

DATED

26 January

2021/2

(1) OPTIVO

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

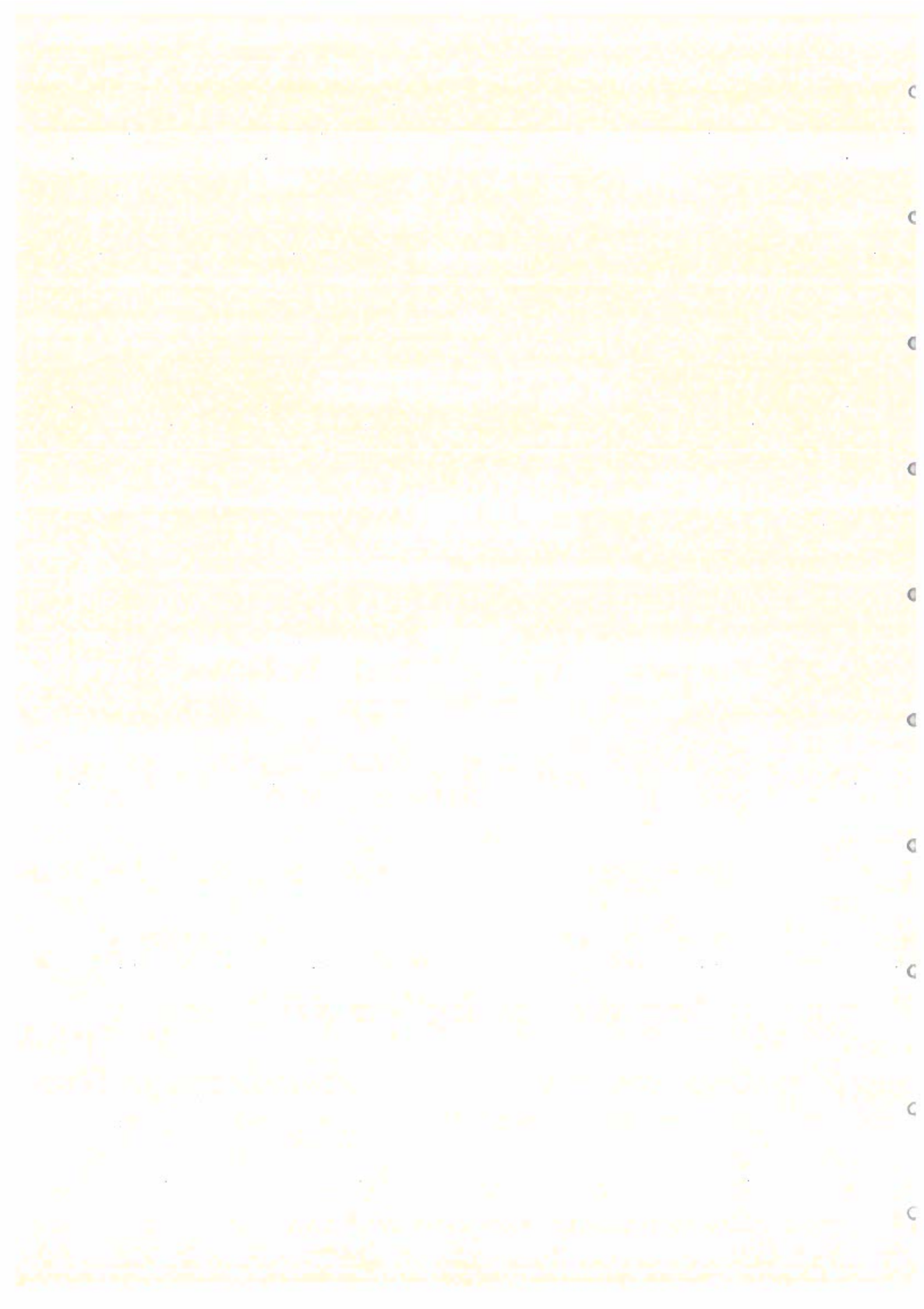
6-8 KEMPLAY ROAD, LONDON NW3 1SY

pursuant to
**Section 106 of the Town and Country Planning Act 1990 (as amended);
Section 278 of the Highways Act 1980
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 1478

G:\case files\culture & env\s106 Agreements\6-8 Kemplay Road (AH, CF, BH, ST, TMOC)
CLS/COM/PM/1800.1888
S106 Agreement FINAL



THIS AGREEMENT is made the 26th day of January 2022

B E T W E E N:

- A. **OPTIVO** (Community Benefit Society No. 7561) of Grosvenor House, 125 High Street, Croydon CR0 9XP (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 Numbers 123345 and 126375.
- 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 24th June 2020 and the Council resolved to grant permission conditionally under reference number 2020/2104/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 Highway Authority for the purposes of s278 of the Highways Act 1980 and 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 The Council is satisfied that the Highway Works to be undertaken pursuant to this Agreement are of benefit to the public.

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	"Affordable Housing"	low-cost housing including Social-Affordable Rented Housing and Intermediate Housing that meets the needs of people who cannot afford to occupy homes available in the open market in accordance with the National Planning Policy Framework and successor documents
2.3	"Affordable Housing Units"	the 8 (eight) Intermediate Housing Units and 2 (two) Social-Affordable Rented Housing Units within the Development to be constructed fitted out and occupied exclusively as Affordable Housing
2.4	"the Agreement"	this Planning Obligation made pursuant to Section 106 of the Act
2.5	"Approved Strategic Partner List"	means a list approved periodically by the Council and published on the Council's website comprising Registered Providers that provide and manage Affordable Housing within the London Borough of Camden in accordance with the Council's objectives for Affordable Housing
2.6	"Bicycle Hangar Contribution"	the sum of £7,696 to be paid by the Owner to the Council in accordance with the terms of this Agreement to be applied by the Council in connection with the provision, installation maintenance and upkeep costs for 12 on-street long term cycle parking with bicycle hangar in the vicinity of the Property
2.7	"Charge"	means a mortgage, charge or other security or loan documentation granting a security interest in the Affordable

		Housing Units (or any number of them) in favour of the Chargee;
2.8	"Chargee"	means any mortgagee or chargee of the Registered Provider of the Affordable Housing Units (or any number of them) and any receiver (including an administrative receiver) and manager appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator;
2.9	"Date of Deemed Service"	means, in each instance where a Chargee has served a Default Notice under Clause 6.9(i): (a) in the case of service by delivery by hand of the Default Notice to the Council's offices at 5 Pancras Square, London N1C 4AG during 9:30am to 4pm Monday to Friday, the date on which the Default Notice is so delivered; or (b) in the case of service by using first class registered post to the Council's offices at Town Hall, Judd Street, London WC1H 9LP the second working day after the date on which the Default Notice is posted (by being placed in a post box or being collected by or delivered to Royal Mail) PROVIDED THAT the Chargee is able to evidence that the Default Notice was actually delivered to the Council (by Royal Mail proof of delivery or otherwise)
2.10	"Default Notice"	means a notice in writing served on the Council by the Chargee under Clause 6.9(i) of the Chargee's intention to enforce its security over the relevant Affordable Housing Units;
2.11	"the Development"	Change of use from hostel (Sui Generis) to residential units (Class C3) to provide 9 no. affordable 1 bed and 1 no. affordable 2 bed self-contained units; conversion and alterations including replacement 'like-for-like' windows and doors, creation of amenity courtyards at rear and

		enlargement of the existing front and rear dormer windows as shown on 3542-MA: N-GF-M2-LGF-T01(2), N-GF-M2-GF T02(2), N-GF-1ST-T03(2), N-GF-2ND-T04(2), N-GF-3RD-T05(2), DR-EL-T00(2), DR-EL-T01(2), DR-SC-T01(2), DR SC-T02(2), DR SC-T03(2), Planning Statement, Design & Access Statement, Heritage Statement.
2.12	"the Financial Contributions"	means the collective sums payable for the Bicycle Hangar Contribution, the Sheffield Stand Contribution and the Traffic Management Order Contribution
2.13	"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
2.14	"Intermediate Housing"	<p>Affordable Housing which includes Intermediate Rented Housing and other intermediate products as agreed in writing by the Council and is:-</p> <p>(a) above target rents but is substantially below open market levels;</p> <p>(b) is affordable to people who at the commencement of their occupancy are eligible for intermediate housing in terms set out in paragraph 3.61 of the London Plan or its successor policies (subject to annual reviews); and</p> <p>(c) comply with the requirements set out for housing of this type in the National Planning Policy Framework and the Mayor of London document entitled: Homes for Londoners - Affordable Homes Programme 2016-21 Funding Guidance and successor documents</p>
2.15	"Intermediate Housing Scheme"	<p>the scheme setting out provision of Intermediate Housing within the Development submitted by the Owner and to be approved by the Council in writing ensuring the Intermediate Housing Units are occupied on the following basis:-</p> <p>a) Intermediate Rented Housing; or</p>

		<p>b) other Intermediate Housing products provision will be on terms to be agreed by the Council in writing in consultation and in consideration of its own policies and those contained in the London Plan with particular reference to paragraph 3.61 (or its successor policies)</p>
2.16	"Intermediate Housing Units"	<p>the 8 (eight) units of Intermediate Housing forming part of the Development comprising 8 (eight) one-bedroom units the same as shown edged blue on Plan 2</p>
2.17	"Intermediate Rented Housing"	<p>"Affordable Housing that is occupied for the lifetime of the Development (subject to the provisions of this Agreement) available for rent above target rents but substantially below open market levels and occupied on the following basis:-</p> <p>a) it complies with the requirements set out for housing of this type in the Mayor of London's "Homes for Londoners Affordable Homes Programme 2016-2021 and successor documents;</p> <p>b) it is consistent with the Council's Local Plan and Camden Supplementary Planning Document "Interim Housing CPG" and the requirements set out in paragraph 4.64 of the London Plan 2021 or its successor policies (subject to annual reviews);</p> <p>c) it provides housing where the annual housing costs for each intermediate rented home (including rent and service charge) is:-</p> <p>i) affordable to households paying no more than 40% of net income on rent and service charge where net incomes are 70% of gross incomes and gross household incomes are £30,074 per annum for studio units and £34,475 per annum for 1-bedroom units and £39,913 per annum for 2-bedroom (3 person) units and £60,000 per annum for 2-bedroom (4 person) units with specified gross household</p>

		<p>incomes adjusted from the date of this agreement by percentage changes to ONS residence-based median earnings for Camden subject to the maximum eligible household income for Intermediate Rent Housing set out by the London Plan as updated by the London Plan Annual Monitoring Report; and</p> <p>ii) not exceed £162 per week for studio units and £185 per week for 1-bedroom units and £215 per week for 2-bedroom (3 person) units £323 per week for 2-bedroom (4 person) units in gross total rent subject to annual rent increases not exceeding the annual increase in the Consumer Price Index +1%; and</p> <p>d) the tenancies shall be marketed to people who are registered on the Council's Intermediate Housing Register of Interest and let in accordance with the Council's Priority Matrix as set out in Schedule 1 of the Council's Intermediate Housing Strategy and successor policies;</p>
2.18	"London Affordable Rented Housing"	<p>a tenure of Affordable Housing that is available as low cost rented homes in London to help low-income households who are unable to secure or sustain housing on the open market in perpetuity such that homes provided:-</p> <p>(a) meet the following weekly rent benchmarks (exclusive of service charge) as set out at Table 1 of the Mayor of London's "Homes for Londoners; Affordable Homes Programme 2021-2023" as updated from time to time or as set out in any subsequent equivalent document confirmed by the Council as being applicable;</p> <p>(b) once occupied are subject to service charges management charges and rent-setting guidance</p>

		<p>issued by the Regulator and the Greater London Authority from time to time;</p> <p>(c) are consistent with the requirements set out for Affordable Housing for Rent in the National Planning Policy Framework;</p> <p>(d) are consistent with the information in relation to London Affordable Rented Housing set out in Camden's Supplementary Planning Document "Camden Planning Guidance – Housing: January 2021" and its successor policies and the requirements set out in paragraph 4.6.4 of the London Plan 2021 or its successor policies (subject to annual reviews); and</p> <p>(e) are managed by a Registered Provider who has entered into a standard nominations agreement with the Council providing for nominations to the Council in respect of London Affordable Rented Housing Units within the Residential Element</p>
2.19	"Occupation Date"	the date when any part of the Development is occupied and the phrases "Occupy", "Occupied" and "Occupation" shall be construed accordingly
2.20	"the Parties"	mean the Council and the Owner
2.21	"the Planning Application"	a planning application in respect of the development of the Property submitted to the Council and validated on 24 th June 2020 for which a resolution to grant permission has been passed conditionally under reference number 2020/2104/P subject to conclusion of this Agreement
2.22	"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
2.23	"Plan 1"	a plan showing the Property annexed hereto at Schedule 3

2.24	"Plan 2"	a plan showing the Affordable Housing Units annexed hereto at Schedule 3
2.25	"the Planning Permission"	a planning permission granted for the Development substantially in the draft form annexed hereto at Schedule 2
2.26	"the Property"	the land known as 6-8 Kemplay Road, London NW3 1SY the same as shown shaded grey on Plan 1
2.27	"Registered Provider"	a registered provider of Affordable Housing registered as such by the Regulator and selected from the London Borough of Camden's Approved Strategic Partner List
2.28	"Regulator"	means the Homes and Communities Agency and any successor organisation
2.29	"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
2.30	"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
2.31	"Sheffield Stand Contribution"	the sum of £255 (two hundred and fifty five pounds) to be paid by the Owner to the Council in accordance with the terms of this Agreement and to be applied by the Council in event of receipt for the carrying out works to the public highway and associated measures in the vicinity of the Property such works to include the provision of two on-street (Camden M/Sheffield) bicycle stands in the vicinity of the Property following ("the Highways Works") and all works will be subject to final measure 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 <u>excludes any statutory undertakers costs</u>
2.32	"Social-Affordable Rented Housing"	Affordable Housing that is to be provided and occupied for the lifetime of the Development (subject to the provisions of this Agreement) as either London Affordable Rented Housing or Social Rented Housing as agreed by the Council in writing

2.33	"Social-Affordable Rented Housing Units"	the 2 (two) units of London Affordable Rented Housing forming the Affordable Housing in the Development comprising 2 (two) two-bedroom units located on the ground floor as shown edged red on Plan 2
2.34	"Traffic Management Order Contribution"	the sum of £2,958.70 to be paid by the Owner to the Council in accordance with the terms of this Agreement to be applied by the Council in connection with the making and associated costs of securing an appropriate traffic management order pursuant to the transport changes at the Property

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 278 of the Highways Act 1980, 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, 7 and 8 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 4.2 for all relevant purposes.

4. **OBLIGATIONS OF THE OWNER**

The Owner hereby covenants with the Council as follows:-

4.1 **AFFORDABLE HOUSING**

4.1.1 On or prior to Implementation to submit to the Council for its written approval:-

- (a) details of the Registered Provider or a shortlist of proposed registered providers with evidence to demonstrate to the Council's reasonable satisfaction that the Owner is in advanced negotiations with a view of engaging the Registered Provider; and
- (b) the Intermediate Housing Scheme.

4.1.2 Not to Implement nor permit Implementation until such time as the Council has:-

- (a) approved the Registered Provider or the shortlist of proposed Registered Providers as demonstrated by written notice to that effect; and
- (b) approved the Intermediate Housing Scheme as demonstrated by written notice to that effect.

4.1.3 To commence all works of construction conversion and fitting out necessary to make the Affordable Housing Units as approved by the Council suitable for occupation as Affordable Housing and thereafter to proceed with and complete such works in a good and workmanlike manner using good quality materials to the reasonable satisfaction

of the Council (as demonstrated by written notification to that effect) in accordance with the specification approved by a Registered Provider.

- 4.1.4 To ensure that the Affordable Housing Units shall not be otherwise used, occupied and shall be retained in perpetuity for no purpose other than (i) for the provision of Social Rented Housing for occupation by tenants at rental levels being in accordance with the targets set by the Regulator (ii) for the provision of Intermediate Housing in accordance with the Intermediate Housing Scheme; and (iii) for the provision of Intermediate Housing for occupation in accordance with the Intermediate Housing Scheme as the case may be.
- 4.1.5 Not to Occupy or allow Occupation of any part of the Development until such time as:
- (i) the Affordable Housing Units have been transferred or demised to a Registered Provider approved by the Council for a term of no less than 125 years;
 - (ii) the works of construction conversion and fitting out of the Affordable Housing Units have been completed in accordance with the requirement of Sub-Clause 4.1.3 hereof.
- 4.1.6 To ensure that the Affordable Housing Units are constructed, occupied and used solely as Affordable Housing pursuant to the objects and purpose of the Council so as to provide accommodation for the households in need of Affordable Housing in accordance with the definition of the eligible persons criteria as agreed by the Government, the Regulator or the Council from time to time.
- 4.1.7 The Registered Provider or the Council shall not dispose of its interest in the freehold or leasehold of the Affordable Housing Units or any part thereof (except by way of mortgage) other than to any other Registered Provider registered with the Regulator or any other body organisation or company registered with the Charity Commissioners for England and Wales and approved by the Regulator or the Council.
- 4.1.8 Schedule 1 shall apply in relation to the Affordable Housing Units.

4.2 CAR FREE

4.2.1 To ensure that prior to occupying any residential unit (being part of the Development) in the Property 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.

4.2.2 Not to Occupy or use (or permit the Occupation or use of) any residential unit (being part of the Development) in the Property 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).

4.2.3 The Owner for itself and its successors in title to the Property hereby acknowledges that the provision in Clause 4.2.1 and 4.2.2 in this Agreement shall continue to have effect in perpetuity.

4.2.4 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) in the Property, identifying those residential units that in the Owner's opinion are affected by the Owner's obligation in Clause 4.2.1 and 4.2.2 of this Agreement.

4.3 FINANCIAL CONTRIBUTIONS

4.3.1 On or prior to the Implementation Date to pay to the Council the Financial Contributions in full.

- 4.3.2 Not to Implement or to permit Implementation until such time as the Council has received the Financial Contributions in its entirety.
- 4.3.3 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.
- 4.3.4 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 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 2020/2104/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 reasonable fee (subject to a limit of £1,000) in respect of each a request relating to one or more obligations) 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.
- 5.6 Submission of any information to the Council under the terms of this Agreement shall be made by the Owner to the Council sending the required information and / or document and any appendices in electronic format (where practicable) to the Planning Obligations Monitoring Officer referring to the names dates and Parties to this Agreement and citing the specific clause of this Agreement to which such plan relates quoting the Planning Permission reference 2020/2104/P.
- 5.7 Payment of the Financial Contributions pursuant to clause 4.3 of this Agreement shall be made by the Owner to the Council sending the full amount via electronic transfer (where practicable). The Owner 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 2020/2104/P. Electronic Transfer be made directly to National Westminster Bank of Hampstead Village, Enfield Customer Service Centre, PO Box 145 Baird Road Middlesex EN1 1FN quoting Sort Code 50-30-03 and London Borough of Camden General Account no. 24299480.
- 5.8 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 Owner.
- 5.9 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 AIIRP") figure last published by the Office for National Statistics at the date hereof is the denominator ("X") and the last AIIRP figure published before the date such payment or application is made ("Y") less the last published AIIRP figure at the date hereof ("X") is the numerator so that

$$A = B \times \frac{(Y-X)}{X}$$

- 5.10 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, 5 Pancras Square, London N1C 4AG quoting the planning reference number 2020/2104/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

CONTINUATION OF SECTION 106 AGREEMENT IN RELATION TO
6-8 KEMPLAY ROAD LONDON NW3 1SY

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
OPTIVO
in the presence of:

[Handwritten signature]
.....
[Handwritten signature]

Witness Signature

Witness Name:

Address:

Occupation:

[Handwritten address]

7/4/04

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

[Handwritten signature]
.....

Authorised Signatory



**SCHEDULE 1
AFFORDABLE HOUSING EXEMPTIONS**

RELEVANT DEFINITIONS

- “Charge”** means a mortgage, charge or other security or loan documentation granting a security interest in the Affordable Housing Units (or any number of them) in favour of the Chargee
- “Chargee”** means any mortgagee or chargee of the Registered Provider of the Affordable Housing Units (or any number of them) and any receiver (including an administrative receiver) and manager appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator
- “Date of Deemed Service”** means, in each instance where a Chargee has served a Default Notice under paragraph 4.1(a) of this Schedule:
- (a) in the case of service by delivery by hand of the Default Notice to the Council’s offices at 5 Pancras Square, London, N1C 4AG during opening hours, the date on which the Default Notice is so delivered if it is delivered prior to 4pm or the following Working Day if it is delivered after 4pm; or
 - (b) in the case of service by using first class registered post to the Council’s offices at Camden Town Hall, Judd Street, London WC1H 9LP, the second Working Day after

the date on which the Default Notice is posted (by being placed in a post box or being collected by or delivered to Royal Mail) PROVIDED THAT the Chargee is able to evidence that the Default Notice was actually delivered to the Council (by Royal Mail proof of delivery or otherwise)

“Default Notice”

means a notice in writing served on the Council by the Chargee under paragraph 4.1(a) of this Schedule of the Chargee's intention to enforce its security over the relevant Affordable Housing Units

“Intention Notice”

means a notice in writing served on the Chargee by the Council under paragraph 4.2 of this Schedule that the Council is minded to purchase the relevant Affordable Housing Units

“Moratorium Period”

means, in each instance where a Chargee has served a Default Notice under paragraph 4.1(a) of this Schedule the period from (and including) the Date of Deemed Service on the Council of the Default Notice to (and including) the date falling three months after such Date of Deemed Service (or such longer period as may be agreed between the Chargee and the Council)

“Option”

means the option to be granted to the Council (and/or its nominated substitute Registered Provider) in accordance with paragraph 4.3 of this Schedule for the purchase of the Affordable Housing Units

“Sums Due”

means all sums due to a Chargee of the Affordable Housing Units pursuant to the terms of its Charge including (without limitation) all interest and

reasonable legal and administrative fees costs and expenses

“Working Day”

means any day except Saturday, Sunday and any bank or public holiday

1 CHARGEЕ IN POSSESSION

1.1 The restrictions contained in Clause 4.1 of this Agreement shall not be binding upon a Chargee PROVIDED THAT a Chargee must:

(a) serve a Default Notice on the Council by delivery by hand to the Council's offices at 5 Pancras Square, London, N1C 4AG during opening hours or using first class registered post to the Council's offices at Camden Town Hall, Judd Street, London WC1H 9LP in either case addressed the following recipients with a copy of the same notice sent by email to the Planning Obligations Monitoring Officer to PlanningObligations@camden.gov.uk:

- i. The Chief Executive;
- ii. Chief Planning Officer;
- iii. The Borough Solicitor;
- iv. The Head of Development Management;
- v. The Housing Commissioning and Partnership Manager; and
- i. The Planning Obligations Monitoring Officer

prior to seeking to dispose of the relevant Affordable Housing Units;

(b) when serving the Default Notice, provide to the Council official copies of the title registers for the relevant Affordable Housing Units; and

(c) subject to paragraph 1.6 below, not exercise its power of sale over or otherwise dispose of the relevant Affordable Housing Units before the expiry of the Moratorium Period except in accordance with paragraph 1.3 below.

1.2 From the first day of the Moratorium Period to (but excluding) the date falling one calendar month later, the Council may serve an Intention Notice on the Chargee.

1.3 Not later than 15 Working Days after service of the Intention Notice (or such later date during the Moratorium Period as may be agreed in writing between the Council and the Chargee), the Chargee will grant the Council (and/or the Council's nominated substitute Registered Provider) an exclusive option to purchase the relevant Affordable Housing Units which shall contain the following terms:

- (a) the sale and purchase will be governed by [the Standard Commercial Property Conditions (Third Edition – 2018 Revision)] (with any variations that may be agreed between the parties to the Option (acting reasonably));
- (b) the price for the sale and purchase will be agreed in accordance with paragraph 1.4.(b) below or determined in accordance with paragraph 1.5 below;
- (c) provided that the purchase price has been agreed in accordance with paragraph 4.4(b) below or determined in accordance with paragraph 1.5 below, but subject to paragraph 1.3(d) below, the Council (or its nominated substitute Registered Provider) may (but is not obliged to) exercise the Option and complete the purchase of the relevant Affordable Housing Units at any time prior to the expiry of the Moratorium Period;
- (d) the Option will expire upon the earlier of (i) notification in writing by the Council (or its nominated substitute Registered Provider) that it no longer intends to exercise the Option and (ii) the expiry of the Moratorium Period; and
- (e) any other terms agreed between the parties to the Option (acting reasonably).

1.4 Following the service of the Intention Notice:

- (a) the Chargee shall use reasonable endeavours to reply to enquiries raised by the Council (or its nominated substitute Registered Provider) in relation to the Affordable Housing Units as expeditiously as possible having regard to the length of the Moratorium Period; and
- (b) the Council (or its nominated substitute Registered Provider) and the Chargee shall use reasonable endeavours to agree the purchase price for the relevant Affordable Housing Units, which shall be the higher of:

- (i) the price reasonably obtainable in the circumstances having regard to the restrictions as to the use of the relevant Affordable Housing Units; and
- (ii) (unless otherwise agreed in writing between the Council (or its nominated substitute Registered Provider) and the Chargee) the Sums Due.

1.5 On the date falling 10 Working Days after service of the Intention Notice, if the Council (or its nominated substitute Registered Provider) and the Chargee have not agreed the price pursuant to paragraph 1.4(b)(i) above:

- (a) the Council (or its nominated substitute Registered Provider) and the Chargee shall use reasonable endeavours to agree the identity of an independent surveyor having at least 10 years' experience in the valuation of affordable/social housing within the London area to determine the dispute and, if the identity is agreed, shall appoint such independent surveyor to determine the dispute;
- (b) if, on the date falling 15 Working Days after service of the Intention Notice, the Council (or its nominated substitute Registered Provider) and the Chargee have not been able to agree the identity of an independent surveyor, either party may apply to the President for the time being of the Royal Institution of Chartered Surveyors or his deputy to appoint an independent surveyor having at least 10 years' experience in the valuation of affordable/social housing within the London area to determine the dispute;
- (c) the independent surveyor shall determine the price reasonably obtainable referred to at paragraph 1.4(b)(i) above, due regard being had to all the restrictions imposed upon the relevant Affordable Housing Units by this Agreement;
- (d) the independent surveyor shall act as an expert and not as an arbitrator;
- (e) the fees and expenses of the independent surveyor are to be borne equally by the parties;
- (f) the independent surveyor shall make his/her decision and notify the Council, the Council's nominated substitute Registered Provider (if any) and the

Chargee of that decision no later than 14 days after his/her appointment and in any event within the Moratorium Period; and

- (g) the independent surveyor's decision will be final and binding (save in the case of manifest error or fraud).

1.6 The Chargee may dispose of the relevant Affordable Housing Units free from the obligations and restrictions contained in Clause 4.1 of this Agreement which shall determine absolutely in respect of those Affordable Housing Units (but subject to any existing tenancies) if:

- (a) the Council has not served an Intention Notice before the date falling one calendar month after the first day of the Moratorium Period;
- (b) the Council (or its nominated substitute Registered Provider) has not exercised the Option and completed the purchase of the relevant Affordable Housing Units on or before the date on which the Moratorium Period expires; or
- (c) the Council (or its nominated substitute Registered Provider) has notified the Chargee in writing pursuant to the Option that it no longer intends to exercise the Option.

1.7 The Council (and its nominated substitute Registered Provider, if any) and the Chargee shall act reasonably in fulfilling their respective obligations under paragraphs 1.1 to 1.6 above (inclusive).

2. TENANTS

2.1 The restrictions contained in Clause 4 of this Agreement shall not be binding upon any tenant (or person claiming title from such tenant or any successors in title thereto and their respective mortgagees and chargee) of a Registered Provider at the Property who exercises a right to acquire pursuant to the Housing Act 1996 (or any statutory successor thereto) or right to buy (including the preserved right to buy) pursuant to the Housing Act 1985 (or an statutory successor thereto) or any other statutory provision for the time being in force in respect of any Affordable Housing Unit.

2.2 The relevant Registered Provider shall use all reasonable endeavours to apply [*the monies/ net proceeds*] received by the Registered Provider in respect of the sale of any Affordable Housing Unit to such a tenant for the provision of Affordable Housing

within the London Borough of Camden in the first instance or, in the event the Registered Provider can show to the Council's reasonable written satisfaction that such funds are unable to be applied within the London Borough of Camden, within the North London Region (or successor region).

**SCHEDULE 2
DRAFT DECISION**

Application ref: 2020/2104/P
Contact:
Tel: 020 7974
Date:

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

Henry Blanks
Martin Arnold Limited
4 Gunnery Terrace
London
SE18 6SW

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:
6-8 Kemplay Road
London
NW3 1SY

PROPOSAL
Proposal:

Change of use from hostel (Sui Generis) to residential units (Class C3) to provide 9 no. affordable 1 bed and 1 no. affordable 2 bed self-contained units; conversion and alterations including replacement 'like-for-like' windows and doors, creation of amenity courtyards at rear and enlargement of the existing front and rear dormer windows.

Drawing Nos: 3542-MA: N-GF-M2-LGF-T01(2), N-GF-M2-GF T02(2), N-GF-1ST-T03(2), N-GF-2ND-T04(2), N-GF-3RD-T05(2), DR-EL-T00(2), DR-EL-T01(2), DR-SC-T01(2), DR SC-T02(2), DR SC-T03(2), Planning Statement, Design & Access Statement, Heritage Statement

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 drawings:

3542-MA: N-GF-M2-LGF-T01(2), N-GF-M2-GF T02(2), N-GF-1ST-T03(2), N-GF-2ND-T04(2), N-GF-3RD-T05(2), DR-EL-T00(2), DR-EL-T01(2), DR-SC-T01(2), DR SC-T02(2), DR SC-T03(2)

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.

Informative(s):

- 1 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).
- 2 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.
- 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.

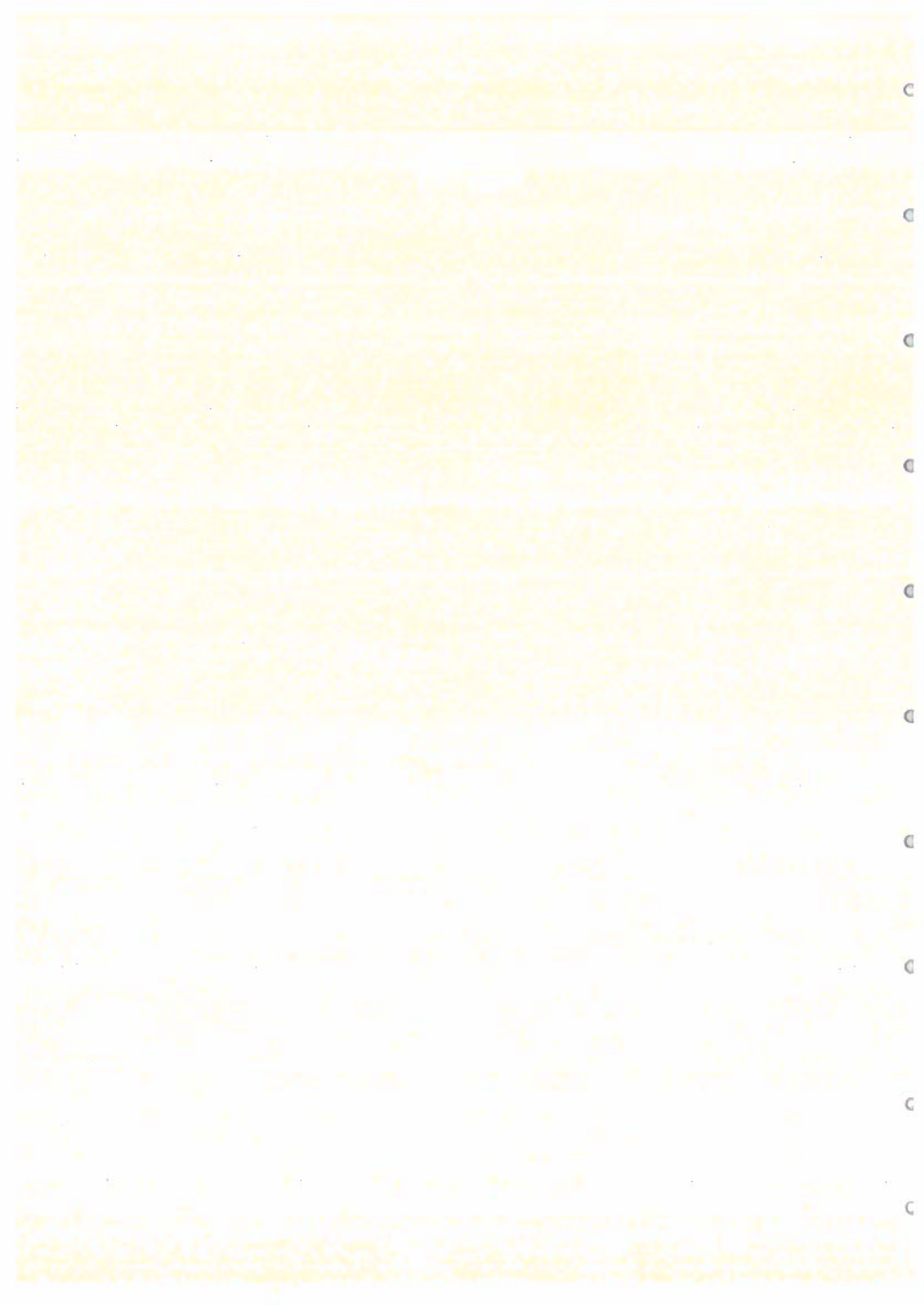
In dealing with the application, the Council has sought to work with the applicant in a positive and proactive way in accordance with paragraphs 186 and 187 of the National Planning Policy Framework.

Yours faithfully

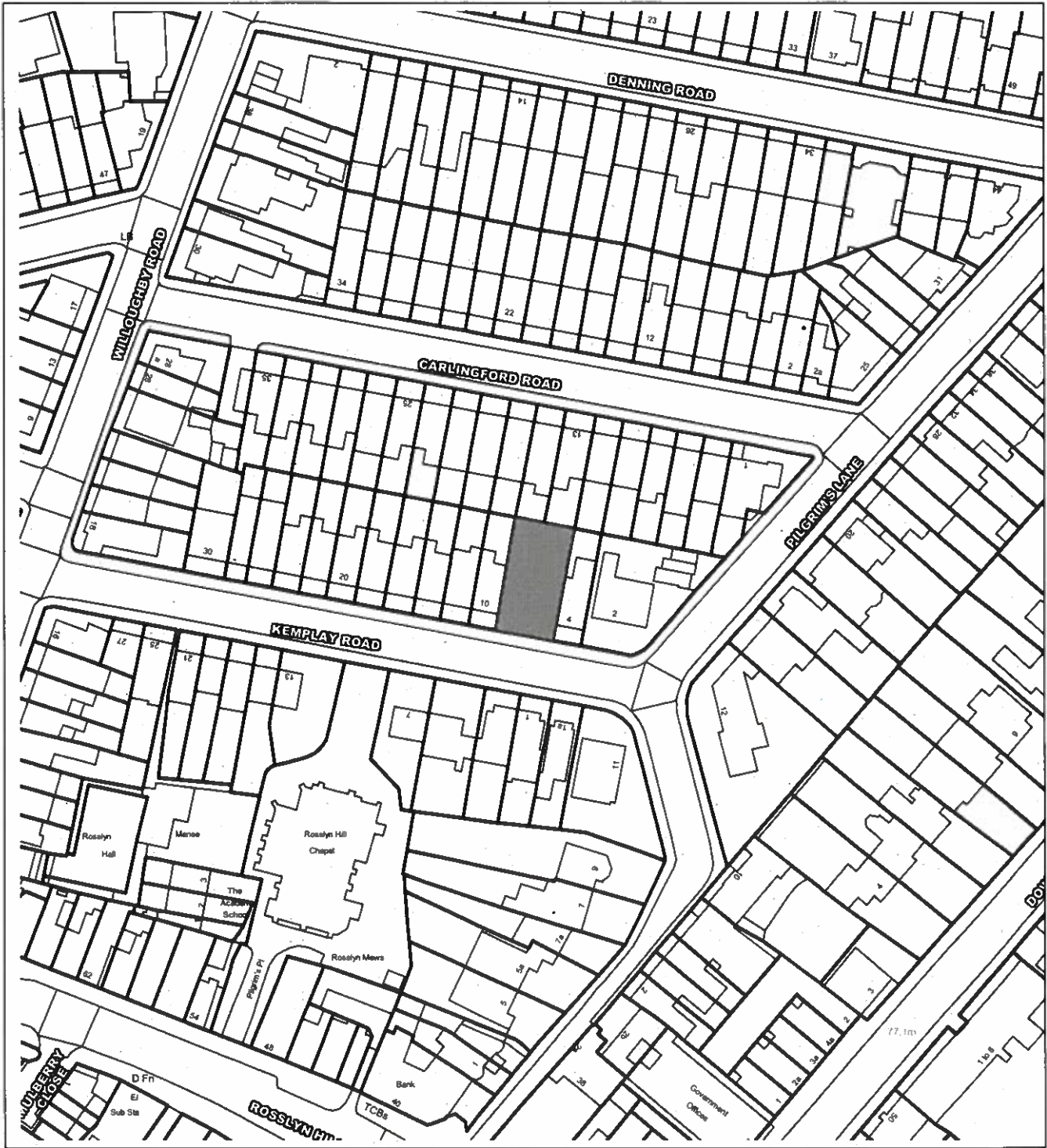
Supporting Communities Directorate



**SCHEDULE 3
PLANS 1 & 2**



2020/2104/P 6-8 Kemplay Road, London NW3 1SY



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MA Code (for MA use only): **3542**

Rev Date By Description



Martin Arnold Limited
4 Guntery Terrace
The Royal Arsenal
London
SE18 6SW

CLIENT :

Optivo
Grosvenor House
125 High Street, Croydon

PROJECT :

6-8 Kemplay Road
London
NW3 1SY

TITLE :

Lower Ground Floor Layout

Purpose of Issue :

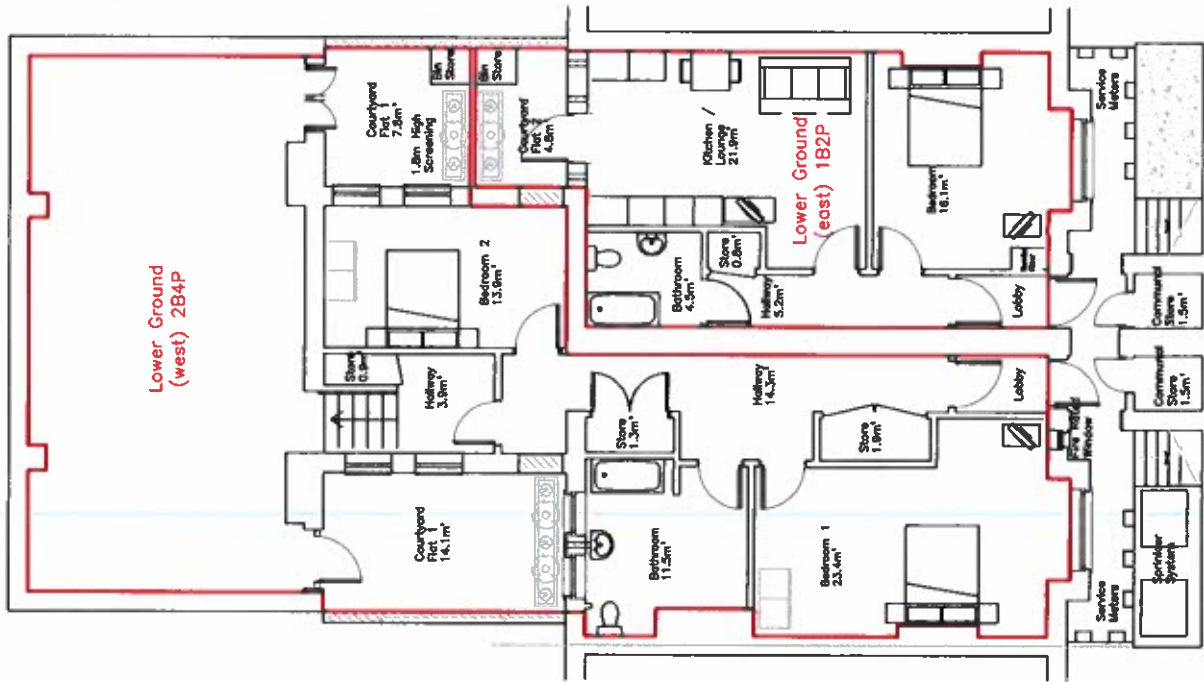
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Date : 29/10/2021

Scale : 1:150 @ A4

Dwg No : 1



Key



Affordable Rent



Intermediate Rent

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MA Code (for MA use only): 3542

Rev Date By Description



Martin Arnold Limited
4 Gunnery Terrace
The Royal Arsenal
London
SE18 6SW

CLIENT :

Optivo
Grosvenor House
125 High Street, Croydon

PROJECT :

6-8 Kemplay Road
London
NW3 1SY

TITLE :

Ground Floor Layout

Purpose of Issue :

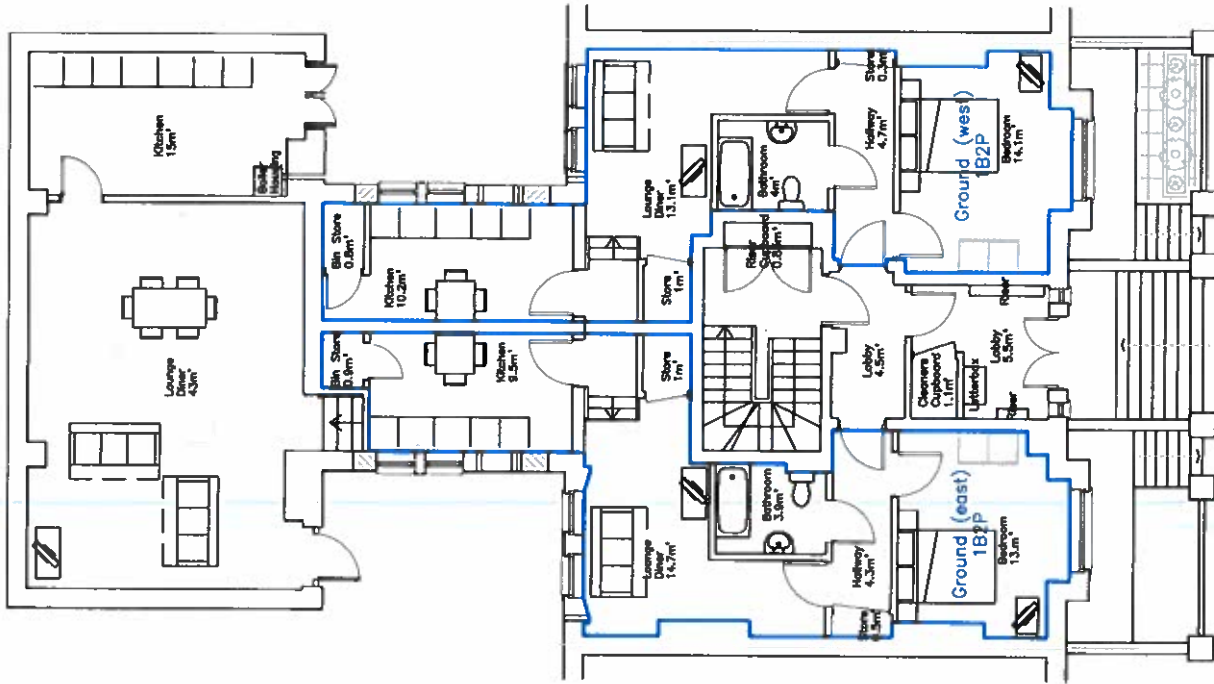
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Date : 29/10/2021

Scale : 1:150 @ A4

Dwg No : 1



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- Intermediate Rent

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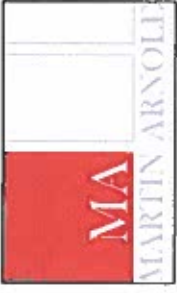
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MA Code (for MA use only): **3542**

Rev Date By Description



Martin Arnold Limited
 4 Gunnery Terrace
 The Royal Arsenal
 London
 SE18 6SW

CLIENT :
 Optivo
 Grosvenor House
 125 High Street, Croydon

PROJECT :
 6-8 Kemplay Road
 London
 NW3 1SY

TITLE :
 First Floor Layout

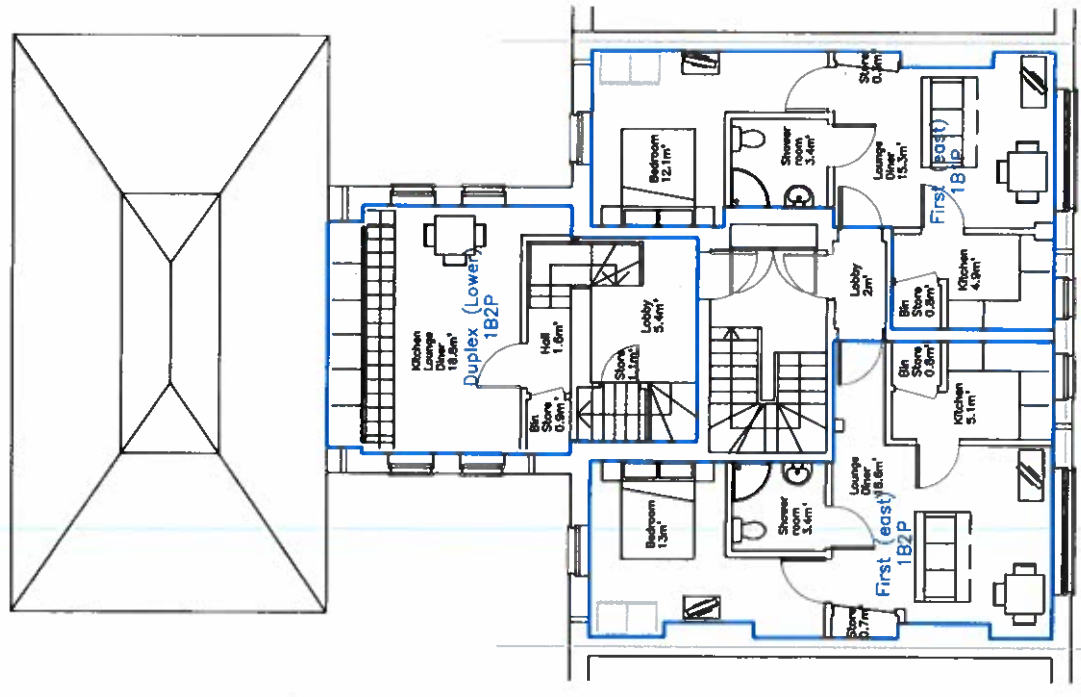
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Drawn : WS Checked By: LW

Date : 29/10/2021

Scale : 1:150 @ A4

Dwg No : 1



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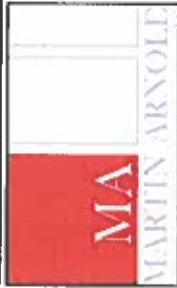
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MA Code (for MA use only): 3542

Rev Date By Description



Martin Arnold Limited
4 Gunnery Terrace
The Royal Arsenal
London
SE18 6SW

CLIENT :

Optivo
Grosvenor House
125 High Street, Croydon

PROJECT :

6-8 Kemplay Road
London
NW3 1SY

TITLE :

Second Floor Layout

Purpose of Issue :

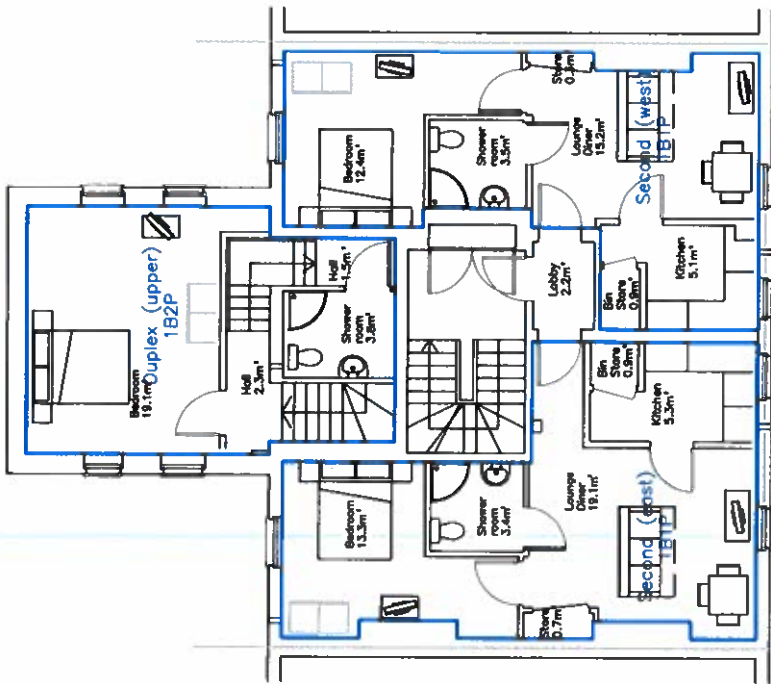
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Date : 29/10/2021

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Dwg No : 1



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Affordable Rent
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MA Code (for MA use only): 3542

Rev Date By Description



Martin Arnold Limited
4 Gunnery Terrace
The Royal Arsenal
London
SE18 6SW

CLIENT :

Optivo
Grosvenor House
125 High Street, Croydon

PROJECT :

6-8 Kemplay Road
London
NW3 1SY

TITLE :

Third Floor Layout

Purpose of Issue :

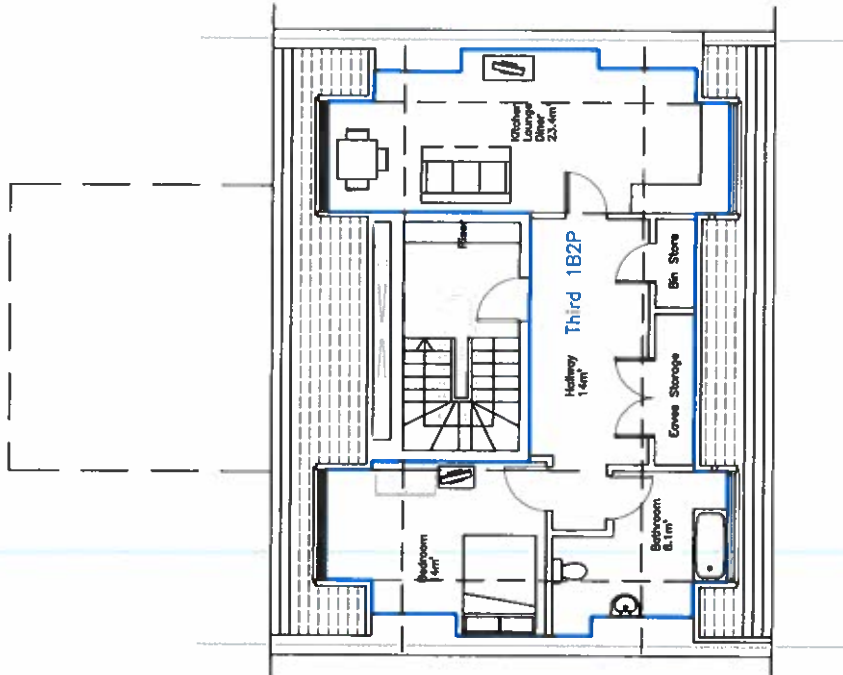
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Date : 29/10/2021

Scale : 1:150 @ A4

Dwg No : 1



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DATED

26 January

2021/2

(1) OPTIVO

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

6-8 KEMPLAY ROAD, LONDON NW3 1SY

pursuant to
**Section 106 of the Town and Country Planning Act 1990 (as amended);
Section 278 of the Highways Act 1980
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 1478

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