



Appeal Decision

Inquiry held on 21 April 2009

Accompanied site visit made on 21 April 2009

by **P E Dobsen MA (Oxon) DipTP MRTPI FRGS**

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
10 June 2009

Appeal Ref: APP/X5210/A/08/2089789

60-72 Shorts Gardens and 14-16 Betterton Street, London WC2H 9AH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Shorts Gardens LLP against the Council of the London Borough of Camden.
- The application (Ref 2008/1401/P), is dated 12 March 2008.
- The development proposed is "alterations, extension and refurbishment of existing buildings at 60-72 Shorts Gardens and 14-16 Betterton Street for commercial use (class B1). Change of use of ground floor of Shorts Gardens to create small scale units (class A1/A2 and D1). Change of use of basement to either B1/D1 or D2 use."

Application for costs

1. At the Inquiry an application for costs was made by Shorts Gardens LLP against the Council of LB Camden. This application is the subject of a separate Decision.

Decision

2. I allow the appeal, and grant planning permission for alterations, extension and refurbishment of existing buildings at 60-72 Shorts Gardens and 14-16 Betterton Street for commercial use (class B1); change of use of ground floor of Shorts Gardens to create small scale units (class A1/A2 and D1); change of use of basement to either B1/D1 or D2 use; in accordance with the terms of the application, Ref 2008/1401/P, dated 12 March 2008, and the plans submitted with it (and as amended), subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) Notwithstanding the provisions of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision in any statutory instrument revoking and re-enacting that Order with or without modification, the basement area shall only be used for class B1 or class D1 use, or as a swimming bath, skating rink, gymnasium or area for other indoor sports or recreations, not involving motorised vehicles or firearms, and not for any other purpose within class D2 (assembly and leisure) of the Order.

- 3) Prior to the commencement of the development, a scheme for the provision of a CCTV/security system in connection with the uses hereby permitted shall be submitted to and approved in writing by the local planning authority, and the development shall not be carried out otherwise than in accordance with these approved details.
- 4) Before any use of the basement area commences sound insulation shall be provided in accordance with a scheme to be approved in writing by the local planning authority which complies with PPG 24 and Appendix 1 of the Camden Replacement UDP 2006. The basement use shall not thereafter be carried out other than in accordance with the approved sound insulation scheme.
- 5) The level of noise emitted from the site shall not exceed 5dB above existing background noise level (LAeq) during the daytime and evening (0700-2300 hrs.) The noise level emitted from the site shall not exceed 3dB above existing background noise level during the night (2300-0700 hrs.) The noise levels should be measured at one metre external to the nearest noise sensitive premises to the site. The noise level inside any living room or bedroom of the nearest noise sensitive premises shall not exceed existing noise levels when measured using Leq 5m (in the 63 Hz octave band measured using the "fast" time constant) during the night. All noise measurements shall be taken according to BS4142:1990.
- 6) Prior to the commencement of development, details of cycle storage areas for 16 cycles in total, including the allocation of spaces to the different uses hereby permitted, shall be submitted to and approved in writing by the local planning authority. The approved cycle storage facilities shall be provided prior to the first occupation of the relevant part of the development, and shall be permanently retained and maintained thereafter.
- 7) Prior to the commencement of development, details of waste storage and removal shall be submitted to and approved in writing by the local planning authority, and development shall be carried out in accordance with the approved details.
- 8) Prior to the commencement of development, a sample panel of the facing brickwork showing the brick type, face bond, and pointing shall be submitted to and approved in writing by the local planning authority, and the sample shall be retained on site for the duration of the building works. Development shall be carried out in accordance with the approved details.
- 9) Detailed drawings (plans, elevations and sections as appropriate) at a scale of 1:10 and/or 1:20 in respect of the following items shall be submitted to and approved in writing by the local planning authority before the relevant part of the building work is begun: a) the new roof extensions; b) new slab levels of the building in relation to surrounding land; c) typical details of the new shop-fronts; d) all new external doors and windows; e) new rainwater pipes and gutters; f) the replacement glass within the existing arches in Shorts Gardens, demonstrating the relationship with the brick surrounds. Development shall be carried out in accordance with the approved details.

- 10) The class D1 and/or D2 uses hereby permitted shall only be operated between the following times: 08.00 -17.00 hrs. Sundays and Bank Holidays; 0800 -22.30 hrs. Mondays-Thursdays; and 08.00-23.30 hrs. Fridays and Saturdays, and on any day all visiting clients/customers shall have left the premises by the later specified time.
- 11) Prior to the commencement of development, details of a management plan for the basement use(s), specifying the capacity (persons), access arrangements (including locations of entrance and exits), and management of persons entering and leaving the building, shall be submitted to and approved in writing by the local planning authority, and the basement uses shall thereafter be operated in accordance with the approved details. The plan shall include measures for the avoidance of queuing on the public highway in Shorts Gardens and surrounding streets.
- 12) No external doors other than fire doors shall open onto the public highway.

The (deemed) Reasons for Refusal etc.

3. Although the Council did not determine the application within the prescribed period, it subsequently indicated that it would have refused it for 10 reasons, which are stated in full in the SCG (Statement of Common Ground, [Doc 6]).
4. In brief summary, these refer to: i) the unacceptability of certain uses within use class D2 (assembly and leisure); ii) the limited provision of on-site cycle storage; iii) the lack of provision of a contribution to off-site affordable housing; iv) the lack of provision of housing as part of the use-mix; v) the lack of sufficient information regarding energy and resources; vi) the absence of a planning obligation to secure a car-free development; vii) the absence of a planning obligation to secure a Construction Management Plan; viii) the absence of a planning obligation to secure a Service Management Plan; ix) the absence of a planning obligation to secure financial contributions to highways works; and x) the absence of a Business Travel Plan.
5. By the time of the inquiry, the Council and the appellants had agreed that matters ii) to x) (incl.) could be satisfactorily resolved by a combination of amended drawings already received, planning conditions, and a S106 planning obligation. Having heard and read the evidence to the inquiry on these matters, I too agree with that. In accordance with my request, an acceptable signed and completed planning obligation was submitted shortly after the inquiry [Doc 5].
6. The revised drawings mentioned above were submitted in response to certain suggestions and requests by the Council, and are included in the bundle of drawings at [Drawings A] as recorded on the appearances sheet appended to this decision. At the Inquiry, the Council confirmed that it had no objection to the substitution of these drawings for the earlier, superseded versions.
7. Owing to the pre-Inquiry resolution of all these matters, certain witnesses for both main parties, who had prepared proofs of evidence, were not called to give that evidence. I have nevertheless taken it into account.

Main issue

8. From the above, from the evidence and representations, and from my inspection of the site and its surroundings, I consider that there is only one main issue outstanding in the appeal. This is whether it would be appropriate to permit an unrestricted use class D2 (assembly and leisure) use in the basement of the appeal site, or whether - in the alternative - that use class should be i) restricted by means of a planning condition or conditions, or ii) precluded altogether.
9. It follows - and both parties agree - that the first 2 of these 3 courses/alternatives would both imply that the appeal should be allowed, and that conditional planning permission should be granted. The 3rd course would lead logically to the dismissal of the appeal.

Reasons

10. The appeal site, formerly known as the London Electricity Site, is located within that part of Covent Garden which lies in LB Camden. It is an "L" shaped plot of some 0.08 ha, comprising 2 separate but adjoining buildings, with frontages to Shorts Gardens and Betterton Street. The 2 buildings have 3 and 4 storeys respectively, plus a high-ceilinged basement, and date back to the late 19th/early 20th century. Both were used formerly by LEB/EDF for an electricity substation and ancillary use, and later for a variety of non-residential mixed uses (mainly B1 offices, and including car parking). The site lies within the Central Activities Zone, as defined in the London Plan, and the Seven Dials Conservation Area.
11. Shorts Gardens and Betterton Street lie within a mixed use area between Endell Street and Drury Lane. The former contains a Travelodge multi-storey modern hotel and a large residential block of flats, Dudley Court, both of them opposite and in close proximity to the site. There are other residential uses in the vicinity, and a variety of commercial uses. The area also displays an eclectic variety of building types, of varying age, frontage widths, heights and massing, and external materials.
12. The proposals are summarised in Doc. 6, and include the flexible use of the basement for either B1 (office), D1 (non-residential institution) or D2 (assembly and leisure) uses. Overall, the proposed development would result in an increase in floorspace from 3,302 sq.m. to 4,065 sq.m. There would be some internal demolition, and extensions at roof level to both buildings. No car parking is included, but the scheme would incorporate cycle storage in accordance with UDP policy.
13. The development plan comprises the London Plan (February 2008) and the Camden Replacement Unitary Development Plan (UDP, 2006). Relevant policies from both are listed in Doc 6. This also lists relevant supplementary planning guidance, and national policy guidance. I have taken all the relevant policies and guidance into account.
14. The application was the subject of protracted but somewhat intermittent discussions and negotiations with the Council's officers. As a result, despite the deemed reasons for refusal most of the outstanding planning matters had been resolved before the inquiry opened. They are now the subject of largely

agreed planning conditions, and a S106 planning obligation. Since they are no longer in dispute, I make no further reference to these matters. The only substantive outstanding matter at the inquiry was the acceptability or otherwise of use class D2 uses in the basement.

15. *Main issue - the acceptability of an unrestricted D2 use:* On this matter, the Council argued that an unrestricted use class D2 (assembly and leisure) use would be contrary principally to UDP policy SD6, *amenity for occupiers and neighbours*. While Covent Garden is characterised by an intricate mix of uses, it contains much residential use which is susceptible to noise and disturbance, especially by food, drink and entertainment (use class D2) uses. The Council's revised supplementary planning guidance for Central London (2007), seeks to control both the locations and the maximum floorspaces, of such uses. Indeed, outside certain designated commercial frontages the guidance contains a presumption against them. It also seeks to restrict them to a maximum of 100 sq. m. gross floorspace. These criteria have been recognised and supported by an Inspector in dismissing a recent (2006) appeal (ref: X5210/A/06/2017550) concerning an A3 use at 25 Shelton Street. This had features in common with the current appeal. Like the Shelton Street site, the current appeal site is both outside any designated commercial frontage, and, at 783 sq.m, its basement area is very much larger than the aforementioned 100 sq.m. threshold.
16. For their part, the appellants argued, in short, that at one stage the Council itself had suggested that a D2 use might be acceptable. More importantly, appropriate conditions and the provisions of a planning obligation could effectively control any undue noise and disturbance from any D2 use. Therefore, there need be no detriment to anyone's residential amenity, and the development would benefit from having a flexible choice of potential uses.
17. On balance, and having pondered it long and hard, I agree with the Council on this matter. It seems to me that the close proximity of residential uses to the appeal site – particularly at Dudley Court, a high density complex of flats – justifies the most careful scrutiny of the appellants' proposal to include the option of an unrestricted D2 use in the basement. At no stage has any particular D2 use, or occupier, been suggested. Nevertheless, I am not persuaded that the agreed conditions and other measures suggested would necessarily and always be sufficiently effective in controlling potential nuisance arising from such uses. Moreover, I find that such an unrestricted D2 use would be contrary to the Council's SPG, which was adopted fairly recently and is up to date, and to UDP policy SD6.
18. Nevertheless, these findings are not fatal to the appeal. Consistent with the options open to me as described in paragraph 9 of this decision, I have decided to allow the appeal, and to grant planning permission.
19. I do so subject to all of the planning conditions agreed by the parties at the inquiry, as well as an additional condition suggested by the Council which would preclude certain uses [in categories (a) to (d)] within the D2 use class. I am satisfied that these conditions (as amended by me) would comply with the tests for conditions set out in Circular 11/95, *The Use of Conditions in Planning Permissions*, and would also be in accordance with development plan policies.

20. I have added a standard time implementation condition (which was not included in the parties' agreed list), and have amended some of the other suggested conditions in the interests of clarity, economy and conciseness.
21. As mentioned above, this permission is also subject to a S106 Planning Obligation [Doc 5]. This includes certain agreed measures, relating to a construction management plan; highways works; a service management plan; a sustainability plan; a travel plan; and "car-free" development.
22. I have considered all the other matters raised at the inquiry, including references by one local resident to possible changes to local traffic and parking arrangements. However, there are none which alter or outweigh my conclusions on the main issue in the appeal.

Paul Dobsen

INSPECTOR



Costs Decision

Inquiry held on 21 April 2009

Site visit made on 21 April 2009

by **P E Dobsen MA (Oxon) DipTP MRTPI**
FRGS

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
10 June 2009

Costs application in relation to Appeal Ref: APP/X5210/A/08/2089789 60-72 Shorts Gardens and 14-16 Betterton Street, London WC2H 9AH

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Shorts Gardens LLP for a full award of costs against the Council of the London Borough of Camden.
- The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for alterations, extension and refurbishment of existing buildings at 60-72 Shorts Gardens and 14-16 Betterton Street for commercial office use (class B1); change of use of ground floor of Shorts Gardens to create small scale units (class A1/A2 and D1); change of use of basement to either class B1/D1 or D2 use.

Summary of Decision: the application fails and no award of costs is made

The Submissions for Shorts Gardens LLP

1. A full award of the appellant's inquiry costs is claimed, based upon para. 7 ff. of Annex 3 to Circular 8/93, concerning the unreasonable refusal of planning permission. In this case, there has been an unreasonable failure to determine the application.
2. At this inquiry, the Council has now in effect accepted that permission ought to be granted, subject to conditions and a planning obligation. It could and should have done so much earlier - indeed, by May 2008 - instead of failing to determine the application, and subsequently raising 10 spurious and unjustified deemed reasons for refusal.
3. Alternatively, the Council could and should have determined favourably the 2nd planning application, submitted in November 2008, which incorporates relatively minor amendments suggested/required by the Council itself. But, 6 months after its submission, this 2nd application still remains un-determined, with no decision date even in prospect.
4. Every one of the 10 so-called reasons could readily have been resolved by the simple expedient of a timely phone call, since from the outset the appellant has been willing and able to provide any additional information sought by the Council. Instead, the Council's handling, or mishandling, of the application has been fraught with prevarication and delay.
5. It is acknowledged that the Council's case officer has suffered intermittently from serious illness, but in any well-managed planning department this should simply have prompted a re-allocation of his caseload. It is certainly not a valid excuse for unwarranted delay.

6. The appellant's evidence (Mr. Rhind's proof) includes a chronology of key events. This demonstrates, in short, that the Council consistently failed in a timely manner to raise queries and issues, to answer correspondence, to engage in discussions, and to deal with the information provided. This is precisely the sort of conduct, on the part of an LPA, which Circular 8/93 was designed to discourage. It has forced the appellant into making an appeal, and then appearing at an inquiry which should never have been necessary in the first place.

The Response by the LB Camden

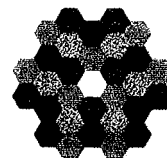
7. The costs application is strongly resisted. Throughout its handling of the application(s) and appeal, the Council has not behaved unreasonably in any of the ways described in Circular 8/93. Even a partial award of costs to the appellant would not be justified.
8. The background to the appeal (and the subsequent) application was unusual, involving several amendments to the proposals and plans, and, unfortunately, a seriously ill case officer. It was not always possible to provide a well-briefed substitute. Nevertheless, as its own detailed chronology of events shows, the Council throughout demonstrated a genuine desire to resolve as many issues as possible arising from the application. Contrary to the appellant's assertions, this has brought about much constructive dialogue and co-operation. The result has been that the issues before the inquiry are now quite narrow.
9. While most of the original reasons for refusal are now capable of being resolved, this was far from clear at the outset, but only emerged as a result of a number of meetings and telephone calls between the parties. These are detailed in the Council's written response to the costs application.
10. Nevertheless, the Council maintains an objection to an unrestricted D2 use in the basement, and if for this reason alone it has been necessary to pursue the application through an appeal and inquiry. The Council has submitted substantial and cogent evidence on the matter, and maintains its position that the appeal should be dismissed.

Conclusions

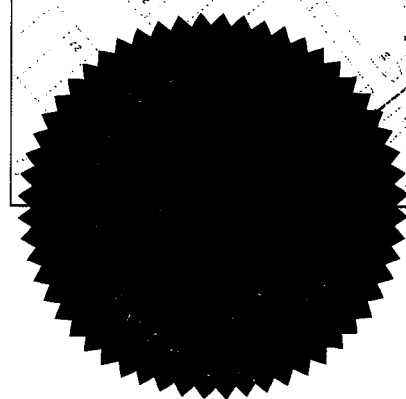
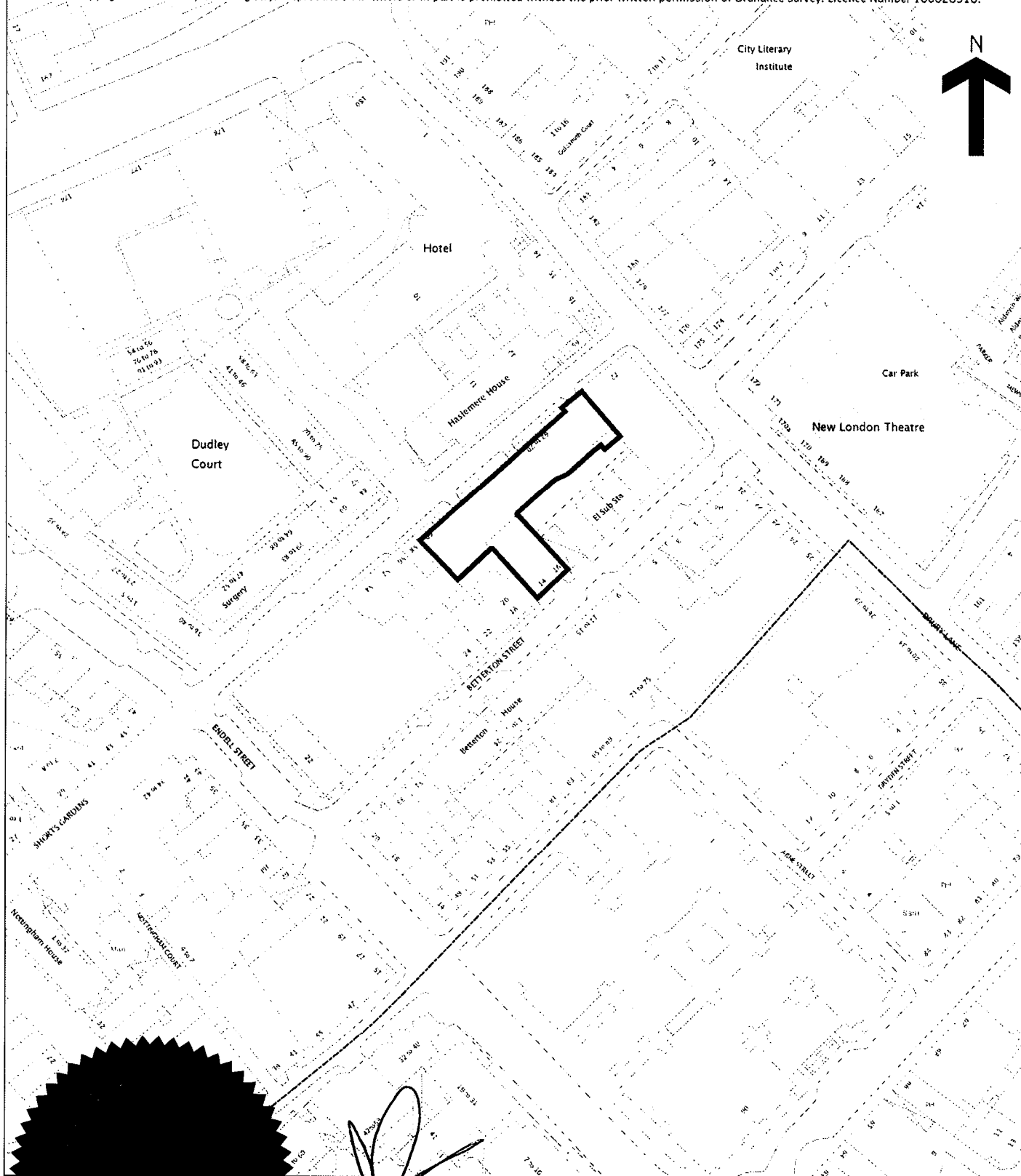
11. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
12. I do not propose to make a detailed forensic dissection of the parties' chronologies of events following the submission of the appeal application. In general, the chronology seems to me to demonstrate a somewhat tardy approach, on the Council's part, towards its determination. This no doubt was caused, to no small degree, by the leading case officer's long-term illness. For their part, the appellants appear to have responded relatively quickly and expeditiously to requests from the Council for further information and drawings etc, and they also showed a general willingness to amend the proposals to meet the Council's objections and requirements.

Land Registry
Official copy of
title plan

Title number NGL870094
Ordnance Survey map reference TQ3081SW
Scale 1:1250
Administrative area CAMDEN



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[Handwritten signatures and initials]



Waterman Boreham
Transport Planning

**SERVICE MANAGEMENT
PLAN**

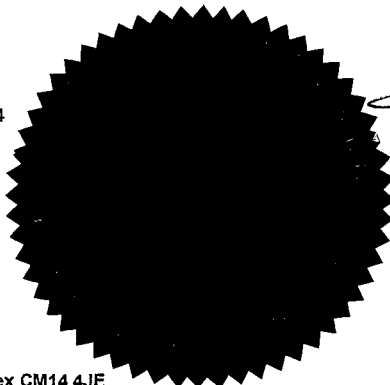
for

**PROPOSED MIXED USE
DEVELOPMENT,
60-72 SHORTS
GARDENS and 14-16
BETTERTON STREET,
COVENT GARDEN**

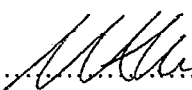

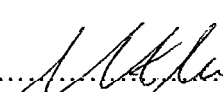
on behalf of

SPAN GROUP

MAL/anb/D/206494
26th March 2009



Title: Service Management Plan
Project: Proposed Mixed Use Development for 60-72 Shorts Gardens
and 14-16 Betterton Street, Covent Garden
Client: Span Group
Issue: Final
Project No. D/206494

Prepared by:  Date 26/3/2009
Checked by:  Date 26/3/2009
Authorised for issue by  Date 26/3/2009

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Appendices

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3. Swept Path Analysis
4. TRAVL Data Calculations for Delivery Movements

1. INTRODUCTION

- 1.1 This Service Management Plan has been prepared in support of the planning application for a mixed use development at 60-72 Shorts Gardens and 14-16 Betterton Street, Covent Garden, London. A site location plan is included in *Appendix 1* to this report.
- 1.2 The plan is a revised version of the Service Management Plan (SMP) included in the Transport Statement (TS) that was submitted in support of the above application. This plan has been compiled and agreed with London Borough of Camden.
- 1.3 Within this report details are provided of the predicted number of service vehicles that will access the site, the type of vehicles and from which road they will serve the site from. Details of time restrictions will be covered and within the appendices, details of swept path analysis and proposed layout.
- 1.4 The agreed contents within the Service Management Plan must be compiled with unless otherwise agreed with the Council. The building occupiers shall work with the Council to review this Service Management Plan from time to time when necessary. Any future revised plan must be approved by the Council and compiled with thereafter.

2. DELIVERY ACCESS AND GENERATION

Proposed Site Details

- 2.1 The proposal is to convert existing buildings 60-72 Shorts Gardens and 14-16 Betterton Street from offices to a mixed use development comprising 2,281m² (GEA) office, three ground floor units comprising of A1 (shops), A2 (financial & professional services) and D1 (Non-residential institution) covering a total of 334m² and a basement area covering 1,163sq.m (GIA) the use for this area is not yet known, but could be either B1, D1 or D2 use. For the purposes of this report, the D1 use has been assumed as it requires the most deliveries. Details of the proposed layout is included in *Appendix 2* to this report.
- 2.2 The proposed development will be constructed within the existing building structure with two additional floors on Betterton Street and one additional floor on Shorts Gardens. The ground floor will be used for the three small A1, A2 & D1 units which will include a shop, bank or estate agent and dentist or doctor. The basement will comprise, for this report, of D1 use. Floors 1 to 6 will be occupied by office use.
- 2.3 The office use will be split into two with four storeys of office (1,499 sqm GEA) use having access from Shorts Gardens and six storeys of office (782 sqm GEA) use having access from Betterton Street. The three A1, A2 & D1 units (334 sq.m GEA) will be accessed from Shorts Gardens as well as the basement use (1,163 sqm GIA).

Shorts Gardens

- 2.4 Deliveries to the uses accessed off Shorts Gardens will be able to use the lay-bys proposed along the site frontage. The proposed arrangement includes the provision of a half lay-by along the front of the site which remains at footway level but slightly re-graded so that it has a gradual slope towards the carriageway reducing the height of the kerb. This ensures that vehicles can easily park but also allows the width of the existing footway to be maintained when vehicles are not parked in this area.
- 2.5 The width of the footway when vehicles are parked reduces to 1.8m. This is considered an acceptable width given the predicted pedestrian footfall in this area. The width of the road past the loading bay is 3.25m ensuring that vehicles servicing the development will not affect the through movement along Shorts Gardens. A plan showing this arrangement is included in *Appendix 2* to this report with swept path analysis carried out using the Auto TRACK computer software included in *Appendix 3*.

- 2.6 The number of deliveries predicted to be made to the site is based on the TRAVL database, the results of which are shown in the table below, broken down for each element of the development. Details of the TRAVL information can be found in the Transport Statement submitted as part of this development application.

Table 2.1 – Predicted Service Vehicle Trip Generation for Vehicles on Shorts Gardens

Time Period	Number of Movements to the site		
	Proposed Office Use	Proposed Basement Use	Proposed Retail/ D1 Use
07.00 - 08.00	2	0	2
08.00 - 09.00	1	0	4
09.00 - 10.00	0	2	0
10.00 - 11.00	1	0	0
11.00 - 12.00	0	1	0
12.00 - 13.00	1	0	0
13.00 - 14.00	0	0	0
14.00 - 15.00	0	0	0
15.00 - 16.00	0	0	0
16.00 - 17.00	0	1	0
17.00 - 18.00	0	0	0
18.00 - 19.00	0	0	0
Total	5	4	6

- 2.7 The deliveries shown in the table indicate the total number of daily movements to the site. In assessing the delivery times in more detail, it is shown that throughout the day the maximum number of vehicles that are likely to use the service bay on Shorts Gardens at any one time will be 2. The majority of these deliveries will be made by car/van type vehicles and only on occasion will a larger 7.5ton type vehicle be used. The length of the proposed lay-by is 10.5m in length and as such will be able to accommodate two vehicles at any one time. Details of the delivery movements are provided in *Appendix 4* to this report.

Betterton Street

- 2.8 Delivery is for the smaller Office use will be via Betterton Street, requiring vehicles to stop on road to load / unload. However, the width of the road along Betterton Street is such that a vehicle parking on road would block the through movement, therefore any delivery vehicles will either use the existing parking bays along Betterton Street or park on Drury Street and use a trolley where required to deliver the goods. This arrangement will be advised to all delivery companies that need to access this side of the development.
- 2.9 As with the deliveries for Shorts Gardens, the number of deliveries predicted to be made by to the Betterton street side of the site is based on the TRAVL database, the results of which are shown in the table below.

Table 2.2 – Predicted Service Vehicle Trip Generation for Vehicles on Betterton Street

Time Period	Number of Movements to the site
	Proposed Office Use
07.00 - 08.00	1
08.00 - 09.00	0
09.00 - 10.00	1
10.00 - 11.00	0
11.00 - 12.00	0
12.00 - 13.00	1
13.00 - 14.00	0
14.00 - 15.00	0
15.00 - 16.00	0
16.00 - 17.00	0
17.00 - 18.00	0
18.00 - 19.00	0
Total	3

- 2.10 The deliveries shown indicate that throughout the day the maximum number of vehicles that will deliver to the Office use on Betterton Street will be 1 at any time. The majority of these deliveries will be made by car/van type vehicles and only on occasion will a larger 7.5ton type vehicle be used. Details of the delivery movements based on the TRAVL Data is included in *Appendix 4*.

Delivery Times

- 2.11 There are delivery times stipulated on Betterton Street with deliveries being permitted between Monday and Saturday between 08:30am and 6.30pm, although on other roads local to the site there are currently no restrictions for deliveries. The TRAVL data suggests that some 30% of deliveries are made prior to 8:30 these are primarily associated with the A1 use proposed on Shorts Gardens which will require earlier deliveries such as fresh produce/ newspapers etc. As such if a restriction on hours is required for the lay-by proposed on Shorts Gardens then it is suggested that the times for deliveries be restricted between Mondays and Saturdays between the hours of 07:00 am – 6:30pm.

3. SERVICING

Refuse Collection

- 3.1 The refuse collection made to the existing site is currently undertaken on a daily basis by a private company called Biffa, it is considered that this arrangement will remain the same for the proposed use.

Bio-Fuel Collection

- 3.2 As part of the proposal, the development will have 10% renewable energy, this will be in the form of Bio Fuel which will be stored in a tank and serviced via Betterton Street.
- 3.3 This vehicle will be similar in size to a 7.5ton Box Van and will need to serve the development once every 1.5 weeks during the winter months and once every 3.5 weeks during the spring/summer months. The operation of this vehicle involves a 40mm pipe being connected from the vehicle to a fill point which will be situated on the front elevation of the building. This filling process takes approximately 30mins per visit.
- 3.4 The arrangement in *Appendix 2* shows an area of footway outside the building frontage which will be slightly re-graded to allow this vehicle to park without obstructing the main through movement. This area will be constructed so that it will be able to accommodate vehicles of this type. The Bio-Fuel tanker will need to be approximately 1m from the building face so that the hose pipe can be accommodated, this also ensures that the emergency access situated on this side of the building is not blocked.
- 3.5 The footpath will be temporarily closed during the filling process (approximately 30mins), pedestrians will therefore be directed to use the footpath on the southern side of Betterton Street whilst this procedure is being carried out. The temporary signage that will be provided will be in accordance with Department for Transport's Traffic Signs Manual, Chapter 8: Roadworks and temporary situations.
- 3.6 In order to demonstrate that this type of vehicle can comfortably manoeuvre into this area and also not obstruct similar type vehicles and emergency vehicles, the AutoTRACK computer programme has been used. Details of which are provided in *Appendix 3*. These drawings illustrate that this vehicle type can be comfortably accommodated without affecting the through movement of vehicles on Betterton Street.

Service Vehicles Delivery Times

- 3.7 As mentioned above, the refuse collection is likely to be made on a daily basis with collections being made from Betterton Street.
- 3.8 For the Bio-fuel servicing, the times most suitable for filling will be out of office hours as the footpath during the filling process will be closed and access out of the site will be slightly restricted. The noise that is expected to be made during the filling process will be only slightly greater than the noise generated by the vehicle idling with its engine running, although with residential properties situated near by the times can not be too early or too late. On this basis it is suggested that for the Bio-fuel servicing, it is restricted Monday to Friday between the hours of 7pm and 9pm and Saturday between the hours of 8:30am and 6:30 pm. If weekday deliveries are restricted, then the frequency of this service during the winter period is likely to increase to once per week and during the summer period once every 3 weeks.

APPENDICES

APPENDIX 1

Site Location Plan

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Key:



NCP parking



Underground Station



One way route

REV	DATE	AMENDMENTS	DRAWN	CHK	APP
Waterman Boreham Transport Planning					
Waterman Boreham Ltd Regent House Hubert Road Brentwood Essex CM14 4LE Telephone: (01277) 238 100 Facsimile: (01277) 238 150 Email: enquiries@waterman-boreham.com					
Client					



INVESTOR IN PEOPLE
182971

Span Group

Shorts Gardens

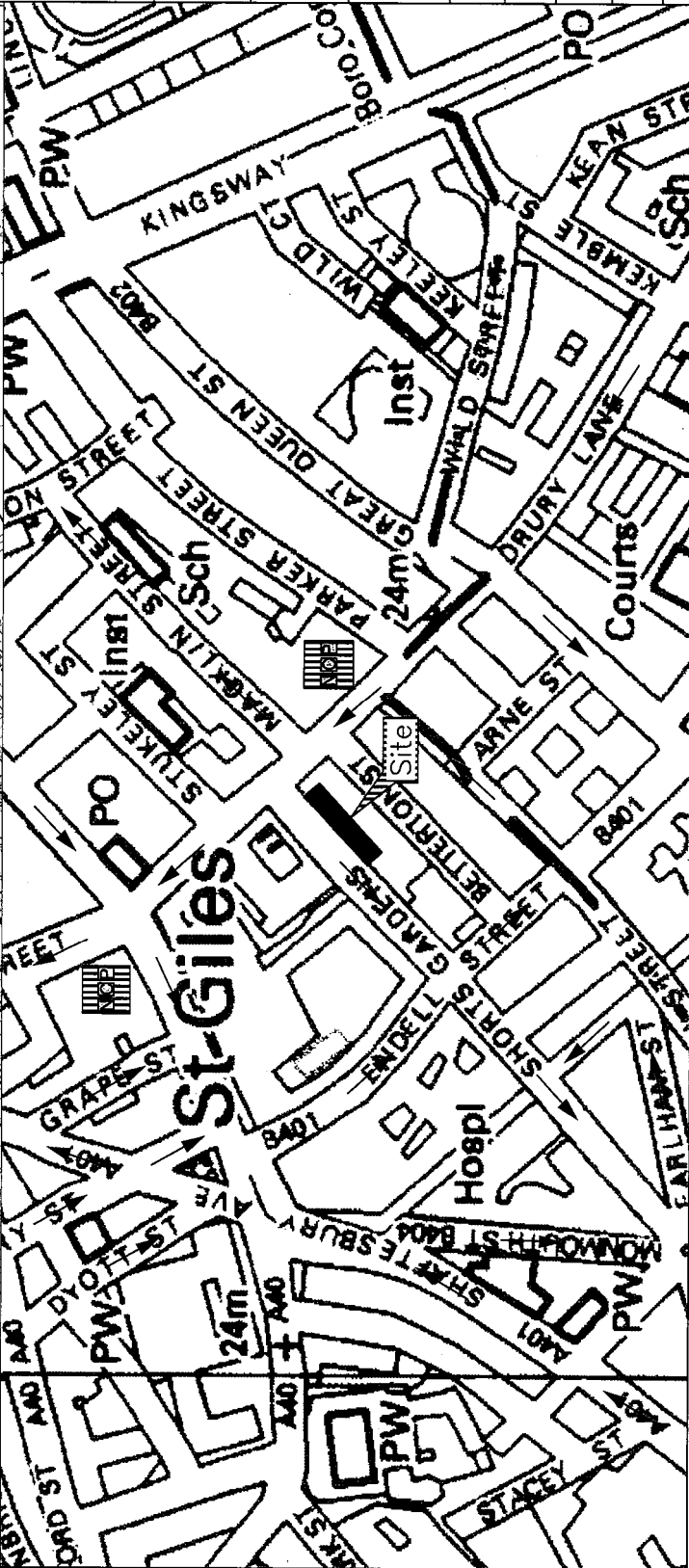
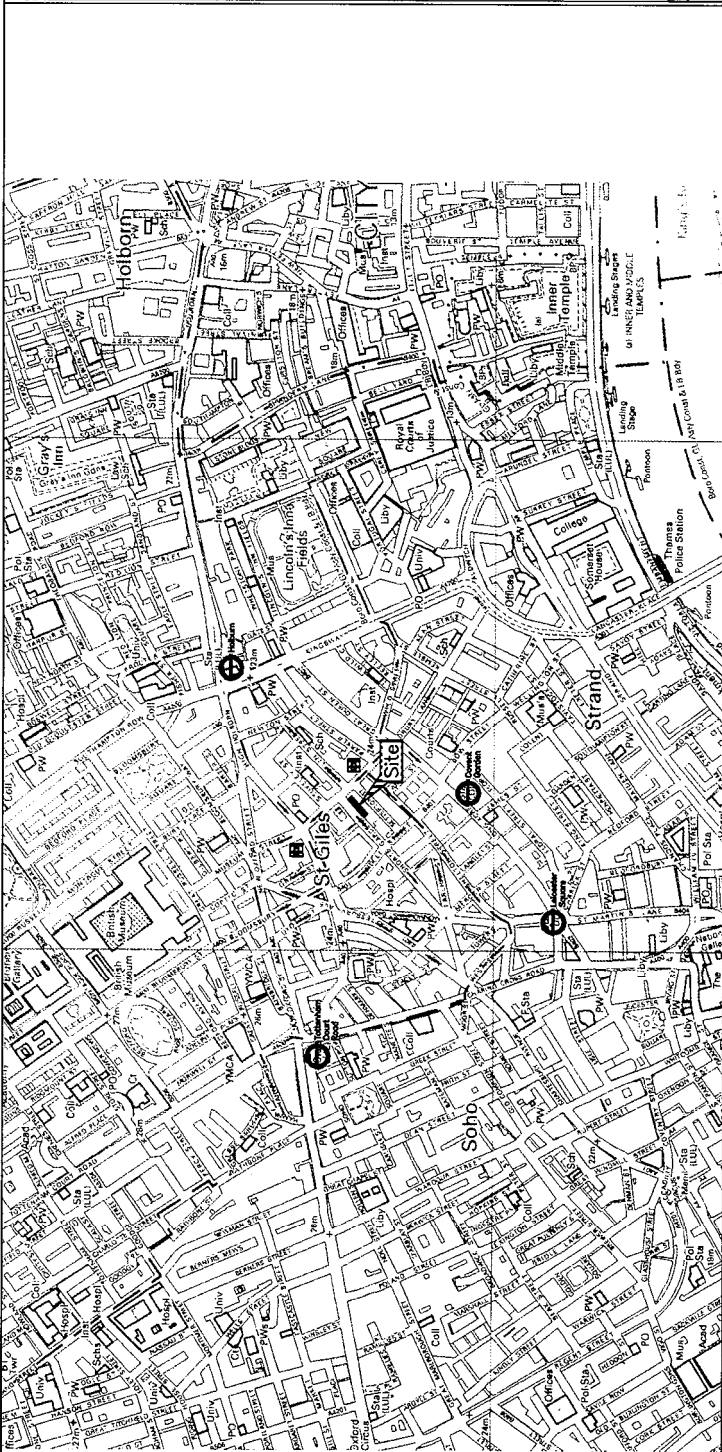
Site Location Plan

Team	Drawn	Checked	Approved
E	AJ	MAJ	MAJ
		11.01.07	11.01.07

Scale @ A3	NTS	Date
		Dec-06

Project No.	Drawing No.	Rev
206494	1	-

Purpose of Issue	<input checked="" type="checkbox"/> Preliminary	<input type="checkbox"/> For Tender	<input type="checkbox"/> For Construction
	<input type="checkbox"/> For Information	<input type="checkbox"/> For Approval	<input type="checkbox"/> As Built



APPENDIX 2

Proposed Site Plan

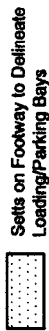
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Key



Site



Setts on Footway to Delineate Loading/Parking Bays

REV	DATE	AMENDMENTS	DRAWN	CHK	APP
C	18/03/09	Layout amended	SG	MAL	MAL
B	19/11/08	The Addition of Vehicles	KH	MAL	MAL
A	19/11/08	The Addition of Road Width Measurement and Extended Cross-Over Area	KH	MAL	MAL

Waterman Boreham
Transport Planning



Waterman Boreham Ltd
Regent House
Hubert Road
Brentwood
Essex
CM14 4JE
Telephone: (01277) 238 100
Facsimile: (01277) 238 150
Email: enquiries@waterman-boreham.com

Client

Span Group

Shorts Gardens

Proposed Loading Bay and
Parking Arrangement

Team	Drawn	Checked	Approved	MAL
D	KH			17.11.08

Scale @ A3	Date	Rev
1:250	17-Nov-08	

Project No.	Drawing No.	Rev
206494	11	C

Purpose of Issue	For Tender	For Construction
<input checked="" type="checkbox"/> Preliminary	<input type="checkbox"/> For Tender	<input type="checkbox"/> For Construction
<input type="checkbox"/> For Information	<input type="checkbox"/> For Approval	<input type="checkbox"/> As Built

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Existing residential permit holder bays

No. 27
COURT
Proposed Height: 37.61
Ridge Height: 44.31

No. 28 & 30
Proposed Height: 37.61
Ridge Height: 44.31

No. 29
Proposed Height: 37.61
Ridge Height: 44.31

No. 30
Proposed Height: 37.61
Ridge Height: 44.31

No. 31
Proposed Height: 37.61
Ridge Height: 44.31

No. 32 & 34
Proposed Height: 37.61
Ridge Height: 44.31

No. 33
Proposed Height: 37.61
Ridge Height: 44.31

No. 34
Proposed Height: 37.61
Ridge Height: 44.31

No. 35
Proposed Height: 37.61
Ridge Height: 44.31

No. 36 & 38
Proposed Height: 37.61
Ridge Height: 44.31

No. 37
Proposed Height: 37.61
Ridge Height: 44.31

No. 38
Proposed Height: 37.61
Ridge Height: 44.31

No. 39
Proposed Height: 37.61
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No. 40
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No. 42
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No. 43
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No. 44
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No. 51
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Ridge Height: 44.31

No. 52 & 54
Proposed Height: 37.61
Ridge Height: 44.31

No. 53
Proposed Height: 37.61
Ridge Height: 44.31

No. 54
Proposed Height: 37.61
Ridge Height: 44.31

No. 55
Proposed Height: 37.61
Ridge Height: 44.31

No. 56 & 58
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Ridge Height: 44.31

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APPENDIX 3

Swept Path Analysis

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Key:



Setts on Footway to Delineate Loading/Parking Bays



REV	DATE	AMENDMENTS	DRAWN	CHECK	APP
D	19/03/09	Tail bay removed and life amended	SG	MAL	MAL
C	04/03/09	Size of vehicle changed	SG	MAL	MAL
B	03/03/09	Layout amended	SG	MAL	MAL
A	19/11/08	Updated layout inserted	SH	MAL	MAL
REV	DATE	AMENDMENTS	DRAWN	CHECK	APP

Waterman Boreham Ltd
Regent House
Hubert Road
Brentwood
Essex
CM14 4JE

Telephone: (01777) 238 100
Facsimile: (01777) 238 150
Email: enquiries@waterman-boreham.com

Waterman Boreham Transport Planning

INVESTOR IN PEOPLE

Client

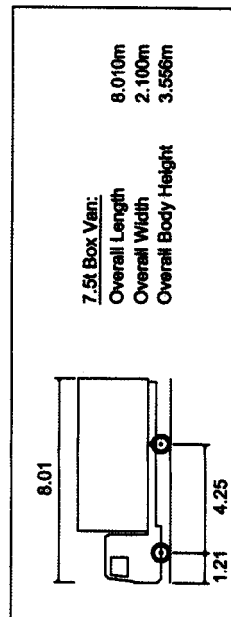
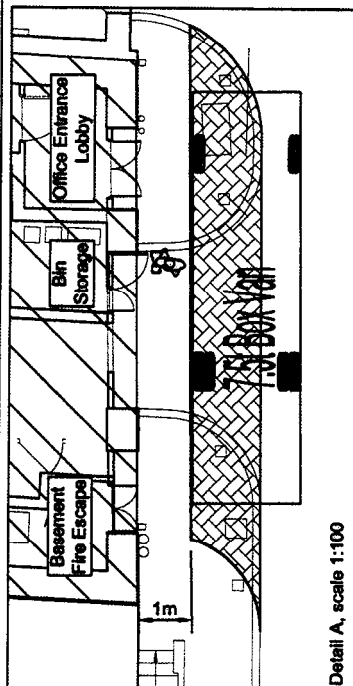
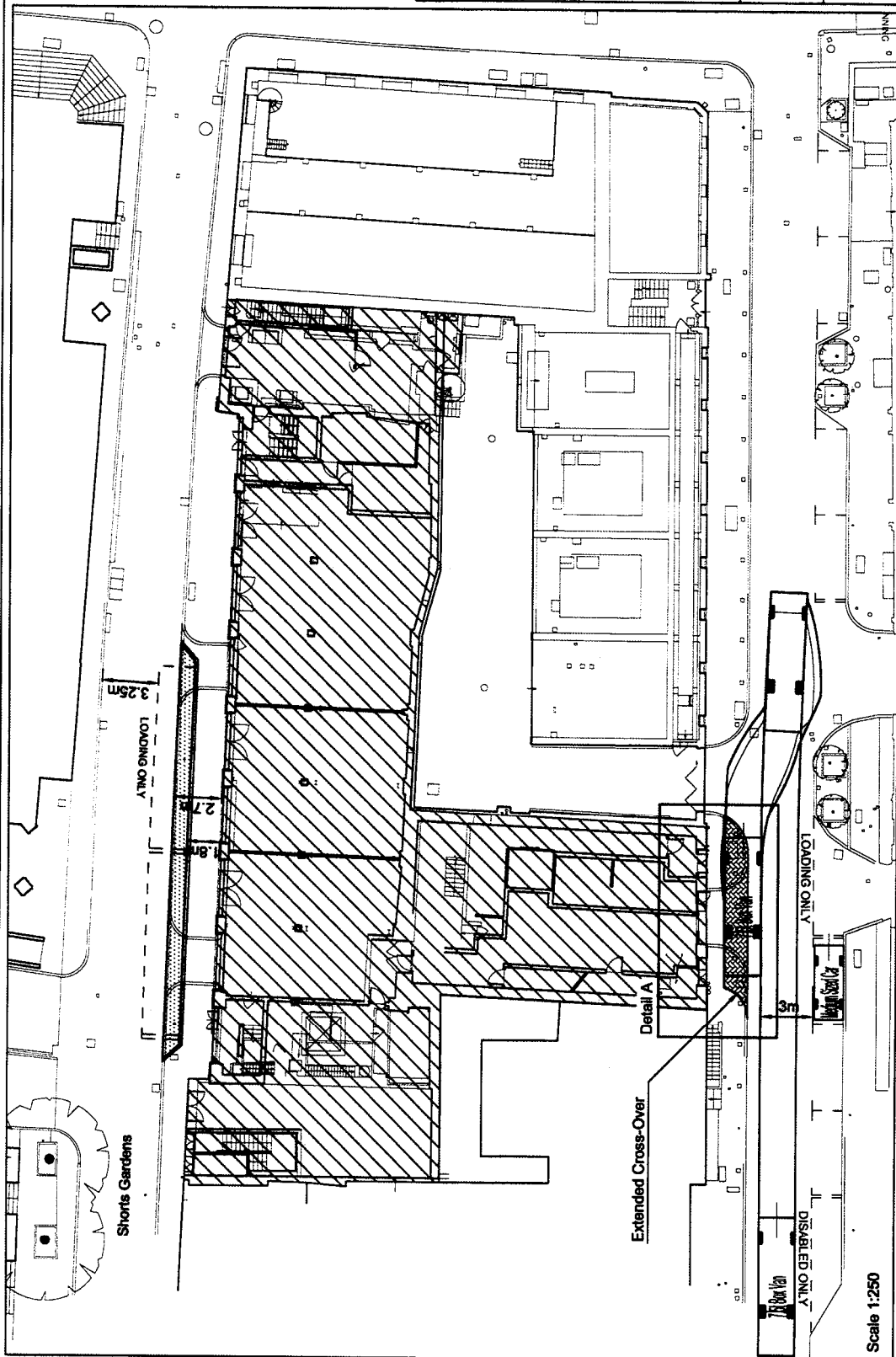
Span Group

Shorts Garden

Swept Path Analysis
for Bio-fuel Tanker
Betterton Street


Team	D	SH	Checked	MAJ	Approved	MAJ
Scale @ A3	As shown		19.11.08	19.11.08		19.11.08
Project No.	206494	Drawing No.	08	Date	Aug-07	Rev
Purpose of Issue	<input checked="" type="checkbox"/> Preliminary	<input type="checkbox"/> For Tender	<input type="checkbox"/> For Construction	<input type="checkbox"/> For Information	<input type="checkbox"/> For Approval	<input type="checkbox"/> As Built

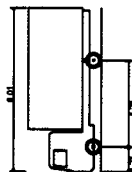
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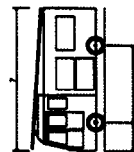
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Key:
 Site Location



7.5t Box Van:
Overall Length 8.010m
Overall Width 2.100m
Overall Body Height 3.558m



Dennis Sabre Fire Tender (SWB):
Overall Length 7.000m
Overall Width 2.430m
Overall Body Height 3.512m

B	18/03/09	Title Amended	SG	MAL	MAL
A	04/03/09	Layout amended Size of vehicle parked changed	SG	MAL	MAL
REV	DATE	AMENDMENTS	DRAWN	CHK	APP
Waterman Boreham Transport Planning					
Waterman Boreham Ltd Regent House Hubert Road Brentwood Essex CM14 4JE Telephone: (01277) 235 100 Facsimile: (01277) 235 150 Email: enquiries@waterman-boreham.com					
Investor in People					
Client					

Span Group

Shorts Garden


Swept Path Analysis
7.5 Box Van & Fire Tender
Belterton Street

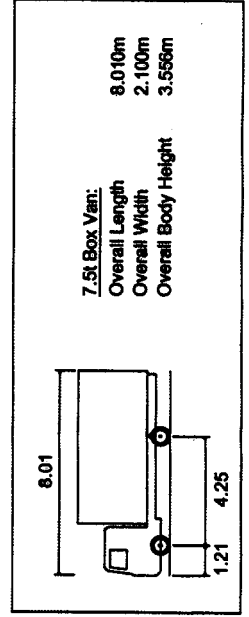
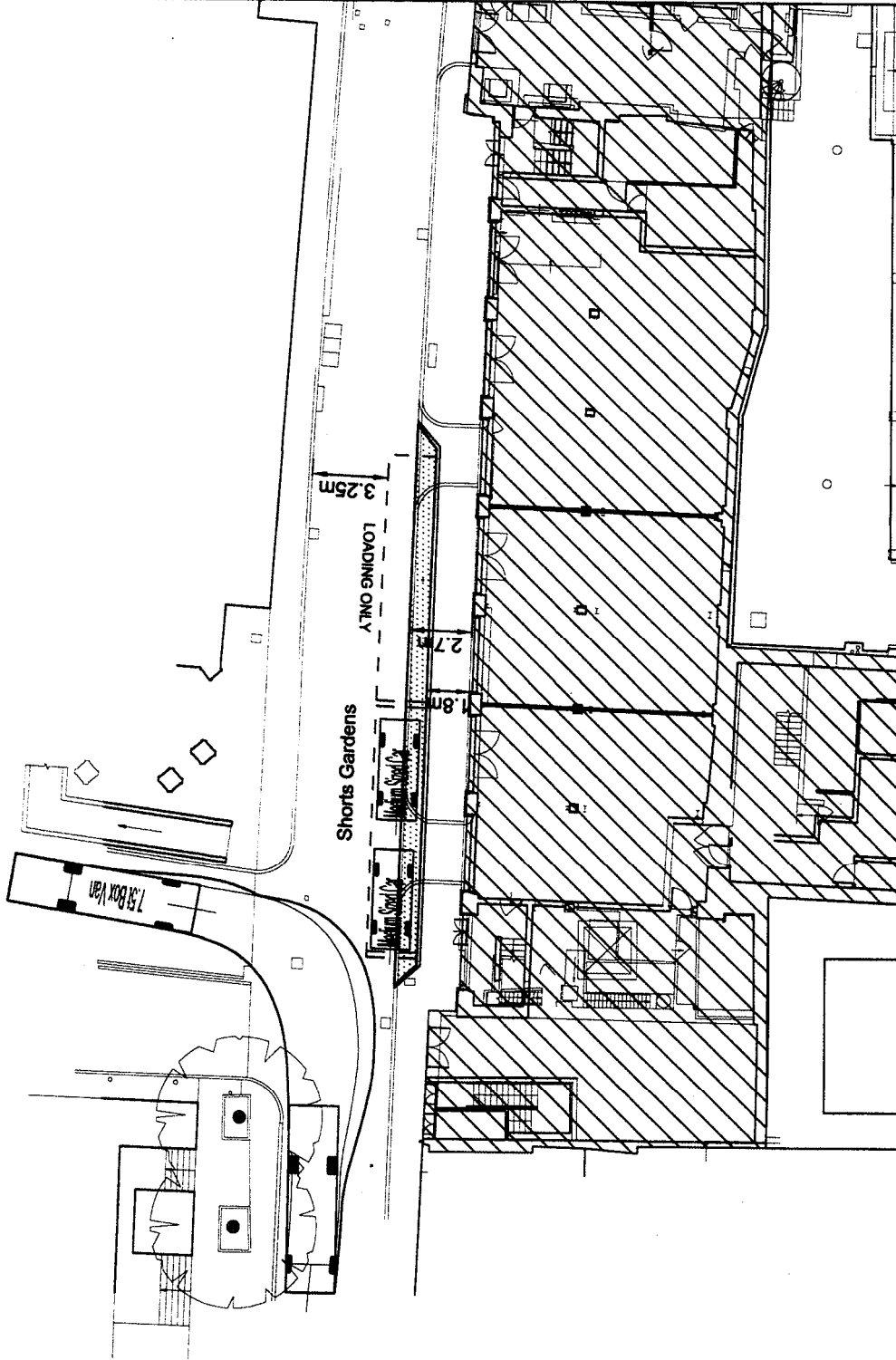
Team	D	Drawn	SG	Checked	MAL	Approved	MAL
Scale	1:200	MA1	03/03/09	03/03/09	03/03/09		
Project No.	206494	Drawing No.	13	Date	3-March-09	Rev	B
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	<input type="checkbox"/> For Information <input type="checkbox"/> For Approval <input type="checkbox"/> As Built						

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Key:
 Site Location



REV	DATE	AMENDMENTS	DRAWN	CHK	APP

Waterman Boreham
Transport Planning

Waterman Boreham Ltd
Regent House
Hubert Road
Brierwood
Essex
CM14 4JE
Telephone: (01277) 238 100
Facsimile: (01277) 238 150
Email: enquiries@waterman-boreham.com

INVESTOR IN PEOPLE

Client

Span Group

Shorts Garden

Swept Path Analysis
7.5 Box Van Exiting Hotel
via Shorts Gardens

Team	D	Drawn	SG	Checked	MAY	Approved	MAY
Scale @ A3	1:200	Date	March-09	Project No.	206494	Drawing No.	14
Purpose of Issue		<input checked="" type="checkbox"/> Preliminary		<input type="checkbox"/> For Tender		<input type="checkbox"/> For Construction	
<input type="checkbox"/> For Information		<input type="checkbox"/> For Approval		<input type="checkbox"/> As Built			

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APPENDIX 4

**TRAVL Data Calculations
for Delivery Movements**

Deliveries **Proposed**

All Uses serviced via Shorts Gardens

	ARRIVAL	DEPARTURES
	No. Trips	No. Trips
07:00 - 07:15	1	1
07:15 - 07:30	1	0
07:30	1	0
07:45	1	0
08:00	0	2
08:15 - 08:30	0	1
08:30	1	0
08:45 - 09:00	2	0
09:00	1	2
09:15	1	3
09:30 - 09:45	0	0
09:45	0	0
10:00 - 10:15	1	0
10:15 - 10:30	0	0
10:30	0	0
10:45	0	0
11:00	0	0
11:15 - 11:30	1	0
11:30	0	1
11:45	0	0
12:00 - 12:15	1	0
12:15	0	0
12:30	0	0
12:45	0	0
13:00	0	0
13:15	0	0
13:30	0	0
13:45	0	0
14:00	0	0
14:15 - 14:30	0	0
14:30	0	0
14:45	0	0
15:00	0	0
15:15	0	0
15:30	0	0
15:45	0	0
16:00	1	0
16:15 - 16:30	1	0
16:30	0	0
16:45	0	0
17:00	0	1
17:15	0	0
17:30	0	0
17:45	0	0
18:00	0	0
18:15	0	0
18:30 - 18:45	0	0
18:45	0	0
	14	15

DATED 8th MAY

2009

(1) SHORTS GARDENS LLP

and

(2) THE ROYAL BANK OF SCOTLAND PLC

and

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

A G R E E M E N T

relating to land known as

**60-70 (EVEN) SHORTS GARDENS AND 14 TO 16 (EVEN) BETTERTON STREET,
LONDON**

**pursuant to Section 106 of the Town and Country Planning
Act 1990 (as amended) and
Section 278 of the Highways Act 1980**

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 the 8th day of **MAY**

2009

B E T W E E N:

1. **SHORTS GARDENS LLP** (LLP. Regn. No. OC316410) whose registered office is at Quadrant House Floor 6, 17 Thomas More Street, Thomas More Square, London E1W 1YW (hereinafter called "the Owner") of the first part
2. **THE ROYAL BANK OF SCOTLAND (Scot. Co. Regn. No SC90312)** of Kirkstane House, 139 St Vincent Street, Glasgow G2 5JF (hereinafter called "Mortgagee") of the second part
3. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of Town Hall, Judd Street, London WC1H 9LP (hereinafter called "the Council") of the third part

WHEREAS

- 1.1 The Owner is registered at the Land Registry as the freehold proprietor with Title absolute of the Property under Title Number NGL870094 subject to a charge to the Mortgagee.
- 1.2 The Owner is the freehold Owner of and is interested in the Property for the purposes of Section 106 of the Act.
- 1.3 A planning application for the development of the Property was submitted to the Council and validated on 13 March 2008 and given reference number 2008/1401/P.
- 1.4 An appeal against the non determination of the Planning Application under Section 78 of the Act was submitted by the Owner to the Planning Inspectorate on 6 November 2008 and given reference number APP/X5210/A/08/2089789/NWF.
- 1.5 The Council is the local planning authority for the purposes of the Act for the area in which the Property is situated 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.

- 1.6 As local highway authority the Council considers the Highways Works to be carried out pursuant to this section 278 Agreement to be in the public benefit.
- 1.7 For that purpose the Owner is willing to enter into this Agreement pursuant to the provisions of Section 106 of the Act.

2. **DEFINITIONS**

In this Agreement the following expressions (arranged in alphabetical order) shall unless the context otherwise requires have the following meanings:-

- | | | |
|-----|---|--|
| 2.1 | "the Act" | the Town and Country Planning Act 1990 (as amended) |
| 2.2 | "the Agreement" | this Planning Obligation made pursuant to Section 106 of the Act |
| 2.3 | "the Application" | a planning application in respect of the Development of the Property submitted to the Council and validated on 13 March 2008 and given reference number 2008/1401/P |
| 2.4 | "the Certificate of Practical Completion" | the final certificate issued by the Owner or the Owner's contractor certifying that the Development has been completed |
| 2.5 | "The Construction Management Plan" | a plan setting out how the Owner will undertake construction of the Development using good site practices in accordance with the Council's Considerate Contractor Manual to ensure the Construction Phase of the Development has |

minimal impact on the surrounding environment including (but not limited to):

- (i) effects on the health and amenity of local residents site construction workers and local businesses adjoining developments undergoing construction
- (ii) effects on other Conservation Area ; features
- (iii) amelioration and monitoring measures over construction traffic including procedures for notifying the owners and or occupiers of the residents and businesses in the locality in advance of major operations delivery schedules and amendments to normal traffic arrangements;
- (iv) proposed routes of vehicles to and from the Development and the access arrangements for vehicles;
- (v) sizes of all vehicles and the schedule of when they will need to access the site;
- (vi) swept path drawing for the vehicle routes for all vehicle sizes;
- (vii) parking and loading arrangement of vehicles and delivery of materials and plant to the Development;

(viii) details of proposed parking bays suspensions and temporary traffic management orders;

(ix) the proposed working hours;

(x) the inclusion of a waste management strategy for handling and disposing of construction waste, and

(xi) identifying means of ensuring the provision of information to the Council and provision of a mechanism for monitoring and reviewing as required from time to time

2.6 "The Construction Phase"

the whole period between

(i) the Implementation Date and

(ii) the date of issue of the Certificate of Practical Completion.

2.7 "the Development"

Alterations, extension (including roof extensions) and refurbishment of existing commercial/office use (Class B1), change of use of ground floor of Shorts Gardens to create small units (Class A1/A2 and D1), and change of use of basement to either B1/D1 or D2 use as shown on drawing numbers Drawing Issue Register; Existing Site Plan 353/P/100 A; Proposed Site Plan

353/P/101 A; Drawing No, 400/P/155 A; 156 A; 157 E; 158 A; 159 A; 160 A; 161 A; 162 B; 163 B; 164 B; 165 B; 205 A; 206 A; 207 B; 208 A; 209 A; 210 A; 211 A; 212 A; 213 A; 300 A; 301 A; 400 A; 401 A; 402 A; 403 A; 404 A; 405 A; 406 A; 407 A; 410 A; 411 A; 412 A; 413 A; 414 A; 415 A; 450 A; 451 A; 452 A; 453 A; 454 A; 455 A; 456 A; 457 A; 460 A; 461 A; 462 A; 463 A; 464 A; Planning Statement; Energy Option Report Issue C dated 28/02/2008; Breeam 2006 Offices Prediction Issue D 28/02/2008; Transport Statement; Background Noise Assessment Issue C 28/02/2008; Transformer Noise Assessment in Shorts Gardens Wing Issue A 23/02/2008; Transformer Noise Assessment Issue A 23/02/2008; Day & Sunlight Report; Design and Access Statement; Payment in Lieu Viability Report; Construction Management Plan; Covering Letter Dated 13/03/2008, Service Management Plan dated 26.03.09

2.8 "the Highways Contribution"

the sum of £90,000 (Ninety thousand pounds) to be paid by the Owner to the Council in accordance with the terms of this Agreement and to be applied by the Council in event of receipt for the carrying out works to the public highway and associated measures in the vicinity of the Property such works to include the following (the Highways Works):-

- a. Repaving the footway and removing the redundant crossovers around the perimeter of the site

- b. The creation of loading bays partially laid in granite setts on Shorts Gardens and Betterton Street
- c. The creation of informal pedestrian crossing points with dropped kerbs and tactile paving either side of the new loading bay on Betterton Street
- d. The creation of a raised entry on Shorts Gardens at the junction with Drury Lane

all works will be subject to final measure and any level adjustment required and for the avoidance of doubt the Council in accepting this sum does not undertake any responsibility in connection with any required statutory undertakers works and excludes any statutory undertakers costs

2.9 "the Implementation Date"

the date of implementation of the Development by the carrying out of a material operation as defined in Section 56 of the Act provided that for the avoidance of doubt a material operation shall not be deemed to have taken place for the purposes of this Agreement by the carrying out of archaeological works, site surveys, site or soil investigations, ground investigations, the erection of fencing to enclose the Development or any part of the Development and works of decontamination and references to "Implementation" and "Implement" shall be construed accordingly

2.10 "the Level Plans"

plans demonstrating the levels at the interface of the Development the boundary of the Property and the Public Highway

- 2.11 "Occupation Date" the first date when any part of the Development is occupied but excluding occupation for the purposes of construction, fitting out or security and the phrases "Occupy", "Occupied" and "Occupation" shall be construed accordingly
- 2.12 "On Street Parking Bay" a parking place designated by the Council by an order under the Road Traffic Regulation Act 1984 or other relevant legislation for use by occupants of the locality in which the Development is situated
- 2.13 "On Street Parking Permit" A parking permit issued by the Council under section 45(2) of the Road Traffic Regulation Act 1984 allowing a vehicle to park in an On Street Parking Bay
- 2.14 "the Parties" mean the Council the Owner and the Mortgagee
- 2.15 "Planning Obligations Monitoring Officer" a planning officer of the Council from time to time allocated to deal with all planning obligations pursuant to Section 106 of the Act to whom all notices, correspondence, approvals etc must be sent in the manner prescribed at clause 6.1 hereof
- 2.16 "the Planning Permission" any planning permission that may be granted by the Planning Inspectorate in the Application pursuant to appeal filed in relation to the Property with the Inspectorate under reference number APP/X5210/A/08/2089789/NWF

- (f) the likely size of the delivery vehicles entering the site;
- (g) measures taken to ensure pedestrian management and public safety during servicing
- (h) measures taken to address servicing movements on and around the site with a view inter alia to combining and/or reducing servicing and minimise the demand for the same
- (i) provision of swept path drawings to ascertain manoeuvring when entering and exiting the Property in accordance with the drawings submitted and agreed with the Council;
- (j) statement setting out how pedestrian and highway safety will be maintained during servicing movements;
- (k) details of arrangements for refuse storage and servicing; and
- (l) identifying means of ensuring the provision of information to the Council and provision of a mechanism for review and update as required from time to time

2.20 "the Sustainability Plan"

a plan including a post construction review securing the incorporation of sustainability measures in the carrying out of the Development in its fabric and in its subsequent

management and occupation based on a Building Research Establishment Environmental Assessment Method assessment with a target of achieving a Very Good or Excellent rating and attaining at least 60% of the credits in each of Energy and Water and 40% of the credits in Materials categories and at least Level 3 of the Code for Sustainable Buildings attaining at least 50% of the credits in each of the Energy Water and Materials categories to be carried out by a recognised independent verification body in respect of the Property

2.21 "The Travel Plan"

a plan setting out a package of measures to be adopted by the Owner in the management of the Property incorporating the elements set out in the First Schedule hereto with a view to inter alia reducing trips in motor vehicles to and from the Property and promoting the use of environmentally friendly transport

NOW THIS DEED WITNESSETH as follows:-

- 3.1 This Agreement is made in pursuance of Section 106 of the Act, and is a planning obligation for the purposes of Section 106 as aforesaid, and shall be enforceable by the Council against the Owner as provided herein and against any person deriving title to any part of the Property from the Owner and insofar as it is not a planning obligation its provisions may be enforceable by the Council under any relevant statutory powers.
- 3.2 Words importing the singular shall include the plural and vice versa and any words denoting actual persons shall include companies corporations and other artificial persons.

- 3.3 Any reference to a specific statute or statutes include any statutory extension or modification amendment or re-enactment of such statute and any regulation or orders made under such statute.
- 3.4 The clause and paragraph headings do not form part of this Agreement and shall not be taken into account in its construction or interpretation.
- 3.5 It is hereby agreed between the Parties that save for the provisions of clauses 1, 2, 3, 5, 6, 7, 8 and 9 hereof all of which shall come into effect on the date hereof the covenants undertakings and obligations contained within this Agreement shall become binding upon the Owner upon the Implementation Date.
- 3.6 The Parties save where the context states otherwise shall include their successors in title.
- 3.7 The Parties acknowledge that the Development shall be treated as being permanently designated as "car free" in accordance with Clause 4.6 for all relevant purposes unless otherwise agreed by the Council in writing that the restriction contained in this Agreement be lifted.
- 3.8 Where any approval, agreement, consent, certificate or expression of satisfaction is to be given by the Council under this Agreement, such approval, agreement, consent, certificate or expression of satisfaction shall not be unreasonably withheld or delayed

4. OBLIGATIONS OF THE OWNER

The Owner hereby covenants with the Council as follows:-

4.1 CONSTRUCTION MANAGEMENT PLAN

- 4.1.1 Prior to Implementation to submit to the Council for approval the Construction Management Plan.
- 4.1.2 Not to Implement or permit Implementation of the Development until such time as the Council has approved the Construction Management Plan in writing.

- 4.1.3 After Implementation, the Owner shall not carry out or permit to be carried out any works of construction at any time other than in strict accordance with the Construction Management Plan and if any part of the Development is not being managed in strict accordance with the Construction Management Plan as approved by the Council from time to time and the Owner shall upon notice from the Council forthwith take any steps reasonably required by the Council to remedy the non-compliance

4.2 HIGHWAYS WORKS

- 4.2.1 On or prior to the Implementation Date to pay to the Council the Highways Contribution in full.
- 4.2.2 Prior to the Implementation Date to submit to the Council the Level Plans for approval.
- 4.2.3 Not to Implement or to permit Implementation until such time as the Council has received the Highways Contribution in full.
- 4.2.4 Not to Implement nor permit Implementation until such time as the Council has approved the Level Plans.
- 4.2.5 The Owner acknowledges that the Council has the right reserved to it to construct the Public Highway to levels it considers appropriate.
- 4.2.6 On completion of the Highway Works the Council shall provide to the Owner a certificate specifying the sum ("the Certified Sum") expended by the Council in carrying out the Highway Works.
- 4.2.7 If the Certified Sum exceeds the Highway Contribution then the Owner shall within fourteen days of the issuing of the said certificate pay to the Council the amount of the excess.
- 4.2.8 If the Certified Sum is less than the Highways Contribution then the Council shall within fourteen days of the issuing of the said certificate pay to the Owner the amount of the difference

4.3 SERVICE MANAGEMENT PLAN

- 4.3.1 Following Occupation to manage the Development in Strict Accordance with the Service Management Plan and if any part of the Development is not being managed in strict accordance with the Service Management Plan as approved by the Council from time to time the Owner shall upon notice from the Council forthwith take any steps reasonably required by the Council to remedy the non-compliance

4.4 SUSTAINABILITY PLAN

- 4.4.1 On or prior to the Implementation Date to submit to the Council for approval the Sustainability Plan.
- 4.4.2 Not to Implement nor permit Implementation until the Sustainability Plan has been approved by the Council as demonstrated by written notice to that effect
- 4.4.3 Not to Occupy or permit the Occupation of the Development until the Council has confirmed in writing that the measures incorporated in the Sustainability Plan as approved by the Council have been implemented in the construction of the Development.
- 4.4.4 Following Occupation to comply with the requirements of the Sustainability Plan and if any part of the Development is not being managed in strict accordance with the Sustainability Plan as approved by the Council from time to time the Owner shall upon notice from the Council forthwith take any steps reasonably required by the Council to remedy the non-compliance

4.5 TRAVEL PLAN

- 4.5.1 The Owner covenants with the Council to submit a draft of the Travel Plan to the Council on or prior to the Implementation Date.
- 4.5.2 The Owner covenants with the Council not to occupy or permit occupation of any part of the Development until such time as the Council has approved the Travel Plan.

- 4.5.3 Following Occupation the owner shall comply with the requirements of the Travel Plan and if any part of the Development is not being managed in strict accordance with the Travel Plan as approved by the Council from time to time the Owner shall upon notice from the Council forthwith take any steps reasonably required by the Council to remedy the non-compliance

4.6 CAR FREE

- 4.6.1 The Owner hereby covenants with the Council to ensure that prior to Occupying the Development each new Occupant of the Development is informed by the Owner of the Council's policy that they shall not be entitled (unless they are the holder of a disabled persons badge issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970) to be granted an On Street Parking Permit to park a vehicle in an On Street Parking Bay and will not be able to buy a contract to park within any car park owned, controlled or licensed by the Council.
- 4.6.2 The Owner for itself and its successors in title to the Property hereby acknowledges that the provision in Clause 4.6.1 above will remain permanently (unless otherwise agreed by the Council in writing that the restriction contained in this Agreement be lifted)

5. OBLIGATIONS OF THE COUNCIL

- 5.1 The Council hereby covenants with the Owner to use all reasonable endeavours to carry out the Highway Works in a good and workmanlike manner.
- 5.2 If the Council requires any further works to be undertaken to the highway in addition to those set out in clause 2.8 or introduce measures reasonably required as a consequence of the Development it will liaise with the Owner and advise of the additional measures as soon as reasonably possible.
- 5.3 Upon receipt of a written request the Council shall provide accounts to the Owner detailing how the Highways Contribution has been spent

6. NOTICE TO THE COUNCIL/OTHER MATTERS

- 6.1 The Owner shall give written notice to the Council on or prior to the Implementation Date specifying that Implementation of the Development has taken or is about to take place.
- 6.2 Within seven days following completion of the Development the Owner shall certify in writing to the Planning Obligations Monitoring Officer in the manner outlined at clause 6.1 hereof quoting planning reference 2008/1401/P the date upon which the Development is ready for Occupation.
- 6.3 The Owner shall act in good faith and shall co-operate with the Council to facilitate the discharge and performance of all obligations contained herein and the Owner shall comply with any reasonable requests of the Council to have access to any part of the Property or any requests to provide documentation within the Owner's possession (at the Owner's expense) for the purposes of monitoring compliance with the obligations contained herein.
- 6.4 The Owner agrees declares and covenants with the Council that it shall observe and perform the conditions restrictions and other matters mentioned herein and shall not make any claim for compensation in respect of any condition restriction or provision imposed by this Agreement and further shall jointly and severally indemnify the Council for any expenses or liability arising to the Council in respect of any substantiated breach by the Owner of any obligations contained herein save to the extent that any act or omission of the Council its employees or agents has caused or contributed to such expenses or liability.
- 6.5 Payment of the Contribution pursuant to Clause 4.2 of this Agreement shall be made by the Owner to the Council sending the full amount in the form of a Banker's Draft to the Planning Obligations Monitoring Officer referring to the names dates and Parties to this Agreement and citing the specific clause of this Agreement to which such Contribution relates quoting the Income Code ZM663ZL065 or by Electronic Transfer directly to the Co-Operative Bank plc of 1 Islington High Street London N1 9TR quoting Sort Code 08-90-33 and London Borough of Camden General Account No. 61030019 and to inform the Planning Obligations Monitoring Officer of such payment quoting the above details as if the payment had been made by Banker's Draft.

6.6 All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable in respect thereof and all parties other than the Council shall pay and indemnify the Council against any such value added tax properly payable on any sums paid to the Council under this Agreement upon presentation of an appropriate value added tax invoice addressed to the Owner.

6.7 Any sums referred to in this Agreement as payable or to be applied by any party other than the Council under this Agreement shall be paid or applied TOGETHER WITH if such payment or application is made more than three months from the date of this Agreement a further sum ("A") being equal to the original sum payable ("B") multiplied by a figure being a fraction of which the All Items of Retail Prices ("the AIIRP") figure last published by the Central Statistical Office at the date hereof is the denominator ("X") and the last AIIRP figure published before the date such payment or application is made ("Y") less the last published AIIRP figure at the date hereof ("X") is the numerator so that

$$A = B \times \frac{(Y-X)}{X}$$

6.8 All costs and expenses payable to the Council under this Agreement shall bear interest at the rate of 4% above the Base Rate of the National Westminster Bank plc from time to time being charged from the date such payment is due until payment is made.

7. **IT IS HEREBY AGREED AND DECLARED** by the Parties hereto that:-

7.1 The provisions of Section 196 of the Law of Property Act 1925 (as amended) shall apply to any notice or approval or agreement to be served under or in connection with this Agreement and any such notice or approval shall be in writing and shall specifically refer to the name, date and Parties to the Agreement and shall cite the clause of the Agreement to which it relates and in the case of notice to the Council shall be addressed to the London Borough of Camden, Planning Obligations Officer, Urban Design and Renewal, Planning and Public Protection, Culture and Environment Directorate Town Hall Annex, Argyle Street, London WC1H 9LP quoting the planning reference number 2008/1401/P and in the case of any notice or

approval or agreement from the Council this shall be signed by a representative of the Council's Environment Department.

- 7.2 This Agreement shall be registered as a Local Land Charge.
- 7.3 The Owner agrees to pay the Council its proper and reasonable legal costs incurred in preparing this Agreement on or prior to the date of completion of the Agreement.
- 7.4 The Owner hereby covenants with the Council that it will within 28 days from the date hereof apply to the Chief Land Registrar of the Land Registry to register this Agreement in the Charges Register of the title to the Property and will furnish the Council forthwith on written demand with official copies of such title to show the entry of this Agreement in the Charges Register of the title to the Property.
- 7.5 Nothing contained or implied in this Agreement shall prejudice or affect the Council's powers to enforce any specific obligation term or condition nor shall anything contained or implied herein prejudice or affect any provisions, rights, powers, duties and obligations of the Council in the exercise of its functions as Local Planning Authority for the purposes of the Act or as a local authority generally and its rights, powers, duties and obligations under all public and private statutes, bye laws and regulations may be as fully and effectually exercised as if the Council were not a party to this Agreement.
- 7.6 Neither the Owner or the Mortgagee nor their successors in title nor any person deriving title from them shall be bound by the obligations in this Agreement in respect of any period during which it no longer has an interest in the Property but without prejudice to liability for any breach committed prior to the time it disposed of its interest.
- 7.8 If the Planning Permission is quashed or revoked or otherwise withdrawn or expires before effluxion of time for the commencement of development or is modified (other than by agreement with or at the request of the Owner) this Agreement shall forthwith determine and cease to have effect and the Council will effect cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.

8. **MORTGAGEE EXEMPTION**

8.1 The Mortgagee hereby consents to the completion of this Agreement and agrees to be bound by it and to the same being registered at the Land Registry as provided in Clause 6.4 hereof and for the avoidance of doubt agrees to be bound by the said obligations only in the event that it becomes a mortgagee in possession of the Property.

9. **RIGHTS OF THIRD PARTIES**

9.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement

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

EXECUTED AS A DEED BY
SHORTS GARDENS LLP
acting by a Director and its Secretary
or by two Directors

)
)
)
)

.....
Director

(ALEXANDER VASIC)

.....
Director/Secretary

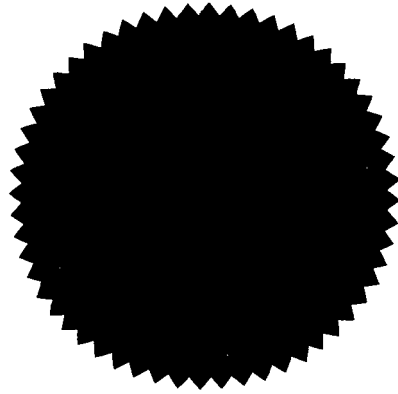
**By
THE ROYAL BANK OF SCOTLAND PLC
by
in the presence of:-**



Alex Hyde

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

Authorised Signatory



THE FIRST SCHEDULE

THE TRAVEL PLAN

PART I: Components of the Travel Plan

The Travel Plan will be a basis for promoting sustainable travel to and from the Property.

The Owner will implement the Travel Plan where appropriate in partnership with the Council and/or with public transport operators.

In drawing up to the Travel Plan ("the Plan) the Owner shall ensure that provisions relating to the following matters are contained within the Plan:-

1. Public Transport and walking

- a. Review the public transport needs of staff
- b. Provide in-house public interest information (both Transport for London and National Rail travel information is available from their respective websites: www.tfl.gov.uk/www.nationalrail.co.uk)
- c. Consider staff provision of interest-free annual season ticket/travelcard loans for travel on buses, the underground, trains and trams
- d. Encourage walking through the provision of information on the best pedestrian routes to and from the Property for staff and visitors

2. Taxis and Minicabs

Consideration must be given to the provision and management of Taxi access to the Property

3. Traffic Restraint

The Plan must seek to reduce the volume and impact of vehicles generated by this Property and the proposed additional Development

4. On-Street Parking Controls

The plan should aim to contain the transport impacts of the site (including parking, loading and unloading) to within the curtilage of the site and reduce the impact of the site on surrounding on-street parking.

5. Staff Parking and travel

A review of staff travel should have the principal aim of reducing non-essential single occupant driver trips to the site. This should include:

- a. consideration and/or review of pool vehicles for work related trips including more environmentally friendly vehicles and alternative forms of transport for some trips.
- b. consider the use of partial homeworking/ teleworking /teleconferencing where feasible and appropriate

7. Cycling

The following cycle measures must be provided:

- a. secure and well-lit workplace cycle parking
- b. changing and showering facilities

Consideration shall also be given to providing:

- c. cycle allowance for work-related journeys
- d. cycle and equipment loans and insurance
- e. cycle repair facilities
- f. cycle pool for work-related journeys
- g. a Bicycle Users Group (BUG) to progress cyclists issues on site
- h. work with the Council to improve cycle routes to/from the Property

8. Facilities for Goods Movement and Servicing

A Servicing Management Plan for the site must seek to:

- a. identify the number and type of servicing vehicles required for the Property;
- b. Limit the size of vehicle where a larger vehicle will create servicing conflicts;
- c. Manage the timing of deliveries to avoid conflict with other servicing vehicles, conflict with loading or parking restrictions in the area or conflict with heavy pedestrian or traffic flows
- d. encourage suppliers and delivery contractors to use alternatively-fuelled vehicles (such as electric and LPG vehicles and cycles) – organisations can apply to the Energy Saving Trust (www.est.org.uk) for alternatively- fuelled vehicle grants

PART II: Review and Monitoring of the Travel Plan

The Owner shall ensure that the Plan contains arrangements for the review and monitoring of the Travel Plan are carried out on an ongoing basis and at least every 2 years. These arrangements will deal with the matters set out below establishing firm timescales for the taking of each step, specific targets to be adopted for the measuring of the effectiveness of each measure and a reporting mechanism to the Council. It is acknowledged that it will be appropriate to amend the Travel Plan by agreement in the light of developing circumstances.

1. Review the Property's Transport Accessibility

The first stage will be to review the Property's accessibility by all modes. An accessibility report will be produced and this will form the basis for the next stages.

2. Consultation with employees

This will involve meeting employees of the Property to promote the concept of a Travel Plan. The meetings will seek to identify a common set of objectives for encouraging public transport usage and reducing the reliance on the private car.

3. User/ Employee Consultation and Travel Surveys

This stage will be based around consultation. It will be extremely important to secure the support of employees and users if the Plan is to succeed. This stage will include employee and user travel surveys to examine the use of existing modes of travel, attitudes towards sustainable modes of transport and the most effective measures to promote sustainable transport for commuting journeys and employers business. The Owner will consult with the Council and providers of public transport at this stage.

4. Implementation

Stages 1 to 3 will provide the base information for the review of the Travel Plan.

5. Monitor and Review

The Travel Plan will secure an ongoing process of continuous improvement. Each version of the Travel Plan shall set out a mechanism for reporting back to the Council on an annual basis on how effectively the Travel Plan is being in maximising the use of sustainable transport.