION**

The addition of a basement (Class C3) in conjunction with the erection of 2 x 3-storey town houses fronting Willes Road previously approved on 18/05/2012 (Ref. 2012/1549/P) as an amendment to planning permission granted on 13/05/2008 (Ref: 2007/4426/P -for refurbishment and restoration of the sports centre to provide 2 swimming pools, leamer pool, gym & studio spaces including internal and external alterations to the building; works of conversion, partial demolition and extensions to provide 10 self-contained flats and 1 x 4 bed town house on Grafton Road and 3 x 3 bed town houses on Willes Road).

Drawing Nos: 0110 Rev A, 1410 Rev C, 1411 Rev B, 1412 Rev B, 2410 Rev B, 3410 Rev B, 3411 Rev B; Basement Impact Assessment Report by Edge Structures dated 29 August 2012; Topographical Survey drwg JKK7218\_1 Rev C; Site Investigation Report ref. C11019 dated Aug 2007; Code for Sustainable Homes Pre-Assessment Report by Stroma Certified; Sustainable Design and Construction Statement & Energy Statement by eb7 dated 27th June 2012; Arboricultural Impact Assessment by ACD dated 19 Oct 2012; Construction Management Plan by Kutner Associates dated March 2012; Design detail drawings:- 3210 Rev A, 3211 Rev A, 3212 Rev A, 3213 Rev A, 3214 Rev A, 3215 Rev A, 3216 Rev A, 3217 Rev A, 3218 Rev A, 3219 Rev A.

The Council has considered your application and decided to grant permission subject to the conditions and informatives (if applicable) listed below **AND** subject to the successful conclusion of a Section 106 Legal Agreement.

The matter has been referred to the Council's Legal Department and you will be contacted shortly. If you wish to discuss the matter please contact **Aidan Brookes** in the Legal Department on **020 7 974 1947**.

Once the Legal Agreement has been concluded, the formal decision letter will be sent to you.

Condition(s) and Reason(s):

- 1 The development hereby permitted must be begun not later than the end of three years from the date of this permission.

Reason: In order to comply with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

- 2 The facing brickwork shall be carried out in accordance with the Hoskins Ryton Brick Sample Panel as approved on 25/09/2012 under application reference 2012/3486/P or such other sample panel of which the details have first been submitted to and approved in writing by the local planning authority. The approved panel shall be retained on site until the work has been completed.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy CS14 of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 [and DP25 if in CA] of the London Borough of Camden Local Development Framework Development Policies.

- 3 The use of the first floor rear terrace shall not commence until the screen, as shown on the approved drawings, has been constructed. The screen shall be permanently retained thereafter.

Reason: In order to prevent unreasonable overlooking of neighbouring premises in accordance with the requirements of policy CS5 of the London Borough of Camden Local Development Framework Core Strategy and policy DP26 of the London Borough of Camden Local Development Framework Development Policies.

- 4 Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 as amended by the (No. 2) (England) Order 2008 or any Order revoking and re-enacting that Order, no development within Part 1 (Classes A-H) [and Part 2 (Classes A-C)] of Schedule 2 of that Order shall be carried out without the grant of planning permission having first been obtained from the Council.

Reason: To safeguard the visual amenities of the area and to prevent over development of the site by controlling proposed extensions and alterations in order to

ensure compliance with the requirements of policies CS14 and CS5 of the London Borough of Camden Local Development Framework Core Strategy and policies DP24 and DP26 of the London Borough of Camden Local Development Framework Development Policies.

- 5 The development hereby permitted shall be carried out in accordance with the following approved plans:- 0110 Rev A, 1410 Rev C, 1411 Rev B, 1412 Rev B, 2410 Rev B, 3410 Rev B, 3411 Rev B; Basement Impact Assessment Report by Edge Structures dated 29 August 2012; Topographical Survey drwg JKK7218\_1 Rev C; Site Investigation Report ref. C11019 dated Aug 2007; Code for Sustainable Homes Pre-Assessment Report by Stroma Certified; Sustainable Design and Construction Statement & Energy Statement by eb7 dated 27th June 2012; Arboricultural Impact Assessment by ACD dated 19 Oct 2012; Construction Management Plan by Kutner Associates dated March 2012; Design detail drawings:- 3210 Rev A, 3211 Rev A, 3212 Rev A, 3213 Rev A, 3214 Rev A, 3215 Rev A, 3216 Rev A, 3217 Rev A, 3218 Rev A, 3219 Rev A.

Reason: For the avoidance of doubt and in the interest of proper planning.

Informative(s):

- 1 Your proposals may be subject to control under the Building Regulations and/or the London Buildings Acts which cover aspects including fire and emergency escape, access and facilities for people with disabilities and sound insulation between dwellings. You are advised to consult the Council's Building Control Service, Camden Town Hall, Argyle Street WC1H 8EQ, (tel: 020-7974 6941).
- 2 Noise from demolition and construction works is subject to control under the Control of Pollution Act 1974. You must carry out any building works that can be heard at the boundary of the site only between 08.00 and 18.00 hours Monday to Friday and 08.00 to 13.00 on Saturday and not at all on Sundays and Public Holidays. You are advised to consult the Council's Compliance and Enforcement team [Regulatory Services], Camden Town Hall, Argyle Street, WC1H 8EQ (Tel. No. 020 7974 4444 or on the website <http://www.camden.gov.uk/ccm/content/contacts/council-contacts/environment/contact-the-environmental-health-team.en> or seek prior approval under Section 61 of the Act if you anticipate any difficulty in carrying out construction other than within the hours stated above.
- 3 Thames Water will aim to provide a minimum water pressure of 10m head (approx 1 bar) and a flow rate of 9 litres/minute at the point where it leaves Thames Waters pipes. The developer should take account of this minimum pressure in the design of the development. Prior approval should be sought from Thames Water where the developer proposes to connect to the public sewer and should any building works fall within 3 metres of the shared pipework outside the property boundary Thames water should be contacted. (For more information please refer to [www.thameswater.co.uk](http://www.thameswater.co.uk)).

- 4 You are reminded that this decision only grants permission for permanent residential accommodation (Class C3). Any alternative use of the residential units for temporary accommodation, i.e. for periods of less than 90 days for tourist or short term lets etc, would constitute a material change of use and would require a further grant of planning permission.

- 5 Reasons for granting permission.

The proposed development is in general accordance with the London Borough of Camden Local Development Framework Core Strategy, with particular regard to policies CS5 - managing impact of growth, CS6 - providing quality homes, CS11- sustainable travel, CS13 - tackling climate change through promoting higher environmental standards, CS14 - promoting high quality places and conserving our heritage, CS15 - parks, open spaces and biodiversity, CS17 - safer places, CS18 - waste and recycling, CS19 - delivering and monitoring the Core Strategy; and the London Borough of Camden Local Development Framework Development Policies, with particular regard to policies DP2 - making full use of Camden's capacity for housing, DP5 - homes of different sizes, DP6 - lifetime homes and wheelchair homes, DP16 - transport implications of development, DP17 - walking, cycling and public transport, DP18 - parking standards and limiting the availability of car parking, DP22 - promoting sustainable design and construction, DP23 - water, DP24 - securing high quality design, DP25 - conserving Camden's heritage, DP26 - managing the impact of development on occupiers and neighbours, DP28 - noise and vibration, DP31 - open space and outdoor recreation. For a more detailed understanding of the reasons for the granting of this planning permission, please refer to the officer report.

- 6 The Mayor of London introduced a Community Infrastructure Levy (CIL) to help pay for Crossrail on 1st April 2012. Any permission granted after this time which adds more than 100sqm of new floorspace or a new dwelling will need to pay this CIL. It will be collected by Camden on behalf of the Mayor of London. Camden will be sending out liability notices setting out how much CIL will need to be paid if an affected planning application is implemented and who will be liable.

The proposed charge in Camden will be £50 per sqm on all uses except affordable housing, education, healthcare, and development by charities for their charitable purposes. You will be expected to advise us when planning permissions are implemented. Please use the forms at the link below to advise who will be paying the CIL and when the development is to commence. You can also access forms to allow you to provide us with more information which can be taken into account in your CIL calculation and to apply for relief from CIL.

<http://www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil>

We will then issue a CIL demand notice setting out what monies needs to paid when and how to pay. Failure to notify Camden of the commencement of development will result in a surcharge of £2500 or 20% being added to the CIL payment. Other surcharges may also apply for failure to assume liability and late payment. Payments will also be subject to indexation in line with the construction costs index.

Please send CIL related documents or correspondence to [CIL@Camden.gov.uk](mailto:CIL@Camden.gov.uk)

- 7 You are advised that this proposal will be liable for the Mayor of London's Community Infrastructure Levy (CIL) as the additional floorspace exceeds 100sqm GIA or one unit of residential accommodation. Based on the Mayor's CIL charging schedule and the information given on the plans, the charge is likely to be £21,700 (434 sqm x £50). This amount is an estimate based on the information submitted in your planning application. The liable amount may be revised on the receipt of the Additional Information Requirement Form or other changing circumstances.
- 8 Your attention is drawn to the fact that there is a separate legal agreement with the Council which relates to the development for which this permission is granted. Information/drawings relating to the discharge of matters covered by the Heads of Terms of the legal agreement should be marked for the attention of the Planning Obligations Officer, Sites Team, Camden Town Hall, Argyle Street, WC1H 8EQ.

Yours faithfully

Culture and Environment Directorate

**DECISION**

DATED

31 October

2012

(1) DAVID KUTNER and FRANCESCA KUTNER

-and-

(2) CLOSE BROTHERS LIMITED

-and-

(3) STRATA RESIDENTIAL LLP

-and-

(4) THE MAYOR AND BURGESSES OF  
THE LONDON BOROUGH OF CAMDEN

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