

Address:	24-28 Gray's Inn Road LONDON WC1X 8HP		02
Application Number:	2014/1412/P	Officer: Charles Thuaire	
Ward:	Holborn & Covent Garden		
Date Received:	21/02/2014		
Proposal: Application under Section 106A (3) to modify a legal agreement and amend clause 4.1 of the S106 (requiring provision of one onsite affordable housing unit) in relation to planning permission (2012/0081/P) dated 19/04/2012 (for the erection of a 6 storey building plus basement level comprising of 14 self- contained residential units (4 x one bedroom, 8 x two bedroom and 2 x three bedroom) at first to fifth floor level (924sqm) and office floor space (Class B1) at basement and ground floor level (448sqm) following demolition of existing buildings.			
Background Papers, Supporting Documents and Drawings: letter from iceni projects dated 11.2.14; email from Isabella Slattery dated 1.12.14			
RECOMMENDATION SUMMARY: Approve modification of legal agreement			
Applicant:		Agent:	
Grays Inn Homes Limited c/o Agent		Iceni Projects Flitcroft House 114-116 Charing Cross Road London WC2H 0JR	

OFFICERS' REPORT

This application is being reported to the Committee as it entails a Deed of Variation to a S106 legal agreement relating to affordable housing that is materially different from the previous obligation approved by the Committee in relation to the same site (Clause 3vi).

This report has been deferred from the last Committee on 22nd January due to lack of time. Furthermore officers are continuing to negotiate with the applicant to secure a higher contribution for offsite affordable housing than originally calculated (see para 6.11 below). The outcome of these negotiations and the final amount will be reported to Committee via a supplementary agenda report.

1. SITE

- 1.1 The application site is located on the east side of Gray's Inn Road at its southern end between Baldwin Gardens and High Holborn. It contains three 5 storey terraced blocks comprising 3 commercial units at ground and basement floors (in Class A1, A3 and B1/A2 uses), and 4 upper floors in Class B1 offices. The buildings are of 19thC origin with well-defined vertical proportions and large dormers within the attic floor. Adjoining buildings comprise modern postwar commercial blocks in office use, including a 6 storey block to its left side and a part 5 part 9 storey block to its right side.
- 1.2 The property is located in the Central London area and an archaeological priority area; it is not within a conservation area, although it lies opposite Gray's Inn which has listed buildings and is within Bloomsbury conservation area.

2. THE PROPOSAL

- 2.1 Application under Section 106A (3) to modify a legal agreement and amend clause 4.1 of the S106 (requiring provision of one onsite affordable housing unit) in relation to planning permission (2012/0081/P) dated 19/04/2012 (for the erection of a 6 storey building plus basement level comprising of 14 self-contained residential units (4 x one bedroom, 8 x two bedroom and 2 x three bedroom) at first to fifth floor level (924sqm) and office floor space (Class B1) at basement and ground floor level (448sqm) following demolition of existing buildings.

3. RELEVANT HISTORY

- 3.1 19.4.12- 2012/0081/P- planning permission granted subject to S106 for Erection of a 6 storey building plus basement level comprising of 14 self-contained residential units (4 x one bedroom, 8 x two bedroom and 2 x three bedroom) at first to fifth floor level (924sqm) and office floor space (Class B1) at basement and ground floor level (448sqm) following demolition of existing buildings.

4. CONSULTATIONS

Adjoining Occupiers

Original

<i>Number of Letters Sent</i>	26
<i>Number of responses Received</i>	00
<i>Number in Support</i>	00
<i>Number of Objections</i>	00

4.1 Also site notice and press advert- No response.

5. POLICIES

Set out below are the LDF policies that the proposals have primarily been assessed against. However it should be noted that recommendations are based on assessment of the proposals against the development plan taken as a whole together with other material considerations.

5.1 LDF Core Strategy and Development Policies

CS6 - Providing quality homes

CS19 - Delivering and monitoring the Core Strategy

DP3 - Contributions to supply of affordable housing

Supplementary Planning Policies

Camden Planning Guidance CPG2 Housing

Other policies

5.2 National Planning Policy Framework (27.3.12)

The London Plan (July 2011)

Town and Country Planning (Modification and Discharge of Planning Obligations)

Regulations 1992

6. ASSESSMENT

6.1 The principal consideration material to the determination of this application is compliance with affordable housing policy.

Proposal

6.2 The extant permission 2012/0081/P was subject to a S106 agreement which had a clause 4.1 requiring the provision of one affordable housing unit on site, in accordance with policy which required the provision of onsite social rented housing for schemes involving more than 10 units. The agreement in this case required the provision of one flat on the 1st floor (a wheelchair accessible 1 bedroom 2 person unit), to be managed by a local housing association as an intermediate shared ownership unit and also a financial contribution of £265,000 as payment-in-lieu for the additional onsite affordable housing floorspace that was required in order to comply with CPG formulae on affordable housing provision.

6.3 The applicant has applied to vary this clause so that no such unit is provided on site and instead an additional payment-in lieu is paid, in accordance with CPG formulae, to enable provision of an equivalent or larger unit elsewhere.

Policy

- 6.4 Section 106A(3) provides the ability to apply for the obligation: “(a) to have effect subject to such modifications as may be specified in the application; or (b) to be discharged.”
- 6.5 The procedure to be followed is set out in the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992. An application may be determined in one of three ways: “(a) that the planning obligation shall continue to have effect without modification; (b) if the obligation no longer serves a useful purpose, that it shall be discharged; or (c) if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.”
- 6.6 The modifications specified in the application must be considered in their entirety. It is not possible to approve an application by accepting some modifications but rejecting others. Section 106A of the 1990 Act does not require that regard is to be had to the development plan for the purposes of determining an application or appeal in respect of the proposed modification or discharge of a planning obligation. There is however a body of case law which clarifies these matters and it primarily comes down to what is the useful planning purpose.
- 6.7 The key consideration of section 106A is whether or not the obligation serves a useful purpose. There are no further planning regulations or guidance about how this is assessed. The National Planning Policy Framework (NPPF) does state that where obligations are being revised, local planning authorities should take account of changes in market conditions over time and, where appropriate, be sufficiently flexible to prevent planned development being stalled.

Considerations

- 6.8 The purpose of the S106 clause is to secure the provision of affordable housing on site. The clause remains to have a useful purpose in meeting the borough’s affordable housing targets. However regard has to be made to the viability and effectiveness of achieving this clause by providing such affordable housing on site. It is argued that it would be more efficient and worthwhile for both parties to have the housing unit provided elsewhere offsite, as explained below, and thus the S106 clause should be amended to secure the provision of such affordable housing in a different form. This modification of the S106 would continue to serve the original purpose equally well as indicated in para 6.5 © above.
- 6.9 The affordable housing unit within the approved scheme was to be a 1 bedroom 2 person flat at front 1st floor facing the street (unit 2 on attached plan), to be sold as shared ownership at a minimum 25% share with 2.75% rent to be charged on unsold equity. The flat is also noted to be 42sqm in size, below the minimum standards specified in the London Plan for such units (50sqm). The applicant estimates that its value would be £745,000 plus a service charge of £56 per week.

- 6.10 The applicants argue that this small flat is not affordable on account of its high price and high service charges. This unit cannot be sold at a 25% share with a 2.75% rent on unsold equity and at best the purchaser would have to be on the London Mayor's maximum income allowable of £66,000 per annum and pay less than 1% rent on unsold equity to be able to afford to buy the minimum 25% share. This would not be an affordable option and not one where the purchaser would likely ever be able to afford to 'staircase out' and own more equity on this unit. In addition there are high service charges due to the fact that the 1st floor flat would be sharing a common entrance and service core with the other private flats. Given its small size and high maintenance and service charges, it would not be viable for a Registered Social Landlord (RSL) to manage or maintain the unit. Moreover an extensive survey of RSL's has shown that none are interested in purchasing a single unit in this otherwise private block of flats.
- 6.11 The applicant proposes a payment-in-lieu to enable creation of an affordable housing unit elsewhere in the Borough. They have suggested conversion of a new unit on the new Council-led private development on Maiden Lane estate to the north. For example here, the new private units include 3 bedroom 4 person ones at 76sqm, of similar value (£705,000) to the one proposed at the application site. The financial contribution would enable conversion of one of these private units which have lower service charges and market values and therefore would be more affordable to a shared ownership purchaser. However the Housing Department is investigating other options where this money could be used to create an affordable housing unit nearer to the application site south of Euston Road. The additional contribution, over and above that already agreed at £265,000 (see para 6.2), has been calculated according to CPG2 formulae for payments-in-lieu and is £139,125, based on the floorspace (42sqm NIA) of the flat. The applicant has agreed to this amount.
- 6.12 The advantages identified are that any alternative flat identified for use as affordable housing (such as that suggested in the Maiden Lane estate) would be larger and in compliance with London Plan standards; potentially more useful and adaptable to accommodating larger households; have a lower and more affordable service charge. The market value and the service charge, being more affordable, would enable a family to afford to 'staircase' in future years therefore helping the aim of shared ownership further.
- 6.13 These advantages are considered significant and will help to achieve the Council's overall aims for affordable housing in the borough. It is considered that the single approved unit here is actually not achievable due to its high cost and due to no interest by a RSL in managing it. In reality, the flat would remain unoccupied and make no contribution to housing needs, whereas the alternative option as proposed now is a much more realistic, achievable and useful solution in meeting the overall Borough's housing needs.

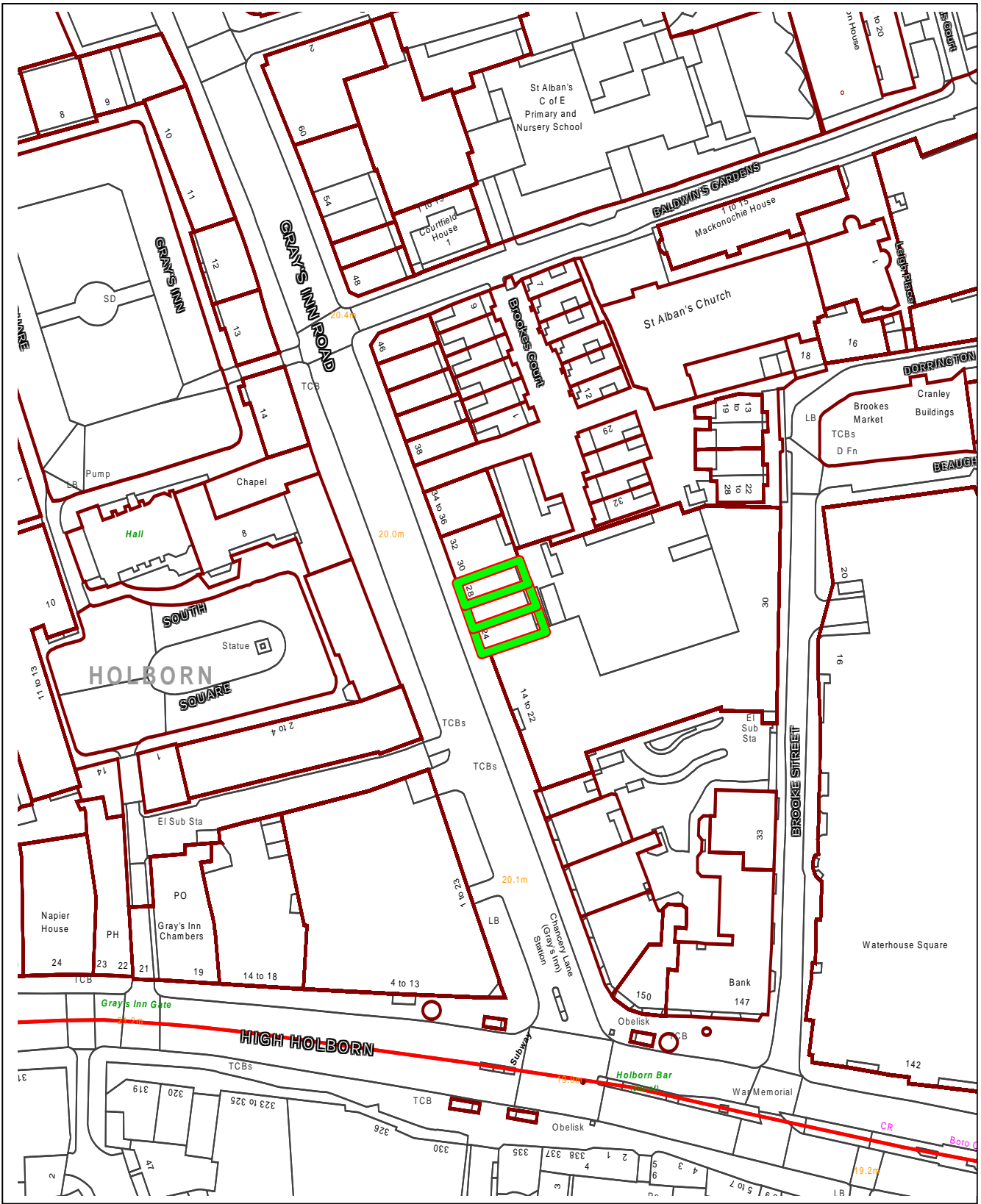
7. CONCLUSION

- 7.1 The amendment to the S106 relating to affordable housing on this site is considered acceptable in the circumstances. It is recommended that the relevant clauses (notably paras 2.4, 2.5 and 2.18 on definitions and section 4.1 on affordable housing) of the S106 be modified so that they omit reference to provision

of one affordable housing unit on site and instead require an additional payment-in-lieu of £139,125 to be used for the creation of an affordable housing unit elsewhere in the Borough.

7.2 LEGAL COMMENTS

7.3 Members are referred to the note from the Legal Division at the start of the Agenda



Application No: 2014/1412/P

**24-28 Gray's Inn Road
LONDON
WC1X 8HP**

**Scale:
1:1250
Date:
30-Jan-15**

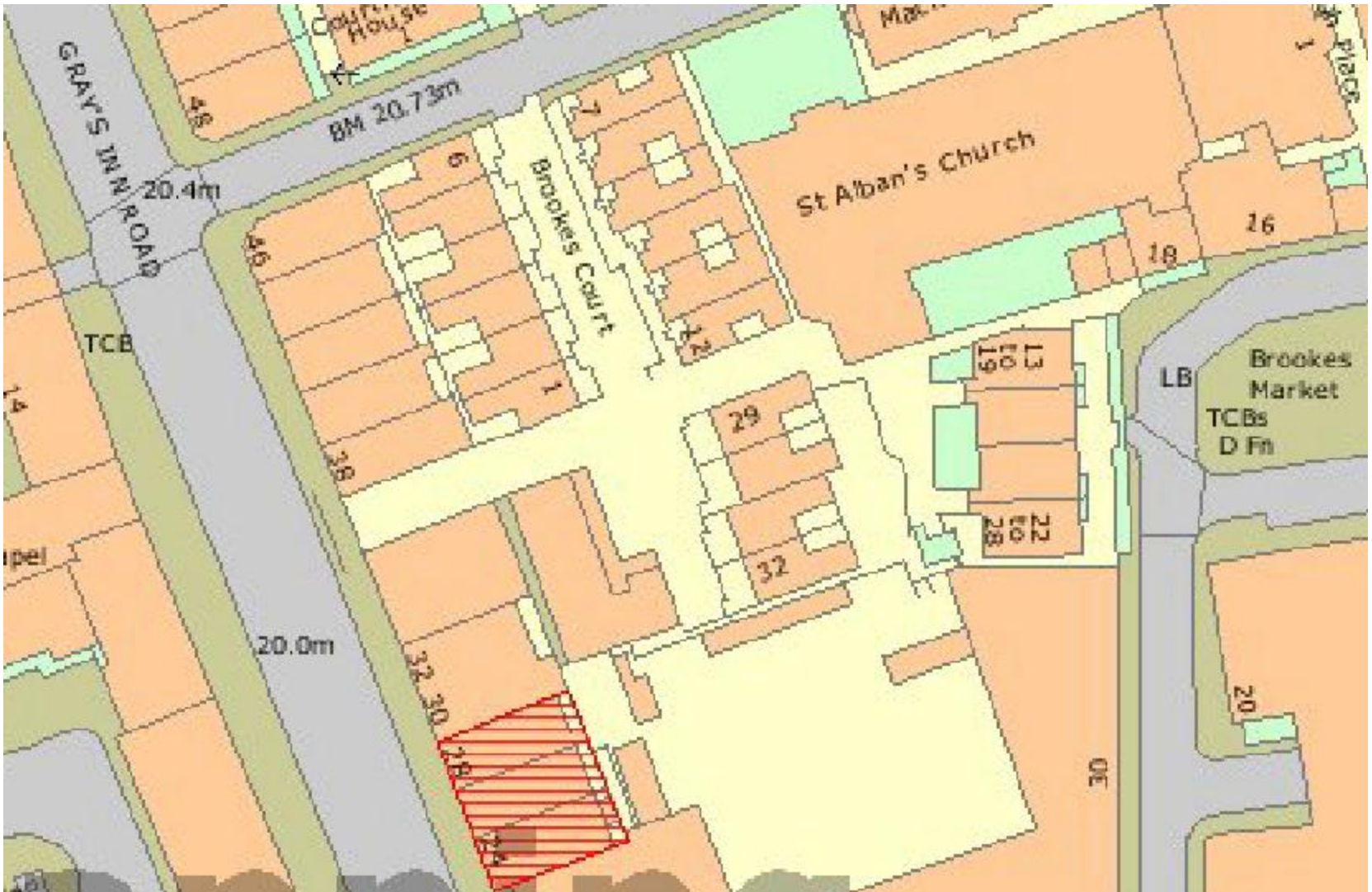


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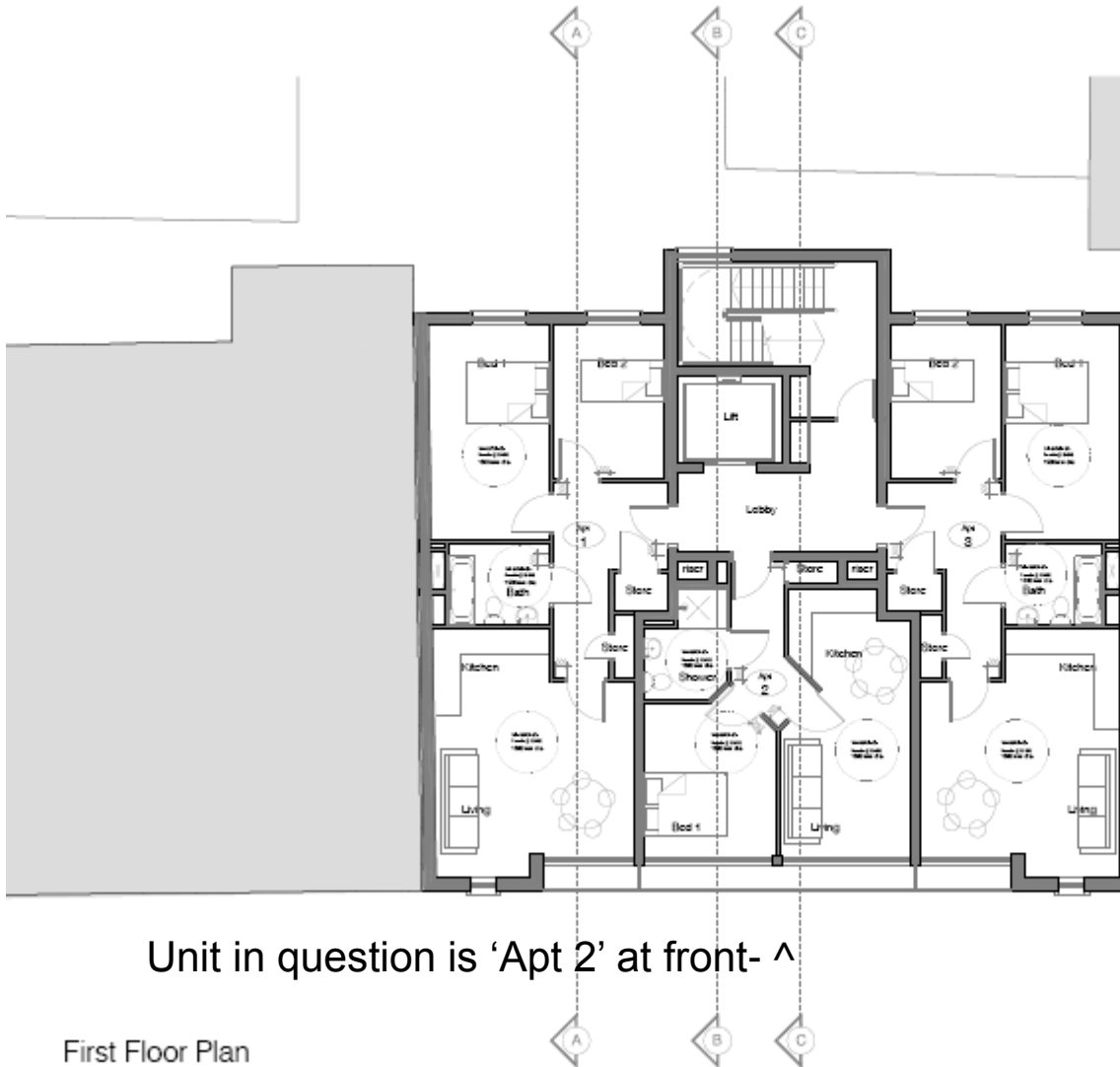
24-28 Grays Inn Road WC1

2014/1412/P

Site Location Plan



Proposed First Floor



C	Section lines added to plan	JL	27-08
D	Plan lines added to plan	JL	27-08
E	General arrangement	ML	14-09-14

Project Title	Proposed Redevelopment 24-28 Gray's Inn Road London
Client	Redbay Developments Ltd
Drawing Title	First Floor Plan

Scale	1:100 (AS)	Date	Sept 07	Sheet	NO
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Unit in question is 'Apt 2' at front- ^

First Floor Plan

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Job No.	07-15	Drawing No.	P14	Revision	E
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