

DATED 10 SEPTEMBER 2018

(1) CORREN PROPERTIES LIMITED

and

(2) LLOYDS BANK PLC

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

7 Northways Parade, Finchley Road, London NW3 5EN
and
17 Northways Parade, Finchley Road, London NW3 5EN

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 1920



THIS AGREEMENT is made the 10th day of September 2018

BETWEEN:

1. **CORREN PROPERTIES LIMITED** (incorporated in Gibraltar) care of Forsters, 31 Hill Street, London W1J 5LS (hereinafter called "the Owner") of the first part;
2. **LLOYDS BANK PLC** (registered under company number 2065) whose registered office is at 25 Gresham Street, London EC2V 7HN (hereinafter called "the Mortgagee") of the second part; and
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.

1. **WHEREAS**

- 1.1 The Owner is registered at the Land Registry as the freehold proprietor with title absolute of the First Property and the Second Property both under title number 457056.
- 1.2 The Owner is interested in the First Property and the Second Property for the purposes of Section 106 of Act.
- 1.3 The Planning Application for the Development of the First Property and the Second Property was submitted to the Council and validated by the Council on 24 May 2018 and the Council resolved to grant planning permission conditionally under reference number 2018/1803/P subject to conclusion of this Agreement.
- 1.4 The Council is the local planning authority for the purposes of the Act for the area in which the First Property and the Second Property are situated and considers it expedient in the interests of the proper planning of its area that the development of the First Property and the Second 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 the legal charge dated 6 April 2017 registered under title number 457056 in respect of the First Property and the Second Property 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);
- 2.2 "this Agreement" this planning obligation made pursuant to Section 106 of the Act;
- 2.3 "the Development" the change of use from retail (A1) to restaurant (A3) at the First Property and the change of use from restaurant (A3) to retail (A1) at the Second Property as part of a use swap as shown on drawing numbers A.51340, 180326-7-1, 180326-7-2, 180326-7-2A, 180326-17-2A, 180326-17-2B;
- 2.4 "the First Property" the land known as 7 Northways Parade, Finchley Road, London NW3 5EN the same as shown edged red on Plan 1;
- 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(4) 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 First Property or the Second Property is occupied for the purposes of the Planning Permission save for the purposes of marketing and the phrases "Occupy", "Occupied" and "Occupation" shall be construed accordingly;
- 2.7 "Parties" the Council, the Owner and the Mortgagee;
- 2.8 "Plan 1" the plan marked "Plan 1" annexed hereto showing the First Property and the Second Property;
- 2.9 "Planning Application" a planning application in respect of the Development of the First Property and the Second Property submitted to the Council and validated on 24 May 2018 for which a resolution to grant permission has been passed conditionally under reference number 2018/1803/P subject to conclusion of this Agreement;
- 2.10 "Planning Obligations Monitoring Officer" a planning officer of the Council from time to time allocated to deal with all planning obligations pursuant to Section 106 of the Act to whom all notices, correspondence, approvals etc must be sent in the manner prescribed at clause 6.1 hereof;
- 2.11 "the Planning Permission" a planning permission granted for the Development substantially in the draft form at the Schedule annexed hereto;



Location Plan - 7 & 17, Northways Parade Finchley Road, London, NW3 5EN



Handwritten notes:
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Drawing Number: A.51340
 O.S. Ref: TQ2684
 Date: 06/04/2018


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020 7493 3043 - bidwells.co.uk



- 2.12 "the Second Property" the land known as 17 Northways Parade, Finchley Road, London NW3 5EN the same as shown edged red on Plan 1.
- 2.13 "the Use Classes Order" the Town and Country Planning (Use Classes) Order 1987.
- 2.14 "Working Day" means any day excluding Saturdays, Sundays and any bank holidays in England and "Working Days" shall be construed accordingly.

3. **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 First Property and/or the Second 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 or interpretation.
- 3.5 It is hereby agreed between the Parties that save for the provisions of clauses 1, 2, 3, 5.1, 6, 7, 8 and 9 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 Parties save where the context states otherwise shall include their successors in title.

3.7 Where any consent approval acknowledgement or expression of satisfaction is required from any of the Parties pursuant to the provisions of this Agreement such consent approval acknowledgement or expression of satisfaction will not be unreasonably withheld or delayed.

4. **OBLIGATIONS OF THE OWNER**

The Owner hereby covenants with the Council as follows:-

4.1 **USE SWAP**

4.1 Not to Occupy or use or permit Occupation or use of any part of the First Property as a restaurant or any other use which falls under class A3 of the Use Classes Order until such time as:

4.1.1 the change of use of the Second Property from restaurant (class A3 of the Use Classes Order) to retail use (class A1 of the Use Classes Order) has taken place and the Second Property is Occupied for use as an A1 retail unit; and

4.1.2 the Owner has notified the Council's Planning Obligations Monitoring Officer in writing that the change of use from restaurant (class A3 of the Use Classes Order) to retail use (class A1 of the Use Classes Order) at the Second Property has taken place and the Second Property is Occupied for use as an A1 retail unit and the Council's Planning Obligations Monitoring Officer has confirmed this by notice in writing.

5. **OBLIGATIONS OF THE COUNCIL**

The Council hereby covenants with the Owner as follows:-

5.1 The Council shall grant the Planning Permission on the date hereof.

- 5.2 Upon receipt of the notification to be provided by the Owner pursuant to Clause 4.1.2 above, the Council shall within 10 Working Days either:
- 5.2.1 confirm to the Owner in writing that it considers that the Second Property is Occupied as an A1 retail unit; or
 - 5.2.2 notify the Owner that it does not consider the Second Property to be Occupied as an A1 retail unit.
- 5.3 If the Council fails to notify the Owner as provided for in Clause 5.2 above, then following the expiry of the time period specified in Clause 5.2 above, the Council shall be deemed to have given notice to the Owner that the Second Property is Occupied as an A1 retail unit for the purposes of this Agreement.

6. NOTICE TO THE COUNCIL/OTHER MATTERS

- 6.1 Within seven days following the Occupation Date the Owner shall certify in writing to the Planning Obligations Monitoring Officer in the manner outlined at clause 6.1 hereof quoting planning reference 2018/1803/P the date upon which the First Property will be ready for Occupation.
- 6.2 The Owner and the Council shall act in good faith and shall co-operate with each other 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 First Property and/or the Second 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.
- 6.3 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 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.

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

- 7.1 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 Permission reference number 2018/1803/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.
- 7.2 This Agreement shall be registered as a Local Land Charge by the Council pursuant to the provisions of the Local Land Charges Act 1975.
- 7.3 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.
- 7.4 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.
- 7.5 Neither the Owner nor the Mortgagee nor their 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 First Property and/or the Second Property but without prejudice to liability for any breach committed prior to the time it disposed of its interest.

7.6 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.

7.7 If the First Planning Permission and/or the Second Planning Permission is quashed or revoked or otherwise withdrawn or expires before effluxion of time before the commencement of the First Development and/or the Second Development this Agreement shall forthwith determine and cease to have effect.

7.8 Nothing in this Agreement shall prohibit or limit the right to develop any part of the First Property or the Second Property in accordance with a planning permission (other than the Planning Permission) granted after the date of this Agreement and the obligations in this Agreement shall not apply to any development carried out under any such planning permission.

8. **MORTGAGEE EXEMPTION**

8.1 The Mortgagee hereby consents to the Owner entering into this Agreement and agrees that the security of its legal charges over the First Property and the Second Property respectively shall take effect subject to this Agreement and that the First Property and the Second Property shall be bound by the obligations in this Agreement.

8.2 The Parties agree that the obligations contained in this Agreement shall not be enforceable against the Mortgagee (or any mortgagee or chargee of the whole or any part of the First Property and or the Second Property) unless the Mortgagee (or any mortgagee or chargee) takes possession of the First Property and or the Second Property as a mortgagee in possession in which case it will be bound by the obligations as if it were a person deriving title from the Owner.

9. **RIGHTS OF THIRD PARTIES**

A person who is not a party to this Agreement (save for the avoidance of doubt for successors in title or assignees of the Mortgagee or the Owner) has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the terms of this Agreement.

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

EXECUTED AS A DEED BY)
CORREN PROPERTIES LIMITED)
in the presence of:)
acting by a Director and its Secretary)
or by two Directors)

MAWZIE PERERA
(for) Finsbury Corporate Services Limited
Director
.....
Director

Nicholas Pitaluga
Finsbury Secretaries Limited
Secretary
.....
Director/Secretary Nicholas Pitaluga

EXECUTED AS A DEED BY)
LLOYDS BANK PLC)
acting by a Director and its Secretary)
or by two Directors)

Director Name: (CAPITALS))

Director Signature:)

BRADLEY MCALLISTER
B. McAllister
.....

Director/Secretary Name (CAPITALS))

Director/Secretary Signature:)

TISH MILNER
Tish Milner
.....

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

P. Alexander
.....

Authorised Signatory





THE SCHEDULE

DRAFT PLANNING PERMISSION



Bidwells
25 Old Burlington Street
London
W1S 3AN

Application Ref: **2018/1803/P**

14 August 2018

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:
7 and 17 Northways Parade
Finchley Road
London
NW3 5EN

DECISION
Proposal:
Change of use from restaurant (A3) to retail (A1) at no.17 Northways Parade in connection with a change of use from retail (A1) to restaurant (A3) at no.7 Northways Parade as part of a use swap
Drawing Nos: A.51340; 180326-7-1; 180326-7-2; 180326-17-2A; 180326-17-2B; Planning Statement prepared by Bidwells (dated 16/04/2018)

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: A.51340; 180326-7-1; 180326-7-2; 180326-17-2A; 180326-17-2B; Planning Statement prepared by Bidwells (dated 16/04/2018)

Reason:

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

- 3 Prior to occupation of the commercial unit hereby approved, full details of all plant equipment including proposed location, manufacturers specifications, noise levels and attenuation, shall be submitted to and approved by the Local Planning Authority in writing. The use shall not proceed other than in complete accordance with such scheme as has been approved. All such measures shall be retained and maintained in accordance with the manufacturers' recommendations.

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies A1 and A4 the London Borough of Camden Local Plan 2017.

Informative(s):

- 1 Reasons for granting permission.

The application seeks to swap the uses of two vacant units, which are located within the Primary Shopping Frontage of Finchley Road/ Swiss Cottage Town Centre. Given the units are within the same frontage, the proposal would not disrupt the balance of uses along the street. Policy requires retail uses to not fall below 75% or for food, drink and entertainment uses (FDE) to not comprise more than 20% of units. The frontage already has less than 75% of A1 uses and nearly 20% of FDE uses. If the permission were to be part-implemented this could result in A3 units, which would further reduce the quantity of retail uses along the frontage further and increase the number of FDE uses to over 20%. Therefore, a s.106 legal agreement will be secured in order to ensure that the retail unit is implemented prior to the restaurant unit.

The floorspace of both units is very similar and therefore there are no expected issues surrounding viability of the uses once the land swap has occurred.

The proposal is expected to involve the installation of plant equipment at no.7 Finchley Road. The proposed location of the plant is acceptable as it would be located in an underground car-park away from residential windows. Adjacent premises have plant equipment installed already. Although there are no nearby residential occupiers, full details of plant equipment shall be secured by condition to

ensure the location, vibration and noise levels are within acceptable parameters.

By virtue of the nature of the proposal, it is not considered to cause any adverse impacts on the amenity of adjoining residential occupiers.

One comment has been received from Thames Water prior to making this decision, which has been attached as an informative. The planning history of the site has been taken into account when coming to this decision.

As such, the proposed development is in general accordance with policies A1, A4, TC1, TC2, TC4 of the Camden Local Plan 2017. The proposed development also accords with the London Plan 2016 and the National Planning Policy Framework.

- 2 Your proposals may be subject to control under the Building Regulations and/or the London Buildings Acts that 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, Judd St, Kings Cross, London NW1 2QS (tel: 020-7974 6941).
- 3 Thames Water recommends the installation of a properly maintained fat trap on all catering establishments and the collection of waste oil by a contractor, particularly to recycle for the production of bio diesel in line with best practice for the disposal of Fats, Oils and Grease. Failure to implement these recommendations may result in this and other properties suffering blocked drains, sewage flooding and pollution to local watercourses.
- 4 No shopfront alterations have been proposed as part of this application and you are reminded that planning permission is likely to be required for any such work.

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





