

**SHADOW S106 AGREEMENT
TO BE READ IN CONJUNCTION WITH
PLANNING PERMISSION REFERENCED 2020/4107/P DATED XXXXX 2021]**

DATED

2021

(1) OWNER

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

**2 SOMALI ROAD, KILBURN LONDON NW2 3RL 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/1800.1796
FINAL SHADOW s.106 AGREEMENT

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"	conversion of 1 x 5 bed dwellinghouse into 2 flats and replacement of front, side and rear single glazed timber framed windows with double glazed timber framed windows. as shown on drawing numbers:- 17/173-04; 17/173-05B; 17/173-06; 17/173-07A.
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 Application"	a planning application in respect of the development of the Property submitted to the Council and validated on 10 September 2020 for which a resolution to grant permission has been passed conditionally under reference number 2020/4107/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 2 Somali Road London NW2 3RL 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 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 4.1.1 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 2020/4107/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 2020/4107/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

**THE COMMON SEAL OF/)
EXECUTED AS A DEED BY)
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:-)**

.....

NORTHGATE SE GIS Print Template



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Application ref: 2020/4107/P

Contact:

Tel: 020 7974

Date: 27 May 2021

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

Whymark & Moulton Chartered Surveyors
14 Cornard Road
Sudbury
Suffolk
CO10 2XA

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:

2 Somali Road
London
NW2 3RL

Proposal:

Conversion of 1 x 5 bed dwellinghouse into 2 flats and replacement of front, side and rear single glazed timber framed windows with double glazed timber framed windows.

Drawing Nos: 17/173-04; 17/173-05B; 17/173-06; 17/173-07A.

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 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: 17/173-04; 17/173-05B; 17/173-06; 17/173-07A.

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

- 4 The development shall be constructed with an enhanced sound insulation value $D_{nT,w}$ and $L_{nT,w}$ of at least 5dB above the Building Regulations value, for the floor/ceiling structures separating the kitchen/diner of the ground floor flat from the rear bedroom of the flat above, and the kitchen/bathroom of the first floor flat from the bedroom of the flat below.

The sound insulation measures shall be installed prior to first residential occupation of the flats and shall be permanently retained thereafter.

Reason: To ensure that the amenity of occupiers of the development is not adversely affected by noise from elsewhere within the development, in accordance with policies A1 and A4 of the London Borough of Camden Local Plan 2017.

- 5 Cycle facilities details as shown on drawing number 17/173-07A, shall be provided in its entirety prior to the first occupation of any of the new units, and permanently retained thereafter.

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.

- 6 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.

7 ** Car free

Both proposed units will be car free.

Reason: In order to protect the pedestrian environment and the amenities of the area generally and to ensure the continued free flow of traffic in the area in accordance with policy T2 of the London Borough of Camden Local Plan 2017.

Informative(s):

1 Reasons for granting permission.

Policy H1 aims to maximise Camden's capacity for housing. The proposed conversion would result in the net increase of 1 unit, with the provision of a 2 bedroom flat at ground floor level and a 3 bedroom flat at first floor level, in place of the existing 5 bedroom dwellinghouse. Policy H7 identifies 2 and 3 bedroom market housing units as high priority. The proposed development would therefore contribute to meeting the priorities set out in policy H7 and maximising the supply of additional homes in the borough and is considered acceptable in principle.

The self-contained flats would have gross internal areas (GIA) which exceed the national minimum requirements as set out by the Technical Housing Standards 2015. Both flats would be triple aspect and would have direct natural light, ventilation and good outlook. The rear garden would be subdivided so that both units would have access to private outdoor amenity space. The proposed layout would provide a good standard of accommodation, with adequate room sizes. To the rear of the building, the kitchen/diner of the ground floor flat would be below a bedroom of the flat above, and the kitchen and part of the bathroom of the first floor flat would be above a bedroom of the flat below. In order to limit harmful noise transmission to these bedrooms, a condition would be added to secure enhanced sound insulation between the flats.

In terms of transport, the proposed development would be car-free to ensure no additional parking congestion occurs in the area. This would usually be secured by way of a section 106 legal agreement; however, in this case the Council is the applicant and as a matter of law, the Council cannot enter into a section 106 agreement with itself. As such, the requirement for both units to be car-free will instead be referenced as a condition and included as an obligation within a shadow section 106 agreement. The proposal has been revised to incorporate a secure and enclosed cycle store with space to accommodate 2 cycles, within the rear garden of each property. This satisfies the requirement of policy T1 for the provision of 4 cycle parking spaces. The timber design of the cycle stores is considered to be appropriate for the garden setting, and the provision of these stores will be secured via a compliance condition.

The proposed replacement of the existing front, side and rear single-glazed timber sash and casement windows with double-glazed timber framed replacements of the same style is considered acceptable.

As all replacement frames would sit in existing openings, there would be no additional

amenity impact to neighbouring residents arising from the development.

No objections were received prior to making this decision. The planning history of the site and surrounding area were taken into account when coming to this decision.

As such, the proposed development is in general accordance with policies A1, A4, D1, H1, H6, H7, CC1, CC2, CC3, T1 and T2 of Camden Local Plan 2017 and policies 1, 2 and 8 of the Fortune Green and West Hampstead Neighbourhood Plan 2015. The proposed development also accords with the policies of the London Plan 2016, the Publication London Plan 2020 and National Planning Policy Framework 2019.

- 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 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.
- 4 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.

- 5 Conditions marked with **

The matters covered by conditions marked with an ** are matters which would usually be incorporated into a Section 106 Agreement. On Council own schemes because the Council cannot enter into an agreement with itself the usual practice would for the permission to reference the Section 106 requirements for information.

If the Council retains ownership of the application site although the reference to Section 106

requirements would not be legally binding they would act as a record of the requirements the Council as planning authority expects the Council as landowner to comply with. If the Council disposes of a relevant interest in the Application Site (which for the avoidance of doubt will not include disposals to individual tenants and occupiers) the incoming owner will be required to enter into a Section 106 giving effect to those requirements which will then become a legally binding document.

- 6 If a revision to the postal address becomes necessary as a result of this development, application under Part 2 of the London Building Acts (Amendment) Act 1939 should be made to the Camden Contact Centre on Tel: 020 7974 4444 or Environment Department (Street Naming & Numbering) Camden Town Hall, Argyle Street, WC1H 8EQ.
- 7 Under Section 25 of the GLC (General Powers) Act 1983, the residential accommodation approved is not permitted for use as holiday lettings or any other form of temporary sleeping accommodation defined as being occupied by the same person(s) for a consecutive period of 90 nights or less. If any such use is intended, then a new planning application will be required which may not be approved.
- 8 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.

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