

DATED 09 September 2022

(1) BENNY DEE (KILBURN) LIMITED

and

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

**A G R E E M E N T**

relating to land known as

108 KILBURN HIGH ROAD LONDON NW6 4HY

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

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

CLS/COM/NF/1800.2258  
SECTION 106 FINAL

THIS AGREEMENT is made the 09 day of September 2022

**BETWEEN:**

- A. **BENNY DEE (KILBURN) LIMITED** (Co. Regn. No. 03058650) whose registered office is at C/O Michael Filiou Limited Salisbury House, 81 High Street, Potters Bar, Hertfordshire, England, EN6 5AS (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 NGL920312.

- 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 21 February 2022 and the Council resolved to grant permission conditionally under reference number 2022/0685/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	"Business 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 businesses of the locality in which the Development is situated
2.4	"Business 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 a Business Parking Bay
2.5	"the Development"	erection of a single-storey self-contained commercial unit (Class E - Office) at rear first floor level as shown on drawing numbers:- 108KHR-PP4-01; 108KHR-PP4-02; 108KHR-PP4-03 Rev. A; 108KHR-PP4-04 Rev. A; Design and Access Statement; Cover Letter dated Feb 2022
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 21 February 2022 for which a resolution to grant permission has been passed conditionally under reference number 2022/0685/P subject to conclusion of this Agreement
2.10	"Planning Obligations"	a planning officer of the Council from time to time allocated

	Monitoring Officer"	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 108 Kilburn High Road London NW6 4HY the same edged in red on the plan annexed hereto

3. **NOW THIS DEED WITNESSETH** as follows:-

- 3.1 This Agreement is made in pursuance of Section 106 of the Act, and is a planning obligation for the purposes of Section 106 as aforesaid, and is also made in pursuance of Section 16 of the Greater London Council (General Powers) Act 1974 Section 111 of the Local Government Act 1972; and Section 1(1) of the Localism Act 2011 and shall be enforceable by the Council against the Owner as provided herein and against any person deriving title to any part of the Property from the Owner and ~~insofar as it is not a planning obligation its provisions may be enforceable by the Council under any relevant statutory powers.~~
- 3.2 Words importing the singular shall include the plural and vice versa and any words denoting actual persons shall include companies, corporations and other artificial persons.
- 3.3 Any reference to a specific statute or statutes include any statutory extension or modification amendment or re-enactment of such statute and any regulation or orders made under such statute.
- 3.4 The clause and paragraph headings do not form part of this Agreement and shall not be taken into account in its construction of interpretation.
- 3.5 It is hereby agreed between the Parties that save for the provisions of clauses 1, 2, 3, 5, 6, and 7 hereof all of which shall come into effect on the date hereof the covenants undertakings and obligations contained within this Agreement shall become binding upon the Owner upon the Implementation Date.

- 3.6 The Council hereby agrees to grant the Planning Permission on the date hereof.
- 3.7 The Parties save where the context states otherwise shall include their successors in title.
- 3.8 The Parties acknowledge that the Development shall be treated as being permanently designated as "car free" housing in accordance with Clause 4.1 for all relevant purposes.

4. **OBLIGATIONS OF THE OWNER**

The Owner hereby covenants with the Council as follows:-

4.1 **CAR FREE**

- 4.1.1 To ensure that prior to occupying any part of the Development each new occupant 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 Business Parking Permit to park a vehicle in a Business 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 unit forming part of the Development at any time during which the occupier of the unit holds a Business Parking Permit to park a vehicle in a Business Parking Bay or is permitted to park a vehicle in any car park owned, controlled or licensed by the Council unless the occupier is the holder of a disabled persons badge issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970).

- 4.1.3 The Owner for itself and its successors in title to the Property hereby acknowledges that the provisions in Clause 4.1.1 and 4.1.2 above will remain permanently.

- 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 units forming part of the Development (as issued and agreed by the Council's Street Name and Numbering Department), identifying those 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 2022/0685/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, Urban Design and Renewal, Planning and Public Protection, Culture and Environment Directorate, Town Hall Annex, Argyle Street, London WC1H 9LP quoting the planning reference number 2022/0685/P and in the case of any notice or approval or agreement from the Council this shall be signed by a representative of the Council's Environment Department.
- 6.2 This Agreement shall be registered as a Local Land Charge.
- 6.3 The Owner agrees to pay the Council its proper and reasonable legal costs incurred in preparing this Agreement on or prior to the date of completion of the Agreement.
- 6.4 The Owner hereby covenants with the Council that it will within 28 days from the date hereof apply to the Chief Land Registrar of the Land Registry to register this Agreement in the Charges Register of the title to the Property and will furnish the Council forthwith with official copies of such title to show the entry of this Agreement in the Charges Register of the title to the Property.
- 6.5 Nothing contained or implied in this Agreement shall prejudice or affect the Council's powers to enforce any specific obligation term or condition nor shall anything contained or implied herein prejudice or affect any provisions, rights, powers, duties and obligations of the Council in the exercise of its functions as Local Planning Authority for the purposes of the Act or as a local authority generally and its rights, powers, duties and obligations under all public and private statutes, bye laws and regulations may be as fully and effectually exercised as if the Council were not a party to this Agreement.
- 6.6 Neither the Owner nor their successors in title nor any person deriving title from them shall be bound by the obligations in this Agreement in respect of any period during which it no longer has an interest in the Property but without prejudice to liability for any breach committed prior to the time it disposed of its interest.

6.7 For the avoidance of doubt the provisions of this Agreement (other than those contained in this sub-clause) shall not have any effect until this Agreement has been dated.

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

7. **RIGHTS OF THIRD PARTIES**

7.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement

**IN WITNESS** whereof the Council has caused its Common Seal to be hereunto affixed and the Owner has executed this instrument as their Deed the day and year first before written



CONTINUATION OF SECTION 106 AGREEMENT RELATING TO  
108 KILBURN HIGH ROAD

EXECUTED AS A DEED BY )  
BENNY DEE (KILBURN) LIMITED )  
acting by a Director and its Secretary )  
or by two Directors )

Director

BENJAMIN BAKER

Director/Secretary

**CONTINUATION OF SECTION 106 AGREEMENT RELATING TO  
108 KILBURN HIGH ROAD**

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

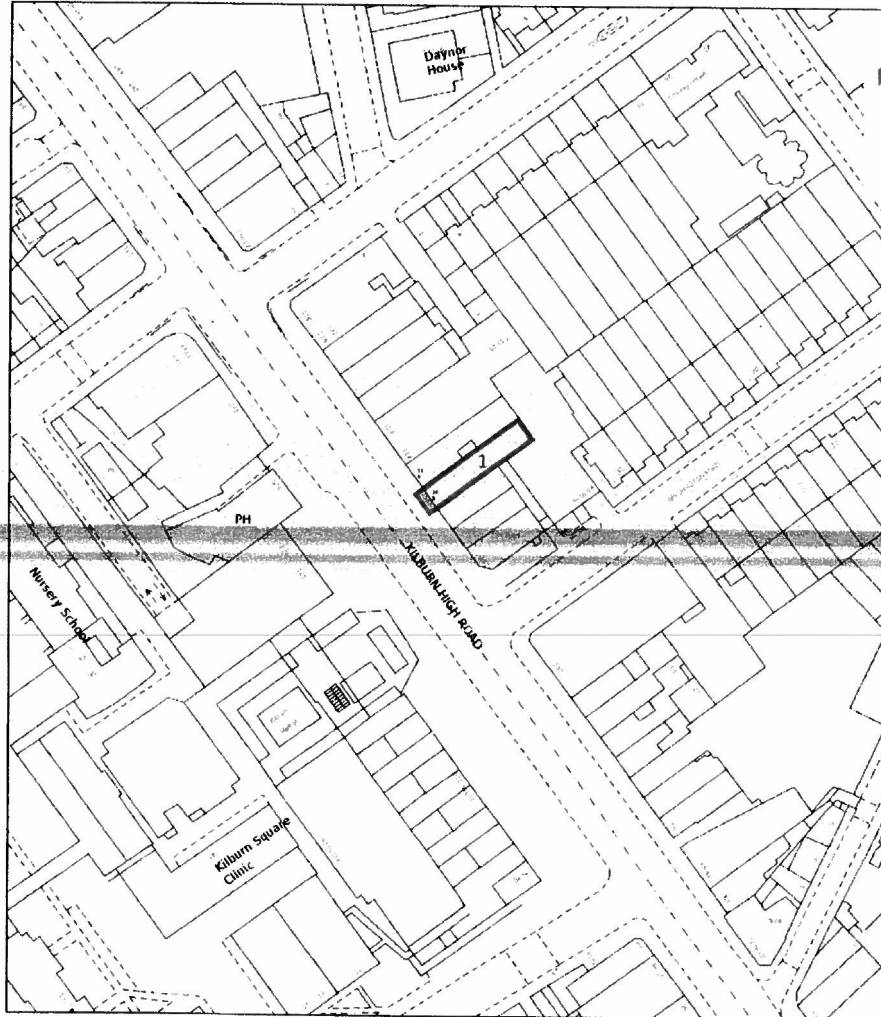
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**Authorised Signatory**



Plan

## 108 KILBURN HIGH ROAD



Site Location Plan  
Scale 1:1,250

**Draft Planning Permission**



Application ref: 2022/0685/P  
Contact:  
Tel: 020 7974  
Date: 1 August 2022

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

Tal Arc Ltd.  
2a Crescent Road  
London  
N3 1HP

Phone: 020 7974 4444

[planning@camden.gov.uk](mailto:planning@camden.gov.uk)  
[www.camden.gov.uk/planning](http://www.camden.gov.uk/planning)

Dear Sir/Madam

**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:  
**108 Kilburn High Road**  
**London**  
**NW6 4HY**

Proposal:  
Erection of a single-storey self-contained commercial unit (Class E - Office) at rear first floor level.  
Drawing Nos: 108KHR-PP4-01; 108KHR-PP4-02; 108KHR-PP4-03 Rev. A; 108KHR-PP4-04 Rev. A; Design and Access Statement; Cover Letter dated Feb 2022

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 The development hereby permitted shall be carried out in accordance with the following approved plans:  
108KHR-PP4-01; 108KHR-PP4-02; 108KHR-PP4-03 Rev. A; 108KHR-PP4-04 Rev. A; Design and Access Statement; Cover Letter dated Feb 2022

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

- 3 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.

- 4 Notwithstanding the provisions of Class E of the Schedule of the Town and Country Planning (Use Classes) Order, 1987, or any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order, the premises shall only be used as an office use and not for any other use within Class E.

Reason: To ensure that the future occupation of the building does not adversely affect the adjoining premises/immediate area by reason of noise, activity and impact on the town centre, in accordance with policies A1, TC2, TC4 and E1 of the London Borough of Camden Local Plan 2017.

- 5 The high-level windows to the south-west elevation of the new unit (facing the rear elevation of no. 108 Kilburn High Road) shall be formed of obscure glazing and be permanently retained as such thereafter.

Reason: To protect the amenity of nearby residents in accordance with the requirements of policy A1 of the London Borough of Camden Local Plan 2017.

- 6 Before the development commences, details of a secure and covered cycle storage area for 2 cycles shall be submitted to and approved by the local planning authority. The approved facility shall thereafter be provided in its entirety prior to the first occupation of the new unit 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.

Informative(s):

1 Reasons for granting permission.

This proposal relates specifically to a section of flat roof situated to the rear of no. 108 Kilburn High Road. The flat roof is used as access to the upper floors of nos. 108-114 Kilburn High Road as well as nos. 28 and 29 Quex Mews. The site is situated within the Kilburn Town Centre as designated within the Camden Local Plan.

During the course of the application, the proposal has been amended with changes made to the proposed fenestration. It was not considered necessary to reconsult on these minor changes.

The proposal is considered acceptable in land use terms. The introduction of a new Class E unit on this otherwise under-used area of roof is welcomed, and its use as an office is an appropriate town centre use. It is not considered that the proposed office use would have any detrimental impact on the viability or character of the area or lead to any unacceptable cumulative impact. A condition is recommended to ensure that the unit is only used as an office use and not any other uses within Class E in order to protect local amenity and transport conditions.

The profile and form of the new unit reflects that of the adjoining first floor element of 46 Birchington Road, and measures approximately 44sqm in floor area and 2.8m at the eaves. It has a pitched roof, formed of brick and has windows to north-east and north-west elevations, and 4 rooflights to the pitched roof. Overall, the addition of the structure to this underutilised flat roof would not detract from the appearance of the area, and its detailed design, form and materiality is considered appropriate in this context.

There would be a gap of approximately 6.3m between the north-east elevation and the rear elevation of no. 29 Quex Mews. It is set back from the directly adjacent north-east elevation of 46 Birchington Road. Owing to the pitched roof and its height, the 25-degree daylight angle test to protect adjoining light would not be breached in relation to the rear windows of no. 29 Quex Mews, and as a result there would not be any unacceptable loss of light or sense of enclosure. Whilst it is acknowledged that there may be a degree of loss of outlook to these rear windows, this floor to no. 29 Quex Mews is dual aspect and there are windows to its north-east elevation which overlook the rear garden, and therefore it is not considered that the development would have any significant negative impact. There would not be any loss of privacy to neighbouring properties, given there are no windows on the north-east elevation facing no. 29 Quex Mews and that the windows facing the rear elevation of no. 108 Kilburn High Road are obscure glazed. A condition is recommended to ensure that these windows are permanently retained as obscure glazing to protect the residential amenity of no. 108 Kilburn High Road.

Given that the flat roof is already being used by residents to access a number of properties, it is not considered that any additional activity and access by occupiers of the new office unit would have any adverse impact on the residential amenity

currently enjoyed by neighbouring residents in terms of noise and activity. It is noted that activity levels would be concentrated during working hours and unlikely to extend into late night.

- 2 The application site has a PTAL rating of 6a, with the site being very well served by public transport. Car parking for staff would not be considered necessary in this instance, and it is recommended that the car-free requirement for the site be secured via legal agreement. London Plan guidance requires 1 long-stay and 1 short-stay cycle parking space to be provided for a B1 Office (now Class E) use of this size. The flat roof currently houses cycle storage for the approved residential units at no. 108-110 Kilburn High Road. It is considered that there is sufficient space to provide two more cycle parking spaces, and a condition is recommended to secure details of these two spaces.

No objections or other responses were received following statutory consultation. The site's planning history and relevant appeal decisions were taken into account when coming to this decision.

As such, the proposal is in accordance with policies A1, D1, E1, T2, TC2 and TC4 of the Camden Local Plan. The proposed development also accords with the policies of the London Plan 2021 and National Planning Policy Framework 2021.

- 3 Your proposals may be subject to control under the Building Regulations and/or the London Buildings Acts that cover aspects including fire and emergency escape, access and facilities for people with disabilities and sound insulation between dwellings. You are advised to consult the Council's Building Control Service, Camden Town Hall, Judd St, Kings Cross, London NW1 2QS (tel: 020 7974 6941).
- 4 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.
- 5 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](http://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.

- 6 Your attention is drawn to the fact that there is a separate legal agreement with the Council which relates to the development for which this permission is granted. Information/drawings relating to the discharge of matters covered by the Heads of Terms of the legal agreement should be marked for the attention of the Planning Obligations Officer, Sites Team, Camden Town Hall, Argyle Street, WC1H 8EQ.

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

Yours faithfully

Supporting Communities Directorate