

DATED

15 October

2017-2018

(1) BT GROUP PLC

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

Footway outside the properties in Trinity Close, Willoughby Road, London NW3 1SD
pursuant to Section 106 of the Town and Country Planning
Act 1990 (as amended) and
Section 278 of the Highways Act 1980

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

Tel: 020 7974 1918
Fax: 020 7974 2962

CLS/COM/OO.1800.163



THIS AGREEMENT is made the 15th day of October 2017/2018

B E T W E E N:

1. **BT GROUP PLC** (Co. Regn. No. **04190816**) whose registered office is at 81 Newgate Street, London, EC1A 7AJ (hereinafter called "the Statutory Undertaker") 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

1. **WHEREAS**

- 1.1 The Statutory Undertaker is a telecommunications company that owns the built electronic fibre cabinet (DSLAM) installed at the Property, which represents the Development under the Planning Application.
- 1.2 The Statutory Undertaker 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 validated on 25 November 2016 and the Council resolved to grant permission conditionally under reference number 2016/6489/P subject to the 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 As local highway authority the Council considers the Highways Works to be carried out pursuant to this section 278 Agreement to be in the public benefit.

1.6 For that purpose the Statutory Undertaker 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 Development" retrospective application to regularise a built electronic fibre cabinet (DSLAM) on the footway outside Trinity Close as shown on drawing numbers:- Design and Access Statement, 1 Rev A, 2 Rev A and 3 Rev A
- 2.4 "the Highways Contribution" the sum of £500 (five hundred pounds) to be paid by the Statutory Undertaker 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 carrying out of works to the public highway and associated measures in the vicinity of the Property and as are required due to the Development ("the Highways Works") these to include costs associated with the following:-
- (a) any required consultation;
 - (b) design work;
 - (c) utilities survey;
 - (d) relocation of the parking sign; and

(e) any other works the Council acting reasonably considers necessary as a direct result of the Development

all works will be subject to final measure and for the avoidance of doubt the Council in accepting this sum does not undertake any responsibility in connection with any required statutory undertakers works and excludes any statutory undertakers costs

- 2.8 "the Parties" mean the Council and the Statutory Undertaker
- 2.9 "the Planning Application" a planning application in respect of the development of the Property submitted to the Council and validated on 25 November 2016 for which a resolution to grant permission has been passed conditionally under reference number 2016/6489/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 S106 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 annexed hereto
- 2.11 "the Property" the footway outside Trinity Close, Willoughby Road, London NW3 1SD the same as shown in red line on the plan annexed hereto

- 2.12 "the Public Highway" any carriageway footway and/or verge adjoining the Property maintainable at public expense

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 Statutory Undertaker as provided herein and against any person deriving interest in any part of the Property from the Statutory Undertaker 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 and 7 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 Statutory Undertaker upon the date of this Agreement.
- 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 STATUTORY UNDERTAKER**

The Statutory Undertaker hereby covenants with the Council as follows:-

4.1 **HIGHWAYS CONTRIBUTION**

- 4.1.1 On the date hereof to pay to the Council the Highways Contribution in full.
- 4.1.2 The Owner acknowledges that the Council has the right reserved to it to construct the Public Highway to levels it considers appropriate.
- 4.1.3 On completion of the Highway Works the Council may provide to the Owner a certificate specifying the sum ("the Certified Sum") expended by the Council in carrying out the Highway Works.
- 4.1.4 If the Certified Sum exceeds the Highway Contribution then the Owner shall within fourteen days of the issuing of the said certificate pay to the Council the amount of the excess.

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

- 5.1 The Statutory Undertaker 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 Statutory Undertaker 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 Statutory Undertaker's possession (at the Statutory Undertaker's expense) for the purposes of monitoring compliance with the obligations contained herein.
- 5.2 The Statutory Undertaker 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 Statutory Undertaker 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.

- 5.3 If satisfied as to the compliance of the Statutory Undertaker 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 Head of Legal Services a formal written certification of compliance, partial compliance or ongoing compliance (as and if appropriate) with the provisions of any such obligation.
- 5.4 Payment of the Highways Contribution pursuant to Clause 4.1 of this Agreement shall be made by the Statutory Undertaker to the Council sending the full amount via electronic transfer (where practicable). The Statutory Undertaker shall notify the Planning Obligations Monitoring Officer that payment has been made referring to names date and Parties to this Agreement and citing the specific clause of this Agreement to which such contribution relates quoting the planning reference 2016/6489/P. Electronic Transfer be made directly to the National Westminster Bank of Hampstead Village quoting Sort Code 50-30-03 and London Borough of Camden General Account no. 24299480.
- 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 Statutory Undertaker.
- 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 AllIRP") figure last published by the Central Statistical Office at the date hereof is the denominator ("X") and the last AllIRP figure published before the date such payment or application is made ("Y") less the last published AllIRP 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, Placeshaping Service, Urban Design and Development Team, 2nd Floor, 5 Pancras Square, London, N1C 4AJ quoting the planning reference number 2016/6489/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.
- 6.3 The Statutory Undertaker 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.
- 6.5 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 Statutory Undertaker 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 Property but without prejudice to liability for any breach committed prior to the time it disposed of its interest.

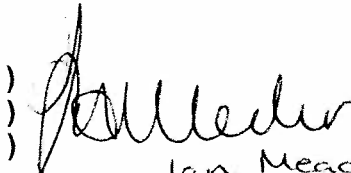
6.7 For the avoidance of doubt the provisions of this Agreement (other than those contained in this sub-clause) shall not have any effect until this Agreement has been dated.

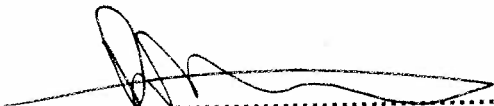
7. **RIGHTS OF THIRD PARTIES**

7.1 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 Statutory Undertaker have executed this instrument as their Deed the day and year first before written

**EXECUTED AS A DEED BY
BT Group Limited
in the presence of:**

) 
) Ian Meacher

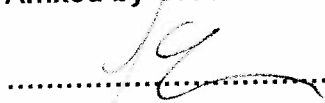

.....
Witness Signature

Witness Name: ROSS BOWER

Address: Chessington TSVL, Cox Lane, Chessington Surrey
KT9 1TX

Occupation: Field Coordinator

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

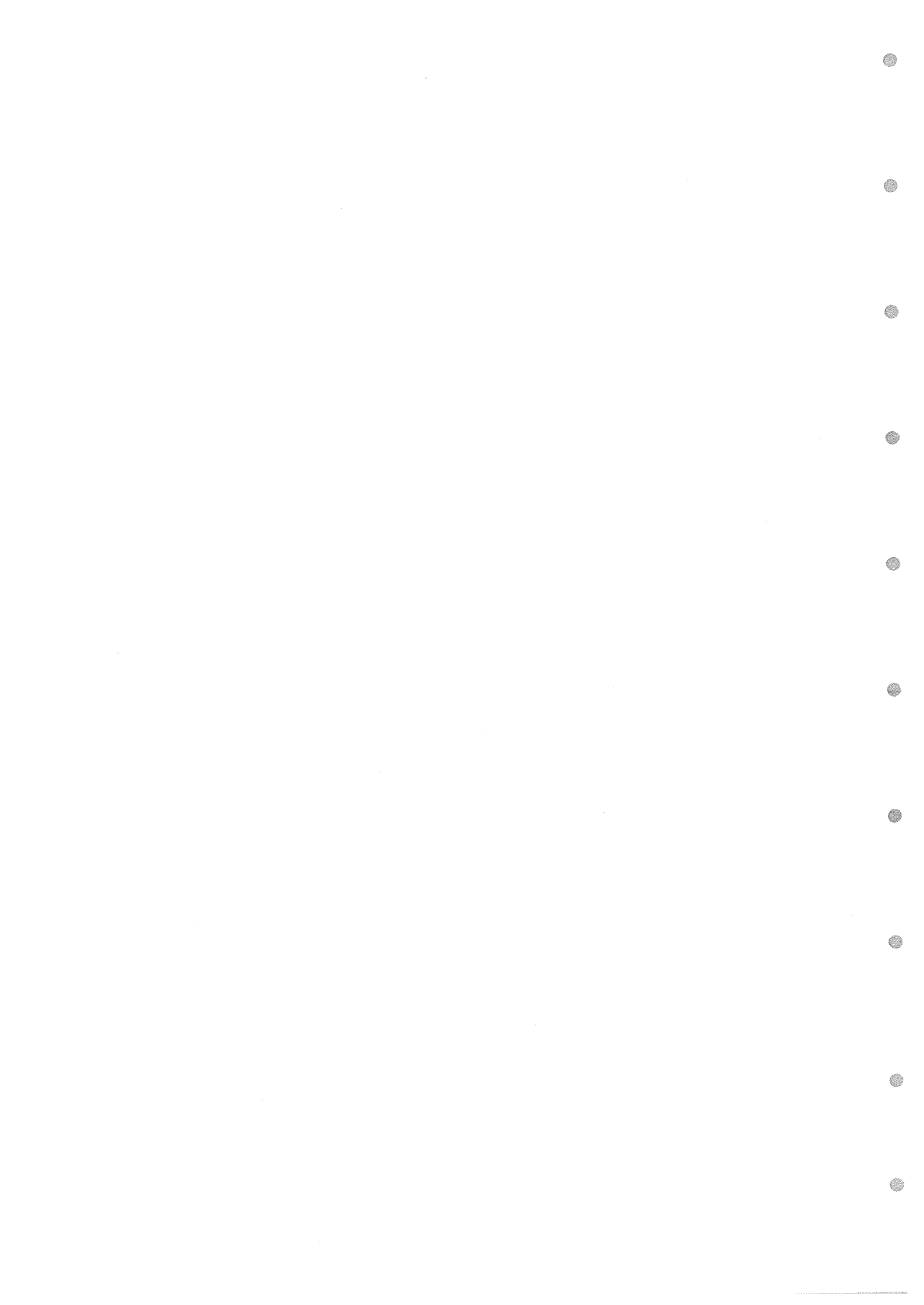

.....
Authorised Signatory



NORTHGATE SE GIS Print Template



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Harlequin Group
Harlequin Group Innovation Centre
Maidstone Rd
Chatham
ME10 1SL UK

Application Ref: **2016/6489/P**

6 November 2017

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:
Trinity Close
Willoughby Road
London
NW3 1SD

Proposal:
Retrospective application to regularise a built electronic fibre cabinet (DSLAM) on the footway outside Trinity Close.

Drawing Nos: Design and Access Statement, 1 Rev A, 2 Rev A and 3 Rev A.

DECISION
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 shall be carried out in accordance with the following approved plans:

Design and Access Statement, 1 Rev A, 2 Rev A and 3 Rev A.

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

Informative(s):

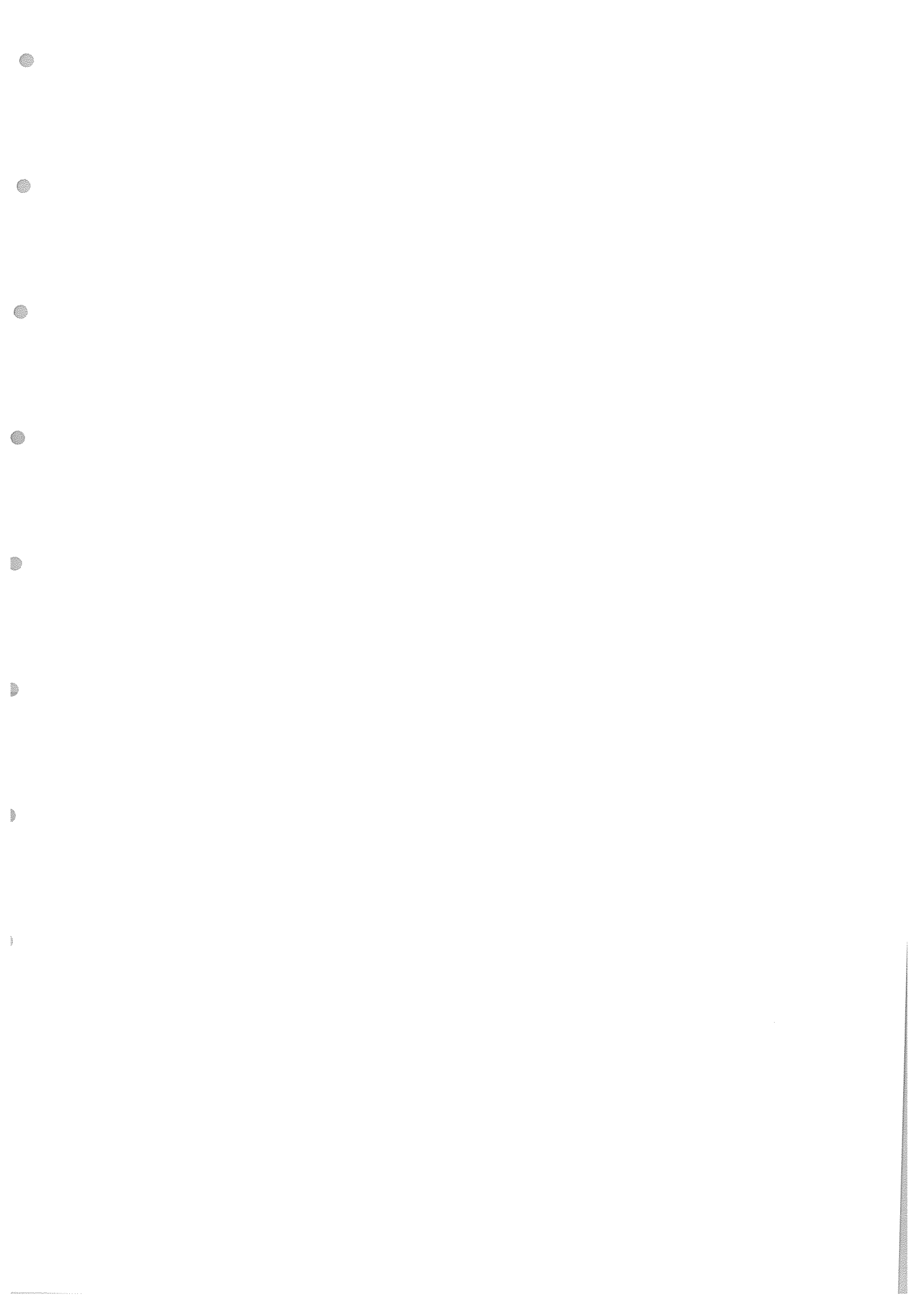
- 1 Your proposals may be subject to control under the Building Regulations and/or the London Buildings Acts which cover aspects including fire and emergency escape, access and facilities for people with disabilities and sound insulation between dwellings. You are advised to consult the Council's Building Control Service, Camden Town Hall, Argyle Street WC1H 8EQ, (tel: 020-7974 6941).
- 2 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

DECISION

Supporting Communities Directorate



DATED 15 October ~~2017~~ 2018

(1) BT GROUP PLC

and

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

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