

DATED

7 May

2003⁴

(1) TOPLAIN LIMITED

and

(2) NATIONWIDE BUILDING SOCIETY

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
134-136 Kilburn High Road, London NW6
pursuant to Section 106 of the Town and Country Planning
Act 1990 (as amended)

Alison Lowton
Borough Solicitor
London Borough of Camden
Town Hall
Judd Street
London WC1H 9LP

Tel: 020 7974 1918
Fax: 020 7974 2713

S:plan/s106 Agreements/Imm/Kilburn High Road 134-136 (CF)



THIS AGREEMENT is made the 7th day of May 2008 4

B E T W E E N:

1. **TOPLAIN LIMITED** (Incorporated in the Isle of Man) (Registered Number 107234C) whose registered office is at 71 Circular Road Douglas Isle of Man IM1 1AZ (hereinafter called "the Owner") of the first part
2. **NATIONWIDE BUILDING SOCIETY** of Nationwide House Pipers Way Swindon L SN38 1NW (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 Owner is registered at HM Land Registry as the freehold proprietor with Title absolute of the Property under Title Numbers 445568 and 449321 both 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 on 5th February 2002 and the Council resolved to grant permission conditionally under reference number PWX0202107 subject to conclusion of this legal Agreement.
- 1.4 The Council 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.
- 1.6 The Mortgagee as Mortgagee under a legal charge registered under Title Number(s) 445568 and 449321 both dated 18 February 2003 (hereinafter called "the Legal Charge") is willing to enter into this Agreement to give its consent to the same.

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 "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 and Second Property submitted to the Council on 5th February 2002 for which a resolution to grant permission has been passed conditionally under reference number PWX0202107 subject to conclusion of this Agreement
- 2.4 "the Development" the change of use of the upper floors from vacant office space (Class B1) to 8 self-contained residential flats (Class C3) with alterations and extensions at the rear, including a terrace at rear second floor level as shown on drawing numbers L378/01 - 04
- 2.5 "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
- 2.6 "Occupation Date" the first date when any part of the Development is occupied
- 2.7 "the Parties" mean the Lord Mayor and Burgesses of the London Borough of Camden the Owner and the Mortgagee

- 2.8 "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
- 2.9 "the Planning Permission" a planning permission granted for the Development substantially in the draft form annexed hereto
- 2.10 "the Property" the land known as 134-136 Kilburn High Road and 3-4 Leith Yard Kilburn London NW6 the same as shown edged in red on the plan annexed hereto
- 2.11 "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.
- 2.12 "Residents 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

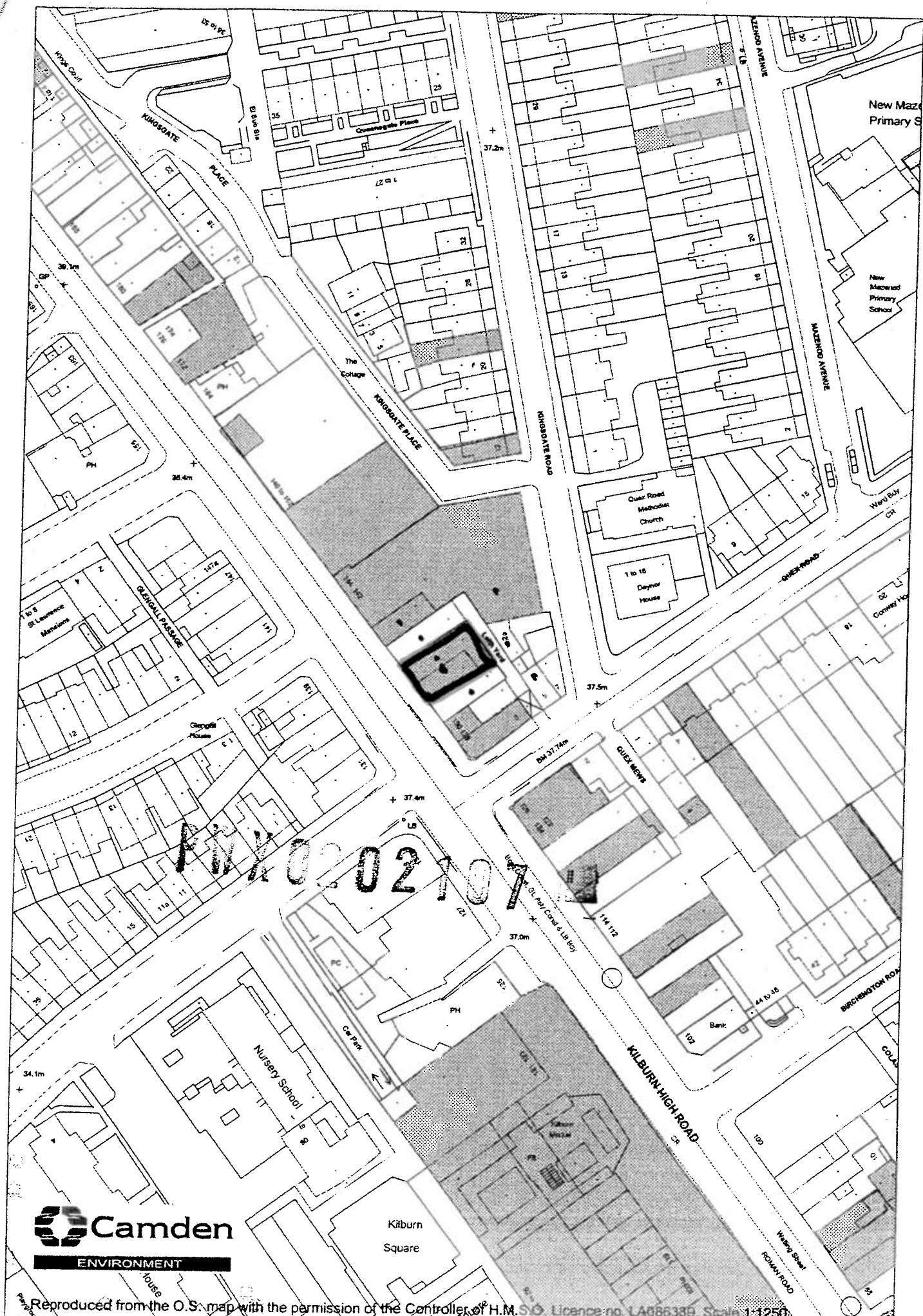
NOW THIS DEED WITNESSETH as follows:-

- 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 and Second Owner as provided herein and against any person deriving title to any part of the Property from the Owner and Second 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 of interpretation.
- 3.5 It is hereby agreed between the Parties that save for the provisions of clauses 1, 2, 3, 5 and 6 hereof all of which shall come into effect on the date hereof covenants undertakings and obligations contained within this Agreement shall become binding upon the Owner upon the Implementation Date.
- 3.5 Council hereby agrees to grant the Planning Permission on the date hereof.
- 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" housing in accordance with clause 4 for all relevant purposes.

4. **OBLIGATIONS OF THE OWNER**

- 4.1 The Owner hereby covenants with the Council to ensure that prior to occupying any residential unit forming part of the Development each new resident 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 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.
- 4.2 The Owner for itself and its successors in title to the Property hereby acknowledges that the provision in Clause 4.1 above will remain permanently.





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

- 5.1 Within 7 days following completion of the Development to certify in writing to the Planning Obligations Monitoring Officer in the manner outlined at clause 6.1 hereof quoting planning reference PWX0202107 the date upon which the residential units forming the Development are ready for occupation.
- 5.2 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.
- 5.3 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 they 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.

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, Property and Projects Team, Planning Division Environment Department, Town Hall Annex, Argyle Street, London WC1H 9LP quoting the planning reference number PWX0202107 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 they will within 28 days from the date hereof lodge their Charge and Land Certificates in relation to the Property with HM Land Registry and apply to the Chief Land Registrar to register this Agreement in the Charges Register thereof and will furnish the Council forthwith on written demand with office copies of such title to show the entry of this Agreement in the Charges Register of the title to the Property and the Second Property.
- 6.5 The Parties hereto shall act in good faith and shall co-operate with the other to facilitate the discharge and performance of all obligations contained herein and in particular the Owner shall comply with any reasonable requests of the Council to provide documentation within the Owner's possession at the expense of either owner for the purposes of monitoring compliance with the obligations contained herein
- 6.6 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.
- 6.7 Neither the Owner or the Mortgagee nor their successors in title nor any person deriving title from the Owner or the Mortgagee 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 or Second Property but without prejudice to liability for any breach committed prior to the time it disposed of its interest.
- 6.8 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.
- 6.9 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.

6.10 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 Secretary of State for the Department for Transport Local Government and the Regions or any other competent authority.

7. The Mortgagee hereby consents to the completion of this Agreement and agrees to be bound by it and to the same being registered at HM Land Registry as provided in

Clause 6.4 hereof *but on the proviso that the Mortgagee shall not be liable to perform or observe any of the covenants and obligations on the part of the Owner in this Agreement unless in*

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

its capacity as a mortgagee in possession of the property

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

OR

IN WITNESS whereof the Council and the Owner have caused their respective common seals to be hereunto affixed [and the Lessee and the Mortgagee have executed this instrument as a Deed] the day and year first before written

~~THE COMMON SEAL OF~~)
~~EXECUTED AS A DEED BY~~)
~~TOPLAIN LIMITED~~)
was hereunto affixed)
in the presence of:-)

John Murphy
John

Director

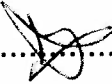
Director/Secretary

EXECUTED as a Deed for and on behalf of TOPLAIN LIMITED a company incorporated in the Isle of Man by EDWARD NORMAN BOWERS and JOHN ANTHONY MURPHY being persons who in accordance with the laws of that territory are acting under the authority of the company

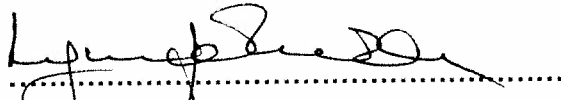
John
EDWARD NORMAN BOWERS

John Murphy
JOHN ANTHONY MURPHY

EXECUTED as a Deed *on behalf of*)
By NATIONWIDE BUILDING SOCIETY)
by BRIAN CHAMBERS)
~~in the presence of:-~~)

.....


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


.....
Authorised Signatory



DRAFT

CLARKE RENNER ARCHITECTS
3 ROYALTY STUDIOS
105 LANCASTER ROAD
LONDON
W11 1QF

Application No: PWX0202107/
Case File:H3/1/2

Date:

Dear Sir(s)/Madam

DECISION

Town and Country Planning Act 1990
Town and Country Planning (General Development Procedure)
Order 1995
Town and Country Planning (Applications) Regulations 1988

PERMISSION FOR DEVELOPMENT - Subject to Conditions

Address :
134-136 KILBURN HIGH ROAD LONDON NW6 4JD

Date of Application : 05/02/2002

Proposal :
The change of use of the upper floors from vacant office space (Class B1) to 8 self-contained residential flats (Class C3) with alterations and extensions at the rear, including a terrace at rear second floor level.
As shown on drawing numbers L378/01 - 04.

The Council has considered your application and decided to grant permission subject to the following conditions:

Standard condition:
The development hereby permitted must be begun not later than the expiration of five years from the date of this permission.

Standard Reason:
In order to comply with the provisions of Section 91 of the Town and Country Planning Act 1990.

Additional conditions:

1 All new external work shall be carried out in materials that

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resemble, as closely as possible, in colour and texture those of the existing building, unless otherwise specified on the approved application.

- 2 A 1.8 metre high screen, details of which shall have been submitted to and approved by the Council, shall be erected on the western side of the roof terrace adjacent to the area marked 'void' on the approved plan prior to the commencement of the use of the said roof terrace, and the screen shall be permanently retained thereafter.

Reasons for additional conditions:

- 1 To ensure that the Council may be satisfied with the external appearance of the building in accordance with the requirements of policies EN1, EN13 and EN31 of the London Borough of Camden Unitary Development Plan 2000.
- 2 In order to prevent unreasonable overlooking of neighbouring premises in accordance with the requirements of policies EN1 and EN19 of the London Borough of Camden Unitary Development Plan 2000.

Standard Informative: You are advised that any references in this decision to specific policies in the adopted Unitary Development Plan are references to the policy numbers in the final published version of the Plan, dating from April 2nd 2001. The reference number is likely to be different from the reference number to the same policy in the published version of the Plan before that date.

Informatives (if applicable)

- 1 Your attention is drawn to the need to consult the Council's Environment & Consumer Protection Service, Waste Management Team, Town Hall, Argyle Street entrance, Euston Road, WC1H 8EQ, (tel: 020-7278 4444) regarding arrangements for the disposal of refuse.
- 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.

This application was dealt with by Alex Bushell on 020 7974 2661.





**Development Control
Planning Services**
London Borough of Camden
Town Hall
Argyle Street
London WC1H 8ND

Tel 020 7278 4444
Fax 020 7974 1975
env.devcon@camden.gov.uk
www.camden.gov.uk/planning

Your attention is drawn to the notes attached to this notice which tell you about your Rights of Appeal and other information.

Yours faithfully

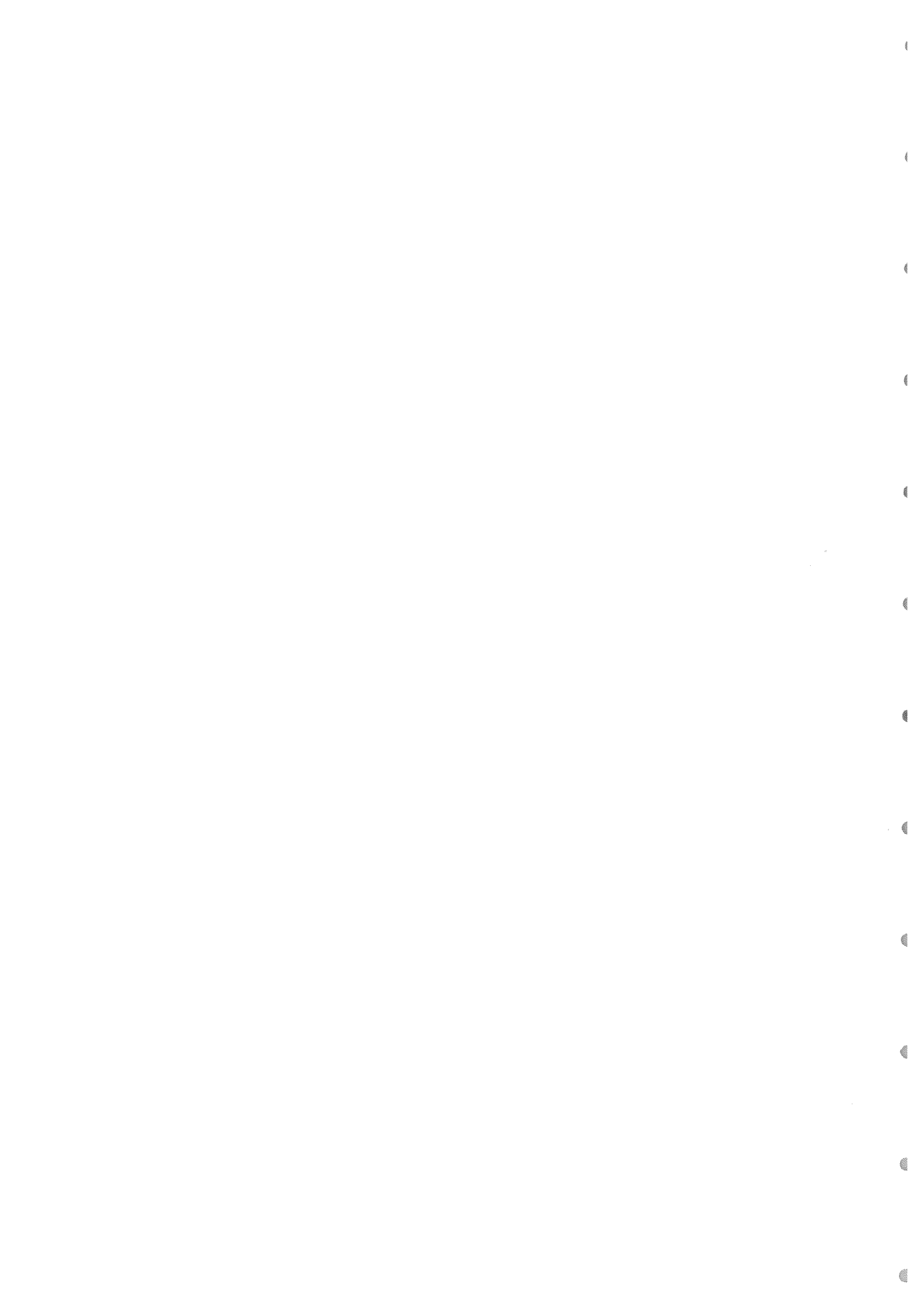
A handwritten signature in black ink, appearing to read "P.A. Bishop".

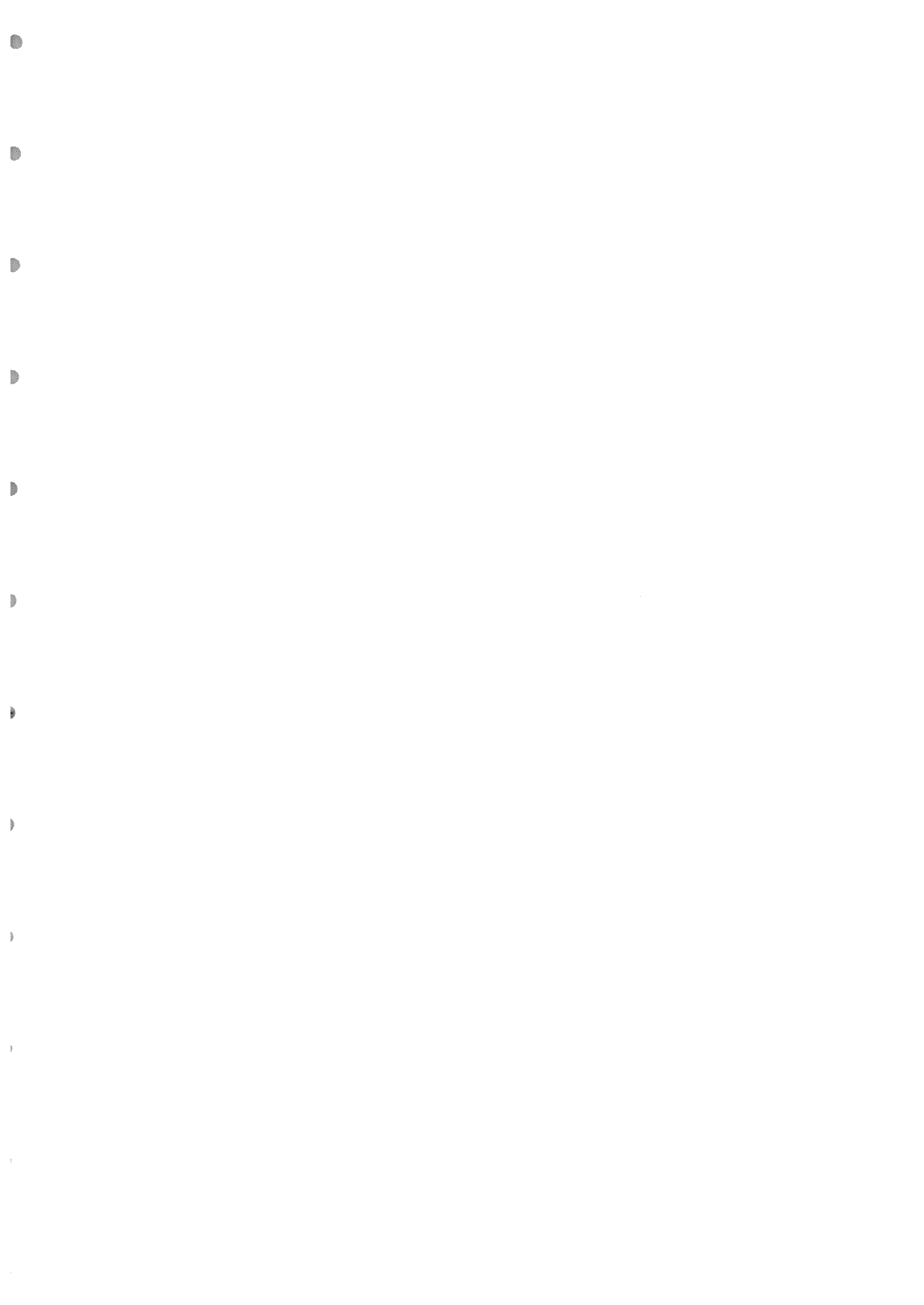
Environment Department
(Duly authorised by the Council to sign this document)

DecfplanWC/TPFU



Director
Peter Bishop





DATED

7th May

2004

(1) TOPLAIN LIMITED

and

(2) NATIONWIDE BUILDING SOCIETY

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

134-136 Kilburn High Road, London NW6

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

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