

DATED 17 FEBRUARY

2006

**(1) COMMUNITY HOUSING ASSOCIATION**

**- 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  
49-53 CAVERSHAM ROAD NW5 2DR  
pursuant to Section 106 of the Town and  
Country Planning Act 1990 (as amended)**

Alison Lowton  
Director of Law and Administration  
London Borough of Camden  
Town Hall, Judd Street  
London WC1H 9LP

Tel: 020 7974 1947  
Fax: 020 7974 2962

THIS AGREEMENT is made the 17<sup>TH</sup> day of FEBRUARY 2006

**B E T W E E N:**

1. **COMMUNITY HOUSING ASSOCIATION LIMITED** whose registered office is at 100 Chalk Farm Road London NW1 8EH (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 Owner has become entitled to be registered at Land Registry as the freehold proprietor with Title absolute of the Property currently registered under Title Number NGL 715747 .
- 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 registered under reference number 2005/4162/P.
- 1.4 The Council's Development Control Sub-Committee on 1 December 2005 resolved to grant the permission subject to an Agreement under Section 106 of the Act.
- 1.5 The Council is the local planning authority for the purposes of the Act and for the area within which the Property is situated and for the purposes of enforcing planning obligations pursuant to Section 106 of the Act.
- 1.6 The Council consider 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 and the parties are 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 by the Planning and Compensation Act 1991)
- 2.2 "Affordable Housing" low cost housing provided by a Registered Social Landlord or the Council available for occupation for people who cannot afford to occupy homes available in the open market
- 2.3 "Affordable Housing Units" the 9 residential units comprising the Development to be constructed, fitted out and occupied exclusively as Affordable Housing comprising the 6 units edged in red on Plan 1 (incorporating 2 x 1 bed room units, 1 x 2 bedroom units 1 x 3 bed room units 1 x 4 bed room units and 1 x 5 bed room units) to be created and used exclusively as Social Rented Housing ("the Social Rented Housing Units") and the units edged in blue on Plan 1 (incorporating 3 x 1 bed room units) to be created and used exclusively as Intermediate Housing ("the Intermediate Housing Units")
- 2.4 "the Agreement" this Planning Obligation made pursuant to Section 106 of the Act
- 2.5 "the Application" a planning application in respect of the development of the Property submitted to the Council for which a resolution to grant permission has been passed conditionally under reference number 2005/4162/P subject to conclusion of this Agreement

- 2.6 "the Development" change of use of three properties from office (class B1) to form 1 x 5 bed room, 1 x 4 bed room, 1 x 3 bed room, 1 x 2 bedroom and 5 x 1 bedroom flats, including installation of dormer windows to front and rear, installation of velux windows top side and rear roof slopes and enlargement of existing rear extension to no 51 Caversham Road
- 2.7 "Education Contribution" the sum of £28,996 (twenty eight thousand nine hundred and ninety six pounds) to be applied by the Council in the event of receipt towards the provision of educational needs in the vicinity of the Development
- 2.8 "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
- 2.9 "Intermediate Housing" Affordable Housing available for rent or shared ownership to any people who at the commencement of their occupancy are in need of intermediate housing in terms set out in paragraph 3.26 of the London Plan (subject to annual reviews), such people being Key Workers or falling within such other categories of Affordable Housing as the Council (acting under and in accordance with the requirements of this Agreement) may agree in writing
- 2.10 "Key Workers" any person who at the commencement of their occupancy is in need of Intermediate Housing in terms set out in paragraph 3.26 of

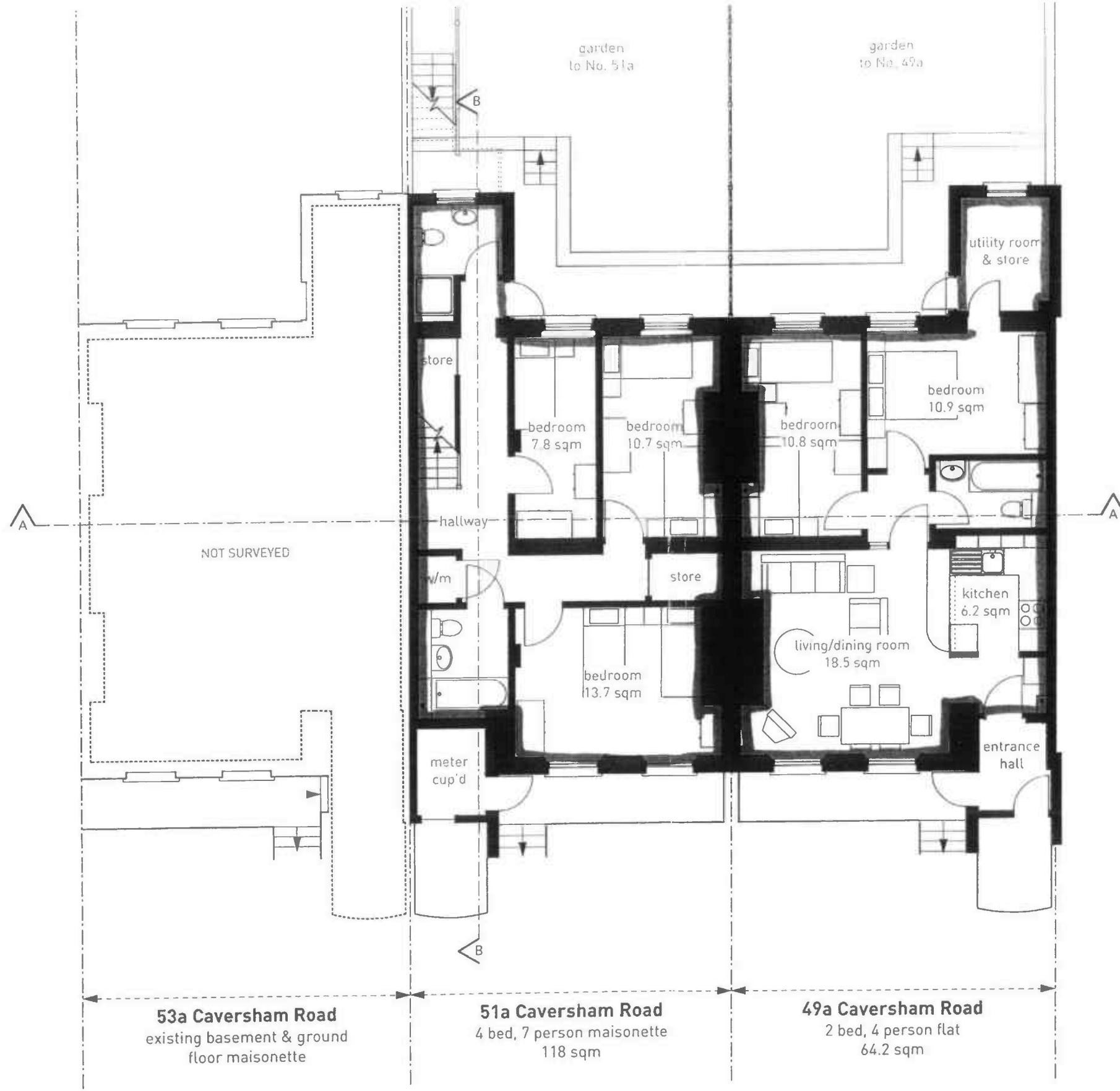
the London Plan, (subject to annual reviews) AND who is in eligible employment as defined in the Housing Corporation Capital Funding Guide, Key Worker Living section, Annex B, Nov 2004 (and any updated guidelines) or such other categories of Affordable Housing as the Council (acting under and in accordance with the requirements of this Agreement) or ODPM may agree

- 2.11 "Occupation Date" the first date when any part of the Development is occupied and the phrases "Occupy" "Occupied" and "Occupation" shall be construed accordingly
- 2.12 "the Parties" mean the Mayor and Burgesses of the London Borough of Camden and the Owner
- 2.13 "Plan 1" the plans annexed hereto and marked 0071/CR49-53/PA/02, 0071/CR49-53/PA/03, 0071/CR49-53/PA/04, 0071/CR49-53/PA/05, 0071/CR49-53/PA/06
- 2.14 "Plan 2" the plan annexed hereto and marked Plan 2
- 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 S106 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" the planning permission to be granted in respect of the Application substantially in the form attached hereto

- 2.17 "the Property" the land known as 49-53 Caversham Road London NW5 2DR as the same is shown edged in red on Plan 2 excluding the basement and ground floor of the building at 53 Caversham Road and the front and rear garden of 53 Caversham Road
- 2.18 "Registered Social Landlord" a registered social landlord registered as such by the Housing Corporation who has entered into an agreement with the Council to secure one hundred per cent of the units of Social Rented Housing created as part of the Development as accommodation for people nominated by the Council through its housing allocation scheme
- 2.19 "Residents 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 residents of the locality in which the Development is situated
- 2.20 "Resident's 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 Residents Parking Bays
- 2.21 "Social Rented Housing" Affordable Housing available for rent and to be managed by a Registered Social Landlord who has entered into a nominations agreement with the Council in respect of such units governing the occupation of all such units.

**NOW THIS DEED WITNESSETH** as follows:-

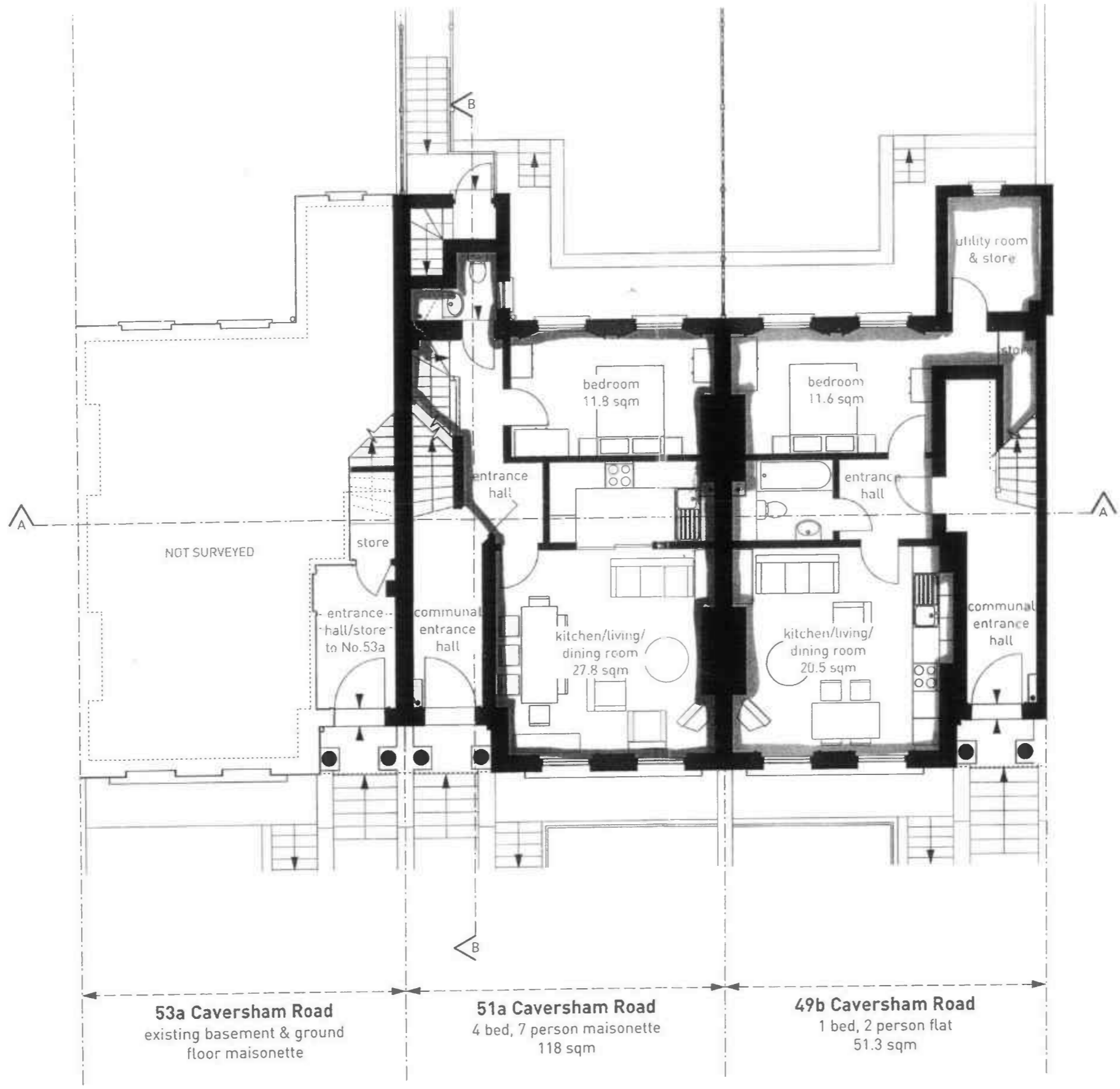
- 3.1 This Agreement is made in pursuance of Section 106 of the Act, and is a *planning obligation for the purposes of Section 106 as aforesaid*, and shall be enforceable by the Council against the Owner as provided herein and against any person deriving title to any part of the Property from the Owner 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 includes 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 of 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 This Agreement is subject at all times to the grant of the Planning Permission by the Secretary of State.
- 3.7 The Parties save where the context states otherwise shall include their successors in title.
- 3.8 The Parties acknowledge that the Development shall be treated as being permanently designated as "car capped " housing in accordance with Clause 4.2 for all relevant purposes.



*MB*

*Amson J.M.*  
*H. King*





*Handwritten signatures and initials:*  
 P. Anderson  
 K. Shys  
 M.P.

**AGATE SHORT ARCHITECTS**  
 8 WATERSON STREET LONDON E2 8HL  
 T: 020 7739 9131 F: 020 7739 3487  
 E: INFO@AGATESHORT.CO.UK | WWW.AGATESHORT.CO.UK

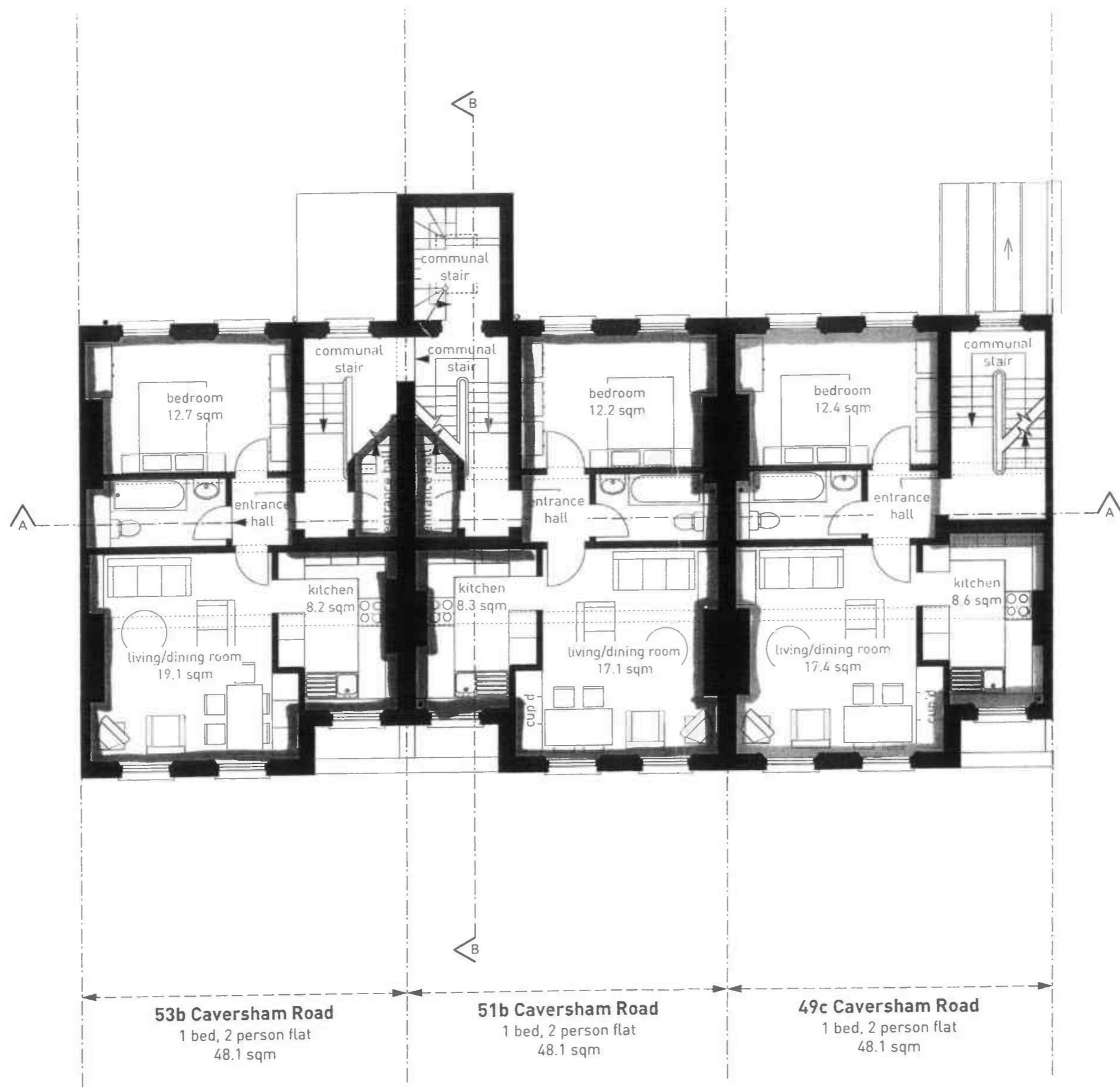
49-53 Caversham Road, London NW5

Ground Floor Plan - As Proposed

Scale: 1:100

Date: August 2005

Drawing Number: 0071/CR49-53/PA/03



*Amos JMA*  
*H. Flays*



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 8 WATERSON STREET LONDON E2 8HL  
 T 020 7739 9131 F 020 7739 3687  
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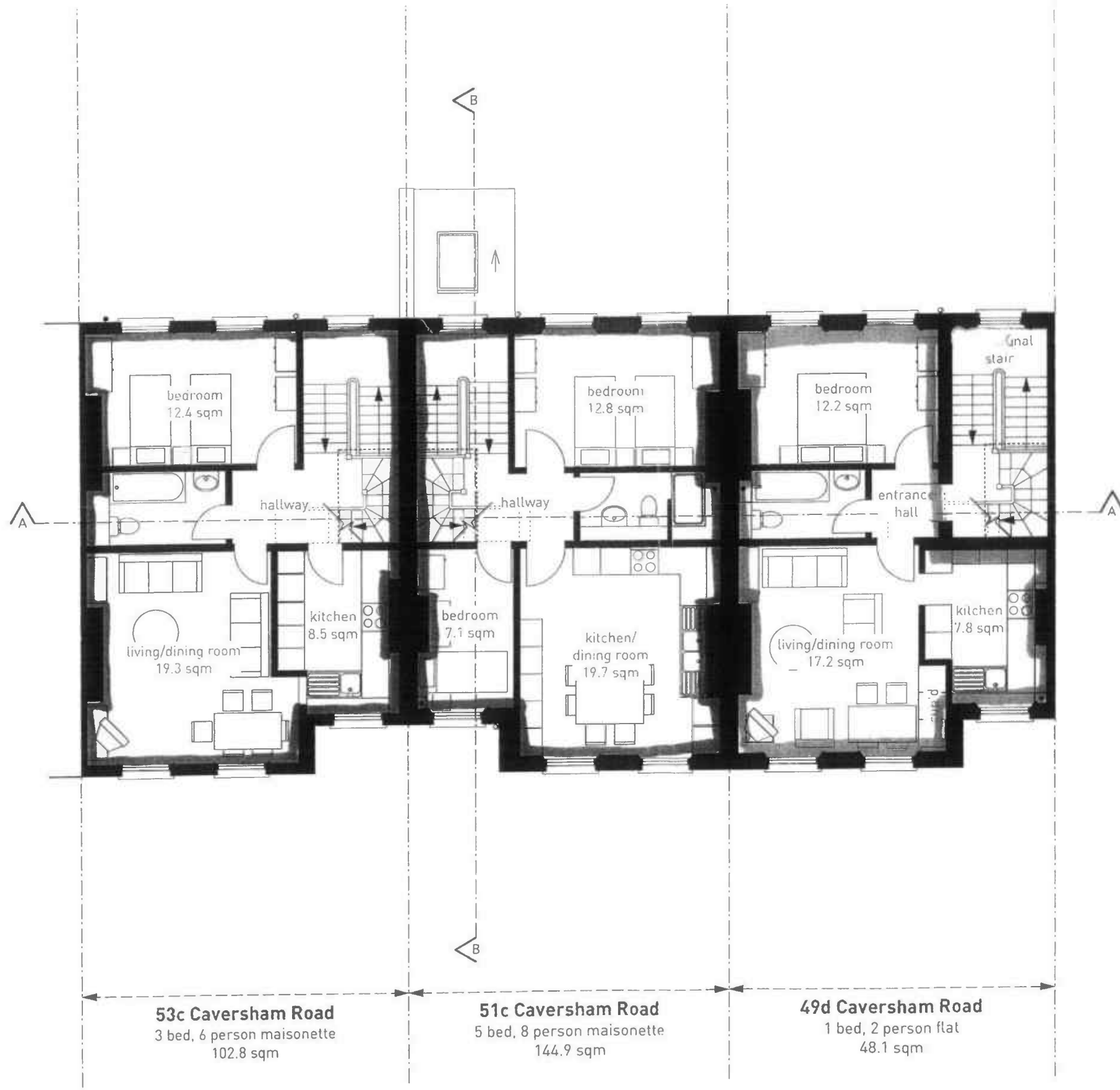
**49-53 Caversham Road, London NW5**

**First Floor Plan - As Proposed**

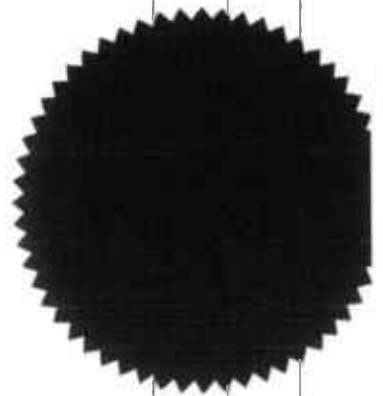
Scale: **1:100**

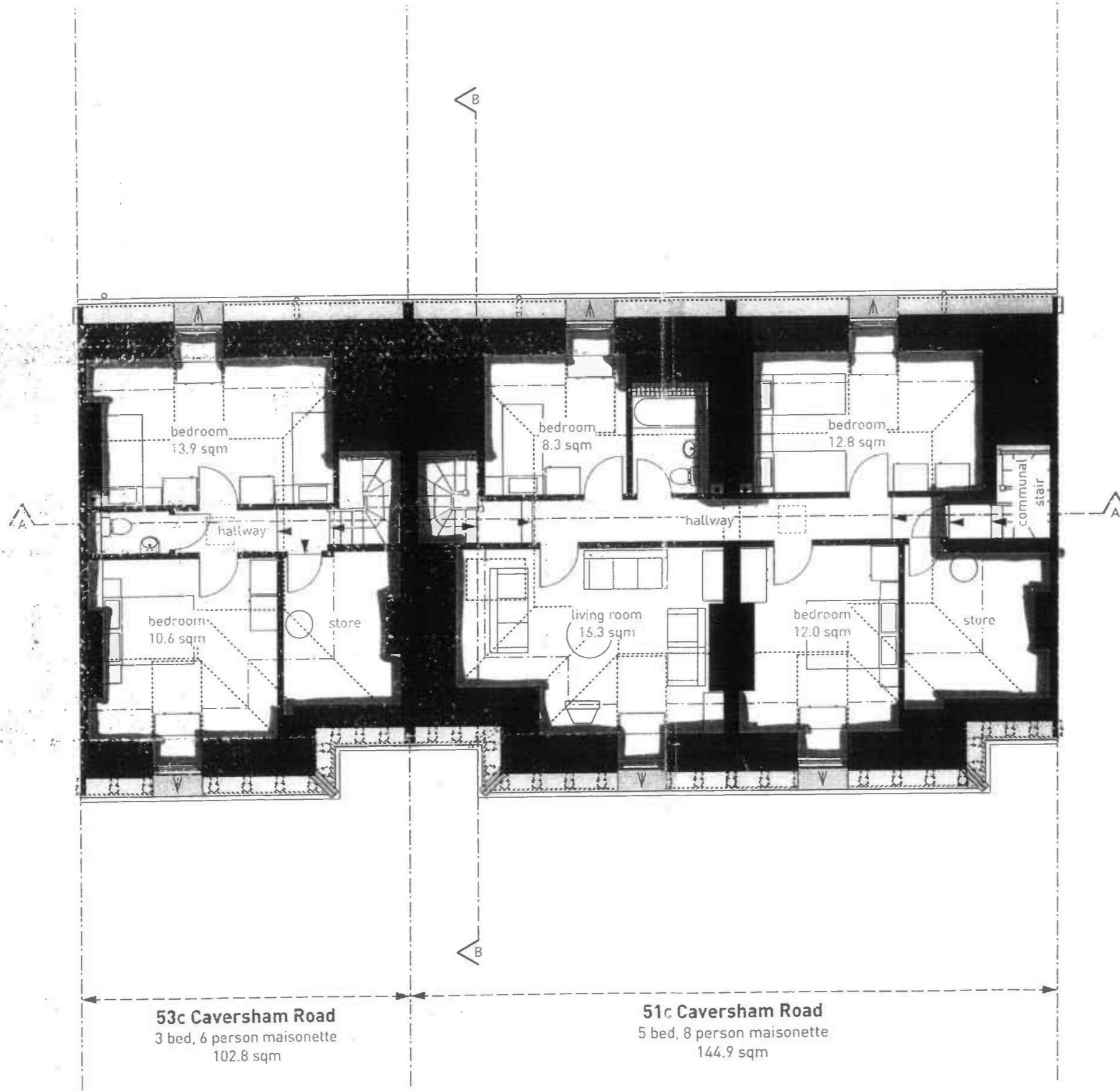
Date: **August 2005**

Drawing Number: **0071/CR49-53/PA/04**



*Amoson JMA*  
*A. Flux*





**53c Caversham Road**  
 3 bed, 6 person maisonette  
 102.8 sqm

**51c Caversham Road**  
 5 bed, 8 person maisonette  
 144.9 sqm

*Handwritten signatures and initials:*  
 [Signature]  
 H. [Signature]



#### **4. OBLIGATIONS OF THE OWNER**

The Owner hereby covenants with the Council as follows:-

##### **4.1 Affordable Housing**

- 4.1.1 The Owner may notify the Council on or prior to Occupation Date of its intention that the whole of the Development shall be secured as Affordable Housing ("Affordable Housing Units Notification") such notice to be given in accordance with the requirements of this Agreement and upon the service of such notice clauses 4.1.2 to 4.1.5 hereof shall come into effect.
- 4.1.2 At its own expense to commence all works of construction conversion and fitting out necessary to make the Affordable Housing Units suitable for occupation as Affordable Housing and thereafter to proceed with and complete such works in a good and workmanlike manner using good quality materials to the reasonable satisfaction of the Council (as demonstrated by written notification to that effect) in accordance with the specification approved by a Registered Social Landlord.
- 4.1.3 To ensure that the Affordable Housing Units are used, occupied and retained in perpetuity for no purpose other than for the provision of Affordable Housing (and that the Social Rented Housing Units are retained in perpetuity for Social Rented Housing for occupation by tenants at rental levels being in accordance with the prevailing Housing Corporation rental structure or such standard as may replace the same that the Council may reasonably agree from time to time and unless otherwise agreed with the Council in accordance with the requirements of this Agreement).
- 4.1.4 Not to Occupy or allow Occupation of any part of the Development until such time as the works of construction conversion and fitting out of the Affordable Housing Units have been completed in accordance with the requirement of sub-clause 4.1.2 hereof.

4.1.5 Subject always to clauses 6.9 and 6.10 the Registered Social Landlord or the Council shall not dispose of its interest in the freehold or leasehold of the Affordable Housing Units or any part thereof (except by way of mortgage (and in respect of the Intermediate Housing Units only) and/or the grant of shared ownership leases) other than to any other Registered Social Landlord or any other body organisation or company registered with the Charity Commissioners for England and Wales and approved by the Housing Corporation or the Council.



#### 4.2 **Car Capped Housing**

4.2.1 The Owner hereby covenants with the Council to ensure that prior to occupying any of the five one-bedroom residential units forming part of the Development each new resident of such units 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 a Residents Parking Permit to park a vehicle in a Residents Parking Bay and will not be able to buy a contract to park within any car park owned, controlled or licensed by the Council.

#### 4.3 **Education Contribution**

In the event that the Owner does not serve the Affordable Housing Units Notification (i) to pay the Education Contribution on or before Occupation and (ii) not to Occupy or permit Occupation until such time as the Council has received the Education Contribution .

### 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 Within 7 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 2005/4162/P the date upon which the residential units forming the Development are ready for occupation.

- 5.3 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.
- 5.4 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 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.
- 5.5 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 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 or by 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, Forward Planning and Projects Team, Planning Division Environment Department, Town Hall Annex, Argyle Street, London WC1H 9LP quoting the planning reference number 2005/4162/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 together with a one off contribution to its monitoring costs of £600 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 HM 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 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.
- 6.7 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.
- 6.8 Nothing in this Agreement shall be construed as affecting prohibiting or limiting any rights to develop any part of the land in accordance with any other planning permission granted whether before or after the date of this Agreement by the Council or the Office of the Deputy Prime Minister or any other competent authority.
- 6.9 Subject to the provisions of paragraph (i) - (iii) below the restrictions contained in clause 4.1 hereof shall not be binding upon a mortgagee or chargee of a registered proprietor of the Affordable Housing Units ("the Registered Proprietor") (ALWAYS PROVIDED that the Registered Proprietor is a Registered Social Landlord) nor any receiver appointed by such mortgagee or chargee or on any person deriving title from such mortgagee or chargee in possession PROVIDED that the following conditions have been satisfied:
- (i) In the event of the Registered Proprietor entering into liquidation or having a receiver or administrative receiver appointed or such steps are taken or legal proceedings are initiated for its winding up or defaults on

Agate Short Architects  
8 Waterson Street  
London  
E2 8HL

Application Ref: 2005/4162/P

21 December 2005

Dear Sir/Madam

**DRAFT**  
FOR INFORMATION ONLY - NOT A FORMAL DECISION  
Town and Country Planning Acts 1990 (as amended)

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

Address:  
**49-53 Caversham Road**  
London  
**NW5 2DR**

Proposal:

**DECISION**  
Change of use of 49, 51 and 53 Caversham Road (from Class B1) to form 1 x 5 bed, 1 x 4 bed, 1 x 2 bed and 1 x 1 bed flats including installation of dormer windows to front and rear, installation of velux windows to side and rear roofslopes, and enlargement of existing rear extension to no.51 Caversham Road.

Drawing Nos: Site Location Plan 0071-CR49-53-E01; E02; E03; E04; E05; E06; E07; E08  
E09; E10; E11; E12; E13  
0071-CR49-53-E14; E15; EOS; P01; P02; P03; P04; P05; P06; P-07; P08; P09; P10; P11.

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 All new external work shall be carried out in materials that resemble, as closely as possible, in colour and texture those of the existing building, unless otherwise specified in the approved application.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policies EN1, EN13, EN22, EN24 and EN31 of the London Borough of Camden Unitary Development Plan 2000.

- 3 The approved privacy screen separating the approved external staircase at no.51 Cavendish Road from the adjacent Cavendish Road shall be installed prior to the first residential occupation of the development and retained permanently thereafter.

Reason: To preserve the existing residential amenity of neighbours in accordance with the provisions of policies EN1 and EN19 of the London Borough of Camden Unitary Development Plan 2000.

Informative(s):

- 1 Your proposals are subject to control from the Building Regulations and/or the London Building Acts which cover the installation of an 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 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.
- 3 The correct street number or number and name must be displayed permanently on the premises in accordance with regulations made under Section 12 of the London Building (Amendments) Act 1939.
- 4 The Council supports schemes for the recycling of bottles and cans and encourages all hotels, restaurants, wine bars and public houses to do so as well. Further information can be obtained by telephoning the Council's Street environment Service (Recycling) on 020 7974 1553.
- 5 Reasons for granting permission.

The proposed development is in general accordance with the policy requirements of the adopted London Borough of Camden Unitary Development Plan 2000, with particular regard to policies RE2, RE6, EN1, EN13, EN19, EN22, EN24, EN31,

HG8, HG9, HG11, HG12, HG13, HG18, HG19, HG20, EC3, TR16, TR17 and TR22, and revised Unitary Development Plan 2004 policies H1, H2, H8 and E2. For a more detailed understanding of the reasons for the granting of this planning permission, please refer to the officers report.

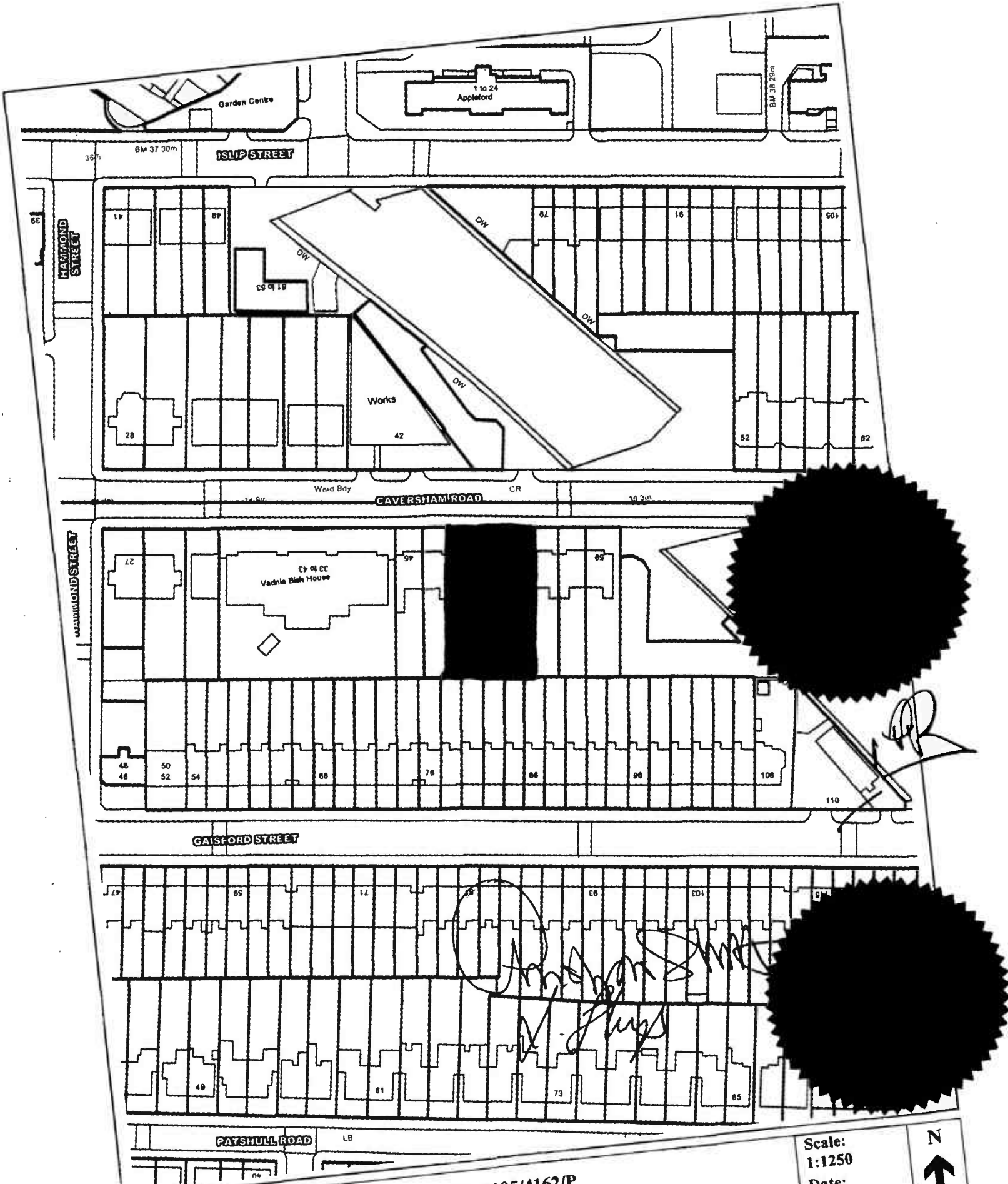
Yours faithfully

Culture and Environment Directorate

**DRAFT**

**DECISION**

PLAN 2



Application No: 2005/4162/P  
 49-53 Caversham Road  
 London  
 NW5 2DR

Scale:  
 1:1250  
 Date:  
 15-Dec-05



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any other terms of the mortgagee or charge so that the mortgagee or chargee exercises its power of sale or failing to make payment of sums due under any loan finance document covering the Affordable Housing Units (whether solely or together with other property) for a period of six months then any mortgagee or chargee of the Affordable Housing Units or any such receiver or administrative receiver shall serve written notice ("the Default Notice") upon the Council.

- (ii) In the event of service of a Default Notice the Council shall be at liberty for a period of six calendar months thereafter to seek to identify another Registered Social Landlord to agree to take a transfer of the Affordable Units
- (iii) In the event of a mortgagee or chargee or receiver or administrative receiver of the Registered Proprietor having served a Default Notice but the Council failing to locate another Registered Social Landlord ready able and willing to take a transfer of the Affordable Housing Units within the six calendar month period specified above ("the Specified Period") on the terms specified above then should the mortgagee chargee or any such receiver or administrative receiver take possession of the Affordable Housing Units otherwise enforce its security on relation to the same at any time thereafter then the Specified Period shall be deemed to have elapsed and the obligations of any mortgagee or chargee and the terms of this Agreement shall be determined in relation to the Affordable Housing Units and shall cease to bind the Affordable Housing Units ALWAYS PROVIDED that any person claiming title from a mortgagee chargee receiver or administrative receiver who has obtained title to the Affordable Housing Units after the procedure set out in this sub-clause has been followed shall not be bound by the restrictions contained in clause 4.1 hereof.

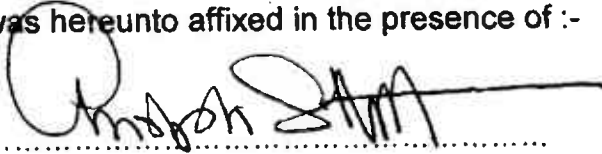
6.10 Any tenant (or person claiming title from such tenant) of a Registered Social Landlord at the Property who exercises a right to acquire pursuant to the Housing Act 1996 (or any statutory successor thereto) shall be released from the obligations of sub-clause 4.1 hereof ALWAYS PROVIDED that the relevant Registered Social Landlord has first provided the Council with information demonstrating to the Council's reasonable satisfaction that all monies received

by the relevant Registered Social Landlord in respect of the sale of such tenant shall be applied exclusively for the provision of Affordable Housing within the London Borough of Camden.

7. Any person owning an Intermediate Housing Unit who staircases under a shared ownership lease to the extent of owning one hundred per cent of the equity in the relevant unit and any successor in title to such person shall be released from the obligations of clause 4.1.
8. All Covenants made by the Owner in this Agreement are made jointly and severally.
9. The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement

**IN WITNESS** whereof the Council and the Owner have caused their respective common seals to be hereunto affixed he day and year first before written.

THE COMMON SEAL OF )  
COMMUNITY HOUSING ASSOCIATION )  
was hereunto affixed in the presence of :- )



Authorised Signatory



Authorised Signatory

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



Authorised Signatory

