

DATED

5 July

2019

(1) MISUMA LIMITED

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

78 Malden Road, London NW5 4DA

pursuant to

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

Section 16 of the Greater London Council (General Powers) Act 1974;

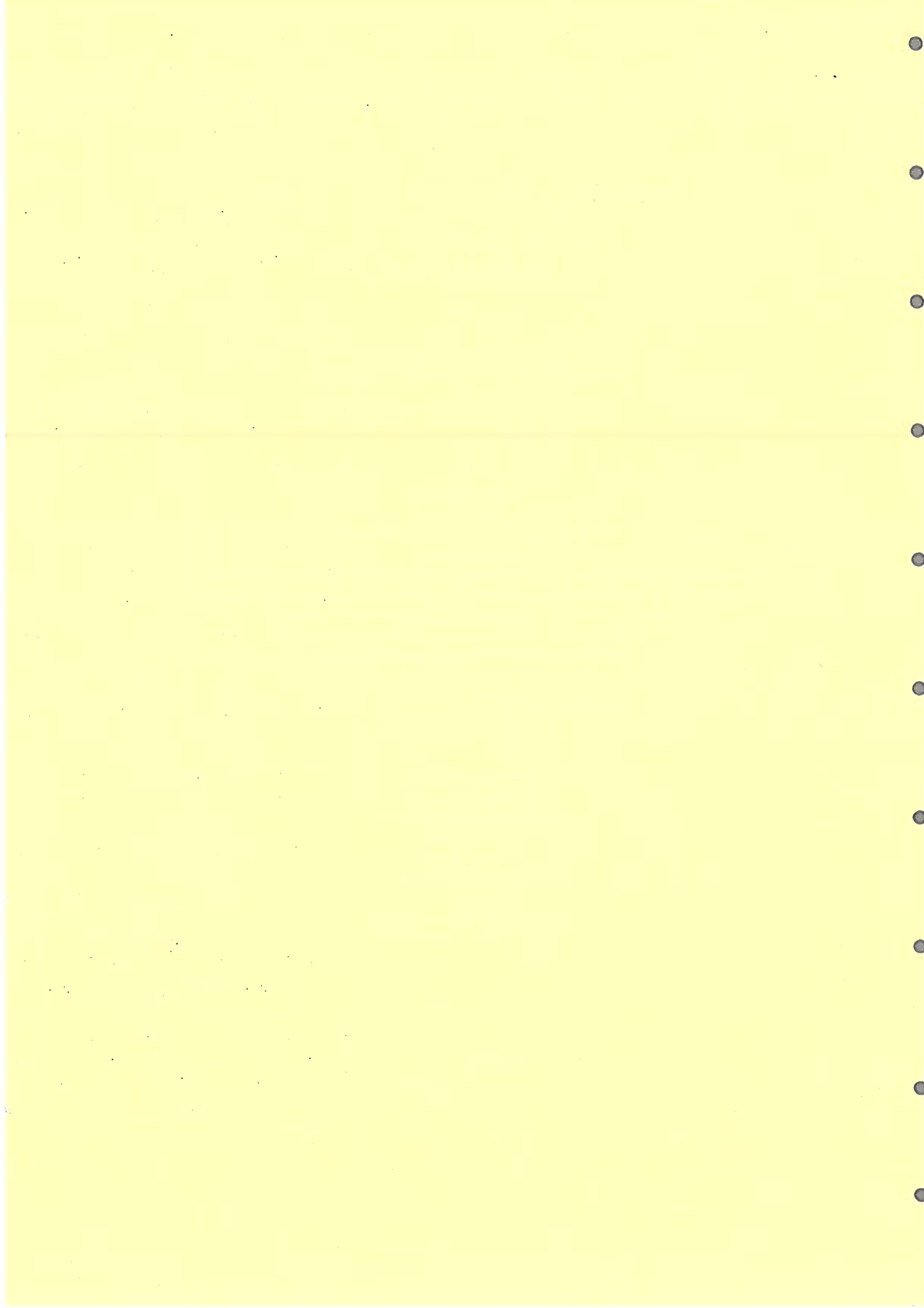
Section 111 of the Local Government Act 1972;

Section 1(1) of the Localism Act 2011; 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 4125
CLS/COM/OO.1800.1079



THIS AGREEMENT is made the

5th

day of

July

2019

B E T W E E N:

A. **MISUMA LIMITED** (Co. Regn. No. 02965805) whose registered office is at Palladium House, 1-4 Argyll Street, London W1F 7LD (hereinafter called "the Owner") of the first part

B. **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 Owner is registered at the Land Registry as the freehold proprietor with Title absolute of the Property under Title Number 244688.

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 validated on 4 February 2019 and the Council resolved to grant permission conditionally under reference number 2019/0658/P subject to the conclusion of this legal Agreement.

1.4 The Council is the local planning authority for the purposes of the Act and is the local authority for the purposes of Section 16 of the Greater London Council (General Powers) Act 1974 Section 111 of the Local Government Act 1972; and Section 1(1) of the Localism Act 2011 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 For that purpose the Owner 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:-

- | | | |
|-----|---------------------------|--|
| | "the Act" | the Town and Country Planning Act 1990 (as amended) |
| 2.1 | "the Agreement" | this Planning Obligation made pursuant to Section 106 of the Act |
| 2.2 | "the Development" | conversion of existing two-flat building into 1x 2bedroom flat; 1x 1bedroom flat and 1x 3bedroom flat; erection of single storey rear extension at ground floor level; formation of amenity terrace at upper ground floor level; alterations and replacements to existing windows and front entrance door and erection of single storey rear outbuilding as shown on drawing numbers:- P-18.064: A-01; A-02; A-03; A-04; A-05; A-06; A-07; A-08; A-09; A-10; A-11; A-12. B-01
Design and Access Statement dated 28th January 2019 by Projection Architects; Daylight and Sunlight Assessment dated 22 February 2019 by Anderson Wilde and Harris; Arboricultural Report, Tree Constraints Plan & Arboricultural Impact Assessment dated 6th July 2018 by Crawshaw Arborcate Ltd |
| 2.3 | "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 |
| 2.4 | "Occupation Date" | the date when any part of the Development is occupied and the phrases "Occupy", "Occupied" and "Occupation" shall be construed accordingly |
| 2.5 | "the Parties" | mean the Council and the Owner |

- 2.6 "the Planning Application" a planning application in respect of the development of the Property submitted to the Council and validated on 4 February 2019 for which a resolution to grant permission has been passed conditionally under reference number 2019/0658/P subject to conclusion of this Agreement
- 2.7 "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
- 2.8 "the Planning Permission" a planning permission granted for the Development substantially in the draft form annexed hereto
- 2.9 "the Property" the land known as 78 Malden Road, London NW5 4DA the same as shown shaded grey on the plan annexed hereto
- 2.10 "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
- 2.11 "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

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 is also made in pursuance of Section 16 of the Greater London Council (General Powers) Act 1974 Section 111 of the Local Government Act 1972; and Section 1(1) of the Localism Act 2011 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 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, 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 Owner upon the Implementation Date.
- 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.
- 3.8 The Parties acknowledge that the Development shall be treated as being permanently designated as "car free" housing in accordance with Clause 4.1 for all relevant purposes.

4. **OBLIGATIONS OF THE OWNER**

The Owner hereby covenants with the Council as follows:-

4.1 CAR FREE

4.1.1 To ensure that prior to occupying any residential unit (being part of the Development) each new occupier 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:

- (i) be granted a Residents Parking Permit to park a vehicle in a Residents Parking Bay; and
- (ii) buy a contract to park within any car park owned, controlled or licensed by the Council.

4.1.2 Not to Occupy or use (or permit the Occupation or use of) any residential unit (being part of the Development) at any time during which the occupier of the residential unit holds a Residents Parking Permit to park a vehicle in a Residents Parking Bay or is permitted to park a vehicle in any car park owned, controlled or licensed by the Council unless the occupier is the holder of a disabled persons badge issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970).

4.1.3 The Owner for itself and its successors in title to the Property hereby acknowledges that the provisions in Clauses 4.1.1 and 4.1.2 in this Agreement shall continue to have effect in perpetuity.

4.1.4 On or prior to the Occupation Date the Owner shall inform the Council's Planning Obligations Monitoring Officer of the official unit numbers of the residential units forming part of the Development (as issued and agreed by the Council's Street Name and Numbering Department), identifying those residential units that in the Owner's opinion are affected by the Owner's obligation in Clause 4.1.1 and 4.1.2 of this Agreement.

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 seven 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 2019/0658/P the date upon which the Development will be 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 If satisfied as to the compliance of the Owner 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 Borough Solicitor a formal written certification of compliance, partial compliance or ongoing compliance (as and if appropriate) with the provisions of any such obligation.

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 and sent to planning obligations on PlanningObligations@camden.gov.uk quoting the planning reference number 2019/0658/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 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 the Land Registry to register this Agreement in the Charges Register of the title to the Property and will furnish the Council forthwith 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 Neither the Owner 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.

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

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 Owner has executed this instrument as their Deed the day and year first before written

EXECUTED AS A DEED BY
MISUMA LIMITED
in the presence of:-/
acting by a Director and its Secretary
or by two Directors

.....
Director

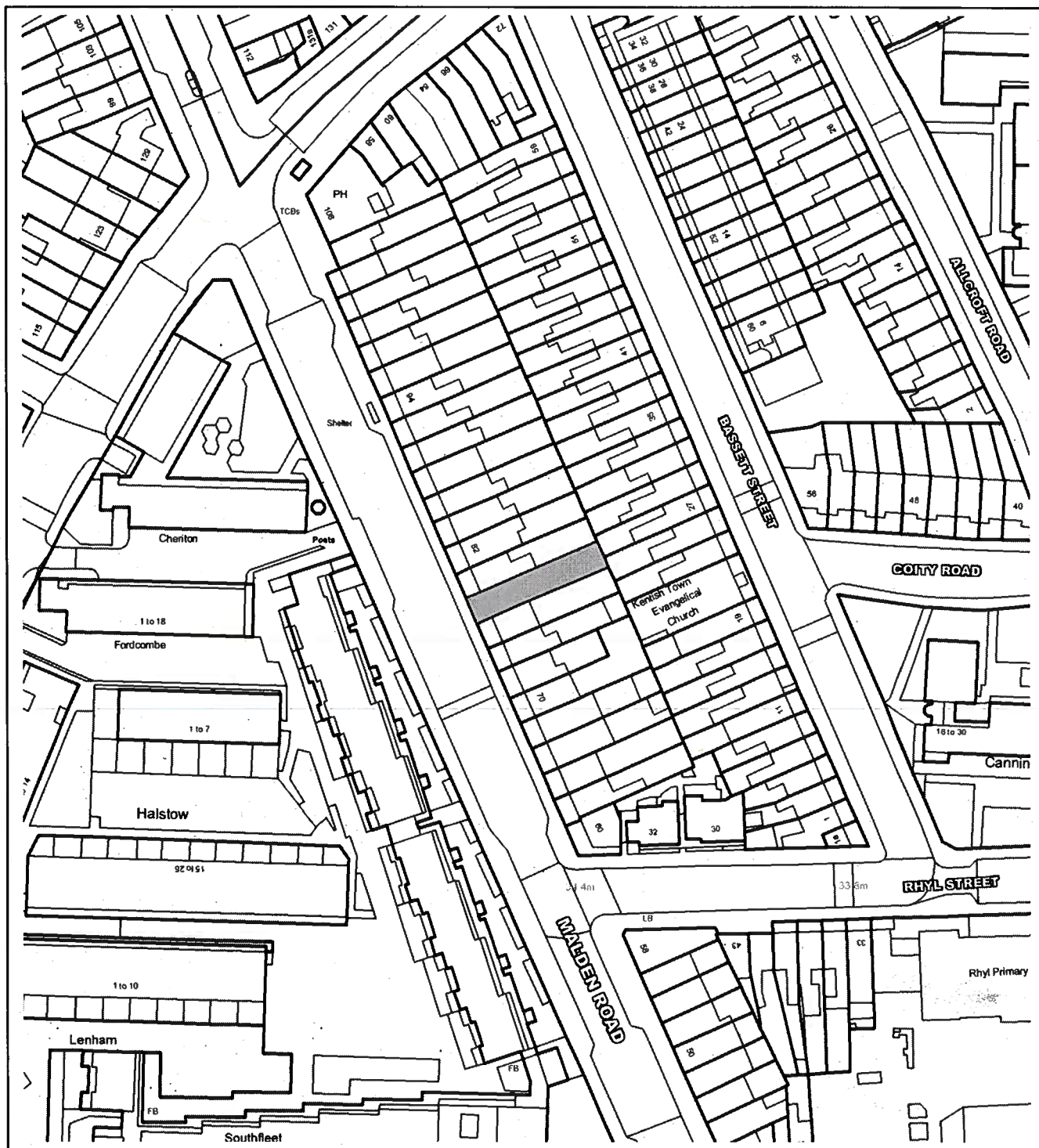
.....
Director/Secretary

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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Projection Architects Ltd
Flat 7
30 Gloucester Crescent
London
NW1 7DL

Application Ref: **2019/0658/P**

11 June 2019

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:
**78 Malden Road
London
NW5 4DA**

DECISION
Proposal:

Conversion of existing two-flat building into 1x 2bedroom flat; 1x 1bedroom flat and 1x 3bedroom flat; erection of single storey rear extension at ground floor level; formation of amenity terrace at upper ground floor level; alterations and replacements to existing windows and front entrance door and erection of single storey rear outbuilding

Drawing Nos: P-18.064: A-01; A-02; A-03; A-04; A-05; A-06; A-07; A-08; A-09; A-10; A-11; A-12. B-01. Design and Access Statement dated 28th January 2019 by Projection Architects; Daylight and Sunlight Assessment dated 22 February 2019 by Anderson Wilde and Harris; Arboricultural Report, Tree Constraints Plan & Arboricultural Impact Assessment dated 6th July 2018 by Crawshaw Arborcate Ltd.

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 policy D1 and D2 of the London Borough of Camden Local Plan 2017.

- 3 The development hereby permitted shall be carried out in accordance with the following approved plans: P-18.064: A-01; A-02; A-03; A-04; A-05; A-06; A-07; A-08; A-09; A-10; A-11; A-12. B-01; Design and Access Statement dated 28th January 2019 by Projection Architects; Daylight and Sunlight Assessment dated 22 February 2019 by Anderson Wilde and Harris; Arboricultural Report, Tree Constraints Plan & Arboricultural Impact Assessment dated 6th July 2018 by Crawshaw Arborcate Ltd.

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

- 4 The development hereby approved shall achieve a maximum internal water use of 110litres/person/day. The dwelling/s shall not be occupied until the Building Regulation optional requirement has been complied with.

Reason: To ensure the development contributes to minimising the need for further water infrastructure in an area of water stress in accordance with Policies CC1, CC2, CC3 of the London Borough of Camden Local Plan 2017.

- 5 Before the relevant part of the work is begun, detailed drawings, or samples of materials as appropriate, in respect of the following, shall be submitted to and approved in writing by the local planning authority:

Details including sections at 1:10 of all replacement windows and the replacement front door

The relevant part of the works shall be carried out in accordance with the details thus approved and all approved samples shall be retained on site during the course of the works.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy D1 and D2 of the London Borough of Camden Local Plan 2017.

- 6 Before the development commences, details of the location, design and method of waste storage and removal including recycled materials, shall be submitted to and approved by the local planning authority in writing. The facility as approved shall be provided prior to the first occupation of any of the new units and permanently retained thereafter.

Reason: To ensure that sufficient provision for the storage and collection of waste has been made in accordance with the requirements of policy CC5 and A1 of the London Borough of Camden Local Plan 2017.

- 7 Prior to first occupation, the following bicycle parking shall be provided:

- secure and covered parking for at least 5 resident's bicycles

All such facilities shall thereafter be retained and accessible in perpetuity.

Reason: To ensure that the scheme makes adequate provision for cycle users in accordance with Camden Local Plan policies T1 and T2, the London Plan and CPG Transport.

- 8 Prior to commencement of development, full details in respect of the living roof in the area indicated on the approved roof plan shall be submitted to and approved by the local planning authority. The details shall include
- a detailed scheme of maintenance
 - sections at a scale of 1:20 with manufacturers details demonstrating the construction and materials used [for large areas of green roof add in : and showing a variation of substrate depth with peaks and troughs]
 - full details of planting species and density

The living roofs shall be fully provided in accordance with the approved details prior to first occupation and thereafter retained and maintained in accordance with the approved scheme.

Reason: In order to ensure the development undertakes reasonable measures to take account of biodiversity and the water environment in accordance with policies G1, CC1, CC2, CC3, D1, D2 and A3 of the London Borough of Camden Local Plan 2017.

- 9 Prior to the commencement of any works on site, details demonstrating how trees to be retained shall be protected during construction work shall be submitted to and approved by the local planning authority in writing. Such details shall follow guidelines and standards set out in BS5837:2012 "Trees in Relation to Construction". All trees on the site, or parts of trees growing from adjoining sites, unless shown on the permitted drawings as being removed, shall be retained and protected from damage in accordance with the approved protection details.

Reason: To ensure that the development will not have an adverse effect on existing trees and in order to maintain the character and amenity of the area in accordance with the requirements of policies A2 and A3 of the London Borough of Camden Local Plan 2017.

Informative(s):

1 Reasons for granting permission:

The proposal seeks to convert the existing two-flat building into a three-flat building, consisting of 1x 1 bedroom flat; 1x 2 bedroom flat and 1x 3 bedroom flat. The proposed conversion is considered acceptable in policy terms as it assists the Council to maximise the supply of additional homes in the borough and would result new units. The proposed dwelling mix consists of majority high priority market housing (2 and 3 bed) and complies with policy H7 of the Camden Local Plan.

The proposed 2 bedroom flat (lower ground floor level), 1 bedroom flat (upper ground floor level) and 3 bedroom flat (first and second floor level) would have a GIA of 61.4sqm, 40sqm and 106.5sqm respectively. These proposed internal floor areas comply with the national technical space standards for dwellings. The proposed bedroom sizes also comply with guidance. Overall, the converted dwellings are considered to have an acceptable layout with access to light, natural ventilation and outlook with the units being dual aspect.

All new build or converted dwellings are required to achieve 100L per person, per day (including 5 litres for external water usage). This is secured by condition.

At lower ground floor level, the proposed single storey rear infill extension is subordinate to the host building in terms of its scale and location at the rear of the building. It would infill a portion of rear garden space and not encroach further than the existing depth of the building. The proposed extension would be constructed from stock brick (to match the existing building) and timber bi-folding doors.

At upper ground floor level, the roof of the proposed rear extension would be formed as an amenity terrace with metal railings that are considered appropriate in appearance. Other works in association with the upper ground floor amenity terrace include the alteration of the rear upper ground floor window to form access doors. These alterations are considered acceptable in this instance as there is no uniformity of the appearance along the rear elevation of the terrace of buildings of which the application building forms a part of. There are examples of altered windows and terraces at upper ground and first floor levels in the prevailing pattern of development.

The rear staircase from upper ground floor level into the rear garden would be removed which is welcomed. The existing rear door and porch would also be removed and bricked up with new windows installed as well as alterations to the window opening at lower ground floor level. These alterations are considered appropriate and would not harm the character of the building or the wider terrace.

The remaining rear windows that would not be altered, would be replaced as would the front windows and the front door. These alterations are considered appropriate. A condition is attached to secure further details of the replacement windows. This is to ensure the character and appearance of the application building and wider conservation area is maintained.

The proposed outbuilding is subordinate in its scale and location at the foot of the rear garden. It would be constructed of timber cladding and feature a similar detailed design to that of the existing outbuilding. Its orientation and position in the garden would result in a better use and layout of the rear garden.

- 2 The proposed conversion of the building into 3x flats would not impact upon the amenity of adjoining residential occupiers. The erection of the proposed extension and rear outbuilding are further considered to not adversely harm the amenity of adjoining residential occupiers by reason of the modest scale and location at lower ground floor level, and at the rear of the garden in the case of the proposed outbuilding.

The proposed rear extension is less than 100sqm and in conjunction with a residential conversion where the existing is already in residential use. Therefore, an affordable housing contribution is not required in this instance.

The site falls within the West Kentish Town Controlled Parking Zone (CPZ) and as per the requirements of policy T2 of the Camden Local Plan, this decision is subject to a car-free legal agreement to ensure that future occupants of the development are aware that they are not entitled to on-street parking permits. Policy T2 seeks to ensure car-free developments across the borough.

5x cycle spaces are provided in accordance with policy T1 of the Camden Local Plan and CPG Transport. These are secured by planning condition.

A condition is attached to secure details of refuse and recycling for the proposed dwellings. This is to ensure that there is a sufficient provision of waste storage.

The scheme was assessed by the Council's Tree and Landscaping Officer who raised no objection to the scheme subject to a condition requesting further details on tree protection during the implementation of the development.

One objection was received prior to making this decision. The application site's planning history and relevant appeal decisions were taken into account when coming to this decision.

Special attention has been paid to the desirability of preserving and enhancing the character and appearance of the conservation area under s.72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Enterprise and Regulatory Reform Act (ERR) 2013.

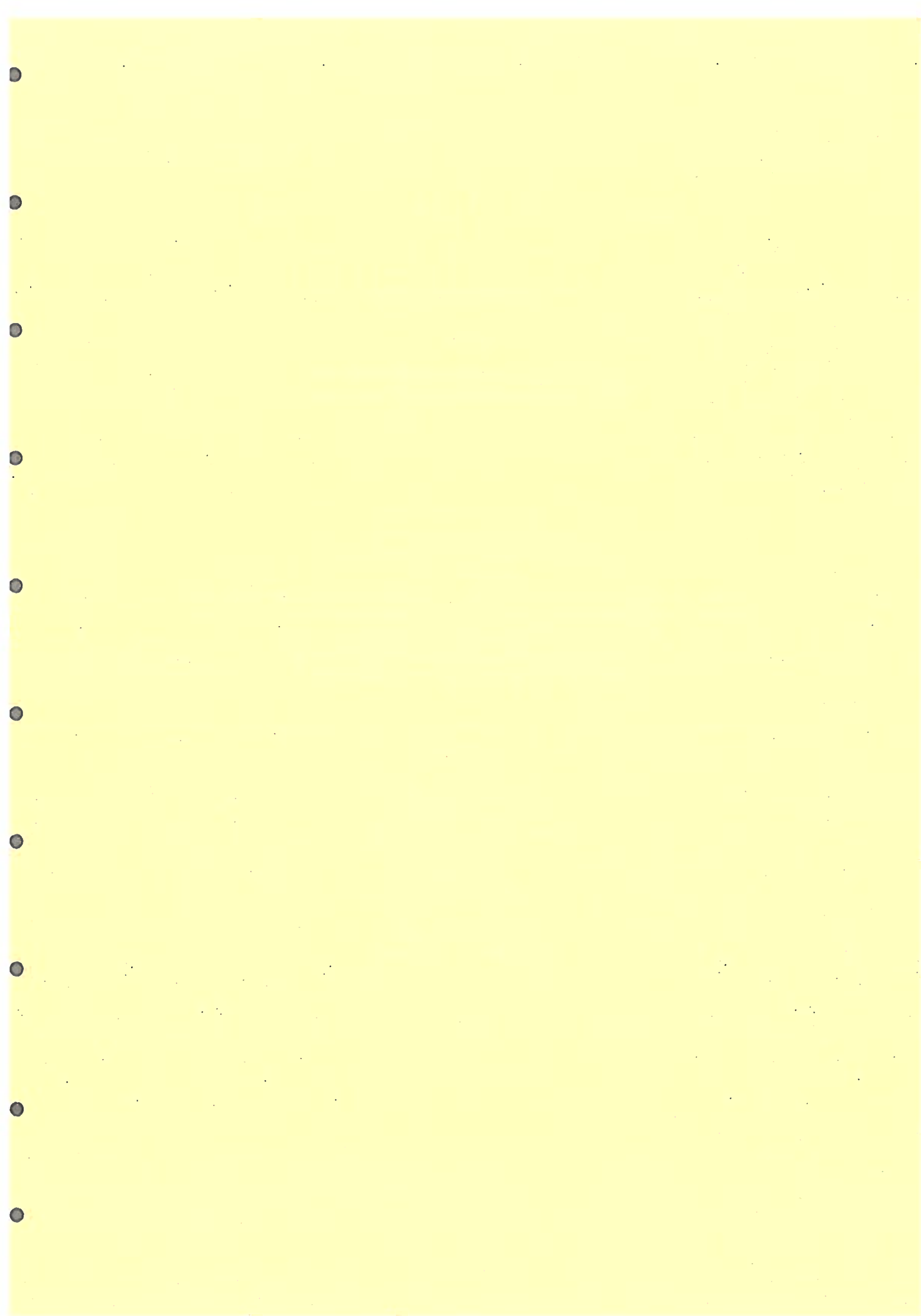
Therefore, the proposed development is in general accordance with H3, H7, A1, A3, D1, D2, T1 and T2 of the London Borough of Camden Local Plan 2017. The proposed development is also in accordance with the London Plan 2016 and the National Planning Policy Framework 2019.

- 3 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).
- 4 Noise from demolition and construction works is subject to control under the Control of Pollution Act 1974. You must carry out any building works that can be heard at the boundary of the site only between 08.00 and 18.00 hours Monday to Friday and 08.00 to 13.00 on Saturday and not at all on Sundays and Public Holidays. You are advised to consult the Council's Noise and Licensing Enforcement Team, Camden Town Hall, Judd St, Kings Cross, London NW1 2QS (Tel. No. 020 7974 4444 or search for 'environmental health' on the Camden website or seek prior approval under Section 61 of the Act if you anticipate any difficulty in carrying out construction other than within the hours stated above.
- 5 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

Supporting Communities Directorate



DATED

5 July

2019

(1) MISUMA LIMITED

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

78 Malden Road, London NW5 4DA

pursuant to

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

Section 16 of the Greater London Council (General Powers) Act 1974;

Section 111 of the Local Government Act 1972;

Section 1(1) of the Localism Act 2011; and

Section 278 of the Highways Act 1980

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