

DATED

2 March

2016

(1) RACHEL LORD and JOHN BARRY WESTON

and

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

A G R E E M E N T
relating to land known as

Rear of Henderson Court
102 Fitzjohn's Avenue
London
NW3 6NS

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

Andrew Maughan
Borough Solicitor
London Borough of Camden
Town Hall
Judd Street
London WC1H 9LP

Tel: 020 7974 5647
Fax: 020 7974 2962

CLS/PK/1781.193 (final)

THIS AGREEMENT is made the 2 day of March 2016

B E T W E E N:

1. **RACHEL LORD** and **JOHN BARRY WESTON** both of 92 Fitzjohn's Avenue, London, NW3 6NP (together hereinafter called "the Owner") of the first part
2. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of Town Hall, Judd Street, London WC1H 9LP (hereinafter called "the Council") of the second part

WHEREAS

- 1.1 The Council (as landowner) is registered at the Land Registry as the freehold proprietor with title absolute of the Property under title number 20219.
- 1.2 The Council (as landowner) granted the Owner a licence dated 23rd December 2015 to access the Property to carry out the Development and the Owner is interested in the Property for the purposes of Section 106 of the Act.
- 1.3 The Planning Application for the Development of the Property was submitted to the Council and validated on 18th December 2015 and the Council resolved to grant permission conditionally under reference number 2015/7116/P subject to conclusion of this legal Agreement.
- 1.4 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.
- 1.5 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 Certificate of Practical Completion" | the certificate issued by the Owner's contractor or architect or project manager certifying that the Development has been completed |
| 2.4 | "the Certified Sum" | the sum of monies properly expended by the Council in carrying out the Tree Replacement Works |
| 2.5 | "the Development" | creation of temporary construction access to 92 Fitzjohn's Avenue including removal of trees as shown on drawing numbers site location plan P094-400; 120-DE003 rev A; 120-DE007; Arboricultural Impact Assessment by Landmark Trees dated 17th December 2015; Tree Protection Plan |
| 2.6 | "the Existing Trees" | the two (2) trees at the Property detailed as T28 Holly and T29 Sycamore on the document entitled "Arboricultural Impact Assessment" by Land Mark Trees dated 17 December 2015 as referenced in the Planning Permission |
| 2.7 | "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 and references to "Implementation" and "Implement" shall be construed accordingly
2.8 "Occupation Date"	the first date when any part of the Development is occupied and the phrases "Occupy", "Occupied" and "Occupation" shall be construed accordingly
2.9 "the Parties"	the Council and the Owner
2.10 "the Planning Application"	a planning application in respect of the development of the Property submitted to the Council and validated on 18 th December 2015 for which a resolution to grant permission has been passed conditionally under reference number 2015/7116/P subject to conclusion of this Agreement
2.11 "Planning Obligations Monitoring Officer"	a planning officer of the Council from time to time allocated to deal with all planning obligations pursuant to S106 of the Act to whom all notices, correspondence, approvals etc must be sent in the manner prescribed at clause 6.1 hereof
2.12 "the Planning Permission"	a planning permission granted for the Development substantially in the draft form at the Second Schedule annexed hereto
2.13 "the Property"	the land known as rear of Henderson Court, 102 Fitzjohn's Avenue, London, NW3 6NS the same

as shown edged red on the plan at the Third Schedule annexed hereto

- 2.14 "the Replacement Trees" the three (3) trees to be planted by the Council at the Property as replacement trees for the Existing Trees
- 2.15 "the Tree Replacement Contribution" the sum of £2,117(two thousand one hundred and seventeen 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 the event of receipt for the provision of the Tree Replacement Works replacement trees arising in the London Borough of Camden
- 2.16 "the Tree Replacement Works" the works to be carried out by the Council in the event of receipt of the Tree Replacement Contribution in accordance with this Agreement for planting at the Property of the Replacement Trees and thereafter maintenance for two years
- 2.17 "the 92 Fitzjohn's Avenue Section 106 Agreement" the legal agreement dated 28th August 2015 entered into by the Owner and the Council under section 106 of the Act in respect of land at 92 Fitzjohn's Avenue, London, NW3 6NP pursuant to planning permission granted by the Council on 28th August 2015 under planning reference number 2015/1856/P

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 and 8 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 Council hereby agrees to grant the Planning Permission on the date hereof.

3.7 The Parties save where the context states otherwise shall include their successors in title.

4. **OBLIGATIONS OF THE OWNER**

The Owner hereby covenants with the Council as follows:-

4.1 **TREE REPLACEMENT CONTRIBUTION**

4.1.1 On or prior to the Implementation Date to pay to the Council the Tree Replacement Contribution in full.

4.1.2 Not to Implement or to permit Implementation until such time as the Council has received the Tree Replacement Contribution in full provided that following receipt of the Tree Replacement Contribution by the Council (such receipt to be confirmed in writing by the Council to the Owner) the Owner shall be entitled to remove the Existing Trees from the Property.

4.2 **CERTIFIED SUM**

- 4.2.1 On completion of the Tree Replacement Works the Council may provide to the Owner a certificate specifying the Certified Sum.
- 4.2.2 In the event of the Certified Sum exceeding the Tree Replacement Contribution then the Owner shall within fourteen (14) days of the issuing of the said certificate by the Council pay to the Council the amount of the excess.

5. **NOTICE TO THE COUNCIL/OTHER MATTERS**

- 5.1 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.
- 5.2 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.
- 5.3 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 indemnify the Council for any expenses or liability arising to the Council in respect of 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.
- 5.4 If satisfied as to the compliance of the Owner in respect of any obligation in this Agreement the Council shall (if requested to do so in writing and subject to payment of a fee of £1,000 in respect of each such obligation) provide through its Borough Solicitor a formal written certification of compliance, partial compliance or ongoing compliance (as and if appropriate) with the provisions of any such obligation.

5.5 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.

5.6 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 Index 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

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

5.7 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.

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

6.1 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 2015/7116/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.

- 6.2 This Agreement shall be registered as a Local Land Charge.
- 6.3 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.
- 6.4 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.
- 6.5 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.
- 6.6 Neither the Owner nor its 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.
- 6.7 For the avoidance of doubt the provisions of this Agreement (other than those contained in this sub-clause) shall not have any effect until this Agreement has been dated.
- 6.8 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.

7. **JOINT AND SEVERAL LIABILITY**

All Covenants made by the Owner in this Agreement are made jointly and severally and shall be enforceable as such.

8. **RIGHTS OF THIRD PARTIES**

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 has executed this instrument as their Deed the day and year first before written

**EXECUTED AS A DEED BY
RACHEL LORD
in the presence of:**

Witness Signature:

Witness Name: (CAPITALS)

Address:

Occupation:

**EXECUTED AS A DEED BY
JOHN BARRY WESTON
in the presence of:**

Witness Signature:

Witness Name: (CAPITALS)

Address:

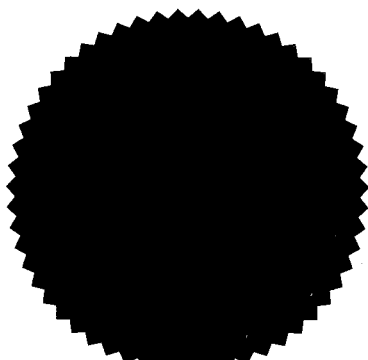
Occupation:

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

.....*S. Alexander*.....

Authorised Signatory

) *Rachel Lord*
)
) *[Signature]*
)
) ...MARC A. PILGREM
) ...PIMPHURST BARN
) ...BETHESDEN, TN263EE
) ...ASSET MANAGER
) *John Barry Weston*
)
) *[Signature]*
)
) ...MARC A. PILGREM
) ...PIMPHURST BARN
) ...BETHESDEN, TN263EE
) ...ASSET MANAGER



THE FIRST SCHEDULE

Addendum to the Construction Management Plan

Link to the Council's CMP pro forma

<https://www.camden.gov.uk/ccm/content/environment/planning-and-built-environment/two/planning-applications/making-an-application/supporting-documentation/planning-obligations-section-106/>

THE SECOND SCHEDULE
DRAFT PLANNING PERMISSION

ShrimplinBrown
Lion House
Oriental Road
Woking
Surrey
GU22 8AR

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

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

Application Ref: **2015/7116/P**

01 March 2016

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:
**Rear of Henderson Court
102 Fitzjohn's Avenue
London
NW3 6NS**

Proposal:
Creation of temporary construction access to 92 Fitzjohn's Avenue including removal of trees.

Drawing Nos: Site Location Plan P094-400; 120-DE003 rev A; 120-DE007; Arboricultural Impact Assessment by Landmark Trees dated 17th December 2015; Tree Protection Plan

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 development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan P094-400; 120-DE003 rev A; 120-DE007; Arboricultural Impact Assessment by Landmark Trees dated 17th December 2015; Tree Protection Plan

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 Permission was granted at 92 Fitzjohn's Avenue for demolition of the existing house and construction of a replacement dwelling on 28th August 2015 (reference 2015/1856/P). The permission showed construction access off Fitzjohn's Avenue through the grounds of Henderson Court (as well as via the existing site's driveway off Fitzjohn's Avenue). An alternative construction access is now proposed off Prince Arthur Road along the existing service road for Henderson Court.

The proposal is acceptable in transport terms as it would take advantage of an existing service access road into Henderson Court and avoid disruption to traffic on Fitzjohn's Avenue. It would also reduce the construction impact on the adjacent St Anthony's Primary School, the south side of Henderson Court, and for pedestrians on Fitzjohn's Avenue.

The trees facing Fitzjohn's Avenue, which are prominent in the Conservation Area, would be retained, but two mature trees at the boundary of Henderson Court and

no. 92 Fitzjohn's Avenue would need to be removed. Tree Officers consider their removal acceptable subject to suitable replacements. Three young replacement trees are proposed which is considered sufficient to mitigate against the loss of canopy cover provide by two mature trees

Tree officers recommend the planting and maintenance of the trees be carried out by the Council's tree services as the trees would be on Council owned land. It is not considered that this could be secured by condition as the responsibility for maintaining them would be problematic, as they would not be on the applicant's land, and the procurement, planting and maintenance would require a financial contribution. As such it is recommended that three replacement trees be secured via a section 106 agreement.

77 Neighbouring occupiers were consulted on the application. One comment has been received prior to making this decision which has been duly taken into account. The application site's planning history and relevant appeal decisions were taken into account when coming to this decision.

Special attention has been paid to the desirability of preserving or enhancing the character or appearance of the Conservation Area under s.72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Enterprise and Regulatory Reform Act (ERR) 2013.

As such, the proposed details are in general accordance with policies CS5, CS11, CS14 and CS15 of the London Borough of Camden Local Development Framework Core Strategy, and policies DP16, DP20, DP21, DP25 and DP26 of the London Borough of Camden Local Development Framework Development Policies. The proposed development also accords with Policies 7.4, 7.6 and 7.8 of the London Plan 2015, and the provisions of paragraphs 14, 17, 56-66 and 126-141 of the National Planning Policy Framework 2012.

- 4 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.

In dealing with the application, the Council has sought to work with the applicant in a positive and proactive way in accordance with paragraphs 186 and 187 of the National Planning Policy Framework.

Yours faithfully

Culture and Environment Directorate

THE THIRD SCHEDULE
PLAN OF THE PROPERTY

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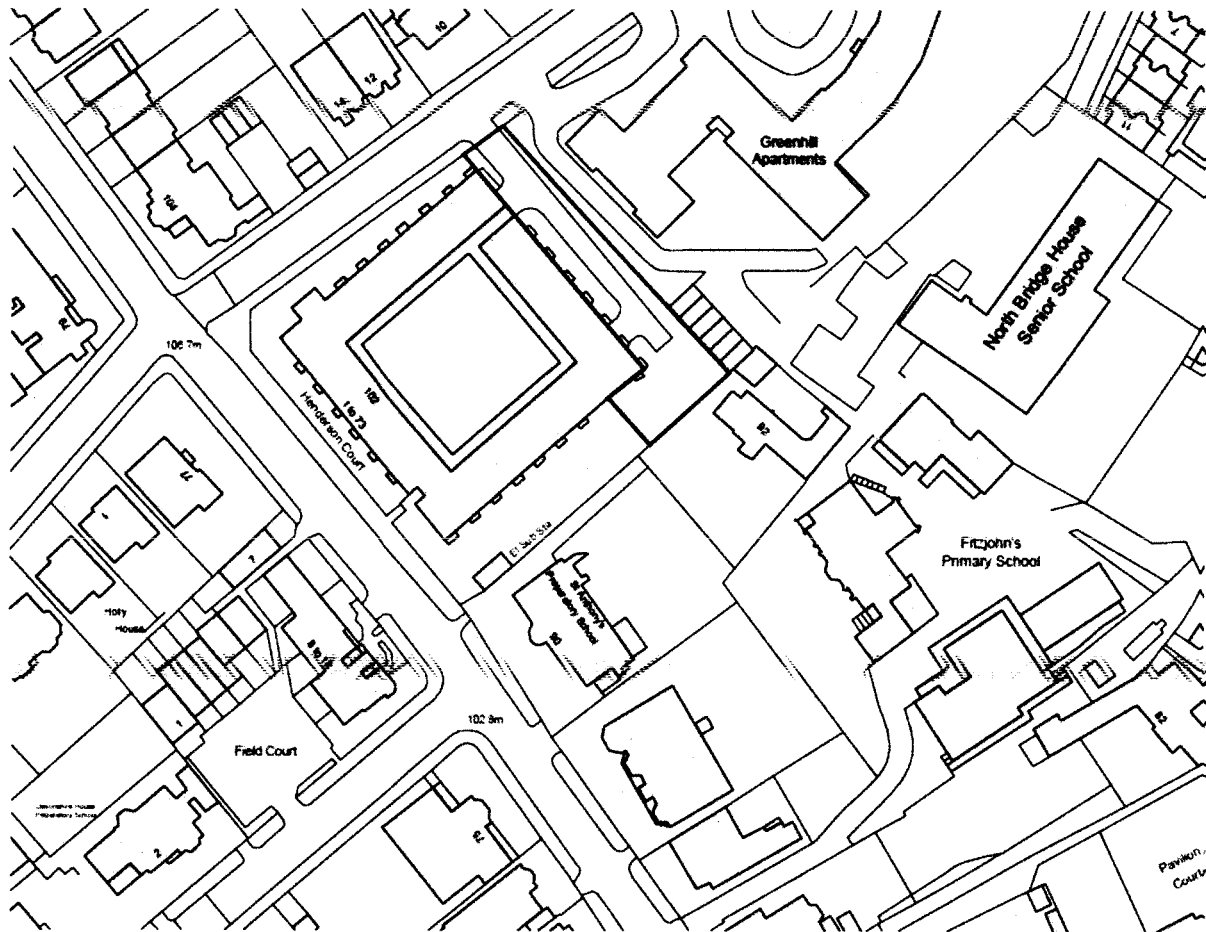
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PLAN OF PROPERTY

Rear of Henderson Court, 102 Fitzjohn's Avenue, London, NW3 6NS



DATED

2 March

2016

(1) RACHEL LORD and JOHN BARRY WESTON

and

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

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