

DATED

29 March

2021

(1) DERBY RACING INVESTMENT LIMITED

and

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

AGREEMENT

relating to land known as

**34 MAPLE STREET, LONDON W1T 6HD 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; and
Section 1(1) of the Localism Act 2011**

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

Tel: 020 7974 5680
CLS/COM/HM/1800.1848
FINAL s.106

THIS AGREEMENT is made the 29 day of March 2021

BETWEEN:

- A. **DERBY RACING INVESTMENT LIMITED** (Co. Regn. No. 11455356) whose registered office is at 19 11 Commercial Street, London E1 6LW (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 292914.
- 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 12 October 2020 and the Council resolved to grant permission conditionally under reference number 2020/4697/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:-

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"	<p>change of use of the basement ancillary retail (Class E(a)) and first floor office (Class E(g)(i)) to residential use (Class C3) and minor alterations to the front and rear facade of the property, opening up of front lightwell including installation of railings as shown on drawing numbers:- Drawings:</p> <p>20190106-PL01 Rev R00, 20190106-PL02 Rev R00, 20190106-PL03 Rev R01, 20190106-PL04 Rev R00, 20190106-PL05 Rev R00, 20190106-PL06 Rev R00, 20190106-PL07 Rev R00, 20190106-PL08 Rev R00, 20190106-PL09 Rev R00, 20190106-PL10 Rev R00, 20190106-PL11 R00, 20190106-PL12 R00</p> <p>Supporting documents:</p> <ul style="list-style-type: none"> - Planning Statement; prepared by DP9 Ltd; - Marketing Report, prepared by Panda Residential; - Agent Report, prepared by LDG; - Marketing Letter, prepared by Hudsons; - Internal Lighting Report, prepared by R. W. Staig
2.4	"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
2.5	"Occupation Date"	the date when any part of the Development is occupied and the phrases "Occupy", "Occupied" and "Occupation" shall be construed accordingly
2.6	"the Parties"	mean the Council and the Owner
2.7	"the Planning"	a planning application in respect of the development of the

	Application"	Property submitted to the Council and validated on 12 October 2020 for which a resolution to grant permission has been passed conditionally under reference number 2020/4697/P subject to conclusion of this Agreement
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 34 Maple Street, London W1T 6HD the same as shown shaded grey 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

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 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 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 4.1.1 and 4.1.2 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 provision in Clause 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 2020/4697/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.

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 2020/4697/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 have executed this instrument as their Deed the day and year first before written

**CONTINUATION OF SECTION 106 AGREEMENT IN RELATION TO
34 MAPLE STREET, LONDON W1T 6HD**

THE COMMON SEAL OF/)
EXECUTED AS A DEED BY)
DERBY RACING INVESTMENT LIMITED)
was hereunto affixed)
in the presence of:-)
acting by a Director and its Secretary)
or by two Directors)

.....
Director

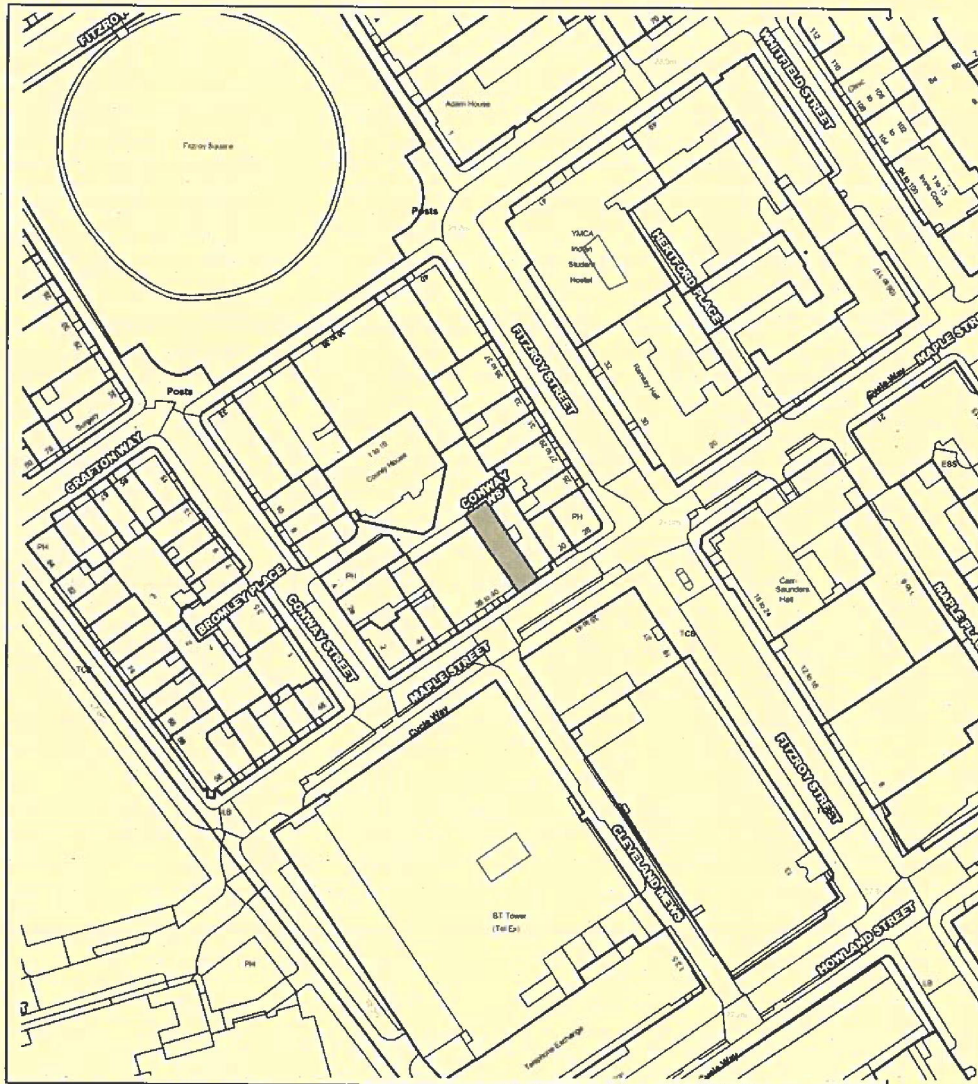
.....
Director/Secretary

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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Application ref: 2020/4697/P
Contact:
Tel: 020 7974
Date: 22 March 2021

DP9 Ltd
100 Pall Mall
London
SW1Y 5NQ



Development Management
Regeneration and Planning
London Borough of Camden
Town Hall
Judd Street
London
WC1H 9JE

Phone: 020 7974 4444

planning@camden.gov.uk
www.camden.gov.uk/planning

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:
34 Maple Street
London
W1T 6HD

Proposal:

Change of use of the basement ancillary retail (Class E(a)) and first floor office (Class E(g)(i)) to residential use (Class C3) and minor alterations to the front and rear facade of the property, opening up of front lightwell including installation of railings.

Drawing Nos: Drawings:

20190106-PL01 Rev R00, 20190106-PL02 Rev R00, 20190106-PL03 Rev R01, 20190106-PL04 Rev R00, 20190106-PL05 Rev R00, 20190106-PL06 Rev R00, 20190106-PL07 Rev R00, 20190106-PL08 Rev R00, 20190106-PL09 Rev R00, 20190106-PL10 Rev R00, 20190106-PL11 R00, 20190106-PL12 R00,

Supporting documents:

- Planning Statement; prepared by DP9 Ltd;
- Marketing Report, prepared by Panda Residential;
- Agent Report, prepared by LDG;
- Marketing Letter, prepared by Hudsons;
- Internal Lighting Report, prepared by R. W. Staig

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:

20190106-PL01 Rev R00, 20190106-PL02 Rev R00, 20190106-PL03 Rev R01, 20190106-PL04 Rev R00, 20190106-PL05 Rev R00, 20190106-PL06 Rev R00, 20190106-PL07 Rev R00, 20190106-PL08 Rev R00, 20190106-PL09 Rev R00, 20190106-PL10 Rev R00, 20190106-PL11 R00, 20190106-PL12 R00.

Supporting documents:

- Planning Statement; prepared by DP9 Ltd;
- Marketing Report, prepared by Panda Residential;
- Agent Report, prepared by LDG;
- Marketing Letter, prepared by Hudsons;
- Internal Lighting Report, prepared by R. W. Staig

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

- 4 Cycle parking:

The cycle stores shall be fully provided in accordance with the ground floor plan hereby approved (20190106-PL03 Rev R00) prior to first occupation and thereafter retained and maintained in accordance with the approved scheme.

Reason: To ensure the development provides adequate cycle parking facilities in accordance with the requirements of policy T1 of the London Borough of Camden Local Plan 2017.

- 5 Prior relevant part of work begun, details shall be submitted to and approved in writing by the Council, of the sound insulation of the floor/ ceiling/ walls separating the commercial part(s) of the premises from noise sensitive premises in residential use. Details shall demonstrate that the sound insulation value $D_{nT,w}$ and $L_{nT,w}$ is enhanced by at least 10dB above the Building Regulations value and, where necessary, additional mitigation measures are implemented to contain commercial noise within the commercial premises and to achieve the criteria of BS8233:2014 within the dwellings/ noise sensitive premises.

The details as approved shall be implemented prior to occupation of the development and thereafter be permanently retained.

Reason: To safeguard the amenities of the future occupiers in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017

Informative(s):

- 1 Reasons for granting permission.

An application for change of use from 1st floor office to 1-bed flat refused in July 2019 under 2019/1699/P, on the basis of the unjustified loss of business space and substandard size of accommodation, and no planning obligation for car-free development secured via section 106 legal agreement (plus car-free s106 requirement). There was no marketing was provided for this application.

The current proposal would retain the existing retail space at ground floor level, and convert the lower ground level from ancillary retail space and first floor level from office space, into two self-contained flats.

A marketing letter reports an unsuccessful period of marketing from April 2010 to May 2011 and indicates that the condition of the property discouraged interest, and notes that the property was sold to the current owners in October 2018. However the premises is in a reasonable condition and would not require significant investment for it to operate. The basement, ground and first floor have has been marketed for 15 months (Dec 2018 to March 2020). The property has been vacant for over 3 years, which justifies marketing for under 2 years (CPG Town Centres). The basement and ground floor have been vacant since 2008.

The office and retail premises have been marketed together. Policy E2 seeks to protect office employment space and the office and retail units should have preferably be marketed separately. However, in this instance the marketing report is considered acceptable given that interested parties could still make enquires about each self-contained unit. In addition, the rental price is considered competitive in comparison to average office rental prices in the area. On balance, it is considered that the loss of the 1st floor office space is justified given the period of vacancy and relatively small size of the unit (35sqm), in line with the

requirements of policy E2.

In relation to the retail unit at basement and ground floor levels, it is noted that the site is not part of a protected retail frontage; however, it is a shop outside a centre and therefore policy TC3 applies. Following the proposed conversion of the lower ground floor from ancillary retail space to residential, the remaining retail sales space at ground floor level would amount to under 14 sqm, with a total of 21.5 sqm including the utility room. It is acknowledged that the remaining floor area of retail would be smaller than existing; however, there is no reason to suggest that this would jeopardise future commercial viability of the remaining retail space at ground floor. Furthermore, residential is a priority use in Camden, and therefore, the loss of the basement ancillary retail storage space in order to be converted into residential is acceptable in land use terms.

In terms of housing mix, the proposal includes a 1 bedroom flat at basement level and a studio self-contained flat at 1st floor level. It is noted that in line with policy H7, the proposed housing mix is of low priority for market sales; however, given the constraints of the site and the retention of retail space, this is considered acceptable in this instance. The overall uplift in residential floorspace would be below 100 sqm and therefore an affordable housing contribution would not be required.

The proposed basement flat would have 53.87 sqm, which exceeds the national minimum space standard of 50.00 sqm. This would be served by a front and rear lightwell which would be opened up, using the existing basement walls as support.

2

The flat would be dual aspect to allow for natural ventilation. In relation to the internal levels of daylight and sunlight, an internal Lighting Report confirms that the living / kitchen / dinner room (LKD) at basement level would achieve an average daylight factor in excess of 1.5% ADF. It is noted that 2% is recommended for kitchens and 1.5% for living rooms as per BRE guidance. The bedroom would meet the 1% ADF requirement. The 1.5% ADF for the LKD is considered acceptable on balance in this instance given the location of the flat at basement level, the existing site constraints, and the floor area of the flat above minimum standards. Overall, both new flats would have an acceptable quality of outlook, natural ventilation and standard of accommodation for future occupants.

In terms of external alterations, the proposed front lightwell would have traditional metal railings which are part of the established character of the street and therefore this would be acceptable. The alterations to fenestration to both front and rear elevations are considered minor and overall the works would preserve the character and appearance of the conservation area.

The proposal is considered to preserve the character and appearance of the conservation area. Special attention has been paid to the desirability of preserving or enhancing the character or 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 2013.

The proposal, due to its nature, modest scale and detailed design, would not give rise to adverse impacts on neighbouring residential amenity in terms of loss of light, outlook or

privacy.

In terms of cycling provision, in line with policy T1, the submitted plans indicate that 2 cycle spaces will be provided within the rear ground floor courtyard and a further space could be accommodated within an existing external store. Whilst this would not be accessible to the basement unit, it is considered that given the constraints of the building this arrangement is acceptable. The provision of the cycle storage would be secured by Condition.

In line with Policy T2, both of the new residential units would be car free, with rights to parking permits removed via planning obligation. As the proposed development involves only a small amount of construction work, with no excavation, only the removal of the ground level to create light wells for the basement, and alterations to the internal fabric of the building, it is considered that a Construction Management Plan is unnecessary in this instance. It is similarly considered that a structural Approval in Principle and highways contribution are not necessary in respect of this application.

No objections have been received from residents prior to making this decision. 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, D1, E1, E2, A1, TC3, T1, T2 and D2 of the London Borough of Camden Local Plan 2017 and Principles 4 and 5 of the Fitzrovia Area Action Plan. The proposed development also accords with the London Plan 2020 and the National Planning Policy Framework 2019.

- 3 This proposal may be liable for the Mayor of London's Community Infrastructure Levy (CIL) and the Camden CIL. Both CILs are collected by Camden Council after a liable scheme has started, and could be subject to surcharges for failure to assume liability or submit a commencement notice PRIOR to commencement. We issue formal CIL liability notices setting out how much you may have to pay once a liable party has been established. CIL payments will be subject to indexation in line with construction costs index. You can visit our planning website at www.camden.gov.uk/cil for more information, including guidance on your liability, charges, how to pay and who to contact for more advice.
- 4 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).
- 5 This approval does not authorise the use of the public highway. Any requirement to use the public highway, such as for hoardings, temporary road closures and suspension of parking bays, will be subject to approval of relevant licence from the Council's Streetworks Authorisations & Compliance Team London Borough of Camden 5 Pancras Square c/o Town Hall, Judd Street London WC1H 9JE (Tel. No 020 7974 4444) . Licences and authorisations need to be sought in advance of proposed works. Where development is subject to a Construction Management Plan (through a requirement in a S106 agreement), no licence or authorisation will be granted until the Construction Management Plan is approved by the Council.

- 6 All works should be conducted in accordance with the Camden Minimum Requirements - a copy is available on the Council's website at <https://beta.camden.gov.uk/documents/20142/1269042/Camden+Minimum+Requirements+%281%29.pdf/bb2cd0a2-88b1-aa6d-61f9-525ca0f71319> or contact the Council's Noise and Licensing Enforcement Team, 5 Pancras Square c/o Town Hall, Judd Street London WC1H 9JE (Tel. No. 020 7974 4444)

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 must secure the approval of the Council's Noise and Licensing Enforcement Team prior to undertaking such activities outside these hours.

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

29 March

2021

(1) DERBY RACING INVESTMENT LIMITED

and

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

AGREEMENT

relating to land known as

**34 MAPLE STREET, LONDON W1T 6HD 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; and
Section 1(1) of the Localism Act 2011**