

DATED

21 January

2021/2

(1) 89 GLOUCESTER AVENUE CAMDEN LIMITED

and

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

AGREEMENT

relating to land known as

89A GLOUCESTER AVENUE, LONDON NW1 8LB 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/1800.2031
FINAL s106 AIP

THIS AGREEMENT is made the 21st day of January 2022

BETWEEN:

- A. **89 GLOUCESTER AVENUE CAMDEN LIMITED** (Co. Regn. No. 6641607) whose registered office is at 89 Gloucester Avenue, London, NW1 8LB (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 343618.
- 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 9 February 2021 and the Council resolved to grant permission conditionally under reference number 2021/0095/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	"Basement Approval in Principle Application"	an application to the Council's Highways Structural team for an approval in principle of the construction of the basement (forming part of the Development) which is to be assessed by the Council with a view to ensuring that sufficient loadings are maintained at all times at the interaction of the Development site and the Public Highway so as to ensure that the Public Highway is not compromised at any time during the Construction Phase or thereafter
2.4	"Basement Approval in Principle Contribution"	the sum of £646.27 (six hundred and forty six pounds and twenty seven pence) to be applied by the Council in event of receipt towards the assessment by the Council's Highways Structural team of the Basement Approval in Principle Application
2.5	"the Development"	alterations to rear fenestration, enlargement of the lower ground floor vault, including installation of walk-over rooflight, structure to lower ground floor and alterations to front paving area as shown on drawing numbers:- 1013_AVP_EL_PROPOSED, 1013_AVP_GA_EXISTING, 1013_AVP_EL_EXISTING, 1013_AVP_GA_PROPOSED-01, 1013_AVP_SE_BB_P01, 1013_AVP_SE_PROPOSED_AA_P02, 1013_AVP_SE_EXISTING_AA, BIA prepared by Constructure Ref. 2163.
2.6	"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

2.7	"Occupation Date"	the date when any part of the Development is occupied and the phrases "Occupy", "Occupied" and "Occupation" shall be construed accordingly
2.8	"the Parties"	mean the Council and the Owner
2.9	"the Planning Application"	a planning application in respect of the development of the Property submitted to the Council and validated on 9 February 2021 for which a resolution to grant permission has been passed conditionally under reference number 2021/0095/P subject to conclusion of this Agreement
2.10	"Planning Obligations Monitoring Officer"	a planning officer of the Council from time to time allocated to deal with all planning obligations pursuant to S106 of the Act to whom all notices, correspondence, approvals etc must be sent in the manner prescribed at clause 6.1 hereof
2.11	"the Planning Permission"	a planning permission granted for the Development substantially in the draft form annexed hereto
2.12	"the Property"	the land known as 89A Gloucester Avenue, London NW1 8LB the same as shown shaded grey on the plan annexed hereto
2.13	"the Public Highway"	any carriageway footway and/or verge adjoining the Property maintainable at public expense

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.

4. **OBLIGATIONS OF THE OWNER**

The Owner hereby covenants with the Council as follows:-

4.1 **BASEMENT APPROVAL IN PRINCIPLE**

4.1.1 On or prior to the Implementation Date to:-

- (a) submit the Basement Approval in Principle Application; and
- (b) pay to the Council the Basement Approval in Principle Contribution

4.1.2 Not to Implement or permit Implementation of any part of the Development until such time as:

- (a) the Council has approved the Basement Approval in Principle Application as demonstrated by written notice to that effect; and

(b) the Council has received the Basement Approval in Principle Application Contribution in full.

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 2021/0095/P the date upon which the Development will be ready for Occupation.
- 5.3 The Owner shall act in good faith and shall co-operate with the Council to facilitate the discharge and performance of all obligations contained herein and the Owner shall comply with any reasonable requests of the Council to have access to any part of the Property or any requests to provide documentation within the Owner's possession (at the Owner's expense) for the purposes of monitoring compliance with the obligations contained herein.
- 5.4 The Owner agrees declares and covenants with the Council that it shall observe and perform the conditions restrictions and other matters mentioned herein and shall not make any claim for compensation in respect of any condition restriction or provision imposed by this Agreement and further shall jointly and severally indemnify the Council for any expenses or liability arising to the Council in respect of breach by the Owner of any obligations contained herein save to the extent that any act or omission of the Council its employees or agents has caused or contributed to such expenses or liability.
- 5.5 If satisfied as to the compliance of the Owner in respect of any obligation in this Agreement the Council shall (if requested to do so in writing and subject to payment of a fee of £1,000 in respect of each such obligation) provide through its Borough Solicitor a formal written certification of compliance, partial compliance or ongoing compliance (as and if appropriate) with the provisions of any such obligation.

- 5.6 Submission of any plan for approval by the Council under the terms of this Agreement shall be made by the Owner to the Council sending the full 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 2021/0095/P.
- 5.7 Payment of any contribution pursuant to Clause 4 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 2021/0095/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, 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 2021/0095/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 or 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
89A GLOUCESTER AVENUE, LONDON NW1 8LB

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

.....
Director

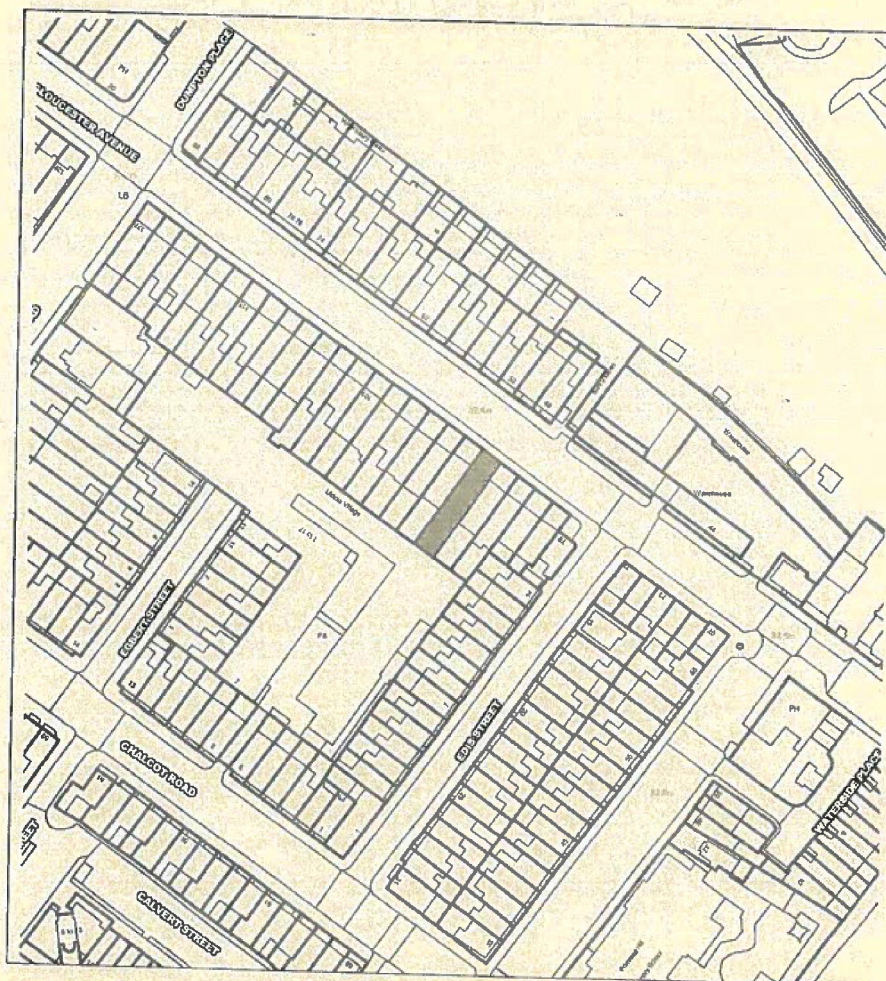
.....
Director/Secretary

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: 2021/0095/P
Contact:
Tel: 020 7974
Date: 21 December 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

Alexandra von Peltz Limited
Pound House
62a Highgate High Street
London
N6 5HX

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:
**89A Gloucester Avenue
London
NW1 8LB**

Proposal:

Alterations to rear fenestration, enlargement of the lower ground floor vault, including installation of walk-over rooflight, structure to lower ground floor and alterations to front paving area.

**Drawing Nos: 1013_AVP_EL_PROPOSED, 1013_AVP_GA_EXISTING,
1013_AVP_EL_EXISTING, 1013_AVP_GA_PROPOSED-01, 1013_AVP_SE_BB_P01,
1013_AVP_SE_PROPOSED_AA_P02, 1013_AVP_SE_EXISTING_AA, BIA prepared by
Constructure Ref. 2163.**

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 if in CA] 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 1013_AVP_EL_PROPOSED, 1013_AVP_GA_EXISTING, 1013_AVP_EL_EXISTING, 1013_AVP_GA_PROPOSED-01, 1013_AVP_SE_BB_P01, 1013_AVP_SE_PROPOSED_AA_P02, 1013_AVP_SE_EXISTING_AA, BIA prepared by Constructure Ref. 2163.

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

- 4 The appointed qualified engineers shall inspect, approve and monitor the critical elements of both permanent and temporary basement construction works throughout their duration to ensure compliance with the design which has been checked and approved by a building control body. Any subsequent change or reappointment shall be confirmed forthwith for the duration of the construction works.

Reason: To safeguard the appearance and structural stability of neighbouring buildings and the character of the immediate area in accordance with the requirements of policies D1, D2 and A5 of the London Borough of Camden Local Plan 2017.

- 5 The development shall not be carried out other than in strict accordance with the methodologies, recommendations and requirements of the Basement Impact Assessment and other relevant documents hereby approved.

Reason: To safeguard the appearance and structural stability of neighbouring buildings and the character of the immediate area, in accordance with the requirements of policy A5 of the London Borough of Camden Local Plan 2017.

Informative(s):

- 1 Reasons for granting permission:

The proposed basement excavation is discussed fully below. In design and conservation terms, the only external manifestations, visible from the street scene, would be a change in front step material; a walk-on skylight; and a new boundary treatment and bin store which

would obscure the new rooflight. This is considered acceptable and in-keeping with other properties along Gloucester Avenue, including the immediate adjoining property No. 91, along with other nearby properties such as Nos. 85, 99 and 109.

To the front it is proposed to erect a bike and bin store which is considered to be of appropriate size and materials. It would be hidden from the streetscene by the proposed boundary treatment which comprises of a planter and hedge, appropriate for the townscape in this location. The new iron balustrade to the front is acceptable in its material and form. It is also proposed to replace the steps to the front lightwell with quality limestone steps which are considered acceptable.

There would be new aluminum framed windows and doors to existing openings to the rear lower and upper ground floor level. The new aluminium framed sliding doors at lower ground floor level and the enlarged window opening at ground floor level are considered acceptable alterations that, by virtue of their nature and location, would not detract from the character or appearance of the conservation area.

The proposal includes the enlargement of the existing coal vault beneath the front garden. The excavation would provide an addition of approximately 16m² of additional residential floorspace. There is no new basement floor as such under the house but rather than an extension to the front vaults under the front garden.

A Basement Impact Assessment (BIA) has been submitted as part of this application. This document has been independently reviewed by Campbell Reith with subsequent information provided by the author of the BIA during the course of the application. The Audit confirms that the proposed basement development will not adversely impact on neighbouring properties and the natural environment of the site.

A construction sequence has been presented and accepted. The Audit confirms that the anticipated extent of structural damage has been categorised as '0' or 'negligible' on the Burland Scale. It also confirms that there will be no adverse effects from subterranean water flows, surface flooding or slope stability.

The Audit confirms that the BIA has adequately identified the potential impacts of the proposed basement construction and proposes sufficient mitigation.

The proposal involves excavation within close proximity to the footway directly adjacent to the site. To ensure that the stability of the public highway adjacent to the site is not compromised by the proposed basement excavations, the applicant would be required to submit an 'Approval In Principle' (AIP) report to our Highways Structures & Bridges Team within Engineering Services as a pre-commencement obligation which would be secured by a S106 agreement.

No objections were received prior to making this decision. The CAAC withdrew their request for additional details of the bin store following a review of the revised drawings which lowered the bin store to 1.2m the minimum height possible. The planning history of the site has been taken into account when coming to this decision.

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 [ERR] 2013.

As such, the proposed development is in general accordance with policies A1, A5, D1 and D2 of the Camden Local Plan 2017. The proposed development also accords with the London Plan 2021 and the National Planning Policy Framework 2021.

- 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, 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 (search for 'Camden Minimum Requirements' at www.camden.gov.uk) 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