

DATED

3rd May

2017

(1) 65 HOLMES ROAD LIMITED

-and-

(2) EFG PRIVATE BANK LIMITED

-and-

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

SECOND DEED OF VARIATION

Relating to the S106 Agreement dated 6 March 2014 and
First Deed of Variation dated 27th May 2016
Between the Mayor and the Burgesses of the
London Borough of Camden,
65 Holmes Road Limited and EFG Private Bank Limited
under section 106 of the Town and
Country Planning Act 1990 (as amended)
Relating to development at premises known as

Magnet 65-69 Holmes Road London NW5 3AN

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

Tel: 020 7974 1918

Fax: 020 7974 1920

1781.555
FINAL 100217



THIS AGREEMENT is made on the *3rd* day of *May* 2017

BETWEEN

1. **65 HOLMES ROAD LIMITED** (Co. Regn. No. 6403136) whose registered office is at 46 Great Marlborough Street London W1F 7JW (hereinafter called "the Owner") of the first part
2. **EFG PRIVATE BANK LIMITED** (Co. Regn. No. 2321802) whose registered office is at Leconfield House Curzon Street London W1J 5JB (hereinafter called "the 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 Council, the Owner and the Mortgagee entered into a Section 106 Agreement dated 6th March 2014 pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended).
- 1.2 The Council, the Owner and the Mortgagee entered into a Section 106 Agreement First Deed of Variation dated 27th May 2016 pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended).
- 1.3 The Owner is registered at the Land Registry as the freehold proprietor with Title Absolute of the Property under title number NGL211408 subject to a charge to the Mortgagee.
- 1.4 The Owner is the freehold owner of and is interested in the Property for the purposes of Section 106(9) of the Act.
- 1.5 The Council is the local planning authority for the purposes of the Act and considers it expedient in the interests of the proper planning of its area that the Development of the Property should be restricted or regulated in accordance with this Agreement.

- 1.6 A new Planning Application in respect of the Property and to amend the Original Planning Permission was submitted to the Council by the Owner and validated on 23rd August 2016 for which the Council resolved to grant permission conditionally under reference 2016/4664/P subject to the conclusion of this Agreement.
- 1.7 This Agreement is made by virtue of the Town and Country Planning Act 1990 Section 106 (as amended) and is a planning obligation for the purposes of that section.
- 1.8 Without prejudice to the terms of the other covenants contained in the Existing Agreement the parties hereto have agreed to vary the terms of the Existing Agreement as hereinafter provided.
- 1.9 The Mortgagee as mortgagee under a legal charge registered under Title Number NGL211408 and dated 20 December 2007 is willing to enter into this Agreement to give its consent to the same.

2. INTERPRETATION

- 2.1 All words and phrases defined in the Existing Agreement shall have the same meaning in this Agreement save where the context otherwise dictates and for the avoidance of any doubt the Existing Agreement shall remain in full force and effect save as varied by this Agreement.
- 2.2 All references in this Agreement to clauses in the Existing Agreement are to clauses within the Existing Agreement.
- 2.3 In this Agreement the following expression shall unless the context otherwise states have the following meaning now allocated to it.

2.3.1 "Agreement" this Second Deed of Variation

2.3.2 "Existing Agreement" the Section 106 Agreement under the Town and Country Planning Act 1990 (as amended) dated 6th March 2014 made between the Council, the Owner and the Mortgagee

2.3.3 "First Deed of Variation"

the Section 106 Agreement Deed of Variation under s106A of the Town and Country Planning Act 1990 (as amended) in respect of the Property dated 27 May 2016 made between the Council, the Owner and the Mortgagee

2.3.4 "the Original Planning Permission"

means the planning permission granted by the Council on 6th March 2014 referenced 2013/7130/P allowing the erection of part seven, part three storey building above two basement levels to provide student accommodation comprising 273 units (337 rooms and 439 bed spaces) with ancillary facilities (sui generis), warehouse (Class B8) at basement and ground floor levels and coffee shop (Class A1) at ground floor level following demolition of existing B8 buildings as shown on drawing numbers EX00; EX01; EX02; EX03; EX04; 131050 A(GA) -P080 B; -P090 A; -P100 C; -P110 B; -P120 B; -P130 B; -P140 B; -P150 B; -P160 B; -P170 A; -P300 A; -P301 A; -P302 A; -P303 A; -P400 B; -P401 A; P402A; -P403 A; 131050 A(VIS) P001; -P002; Sustainability Statement, Oct 2013, prepared by Hodkinson Consultancy; Sunlight and Daylight, 22 Oct 2013, prepared by BMT Fluid Mechanics Ltd; Basement Impact Assessment, Oct 2013, prepared by Pringuer-James Consulting Engineers; Design & Access Statement, Nov 2013 rev A, prepared by Contemporary Design Solutions; Planning Statement, Oct 2013, prepared by KR Planning; Energy Statement, Oct 2013, prepared by Hodkinson Consultancy; Transport Statement, Oct 2013, prepared by URS; Construction Traffic Management Plan,

Oct 2013, prepared by URS; Workplace Travel Plan, Oct 2013, prepared by URS; Student Travel Plan, Oct 2013, prepared by URS; email from KR Planning dated 7 Feb 2014, entitled Holmes Road; revised room schedule, submitted 11 Feb 2014

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

3. VARIATION TO THE EXISTING AGREEMENT

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

3.1.1 "Development" the erection of part seven, part three storey building above two basement levels to provide student accommodation comprising 273 units (337 rooms and 439 bed spaces) with ancillary facilities (sui generis), warehouse (Class B8) at basement and ground floor levels and coffee shop (Class A1) at ground floor level following demolition of existing B8 buildings as shown on

KR Planning
KR Planning
183 Seafield Road
Boumemouth BH6 5LJ

Application Ref: **2016/4664/P**

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:

**Magnet 65-69 Holmes Road
London
NW5 3AN**

Proposal:

DECISION
Variation of Condition 20 (approved plans) of planning permission 2013/7130/P dated 06/03/2014 (as varied by 2015/5435/P dated 27/05/2016) for a 3-7 storey building (with 2 basement levels) to provide 273 units (337 rooms and 439 bed spaces) of student accommodation with ancillary facilities (sui generis), warehouse and a coffee shop following demolition of existing building; CHANGES ARE to configure the warehouse levels and ground floor areas to provide an enlarged social area for the student accommodation use; additional row of windows on Holmes Road elevation; additional rooflights into basement and changes to positioning of windows.

Drawing Nos: Approved Plans: (131050-A(GA))P080 Rev E; P090 Rev E; P100 Rev G; P110 Rev G; P120 Rev G; P130 Rev G; P140 Rev G; P150 Rev G; P160 Rev G; P170 Rev D; P300 Rev D; P301 Rev D; P302 Rev D; P303 Rev C; P304 Rev B; P400 Rev D; P401 Rev D; P402 Rev B; P403 Rev C, D & A Statement - s73 Update (Addendum to Approved scheme D&A Statement - 2015/5435/P) dated July 2016 and Basement Impact Assessment Addendum No. 2 to Approved Document dated 10/08/2016.

Superseded Plans: (131050-A(GA))P080 Rev A; P090 Rev A; P100 Rev B; P110 Rev B; P120 Rev B; P130 Rev B; P140 Rev B; P150 Rev B; P160 Rev B; P170 Rev A; P300 Rev A; P301 Rev A; P302 Rev A; P303 Rev A; P400 Rev B; P401 Rev A; P402 Rev A; P403 Rev A and revised room schedule submitted 11 Feb 2014.

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 For the purposes of this decision, condition no.20 of planning permission 2013/7130/P shall be replaced with the following condition:

REPLACEMENT CONDITION 20

The development hereby permitted shall be carried out in accordance with the following approved plans, except in respect of the windows in the elevation of the proposed building facing towards adjoining No 61 and 63 Holmes Road, which shall be deleted and fresh details of this element of the scheme shall be submitted: EX00; EX01; EX02; EX03; EX04; (131050-A(GA))P080 Rev E; P090 Rev E; P100 Rev G; P110 Rev G; P120 Rev G; P130 Rev G; P140 Rev G; P150 Rev G; P160 Rev G; P170 Rev D; P300 Rev D; P301 Rev D; P302 Rev D; P303 Rev C; P304 Rev B; P400 Rev D; P401 Rev D; P402 Rev B; P403 Rev C; (131050-A(VIS))P001 and P002; Sustainability Statement, Oct 2013, prepared by Hodkinson Consultancy; Sunlight and Daylight, 22 Oct 2013, prepared by BMT Fluid Mechanics Ltd; Basement Impact Assessment, Oct 2013, prepared by Pringuer-James Consulting Engineers; Design & Access Statement, Nov 2013 rev A, prepared by Contemporary Design Solutions; Planning Statement, Oct 2013, prepared by KR Planning; Energy Statement, Oct 2013, prepared by Hodkinson Consultancy; Transport Statement, Oct 2013, prepared by URS; Construction Traffic Management Plan, Oct 2013, prepared by URS; Workplace Travel Plan, Oct 2013, prepared by URS; Student Travel Plan, Oct 2013, prepared by URS; email from KR Planning dated 7 Feb 2014, entitled Holmes Road; D & A Statement - s73 Update (Addendum to Approved scheme D&A Statement - 2015/5435/P) dated July 2016 and Basement Impact Assessment Addendum No. 2 to Approved Document dated 10/08/2016.

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

Informative(s):

- 1 Reasons for granting permission.

The proposed changes include the reconfiguration to warehouse levels and ground floor areas to provide an enlarged social area for the student accommodation use; an additional row of windows on the Holmes Road elevation; additional rooflights into the basement levels and changes to the positioning of windows. The

amendments include changes approved under 2015/5435/P.

The main changes to the commercial (B8) use are to the upper basement level where the vehicle ramp would be replaced with a 7.5T vehicle platform lift. A mezzanine level would be inserted at upper basement level in an area that is currently 5.6m high. The proposed mezzanine would have an area of 137m² at 2.8m headroom. There would be a gain of 43m² of warehouse space overall. It is considered that the changes would not materially decrease the quality of the warehouse space and there is the benefit of a relatively small uplift. In addition, a section 106 obligation requiring the developer to secure occupation of the B8 space before the student accommodation is occupied would continue.

The above revisions would allow additional ancillary student space at mezzanine level for the benefit of students within the accommodation only and would be accessed via secure entrances. The extra communal space would not lead to additional students from outside of the accommodation. Furthermore, the extant planning permission has a legal obligation requiring a student management plan. Any issues relating to the use of the new communal area would be controlled by this agreement.

The proposed basement extensions were approved under 2015/5435/P. A Basement Impact Assessment Addendum has been submitted with the current application to ensure the development would not harm the natural or built environment. Further detailed design, structural calculations and a method statement for the foundation design and all new groundworks need to be formally submitted for review and subject to independent verification in order to discharge conditions 14 and 22 of the extant permission.

There are no significant changes to the scale or external appearance of the proposed building from the extant permission. For this reason the proposed works are not considered to harm the character or appearance of the building or surrounding area.

The approved building would not be increased in size, there would be no new windows that could overlook surrounding occupiers and student numbers would not be altered. It is therefore considered that the proposed development would not result in an undue loss of sunlight, outlook, privacy, or that it would increase levels of noise and general disturbance over the approved scheme.

2 objections have been received from occupiers within Holmes Road regarding student numbers, massing and height issues and overlooking. The site's planning history and relevant appeal decisions were taken into account when coming to this decision.

As such, the proposed amendments are in general accordance with policies CS1, CS5, CS6, CS7, CS8, CS11, CS13, CS14 and CS19 of the London Borough of Camden Local Development Framework Core Strategy, and policies DP1, DP2, DP5, DP8, DP12, DP13, DP16, DP17, DP18, DP19, DP20, DP21, DP22, DP24, DP26, DP27, DP28 and DP29 of the London Borough of Camden Local Development Framework Development Policies. The proposed development also accords with the London Plan 2016 and the National Planning Policy Framework.

- 2 This approval under Section 73 of the 1990 Act effectively varying the relevant condition of the previous planning permission is subject otherwise to the same terms, drawings, conditions (and obligations where applicable) as attached to the previous planning permission. This includes condition 1 providing for a 3 year time period for implementation which for the avoidance of doubt commences with the date of the original decision (and not this variation). It is also noted that there are a number of pre-commencement conditions to be discharged.

- 3 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.

DRAFT

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

Supporting Communities Directorate

DECISION

drawing numbers EX00; EX01; EX02; EX03; EX04; 131050 A(GA) -P080 B; -P090 A; -P100 C; -P110 B; -P120 B; -P130 B; -P140 B; -P150 B; -P160 B; -P170 A; -P300 A; -P301 A; -P302 A; -P303 A; -P400 B; -P401 A; P402A; -P403 A; 131050 A(VIS) P001; -P002; Sustainability Statement, Oct 2013, prepared by Hodkinson Consultancy; Sunlight and Daylight, 22 Oct 2013, prepared by BMT Fluid Mechanics Ltd; Basement Impact Assessment, Oct 2013, prepared by Pringuer-James Consulting Engineers; Design & Access Statement, Nov 2013 rev A, prepared by Contemporary Design Solutions; Planning Statement, Oct 2013, prepared by KR Planning; Energy Statement, Oct 2013, prepared by Hodkinson Consultancy; Transport Statement, Oct 2013, prepared by URS; Construction Traffic Management Plan, Oct 2013, prepared by URS; Workplace Travel Plan, Oct 2013, prepared by URS; Student Travel Plan, Oct 2013, prepared by URS; email from KR Planning dated 7 Feb 2014, entitled Holmes Road; revised room schedule, submitted 11 Feb 2014 AS VARIED BY the development of the Property proposed by planning application 2015/5435/P granted planning permission on the 27th May 2016 AND FURTHER VARIED BY the development of the Property proposed by planning application 2016/4664/P and shown in draft form annexed hereto.

3.1.2 "Planning Permission"

the planning permission under reference number 2016/4664/P to be issued by the Council in the form of the draft annexed hereto

3.1.3 "Planning Application" the application for Planning Permission in respect of the Property submitted on 23 August 2016 by the Owner and given reference number 2016/4664/P

3.2 After the words "2013/7130/P or 2015/5435/P" in clause 5.2 of the Original Agreement the words "or 2016/4664/P" shall be inserted.

3.3 After the words "2013/7130/P or 2015/5435/P" in clause 5.6 of the Original Agreement the words "or 2016/4664/P" shall be inserted.

3.4 After the words "2013/7130/P or 2015/5435/P" in clause 6.1 of the Original Agreement the words "or 2016/4664/P" shall be inserted.

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

4. **MORTGAGEE EXEMPTION**

4.1 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 in the Existing Agreement 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.

5. **PAYMENT OF THE COUNCIL'S LEGAL COSTS**

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

6. **REGISTRATION AS LOCAL LAND CHARGE**

6.1 This Agreement shall be registered as a Local Land Charge

IN WITNESS WHEREOF the Council and the Owner has caused their respective Common Seals to be affixed and the Mortgagee has caused this Agreement to be executed as a Deed the day and year first above written.

EXECUTED AS A DEED BY
65 HOLMES ROAD LIMITED
acting by a Director

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)

Director Name: (CAPITALS)

)

Director Signature:

)

NABIL FATTAL

in the presence of:
Witness Signature:

)

Witness Name: (CAPITALS)

)

GEORGE LEVINE

Address:

)

46 Great Marlborough Street

)

London W1F 7JW

Occupation:

)

Lawyer

EXECUTED AS A DEED BY
EFG PRIVATE BANK LIMITED
acting by a Director and its Secretary
or by two Directors

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)
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Assistant Director

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Assistant Director/Secretary

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

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)



.....
Duly Authorised Officer





DATED

3rd May

2017

(1) 65 HOLMES ROAD LIMITED

-and-

(2) EFG PRIVATE BANK LIMITED

-and-

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

SECOND DEED OF VARIATION

Relating to the Agreement dated 6 March 2014 and
First Deed of Variation dated 27th May 2016

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under section 106 of the Town and
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Relating to development at premises known as

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