

## Paul Robinson

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**From:** [REDACTED] <[REDACTED]@hounslow.gov.uk>  
**Sent:** 03 April 2018 10:48  
**To:** Planning Support  
**Cc:** [REDACTED]  
**Subject:** GLA ref. D&P/4126/02/JS (Morrisons, Brentford) - email 1 of 2  
**Attachments:** Morrisons draft decision notice.pdf; S106\_KLG\_20 03 18\_EU\_Active01\_700896749\_9 MK edit.docx

Hi,

Please find LB Hounslow's revised Stage II referral for the above scheme, this time with a draft decision notice for approval and a draft of the Section 106 Agreement that has been worked on since the previous Stage II referral.

[REDACTED] – I don't normally work on Tuesdays but I am sending this from home today given your request not to send until your return from leave. Please don't hesitate to contact me tomorrow if anything is queried.

I will also forward the previous Stage II referral following this email.

Regards,

[REDACTED] MRTPI  
East Area Deputy Planning Manager

Housing, Planning and Regulatory Services  
London Borough of Hounslow  
Orange Zone, Civic Centre, Lampton Road,  
Hounslow, TW3 4DN  
Office: 0208 583 [REDACTED]

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**From:** [REDACTED] [mailto:[REDACTED]@london.gov.uk]  
**Sent:** 06 March 2018 10:23  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Morrisons Brentford

Thanks [REDACTED]

[REDACTED] cc'd would be the best person to review the draft s106 clauses. He is familiar with the scheme and Essential Living.

If you can also confirm the proposed rental levels as well, noting the £60k household cap for DMR in the SPG/draft London Plan/Housing Strategy and the Mayor's status preference for London Living Rent.

Thanks

■

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**From:** ■ [mailto:■@hounslow.gov.uk]

**Sent:** 06 March 2018 10:17

**To:** ■ <■@london.gov.uk>

**Subject:** RE: Morrisons Brentford

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Thanks for this. We had a very productive meeting with the applicant last Wednesday and hope to have a draft of the 106 finalised by the end of this week. The applicant has agreed to 15 year covenant for PRS, DMR in perpetuity and early and late viability reviews so I think this captures everything that was requested. Is there anyone that I can run the draft past in your absence so that we can send our Stage II referral on your return?

Regards,

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**From:** ■ [mailto:■@london.gov.uk]

**Sent:** 05 March 2018 16:02

**To:** ■

**Subject:** Morrisons Brentford

Hi ■

Further to our recent discussions, please see attached letter which is being sent in the post re: Morrisons Brentford to clarify the GLA position.

Can you note tomorrow is my last day in the office and I will then be on leave until 3 April.

If there is to be a re-referred Stage 2, it will need to be after the Easter holiday period.

Kind regards

■

■ | Senior Strategic Planner | Development Management | Development, Enterprise & Environment

**GREATER LONDON AUTHORITY** | 4th Floor, City Hall, The Queen's Walk, London SE1 2AA

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Mrs Katy Davis  
Carter Jonas LLP  
1 Chapel Place  
London W1G 0BG

Reference 00607/228-246/P1

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## DRAFT DECISION NOTICE

DECTP2

### Town and Country Planning Act 1990

Whereas in accordance with the provisions of the Town and Country Planning Act 1990 and the Orders in force thereunder you have made application dated 12 December 2016 and illustrated by plans for permission to the Local Planning Authority to develop land situated at **MORRISONS 228-246 HIGH STREET BRENTFORD TW8 0JG**

**By:** Demolition of the existing foodstore and redevelopment to provide 3,502 sqm A1 retail use and 661 sqm flexible A1/A3/A4 retail/cafe/bar use, 221 Private Rented Sector (PRS) apartments (C3 Use Class) across Building A and Building B, 90 car parking spaces, associated hard and soft landscaping, new pedestrian access routes through the site and public and private amenity space **Drawing Numbers:** See schedule of plans

**Now therefore we The Mayor and Burgesses of the London Borough of Hounslow** acting by the Council of the said Borough hereby give you notice pursuant to the said Acts and the Orders in force thereunder that permission to develop the said land in accordance with the said application is **hereby Approved Subject to a Legal Agreement.**

Subject to the following **conditions** and reasons.

**1. The Development hereby approved, shall be begun no later than the expiration of three years from the date of this permission.**

Reason: To accord with the provisions of Section 92(1) of the Town and Country Planning Act 1990.

**2. The proposed development shall be carried out in all respects in accordance with the proposals contained in the application and the plans submitted (schedule of plans) therewith and approved by the Local Planning Authority.**

Reason: To ensure the development is carried out in accordance with the planning permission and to ensure that any development that is carried out is that which has been assessed.

**3. No development shall take place until a Construction Management Plan (CMP) and Construction Logistics Plan (CLP) have been submitted to and approved by the Local Planning Authority. The CLP shall cover as a minimum:**

- a site plan (showing the areas set out below);
- confirmation that a pre-start record of site conditions on the adjoining public highway will be undertaken with Hounslow Highways and a commitment to repair any damage caused;
- provision for the parking of vehicles of site operatives and visitors;
- provisions for loading, unloading and storage of plant and materials within the site;
- details of access to the site, including means to control and manage access and egress of vehicles to and from the site for the duration of construction including phasing arrangements;
- details of vehicle routeing from the site to the wider strategic road network;
- the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- provision of wheel washing facilities at the site exit and a commitment to sweep adjacent roads when required and at the reasonable request of the Council;
- a scheme for recycling/disposing of waste resulting from demolition and construction

works;

- measures to ensure the safety of all users of the public highway especially cyclists and pedestrians in the vicinity of the site and especially at the access;
- commitment to liaise with other contractors in the vicinity of the site to maximise the potential for consolidation and to minimise traffic impacts;
- avoidance of network and school peak hours for deliveries and details of a booking system to avoid vehicles waiting on the public highway;
- all necessary traffic orders and other permissions required to allow safe access to the site to be secured and implemented prior to commencement of construction;
- details of the construction programme and a schedule of traffic movements.

**All demolition and construction works shall be undertaken in accordance with the approved CMP and CLP.**

Reason: In order to protect the environmental quality of the surrounding area and to ensure that deliveries to the site during construction are managed effectively so as to minimise impact upon the road network and to safeguard the amenities of residential properties in the locality and in the interest of road safety; in accordance with Local Plan policies CC2, EQ4, EQ5, EQ6 & EC2 and London Plan policies 5.3, 7.14 & 7.15. It is necessary for the details required by this condition to be submitted prior to the commencement of the development as to do so at a later date could compromise the material considerations of the case.

**4. No demolition or construction work shall take place on the site except between the hours of 8am to 6pm on Mondays to Friday and 8am to 4pm on Saturdays and not at all on Sundays and Public Holidays.**

Reason: In order to safeguard the amenities of adjoining residents and the amenities of the locality in accordance with Local Plan policies CC1, CC2 & EQ5 and London Plan policies 5.3 & 7.15.

**5. (A). Prior to the completion of the frame of any building hereby approved, a scheme for the storage and collection of waste and materials to be recycled shall be submitted to and approved by the Local Planning Authority.**

**(B). No building hereby approved shall be occupied until the waste and recycling facilities approved under Part (A) of this condition have been provided and made available for use by residents of that building. Such facilities shall remain throughout the lifetime of the development and shall be used for no other purposes.**

Reason: To ensure that refuse can be properly stored and removed from the site as soon as the building is occupied in accordance with Local Plan policies CC1, CC2 & EQ7.

**6. No development for the relevant part of the development (except demolition, archaeological investigations, ground condition investigations and intrusive site surveys and other enabling works: site clearance; soil storage; remedial works in respect of any contamination or any other adverse ground conditions; erection of any temporary means of enclosure and land raising) shall take place until details and samples of all facing materials to buildings are submitted to and approved in writing by the Local Planning Authority. The samples and details shall include:**

**A. brick/stonework (including brick/stone and mortar on-site sample panel min.**

**2m x 2m);**

**B. cladding materials (including system specifications/details and on-site samples where relevant);**

**C. window treatment (including sections/reveals and on-site sample);**

**D. all privacy measures (including obscure glazing details and privacy screens)**

**E. balustrading treatment (including details/sections/materials for each balcony type); and**

**F. any other materials/details to be used including extract vents, boiler flues etc.**

**The development shall be carried out in accordance with the approved details and maintained as such thereafter.**

Reason: In order to safeguard the visual amenities of the area and to satisfy the requirements of Local Plan policies CC2, CC3, CC4 & SC4 and London Plan policy 7.6.

**7. A minimum of 22 residential units hereby permitted shall be built so that they are easily adaptable to the standards in Building Regulations Part M4(3) (Wheelchair User Dwellings) or its subsequent update. All remaining residential units shall be built in accordance with the standards in Building Regulations Part M4(2) (Accessible and adaptable dwellings) or its subsequent update.**

Reason: To ensure a socially inclusive and sustainable development in accordance with Local Plan policy SC5 and London Plan policies 3.5 & 7.2.

**8. (A). Prior to the completion of the frame of any building hereby approved, a scheme of acoustic insulation, taking into consideration the recommendations of the Noise Impact Assessment dated December 2016 by Peter Brett Associates LLP, shall be submitted to and approved by the Local Planning Authority. Such a scheme shall include details of measures**

to ensure that the residential accommodation does not exceed the levels in Table 4 of BS8233:2014 and that through the application of good acoustic design, external communal amenity areas shall not exceed the noise levels set out in BS8233:2014 or such other standard as agreed in writing with the Local Planning Authority. Any works that form part of such a scheme shall be completed as approved before any part of the building to which the works relate is first occupied.

**(B). Prior to the first occupation of the development, measurement reports in accordance with the Associate of Noise Consultants guidelines – Noise Measurements in buildings (ANC-9801) Part 2: Noise from external sources (e.g. road traffic) demonstrating compliance with the scheme approved under Part A of this condition, shall be submitted to and approved by the Local Planning Authority.**

Reason: To ensure satisfactory environmental conditions for the occupiers of the proposed development in accordance with Local Plan policy EQ5.

**9. Prior to the occupation of any residential unit hereby permitted, details of a scheme of mitigation for exposure to poor air quality internally for each unit, to ensure exposure to air pollution does not exceed national air quality objectives, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved mitigation details.**

Reason: To ensure satisfactory environmental conditions for the occupiers of the hereby approved buildings in accordance with Local Plan policy EQ4, London Plan policy 7.14 and the London Councils' 'Air Quality and Planning Guidance'.

**10. No development (except demolition, archaeological investigations, ground condition investigations and intrusive site surveys and other enabling works: site clearance; soil storage; remedial works in respect of any contamination or any other adverse ground conditions; erection of any temporary means of enclosure and land raising) shall take place until final detailed drainage designs (including drawings), a maintenance plan for each of the drainage feature components (including routine maintenance tasks and frequencies and the responsible body/bodies) and evidence of site ground investigation to demonstrate whether the use of infiltration is suitable for the proposed drainage scheme has been submitted to and approved by the Local Planning Authority. The drainage scheme should be designed and constructed in line with Appendix E of the Flood Risk Assessment dated December 2016 by Peter Brett Associates LLP.**

Reason: To prevent the risk of flooding to and from the site in accordance with Local Plan policy EQ3, London Plan policy 5.13 and the Non-Statutory Technical Standards for Sustainable Drainage Systems.

**11. Prior to first occupation of the development hereby approved, evidence that the drainage system has been built as per the final detailed drainage designs (through the submission of photographs and copies of installation contracts) and written confirmation that the drainage features will be managed as per the detailed maintenance plan for the lifetime of the development shall be submitted to and approved by the Local Planning Authority.**

Reason: To ensure that the methods to mitigate the risk of surface water flooding have been constructed as agreed and that the drainage system is suitably managed, in accordance with Local Plan policy EQ3, London Plan policy 5.13 and the Non-Statutory Technical Standards for Sustainable Drainage Systems.

**12. Before the development hereby permitted commences:**

**a. Details of an intrusive site investigation are required in addition to the phase 1 desk study previously submitted. These details shall be submitted to and approved by the Local Planning Authority. The site shall be investigated by a competent person to identify the extent and nature of contamination. The report should include a tiered risk assessment of the contamination based on the proposed end use of the site. Additional investigation may be required where it is deemed necessary.**

**b. A scheme for the decontamination of the site shall be submitted to and approved by the Local Planning Authority, unless otherwise confirmed by the Local Planning Authority that this is not required. The scheme shall account for any comments made by the Local Planning Authority before the development hereby permitted is first occupied.**

**During the course of the development:**

**c. The Local Planning Authority shall be notified immediately if additional contamination is discovered during the course of the development. A competent person shall assess the additional contamination, and shall submit appropriate amendments to the scheme for decontamination in writing to the Local Planning Authority for approval before any work on that aspect of development continues.**

**Before the development is first brought into use:**

**d. The agreed scheme for decontamination referred to in clauses b) and c) above, including**

**amendments, shall be fully implemented and a written validation (closure) report submitted to the Local Planning Authority for approval.**

Reason: Contamination is known or suspected on the site due to a former land use. The Local Planning Authority therefore wishes to ensure that the development can be implemented and occupied with adequate regard for public and environmental safety, in accordance with Local Plan policy EQ8. It is necessary for the details required by this condition to be submitted prior to the commencement of the development as to do so at a later date could compromise the material considerations of the case.

**13. Prior to the first occupation of each building hereby approved, evidence (e.g. photographs, installation contracts and As-Built certificates under the Standard Assessment Procedure/National Calculation Method) shall be submitted to and approved by the Local Planning Authority to show that the development has been constructed in accordance with the approved Energy Strategy, and any subsequent approved revisions.**

Reason: To ensure that the development makes the fullest contribution to minimising carbon dioxide emissions in accordance with Local Plan policy EQ1 and London Plan policy 5.2.

**14. (A). Within three months of works starting on site, a BREEAM Design Stage certificate and summary score sheet (or such equivalent standard that replaces this) must be submitted to and approved by the Local Planning Authority to show that an 'Excellent' (minimum score 70%) rating will be achieved.**

**(B). Prior to the first occupation of each building hereby approved, a BREEAM Post-Construction Review certificate and summary score sheet (or such equivalent standard that replaces this) must be submitted to and approved by the Local Planning Authority to show that an 'Excellent' (minimum score 70%) rating has been achieved.**

Reason: To ensure a sustainable form of development in accordance with Local Plan policy EQ2.

**15. Prior to the first occupation of each building hereby approved, evidence (schedule of fittings and manufactures literature) shall be submitted to and approved by the Local Planning Authority to show that the development has been constructed in accordance with the approved internal water use calculations.**

Reason: In order to protect and conserve water supplies and resources in accordance with Local Plan policy EQ2 and London Plan policy 5.15.

**16. The development shall not be occupied until evidence (e.g. photographs and copies of installation contracts) has been submitted to the Local Planning Authority to demonstrate that the development has been carried out in accordance with the approved sustainable sourcing of materials requirements.**

Reason: In order to ensure the sustainable sourcing of materials in accordance with the London Plan policy 5.3 and the Mayor of London's Sustainable Design and Construction SPG.

**17. Prior to the completion of the frame of any building hereby approved, details of both hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority. The works shall then be carried out as approved.**

**The detailed landscaping scheme shall include:**

**A. soft planting: including any grass and turf areas, trees, planters, shrub and herbaceous areas including details of species, sizes, numbers/densities and sections of landscaped areas;**

**B. a 'Tree Planting Statement' providing full details, locations, specifications and construction methods for all purpose-built tree pits and associated above ground features, including specifications for tree protection and a stated volume of suitable growing medium to facilitate and promote the healthy development of the proposed trees, ensuring each tree has a soil volume equivalent of 0.6 times its canopy area at maturity;**

**C. hard landscaping: including ground surfaces, kerbs, edges, ridge and flexible paving, furniture, steps, refuse disposal points and if applicable synthetic surfaces for ground level, podium courtyard and roof terrace (where relevant);**

**D. play spaces and play equipment (to the equivalent provision of 157sqm);**

**E. an external lighting strategy; and**

**F. any other landscaping feature(s) forming part of the scheme.**

**The submission shall include a management programme for the lifetime of the development, which shall include: long term design objectives, management responsibilities and maintenance schedules for all hard and soft landscape areas, and details of any temporary landscaping (including boundary treatment) to be provided and management thereof.**

**All permanent landscaping comprised in the approved details shall be carried out during the first planting and seeding seasons following completion of construction works. Any trees or shrubs planted (including any such replacements) which die within five years from the date of planting shall be replaced in the next planting season with the same species, and of comparable maturity. The development shall be carried out strictly in accordance with the**

**details so approved and shall be maintained in accordance with the approved management programme.**

Reason: To ensure a satisfactory appearance of the site and to provide for suitable areas of amenity for future occupants, in accordance with Local Plan policies CC2, SC5 & GB7 and London Plan policies 5.3 & 7.2.

**18. No demolition or development shall take place until a stage 1 written scheme of investigation (WSI) has been submitted to and approved in writing by the Local Planning Authority. For land that is included within the WSI, no demolition or development shall take place other than in accordance with the agreed WSI, and the programme and methodology of site evaluation and the nomination of a competent person(s) or organisation to undertake the agreed works.**

If heritage assets of archaeological interest are identified by stage 1 then for those parts of the site which have archaeological interest a stage 2 WSI shall be submitted to and approved in writing by the Local Planning Authority. For land that is included within the stage 2 WSI, no demolition/development shall take place other than in accordance with the agreed stage 2 WSI which shall include:

**A. The statement of significance and research objectives, the programme and methodology of site investigation and recording and the nomination of a competent person(s) or organisation to undertake the agreed works; and**

**B. The programme for post-investigation assessment and subsequent analysis, publication & dissemination and deposition of resulting material. This part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the stage 2 WSI.**

Reason: To enable the recording of any items of historical or archaeological interest in accordance with Local Plan policy CC4 and Chapter 12 of the NPPF.

**19. Prior to the completion of the frame of any building hereby approved, details of the provision to be made for cycle parking (for both residential and commercial uses) shall be submitted to and approved in writing by the Local Planning Authority. The cycle parking shall be provided in accordance with the approved details prior to the first use of the development and shall thereafter be retained.**

Reason: To ensure that secure cycle spaces are provided and retained for the occupiers of the residential accommodation in accordance with Local Plan policy EC2 and London Plan policy 6.9.

**20. Prior to the first use of the development hereby permitted, a minimum of 9 'active' Electric Vehicle Charging spaces and 9 'passive' Electric Vehicle Charging spaces shall be provided in the site car park. Unless otherwise agreed in writing by the Local Planning Authority, the charging points must be 7.2kw.**

Reason: In order to promote sustainable transport modes in accordance with policies CC2 and EC2 of the adopted Local Plan and London Plan policy 6.13.

**21. No shopping trolleys, baskets, advertisements or other commercial paraphernalia shall be stored or located on the public highway which shall be kept clear of all obstructions at all times.**

Reason: In the interests of visual amenity and to prevent obstruction and inconvenience to users of the public highway in accordance with policies CC2 & EC2 of the Local Plan.

**22. All refuse and recycling bins, delivery cages, trolleys and any other items linked to deliveries and collection in association with the development hereby permitted are to be stored within the buildings and only brought out onto the public highway when deliveries are being made or refuse collected.**

Reason: In the interests of visual amenity and to prevent obstruction and inconvenience to users of the public highway, in accordance with policies CC2 & EC2 of the Local Plan.

**23. Prior to first occupation of each individual commercial unit labelled 'Retail 1-4' on the approved plans, details of storage areas and internal servicing routes shall be submitted to and approved in writing by the Local Planning Authority. Such arrangements shall be implemented prior to first occupation of the relevant commercial unit and retained as such thereafter.**

Reason: In order to prevent obstruction and inconvenience to users of the adjacent highway and in the interests of road safety, in accordance with policies CC2 & EC2 of the Local Plan and London Plan policy 6.13.

**24. Prior to the completion of the frame of any building hereby approved, an Inclusive Access Strategy shall be submitted to and approved by the Local Planning Authority, including:**

- Details for the arrival, entrance and movement through the buildings and how any level changes in the public realm would be overcome;
- Details of the play space including a choice of equipment to engage young children with

various abilities; and

- Details of seating suitable for disabled carers.

Reason: To ensure a socially inclusive and sustainable development in accordance with Local Plan policy SC5, London Plan policies 3.5 & 7.2 and the Mayor of London's 'Accessible London: Achieving an inclusive environment' SPG.

**25. Prior to the completion of the frame of any building hereby approved, details of the means of ventilation for the residential units hereby permitted, including noise attenuation measures, shall be submitted to and approved by the Local Planning Authority. The approved scheme shall be installed prior to the occupation of any residential unit and thereafter shall be permanently retained.**

Reason: To protect the amenities of existing and future residents and ensure that the development provides a high quality design in accordance with Local Plan policies CC2 & EQ5.

**26. Prior to the completion of the frame of any building hereby approved, details of the means of ventilation and odour extraction for the commercial units hereby permitted, including noise attenuation measures, shall be submitted to and approved by the Local Planning Authority. The approved scheme shall be installed prior to the first use of the commercial unit to which the scheme relates and thereafter shall be permanently retained.**

Reason: To protect the amenities of existing and future residents and ensure that the development provides a high quality design in accordance with Local Plan policies CC2 & EQ5.

**27. (A). Before any commercial plant/machinery is installed at the site, it shall be designed to ensure that noise emanating from such plant is at least 10dB below the background noise levels when measured from the nearest sensitive receptors, in accordance with a scheme to be submitted to and by the Local Planning Authority. Any roof plant shall be set in from the roof boundaries by a minimum of 2m.**

**(B). Following the installation of any plant/machinery at the site, a post-completion noise assessment shall be submitted for approval to the Local Planning Authority which demonstrates the actual measured rating level of plant/machinery operating under normal conditions. All measurements shall be made in accordance with the methodology of BS4142:2014 (Methods for rating and assessing industrial and commercial sound) and/or its subsequent amendments. The post-completion report shall be both completed and submitted to the Local Planning Authority within 28 days of completion of the installation for review and approval.**

Reason: To protect the amenities of existing and future residents in accordance with policies with Local Plan policies CC2 & EQ5.

**28. The commercial units shown as 'Retail 1-4' on drawing no. ESL-BRE\_00\_DR\_0200 Rev A received 13th March 2017 shall be used for Class A1/A3/A4 purposes only and for no other purpose (including any other purposes in the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended), or in any provision equivalent to that Schedule in any statutory instrument revoking and re-enacting that Order with or without modification).**

Reason: The Council is satisfied that the uses hereby approved would not result in detriment to adjoining properties but wish to control future changes of use in the interests of amenity and in accordance with the provisions of Local Plan policies CC1, CC2 & EQ5.

**29. The approved food store (Building A) shall not be open to customers outside of the times of 07:00-23:00. The remaining commercial uses (Class A1/A3/A4) shall not be open to customers outside of the times of 07:00-02:00.**

Reason: In order to safeguard the amenities of neighbouring residential properties in accordance with Local Plan policies CC2, EQ5 & EC2.

**30. Prior to first occupation of each individual commercial unit, details of timings that deliveries shall be taken or dispatched from the site shall be submitted to and approved by the Local Planning Authority. Such arrangements shall be implemented prior to first use of the relevant commercial unit and retained as such thereafter.**

Reason: In order to ensure that deliveries to and the servicing of the site is managed effectively so as to minimise impact upon the road network and safeguard the amenities of residential properties in the locality; in accordance with Local Plan policies CC2, EQ5 & EC2 and London Plan policy 7.15.

**31. Prior to first occupation of each individual commercial unit, a detailed scheme for the shop windows of the unit shall be submitted to and approved by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved scheme and no further modifications shall be made without the written consent of the Local Planning Authority.**

Reason: To protect the appearance and character of the area in accordance with Local Plan policies CC2 & CC4.

**32. Prior to the first occupation of the residential units in Building B hereby approved, the southernmost and northernmost windows to Levels 02-08 (inclusive) as shown on Elevation**

11 on drawing no. ESL-BRE\_E3\_DR\_0222 Rev A received 13th March 2017 shall be non-opening and fitted with obscure glazing in accordance with the details to be submitted pursuant to condition 6 of this permission. Thereafter, these windows shall not be repaired or replaced otherwise in accordance with the requirements of this condition.

Reason: To protect the amenities of neighbouring occupants in Building A in accordance with policy CC2 of the adopted Local Plan.

**33. The commercial unit shown as 'food store' on drawing no. ESL-BRE\_00\_DR\_0200 Rev A received 13th March 2017 shall be used as a retail food store only and for no other purpose (including any other purposes in the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended), or in any provision equivalent to that Schedule in any statutory instrument revoking and re-enacting that Order with or without modification).**

Reason: To accord with the terms of the application and to protect the vitality and viability of Brentford town centre; in accordance with Local Plan policies TC2, TC3 & TC4 and paragraphs 23-27 of the NPPF.

**Informative:**

1. This development is liable for CIL. A Liability Notice will follow shortly. For further information please contact the CIL team on 020 8583 4898/4895 or view our web page:  
[http://www.hounslow.gov.uk/index/environment\\_and\\_planning/planning.htm](http://www.hounslow.gov.uk/index/environment_and_planning/planning.htm)  
or the planning portal web page:  
<http://www.planningportal.gov.uk/wps/portal>

**Dated**

Marilyn Smith  
**Chief Planning Officer**

Notes and Schedule Follow

**DRAFT**

## Notes:

- (i) Attention is particularly drawn to the Schedule to this Notice which sets out the rights of applicants who are aggrieved by the decisions of the Local Planning Authority.
- (ii) This decision does not purport to convey any approval or consent which may be required under the Building Regulations, 1991 any bye-laws or under any enactment other than the Town and Country Planning Act 1990. The Building Regulations 1991 apply to "building work" where it is necessary to submit separate full plans or a building notice before any works are commenced. Plans and details should be submitted together with appropriate forms and the relevant fee.

## The Schedule referred to overleaf

### Rights of Applicants Aggrieved by Decision of Local Planning Authority

- 1 If the applicant is aggrieved by the decision of the local planning authority to refuse permission or approval for the proposed development or to grant permission or approval subject to conditions he may appeal to the Secretary of State for the Environment in accordance with section 78 of the Town and Country Planning Act 1990 within six months of the date of this notice.

(Appeals must be made on a form which is obtainable from the Secretary of State for the Environment).\* The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the local planning authority, or could not have been so granted otherwise than subject to the conditions imposed by them having regard to the statutory requirements to the provisions of the development order and to any directions given under the order.

- 2 If permission to develop land is refused or granted subject to conditions whether by the local planning authority or by the Secretary of State for the Environment and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted he may serve on the Common Council or on the Council of the county borough London borough or county district in which the land is situated as the case may be a purchase notice requiring that council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.
- 3 In certain circumstances a claim may be made against the local planning authority for compensation where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in Part IV of the Town and Country Planning Act 1990.

- \* Present address: The Planning Inspectorate, Room 3/01 (Customer Support/Scanning Team), Temple Quay House, 2 The Square, Temple Quay, BRISTOL, BS1 6PN

## Provisions for disabled persons

The applicant's attention is drawn to the following informative if appropriate to the development hereby approved:

### Disabled Persons Act 1981

In accordance with section 70A of the Town and Country Planning Act 1990 attention is drawn to the relevant provisions of the Chronically Sick and Disabled Persons Act 1970 (i.e. sections 4 and 7 and/or 7 and 8a) and the Code of Practice for Access for the Disabled to Buildings (i.e. British Standard No.5810 of 1979).

KWN

## Paul Robinson

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**From:** [REDACTED] <[REDACTED]@hounslow.gov.uk>  
**Sent:** 03 April 2018 10:51  
**To:** Planning Support  
**Cc:** [REDACTED]  
**Subject:** GLA ref. D&P/4126/02/JS (Morrisons, Brentford) - email 2 of 2  
**Attachments:** GLA ref. D&P/4126/01/JS (Morrisons, Brentofrd High Street, TW8) - email 1 of 2; RE: GLA ref. D&P/4126/01/JS (Morrisons, Brentofrd High Street, TW8) - email 1 of 2; FW: Essential Living Morrisons, 228-246 High Street, Brentford, TW8 0JG [KLG-EU\_Active01.FID131537]

To be read with email just sent.

Regards,

[REDACTED] MRTPI  
East Area Deputy Planning Manager

Housing, Planning and Regulatory Services  
London Borough of Hounslow  
Orange Zone, Civic Centre, Lampton Road,  
Hounslow, TW3 4DN  
Office: 0208 583 [REDACTED]

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**From:** [REDACTED]  
**Sent:** 23 January 2018 12:53  
**To:** [REDACTED]  
**Cc:** 'planningadmin'  
**Subject:** GLA ref. D&P/4126/01/JS (Stage II referral)

[REDACTED]

Thanks for confirming discussions tomorrow.

If a Stage II is needed then I can't wait to submit this sometime next month, as we need to determine shortly owing to public/Councillor unrest and impending deadline with extension of time. On this basis, I attach three emails with all the necessary documents to provide a Stage II response, namely:-

- GLA's Stage I response;
- Committee report, addendum report & minutes;

- Consultation responses (1 of 2, with the other provided as CD previously);
- Viability Assessments (ULL on behalf of applicant & BPS on behalf of Council);
- Draft 106 sent to applicant 22<sup>nd</sup> August (no progress made).

As per our tel con, the Council are now minded to refuse the application as we have not been able to progress the 106 since August. The Committee report is clear at paragraphs 11.2 & 11.3 that officers may refuse permission if the legal agreement cannot be completed by 30<sup>th</sup> June 2017 or an extended date.

I would be grateful if you could construe this email as the Council's Stage II referral subject to the need for this being confirmed.

Regards,

**[REDACTED] MRTPI**  
**East Area Deputy Planning Manager**  
**London Borough of Hounslow**

☎: 020 8583 [REDACTED]  
✉: [REDACTED]@hounslow.gov.uk  
🌐: [www.hounslow.gov.uk](http://www.hounslow.gov.uk)



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**From:** [REDACTED] [[mailto:\[REDACTED\]@london.gov.uk](mailto:[REDACTED]@london.gov.uk)]  
**Sent:** 23 January 2018 10:07  
**To:** [REDACTED]  
**Subject:** Brentford Essential Living

Morning [REDACTED]

I have raised this case with management and have a meeting with them to discuss tomorrow morning.

Following that, I will get back to you with arrangements and timescales for the Stage 2.

Any immediate queries, please ring.

Thanks

[REDACTED]  
[REDACTED] | Senior Strategic Planner | Development & Projects | Development, Enterprise & Environment  
**GREATER LONDON AUTHORITY** | 4th Floor, City Hall, The Queen's Walk, London SE1 2AA  
Tel: 020 7983 [REDACTED] | Fax: 020 7983 [REDACTED] | Email: [REDACTED]@london.gov.uk

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This email has been scanned prior to entering the London Borough of Hounslow's network.

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**Paul Robinson**

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**From:** [redacted] <[redacted]@hounslow.gov.uk>  
**Sent:** 09 June 2017 15:57  
**To:** Planning Support; [redacted]  
**Subject:** GLA ref. D&P/4126/01/JS (Morrisons, Brentofrd High Street, TW8) - email 1 of 2  
**Attachments:** Stage I response.pdf; Addendum Report.pdf; Additional items for s106 Heads of Terms.docx; Committee report.pdf; Heads of Terms document.pdf; Planning Committee minutes.pdf;  
**Consultation responses 2 GLA.pdf**

**[Regulation 13 - see cover response]**

Good afternoon,

Further to the Stage I response to the above planning application (as attached), I now also include the Planning Committee report, Addendum report (which includes recommended conditions), Committee meeting minutes and agreed Heads of Terms provided in two documents. I have also attached 1 of 2 documents which collates the consultation responses received – second document to follow due to file size.

I would be grateful if you could construe this email as the Council’s Stage II referral to the GLA. Please let me know if you require any further documentation.

Regards,

[redacted] **MRTPI**  
**East Area Deputy Planning Manager**  
**London Borough of Hounslow**

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✉: [redacted]@hounslow.gov.uk  
🌐: [www.hounslow.gov.uk](http://www.hounslow.gov.uk)



[Planning committee report available at <https://democraticservices.hounslow.gov.uk/documents/s132384/Morrisons%20report.pdf>]

#### **Additional items for s106 Heads of Terms:-**

1. Review mechanism to capture any uplift in viability with a profit share for a financial contribution towards off-site affordable housing delivery (initial suggestion of 12-18 months post completion)
2. Construction training – £168,963 or in-kind provision
3. End-user employment training – £75,680 (or in-kind provision as already set out in HoT)
4. £100 sustainability travel voucher for all new residential units (part of Residential Travel Plan)
5. Provision of car club parking bay either on-site or on-street
6. Bus stop upgrade works (potential need identified by LBH Transport but TfL have not confirmed– will remove if response not forthcoming)
7. Permanent 24-hour public access through the site (arcade route to remain open)
8. Delivery and Servicing Management Plan
9. Considerate Contractors Scheme
10. Cycle Superhighway contribution - £50,000
11. Works to Back Lane secured in the s106 and delivered under s278
12. In-kind contribution towards upgrade of St Paul's Recreation Ground

# PLANNING OBLIGATIONS: POTENTIAL HEADS OF TERMS FOR HIGH STREET EAST, BRENTFORD

## PLANNING APPLICATION REFERENCE: P/2016/5573

The following list is subject to detailed negotiation with the LPA as the application determination period progresses.

### 1. Draft Heads of Terms

#### 1.1. Parties

1.1.1. **Essential Living (Brentford) Limited** (Company Registration Number 119247) registered in Jersey under the Companies (Jersey) Law 1991 whose registered office is at 3rd Floor 37 Esplanade St Helier Jersey JE2 3QA (the Owner)

1.1.2. **London Borough of Hounslow** of Civic Centre, Lampton Road, Hounslow, TW3 4DN (the Council)

#### 1.2. Affordable Housing provision

1.2.1. Current target (subject to detailed viability testing) is 25% through Discount Market Rent (DMR).

1.2.2. The discount levels for DMR will be as follows:

55% of OMR

65% of OMR

80% of OMR

1.2.3. DMR Unit rents will be subject to annual upwards-only indexation, to be tied to the Retail Prices Index.

1.2.4. Nominations for residents of DMR Units will be received from the London Borough of Hounslow. The London Borough of Hounslow shall ensure that nominated persons are eligible for DMR Units

1.2.5. It is proposed that for a period of 20 years from the date of practical completion of each DMR Unit that unit will be provided as DMR. The DMR Unit locations within the Development can be changed at any time, provided that the number, discount mix and unit-type mix remains unchanged. The current proposed mix is as follows:

Unit Type	55% of OMR	65% of OMR	80% of OMR
Studio			
No. of Units	3	3	5

1 bed			
No. of Units	5	6	8
2 bed			
No. of Units	6	6	8
3 bed			
No. of Units	2	2	1
<b>TOTAL</b>	<b>16</b>	<b>17</b>	<b>22</b>

- 1.2.6. At the end of the 20 year period each of the DMR units will no longer be subject to the restrictions on DMR housing and will revert to being a Private Rented Sector unit.
- 1.2.7. At the point at which a unit reverts to Private Rent the tenants will be able to remain in the unit but will be charged Open Market Rent (OMR) levels.
- 1.2.8. It is proposed that a commuted sum of £50,000 per DMR unit is paid upon reversion to OMR; however, The Owner shall have the right to retain all or some of the DMR units at DMR rents in lieu of providing said commuted sum. Should any retain DMR units revert to OMR at a later date, the commuted some of £50,000 would be paid in respect of said unit.
- 1.2.9. A cap of £2,750,000 (i.e. 55 x £50,000) would be applicable to the total amount of commuted sums paid in respect of reversion to OMR of the DMR units after the 20 year DMR period.
- 1.2.10. It is proposed that the gross household income of all DMR tenants will be reviewed by an independent third party at the end of 5, 10 and 15 years from first occupation, on behalf of The Owner and the LPA. If the tenant has a lower or higher gross household income than when they were last assessed, and has moved between the specified maximum income criteria they would also move (up or down, as appropriate) between the rental discount brackets.
- 1.2.11. If a tenant no longer qualified for DMR after a review they could remain in their apartment paying open market rent and another unit would be substituted as DMR. The number and mix of units that make up the overall percentage of DMR offer would need to remain the same.
- 1.2.12. In the event of PRS market failure (introduction of legislation/policy to control or regulate rent, 25% or more of the units unoccupied and being unlikely to be occupied for PRS because of continuous adverse change in market conditions beyond The Owner's control and/or no buyer available to purchase all the Dwellings who is willing to pay more than 95% Open Market Value) the Owner must demonstrate this to the Council's satisfaction (acting reasonably) and the Council will release the restriction on

use for PRS during the Private Rental Period.

1.2.13. In the event that The Owner

1.2.13.1. has not implemented the planning permission within 18 months of completion of the s106 agreement

1.2.13.2. disposes of more than 50% of the units in the scheme for occupation other than as PRS units within 10 years of the date of implementation of the planning permission

then a viability assessment will be undertaken to determine whether an additional contribution is required towards the provision of off site affordable housing.

**2. Other Heads of Terms**

2.1. PRS covenant period of 10 years from practical completion;

2.2. New residential and business occupiers to be made aware through a clause in their tenancy agreements/leases (respectively) that they cannot apply for a parking permit within any CPZ in the locality of the Land.

2.3. Implementation of a car park management plan to be agreed with the Council, and to incorporate replacement food store operators, the Owner and Hounslow;

2.4. Workplace and residential travel plan provision;

2.5. Employment training measures to be delivered through Essential Living Future, such measures to include training programmes, work experiences and employment opportunities

2.6. Payment of the carbon offset contribution of £241,481;

2.7. The LPA's monitoring, legal and professional costs; and

2.8. The Owner shall use reasonable endeavours to make arrangements for temporary alternative food store provision in conjunction with the proposed operator of the food store to be provided as part of the Development in lieu of the current provision at the site during the construction period. Should the Owner (acting reasonably) be unable to procure a temporary alternative food store provision within 12 months after the date of the s106 Agreement, then the Owner shall make alternative provision, including but not limited to the provision of a shuttle bus to an alternative local food store, or arrangements for increased home delivery capacity for food and groceries with a provider of the Owner's choosing, until such time as the new food store on the Land is Practically Complete.

### 3. General Provisions

The below provides an indication of the drafting of the main body of the Agreement. Elements will be subject to change, particularly including the definitions section.

The final Agreement will include detailed provisions regarding the obligations of the Owner and Council, pursuant to the above heads of terms.

#### 1. DEFINITONS

[TBC]

<b>“Act”</b>	means the Town and Country Planning Act 1990
<b>“BCIS Indexation”</b>	means the Building Cost Information Service Index (BCIS) as established by the Royal Institute of Chartered Surveyors (RICS) Building Cost Information Service All in tender Indexation and such indexation shall be from the date this Deed and <b>“BCIS Index”</b> should be construed accordingly
<b>“Certificate of Practical Completion”</b>	means any certificate issued in accordance with a works or building contract certifying that Practical Completion has taken place in respect of construction of a Dwelling or where relevant the whole or part of the Dwelling
<b>“Deed”</b>	means a reference to this deed
<b>“Designated Person”</b>	means a person who: <ul style="list-style-type: none"><li>a) Lives or works in the London Borough of Hounslow</li><li>b) Has been identified through the London Borough of Hounslow’s Intermediate Housing Waiting List and in accordance with the Council’s adopted guidance</li><li>c) Has a gross income of between £18,000 and £70,000 (RPI Indexed)</li><li>d) Has provided to the Owner three references to the Owner’s satisfaction</li></ul>
<b>“Development”</b>	means (as detailed in the Planning Permission) the development comprising “demolition of the existing foodstore and redevelopment to provide 3,502 sqm A1 retail use and 661 sqm flexible A1/A3/A4 retail/cafe/bar use, 221 Private Rented Sector (PRS) apartments (C3 Use Class) across Building A and Building B, 90 car parking spaces, associated hard and soft landscaping, new pedestrian access routes through the site and public and private amenity space”

<b>“Director”</b>	means the Council’s Executive Director of Regeneration, Economic Development & Environment for the time being or such other officer of the Council as it may notify to the Owner in writing
<b>“Disposal”</b>	means any transfer lease tenancy or other instrument creating a freehold or leasehold in one of the Private Rented Sector Units on the basis of which the unit may be used for a purpose other than Private Rental Use
<b>“DMR Period”</b>	means (in relation to each of the DMR Units) the period beginning on the date of Practical Completion of that DMR Unit which shall end at the date on which that DMR Unit is subject to a requirement to pay 100% Open Market Rent AND FOR THE AVOIDANCE OF DOUBT that period shall be: <ul style="list-style-type: none"> <li>(a) 20 years and 12 months in the case of a DMR Unit which is on Rent Level Discount One;</li> <li>(b) 20 years and 9 months in the case of a DMR Unit which is on Rent Level Discount Two; and</li> <li>(c) 20 years and 7 months in the case of a DMR Unit which is on Rent Level Discount Three</li> </ul>
<b>“DMR Unit”</b>	means a Dwelling provided on the Land built in accordance with the Planning Permission and let only to Designated Persons
<b>“Dwelling”</b>	means any unit of residential accommodation constructed on the Land pursuant to the Planning Permission and forming part of the Development for the sole use as a private residence
<b>“Expert”</b>	means the expert appointed pursuant to Clause 8 of this Deed
<b>“Implement” “Implemented” and “Implementation”</b>	means the carrying out of a material operation on the Development as defined in section 56(4) of the Act save for operations consisting of:- <ul style="list-style-type: none"> <li>(a) archaeological investigations;</li> <li>(b) investigations for the purpose of assessing ground conditions;</li> <li>(c) remedial work in respect of any contamination or other adverse ground conditions;</li> <li>(d) diversion and laying of services;</li> <li>(e) erection of any temporary means of enclosure;</li> </ul>

- (f) the temporary display of site notices or advertisements;
- (g) the inter tidal terracing works; and
- (h) site clearance and demolition work on the Land

**“Implementation Date”** means the date of Implementation of the Development

**“the Land”** means all of that land located at 228-246 HIGH STREET BRENTFORD TW8 0JG and as delineated edged red on Plan [ ] of the First Schedule to this Deed and is the land against which this Deed may be enforced

**“Market Failure”** means:-

- (a) the introduction by national London wide or local government of legislation or policy which has the direct or indirect effect of controlling restricting or otherwise regulating the rent which can be charged in relation to any Dwelling;
- (b) 25% or more of the Dwellings becoming unoccupied and being unlikely to be occupied for Private Rental Use due to any continued and sustained adverse change in the private residential market beyond the Owner’s reasonable control for a continuous period of more than 6 months commencing after the date of Practical Completion; or
- (c) failure to find a single buyer of all of the Dwellings for Private Rental Use who will pay more than 95% of the total cumulative market value of all of the Dwellings sold on an individual basis to separate owner occupiers

**“Occupation”, “Occupied” and “Occupy”** means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations

**“Open Market Rent”** means a rent valued using the definition of the International Valuations Standard Committee as adopted by the Royal Institution of Chartered Surveyors and approved by the Council

**“Permitted Disposal”** means the grant of an assured shorthold tenancy (or similar tenancy or lease that does not grant security of tenure to the individual occupier and is not registerable at Land Registry) of a Dwelling to an individual for Private Rental Use

**“Planning Application”** means the application submitted to the Council for the Development and allocated the Council’s reference number

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<b>“Planning Permission”</b>	means the planning permission subject to conditions to be granted by the Council pursuant to the Planning Application in the form set out in the Second Schedule to this Deed
<b>“Practical Completion”</b>	means the date certified in the relevant Certificate of Practical Completion and where more than one such certificate is issued the date of Practical Completion shall be the date certified in the last certificate issued in respect of that Dwelling and where relevant the whole or part of the Development and <b>“Practically Completed”</b> shall be construed accordingly
<b>“Private Rental Period”</b>	means the period commencing on the date of this Deed and expiring on the tenth anniversary of the Practical Completion of the Development
<b>“Private Rental Use”</b>	means use for Occupation by individuals for private residential purposes under assured shorthold tenancies (or similar tenancies or leases that do not grant security of tenure to the individual occupier and are not registerable at Land Registry) and not for use as a DMR Unit
<b>“Private Rented Sector”</b>	means a Dwelling where the landlord tenant relationship is other than: owner-occupied, social housing landlord such as a registered provider or Council landlord
<b>“Private Rented Sector Units”</b>	means a Dwelling Occupied for Private Rental Use
<b>“Rent Level Discount”</b>	means a discount from the Open Market Rent for a Dwelling
<b>“Rent Level Discount One”</b>	means 55% of the Open Market Rent for that Dwelling
<b>“Rent Level Discount Two”</b>	means 65% of the Open Market Rent for that Dwelling
<b>“Rent Level Discount Three”</b>	means 80% of the Open Market Rent for that Dwelling

## **2. CONSTRUCTION OF THIS DEED**

- 2.1 Where in this Deed reference is made to clause, paragraph, annex, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, annex, schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Words denoting an obligation on a party to do any act, matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause permit or suffer any infringement of the restriction
- 2.5 Headings contained in this Deed are for reference purposes only and are not incorporated into the Deed and shall not be deemed to be an indication of the meaning of the parts of this Deed to which they relate
- 2.6 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.7 Any reference to an act of Parliament shall include any modification, extension or re-enactment of that act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that act or deriving validity from it.
- 2.8 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council and the successors to their respective statutory functions.

### **3. LEGAL BASIS**

- 3.1 This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972, Section 16 of the Greater London Council (General Powers) Act 1974, Section 1 of the Localism Act 2011 and all other powers so enabling.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and shall be binding on the Land and are enforceable by the Council as local planning authority not only against the Owner but also against any person deriving title from the Owner in respect of the Land as provided by Section 106 of the Act and any persons claiming through or under it with the exception of those listed at Clause 7.8 of this Deed.
- 3.3 Nothing contained or implied in this Deed shall prejudice or affect the rights, powers, duties and obligations of the Council in the exercise of its functions as local planning authority and its rights powers duties and obligations under all public and private statutes, bylaws and regulations may be fully and entirely exercised as if the Council were not a party to this Deed

### **4. CONDITIONALITY**

- 4.1 This Deed is conditional upon:
- (i) the grant of the Planning Permission; and
  - (ii) the Implementation of the Planning Permission

save for the provisions in clauses [ ] which shall come into effect immediately upon completion of this Deed PROVIDED THAT nothing shall absolve the Owner from

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complying with the obligations made under this Deed in relation to the Development or part of it which need to be complied with prior to the Implementation of the same.

## **5. COVENANTS**

5.1 The Owner covenants with the Council to fulfil the obligations and restrictions as set out in this Deed

5.2 The Council covenants with the Owner to fulfil the obligations and restrictions as set out in this Deed

## **6. COUNCIL'S POWERS**

Nothing in this Deed shall fetter the statutory duties, rights and powers of the Council.

## **7. MISCELLANEOUS**

7.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it

7.2 This Deed shall be registered as a local land charge by the Council.

7.3 Where the agreement, approval, consent or expression of satisfaction is required from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld conditioned or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Director; and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

7.4 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

7.5 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid or unenforceable then such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

7.6 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or expires prior to the Implementation of the Development but the cessation of this deed shall not affect the liability of any party for any antecedent breach of this Deed. This Clause shall not apply if the Planning Permission is subsequently re-instated.

7.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land or that part of the Land in relation to which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

7.8 The obligations contained in this Deed shall not bind nor be enforceable against:

- (a) any statutory undertakers or utilities companies in relation to any part of the Land required by them for electricity substations, gas governor stations and/or for the supply of any services; and

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- (b) any individual owner-occupiers or tenants of Dwellings constructed pursuant to the Planning Permission nor against those deriving title from them.
- 7.9 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

## **8. APPOINTMENT OF EXPERT**

- 8.1 In the event of any dispute arising between the parties hereto in respect of any matter contained in this Deed (including any matter to be agreed or approved under this Deed) the same shall be referred to an Expert being an independent person of at least 10 years standing in the area of expertise relevant to the dispute to be agreed between the parties or failing agreement at the request and option of any of them to be nominated as their joint expense by or on behalf of the President for the time being of the Law Society and the Expert so appointed shall act as an expert and not as an arbitrator and whose decision shall be final and binding on the parties and whose costs shall be in his award.
- 8.2 The Expert shall be appointed subject to an express requirement that he reaches his decision and communicates it to the parties to the dispute within the minimum practical timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight days from the date of his appointment to act.
- 8.3 The Expert shall be required to give notice to each of the parties to the dispute inviting each of them to submit to him within ten Working Days written submissions and supporting material and shall afford to the parties an opportunity to make counter submissions within a further five Working Days in respect of any such submission and material and his decision, in the absence of manifest error, shall be binding on the parties
- 8.4 The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief

## **9. WAIVER**

No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

## **10. CHANGES IN OWNERSHIP**

The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of their respective interests in the Land occurring before all the obligations under this Deed have been discharged. Such notice shall give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Land or unit of Occupation purchased by reference to a plan.

## **11. INDEXATION**

All sums under this Deed (save for Legal Costs) are subject to BCIS Indexation and such sums shall be increased by an amount equivalent to the relevant Index from the date of the Planning Application until the date that the sum becomes payable

## **12. LATE PAYMENT**

If any payment due to the Council under this Deed is paid late, interest will be payable at 2% above the base lending rate of Lloyds Bank (calculated from time to time) to be calculated from the date payment is due to the date payment is made.

## **13. FINANCIAL PAYMENTS**

All financial payments payable by the Owner to the Council under this Deed are to be sent by [ ].

## **14. NOTIFICATION**

The Owner covenants with the Council to give at least five (5) Working Days prior written notice to the Council clearly addressed and marked for the attention of the Director of the commencement and completion of any dates referred to in this Deed including:-

- (i) the Implementation Date;
- (ii) the Occupation of the first Dwelling;
- (iii) the date of the fifth anniversary of each DMR Period;
- (iv) the date of the tenth anniversary of each DMR Period;
- (v) the date on which any DMR Unit reverts to Open Market Rent;
- (vi) the date which is 12 months prior to the proposed date of Practical Completion;
- (vii) the proposed date of Practical Completion; and
- (viii) any other obligations to notify the Council as referred to in this Deed.

## **15. JURISDICTION**

15.1 This Deed including its construction, validity, performance and enforcement and any dispute arising or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes and claims) shall be governed by and interpreted in accordance with English law.

15.2 The parties to this Deed irrevocably agree that the English courts shall have exclusive jurisdiction to settle any disputes or claims arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes and claims).

## **16. VAT**

- 16.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable in respect thereof
- 16.2 If at any time VAT becomes chargeable in respect of any supply made in accordance with the terms of this Deed then to the extent that VAT had not previously been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

## **17. COMMUNITY INFRASTRUCTURE LEVY**

- 17.1 The Council and the Owner agree that the obligations set out in this Deed are for the purposes of Regulation 122 of the Community Infrastructure Levy Regulations 2010:-
- (a) necessary;
  - (b) directly related to the Development; and
  - (c) fairly and reasonably related in scale and kind to the Development.

## **18. PRIVATE RENTAL PERIOD**

- 18.1 The Owner shall not during the Private Rental Period use or permit the Dwellings to be used for any purpose other than Private Rental Use.
- 18.2 The Owner shall not during the Private Rental Period complete or permit completion of any Disposal of a Dwelling or Dwellings at the Property other than a Permitted Disposal.

## **19. PRS MARKET FAILURE**

- 19.1 In the event that the Owner considers acting reasonably that a Market Failure has occurred it shall notify the Council in writing of this and provide reasoned justification and/or evidence of the said Market Failure.
- 19.2 If the Owner can demonstrate to the Council's reasonable satisfaction that a Market Failure has occurred then:
- (a) Upon receipt of written notification from the Council the Owner shall no longer be bound by the covenants set out in Clause 18; and
  - (b) the Council shall, at the Owner's cost, enter into such deeds and procure such Land Registry forms (including form RX4) as are required to determine this deed and remove the restriction detailed in Clause 20.

## **20. RESTRICTION**

- 20.1 The Owner will procure registration of a restriction on the proprietorship register to the Property relating to the Owner's covenants in Clause 18 in the following form:

*"No disposition of the registered estate (other than a legal charge) by the proprietor of the registered estate is to be registered without a certificate signed by the Council or their conveyancer confirming that the provisions of Clause 18 of the S106 Agreement*

**Winckworth**  
Sherwood

*dated [●] and made between (1) Essential Living (Brentford) Limited and (2) the London Borough of Hounslow have been complied with or do not apply”.*

- 20.2 The Council hereby consents prospectively to the removal of the restriction detailed in Clause 20.1 above on the expiry of the Private Rental Period and will provide such assistance to the Owner as may be required to effect the removal of the restriction PROVIDED ALWAYS that the Owner shall be solely responsible for any reasonable costs incurred by the Council in providing such assistance.

**21. MORTGAGEE PROTECTION CLAUSE**

- 21.1 The Council confirms that the covenants imposed on the Owner by Clause 18 of this Deed shall not bind a mortgagee or receiver exercising its power of sale or other remedies under its charge over the Land or any part of it.

## Paul Robinson

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**From:** [REDACTED] <[REDACTED]@hounslow.gov.uk>  
**Sent:** 26 June 2017 13:21  
**To:** [REDACTED]  
**Subject:** RE: GLA ref. D&P/4126/01/JS (Morrisons, Brentofrd High Street, TW8) - email 1 of 2  
**Attachments:** Economic Viability Assessment Report - December 2016.pdf; Brentford High Street Morrisons Site - BPS report - 5th April 2017.pdf; APPENDIX ONE - Review of cost estimate.pdf

[REDACTED]

Thanks for confirming re CD. At this stage we don't have an agreed position on the details of the AH review – I envisage that this will be finalised when our appointed solicitor has drawn up the 106 (hopefully this week) and then this aspect of the draft deed is agreed by the applicant.

I was awaiting the completion of this before sending all documents but as I'm emailing I can send the applicant's FVA alongside the review of this by the Council's appointed consultant (BPS). The Review of Cost Estimate doc was also commissioned by BPS.

Regarding the shorter covenant period, the viability review shows that a PRS scheme actually allows for more affordable housing units to be delivered than a more traditional build-to-sale scheme, such that I was not concerned with securing these units as PRS for the prescribed period if this model of housing proposed is not impacting upon affordable housing provision. If this not agreeable then please let me know.

Regards,

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**From:** [REDACTED] [mailto:[REDACTED]@london.gov.uk]  
**Sent:** 22 June 2017 16:49  
**To:** [REDACTED]  
**Subject:** RE: GLA ref. D&P/4126/01/JS (Morrisons, Brentofrd High Street, TW8) - email 1 of 2

Hi [REDACTED]

Just confirming receipt of the CD with the Morrisons reps.

In terms of progressing the Stage 2, can you let me know when you will be addressing the matters raised below please, namely copies of the viability material, details of the s106 review mechanism and the PRS covenant please?

Thanks

[REDACTED] | Senior Strategic Planner | Development & Projects | Development, Enterprise & Environment  
**GREATER LONDON AUTHORITY** | 4th Floor, City Hall, The Queen's Walk, London SE1 2AA  
Tel: 020 7983 [REDACTED] | Fax: 020 7983 [REDACTED] | Email: [REDACTED]@london.gov.uk

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**From:** [REDACTED]  
**Sent:** 12 June 2017 12:33  
**To:** [REDACTED]  
**Subject:** RE: GLA ref. D&P/4126/01/JS (Morrisons, Brentofrd High Street, TW8) - email 1 of 2

[REDACTED]

Thanks for this. I didn't receive any second email from yourself, just this one, so please re-forward the second one. Apologies for not responding to your email of 31 May as well, I have only returned to the office today after a severe illness.

Glancing over the material – we need full details of the s106 wording for the review mechanism. The Mayor will not consider any Stage 2s without full details of the affordable housing and review mechanisms.

We also need copies of the applicant's viability material, the review undertaken by yourselves (or on your behalf) and any relevant correspondence between the viability consultants. This material will be reviewed by the GLA's viability team to inform the Stage 2 report.

I also note from the Winkworth Sherwood s106 HOTS document that a PRS covenant period of 10 years is proposed. As referenced in para 26 of our Stage 1, the Housing SPG seeks a covenant of at least 15 years. We will need a robust justification as to why a shorter covenant period is being sought here.

Kind regards

█

█ | Senior Strategic Planner | Development & Projects | Development, Enterprise & Environment  
**GREATER LONDON AUTHORITY** | 4th Floor, City Hall, The Queen's Walk, London SE1 2AA  
Tel: 020 7983 █ | Fax: 020 7983 █ | Email: █ [london.gov.uk](mailto:█@london.gov.uk)

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**From:** █ [<mailto:█@hounslow.gov.uk>]  
**Sent:** 09 June 2017 15:58  
**To:** planningadmin; █  
**Subject:** GLA ref. D&P/4126/01/JS (Morrisons, Brentofrd High Street, TW8) - email 1 of 2

Good afternoon,

Further to the Stage I response to the above planning application (as attached), I now also include the Planning Committee report, Addendum report (which includes recommended conditions), Committee meeting minutes and agreed Heads of Terms provided in two documents. I have also attached 1 of 2 documents which collates the consultation responses received – second document to follow due to file size.

I would be grateful if you could construe this email as the Council's Stage II referral to the GLA. Please let me know if you require any further documentation.

Regards,

█ **MRTPI**  
**East Area Deputy Planning Manager**  
**London Borough of Hounslow**

☎: 020 8583 █  
✉: █ [hounslow.gov.uk](mailto:█@hounslow.gov.uk)  
🌐: [www.hounslow.gov.uk](http://www.hounslow.gov.uk)



**Brentford High Street East,  
228-248 High Street, Brentford**

**Independent Viability Review**

Prepared on behalf of the London Borough of Hounslow

5th April 2017



82 South Street, Dorking, RH4 2HD  
[www.bps-surveyors.co.uk](http://www.bps-surveyors.co.uk)  
Tel: 01483 565 433

## 1.0 INTRODUCTION

- 1.1 We have been instructed by the London Borough of Hounslow ('the Council') to undertake a Viability Review in respect of a proposed scheme at 228-248 High Street Brentford ('the Site'), which has been submitted under planning application reference P/2016/5573 (the 'application scheme') by the applicant, Essential Living.
- 1.2 The Site is 0.63 Hectares and currently accommodates a single building - a large supermarket - together with ancillary surface car parking. The building is 2,787 sq m and the car park has 115 spaces. The Site is accessed from the High Street and from Back Lane. It is bounded by the High Street to the south, the Beehive Public House to the west, Back Lane and Brentford Police Station to the north, and the County Court to the east.
- 1.3 The immediate surrounding area is in a mixture of community, residential and retail use. The application scheme entails the demolition of the existing foodstore, and provision of an A1 Retail unit (foodstore), four units providing flexible (A1/A3/A4) retail space, and 221 Private Rented Sector (PRS) residential dwellings. There will be 90 parking spaces available for the retail uses, but no spaces for the residential units. A development appraisal has been created for this scheme by the applicant's advisers, ULL.
- 1.4 With respect to affordable housing, Policy SC2 of the Council's Local Plan sets a strategic target of 40% affordable housing delivery. The target tenure mix is 60% social rented and 40% intermediate. The applicant is currently offering to provide 25% of the scheme's units as a form of affordable housing, Discounted Market Rent (DMR) units, which will offer a varying discount to market value for a period to be confirmed. With this level of affordable housing, the scheme is shown in ULL's appraisal as having a deficit. ULL therefore conclude that the scheme cannot afford to deliver any additional affordable housing units, over and above the 20% currently being offered. We have scrutinised the costs and values and methodology in ULL's viability assessment in order to determine whether the scheme can viably deliver any additional affordable housing contributions.
- 1.5 This Viability Review does not constitute a 'Red Book' valuation, meaning that Valuation Practice Statements 1-4 of the Red Book (RICS Valuation - Professional Standards, January 2014) are not of mandatory application. The Valuation Date for this Viability Review is the date of this report, as stated on the title page. This Viability Review has been undertaken in accordance with the Terms & Conditions provided to the Council and with any associated Letters of Engagement, and should only be viewed by those parties that have been authorised to do so by the Council.

## 2.0 PRS SCHEMES - POLICY DISCUSSION

2.1 The PRS category of rented property is different from the majority of private rented accommodation in that it is institutionally owned and managed as an investment. Whilst the Government has encouraged institutional investment in this sector, PRS is not yet recognised in terms of its planning use as being different from private housing for sale in that both fall within a general C3 use class, although provisions in the Housing & Planning Bill seek to change this.

2.2 In terms of planning policy concerning PRS, the DCLG's *Planning Practice Guidance* (PPG) notes that the viability of individual development types, including PRS, should be considered:

*“For residential schemes, viability will vary with housing type. For example, in respect of developments of multiple units held in single ownership as private rented sector housing intended for long term rental, viability considerations in decision-taking should take account of the economics of such schemes, which will differ from build for sale. This may require a different approach to planning obligations or an adjustment of policy requirements.”*

2.3 This Guidance states that the economics of such ‘build to rent’ schemes differs from ‘build-to-sell’ and should be determined on a case-by-case basis. To help ensure these schemes remain viable while improving the diversity of housing to meet local needs, Local Planning Authorities should consider the appropriate level of planning obligations, including for affordable housing, and when these payments are required. So that these homes remain available to rent only, Local Planning Authorities may choose to explore using planning obligations to secure these schemes for a minimum period of time - the period of such a restriction has yet to be agreed. Local Planning Authorities should enforce these planning obligations in the usual way.

2.4 We have also had regard to the Mayor's draft Housing SPG (November 2016) which includes a section on Build to Rent (i.e. PRS) schemes, including Paragraph 3.3.4 which emphasises their ‘distinct economics’:

*“As part of encouraging the development of this type of housing the Mayor has made clear that LPAs should recognise the distinct economics of the sector relative to mainstream market housing and take account of this when undertaking viability assessments for covenanted build to rent schemes. These distinct economics is normally taken to mean two separate but connected things. Firstly, a reliance on an annual revenue income through rent rather than upfront capital receipts; and secondly, even taking this into account, that build to rent cannot compete on an equal footing with speculative build for sale, as it has inherently lower returns [emphasis added]”*

2.5 In practical viability-testing terms, the above paragraph suggests that the lack of upfront capital receipts should be explicitly modelled, by way of a discounted cashflow model which continues long after practical completion of the scheme. This approach, however, is not in our view the only suitable way to model PRS schemes, as it is feasible to assume an ‘up-front’ receipt by way of an investment sale of the scheme at practical completion. The latter approach has been adopted by ULL, and we have reviewed this approach but also cross-checked it against a basic discount cashflow model which values the completed PRS units.

- 
- 2.6 With respect to affordable housing, Paragraph 4.19 of the draft SPG sets out that, *“Where a developer is proposing a Build to Rent development... the affordable housing offer can be entirely discounted market rent (DMR), managed by the Build to Rent provider and delivered without grant, i.e. entirely through planning gain”*. Consequently, the applicant is offering affordable housing exclusively in the form of DMR units, which make up 25% of the total units and will be at a discount of between 20% and 45% of the market rents. The DMR units will be available to Council nominees for a period of 20 years. But Essential Living will manage these units. The Mayor’s SPG does therefore support the adoption of affordable housing within PRS schemes as DMR as opposed to other tenures of affordable housing.
- 2.7 We have had regard to the Government’s recent Housing White Paper, which states the Government’s intention of confirming Discounted Market Rent as a legitimate form of affordable housing, and proposed a policy that 20% of ‘Build to Rent’ (i.e. PRS) of these development should be DMR units, and at a 20% discount to Market Rents. It is apparent that Essential Living’s discounts and amount of DMR meets the Government’s proposed requirements. However, we note that the Government’s aspiration is for the discount to be available in perpetuity, whereas Essential Living are proposing a 20 year period, after which there will be a phased reversion to full market rents.

### 3.0 CONCLUSIONS & RECOMMENDATIONS

#### PRS appraisal - results & BPS adjustments

- 3.1 The affordable housing offer presented in this planning application is for 25% of the apartments to be DMR units. With this level of affordable housing, the scheme was shown in ULL's original, December 2016 appraisal as having a deficit of £2,326,000. This was after the £13.92m Benchmark Land Value was deducted from the £11.59m Residual Land Value.
- 3.2 We initially revised ULL's appraisal, based on the findings of our review. We made adjustments to the developer's profit and build costs, and to the yield applied to the proposed foodstore's income. In addition, we added in the cost of compensating Morrisons, and this was confirmed by ULL as being a necessary expenditure.
- 3.3 Following further discussions with the applicant's advisers, we have made some further changes to our revised appraisal, to reflect the comments ULL have made and the additional information provided. For example, it has been confirmed that a lower rent of £22 has been offered for the foodstore by a retail operator, which compares to the £25 per sq ft originally adopted by ULL. We have also increased the yield we have applied to 4.6% which now more suitably reflects the range of available sales evidence. Whilst the applicant's advisers have questioned the reductions that we have made to profit and build costs, we maintain that these reductions are suitable. Our cost consultant, GBA, has had further discussions with the applicant's advisers, but GBA maintains the conclusion that the costs are overstated and they are not proposing any changes to their estimates. And we have had reference to additional evidence on PRS profit levels, provided by CBRE, which indicates that our adopted profit of 15.58% is reasonable in view of the lower risks involved in a PRS, especially where the PRS operator has already been secured or where the operator is building the scheme for their own use.
- 3.4 There has been some design changes to the scheme, which have resulted in the overall floor area reducing from 192,949 sq ft to 185,210 sq ft (NIA), and this has a negative impact on viability. In addition, the inputting of the recently-confirmed Shuttle Bus Contribution of £200,000 and S278 Contribution of £150,000, have further impacted on viability.
- 3.5 The result of our latest appraisal, with the latest design changes and planning contributions incorporated, is a residual land value of £11.9m, which leads to a deficit of £2.0m when compared against the benchmark land value of £13.9m. We can therefore conclude that the current affordable housing offer is the maximum that can reasonably be delivered.

#### Build for Sale appraisal

- 3.6 ULL have created a 'Build for Sale' appraisal which replaces the PRS units with conventional market sale units, and with 25% affordable housing. This generates a Residual Land Value of £0.67m, therefore has a much greater deficit than the PRS scheme. Our review of this appraisal indicates that it is a realistic assessment of viability, with the exception of the build costs for which we would apply the same reduction as we have made in the PRS scheme appraisal. Also, a relatively minor reduction to the profit target may be required in order to incorporate our

suggested 15% profit on GDV for the commercial element. However, we do not have a breakdown of how ULL's blended profit of 18.79% on GDV has been calculated therefore this would require further discussion, but in any case this profit issue and suggested build cost reduction does not affect the overall conclusion that the Build For Sale scheme is less viable than the PRS scheme.

- 3.7 The commercial element of this appraisal has the same inputs as the 'build for rent' appraisal, and very similar cost assumptions, therefore our conclusions regarding the other aspects are the same as for the build for rent appraisal. It has a similar construction period, but the post-construction period is longer to reflect the time taken to sell the units.
- 3.8 We have assessed the private residential sales prices that ULL have provided. Based on our comparisons of these with nearby schemes, we do not consider these values to be understated.

#### Discussion of review mechanism

- 3.9 ULL have also created the aforementioned 'Build for Sale' appraisal for comparison purposes. This generates a Residual Land Value of £0.61m, which is a £13.31m deficit. This has been submitted to comply with the GLA's November 2016 Draft Affordable Housing & Viability SPG, which states in para 4.13 that,

*"As part of the viability testing process, to provide an understanding of the distinct economics of the scheme, an applicant should submit a 'build for sale' viability appraisal alongside the appraisal for the covenanted Build to Rent scheme (see viability section below in paragraphs 4.30 - 4.35). Where these viability appraisals show that covenanted Build to Rent schemes can support less affordable housing than build for sale because of their distinct economics, 'clawback' mechanisms which apply during the covenant period should be included as part of the planning permission. These should seek to recoup the initial loss of affordable housing if the homes are sold out of the Build to Rent sector - to ensure schemes deliver the maximum reasonable level of affordable housing*

- 3.10 In view of the substantially larger deficit of the 'build for sale' appraisal compared to the build to rent appraisal, this indicates that the requirement for a clawback mechanism in the form set out para 4.13 of the SPG would not apply, nevertheless due to the shortfall from the Mayor's target some form of review provision would be required.
- 3.11 The Council's overall strategic target for affordable housing provision is 40% of all new dwellings, as detailed in Policy CS2 of the Local Plan. This policy goes on to stipulate that the Council will employ "a review mechanism upon partial or full completion of a development when financial viability assessments demonstrate that current market conditions will support less than 40% affordable housing".
- 3.12 In accordance with the Council's Core Strategy and adopted Development Management policies, there is a requirement to review the outturn viability of the scheme. We recommend that this is in the form of two separate review provisions, as detailed below:
- The first review would be triggered some 12-18 months post completion to allow for the property to become largely let. At this point it should be

possible to determine any significant variance in annual rental income and build costs from the levels proposed. We suggest that assumptions concerning capitalisation yields are retained and applied for this purpose. We are of the view it is reasonable to allow for the deduction of normal and anticipated expenditure from the gross recent receivable. Costs would be reviewed as per other S106 Agreements. There would be no trigger point other than a date 12-18 months post practical completion. Care should be taken to ensure that practical completion accords with an ability to let and occupy the property. Any surplus identified on this basis to be divided between the parties on the usual basis.

- The second review would be triggered in the event of any PRS units being sold. This review provision should be time limited to a maximum of 15 years but possibly 10 years. In the event no units are sold over this period the review provision should fall away.

#### Developer's Return (PRS scheme)

- 3.13 A profit of 17% on GDV has been applied, which ULL state is lower than the typical 20% on GDV for 'build for sale' schemes, to reflect the lower 'disposal risk' for this type of project - i.e. a PRS scheme. We have had regard to the Mayor's SPG which states that, "...Build to Rent viability assessments may need to take account of: a different approach to profit (often lower than a build for sale scheme);" Given that the Council's nomination rights create a guaranteed supply of tenants for the DMR element, this arguably reduces some of the risk. Whilst the scheme is still exposed to the risk of market fluctuations - i.e. the volatility of market rents - it is clear that this is a buoyant market and is not expected to incur substantial depression in rents. In addition, the scheme has effectively been 'pre-sold' as Essential Living are already committed to operating the PRS scheme long-term. We have therefore created a blended profit of 15.58% which is based on the use of 17% on GDV for the PRS private market element, 10% for the Discounted Market Rent units (and 15% for the commercial units).

#### Benchmark Land Value

- 3.14 A Benchmark Land Value of £13,921,000 has been adopted by ULL. This is based on the site's Existing Use Value with a landowner premium then added, which is an approach that is supported by Hounslow and GLA planning guidance. This is a realistic benchmark, based on the suitable assumption that Morrisons would remain in occupation if they were offered a new tenancy by the landlord. The investment yield adopted reflects the risk of vacancy at the impending lease expiry but also the strong covenant strength of Morrisons and the strong likelihood that they would seek a new tenancy of the premises at lease expiry. The 20% landowner premium adopted is appropriate in view of the relatively secure income being generated by the Site and therefore the need for a substantial premium to incentivise the landowner to release the site for redevelopment.
- 3.15 It should be noted that we are also aware of other strong interest from other retailers who would bid for this site if Morrisons sought to vacate the site.

#### Residential values (PRS scheme)

- 3.16 The open market rents applied to the private PRS units are at the top of the local market, and we conclude that these are realistic, taking into account the quality of this PRS scheme.
- 3.17 The Discounted Market Rent (DMR) units have rents at a 20% to 45% to the market rents. Planning Officers have informed us that they are broadly satisfied with the rent discounts being proposed, with the exception that they would prefer to see more of the 3-beds as 55%-65% of market rent rather than higher percentages, as this assists in meeting their affordability criteria.
- 3.18 We have been informed that the Council is currently exploring whether to restrict occupancy of some or all of these DMR units to key-workers. The details of this are not yet clear, therefore we are unable to determine its likely impact on viability. In general, we would not expect this to make a substantial difference to viability, provided that the definition of key-workers is wide enough to ensure sufficient demand and therefore ensure that this restriction does not lead to increased vacancy rates, which would impact on the investment value of the buildings.
- 3.19 We are also in agreement with the yield of 4.25% (gross) that has been adopted when capitalising the rental income. This yield is broadly in line with Knight Frank's, CBRE's and BNP Paribas' research into the London PRS market. There are few publicised transactions of this type to support more in depth analysis.

#### Development Costs (PRS scheme)

- 3.20 We have instructed Geoffrey Barnett Associates (GBA) to undertake a cost review of the November Cost Plan that has been prepared by Cast. The overall conclusion of this review is that the base build costs appear to be overstated. The figure estimated by GBA is £59,563,173 (excluding contingency). This compares to the £64,032,466 figure in the cost plan (a £4.47m difference) which is inclusive of 6% project management fees, 7% preliminaries and 1.1% contractor's risk, but exclusive of contingency.
- 3.21 With contingency added, the figure proposed by GBA is £62,541,331.
- 3.22 Regarding the other build cost items in ULL appraisal, we have assessed these with assistance from GBA and conclude that these are all realistic and in line with typical benchmark rates.
- 3.23 The appraisal does not include any allowance for compensating the existing tenant, Morrison's. This compensation would be £1,318,810 as calculated in the way prescribed by the Landlord & Tenant Act 1954. ULL have since confirmed these compensation costs are indeed absent from the current appraisal, and that in their view these should have been included. Therefore we have added these in when revising the appraisal.

#### Retail values (PRS scheme)

- 3.24 We have considered the estimated rents that have been adopted by ULL for the proposed food-store small retail units. Following a recent offer of £22 per sq ft by a foodstore retailer, this rent has been reduced, which we accept this offer constitutes good market evidence.

- 
- 3.25 The 4.75% yield used to capitalise the proposed foodstore's rent appears to be somewhat pessimistic, in view of the large unit size, the strong potential to secure a 'national' retailer with a good covenant strength, the good location of the site for foodstore retailing, and that the existing foodstore tenant does not wish to vacate. However, it is important to have a realistic yield differential between the proposed foodstore and existing foodstore, and the willingness of Morrison's to remain in occupation means that it is difficult for us to justify a much larger yield differential, thus we have only marginally reduced the yield, to 4.6%.
- 3.26 With respect to the other retail units, on balance we consider the yield of 6.5% adopted by ULL to be somewhat cautious and at the upper end of realistic yields. However, in view of the uncertainties over this location as a retail location, we would not suggest a lowering of this yield.

## 4.0 PRS UNITS - RENTS

### Private rented units

4.1 The applicant has stated that it intends to charge the following market rents per calendar month (pcm), which have been adopted by ULL in their viability assessment:

- £1,250 for studios
- £1,550 for 1-beds
- £2,200 for 2-beds
- £2,850 for 3-beds

4.2 ULL have undertaken research into the local market in order to corroborate whether these rents are in line with open market rates. They have provided many examples of nearby lettings, in new-build schemes, and conclude that the rents proposed by Essential Living are somewhat higher than the going market rates. However, Essential Living anticipate that a premium will be secured at this scheme due to the advantages of it being a Build for Rent product, and that the longer tenancies being offered may boost rents as this is a desirable incentive for some tenants. We have discussed the specification with ULL. They have informed us that, *“The added value provided for tenants in terms of shared amenity space and facilities in the proposed scheme derives value, and the rents are inclusive of service charges which might normally pay for these items.”*

4.3 Taking the example of Kew Bridge West, this scheme has rents of £1,504-£1,599 pcm for its one-beds. It is located further east along the High Street and is broadly comparable - although perhaps marginally superior - to the Site in terms of location. These are higher than the £1,250-1,400 pcm rented one-bed at GWQ (a nearby scheme by Barratts), which is known as Westgate House and is in an inferior location to the application scheme - being close to the noisy M4. This indicates that the £1,550 pcm applied in the appraisal is realistic for one-beds and is near the top of the local market.

4.4 For the two-beds, the rents are in line with the higher ones cited for Kew Bridge West, and substantially above those of GWQ, Brentford Lock and FLP Group’s ‘Market Place’ scheme. We are therefore in agreement with the market rents that have been adopted. Similarly, the smaller number of comparables cited for three-beds and studio apartments do still give good support to the rents estimated by ULL.

### Discounted market rents

4.5 The discounts applied to market rents, for the Discounted Market Rent (DMR) units, vary from 20% to 45%. In total, 25% of the scheme’s units will be DMR. This is a straightforward approach to arriving at the values of these DMR units, which are capitalised in the same way as the full market rent units.

4.6 At this stage the period of this discount is not yet agreed but is anticipated to be 20 years.

## 5.0 PRS SCHEME - INVESTMENT YIELD

- 5.1 An investment yield of 4.25% (gross) has been adopted. This compares to CBRE's research which gives 4.75% for Zone 3 residential investment. We note that BNP Paribas state within a press release dated March 2016 that PRS yields in London have reached 4% over the course of the last 12 months, although we would expect Brentford schemes' yields to be above this London-wide figure.
- 5.2 The Knight Frank *Private Rented Sector Update* (January 2016) is the latest yield evidence available to us regarding the private rented sector. For Zones 2-3 it gives a gross initial yield of 4.50%. This is based on gross rents, while their net initial yield is based on the net rent - i.e. after a 25% discount is made to the rent to allow for typical levels of costs for maintenance, lettings management, repairs, void periods, insurance, utilities and replacement of fixtures and fittings. Based on Knight Frank's map, the Site is in the outer area of Zone 3 therefore it is arguable that 4.25% is reasonable this location.
- 5.3 ULL do not appear to have explicitly factored in to their capital valuation the improvement in values that would result when the DMR units were to revert to full market rents after a certain period - perhaps 15 or 20 years. By way of example, the present-day gross capital value of this additional revenue, if the period is 20 years, would be *circa*. £4.1m, which does not take into account the effect of phasing the reversion to market rents (i.e. implementing it incrementally). Further discussion will be required to establish when these units will revert to full market rents and whether this reversion will be phased. We have, however, been informed that when any DMR unit reverts to full market rents, this will trigger a £50,000 payment to the Council, therefore this payment will more than counteract the positive impact of the rent increases on the landlord's cashflow.
- 5.4 We note that in a Waltham Forest scheme, ULL adopted 4% and we agreed this was reasonable. Waltham Forest is a marginally more central location and would be expected to be viewed slightly more favourably by the investment market.
- 5.5 ULL have stated that they do not consider DMR to be less of a risk than private rents at 100% market rents. The fact these units will be let to Council nominees will give a guaranteed supply of new residents but at the same time will give the landlord reduced control over residents. Politically it may be more difficult to take management action with Council nominees than with the landlord's own selected tenants. In addition, it is considered unlikely that DMR will have a greater security of income than private PRS. We therefore agree that a lower yield cannot be justified for the DMR element of the scheme.

## 6.0 BENCHMARK LAND VALUE

- 6.1 A Benchmark Land Value of £13,921,000 has been adopted by ULL. This is based on the Site's Existing Use Value with a landowner premium then added. The Site is occupied by Morrisons under a lease. The rent on this lease is £650,000, which was agreed at the 2013 rent review. This foodstore is 31,937 sq ft, and the passing rent is £20.35 per sq ft. Local lettings evidence shows that this rent is broadly in line with the market.
- 6.2 A yield of 5.25% has been applied to the passing rent, which is higher than the 4.75% applied to the replacement foodstore. This is to be expected because the lease to Morrisons expires on 1st June 2018. It is understood that they have no intention to vacate, nevertheless the presence of this expiry date in the near future does increase the landlord's risk exposure and therefore justifies the use of a higher yield than would be applied to a tenancy with a long period to run until lease expiry.
- 6.3 ULL consider an EUV approach to be the most appropriate approach to benchmarking in this case, which we agree with considering the Mayor's SPG and other guidance that supports the use of this approach. It is, however, worth noting that the use of an Alternative Use Value (AUV) approach cannot be dismissed, but no AUV has been put forward by the applicant's advisers.
- 6.4 A landowner premium of 20% is included. This is consistent with Paragraph 173 of the NPPF which states that developments should "*provide competitive returns to a willing land owner.....*" We have had regard to the Mayor's Housing SPG (2016) which states that, "*Premiums above EUV should be justified, reflecting the circumstances of the site and landowner. For a site which does not meet the requirements of the landowner or creates ongoing liabilities/ costs, a lower premium would be expected compared with a site occupied by profit-making businesses that require relocation. The premium could be 20% to 30%, but this must reflect site specific circumstances and may be considerably lower.*" In view of the existing, income-producing facilities on-site, a substantial level of premium should be allowed for in this case in order to incentivise the landowner to release the land for development.
- 6.5 The applicant has confirmed that Morrisons have no intention to leave, thus would likely apply for a new tenancy under the Landlord & Tenant Act 1954, and therefore the applicant would need to rely on the 1954 Act's 'Grounds of Opposition' - specifically having a firm intention to redevelop the site. Their apparent desire to remain in occupation is important for valuation purposes, as if they were intending to leave then this would likely depress the existing use value of the site.
- 6.6 The current lease originates in the 1990s and ULL have confirmed that this is an 'arm length' arrangement - i.e. not part of a sale and leaseback or some other, similar deal. It is therefore useful for the purposes of establishing the site's rental value and existing use value.
- 6.7 The applicant has confirmed that they will need to pay compensation to the tenant. The tenant has Security of Tenure under the Landlord & Tenant Act 1954 which means that compensation would be determined by the Act, which for this lease would be double the rateable value. We have checked the rateable value,

which is £659,405 therefore the full compensation would be £1,318,810. This compensation to the tenant has not been included in the applicant's appraisal, so adding in these legitimate costs would increase the deficit further, especially because these compensation costs would be incurred near the start of the project and will therefore generate high finance costs. ULL have since confirmed these compensation costs are indeed absent from the current appraisal, and that in their view these should have been included.

## 7.0 COMMERCIAL VALUES

### Rents

- 7.1 A rent of £30-36 per sq ft has been applied to each of the four small retail units; and for the large retail unit, which will be a foodstore, a £25 per sq ft rent was initially applied. The rent of £30-36 per sq ft is clearly higher than the lettings transactions cited by ULL, including a letting at No. 119 High Street in August 2016 at £11.88 per sq ft. We have considered these comparable lettings and have undertaken our own research into the local market, and have collected similar examples such as No. 110 High Street which let in March 2016 for £11.67 sqft. It is therefore apparent that higher rents cannot be justified.
- 7.2 Regarding the foodstore, the comparables cited include an M&S Simply Food in Queen's Park Place, Queen's Park, which was 6,327 sq ft (considerably smaller than the application scheme's foodstore) and was let on a 15 year lease in June 2016 at a rent of £30.82 per sq ft. Another is the letting to Morrisons of 100 High Street, Crawley, which is a 75,240 sq ft foodstore let for £26.66 per sq ft. Given the Site's good location, and that its existing store is the only supermarket in the town, we would expect it to achieve rents on a par with these comparable lettings. We have also taken into account the 2013 rent review for the existing premises, which sets the rent at £21.04 per sq ft, and suggests that present-day rents of c£25 per sq ft are within a realistic range for this location.
- 7.3 The capital value is discounted back by 6 months to reflect a rent free period and/or void period. This is a realistic assumption, taking into account the likely void on these units and also the likelihood that the tenants will negotiate a rent free period for the purposes of fitting out the premises.

### Investment yield

- 7.4 The yield applied to the commercial incomes is 4.75% for the foodstore, and 6.5% for the four small retail units. We have viewed the yields for food stores which are detailed in Table One. These indicate that 4.75% is at the upper end of the range of achieved yields.

*Table One: achieved yields for foodstore investment sales*

Address	Price (£)	GIA (m <sup>2</sup> )	Yield (2016) (%)	Rental value (p/a)
Sainsbury's, FK8 1RA	£40,600,000	2,943	4.11%	£1,668,660
Canning Town, E16 1JL	£43,100,000	7,432	4.16%	£1,792,960
Mill View March, PE15 8SY	£11,550,000	3,031	4.36%	£503,580
Grange Road Gosport	£14,950,000	3,767	4.56%	£681,720

158-162 High Street	£16,500,000	4,181	4.66%	£768,900
Braidwater Retail Park	£17,850,000	5,646	4.70%	£838,950

7.5 Taking into account the evidence above, we consider the yield of 4.75% applied to the 3,501 sq m foodstore to potentially be marginally overstated given the size of this unit, its strong potential to secure a 'national' retailer with a good covenant strength, the good location of the site for foodstore retailing, and that the existing foodstore tenant does not wish to vacate. The below table (Table Two) is somewhat inconclusive as it has a range of yields and is a wide range of transaction dates, but it does indicate that 4.75% is within the range of achievable yields, albeit at the upper end.

*Table Two: investment sales of large (20,000 sqft +) foodstores*

Address	Deal Date	Price	Yield %
158-162 High Street London Inner London SE20 7QS	08/02/2013	16,500,000	5.10
Canning Town Redevelopment (Retail) Silvertown Way London Outer London E16 1JL	13/02/2013	43,100,000	4.60
70 Gracechurch Street London Inner London EC3V 0XL	01/07/2013	202,000,000	5.25
2-6 Werter Road London Outer London SW15 2LJ	07/03/2014	23,100,000	3.70
ASDA Belvedere Lower Road Belvedere Outer London DA17 6DF	17/03/2014	32,400,000	4.75
80 Dog Kennel Hill London Inner London SE22 8BB	15/05/2014	68,000,000	3.95
5-7 Homefield Rise Orpington Outer London BR6 0RT	01/11/2014	12,975,000	5.75
288 High Street Enfield Outer London EN3 4DP	18/06/2015	52,700,000	4.73

7.6 With respect to the four retail units that have been attributed a yield of 6.5%, we have considered more local comparable transactions:

- For example, Unit 21 in The Treaty Centre, was sold in February 2015 and achieved a 6.36% net initial yield. It is a 177m<sup>2</sup>, which is similar to the average size of the four proposed units (191 sqm).
- 209 High Street is a somewhat historic example, being sold in March 2014, and achieving a 5.43% net initial yield.
- In September 2016, 193-199 High Street, Hounslow was sold in an investment sale for £8.175m, representing a 6.1% initial yield.

7.7 The sizes of the units vary from 527 to 4,770 sq ft. We would expect the largest unit to achieve a lower yield than the smaller units as it is likely to secure a better tenant - i.e., potentially national retailer. However, it is important to note that this is a somewhat secondary retail location which will likely have limited appeal, and will largely be dependent on local residents and the foodstore customers for footfall.

7.8 We have viewed CBRE's Prime Rent & Yield Monitor which gives over recent years has shown prime Central London retail yield at circa 4% and prime Suburban London yields of 6.0%. Given the non-prime location of this scheme, on balance we consider the yield of 6.5% adopted by ULL is somewhat cautious and at the upper end of realistic yields. However, in view of the uncertainties over this location as a retail location, we would not suggest a lowering of this yield.

## 8.0 BUILD COSTS - PRS SCHEME

- 8.1 A Cost Plan has been created by Cast. This has been reviewed by our Cost Consultant, Geoffrey Barnett Associates (GBA), and their full cost review is in Appendix One. The total build cost is £67,232,929 which appears to be inclusive of a 5% contingency, which is a reasonable contingency allowance.
- 8.2 The figure estimated by GBA is £59,563,173. This compares to the £64,032,466 figure in the cost plan (a £4.47m difference) which is inclusive of 6% project management fees, 7% preliminaries and 1.1% contractor's risk, but exclusive of contingency.
- 8.3 The professional fees are 7% which is a realistic allowance. It is lower than typically included in appraisals, as the main build cost figure in the appraisal already includes a 6% for project management (PM+ management fee) & management fees, which GBA have confirmed is a realistic rate.
- 8.4 In addition, the interest rate of 7% adopted to calculate the finance costs are in line with typical benchmark rates. Geoffrey Barnett Associates have considered the development period that has been used to calculate the finance costs. The construction period is 24 months, and GBA have suggested that this is a realistic period. In addition, the scheme has a 3-month pre-construction period and a 6 month letting period which are both reasonable assumptions, therefore we are satisfied with the finance costs calculations.
- 8.5 Agent & Legal Fees of 2% and 8% respectively for the letting of the flats, and 3% and 10% for the commercial. These are in line with typical rates in the current market, as are the purchaser's costs.
- 8.6 The PRS appraisal includes Mayoral CIL of £883,185, Hounslow CIL of £2,558,604, and a Carbon Levy of £267,942. There are no other S106 Contributions in the appraisal, therefore it will need to be confirmed by Planning Officers whether any further contributions will be required.

## 9.0 DEVELOPER'S RETURN

- 9.1 A profit of 17% on GDV has been applied, which ULL state is lower than the typical 20% on GDV, to reflect the lower 'disposal risk' for this type of project - i.e. a PRS scheme. This is the rate across the whole scheme. It is not clear whether a lower rate was applied to the DMR units. These units do pose a risk in that they are linked to market rents thus are prone to fluctuations in the market. They do however have a guaranteed source of tenants as they are nominees provided by the Council and in any case we would expect demand from these discounted units to be high, which reduces vacancy rates. It is not clear why such a high letting fee is required given that the Council will provide the tenant, which explains why the 8% letting fee is lower than the typical 10-12%.
- 9.2 The Mayor's SPG states that, "...Build to Rent viability assessments may need to take account of: • a different approach to profit (often lower than a build for sale scheme);"
- 9.3 It has been considered that the risks attributed to this scheme would not be identical to a market sale development. In this regard, we are of the opinion that further information regarding anticipated returns sought by other PRS schemes would be of relevance, given that these products are long term investments rather than build to sell developments.
- 9.4 Given that the Council's nomination rights create a guarantee supply of tenants, this reduces the risk. Whilst the scheme is still exposed to the risk of market fluctuations - i.e. the volatility of market rents - it is clear that this is a buoyant market and is not expected to incur substantial depression in rents.

*Table Three: profit calculations*

	GDV	ULL profit - %	ULL profit - £	BPS revised profit - %	BPS revised profit - £
PRS Apartments (Block A)	63,162,353	17.0%	10,737,600	17%	10,737,600
DMR 55% (Block A)	3,843,529	17.0%	653,400	10%	384,353
DMR 65% (Block A)	4,542,353	17.0%	772,200	10%	454,235
DMR 80% (Block A)	6,223,059	17.0%	1,057,920	10%	622,306
Food Store (Block A)	19,408,090	17.0%	3,299,375	15%	2,911,214
Commercial Unit 4 (Block A)	938,740	17.0%	159,586	15%	140,811
PRS Apartments (Block B)	23,421,176	17.0%	3,981,600	17%	3,981,600
DMR 55% (Block B)	1,118,118	17.0%	190,080	10%	111,812
DMR 65% (Block B)	1,321,412	17.0%	224,640	10%	132,141
DMR 80% (Block B)	2,608,941	17.0%	443,520	10%	260,894
Commercial Unit 1 (Block B)	366,283	17.0%	62,268	15%	54,942
Commercial Unit 2 (Block B)	2,564,787	17.0%	436,014	15%	384,718
Commercial Unit 3 (Block B)	235,691	17.0%	40,067	15%	35,354
	<b>129,754,533</b>	<b>17.0%</b>	<b>22,058,270</b>	<b>15.58%</b>	<b>20,211,980</b>

## Appendix One



Geoffrey Barnett  
Associates

**REVIEW OF ESSENTIAL LIVING LTD  
ORDER OF COST ESTIMATE**

**FOR**

**HIGH STREET EAST, BRENTFORD**

**14th FEBRUARY 2017**

**Geoffrey Barnett Associates**

*Chartered Quantity Surveyors  
Project Coordinators*

The Old Mill  
Mill Lane

GODALMING

Surrey

GU7 1EY

Tel: 01483 429229



**CONTENTS**

- 1: INTRODUCTION**
- 2: BASIS OF REVIEW**
- 3: REVIEW AND COMMENTARY**
- 4: CONCLUSION**

## **1.0 INTRODUCTION**

- 1.1 Geoffrey Barnett Associates are Chartered Quantity Surveyors, established in 1974, and have over 40 years experience of providing quantity surveying, project co-ordination and construction cost management services to clients throughout the UK. The firm's experience covers a wide range of project types and sizes including new build residential and commercial developments, infrastructure projects and refurbishment projects.
- 1.2 This review relates to Essential Living Ltd Order of Cost Estimate dated December 2016. The estimate was prepared by Cast Consultancy on behalf of Essential Living Ltd.

## **2.0 BASIS OF REVIEW**

- 2.1 The contract build cost estimate provided by the applicant is reviewed by comparison against the Building Cost Information Service (BCIS) construction cost data published by the RICS. The reason for using the BCIS service is that it provides a UK wide and fully independent database compiled and continually updated by input from varied project types and locations.
- 2.2 BCIS publish costs as average overall prices on a cost per sq metre basis and an elemental cost per sq metre basis for new build work. For new build construction, the BCIS cost levels are used as a baseline to assess the level of cost and specification enhancement in the scheme on an element by element basis.
- 2.3 Regarding refurbishment or conversion work on an existing building, BCIS provides overall cost per sq metre, but not on an element by element basis. However, it does provide cost information on a group element basis i.e. substructure, superstructure, finishings, etc. For this reason, the review of contract build costs for a refurbishment project using BCIS presents more difficulty in assessing that an applicants costs are reasonable.
- 2.4 BCIS costs are updated on a quarterly basis. The most recent quarters use forecast figures, the older quarters are firm costs based on historic project data. The BCIS also provides a location adjustment facility against a UK mean index of 100, which allows adjustment of costs for any location in the UK. The BCIS also publish a Tender Price Index based on historic tender prices. This allows adjustment of costs on a time basis where necessary.
- 2.5 BCIS average costs are available for various categories of buildings such as apartments, offices, shops, hotels, schools, etc.
- 2.6 BCIS average prices per sq meter include overheads and profit (OHP) and preliminaries costs. BCIS elemental costs include OHP but not preliminaries. Average prices per sq meter or elemental costs do not include for external services and

external works costs. Demolitions and site preparation are excluded from all BCIS costs.

- 2.7 Ideally, a contract build cost estimate should be prepared by the applicant in the BCIS elements. If this is not available exactly in the BCIS format then, where relevant, we undertake analysis and adjustment to allow direct comparison to BCIS elemental benchmark costs. This requires access to the drawings, specifications, and any reports which have a bearing on cost.
- 2.8 The review of an applicant's contract build cost estimate against BCIS would typically require:
- Adjustment by location factor
  - Adjustment for abnormal and enhanced costs
  - Review of the applicants cost plan on element by element basis
  - More detailed analysis where there are significant deviance from BCIS costs
  - Adjustment of overheads & profit inclusions to provide direct comparison to BCIS
  - Addition of contractors' preliminaries costs
  - Addition of ancillary costs, such as fees, statutory charges, etc., as appropriate
- 2.9 These adjustments enable us to make a direct comparison with BCIS benchmark costs.
- 2.10 The floor areas stated in the applicants cost estimate are accepted and we do not attempt to check the floor areas.

### **3.0 REVIEW AND COMMENTARY**

- 3.1 The development appears to comprise the following principal elements: -
- |            |                      |
|------------|----------------------|
| Apartments | 21,129m <sup>2</sup> |
| Car Park   | 3,183m <sup>2</sup>  |
| Commercial | 4,129m <sup>2</sup>  |
- 3.2 Using these areas, we have calculated construction costs based mainly on BCIS Average m<sup>2</sup> rates – see attached tables. The rate for apartments is taken from BCIS, but the rates for car park and commercial are assessments, since BCIS rates are not really relevant to this situation.
- 3.3 BCIS average m<sup>2</sup> rates specifically exclude external works. We have therefore allowed a separate amount for external works and abnormals. This amount is exactly as the Cast Consultancy cost estimate, inclusive of percentages for preliminaries, management fees and contractors risk.
- 3.4 Table 1 shows the result using mean m<sup>2</sup> rates. The scheme appears to be a reasonably high specification, so we have also included Table 2, which shows the cost using BCIS upper quartile rates. We feel that the latter table is more relevant. All costs have been rebased to 1Q 2018 and factorised to Hounslow, to be in line with Cast Consultancy costs.

- 3.5 It can be seen that the anticipated cost for the scheme using BCIS upper quartile rates is £56,008,048. This is £8,024,418 lower than Cast Consultancy's cost estimate, a difference of 12.5%.
- 3.6 In an attempt to identify where the main differences lie, we have prepared table 3, which shows a proportional breakdown for the Cast Consultancy estimate, and for BCIS.
- 3.7 From this, it is apparent that the proportion of cost attributable to Frame and Upper Floors is considerably higher in the Cast Consultancy estimate than by using BCIS. According to the outline specification, the frame is concrete, which is more expensive than BCIS would presumably be based on. We think it is therefore acceptable to adjust the benchmark cost to reflect this. We assess that an acceptable uplift is £125 per m<sup>2</sup> of overall GIA.

#### 4.0 CONCLUSION

- 4.1 Table 4 shows our assessment of a benchmark cost based on BCIS upper quartile costs and adjusted to reflect a concrete frame. This assessment shows a total cost of **£59,563,173**. This is some £4,469,293 (7%) lower than Cast Consultancy's cost estimate, even bearing in mind that we have benchmarked against upper quartile rates and adjusted frame costs.



TABLE 1 - ANTICIPATED COSTS USING BCIS MEAN AVERAGE M2 RATES

	GIA (m2)	£/m2	£
Apartments	21,129	1,860	39,299,940
Car park	3,183	1,250	3,978,750
Commercial	4,129	1,500	6,193,500
			<hr/>
			49,472,190
Abnormals and externals			2,965,057
			<hr/>
			<b>52,437,247</b>
			<hr/> <hr/>
Average £/m2			1,844

TABLE 2 - ANTICIPATED COSTS USING BCIS UPPER QUARTILE AVERAGE M2 RATES

	GIA (m2)	£/m2	£
Apartments	21,129	2,029	42,870,741
Car park	3,183	1,250	3,978,750
Commercial	4,129	1,500	6,193,500
			<hr/>
			53,042,991
Abnormals and externals			2,965,057
			<hr/>
			<b>56,008,048</b>
			<hr/> <hr/>
Average £/m2			1,969

TABLE 3 - ELEMENTAL BREAKDOWN OF CAST CONSULTANCY AND BCIS

	Cast	BCIS
Substructure	5.67%	8.96%
Frame & Upper Floors	20.64%	12.56%
Roof	3.38%	5.80%
Stairs	0.61%	2.00%
External Walls	9.02%	11.60%
External Windows and Doors	10.79%	5.67%
Internal Walls and Partitions	4.52%	4.06%
Internal Doors	1.66%	3.29%
Wall Finishes	1.65%	4.70%
Floor Finishes	6.50%	3.80%
Ceiling Finishes	2.17%	2.45%
Fittings and Furnishings	6.10%	3.74%
Sanitary Appliances	0.88%	1.80%
MEP services	24.09%	26.42%
Lift and Conveyor Installations	1.84%	2.32%
Builder's Work in Connection	0.48%	0.84%
	100.00%	100.00%

TABLE 4 - ANTICIPATED COSTS USING BCIS UPPER QUARTILE AVERAGE M2 RATES AND INCLUDING ADJUSTED FRAME COSTS

	GIA (m2)	£/m2	£
Apartments	21,129	2,029	42,870,741
Car park	3,183	1,250	3,978,750
Commercial	4,129	1,500	6,193,500
			53,042,991
Abnormals and externals			2,965,057
Adjusted frame cost	28,441	125	3,555,125
			59,563,173
Average £/m2			2,094

## Appendix Two

**Brentford High Street East - BPS REVISED APPRAISAL  
Confidential**

**Summary Appraisal for Merged Phases 1 2**

Currency in £

**REVENUE**

Sales Valuation	Units	Unit Price	Gross Sales
Car Parking	90	15,000	1,350,000

**Rental Area Summary**

	Units	ft <sup>2</sup>	Rate ft <sup>2</sup>	Initial MRV/Unit	Net Rent at Sale	Initial MRV
PRS Apartments (Block A)	111	67,051	33.35	20,146	2,236,151	2,236,151
DMR 55% (Block A)	13	8,902	18.35	12,565	163,350	163,350
DMR 65% (Block A)	13	8,902	21.69	14,850	193,050	193,050
DMR 80% (Block A)	14	9,516	26.23	17,829	249,605	249,605
Food Store (Block A)	1	37,696	22.00	829,312	829,312	829,312
Commercial Unit 4 (Block A)	1	2,131	30.00	63,930	63,930	63,930
PRS Apartments (Block B)	55	36,706	33.05	22,057	1,213,133	1,213,133
DMR 55% (Block B)	4	2,605	18.24	11,879	47,515	47,515
DMR 65% (Block B)	4	2,605	21.56	14,041	56,164	56,164
DMR 80% (Block B)	7	4,123	26.89	15,838	110,867	110,867
Commercial Unit 1 (Block B)	1	818	30.00	24,540	24,540	24,540
Commercial Unit 2 (Block B)	1	3,638	36.00	130,968	130,968	130,968
Commercial Unit 3 (Block B)	1	517	30.00	15,510	15,510	15,510
<b>Totals</b>	<b>226</b>	<b>185,210</b>			<b>5,334,095</b>	<b>5,334,095</b>

**Investment Valuation**

<b>PRS Apartments (Block A)</b>						
Current Rent	2,236,151	YP @	4.2500%	23.5294	52,615,314	
<b>DMR 55% (Block A)</b>						
Current Rent	163,350	YP @	4.2500%	23.5294	3,843,529	
<b>DMR 65% (Block A)</b>						
Current Rent	193,050	YP @	4.2500%	23.5294	4,542,353	
<b>DMR 80% (Block A)</b>						
Current Rent	249,605	YP @	4.2500%	23.5294	5,873,051	
<b>Food Store (Block A)</b>						
Market Rent	829,312	YP @	4.6000%	21.7391		
(6mths Rent Free)		PV 6mths @	4.6000%	0.9778	17,627,644	
<b>Commercial Unit 4 (Block A)</b>						
Market Rent	63,930	YP @	6.5000%	15.3846		
(6mths Rent Free)		PV 6mths @	6.5000%	0.9690	953,052	
<b>PRS Apartments (Block B)</b>						
Current Rent	1,213,133	YP @	4.2500%	23.5294	28,544,313	
<b>DMR 55% (Block B)</b>						
Current Rent	47,515	YP @	4.2500%	23.5294	1,118,005	
<b>DMR 65% (Block B)</b>						
Current Rent	56,164	YP @	4.2500%	23.5294	1,321,501	
<b>DMR 80% (Block B)</b>						
Current Rent	110,867	YP @	4.2500%	23.5294	2,608,646	
<b>Commercial Unit 1 (Block B)</b>						
Market Rent	24,540	YP @	6.5000%	15.3846		
(6mths Rent Free)		PV 6mths @	6.5000%	0.9690	365,836	
<b>Commercial Unit 2 (Block B)</b>						
Market Rent	130,968	YP @	6.5000%	15.3846		
(6mths Rent Free)		PV 6mths @	6.5000%	0.9690	1,952,437	
<b>Commercial Unit 3 (Block B)</b>						
Market Rent	15,510	YP @	6.5000%	15.3846		
(6mths Rent Free)		PV 6mths @	6.5000%	0.9690	231,219	
					<b>121,596,901</b>	

**GROSS DEVELOPMENT VALUE 122,946,901**

**NET REALISATION 122,946,901**

**OUTLAY**

**ACQUISITION COSTS**

Residualised Land Price			11,906,946		
				11,906,946	
Stamp Duty	5.00%	595,347			
Agent Fee	1.00%	119,069			
Legal Fee	0.50%	59,535			
				773,952	

**CONSTRUCTION COSTS**

**Brentford High Street East - BPS REVISED APPRAISAL**

**Confidential**

<b>Construction</b>	<b>ft<sup>2</sup></b>	<b>Rate ft<sup>2</sup></b>	<b>Cost</b>	
Construction Block A	228,604 ft <sup>2</sup>	204.29 pF <sup>2</sup>	46,701,511	
Construction Block B	<u>72,151 ft<sup>2</sup></u>	204.29 pF <sup>2</sup>	<u>14,739,728</u>	
<b>Totals</b>	<b>300,755 ft<sup>2</sup></b>		<b>61,441,239</b>	<b>61,441,239</b>
Photo Voltaic			315,000	
Mayoral CIL			883,185	
Borough CIL			2,558,684	
Carbon Levy			267,942	4,024,811
<b>Other Construction</b>				
Compensation to Morrisons			1,318,810	
Shuttle Bus Contribution			200,000	
S278 Contribution			150,000	1,668,810
<b>PROFESSIONAL FEES</b>				
Professional Fees		7.00%	4,393,203	4,393,203
<b>MARKETING &amp; LETTING</b>				
Marketing		0.10%	121,597	
Letting Agent Fee - residential		8.00%	357,784	
Letting Agent Fee - commercial		10.00%	106,426	
Letting Legal Fee - residential		2.00%	85,397	
Letting Legal Fee - commercial		3.00%	31,928	703,132
<b>DISPOSAL FEES</b>				
Purchaser's Costs			7,660,605	
Sales Agent Fee		0.50%	614,735	
Sales Legal Fee		0.20%	245,894	8,521,233
<b>FINANCE</b>				
Debit Rate 7.000%, Credit Rate 0.000% (Nominal)				
Total Finance Cost				10,358,448
<b>TOTAL COSTS</b>				<b>103,791,774</b>
<b>PROFIT</b>				<b>19,155,127</b>
<b>Performance Measures</b>				
Profit on Cost%		18.46%		
Profit on GDV%		15.58%		
Profit on NDV%		16.62%		
Development Yield% (on Rent)		5.14%		
Equivalent Yield% (Nominal)		4.37%		
Equivalent Yield% (True)		4.49%		
IRR		18.43%		
Rent Cover		3 yrs 7 mths		
Profit Erosion (finance rate 7.000%)		2 yrs 5 mths		

DRAFT FOR DISCUSSION

**Paul Robinson**

---

**From:** [redacted] <[redacted]@hounslow.gov.uk>  
**Sent:** 05 April 2018 20:22  
**To:** Planning Support  
**Cc:** [redacted]  
**Subject:** FW: GLA ref. D&P/4126/02/JS (Morrisons, Brentford) - email 1 of 2  
**Attachments:** Plan 1.pdf; Plan 2.pdf; Plan 3.pdf; Plan 4.pdf; Plan 5.pdf; S106\_KLG\_05 04 18\_EU\_Active01\_700896749\_9 mk.pdf

Hi,

Further to Tuesdays email below, I now attach an update to the previous Section 106 Agreement which ensures that the rent levels of the DMR units will not exceed 40% of net income levels. Please see the table on page 27 in particular.

Regards,

[redacted] MRTPI  
East Area Deputy Planning Manager

Housing, Planning and Regulatory Services  
London Borough of Hounslow  
Orange Zone, Civic Centre, Lampton Road,  
Hounslow, TW3 4DN  
Office: 0208 583 [redacted]

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---

**From:** [redacted]  
**Sent:** 03 April 2018 10:48  
**To:** 'planningadmin@london.gov.uk'  
**Cc:** [redacted]  
**Subject:** GLA ref. D&P/4126/02/JS (Morrisons, Brentford) - email 1 of 2

Hi,

Please find LB Hounslow’s revised Stage II referral for the above scheme, this time with a draft decision notice for approval and a draft of the Section 106 Agreement that has been worked on since the previous Stage II referral.

[redacted] – I don’t normally work on Tuesdays but I am sending this from home today given your request not to send until your return from leave. Please don’t hesitate to contact me tomorrow if anything is queried.

I will also forward the previous Stage II referral following this email.

Regards,

██████████ MRTPI  
East Area Deputy Planning Manager

Housing, Planning and Regulatory Services  
London Borough of Hounslow  
Orange Zone, Civic Centre, Lampton Road,  
Hounslow, TW3 4DN  
Office: 0208 583 ██████████

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---

**From:** ██████████ [<mailto:██████████@london.gov.uk>]  
**Sent:** 06 March 2018 10:23  
**To:** ██████████  
**Cc:** ██████████  
**Subject:** RE: Morrisons Brentford

Thanks ██████████

██████████ cc'd would be the best person to review the draft s106 clauses. He is familiar with the scheme and Essential Living.

If you can also confirm the proposed rental levels as well, noting the £60k household cap for DMR in the SPG/draft London Plan/Housing Strategy and the Mayor's status preference for London Living Rent.

Thanks  
██████████

---

**From:** ██████████ [<mailto:██████████@hounslow.gov.uk>]  
**Sent:** 06 March 2018 10:17  
**To:** ██████████ <██████████@london.gov.uk>  
**Subject:** RE: Morrisons Brentford

██████████

Thanks for this. We had a very productive meeting with the applicant last Wednesday and hope to have a draft of the 106 finalised by the end of this week. The applicant has agreed to 15 year covenant for PRS, DMR in perpetuity

and early and late viability reviews so I think this captures everything that was requested. Is there anyone that I can run the draft past in your absence so that we can send our Stage II referral on your return?

Regards,

██████████

---

**From:** ██████████ [mailto:██████████@london.gov.uk]  
**Sent:** 05 March 2018 16:02  
**To:** ██████████  
**Subject:** Morrisons Brentford

Hi ██████████

Further to our recent discussions, please see attached letter which is being sent in the post re: Morrisons Brentford to clarify the GLA position.

Can you note tomorrow is my last day in the office and I will then be on leave until 3 April.

If there is to be a re-referred Stage 2, it will need to be after the Easter holiday period.

Kind regards

██████████  
██████████ | Senior Strategic Planner | Development Management | Development, Enterprise & Environment  
**GREATER LONDON AUTHORITY** | 4th Floor, City Hall, The Queen's Walk, London SE1 2AA  
Tel: 020 7983 ██████████ | Email: ██████████@london.gov.uk

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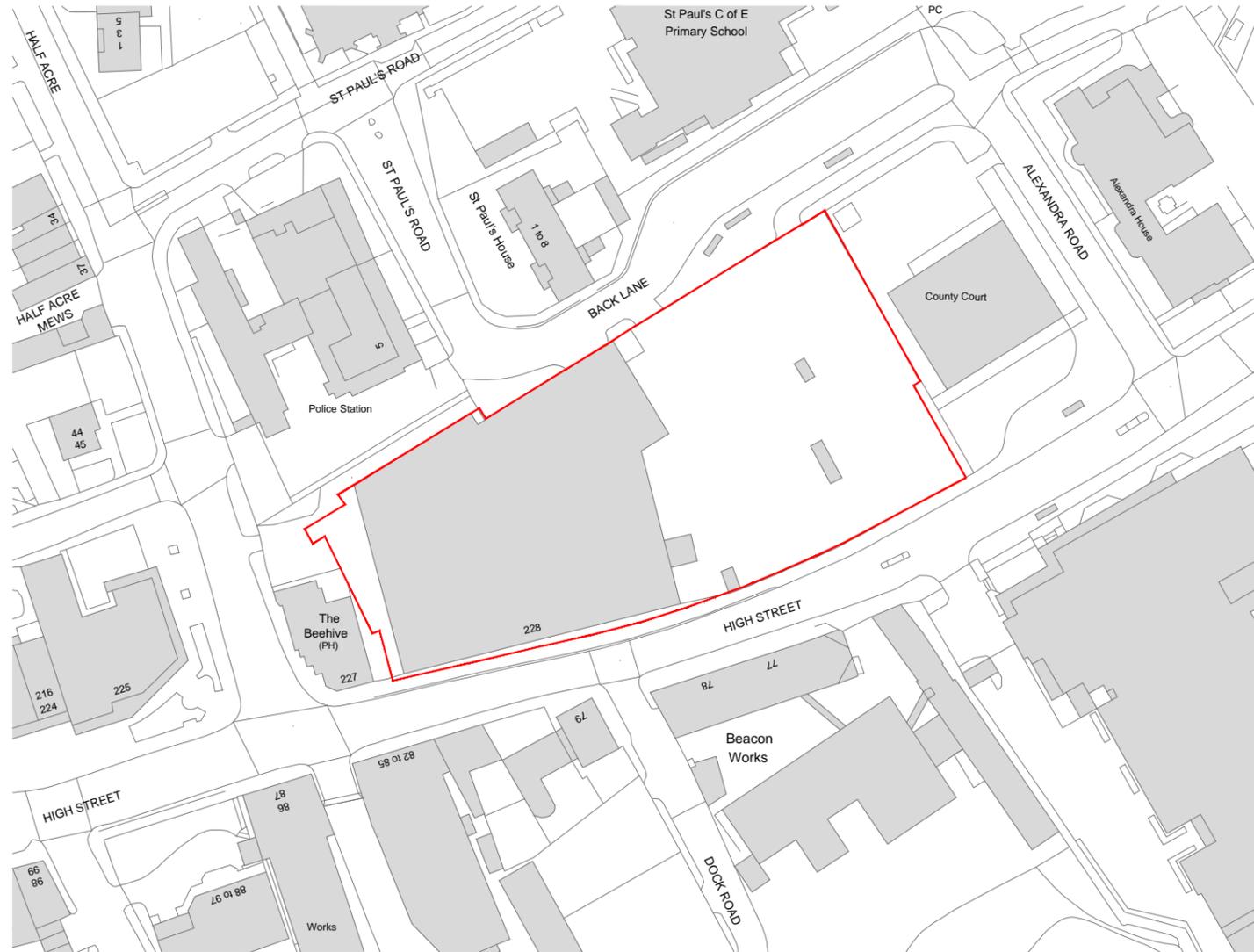
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Rev	Date	Drawn	Description
-	09/12/16	CHA	Initial Issue

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**Existing Site Location Plan**  
drawing title

**ESL-BRE\_XX\_DR\_0001**  
drawing number

-  
revision

**Essential Living**      **High Street East, Brentford**  
client / project

**1:1250**  
scale @ A3

**ESL-BRE**  
project number

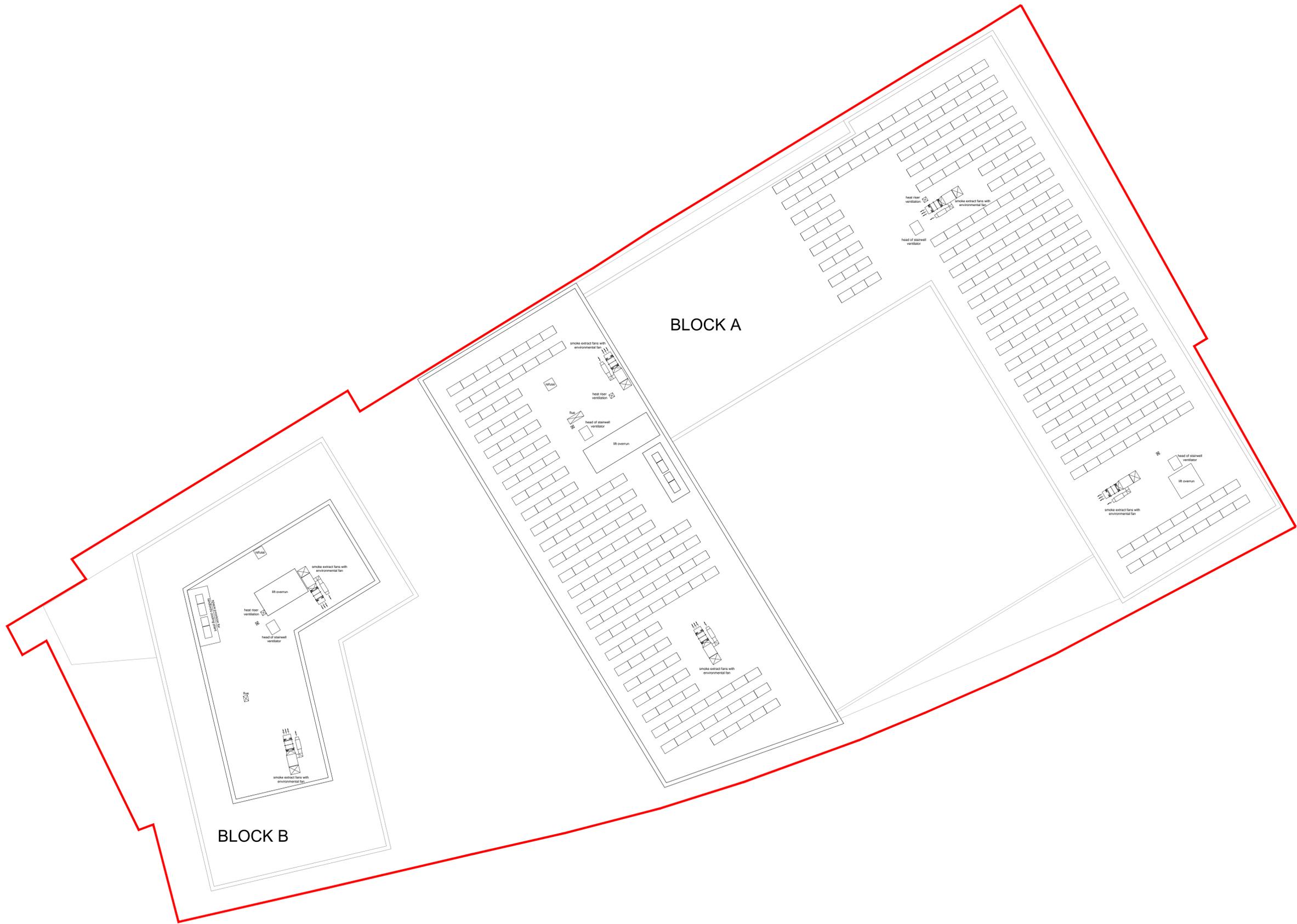
**CHA**  
originated by

**FOR PLANNING**  
status

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106-110 Kentish Town Road  
London, NW1 9PX  
020 7485 8555  
www.hta.co.uk

HTA Design LLP  
21 Slater's Steps  
Edinburgh, EH8 8PB  
0131 344 4742  
www.hta.co.uk





Rev	Date	Drawn	Description
A	09.12.16	CHA	Initial Issue
	13.03.17	CHA	Post Submission Amendments

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 Drawing to be read in conjunction with outline specification.



Proposed Roof Plan  
 drawing title

ESL-BRE\_10\_DR\_0210  
 drawing number

A  
 revision

Essential Living / High Street East, Brentford  
 client / project

1:200  
 scale @ A1

ESL-BRE  
 project number

CHA  
 originated by

**FOR PLANNING**  
 status

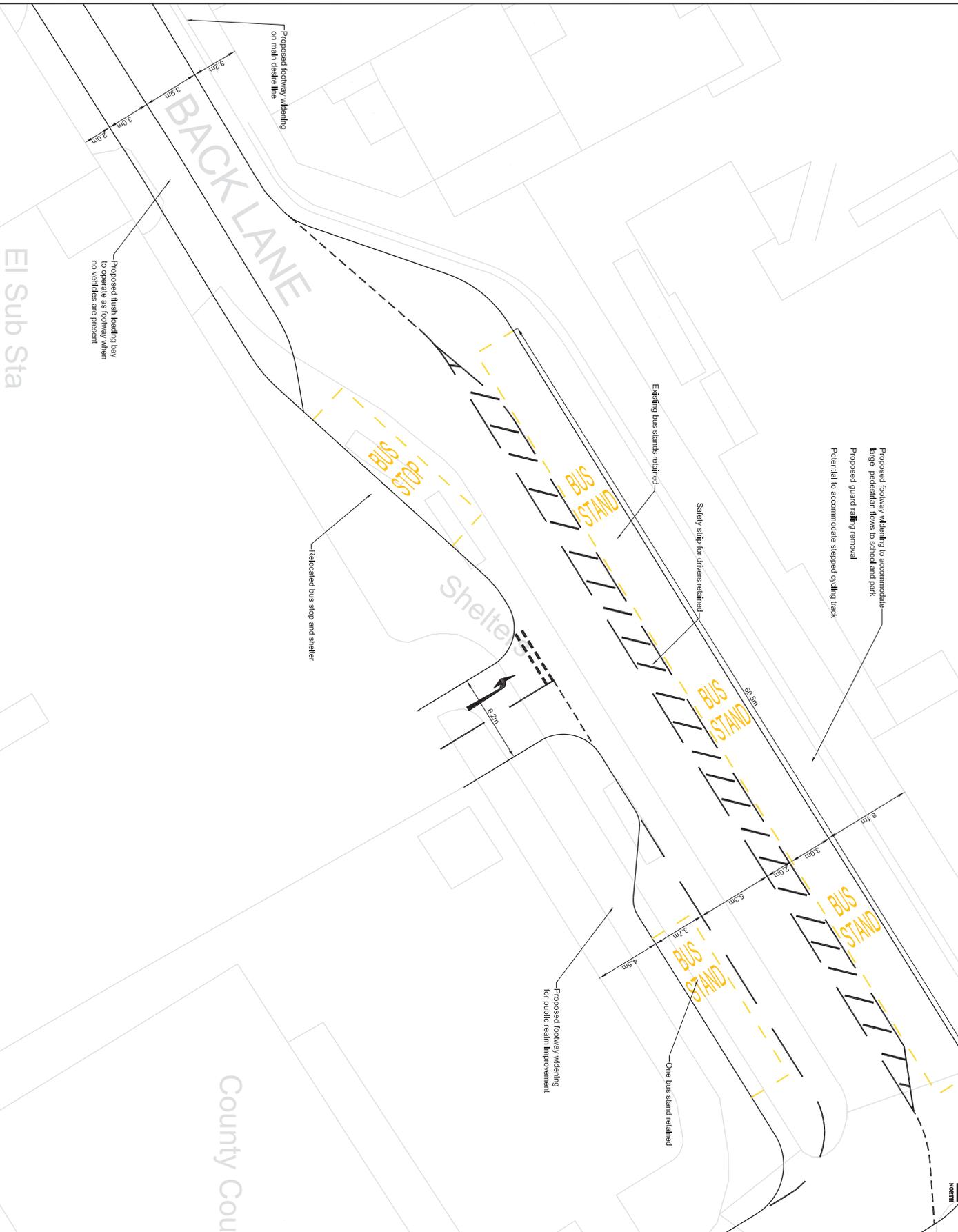
Tanner Place 54-58 Tanner Street  
 London, SE1 3PH  
 020 7993 4142  
 www.juicearchitects.com  
 studio@juicearchitects.com



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 106-110 Kenish Town Road  
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 www.hta.co.uk

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 21 Slater's Steps  
 Edinburgh, EH8 8PB  
 0131 344 4742  
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- ### Notes
1. The measured details in this drawing are indicative only
  2. Do not scale from this drawing
  3. All dimensions are in meters, unless otherwise stated
  4. Design based on DMRB TD42/95 Speed limit 30mph, design speed 60kph

- ### Key
- Existing Layout
  - Proposed Kerb Line
  - Proposed Road Markings

Rev	Date	Revision details	Drawn	Checked	Approved
A	1/12/16	Added safety strip for drivers	GF	JC	JC

**JMP**  
 2202 Old Lawry  
 London  
 EC2R 8DQ  
 T 020 3714 4400  
 F 020 3714 4403  
 W www.jmp.co.uk

Client: London Borough of Hounslow  
 Project: Development Planning Support Highways Design  
 Title: Morrisons Brentford Access Layout

Drawn	GF	Checked	JC	Approved	
Original file size	A3	Date	01.12.2016	Scale	1:250
Drawing Status	Draft	Drawing Number	ST17200-01	Rev	A





Rev	Date	Drawn	Description
A	09.12.16	CHA	Initial Issue
	13.03.17	CHA	Post Submission Amendments

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 Drawing to be read in conjunction with outline specification.



<b>Proposed 1st Floor Plan</b>		<b>ESL-BRE_01_DR_0201</b>	<b>A</b>
drawing title		drawing number	revision
<b>Essential Living / High Street East, Brentford</b>		<b>1:200</b>	<b>ESL-BRE</b>
client / project		scale @ A1	project number
Tanner Place 54-58 Tanner Street London, SE1 3PH 020 7993 4142 www.juicearchitects.com studio@juicearchitects.com		HTA Design LLP 106-110 Kenish Town Road London, NW1 9PX 020 7485 8555 www.hta.co.uk	HTA Design LLP 21 Slater's Steps Edinburgh, EH8 8PB 0131 344 4742 www.hta.co.uk
<b>FOR PLANNING</b>		<b>JUCE architects</b>	<b>hta</b>
status			originated by

## Paul Robinson

---

**From:** [REDACTED]  
**Sent:** 12 April 2018 13:30  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: GLA ref. D&P/4126/02/JS (Morrisons, Brentford)  
**Attachments:** Example PRS Clawback Clauses.docx

[REDACTED] all noted. The report is drafted, it will go to the meeting on the 24<sup>th</sup>, there are no other outstanding issues apart from the s106 wording.

There is an example clawback attached. The individual values of the private rental units psm need to be set out in the agreement, as determined through the viability assessment.

The 40% net income threshold should apply to all the DMR units.

Thanks

[REDACTED]

---

**From:** [REDACTED] [mailto:[REDACTED]@hounslow.gov.uk]  
**Sent:** 12 April 2018 10:19  
**To:** [REDACTED] <[REDACTED]@london.gov.uk>  
**Cc:** [REDACTED] <[REDACTED]@london.gov.uk>  
**Subject:** RE: GLA ref. D&P/4126/02/JS (Morrisons, Brentford)

[REDACTED]

We have to complete this matter by the end of this month. The applicant is accepting of late changes to the 106 as they need to be able to secure financing on this asap but this can't run into May or the development may not proceed. We need to have the deed signed by our Mayor on Wednesday 25<sup>th</sup> April to be able to issue the permission before the end of the month, hence if you cannot determine next Monday then we can wait until 23<sup>rd</sup> but on the basis that the deed is agreed this week so that engrossments can be prepared next week whilst awaiting the Stage II response before the sealing process.

On the eligibility definition, can you confirm my understanding that the 40% net income threshold should only apply to those units that would otherwise be set at 80% of open market rent levels i.e. we can fix the remaining units at 55% and 65% of open market rent levels without the income threshold? Can you please send me any other changes re clawback that you are proposing by the end of today?

Regards,

[REDACTED]

---

**From:** [REDACTED] [mailto:[REDACTED]@london.gov.uk]  
**Sent:** 11 April 2018 16:35  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: GLA ref. D&P/4126/02/JS (Morrisons, Brentford)

[REDACTED] the very earliest meeting this would go to is the 24<sup>th</sup> April 2018.

I have liaised with [REDACTED] on the draft s106 and there are some outstanding points here.

### Affordability

In terms of the eligible persons definition – can you make it explicitly clear that it's the upper limit for **intermediate rented** products within the AMR please. Suggested minor change below.

(b) Persons whose gross annual household income at the date of offer to rent a DMR Unit does not exceed the relevant uppermost annual income thresholds [for intermediate rented products](#) as set out in the London Plan Spatial Development Strategy for Greater London as updated from time to time by the London Plan Annual Monitoring Report ("LPAMR"); If from time to time there is any relevant successor strategic plan guidance or legislation to the London Plan or the LPAMR in either case that relevant successor shall be substituted herein and if in both cases there is no relevant successor then the income or threshold referred to in this definition shall be based on the last defined income in the London Plan or LPAMR and increased by the percentage difference of the average change in the Retail Prices Index;



**Clawback**

The Market Failure Review is not a distinct clawback. Reviews and clawbacks are quite separate elements, as set out in our SPG – Para 4.11 onwards. I will ask [redacted] to dig out an example s106 from elsewhere, if required. I know he is developing some sample clause with legal colleagues.

**Developer Profit**

On the original Stage 2 referral we did not look at the viability in details as you were seeking refusal. The profit rates in the s106 are taken from the BPS review in April 2017 – 17% GDV on OMR, 10% GDV on DMR and 15% GDV on commercial. Whilst the 15% on GDV for the commercial is pretty standard and agreed, we are currently seeing 12.5% on GDV (15% on costs) for BTR schemes – blended for OMR and DMR - so these profit levels are significantly above what we would expect to see.

**Review cap**

The review cap should be determined at the point of review, with reference to your local plan target.

I confirm there are no other outstanding issues with the wider application, aside from the s106 detail.

Kind regards

---

**From:** [redacted] [mailto:[redacted]@hounslow.gov.uk]  
**Sent:** 11 April 2018 13:53  
**To:** [redacted] <[redacted]@london.gov.uk>  
**Subject:** RE: GLA ref. D&P/4126/02/JS (Morrisons, Brentford) - email 1 of 2

[redacted]

Thanks for confirming. Are we expecting the Mayor's response on Monday 16<sup>th</sup> April?

Regards,

---

**From:** [redacted] [mailto:[redacted]@london.gov.uk]  
**Sent:** 06 April 2018 17:01  
**To:** [redacted]  
**Subject:** RE: GLA ref. D&P/4126/02/JS (Morrisons, Brentford) - email 1 of 2

Hi [redacted]

I have only returned to the office today, as I was hospitalised in India.

I will need to review the draft s106 with [redacted] next week to ensure there are no outstanding issues.

Thanks

---

**From:** [redacted] [mailto:[redacted]@hounslow.gov.uk]  
**Sent:** 05 April 2018 20:22  
**To:** Planning Support <[redacted]@planningsupport@london.gov.uk>  
**Cc:** [redacted] <[redacted]@london.gov.uk>  
**Subject:** FW: GLA ref. D&P/4126/02/JS (Morrisons, Brentford) - email 1 of 2

Hi,

Further to Tuesdays email below, I now attach an update to the previous Section 106 Agreement which ensures that the rent levels of the DMR units will not exceed 40% of net income levels. Please see the table on page 27 in particular.

Regards,

██████████ MRTPI  
East Area Deputy Planning Manager

Housing, Planning and Regulatory Services  
London Borough of Hounslow  
Orange Zone, Civic Centre, Lampton Road,  
Hounslow, TW3 4DN  
Office: 0208 583 ██████████

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---

**From:** ██████████  
**Sent:** 03 April 2018 10:48  
**To:** 'planningadmin@london.gov.uk'  
**Cc:** ██████████  
**Subject:** GLA ref. D&P/4126/02/JS (Morrisons, Brentford) - email 1 of 2

Hi,

Please find LB Hounslow's revised Stage II referral for the above scheme, this time with a draft decision notice for approval and a draft of the Section 106 Agreement that has been worked on since the previous Stage II referral.

██████████ – I don't normally work on Tuesdays but I am sending this from home today given your request not to send until your return from leave. Please don't hesitate to contact me tomorrow if anything is queried.

I will also forward the previous Stage II referral following this email.

Regards,

██████████ MRTPI  
East Area Deputy Planning Manager

Housing, Planning and Regulatory Services  
London Borough of Hounslow  
Orange Zone, Civic Centre, Lampton Road,  
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Office: 0208 583 ██████████

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**From:** [redacted] [[mailto:\[redacted\]@london.gov.uk](mailto:[redacted]@london.gov.uk)]  
**Sent:** 06 March 2018 10:23  
**To:** [redacted]  
**Cc:** [redacted]  
**Subject:** RE: Morrisons Brentford

Thanks [redacted]

[redacted] cc'd would be the best person to review the draft s106 clauses. He is familiar with the scheme and Essential Living.

If you can also confirm the proposed rental levels as well, noting the £60k household cap for DMR in the SPG/draft London Plan/Housing Strategy and the Mayor's status preference for London Living Rent.

Thanks  
[redacted]

---

**From:** [redacted] [[mailto:\[redacted\]@hounslow.gov.uk](mailto:[redacted]@hounslow.gov.uk)]  
**Sent:** 06 March 2018 10:17  
**To:** [redacted] <[\[redacted\]@london.gov.uk](mailto:[redacted]@london.gov.uk)>  
**Subject:** RE: Morrisons Brentford

[redacted]

Thanks for this. We had a very productive meeting with the applicant last Wednesday and hope to have a draft of the 106 finalised by the end of this week. The applicant has agreed to 15 year covenant for PRS, DMR in perpetuity and early and late viability reviews so I think this captures everything that was requested. Is there anyone that I can run the draft past in your absence so that we can send our Stage II referral on your return?

Regards,  
[redacted]

---

**From:** [redacted] [[mailto:\[redacted\]@london.gov.uk](mailto:[redacted]@london.gov.uk)]  
**Sent:** 05 March 2018 16:02  
**To:** [redacted]  
**Subject:** Morrisons Brentford

Hi [redacted]

Further to our recent discussions, please see attached letter which is being sent in the post re: Morrisons Brentford to clarify the GLA position.

Can you note tomorrow is my last day in the office and I will then be on leave until 3 April.

If there is to be a re-referred Stage 2, it will need to be after the Easter holiday period.

Kind regards

██████████  
██████████ | Senior Strategic Planner | Development Management | Development, Enterprise & Environment  
**GREATER LONDON AUTHORITY** | 4th Floor, City Hall, The Queen's Walk, London SE1 2AA  
Tel: 020 7983 ██████████ | Email: ██████████ [london.gov.uk](mailto:██████████@london.gov.uk)

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### **Example PRS Clawback Clauses**

- 1.1 during a period of 15 years from the later of:
- 1.1.1 the date on which the first Private PRS Unit is Occupied; or
  - 1.1.2 the date on which all of the Private PRS Units are ready for Occupation
- at all times the Long Leasehold interest in the Private PRS Units (other than in respect of any Private PRS Units disposed of in accordance with paragraph 2.8) shall be owned and the Private PRS Units managed and operated by a single person or single entity;
- 1.2 the Owner covenants that the Private PRS Units shall be retained as private rented accommodation under single management during the period of 15 years specified in paragraph 1.1 above, subject only to:
- 1.2.1 any requirement in accordance with the provisions of this Deed to convert any Private PRS Units into an Additional Affordable PRS Unit; or
  - 1.2.2 any disposal of a Private PRS Unit in the relevant 15 year period being made in accordance with paragraph 1.3.
- 1.3 the Owner may dispose of a Private PRS Unit(s) by way of market sale during the 15 year period as described in paragraph 1.2 above provided that if they do they shall submit to the Council for approval within 10 Working Days of the disposal a written statement setting out the following in relation to each relevant Private PRS Unit disposed of:
- 1.3.1 the quantum in square metres of the relevant Private PRS Unit disposed of;
  - 1.3.2 the price per square metre achieved in the disposal,
  - 1.3.3 the Clawback Payment payable on the basis of the following formula in relation to each relevant Private PRS Unit disposed of:  
$$A = B * (C - D)$$

where:

A = the Clawback Payment

B = the quantum sold in m2

C = the sale price for the relevant Private PRS Unit sold per m2

D = £XXX (the Assumed Value per m2 for the equivalent Private PRS Unit to that sold (studio, one, two, or three bed as the case may be) index linked from the date of the Baseline Appraisal based on the change in local rental values as indicated by Valuation Office Agency data
- 1.4 the Council will determine whether the written statement is approved or specify the level of Clawback Payment. The Owner shall pay the relevant Clawback Payment to the Council within 20 Working Days of approval or determination (as relevant).

## Paul Robinson

---

**From:** [REDACTED] <[REDACTED]@hounslow.gov.uk>  
**Sent:** 13 April 2018 12:06  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: GLA ref. D&P/4126/02/JS (Morrisons, Brentford)  
**Attachments:** RE: Morrisons Brentford

[REDACTED]

For ease, please see my email exchange with [REDACTED] (you were copied in also) between 15<sup>th</sup> March and 19<sup>th</sup> March on this matter. I have/had similar concerns with regard to clause (c), but [REDACTED] advised that this would be acceptable where the clawback would be in place.

I have been fairly relaxed with the deferred contribution sum reducing to 50% after 3 years given that the viability assessments indicated that the scheme was more viable as a PRS development than as an open market sale development – the extract from our viability consultant’s report below confirming that the 25% affordable secured due to this being a PRS scheme would be higher than what could be achieved as a build-to-sale scheme – such that I considered this reasonable on the proviso that there was at least an initial period where the deferred contribution was 100%.

### Build for Sale appraisal

3.3 ULL have created a ‘Build for Sale’ appraisal which replaces the PRS units with conventional market sale units, and with 25% affordable housing. This generates a Residual Land Value of £0.67m, therefore has a much greater deficit than the PRS scheme. Our review of this appraisal indicates that it is a realistic assessment of viability, with the exception of the build costs for which we would apply the same reduction as we have made in the PRS scheme appraisal. Also, a relatively minor reduction to the profit target may be required in order to incorporate our suggested 15% profit on GDV for the commercial element. However, we do not have a breakdown of how ULL’s blended profit of 18.79% on GDV has been calculated therefore this would require further discussion, but in any case this profit issue and suggested build cost reduction does not affect the overall conclusion that the Build For Sale scheme is less viable than the PRS scheme.

Again let me know your thoughts, and whether this is a reasonable approach or if an alternative solution could be that we remove the 50% reduction and leave this as 100% for the covenant period.

Regards,

[REDACTED]

---

**From:** [REDACTED] [mailto:[REDACTED]@london.gov.uk]  
**Sent:** 13 April 2018 11:10  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: GLA ref. D&P/4126/02/JS (Morrisons, Brentford)

[REDACTED]

I take that point – but looking at the definition of Market Failure (below), I would flag point (c) and whether it constitutes a genuine market failure. I imagine most would-be purchasers would negotiate a discount against market value on the bulk purchase of 150+ flats, and I’d question whether a discount of up to 5% was a clear sign of a failing market.

█ – do you have any comment on this please? notably market expectations from your discussions with BTR operators, particularly institutional investors and/or any details of completed BTR developments which have subsequently changed hands to date?

“Market Failure” means:

(a) the introduction by national London wide or local government of legislation or policy which has the direct effect of restricting the rent which can be charged in relation to any OMR Unit; or

(b) 25% (twenty five percent) or more of the OMR Units becoming unoccupied for Private Rental Use due to any continued and sustained adverse change in the private residential market beyond the Owner’s reasonable control for a continuous period of more than 6 months commencing after the date of Practical Completion of the Development PROVIDED THAT the Owner has first notified the Council in writing when 25% (twenty five percent) or more of the OMR Units have been unoccupied for a period of 2 (two) months and the Owner has implemented any recommendations made by the Council in order to increase the level of occupation of the OMR Units;

(c) Failure to find a single buyer for all of the OMR Units following no less than 6 months of publicly marketing them who will pay more than 95% (ninety five percent) of the total cumulative market value of all of the OMR Units sold on an individual basis to separate owner occupiers;

█

From: █ [mailto:█@hounslow.gov.uk]

Sent: 12 April 2018 17:08

To: █ <█@london.gov.uk>

Subject: RE: GLA ref. D&P/4126/02/JS (Morrisons, Brentford)

█

There isn’t a provision in the 106 currently for selling the units out of PRS unless there is a market failure, whereas the clawback mechanism allows for this. Hence I’m unclear why the GLA are asking for this if the applicant has not requested this to be included in the first instance.

█

From: █ [mailto:█@london.gov.uk]

Sent: 12 April 2018 16:50

To: █

Cc: █

Subject: RE: GLA ref. D&P/4126/02/JS (Morrisons, Brentford)

█

The clawback is there to dis-incentivise these units being sold out within the 15 years. The proposed review mechanism does not do that, especially after that initial 3 year period. 4.13 – 4.17 of the SPG are the key ones here.

4.13 As part of the viability testing process applicants should submit a Build to Rent viability assessment, which will be scrutinised in the usual way to determine the maximum reasonable amount of affordable housing that can be provided.

4.14 In line with the Mayor’s approach to affordable housing on Build to Rent schemes, and to ensure that there is no financial incentive to break a covenant, planning permission should only be granted where the scheme is subject to a clawback agreement. The appropriate clawback amount will be the difference between the total value of the market rent units based on the viability assessment at application stage, and those units valued on a ‘for sale’ basis at the point of sale. The LPA should be notified of the sale price of units that are sold and this should inform the market value of remaining units to determine the clawback. The clawback amount must demonstrate a sufficient difference in the value of units between rented and for sale tenures, consistent with the ‘distinct economics’ of build to rent, for the scheme to qualify for the Build to Rent pathway.

4.15 The clawback amount will be payable to the LPA for the provision of affordable housing in the event that market rented units are sold within the covenant period, which would break the covenant. For larger phased schemes the LPA should consider whether the clawback amount should be disaggregated to the relevant block in which units are sold. The clawback amount should not reduce over time to ensure that the covenant remains effective for the full period.

4.16 In the event that a share of rented units are sold, and the remaining units are retained within the rental market, an LPA may determine that the clawback is calculated based on the units sold. The other units will remain under covenant and the clawback will apply at the point of sale if disposed of within the covenant period.

4.17 The clawback does not relate to any affordable units provided as part of the scheme. Affordable units are not subject to a minimum covenant period and must always be secured in perpetuity. Additionally, overall ownership of the building(s) in which the units are located may change during the covenanted period without triggering 'clawback' if the units remain in single ownership and management as Build to Rent.

From: [redacted] [mailto:[redacted]@hounslow.gov.uk]  
Sent: 12 April 2018 16:00  
To: [redacted] <[redacted]@london.gov.uk<mailto:[redacted]@london.gov.uk>>  
Cc: [redacted] <[redacted]@london.gov.uk<mailto:[redacted]@london.gov.uk>>  
Subject: RE: GLA ref. D&P/4126/02/JS (Morrisons, Brentford)

In relation to the clawback mechanism, I just want to check a couple of points with you:

\* The S106 is currently drafted so that the OMR Units must let on ASTs for 15 years unless the owner considers that there has been a 'Market Failure' and submits evidence to the Council showing this, and the Council agrees that there has been a Market Failure.

\* When there has been a Market Failure a viability review is triggered. "Market Failure Review Trigger Date" is the date following a Market Failure when 25% of the OMR Units have been disposed of other than by way of an AST.

\* The purpose of this viability review is to capture any improvement in viability arising as a result of the Owner selling the OMR units, rather than letting them on ASTs. The Council will get 100% of any surplus shown in the appraisal (in the first three years) and 50% of any surplus subsequently.

For this reason, I question whether a clawback mechanism is required, as we have just dealt with this issue in a different way. The clawback mechanism as proposed seems to cut across what we have secured in the deed.

Any thoughts?

From: [redacted] [mailto:[redacted]@london.gov.uk]  
Sent: 12 April 2018 13:30  
To: [redacted]  
Cc: [redacted]  
Subject: RE: GLA ref. D&P/4126/02/JS (Morrisons, Brentford)

████ all noted. The report is drafted, it will go to the meeting on the 24th, there are no other outstanding issues apart from the s106 wording.

There is an example clawback attached. The individual values of the private rental units psm need to be set out in the agreement, as determined through the viability assessment.

The 40% net income threshold should apply to all the DMR units.

Thanks

████

From: █████ [mailto:████@hounslow.gov.uk]  
Sent: 12 April 2018 10:19  
To: █████ <████@london.gov.uk<mailto:████@london.gov.uk>>  
Cc: █████ <████@london.gov.uk<mailto:████@london.gov.uk>>  
Subject: RE: GLA ref. D&P/4126/02/JS (Morrisons, Brentford)

████

We have to complete this matter by the end of this month. The applicant is accepting of late changes to the 106 as they need to be able to secure financing on this asap but this can't run into May or the development may not proceed. We need to have the deed signed by our Mayor on Wednesday 25th April to be able to issue the permission before the end of the month, hence if you cannot determine next Monday then we can wait until 23rd but on the basis that the deed is agreed this week so that engrossments can be prepared next week whilst awaiting the Stage II response before the sealing process.

On the eligibility definition, can you confirm my understanding that the 40% net income threshold should only apply to those units that would otherwise be set at 80% of open market rent levels i.e. we can fix the remaining units at 55% and 65% of open market rent levels without the income threshold? Can you please send me any other changes re clawback that you are proposing by the end of today?

Regards,

████

From: █████ [mailto:████@london.gov.uk]  
Sent: 11 April 2018 16:35  
To: █████  
Cc: █████  
Subject: RE: GLA ref. D&P/4126/02/JS (Morrisons, Brentford)

████ the very earliest meeting this would go to is the 24th April 2018.

I have liaised with █████ on the draft s106 and there are some outstanding points here.

Affordability

In terms of the eligible persons definition – can you make it explicitly clear that it's the upper limit for intermediate rented products within the AMR please. Suggested minor change below.

(b) Persons whose gross annual household income at the date of offer to rent a DMR Unit does not exceed the relevant uppermost annual income thresholds for intermediate rented products as set out in the London Plan Spatial Development Strategy for Greater London as updated from time to time by the London Plan Annual

Monitoring Report (“LPAMR”); If from time to time there is any relevant successor strategic plan guidance or legislation to the London Plan or the LPAMR in either case that relevant successor shall be substituted herein and if in both cases there is no relevant successor then the income or threshold referred to in this definition shall be based on the last defined income in the London Plan or LPAMR and increased by the percentage difference of the average change in the Retail Prices Index;

#### Clawback

The Market Failure Review is not a distinct clawback. Reviews and clawbacks are quite separate elements, as set out in our SPG – Para 4.11 onwards. I will ask [REDACTED] to dig out an example s106 from elsewhere, if required. I know he is developing some sample clause with legal colleagues.

#### Developer Profit

On the original Stage 2 referral we did not look at the viability in details as you were seeking refusal. The profit rates in the s106 are taken from the BPS review in April 2017 – 17% GDV on OMR, 10% GDV on DMR and 15% GDV on commercial. Whilst the 15% on GDV for the commercial is pretty standard and agreed, we are currently seeing 12.5% on GDV (15% on costs) for BTR schemes – blended for OMR and DMR - so these profit levels are significantly above what we would expect to see.

#### Review cap

The review cap should be determined at the point of review, with reference to your local plan target.

I confirm there are no other outstanding issues with the wider application, aside from the s106 detail.

Kind regards

[REDACTED]

From: [REDACTED] [[mailto:\[REDACTED\]@hounslow.gov.uk](mailto:[REDACTED]@hounslow.gov.uk)]

Sent: 11 April 2018 13:53

To: [REDACTED] <[\[REDACTED\]@london.gov.uk](mailto:[REDACTED]@london.gov.uk)<[mailto:\[REDACTED\]@london.gov.uk](mailto:[REDACTED]@london.gov.uk)>>

Subject: RE: GLA ref. D&P/4126/02/JS (Morrisons, Brentford) - email 1 of 2

[REDACTED]

Thanks for confirming. Are we expecting the Mayor’s response on Monday 16th April?

Regards,

[REDACTED]

From: [REDACTED] [[mailto:\[REDACTED\]@london.gov.uk](mailto:[REDACTED]@london.gov.uk)]

Sent: 06 April 2018 17:01

To: [REDACTED]

Subject: RE: GLA ref. D&P/4126/02/JS (Morrisons, Brentford) - email 1 of 2

Hi [REDACTED]

I have only returned to the office today, as I was hospitalised in India.

I will need to review the draft s106 with [REDACTED] next week to ensure there are no outstanding issues.

Thanks

[REDACTED]

From: [redacted] [[mailto:\[redacted\]@hounslow.gov.uk](mailto:[redacted]@hounslow.gov.uk)]

Sent: 05 April 2018 20:22

To: Planning Support <[planningsupport@london.gov.uk](mailto:planningsupport@london.gov.uk)<<mailto:planningsupport@london.gov.uk>>>

Cc: [redacted] <[\[redacted\]@london.gov.uk](mailto:[redacted]@london.gov.uk)<[mailto:\[redacted\]@london.gov.uk](mailto:[redacted]@london.gov.uk)>>

Subject: FW: GLA ref. D&P/4126/02/JS (Morrisons, Brentford) - email 1 of 2

Hi,

Further to Tuesdays email below, I now attach an update to the previous Section 106 Agreement which ensures that the rent levels of the DMR units will not exceed 40% of net income levels. Please see the table on page 27 in particular.

Regards,

[redacted] MRTPI  
East Area Deputy Planning Manager

[Rest of email chain duplicated in pack]

**Paul Robinson**

---

**From:** [REDACTED]  
**Sent:** 21 March 2018 21:05  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Morrisons Brentford

[REDACTED]

Thank you for this. Yes as drafted the link to RPI takes effect if the income thresholds are no longer set out in the London Plan, however RPI is no longer thought of as a reliable index and in any case is not linked to incomes. If using an index for this purpose I would recommend looking at the ONS earning series.

Re the affordability of units, the London Plan AMR and the Mayor's Affordable Housing and Viability SPG are clear that intermediate rented units must be affordable to households on maximum household incomes of £60,000 based on 40% of net income. The applicant should be aware of that. We have recently come across a similar situation on a scheme where the applicant has agreed to ensure that the units meet the income criteria without a change in the overall percentage in order to meet the Mayor's requirements and because this would have been out of the scope of delegated authority following a resolution from the planning committee.

The email was not attached and I have not reviewed the clawback provisions.

Kind regards,

[REDACTED]

[REDACTED]  
Strategic Planning Manager - Viability

**GREATER LONDON AUTHORITY** | 4th Floor, City Hall, The Queen's Walk, London SE1 2AA  
Tel: 020 7983 4370 | Email: [REDACTED]@london.gov.uk | Web: [www.london.gov.uk](http://www.london.gov.uk)

---

**From:** [REDACTED] [mailto:[REDACTED]@hounslow.gov.uk]  
**Sent:** 21 March 2018 12:38  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Morrisons Brentford

[REDACTED]

As I understand, the income link to RPI only applies where the annual income thresholds are no longer set out in the London Plan. Please let me know if you would like a legal opinion to confirm this. There is a claw back arrangement for the open market sale of PRS units, which is set out on p.40 and 41 of the now updated deed in the attached email (this comprises minor updates as set out in the email text).

I am concerned with any additional clause that the discounted rent levels should be restricted to no more than 40% of net income, as this would mean that the uppermost discounted levels of 19 units (based on a % of the open market rent levels in the viability appraisal and as highlighted below) would need to be reduced to £1,419.20 pcm for a person earning £60k. A restriction on rent to no more than 40% of gross income (or say 55% of net income) would mean that only the three bed at 80% of the open market rate would need to be amended down or the provision re-negotiated.

Can you come back to me on this point as this would otherwise have a significant impact on scheme viability and/or the quantum of DMR units (25% of total) that have been agreed in the line with the Planning Committee resolution.

Size of Unit	Discount in Rent Level (Percentage of Open Market Rent)		
	55% or less	65% or less	80% or less
Studio	3 (£687.50 pcm)	3 (£812.5 pcm)	5 (£1000 pcm)
One Bed	5 (£852.50 pcm)	6 (£1007.5 pcm)	8 (£1240 pcm)
Two Bed	6 (£1210 pcm)	6 (£1430 pcm)	8 (£1760 pcm)
Three Bed	2 (£1567.5 pcm)	2 (£1852.5 pcm)	1 (£2280 pcm)
<b>Total</b>	<b>16</b>	<b>17</b>	<b>22</b>

**Calculation**

A person currently earning £60,000pa (gross) would have annual earnings (after tax and NI) of **£42,576**.

£42,576 / 12 = **£3,548** per month

40% of £3,548 = **£1,419.20**

Regards,

██████████

-----Original Message-----

From: ██████████ [mailto:██████████@london.gov.uk]

Sent: 19 March 2018 19:03

To: ██████████

Cc: ██████████

Subject: RE: Morrisons Brentford

██████████

Yes thats right. It would need to set out that the units would need to be affordable to households based on no more than 40%.of net income with the maximum income in the AMR (if not covered elsewhere in the agreement). We would not accept linking the income cap to RPI which is not linked to incomes and consider that it is sufficient to link the cap to subsequent AMRs or successor documents issued by the Mayor.

Yes the sale out of rented tenure is only acceptable with the claw back.

Kind regards

██████████

On Mar 19, 2018 3:59:05 PM, ██████████ <██████████@hounslow.gov.uk> wrote:

Thanks for your response. May I assume that the following sub-clause would be more suitable than the previous way of defining income threshold?

(b) Persons whose gross annual household income at the date of offer to rent a DMR Unit does not exceed the relevant uppermost annual income thresholds as set out in the London Plan Spatial Development Strategy for Greater London as updated from time to time by the London Plan Annual Monitoring Report ("LPAMR"); if from time to time there is any relevant successor strategic plan guidance or legislation to the London Plan or the LPAMR in either case that relevant successor shall be substituted herein and if in both cases there is no relevant successor then the income or threshold referred to in this definition shall be based on the last defined income in the London Plan or LPAMR and increased by the percentage difference of the average change in the Retail Prices Index;

On your second point, do you mean that you would only accept the sale out of market tenure with a clawback arrangement?

Regards,

From: [redacted] [mailto:[redacted]@london.gov.uk]  
Sent: 19 March 2018 14:39  
To: [redacted]  
Cc: [redacted]  
Subject: RE: Morrisons Brentford

[redacted] thank you for your email.

I have not been able to review all of the affordable housing / review clauses as yet but by way of feedback on your specific points the GLA would not accept units that are not affordable on the basis of 40% of net income of households with an income of greater than £60,000. I don't think that an alternative upper limit based on a multiple of the rent charged would work because if the base rent is increased the multiple could take that over the £60,000.

In terms of the market failure clauses we would not accept the sale out of market tenure within the 15 year covenant period with a clawback arrangement consistent with the approach set out in the SPG – see para 4.13 onwards.

Kind regards,

From: [redacted] [mailto:[redacted]@hounslow.gov.uk]  
Sent: 15 March 2018 18:27  
To: [redacted] <[redacted]@london.gov.uk> [mailto:[redacted]@london.gov.uk]>>  
Cc: [redacted] <[redacted]@london.gov.uk> [mailto:[redacted]@london.gov.uk]>>  
Subject: RE: Morrisons Brentford

Further to my email exchange with [redacted] below, I attach a near-finalised version of the 106.

I would be grateful for any comments that you wish to make on this prior to formally submitting our second Stage II request. I would direct you to p. 25 & 26 in particular, which I would like your views on. Firstly, the annual income threshold for the Discounted Market Rent units is set at £60k, although I have added an additional threshold equivalent to 30x the monthly rent in line with my email of 6th March below. Secondly, the applicant has included three market failure clauses, which enable the PRS units to be sold on the open market if any of these apply. The first two seem reasonable, although the third (failure to find a single buyer for all of the OMR Units following no less than 6 months of publicly marketing) seems relatively unachievable, although I would be happy to agree this if this has been included in other 106s for PRS developments that the GLA is aware of.

Please don't hesitate to call if easier to discuss.

Regards,

█

From: █  
Sent: 06 March 2018 11:29  
To: █  
Cc: █  
Subject: RE: Morrisons Brentford

█

Rental levels are a mix of 55%, 65% and 80% of open market rent as tested in viability review. Table below.

Discount in Rent Level (Percentage of Open Market Rent)

Size of Unit

55% or less

65% or less

80% or less

Studio

3

5

One Bed

5

6

8

Two Bed

6

6

8

Three Bed

2

2

1

Total

16

17

22

The £60k threshold is noted and was discussed last week. The applicant asked if the £60k limit could be increased if any of the DMR rates would be more than 40% of income (which is an equivalent threshold of monthly rent being more than 1/30th of annual income). When I've checked this against the viability appraisal, only one unit is applicable – the single three bed unit at 80%. The DMR rental level for this is stated as £2,280pm, meaning that the discounted rent level would be 46% of an annual income of £60k. Hence, is it acceptable to the GLA to state either a £60k limit or that which is no more than 30x monthly rent?

Regards,

█

From: █ [mailto:█@london.gov.uk]  
Sent: 06 March 2018 10:23  
To: █  
Cc: █  
Subject: RE: Morrisons Brentford

Thanks █

█ cc'd would be the best person to review the draft s106 clauses. He is familiar with the scheme and Essential Living.

If you can also confirm the proposed rental levels as well, noting the £60k household cap for DMR in the SPG/draft London Plan/Housing Strategy and the Mayor's status preference for London Living Rent.

Thanks

█

From: █ [mailto:█@hounslow.gov.uk]  
Sent: 06 March 2018 10:17  
To: █ <█@london.gov.uk> [mailto:█@london.gov.uk]>>  
Subject: RE: Morrisons Brentford

█

Thanks for this. We had a very productive meeting with the applicant last Wednesday and hope to have a draft of the 106 finalised by the end of this week. The applicant has agreed to 15 year covenant for PRS, DMR in perpetuity and early and late viability reviews so I think this captures everything that was requested. Is there anyone that I can run the draft past in your absence so that we can send our Stage II referral on your return?

Regards,

█

From: █ [mailto:█@london.gov.uk]  
Sent: 05 March 2018 16:02  
To: █  
Subject: Morrisons Brentford

Hi █

Further to our recent discussions, please see attached letter which is being sent in the post re: Morrisons Brentford to clarify the GLA position.

Can you note tomorrow is my last day in the office and I will then be on leave until 3 April.

If there is to be a re-referred Stage 2, it will need to be after the Easter holiday period.

Kind regards

██████████ | Senior Strategic Planner | Development Management | Development, Enterprise & Environment  
GREATER LONDON AUTHORITY | 4th Floor, City Hall, The Queen's Walk, London SE1 2AA  
Tel: 020 7983 ██████████ | Email: ██████████@london.gov.uk<mailto:██████████@london.gov.uk>

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## Paul Robinson

---

**From:** [REDACTED]  
**Sent:** 16 April 2018 13:49  
**To:** [REDACTED]  
**Cc:** Planning Support; Planning Support  
**Subject:** RE: GLA ref. D&P/4126/02/JS (Morrisons, Brentford) - email 1 of 2  
**Attachments:** GLA 4126 - Morrison's Supermarket

[REDACTED]

Planning Support acknowledged this last week (attached), but I note they neglected to include you in the email.

I will get back to you on your other email.

---

**From:** [REDACTED] [mailto:[REDACTED]@hounslow.gov.uk]  
**Sent:** 16 April 2018 13:10  
**To:** [REDACTED] <[REDACTED]@london.gov.uk>  
**Cc:** Planning Support <planningsupport@london.gov.uk>; Planning Support <planningsupport@london.gov.uk>  
**Subject:** FW: GLA ref. D&P/4126/02/JS (Morrisons, Brentford) - email 1 of 2

[REDACTED]

As I have not heard back from you I have to proceed with the version the Section 106 Agreement as attached which the Council feels is acceptable and would enable a decision to be made on the application this month.

Planning Admin/Support – please confirm receipt and send 14 day notification in relation to my original submission as also previously requested.

Regards,

[REDACTED] MRTPI  
East Area Deputy Planning Manager

[Rest of email chain duplicated in pack]

**Paul Robinson**

---

**From:** Planning Support  
**Sent:** 12 April 2018 16:03  
**To:** [redacted] Tony Arbour; [redacted] Nicky Gavron; PCU@communities.gsi.gov.uk;  
[redacted] tfl.gov.uk;  
[redacted] Planning; [redacted]  
[redacted] tfl.gov.uk;  
[redacted] tfl.gov.uk  
**Subject:** GLA 4126 - Morrison's Supermarket

**Re: Stage 2 - Re-referral**

Dear [redacted]

**Site name:** Morrison's Supermarket

**Site Address :** 228-246 High Street, Brentford TW8 0JG

**Local planning authority reference:** P/2016/5573

**D&P case number:** 4126

Thank you for your letter informing the Mayor that Hounslow has resolved that it is minded to grant permission for the above planning application.

I hereby give notice that your Stage II **re-referral** was received complete on (11/04/2018) and that the fourteen day period allowed to the Mayor will therefore terminate on (24/04/2018).

If you have any queries at this stage, please contact [redacted] who can be reached by email or phone; [redacted] london.gov.uk; 020 7983 [redacted]

Kind Regards

[redacted]  
Development Management  
Greater London Authority

**Paul Robinson**

---

**From:** [redacted] <[redacted]@hounslow.gov.uk>  
**Sent:** 19 April 2018 10:24  
**To:** [redacted]  
**Cc:** [redacted]  
**Subject:** RE: GLA ref. D&P/4126/02/JS (Morrisons, Brentford)  
**Attachments:** S106\_V13 v V14\_EU\_Active01\_701750731\_1.pdf; S106\_KLG\_18.04.18\_2nd draft of day\_EU\_Active01\_700896749\_14.docx

[redacted]

The applicant's solicitor spotted that the latest s106 required the applicant to pay the clawback and carry out a viability review in the event of a market failure, which wasn't the intention. Hence, we've now taken the 'failure to find a single buyer' out of the market failure definition altogether, and defined this situation as a Sales Demand Failure which is still subject to the clawback. Market failure now covers policy change and mass vacancies only, and is subject to a viability review.

I've attached a track change document showing the changes and a clean version of this for your information. I trust this is a sensible approach to take but let me know if any concern.

Regards,

[redacted]

---

**From:** [redacted] [mailto:[redacted]@london.gov.uk]  
**Sent:** 18 April 2018 17:04  
**To:** [redacted]  
**Cc:** [redacted]  
**Subject:** RE: GLA ref. D&P/4126/02/JS (Morrisons, Brentford)

Hi [redacted]

Thanks for this. I confirm we're happy.

[redacted]

---

**From:** [redacted] [mailto:[redacted]@hounslow.gov.uk]  
**Sent:** 18 April 2018 12:14  
**To:** [redacted] <[redacted]@london.gov.uk>  
**Cc:** [redacted] <[redacted]@london.gov.uk>  
**Subject:** RE: GLA ref. D&P/4126/02/JS (Morrisons, Brentford)

[redacted]

Our solicitor has proposed the changes in the newly attached version which seems to capture all that has been requested. Can you kindly confirm that this is to your satisfaction to avoid having to go back to the applicant a further time.

[redacted]

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**From:** [redacted] [mailto:[redacted]@london.gov.uk]  
**Sent:** 17 April 2018 11:48  
**To:** [redacted]

Cc: [REDACTED]

**Subject:** RE: GLA ref. D&P/4126/02/JS (Morrisons, Brentford)

[REDACTED] I have finally caught up with [REDACTED] on this.

[Rest of email chain duplicated in pack]

DATED

2018

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HOUNSLOW**
- (2) **ESSENTIAL LIVING (BRENTFORD) LIMITED**

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## **DEED OF AGREEMENT**

Pursuant to Section 106 of the Town and County Planning Act 1990 Section 111 of the Local Government Act 1972 Section 16 of the Greater London Council (General Powers) Act 1974 Section 1 of Localism Act 2011 and all other enabling powers

Relating to 228-246 High Street, Brentford TW8 0JG

---

### **K&L Gates LLP**

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Tel: +44 (0)20 7648 9000  
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Ref: FXA/6014604.00022

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**THIS DEED** is made on

2018

**BETWEEN:**

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HOUNSLOW** of Civic Centre, Lampton Road, Hounslow, Middlesex TW3 4DN (the "**Council**"); and
- (2) **ESSENTIAL LIVING (BRENTFORD) LIMITED** (incorporated in Jersey with company registration number 119247) whose registered office is 3rd Floor, 37 Esplanade, St Helier, Jersey JE2 3QA (the "**Owner**").

**WHEREAS**

- (A) The Council is the local planning authority for the purposes of the 1990 Act and the highway authority for the purposes of the 1980 Act for the area within which the Development Land is situated and by whom the planning obligations under this Deed are enforceable.
- (B) The Owner is the registered proprietor of the freehold interest of the Development Land registered at the Land Registry under title number AGL38279 and identified on Plan 1.
- (C) On 12 December 2016 the Owner submitted the Planning Application to the Council.
- (D) On 6 April 2017 the Council resolved to grant Planning Permission for the Development subject (inter alia) to completion of this Deed.
- (E) The Council considers that the Development should not take place without the Owner entering into the obligations in this Deed.
- (F) The Parties are satisfied that the obligations in this Deed are planning obligations for the purposes of Section 106 of the 1990 Act and comply with the statutory tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and are necessary to make the Development acceptable in planning terms, directly related to the Development and fairly and reasonably related in scale and kind to the Development.

**NOW THIS DEED WITNESSES** as follows:

**1. STATUTORY PROVISIONS**

- 1.1 This Deed is made pursuant to the provisions of Section 106 of the 1990 Act, Section 111 of the Local Government Act 1972, Section 16 of the Greater London Council (General Powers) Act 1974, Section 2 of the Local Government Act 2000, Section 1 of the Localism Act 2011 and all other powers enabling which may be relevant for the purpose of giving validity thereto or facilitating the enforcement of the obligations herein contained.

1.2 The covenants on the part of the Owner in this Deed are planning obligations for the purposes of the 1990 Act and shall be binding and enforceable against the Owner and any person deriving title therefrom as provided in Section 106 of the 1990 Act.

## 2. INTERPRETATION

### 2.1 Definitions

In this Deed the following words and expressions will unless the context otherwise requires have the following meanings:

"**1980 Act**" means the Highways Act 1980 as amended;

"**1990 Act**" means the Town and Country Planning Act 1990 as amended;

"**Additional Amount**" means the amount calculated in accordance with Clause 8 hereof;

"**Block**" means block A or block B (as applicable) as identified on Plan 2;

"**Carbon Offset Contribution**" means the £241,481 (two hundred and forty one thousand four hundred and eighty one pounds);

"**Carbon Offset Contribution Purposes**" means towards reducing carbon dioxide emissions in the Council's Area;

"**Car Club**" means a car club scheme or company which enables its members to use a pool of cars or other light vehicles for flexible periods of time on a pay-as-you-drive basis;

"**Car Club Operator**" means the operator of a Car Club;

"**Car Club Space**" means one (1) car club parking space either located:

- (a) within the Development Land; or
- (b) on a road in the vicinity of the Development Land;

the exact location of which shall be approved by the Council in writing and which is to be made available to a Car Club Operator for use for a Car Club;

"**Car Park Management Plan**" means the plan to be approved by the Council which is in accordance with the principles set out in paragraph 8.2 of Schedule 1 for the purpose of managing the car parking on the Development Land including details of servicing and management of access roads;

"**Commencement of the Development**" means in relation to the Development the carrying out of any "material operation" as defined by Section 56 of the 1990 Act save for any of the following works:

- (a) works of site clearance (including demolition);

- (b) ground investigation and site survey work;
- (c) construction of boundary fencing and hoarding and haul roads;
- (d) intrusive archaeological investigation;
- (e) works of decontamination or remediation;
- (f) works below ground (including but not limited to piling operations);
- (g) works relating to the installation, removal or diversion of services and conducting media; and
- (h) temporary works for site services, access and erection of construction site offices,

and any other analogous preparatory works and references to "Commence" "Commencement" and "Commencing" shall be construed accordingly;

**"Commercial Space"** means the commercial space in the Development as identified on Plan 4;

**"Commercial Travel Plan"** means a travel plan prepared in relation to the Commercial Space in accordance with the principles set out in paragraph 11.2 of Schedule 1 and approved in accordance with paragraph 11.4 of Schedule 1;

**"Considerate Contractor Scheme"** means a scheme in accordance with the details in Schedule 5;

**"Controlled Parking Zone"** or **"CPZ"** means an area where the Council has introduced restrictions on parking on the highway during certain times of the day or week for non-permit holders;

**"Construction Training"** means:

- (a) on-site construction training provided by or in conjunction with the Training Provider; and
- (b) on-site construction training provided by the Owner or its contractors or consultants in a manner approved either by the Council or the Training Provider (each acting reasonably) in writing;

**"Construction Training Contribution"** means £168,963 (one hundred and sixty eight thousand nine hundred and sixty three pounds);

**"Construction Training Contribution Purposes"** means the provision of on-site Construction Training in the Council's Area;

**"Construction Training Initiative Purposes"** means the provision of Construction Training in the Council's Area including on the Development Land;

**"Construction Training Initiative Reports"** means the monitoring and progress report to be provided in accordance with paragraph 4.4 of Schedule 1;

**"Contributions"** means the Carbon Offset Contribution, Construction Training Contribution (if payable); the Cycle Superhighway Contribution, and the Employment Initiatives Contribution (if payable);

**"Contribution Purposes"** means the Construction Training Initiatives Purposes, Carbon Offset Contribution Purposes, Cycle Superhighway Contribution Purposes, and Employment Initiatives Contribution Purposes;

**"Council's Area"** means the London Borough of Hounslow;

**"Council's Covenants"** means those covenants set out in paragraph 7 of Schedule 3 and Schedule 4 to this Deed;

**"Cycle Superhighway Contribution"** means the sum of £50,000 (fifty thousand pounds);

**"Cycle Superhighway Contribution Purposes"** means towards the proposed cycle superhighway (CS9) which will run along Brentford High Street;

**"Delivery and Servicing Management Plan"** means a delivery and servicing management plan which is in accordance with the principles set out in paragraph 7.2 of Schedule 1, approved in accordance with paragraph 7.1 of Schedule 1 and the purpose of which is to ensure that any adverse impacts to the operation of road networks surrounding the Development Land as a result of deliveries to the Development are avoided remedied or mitigated;

**"Development"** means the demolition of the existing food store and redevelopment to provide 3,502 sq m A1 retail use and 661 sq m flexible A1/A3/A4 retail/café/bar use, 221 private rented sector apartments (Use Class C3), 90 car parking spaces, associated hard and soft landscaping, new pedestrian access routes through the site and public and private amenity space;

**"Development Land"** means the land on which the Development pursuant to the Planning Permission will be carried out shown edged red for identification purposes only on Plan 1 annexed to this Deed;

**"Documentary Evidence"** may include one or more of the following letter/report from the contractor/training manager setting out management/employee time spent on training and or job brokerage and equivalent cost; note of costs incurred from apprenticeship and training schemes; receipts/invoices for services and products used for training; receipts/invoices for advertising jobs/schemes or any other evidence as approved by the Council (such approval not to be unreasonably withheld or delayed);

**"Employment Initiatives"** means the development of and provision of job brokerage and skills training and apprenticeships to develop the career path and skills of people in the Council's Area;

**"Employment Initiatives Contribution"** means the sum of £75,680 (seventy five thousand six hundred and eighty pounds);

**"Employment Initiatives Contribution Purposes"** means the development of appropriate training and/or job brokerage programmes to enable local people to gain the requisite skills to access or aspire to new job opportunities such as those presented by the Development;

**"Highways Agreement"** means an agreement or agreements made pursuant to section 38 and/or section 278 of the 1980 Act to secure the delivery of the Highway Works;

**"Highway Works"** means the works to be undertaken at the Owner's expense to construct a vehicular access to the Development Land from Back Lane and the public realm improvement works listed at paragraph 15.1 of Schedule 1 and shown indicatively on Plan 3 details of which are to be approved by the Council pursuant to paragraph 15.2 of Schedule 1;

**"Implementation"** means in relation to the Development the carrying out of any "material operation" as defined by Section 56 of the 1990 Act;

**"Index"** means in relation to all payments due under this Deed the Retail Price Index published by the Office for National Statistics or by any other Department Ministry or other body upon which the duties in connection with the Index devolves or during any period when no such Index exists the Index which replaces the same or is the nearest equivalent thereto as the Council will reasonably nominate taking into account any official reconciliation of changes in its basis of calculation;

**"Occupation"** means the beneficial occupation in accordance with the Planning Permission but for the avoidance of doubt will not include occupation for the purpose of works carried out prior to or during construction, fitting out, commissioning, advertising, marketing, security or management of land for parking and "Occupy", "Occupied" and "Occupier" will be construed accordingly;

**"Owner's Covenants"** means those covenants set out in Schedules 1, 2 and 3 to this Deed;

**"Parties"** means the Council and the Owner;

**"Planning Application"** means the application for planning permission for the Development with reference P/2016/5573 and alternative reference 00607/228-246/P1;

**"Planning Permission"** means planning permission to be granted by the Council pursuant to the Planning Application in the form attached in Schedule 6;

**"Plan 1"** means the plan of the Development Land shown for indicative purposes only titled "Plan 1" included in the Appendix hereto and so marked;

**"Plan 2"** means the plan of the Blocks shown for indicative purposes only titled "Plan 2" included in the Appendix hereto and so marked;

**"Plan 3"** means the plan showing the Back Lane Highway and Public Realm Works for indicative purposes only titled "Plan 3" included in the Appendix hereto and so marked;

**"Plan 4"** means the plan of the Commercial Space titled "Plan 4" included in the Appendix hereto and so marked;

**"Plan 5"** means the plan showing the Public Access Route titled "Plan 5" included in the Appendix hereto and so marked;

**"Practical Completion"** means completion in relation to the whole or any part of the Development as appropriate in all material respects save for snagging and minor defects and the issue of a certificate of practical completion by the Owner or the Owner's architect or engineer as the case may be and the expressions "Practically Completed", "Complete", "Completed" and "Completion" will be construed accordingly;

**"Public Access Route"** means the route through the Development Land from Brentford High Street to Back Lane identified on Plan 5;

**"Residential Travel Plan"** means a travel plan prepared in relation to the Residential Units in accordance with the principles set out in paragraph 11.2 of Schedule 1 and to be approved in accordance with paragraph 11.3 of Schedule 1;

**"Residential Units"** mean the 221 units of residential accommodation permitted to be built on the Development Land by the Planning Permission;

**"Resident's Parking Bay"** means 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 but excluding any on the Development itself;

**"Resident's Parking Permit"** means 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 Resident's Parking Bay;

**"St Paul's Recreation Ground Improvement Works"** means works to improve St Paul's recreation ground the scope and specification of which are to be agreed by the Council (acting reasonably) and in consultation with the Friends of St Paul's Recreation Ground pursuant to paragraph 14 of Schedule 1 which may include restoration of the water fountain, supplying and planting trees to assist with the planting initiative and with refurbishment of the railings;

**"Sustainability Voucher"** means a voucher in the sum of £100.00 (one hundred pounds) paid by the Owner to encourage the use of green travel modes by residential Occupiers to be used towards the following:

- (a) purchase of an Oyster card;
- (b) purchase of a rail card or other means of public transport;
- (c) purchase of a bicycle;
- (d) membership of a Car Club; or
- (e) other offers available to voucher holders;

**"TfL"** means Transport for London;

**"Training Provider"** means such training provider as approved by the Council in writing; and

**"Working Days"** means any working day except Saturday, Sunday, bank holidays or days between Christmas Day and New Year's Day.

## 2.2 Interpretation Principles

- (a) The expressions "Council" and "Owner" will include their respective successors in title save where specifically provided to the contrary by this Deed.
- (b) Words importing one gender will include all other genders and words importing the singular will include the plural and vice versa.
- (c) Words importing persons include firms, companies, other corporate bodies or legal entities and vice versa.
- (d) Any reference to a specific statute or statutes will include any statutory extension or modification amendment or re-enactment of such statute and any regulation or orders made under such statute.
- (e) References in this Deed to any clause, sub-clause or Schedule without further designation will be construed as a reference to the clause, sub-clause or Schedule to this Deed so numbered.
- (f) The clause paragraph and schedule headings and list of contents do not form part of this Deed and will not be taken into account in its construction or interpretation.
- (g) Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.

- (h) The word "including" will be construed without prejudice to the generality of the words preceding it.
- (i) Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause permit or suffer any infringement of the restriction in each case by any person under its control.
- (j) Save in respect of the Planning Permission, if there is any conflict between the terms conditions and provisions of this Deed and any document or plan annexed hereto or referred to herein, the terms conditions and provisions of this Deed will prevail.
- (k) In this Deed, unless otherwise specifically stated, any reference to the term "month" will mean calendar month and any reference to the term "year" will mean calendar year.
- (l) The Interpretation Act 1978 will apply to this Deed.

### 3. **LEGAL BASIS**

3.1 This Deed shall only be binding and take effect from:

- (a) the date when the Planning Permission is granted; and
- (b) Commencement of the Development,

save in respect of Clauses 1-12 paragraphs 1.1(a), 2.1, 3.1, 4.1, 4.2, 12. 15.2 and 15.3 of Schedule 1, paragraph 3 of Schedule 2 and paragraphs 1 and 6 of Schedule 3 which shall take effect from the date hereof.

3.2 If the Planning Permission expires before the Development has been Commenced or is revoked or otherwise quashed or withdrawn this Deed will cease to have effect.

3.3 This Deed shall be enforceable against the Owner and any person deriving title from the Owner as provided in Section 106(3) of the 1990 Act but in accordance with Section 106(4) of the 1990 Act no person shall be liable for breach of a covenant contained in this Deed after he shall have parted with all interest in the Development Land or with the part in respect of which such breach occurs or shall have no interest in the part of the Development Land in respect of which the breach occurs but without prejudice to liability for any subsisting breach which occurred prior to parting with such interest.

3.4 The obligations contained within this Deed will not be binding upon nor enforceable against:

- (a) the occupiers of the DMR Units save in respect of paragraph 6 of Schedule 1 which shall apply;

- (b) Subject to clause 3.5 below, the occupiers and owners and their mortgagees of the OMR Units save in respect of paragraph 6 of Schedule 1 which shall apply; and
- (c) any statutory undertaker or other person who acquires any part of the Development Land or interest therein for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services.

3.5 The obligations contained within this Deed shall be binding and enforceable against the owners or occupiers of the last 15% of OMR Units to be Occupied thereof until the earliest of:

- (a) the Council confirming to the Owner in writing that the Viability Assessment is approved and results in a Deficit;
- (b) the Deferred Contribution calculated pursuant to Part II of Schedule 3 being paid to the Council.

3.6 Any mortgagee or chargee who from time to time shall have the benefit of a charge or mortgage registered against any part or parts of the Development Land shall otherwise have no liability under this Deed unless and until the mortgagee or chargee takes possession of the Development Land in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

#### 4. **COVENANTS**

4.1 The Owner covenants with the Council to observe and perform the Owner's Covenants.

4.2 The Council covenants with the Owner to observe and perform the Council's Covenants.

#### 5. **NOTICES**

5.1 Any notice certificate or other communication given under this Deed will be in writing:

- (a) in the case of the Council to the Director at the address referred to above or such other address as may be notified in writing to the Owner; and
- (b) in the case of the Owner at its address referred to above or such other addresses as may be notified in writing to the Council.

5.2 Any notice certificate or other communication sent by post will be deemed (in the absence of evidence of receipt) to have been delivered two days after despatch and in proving the fact of despatch it should be sufficient to show that the envelope was properly addressed and posted.

5.3 Any notice certificate or other communication delivered personally or received by facsimile transmission will be deemed to have been delivered on the day of despatch if

transmitted during or prior to 4.00 pm on a Working Day but otherwise on the next Working Day thereafter.

**6. LOCAL LAND CHARGE**

This Deed is a local land charge and will be registered as such by the Council.

**7. FEES**

7.1 The Owner will on completion of this Deed pay the Council's reasonable legal costs incurred in the settlement of this Deed.

7.2 The Owner will on completion of this Deed pay £8,300 (eight thousand three hundred pounds) in respect of the Council's planning services costs and £2,625 (two thousand six hundred and twenty five pounds) in respect of the Council's monitoring costs.

**8. ADDITIONAL AMOUNT**

In the event of an increase but not a decrease in the Index during the period commencing on the date referred to in C to the date referred to in B the Additional Amount will be the difference between the amount of the Contribution (or any part thereof being paid) and the sum calculated as follows:

$$A \times \frac{B}{C}$$

When:

A = the amount of the Contribution (or any part thereof being paid) as specified in Clause 2.1 hereof

B = the Index at the date the Contribution is received by the Council

C = the Index at the date Planning Permission is granted or, if earlier, the date of the Commencement of the Development

**9. REGISTRATION AT HM LAND REGISTRY**

9.1 The Owner hereby covenants with the Council that:

(a) it will within 10 Working Days from the date of this Deed apply to HM Land Registry to register this Deed in the Charges Register of title AGL38279 and will provide the Council with office copies of such title following registration; and

(b) it shall not make any application to the HM Land Registry for the removal of any notice registered pursuant to clause 9.1 above until such time as all obligations in this Deed have been satisfied.

## 10. MISCELLANEOUS

- 10.1 Nothing contained or implied in this Deed will prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as local planning authority and its respective rights powers duties and obligations under all public and private statutes byelaws and regulations may be as fully and effectually exercised as if it were not a beneficiary of this Deed.
- 10.2 If any provision in this Deed is held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof will not in any way be deemed thereby to be affected or impaired.
- 10.3 No waiver (save for an express waiver by deed referring to this clause) by the Council of any breach or default by the Owner in performing or observing any of the terms or conditions of this Deed will constitute a continuing waiver and no such waiver will prevent the Council from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereof by the Owner.
- 10.4 Subject to clause 10.5 the Owner will pay interest at the rate of 2% above HSBC Bank base rate for the time being in force on any monies due under the provisions of this Deed in the event of late payment for the period from the date the monies should have been paid to the date the monies are received by the Council and for the avoidance of doubt monies include any such in respect of the Additional Amount.
- 10.5 The Owner will pay interest at a rate of 10% above HSBC Bank base rate for the time being in force on any Deferred Contribution in the event of late payment for the period from the date the Deferred Contribution (as applicable) should have been paid to the date when the monies are received by the Council.
- 10.6 Nothing in this Deed will be construed as affecting prohibiting or limiting any rights to develop any part of the Development Land in accordance with any other planning permission granted whether before or after the date of this Deed by the Council or the Secretary of State or any other competent authority and/or in accordance with any permitted development rights applying from time to time.
- 10.7 No person will acquire any rights under the Contracts (Rights of Third Parties) Act 1999 by virtue of this Deed.
- 10.8 Where under this Deed any notice, approval, consent, certificate, direction, authority, agreement, action, expression of satisfaction or calculation is required to be given or reached or taken by the Council or any response is requested any such notice, approval, consent, certificate, direction, authority, agreement, action, expression of satisfaction or calculation or response will not be unreasonable or unreasonably withheld or delayed.

## 11. DISPUTE RESOLUTION

- 11.1 Where any matter the subject of this Deed will be in dispute the Parties will use their reasonable endeavours to resolve the same and either Party may, if the dispute remains

unresolved after 28 days, refer the same for determination by an expert with a minimum of 10 years' experience in the relevant field (the "**Expert**") who will be agreed upon by the Parties but in default of such agreement within 28 days of such dispute arising such appointment will be referred to the President for the time being of the RICS or the President of the Law Society where the dispute relates to matters of interpretation of this Deed.

- 11.2 Subject to Clause 11.1 any dispute disagreement or difference arising between the Parties with regard to their respective rights and obligations as to any matter or thing in any way arising out of or connected with this Deed will be referred to the decision of the Expert.
- 11.3 The determination of the Expert (including any determination as to the responsibility for payment of his own costs and those of the Parties) will be final and binding upon the Parties save in the case of fraud or manifest error.
- 11.4 The terms of reference of the Expert will include the following:
- (a) the Expert will call for representations from the Parties within 21 days of a reference to him under this Deed and require the Parties to exchange representations within this period;
  - (b) the Expert will allow the Parties 14 days from the expiry of the period referred to under Clause 11.4(a) above to make counter representations;
  - (c) any representations or counter representations received out of time may be disregarded by the Expert;
  - (d) the Expert will provide the Parties with a written decision within 28 days of the last date for receipt of counter representations and he will be entitled to call for such independent expert advice as he will think fit; and
  - (e) the Expert's costs and the costs of any independent expert advice called for by the Expert will be borne as the Expert may direct.

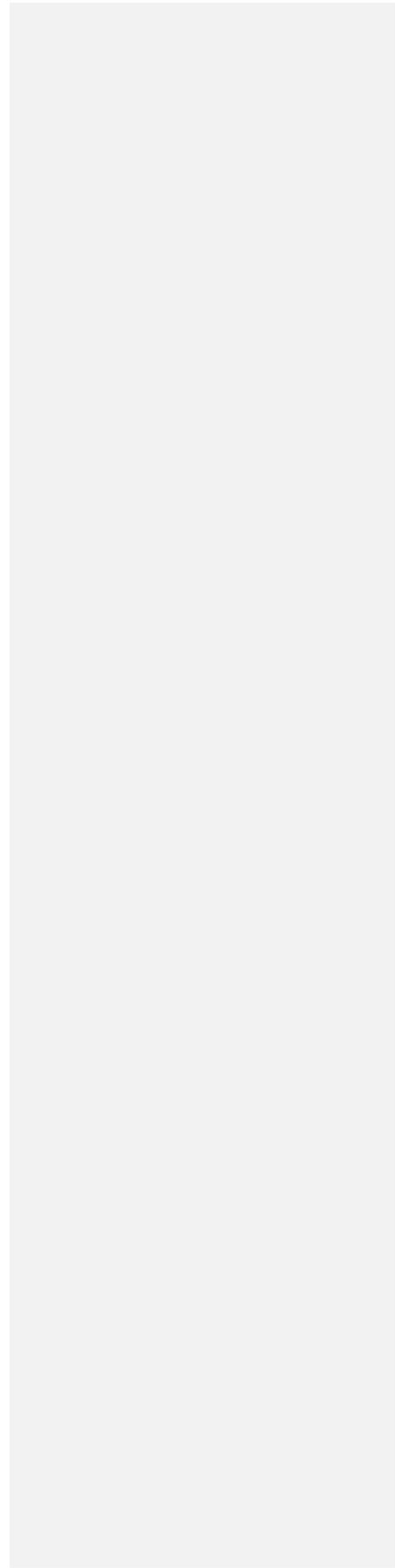
## 12. **JURISDICTION**

The construction validity and performance of this Deed will be governed by English Law and the Parties agree to irrevocably submit to the exclusive jurisdiction of the English courts.

## 13. **COUNTERPARTS**

[This Deed may be executed in any number of counterparts, each of which is an original and all of which together evidence the same agreement.](#)

|



## **SCHEDULE 1**

### **Owner's Covenants**

#### **1. NOTICES**

1.1 At least ten (10) Working Days' prior written notice of the actual date (or where the context requires the anticipated date) of each of the following events will be provided to the Director:

- (a) Commencement of the Development;
- (b) Date of Practical Completion;
- (c) Occupation of the Development;
- (d) Prior to Occupation of any OMR Units;
- (e) Prior to Occupation of any DMR Units;
- (f) Prior to Occupation of 75% of the OMR Units;
- (g) Prior to Occupation of 85% of the OMR Units; and
- (h) 15 years after the date of Practical Completion.

#### **2. CONTRIBUTIONS**

2.1 Prior to Commencement to pay the Cycle Superhighway Contribution and the Additional Amount to the Council and not to Commence or permit Commencement of the Development unless and until such payment has been made.

2.2 Prior to Occupation to pay 50% of the Carbon Offset Contribution and the Additional Amount to the Council and not to Occupy or permit Occupation of the Development unless and until such payment has been made.

2.3 Prior to Occupation of more than 100 Residential Units to pay 50% of the Carbon Offset Contribution and the Additional Amount to the Council and not to Occupy or permit Occupation of more than 100 Residential Units unless and until such payment has been made.

#### **3. CONSIDERATE CONTRACTOR SCHEME**

During demolition and construction works at any time carried out on the Development Land pursuant to the Planning Permission the Owner will implement and ensure compliance with the Considerate Contractor Scheme or such varied scheme as may be agreed in writing with the Council from time to time.

#### 4. CONSTRUCTION TRAINING

The Owner covenants as follows:

- 4.1 Within 3 months prior to Commencement of Development to liaise with the Council with a view to implementing the provisions of this paragraph 4 of Schedule 1.
- 4.2 On or before Commencement of Development at the Owner's absolute discretion to either:
- (a) pay the Construction Training Contribution to the Council and the Owner shall have no liability for and shall not be required to perform the obligations in paragraphs 4.2(b) – 4.4 of this Schedule 1; or
  - (b) prepare and submit a scheme for Construction Training on the Development Land and to use reasonable endeavours to implement any such approved scheme or such scheme as may be revised from time to time with the Council's approval in accordance with the timetable set out therein and such scheme shall be in accordance with the CITB client based approach or include as a minimum the following:
    - (i) All learners, trainees, apprentices shall be from the Council's Area (unless otherwise agreed with the Council in writing);
    - (ii) Minimum 10 Working Days lead time of notification of available positions i.e. direct employment or apprenticeships;
    - (iii) Apprenticeships - Level 1, 2 and 3;
    - (iv) Traineeships;
    - (v) Work experience of not less than 100 hours;
    - (vi) On site accredited training;
    - (vii) Use of training providers and/or colleges;
    - (viii) All relevant risk assessments and probationary periods identified; or
  - (c) convene and to use reasonable endeavours to subsequently service a steering group consisting of appropriate officers representing the Council the Training Provider and the Owner (the "Steering Group") to oversee the implementation of the Construction Training Initiative Purposes.
- 4.3 If applicable, the Steering Group will monitor the progress of Construction Training and co-ordinate with other construction training initiatives within the Council's Area.
- 4.4 In the event that:

- (a) paragraph 4.2(b) of this Schedule applies the Owner will provide Construction Training Initiative Reports on a quarterly basis to the Council for the lifetime of the construction phase of the Development;
- (b) paragraph 4.2(c) of this Schedule applies the Owner will provide the Construction Training Initiative Report on a quarterly basis to the Steering Group for the lifetime of the construction phase of the Development;
- (c) In the event that paragraph 4.2(b) of this Schedule applies within 1 month of Practical Completion to pay to the Council the Construction Training Contribution plus the Additional Amount for the Construction Training Initiatives Purposes less (subject to receipt by the Council of reasonable Documentary Evidence of the same satisfactory to the Council acting reasonably) the costs reasonably and properly incurred by the Owner or contractors or consultants of the Owner on Construction Training on site in accordance with any construction training scheme approved pursuant to 4.2(b) prior to the date of such payment; and
- (d) In the event that paragraph 4.2(c) applies within 1 month of Practical Completion to pay to the Council the Construction Training Contribution plus the Additional Amount for the Construction Training Initiatives Purposes less (subject to receipt by the Council of reasonable Documentary Evidence of the same, satisfactory to the Council, acting reasonably) the costs reasonably and properly incurred by the Owner or contractors or consultants of the Owner on Construction Training Initiatives Purposes prior to the date of such payment.

## 5. **EMPLOYMENT INITIATIVES**

- 5.1 Prior to Occupation to submit to the Council for approval the Employment Initiatives and not to Occupy or permit the Occupation of the Development unless and until the Employment Initiatives have been so approved.
- 5.2 Not less than 6 months prior to Practical Completion to use all reasonable endeavours to set up and commence and thereafter continue to implement the approved Employment Initiatives.
- 5.3 In the event that the Owner has used all reasonable endeavours to implement the approved Employment Initiatives but has been unable to do so it shall submit evidence in writing to the Council setting out the steps it has taken to try and implement the Employment Initiatives and the reasons why it has not been possible to deliver the Employment Initiatives.
- 5.4 On receipt of evidence submitted pursuant to paragraph 5.3 above the Council may recommend additional measures to try and deliver the Employment Initiatives, and the Owner shall carry out such additional measures within a timescale to be agreed between the parties.
- 5.5 In the event that the Council is either:

- (a) satisfied by the evidence submitted pursuant to paragraph 5.3; or
- (b) satisfied that the Owner has carried out the additional measures recommended by the Council pursuant to paragraph 5.4 above but has been unable to deliver the Employment Initiatives;

the Council shall notify the Owner of this and the Owner shall pay the Employment Initiatives Contribution and the Additional Amount to the Council within 5 Working Days.

5.6 In the event that the Owner implements the Employment Initiatives the Owner shall:

- (a) monitor the progress of the Employment Initiatives and from Practical Completion to provide a report on a quarterly basis to the Council on the Employment Initiatives whilst they are being implemented;
- (b) shall take into account the reasonable representations of the Council arising from the quarterly reports issued pursuant to paragraph 5.6(a);
- (c) within 2 (two) years of Occupation of the Development (or such longer period requested by the Owner and approved by the Council) submit to the Council Documentary Evidence of the costs reasonably and properly incurred by the Owner on the Employment Initiatives prior to such date; and
- (d) within 2 (two) years of Occupation pay to the Council the Employment Initiatives Contribution plus the Additional Amount in respect thereof less (subject to receipt by the Council Documentary Evidence satisfactory to the Council in respect thereof) the costs reasonably and properly incurred by the Owner in the provision of approved Employment Initiatives.

## 6. CONTROLLED PARKING ZONE PERMIT PROHIBITION

6.1 To ensure that prior to Occupying any Residential Unit each new resident of the Development is informed by the Owner by way of sales literature or in the contract for the sale and purchase of such unit of the Council's policy that they shall not be entitled to be granted a parking permit to park a vehicle in a Controlled Parking Zone currently operating (or operating in the future) in the vicinity of the Development Land (unless the Occupant is a holder of a disabled badge pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970) and to acknowledge for itself and any successor in title to the Development Land that this provision will remain permanently in place.

6.2 Not to permit any person to Occupy a Residential Unit unless and until such person has waived all rights and entitlement to a permit issued by the Council to park a vehicle in a Resident's Parking Bay or otherwise to apply to park (unless the Occupier concerned becomes entitled to a disabled person's badge), and where such person has been notified by the Owner in accordance with paragraph 6.1 above that person shall thereby be taken as having waived all rights and entitlements to a Resident's Parking Permit or otherwise to apply to park as required by this paragraph 6.

- 6.3 To inform the Council on or before first Occupation of any Residential Units in a Block of the address of each Residential Unit in such Block to ensure that, with the exception of disabled persons, no Occupier of a Residential Unit shall obtain a permit to park in a Controlled Parking Zone.
- 6.4 Where the Owner has notified a resident of a Residential Unit of the restriction pursuant to paragraph 6.1 the Owner's obligation shall be discharged and if such resident has applied or obtained a permit the Council may only be entitled to take action against that resident and not against the Owner.

## 7. DELIVERY AND SERVICING MANAGEMENT PLAN

7.1 No later than 6 months prior to the anticipated date of Occupation to submit the Delivery and Servicing Management Plan that is in accordance with the principles set out in paragraph 7.2 below to the Council for approval and not to Occupy the Development unless and until such Delivery and Servicing Management Plan has been approved.

7.2 The Delivery and Servicing Management Plan shall as a minimum include:

### Servicing Area:

- (a) Details of the approved commercial servicing areas within the Development Land;
- (b) Details of how the commercial servicing area will be managed including the implementation of an appropriate booking system and means to ensure that delivery vehicles do not affect the condition or safety or free flow of traffic and pedestrians on the public highway;
- (c) Details of monitoring and enforcement procedures to ensure that delivery vehicles only use the designated servicing area;
- (d) Details of servicing areas for the residential uses;
- (e) Details of how the residential servicing areas will be managed including means to ensure that delivery vehicles do not affect the condition or safety or free flow of traffic and pedestrians on the public highway;
- (f) Details of monitoring and enforcement procedures to ensure that delivery vehicles only use the designated servicing areas.

### Trip and Vehicle Assessment:

- (g) A detailed estimate of the number of delivery trips resulting from the Development;
- (h) The predicted proportion of different sizes of delivery vehicles.

Refuse Removal and Management:

- (i) The management of refuse and recycling is to be detailed; This is to include any storage and compaction facilities and the method by which waste or recycling is to be brought to these facilities; and
- (j) The number and times of any daily, weekly or other refuse or recycling pickups by refuse collection vehicles are to be noted.

Delivery Management:

- (k) The method by which servicing bays and any other servicing areas are to be managed in detail.

7.3 To comply and continue to comply for the lifetime of the Development with the terms of the approved Delivery and Servicing Management Plan subject to any amendments which are agreed in writing with the Council.

**8. CAR PARK MANAGEMENT PLAN**

8.1 No later than 6 months prior to the anticipated date of Occupation to submit to and have approved by the Council the Car Park Management Plan, that is in accordance with the principles set out in paragraph 8.2 of this Schedule 1.

8.2 The Car Park Management Plan shall as a minimum include:

- (a) Ensuring that parking only occurs in marked bays.
- (b) Providing and allocating disabled parking bays to those residents who require them upon request and the means by which this will be done including the location of those bays which can be converted for use by disabled residents.
- (c) Provision of disabled parking bays for use by visitors to the retail units and location of these bays which are to be separate from the bays allocated in (b) above.
- (d) Means of allocating parking bays with EV charging points to those who require them.
- (e) Management and enforcement of parking on the site including how parking outside of designated bays will be monitored and enforced.
- (f) Management of loading, unloading and deliveries to ensure they take place only in designated areas.
- (g) The parking bays allocated for short term use shall only be used by visitors to the Residential Units.

- (h) Any reallocation of parking bays is to be agreed in writing by the Council in advance of a change of use.
- (i) A mechanism by which the car park charges shall be reviewed, and how charges relate to length of stay.
- (j) Means by which any car park barriers will be managed and maintained to ensure that there is no queuing on the public highway by vehicles waiting to enter the site including a maintenance agreement, a strategy to be implemented if the barriers fail which shall require the barriers to be locked in an open position until they are repaired.

8.3 The Owner will not Occupy or permit Occupation of the Development until the Car Park Management Plan has been submitted to and approved by the Council (acting reasonably).

8.4 The Owner will comply and continue to comply with the terms of the approved Car Park Management Plan for the lifetime of the Development subject to any amendments which are agreed in writing with the Council.

## 9. **CAR CLUB**

The Owner Covenants:

9.1 Not to Occupy or cause or permit Occupation of the Residential Units until such time as:-

- (a) the Owner has entered into an agreement with the Car Club Operator to operate a Car Club from the Car Club Space for an initial minimum period of 2 years for Occupiers of the Residential Units and also general members of the public to become members of the Car Club;
- (b) the Owner has made available the Car Club Space to the Car Club Operator for the purposes of operating the Car Club on the Development Land and the space shall be provided free of charge and for use by a Car Club Operator for the lifetime of the Development; and
- (c) to submit to and have approved by the Council details of how the Owner and/or the Car Club Operator will publicise the Car Club to members of the public in accordance with paragraph 9.2 below.

9.2 To notify all prospective first residents of the Residential Units of the availability of the Car Club Space and within 14 days of Occupation to notify the Council in writing that they have done so.

9.3 To give the Council 14 days written notice prior to entering into an agreement with the Car Club Operator details of the agreement for approval by the Council and to provide with that notice details of such Car Club Operator and the anticipated date of commencement of the Car Club.

- 9.4 In the event that the Car Club Space is located on the Development Land to permit general members of the public not resident at the Development to enter the Development Land to gain access to the Car Club Space for the purposes of using the Car Club.
- 9.5 To provide a Car Club after the initial 2 year period unless the requirements of paragraph 9.6 below are satisfied.
- 9.6 In the event that usage data submitted by the Car Club Operator indicates that the Car Club is unviable and the Council agrees that it is not viable to continue the Car Club beyond the initial 2 years beginning with the date of commencement of operation of the Car Club or if the Owner has used all reasonable endeavours (including carrying out any reasonable recommendations made by the Council) and has failed to procure an alternative Car Club Operator then save for paragraph 9.7 below the obligations in this Deed in respect of the operation of the Car Club shall be deemed fully complied with and discharged.
- 9.7 In the event that the Car Club Space is located on the Development Land the Car Club Space shall remain available for future use by a Car Club Operator, free of charge and at no cost to the Owner should demand for a new Car Club be demonstrated. The Car Club Space may be reallocated for a temporary use (which has been approved by the Council in writing acting reasonably) in the interim period.

#### 10. **SUSTAINABILITY VOUCHER**

- 10.1 To give one Sustainability Voucher to the first household to Occupy each of the Residential Units and for the avoidance of doubt no more than one Sustainability Voucher shall be provided in respect of any Residential Unit.

#### 11. **TRAVEL PLANS**

The Owner covenants as follows:

- 11.1 To submit to the Council for its written approval a Residential Travel Plan and Commercial Travel Plan in accordance with principles set out in paragraph 11.2 below:
- 11.2 The Residential Travel Plan and Commercial Travel Plan shall each provide as a minimum:
- (a) targets achieving modal split percentages, clearly defined actions and measures to achieve such targets, a timetable for the implementation of such actions and measures, identifying standards of implementation, timescales and responsibilities for ensuring implementation. This is to apply to residents in respect of the Residential Travel Plan and staff and customers in respect of the Commercial Travel Plan;
  - (b) designation of a named travel plan co-ordinator/s who will be appointed by the Owner to act as co-ordinator of the Residential Travel Plan and Commercial

Travel Plan and who shall be responsible for the implementation, monitoring and progress reporting of the Residential Travel Plan and Commercial Travel Plan;

- (c) a schedule of monitoring, which includes both surveys and monitoring reports to be submitted to the Council. Subject to the provisions in paragraphs 11.10 and 11.11 below the length of the monitoring period shall be not less than 5 years from the date of First Occupation of 50% the Residential Units in relation to the Residential Travel Plan and not less than 5 years from the date of First Occupation of the Commercial Floorspace in relation to the Commercial Travel Plan;
- (d) a baseline modal split based on the information set out in the Transport Assessment submitted with the Application with subsequent targets to reduce the percentage of car borne trips;
- (e) the methods of carrying out the surveys for the purposes of monitoring to include details of the equipment to be used, the methods of collecting the data and the methods for calculating the modal shift;
- (f) a reasonable budget for the implementation of measures and carrying out of surveys, and a commitment to spend this budget; and
- (g) the Residential Travel Plan and Commercial Travel Plan shall be compliant with Transport for London's ATTrBuTE Tool, and score a pass rating when assessed by ATTrBuTE and comply with current Council guidance on travel plans.

11.3 The Owner will not Occupy or permit the Occupation of any Residential Unit until the Residential Travel Plan has been submitted to and approved by the Council in writing acting reasonably.

11.4 The Owner will not Occupy or permit the Occupation of any Commercial Space until the Commercial Travel Plan has been submitted to and approved by the Council in writing acting reasonably.

11.5 The Owner will implement and comply with the provisions of the approved Residential Travel Plan or such revised Residential Travel Plan as may be agreed with the Council in writing from time to time from First Occupation of a Residential Unit for the lifetime of the Residential Units and will use reasonable endeavours to meet the targets set out therein.

11.6 The Owner will implement and comply with the provisions of the approved Commercial Travel Plan or such revised Commercial Travel Plan as may be agreed with the Council in writing from time to time from Occupation of the Commercial Space for the lifetime of the Commercial Space and will use reasonable endeavours to meet the targets set out therein.

11.7 The Owner will implement the Residential Travel Plan and commence monitoring and review of the workings of the Residential Travel Plan on the date of Occupation of 50% of the Residential Units and thereafter review its workings on the third year and the fifth

years following Occupation of 50% of the Residential Units and will submit details of the review in a report to the Council showing how the Residential Travel Plan has operated and specifically how effective it has been in achieving its targets and in the event that targets as set out in the Residential Travel Plan are not achieved identify any proposed amendments to the Residential Travel Plan together with a plan for future actions to be implemented.

- 11.8 The Owner will implement the Commercial Travel Plan and commence monitoring and review the workings of the Commercial Travel Plan on the date of first Occupation of the Commercial Space and thereafter review its workings on the third year and the fifth years following first Occupation and will submit details of the review in a report to the Council showing how the Commercial Travel Plan has operated and specifically how effective it has been in achieving its targets and in the event that targets as set out in the Commercial Travel Plan are not achieved identify any proposed amendments to the Commercial Travel Plan together with a plan for future actions to be implemented.
- 11.9 Following each review it will be open to the Council to suggest reasonable ways of improving the effectiveness of the Residential Travel Plan and Commercial Travel Plan and the Owner will consider and procure the implementation of such reasonable agreed improvements within a timescale to be agreed with the Council.
- 11.10 If targets set out in the Residential Travel Plan have not been met after 5 years following Occupation of 50% of the Residential Units then a detailed review of the Residential Travel Plan will be undertaken with the Council and the Owner will procure that reasonable measures agreed with the Council to improve the effectiveness of the Residential Travel Plan are implemented and monitoring will continue with further reviews on the seventh and tenth years following Occupation of 50% of Residential Units.
- 11.11 If targets set out in the Commercial Travel Plan have not been met after 5 years following first Occupation of the Commercial Space then a detailed review of the Commercial Travel Plan will be undertaken with the Council and the Owner will procure that reasonable measures agreed with the Council to improve the effectiveness of the Commercial Travel Plan are implemented and monitoring will continue with further reviews on the seventh and tenth years following first Occupation of the Commercial Space.

## 12. SHUTTLE BUS/ALTERNATIVE FOOD STORE PROVISION

- 12.1 The Owner shall use reasonable endeavours to make arrangements for temporary alternative food store provision in conjunction with the proposed operator/s of the food store to be provided as part of the Development in lieu of the current provision at the Development Land during demolition and construction works carried out pursuant to the Permission.
- 12.2 Should the Owner (acting reasonably) be unable to procure a temporary alternative food store provision within 6 months prior to Implementation, then the Owner shall make alternative provision, including but not limited to the provision of a shuttle bus to an

alternative local food store, or arrangements for increased or discounted home delivery for food and groceries with a provider of the Owner's choosing, and liaising with local health centres to redirect prescriptions to neighbouring pharmacies until such time as the new food store on the Development Land is Practically Complete.

- 12.3 In any event, 6 months prior to Implementation, the Owner will prepare and submit to the Council for approval in writing (such approval not to be unreasonably withheld or delayed) a scheme outlining the temporary measures which are to be adopted by the Owner during the construction period.

13. **PUBLIC ACCESS ROUTE**

- 13.1 Subject to paragraph 13.2 of this Schedule 1, the Owner will allow (on a permissive basis without any intention to dedicate as public highway or as public open space nor any implication of adoption as maintainable at public expense) public access on foot and bicycle to the Public Access Route for 24 hours a day from completion of the Public Access Route.

- 13.2 The Owner may suspend public access to the Public Access Route:

- (a) if reasonably required in the interest of security or management or for maintenance or cleansing or other works required to the Public Access Route;
- (b) in case of emergency or danger to the public;
- (c) for temporary closure during the carrying out of works of construction (including development or redevelopment or maintenance or repair of adjoining buildings and structures now or in the future or for the placing or replacing of underground services);
- (d) for occasional temporary closure of not more than one day per year to assert rights of proprietorship preventing public or private rights from coming into being by means of prescription or other process of law and to erect such signage to this effect; and
- (e) for any other sufficient cause approved in advance by the Council in writing.

PROVIDED ALWAYS that:

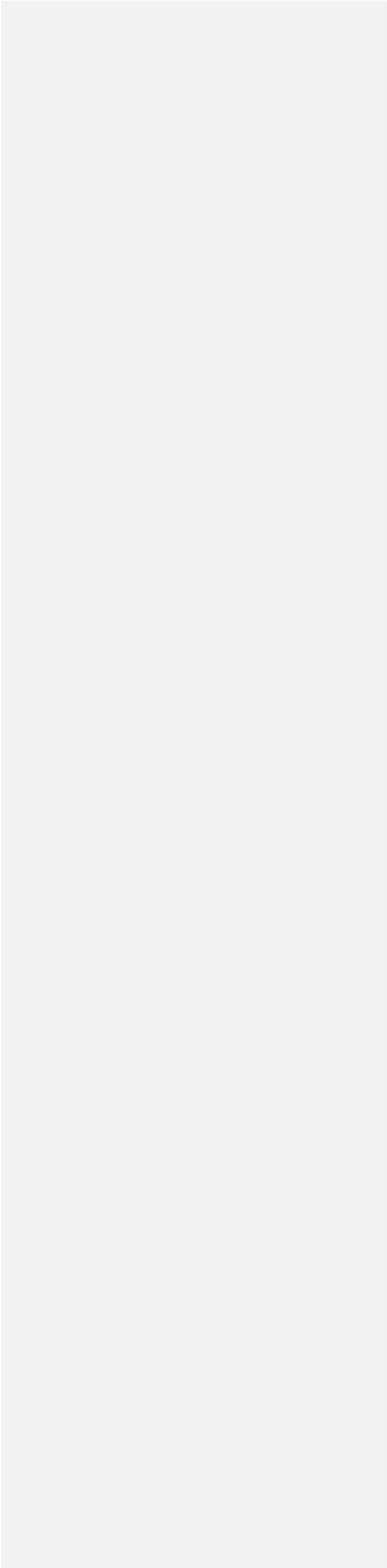
- (f) such public rights of access will be in common with the owners of the Development and its tenants and Occupiers of any part of the Development; and
- (g) closure in the above circumstances in paragraphs 13.2(a), 13.2(c) and 13.2(d) will be (unless otherwise agreed) on not less than 5 (five) Working Days' prior notice to the Council.

14. **ST PAUL'S RECREATION GROUND**

- 14.1 Within 6 months of Commencement of the Development the Owner shall agree the scope and specification of the St Paul's Recreation Ground Works with the Council and in consultation with the Friends of St Paul's Recreation Ground.
- 14.2 The Owner shall obtain all necessary consents and approvals to complete the St Paul's Recreation Ground Works and shall not Occupy or permit the Occupation of the Development unless and until the St Paul's Recreation Ground Works have been completed to the Council's reasonable satisfaction.

15. **HIGHWAY WORKS**

- 15.1 The Highway Works will include (but are not limited to) the following:
- (a) Removal of the existing car park access road and reinstatement with kerbs and footway;
  - (b) Construction of a new vehicular access to the site from Back Lane;
  - (c) Relocation of the southern kerb of Back Lane to provide a wider footway;
  - (d) Relocation of bus stands, bus stops, bus shelters and signage on the southern side of Back Lane;
  - (e) Provision of a new on-street loading bay on the southern side of Back Lane;
  - (f) Introduction of a 20mph speed limit on Back Lane;
  - (g) Reprovision of road markings and signage as appropriate to accommodate the works; and
  - (h) New dropped kerbs for pedestrians across Alexandra Road.
- 15.2 The Owner shall submit plans showing details of the Highway Works to the Council for approval.
- 15.3 The Owner shall not Commence the Development or permit Commencement of the Development unless and until:
- (a) the plans submitted to the Councils pursuant to paragraph 15.2 above have been approved by the Council in writing; and
  - (b) a Highways Agreement has been entered into in relation to the Highway Works.
- 15.4 The Owner shall not Occupy the Development or permit the Occupation of the Development unless the Highway Works have been completed to the Council's satisfaction.



## SCHEDULE 2

### OMR Units and DMR Units

“**Accommodation Schedule**” means the schedule identifying the location (Block and floor) of each OMR Unit and each DMR Unit within the Development to be submitted to and approved by the Council pursuant to paragraphs 2.1 and 2.2 of Schedule 2;

“**Baseline Appraisal**” means the viability assessment dated December 2016 prepared by ULL Property and submitted as part of the Planning Application;

“**Disposal**” means any transfer lease tenancy or other instrument creating or transferring an interest in one of the Residential Units;

“**Clawback Payment**” means a payment which is calculated as set out below in relation to each OMR Unit Disposed other than by way of a Permitted Disposal during the Private Rental Period:

$$A = B * (C - D)$$

where:

A = the Clawback Payment

B = the quantum sold in m<sup>2</sup>

C = the sale price for the relevant OMR Units sold per m<sup>2</sup>

D = £ 7,266 per m<sup>2</sup> (the assumed value per m<sup>2</sup> for the equivalent OMR Unit to that sold (studio, one, two, or three bed as the case may be) index linked from the date of the Baseline Appraisal based on the change in local rental values as indicated by Valuation Office Agency data;

“**DMR Units**” means 55 (fifty five) of the Residential Units which are to be rented at a discount to the Open Market Rent in accordance with the provisions set out in paragraph 2 of Schedule 2;

“**DMR Unit Mix**” means:

Number of bedrooms	Number of DMR Units
Studio	11
One	19
Two	20
Three	5
<b>Total</b>	<b>55</b>

**"DMR Unit Tenancy Agreement"** means the Owner's bespoke legal agreement for a tenancy of any DMR Unit pursuant to Section 1 of the Housing Act 1988 under which a dwelling is let as a separate dwelling and where:

- (a) the tenant or each of the joint tenants is an individual;
- (b) the tenant, or at least one of the joint tenants Occupies the dwelling as his only home;
- (c) the tenancy is not one which by virtue of section 1 of the Housing Act 1988 subsections (2) or (6) cannot be an assured tenancy;

Provided that the form of the DMR Unit Tenancy Agreement (and any subsequent amendments to such form) shall be approved by the Council in writing prior to letting of such units;

**"Eligible Persons"** means:

- (a) Persons who are resident or employed in the Council's Area; and
- (b) Persons whose gross annual household income at the date of offer to rent a DMR Unit does not exceed the relevant uppermost annual income thresholds for intermediate rented products as set out in the London Plan Spatial Development Strategy for Greater London as updated from time to time by the London Plan Annual Monitoring Report ("LPAMR"); If from time to time there is any relevant successor strategic plan guidance or legislation to the London Plan or the LPAMR in either case that relevant successor shall be substituted herein and if in both cases there is no relevant successor then the income or threshold referred to in this definition shall be based on the last defined income in the London Plan or LPAMR and increased by the percentage difference of the average change in the Retail Prices Index; and
- (c) Persons who have no ownership in another residential property which he is able to occupy within the United Kingdom (unless otherwise agreed by the Council);

**"Market Failure"** means:

- (a) the introduction by national London wide or local government of legislation or policy which has the direct effect of restricting the rent which can be charged in relation to any OMR Unit; or
- (b) 25% (twenty five percent) or more of the OMR Units becoming unoccupied for Private Rental Use due to any continued and sustained adverse change in the private residential market beyond the Owner's reasonable control for a continuous period of more than 6 months commencing after the date of Practical Completion of the Development PROVIDED THAT the Owner has first notified the Council in writing when 25% (twenty five percent) or more of the OMR Units have been unoccupied for a period of 2 (two) months and the Owner has

implemented any recommendations made by the Council in order to increase the level of occupation of the OMR Units;

~~failure to find a single buyer for all of the OMR Units following no less than 6 months of publicly marketing them who will pay more than 95% (ninety five percent) of the total cumulative market value of all of the OMR Units sold on an individual basis to separate owner occupiers;~~

**“Nominations Agreement”** means an agreement between the Council and the Owner under which the Council shall be able to nominate all occupiers of the DMR Units;

**“OMR Units”** means the 166 (one hundred and sixty six) of the Residential Units which can be Occupied for Private Rental Use during the Private Rental Period in accordance with the provisions set out in paragraph 1 of Schedule 2;

**“Open Market Rent”** means a rent valued using the definition in the RICS Valuation - Professional Standards UK (January 2014 - updated April 2015);

**“Permitted Disposal”** means the grant of an assured shorthold tenancy (or similar tenancy or lease that does not grant security of tenure to the individual occupier and is not registerable at Land Registry);

**“Private Rental Period”** means from the date of Practical Completion of the Development and the expiring on the date which is 15 (fifteen) years after the date of Practical Completion of the Development;

**“Private Rental Use”** means use for Occupation by individuals for private residential purposes under assured shorthold tenancies (or similar tenancies or leases that do not grant security of tenure to the individual occupier and are not registerable at Land Registry) only;

**“Rent Level Discount”** means in relation to each DMR Unit rent (including service charge and any other management fees) which has been discounted in accordance with the table below:

	Discount in Rent Level		
Size of Unit	The lower of 55% of Open Market Rent of the DMR Units or 40% of the net household income of tenants to be let such DMR Unit	The lower of 65% of Open Market Rent of the DMR Units or 40% of the net household income of tenants to be let such DMR Unit	The lower of 80% of Open Market Rent of the DMR Unit or 40% of the net household income of tenants to be let such DMR Unit
Studio	3	3	5

One Bed	5	6	8
Two Bed	6	6	8
Three Bed	2	2	1
<b>Total</b>	<b>16</b>	<b>17</b>	<b>22</b>

“Residential Units” means the OMR Units and the DMR Units; ~~and~~

“RICS” means the Royal Institution of Chartered Surveyors; ~~and~~

“Sales Demand Failure” means failure to find a single buyer for all of the OMR Units following no less than 6 months of publicly marketing them who will pay more than 95% (ninety five percent) of the total cumulative market value of all of the OMR Units sold on an individual basis to separate owner occupiers;

**1. OMR UNITS**

1.1 The Owner shall provide the OMR Units in accordance with the Accommodation Schedule.

1.2 Subject to ~~clauses~~paragraphs 1.4 ~~and~~ 1.~~5~~7 below, the Owner shall during the Private Rental Period only permit the OMR Units to be used for Private Rental Use.

1.3 The Owner shall not during the Private Rental Period complete or permit completion of any Disposal of an OMR Unit other than a Permitted Disposal.

1.4 In the event that the Owner considers a Market Failure has occurred then it shall notify the Council in writing and at the same time provide evidence and a reasoned justification of why it considers that a Market Failure has occurred.

1.5 If the Council considers that a Market Failure has occurred it shall notify the Owner of this in writing and the Owner shall no longer be bound by paragraphs 1.2 ~~and 1.3 of Schedule 2~~, 1.3 and 1.8(a) of Schedule 2.

1.6 In the event that the Owner considers a Sales Demand Failure has occurred then it shall notify the Council in writing and at the same time provide evidence and a reasoned justification of why it considers that a Sales Demand Failure has occurred.

~~4.5~~1.7 If the Council considers that a Sales Demand Failure has occurred it shall notify the Owner of this in writing and the Owner shall no longer be bound by paragraphs 1.2 and 1.3 of Schedule 2.

~~4.6~~1.8 Notwithstanding the requirement to comply with ~~paragraph~~paragraphs 1.2 and 1.3 above, if the Owner:

- (a) Makes a Disposal of an OMR Unit which is not a Permitted Disposal during the Private Rental Period; or
- (b) The Council notifies the Owner that it considers a ~~Market~~Sales Demand Failure has occurred pursuant to paragraph 1.~~5~~7 above;

The Owner shall submit to the Council for approval within 10 Working Days of such Disposal a written statement setting out the following in relation to each relevant OMR Unit Disposed of:

- (a) the quantum in square metres of the relevant OMR Unit Disposed of;
- (b) the price per square metre achieved in the Disposal; and
- (c) the amount of the Clawback Payment;

~~4.7~~1.9 The Council will determine whether the written statement submitted by the Owner pursuant to paragraph 1.~~6~~8 above is approved or specify the level of Clawback Payment. The Owner shall pay the relevant Clawback Payment to the Council within 20 Working Days of approval or determination by the Expert (if applicable).

## 2. **DMR UNITS**

### Location of the DMR Units

2.1 Prior to Occupation of any Residential Units the Owner shall submit:

- (a) plans identifying the location of all of the DMR Units and OMR Units; and
- (b) the Accommodation Schedule;

to the Council for approval which shall be in accordance with the DMR Unit Mix and the Owner shall not Occupy or permit the Occupation of the Residential Units unless and until the plans and the Accommodation Schedule have been approved by the Council in writing.

2.2 In the event that the Owner proposes to change the location of the DMR Units it shall submit revised plans and a revised Accommodation Schedule to the Council for approval Provided Always the revised location of the DMR Units shall be in accordance the DMR Unit Mix and in compliance with the Rent Level Discount.

2.3 The Owner shall not let the DMR Units other than in accordance with the plans and Accommodation Schedule approved by the Council pursuant to paragraph 2.1 or the revised plans and revised Accommodation Schedule approved by the Council pursuant to paragraph 2.2.

DMR Unit Mix

- 2.4 The Owner covenants to provide the DMR Units in accordance with the DMR Unit Mix.

Timing for Delivery

- 2.5 The Owner shall not Occupy or permit the Occupation of any of the OMR Units unless and until all of the DMR Units have been Practically Completed.

Discount in Rent Level

- 2.6 The Owner shall not let or permit the letting of any of the DMR Units other than in accordance with the applicable Rent Level Discount for the lifetime of the Development.

- 2.7 The Owner shall provide the following information to Council within 10 (ten) Working Days following a request by the Council for such information:

- (a) the Open Market Rent in relation to any DMR Unit which has been certified by a RICS qualified surveyor owing a duty of care to the Council;
- (b) the level of rent being charged for that DMR Unit;
- (c) evidence that the occupier of the DMR Unit is an Eligible Person; and
- (d) confirmation and evidence that the DMR Units have been let in accordance with the DMR Unit Mix and Rent Level Discount.

- 2.8 The Owner shall not complete or permit completion of any Disposal of a DMR Unit other than a Permitted Disposal.

- 2.9 The Owner shall ensure that the tenancy agreements of all DMR Units shall include the provisions prohibiting underletting, the assignment or any other Disposal of the DMR Unit.

Eligible Persons and Nomination Rights

- 2.10 The Owner shall let the DMR Units:

- (a) to Eligible Persons only; and
- (b) in accordance with the DMR Unit Tenancy Agreement.

- 2.11 No later than 3 (three) months prior to the estimated date of Practical Completion of the DMR Units the Owner shall enter into a Nominations Agreement with the Council and shall not Occupy or permit the Occupation of any DMR Unit unless and until a Nominations Agreement has been entered into and thereafter the Owner shall not permit Occupation of any DMR Units otherwise than in accordance with such Nomination Agreement.

3. **TITLE RESTRICTION**

- 3.1 Within 10 Working Days of the day of this Deed the Owner shall apply to the Land Registry for entries on the register of the Development Land in the standard form L in Schedule 4 of the Land Registration Rules 2003, namely:

*"No disposition of the registered estate or part of the registered estate other than a charge by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a certificate signed on behalf of the applicant for registration by its conveyancer that the provisions of paragraphs 1.2 and 2.6 of Schedule 2 and paragraphs 1.6, 1.8, 2.5 and 3.4 of Schedule 3 of a section 106 agreement dated ● 2018 and made between Essential Living (Brentford) Limited and the Mayor and Burgesses of the London Borough of Hounslow have been complied with or do not apply".*

- 3.2 The Owner shall confirm registration of this restriction to the Council's solicitor within one week of confirmation of the same from the Land Registry.

## SCHEDULE 3

### Viability Reviews

"**Affordable Housing**" means affordable housing as defined in Annex 2 of the National Planning Policy Framework;

"**Any Other Costs**" shall mean any other costs properly and reasonably incurred or reasonably anticipated to be incurred by the Owner in connection with or incidental to the Development which are not included in any other cost headings in paragraph 6.3 of Schedule 3 to the intent that no costs which are so properly and reasonably incurred should be excluded from the Viability Assessment;

"**Any Other Revenue or Receipts**" shall constitute the total gross receipts or revenue in cash or kind received by the Owner generated from the Development or anticipated to be received but not otherwise included in the Viability Assessment and which should be reasonably factored into the Viability Assessment including without limitation revenue or receipts or other consideration in cash or kind generated from advertising on the Development Land prior to Commencement of Development, commissions, rents, licence, fees, wayleaves, telecommunication, payments from statutory undertakers and the up to date market value of any residual interest of the Owner in the Development Land as at the submission of the Viability Assessment not otherwise accounted for;

"**Building Contract**" means a contract in writing between the Owner and a Building Contractor to carry out works on the Development or where there is no main Building Contract the appropriate trade contracts;

"**Building Contractor**" means the building contractors or sub-contractors employed by the Owner to carry out works on the Development;

"**Building Costs**" shall mean (whether incurred before or after the date of this Deed in relation to the Development):

- (a) all payments made to a Building Contractor under any Building Contracts;
- (b) the fees of architects (including landscape architects), sustainability consultants, quantity surveyors, building surveyors, structural engineers, mechanical and electrical engineers, construction engineers, the employer's agent, any project monitor CDM co-ordinators, project managers, developers, planning supervisors and planning and building regulation and National Building Council or analogous application and any inspection fees and any fees and charges payable to any statutory undertakers and any other costs and fees necessary to be expended properly and reasonably in the Development;
- (c) proper and reasonable guarantee fees, commitment fees, procurement fees, finance charges (including all interest) in respect of monies borrowed from any third party funder and where such finance is funded internally by the Owner then at the Interest Rate together with a reasonable sum that is paid or would notionally be paid for arrangement fees, servicing fees and redemption fees;

- (d) the cost of obtaining any Statutory Consents and whether planning or otherwise including all fees incurred for obtaining Statutory Consents and any other fees and contributions payable to any public or other authority and any payments due under any Planning Agreement (including this Deed) entered into in order to obtain the relevant Statutory Consents;
- (e) the cost of diversion of existing supplies and services and the installation and connection of new supplies (including foul and surface water drainage gas water and electricity supplies and telecommunications) and otherwise carry out service works;
- (f) the costs incurred in insuring the Development and Development Land and all third party and any other necessary insurance and the periodic cost of valuation for income purposes on usual terms;
- (g) rates including sums payable to any statute or byelaw rents and other outgoings payable in respect of the Development Land;
- (h) the cost of providing security to the Development Land;
- (i) the costs of carrying out appropriate environmental surveys and monitoring and any other site investigations, monitoring or other under procedures necessary to deliver the Development;
- (j) annual recurring and capital outgoings (whether parliamentary, parochial or otherwise);
- (k) Community Infrastructure Levy under Part XI of the Planning Act 2008 or such other similar tax or levy and whether by central or local government, the Mayor of London or any analogous authority from time to time;
- (l) Design and Planning Costs; and
- (m) any other cost of and incidental to the carrying out of the Development and necessarily incurred including legal and other professional fees in connection therewith;

**"Commercial Revenue"** shall constitute the total gross receipts estimated to be due to the Owner generated from the sale and/or lease of any Commercial Space and/or any other gross revenue generated from commercial use of the Development Land and in the case of Short Commercial Leases all rents received up to date and the market value of the residual interest in the respective Commercial Space leased as at the date of submission of the Viability Assessment;

**"Costs"** means the total of the Building Costs, Finance, Legal Fees, Developer's Profits and Overheads, Prelims, Rental Costs, Sales Costs, Section 106 Costs, SDLT, Land Value and Any Other Costs but not including Excluded Costs, provided always that no item shall be accounted

for more than once and in relation to the Pre-Commencement Review updated estimates of these costs;

**"Deferred Contribution"** means an amount calculated in accordance with the provisions of paragraph 4 of Schedule 3 PROVIDED THAT save in the event of any payment due pursuant to a Market Failure Review it shall not exceed that Deferred Contribution Cap;

**"Deferred Contribution Cap"** means £2,332,851 (two million three hundred and thirty two thousand eight hundred and fifty one pounds) and the Additional Amount;

**"Deferred Contribution Purposes"** means to be used for the provision of Affordable Housing in the Council's Area;

**"Deferred DMR Units"** means discounted private rent units to be provided as part of the Development in addition to the DMR Units to be provided pursuant to paragraph 2 of Schedule 2;

**"Deferred DMR Unit Scheme"** means a scheme specifying the number, size and rental discount level of the Deferred DMR Units which is submitted to the Council with the Viability Assessment submitted pursuant to paragraph 1.2 of Schedule 3;

**"Deferred Report"** means a detailed report setting out and evidencing the Owner's reasons and justification as to why any Viability Assessment submitted pursuant to paragraph 1.2 of Schedule 3 would not support any Deferred DMR Units;

**"Deficit"** means no Surplus has arisen;

**"Design and Planning Costs"** means professional fees and disbursements incurred in obtaining planning permission relating to the Development Land and all other costs incurred in connection with or incidental to obtaining such planning permissions including (without limitation) the cost of entering into and complying with any Planning Agreements;

**"Developer's Profits and Overheads"** shall be the amount equivalent to 17% gross development value of the OMR Units, 10% gross development value of the DMR Units, 15% gross development value of the Commercial Space, 17% of ground rent value, and 17% of any other value;

**"DMR Revenue"** shall mean all rents received up to date from DMR Units and the Open Market Value of the residual interest in the DMR Units leased as at the date of submission of the Viability Assessment;

**"Excluded Costs"** means:

- (a) Internal Overheads;
- (b) any tax payable by the Owner on any gain or profit arising from the Development (save for those expressly included in the definition of Costs) except non-recoverable VAT on building costs (including white goods);

- (c) any costs incurred by the Owner arising out of disputes or litigation with the Council and including any costs in relation to disputes resolved by the Expert save for any such disputes or litigation where it is held that the Council has acted either unlawfully or unreasonably;
- (d) the Deferred Contribution;

**"Final Account"** means a detailed final account statement including a full breakdown of all elements therein agreed between the Owner and the Building Contractor;

**"Finance"** shall mean the cost of finance for acquiring the Development and carrying out the Development, including interest charges and financial charges, arrangement fees, commitment fees and similar costs and the redemption fees and where any funding is provided by the Owner from its own resources notional interest at the Interest Rate provided that where funding is provided by the Owner costs of Finance will (until the Owner can demonstrate that the Development has become cash-flow positive) be reduced through pooling of debit and credit balances and such costs shall be calculated by production of a cashflow detailing debits and credits. Debits shall be considered as at the date debited. Credits shall be considered as at the date credited;

**"Interest Rate"** means 2% above LIBOR from time to time;

**"Internal Overheads"** means the Owner's internal overheads and administrative expenses other than those included in the definition of Costs;

**"Land Value"** means the sum of £13,921,000 (thirteen million nine hundred and twenty one thousand pounds);

**"Legal Fees"** shall mean all legal and surveyor's fees and disbursements in relation to the Development including (without limitation) the acquisition of the Development Land and the disposal of the Development Land or parts thereof and dealing with any Planning Agreements including this Deed;

**"LIBOR"** means the British Bankers Association London Interbank Offered Rate for sterling for a 3 month period;

**"Market Failure Review Trigger Date"** means the date following a Market Failure when 25% of the OMR Units have been Disposed of other than by way of a Permitted Disposal;

**"OMR Revenue"** shall constitute the gross receipts due to the Owner in respect of the disposals of any OMR Units forming part of the Development Land and calculated on the following basis:

- (a) in respect of the sale of an OMR Unit to an individual owner (permitted only because of a Market Failure arising prior to submission of the Viability Assessment), the total amount of premium payable to the Owner together with any associated purchase of chattels;

- (b) in respect of sale of an OMR Unit (permitted only because of a Market Failure arising prior to submission of the Viability Assessment) by way of a part exchange or by way of swap, the full value of the OMR Unit acquired without deduction for the property taken in part exchange; and/or
- (c) in respect of an arm's length third party bona fide transaction that is not a Sham Transaction for more than one OMR Unit (permitted only because of a Market Failure arising prior to submission of the Viability Assessment), the total premium payable to the Owner;
- (d) in respect of any Sham Transaction (permitted only because of a Market Failure arising prior to submission of the Viability Assessment) the Open Market Value of the OMR Units concerned as at the date of the relevant transaction;
- (e) in respect of Short Residential Leases all rents received up to date, and the up to date Open Market Value of the OMR Units subject to the Short Residential Leases; and/or
- (f) in respect of the Last OMR Units the projected Open Market Value taking into account when such sale is expected to take place as of the date of submission of the Viability Assessment;

every Residential Unit shall be accounted for but no Residential Unit shall be accounted for more than once and in respect of any Residential Unit not otherwise accounted for, the Open Market Value of such Residential Unit as of the date of submission of the Viability Assessment;

**"Open Market Value"** means as defined in the RICS Valuation - Professional Standards (January 2014 - updated April 2015);

**"Post Occupation Review Trigger Date"** means the date when 75% of the OMR Units are Occupied;

**"Prelims"** means the costs of preparing the Development Land for the Development including site establishment, installation of services offices and equipment, site security, plant and machinery, scaffolding, health and safety measures such costs to be calculated and included in the Viability Assessment;

**"Rental Costs"** means costs incurred in relation to management of the Residential Units including management costs, voids/bad debts, lettings, cleaning, maintenance, costs associated with operating communal facilities and insurance;

**"Revenue"** means the total of the OMR Revenue, DMR Revenue, Commercial Revenue and Any Other Revenue or Receipts and in relation to the Pre-Commencement Review updated estimates of these revenues;

**"Sales Costs"** means:

- (a) proper fees and disbursements of selling agents;
- (b) the proper and reasonable legal fees in relation to negotiations of any agreement for lease and lease and any agreement for sale and sale documentation;
- (c) any other promotional or marketing costs incurred in relation to the letting or sale of any part of the Development Land including (without limitation) the cost of setting up and running and then dismantling any sales and marketing facility and associated staffing costs;
- (d) NHBC, Premier (or similar) costs;
- (e) all discounts, incentives or allowances allowed by the Owner to any tenant or buyer (including without limitation payment of legal and agents' costs (including irrecoverable VAT), SDLT, all payments for or made towards the provision of carpets, curtains and white goods, any rent free periods and service charge voids and/or exemptions) in relation to the Residential Units;
- (f) any costs incurred by the Owner in carrying out any extras or works at the request of any individual tenant or buyer of a Residential Unit over and above the Owner's standard specification for that particular Residential Unit;
- (g) any proper legal and marketing and professional costs and other costs incurred by the Owners in acquiring owning and/or disposing of any property by way of part of exchange on sale of Residential Unit, together with any costs resulting from any difference between the value attributed to a property on part exchange and the realised value or up to date values of that property as applicable of the reasonable market sale value of the property part exchanged (even if not yet sold);
- (h) any proper cost of settling claims from or reaching agreement with neighbouring landowners who hold rights that will prevent the Development or whose co-operation is needed or beneficial in respect of the Development;

**"Rental and Sales Schedule"** means a schedule setting out:

- (a) the rental prices achieved in respect of each OMR Unit which has been let; and
- (b) in the event that sales of OMR Units have been permitted due to a Market Failure, the gross sales price achieved

And in both cases clearly identifying the value of discounts incentives or allowances allowed by the Owner in respect of each OMR Unit let or sold certified by a RICS qualified surveyor owing a duty of care to the Council;

**"SDLT"** means stamp duty land tax;

**"Section 106 Costs"** means the sums paid to the Council pursuant to this Deed (the expression "sums paid" shall include sums to be paid by way of Contributions together with Additional Amount) together with the costs incurred performing the obligations in this Deed excepting payment of the Deferred Contribution;

**"Sham Transaction"** means:

- (a) a transaction the effect of which is to reduce OMR Revenue for the purposes of the Viability Assessment; or
- (b) a disposal of OMR Units that is not an arm's length third party bona fide transaction;
- (c) examples of which include but are not confined to transactions between the Owner and subsidiary companies of the Owner or transactions between the Owner and their employees or transactions involving loans from the Owner or other forms of deferred consideration or transactions involving other property not comprised in the Development;

**"Short Commercial Lease"** means a lease of Commercial Space with a term of less than 7 years;

**"Short Residential Lease"** means a lease of a Residential Unit with a term of less than 99 years;

**"Statutory Consents"** means any statutory approvals, consents or licences or permissions required from any local or competent authority to enable the Owner to carry out and complete the Development;

**"Supporting Evidence"** means:

- (a) for costs actually incurred:
  - (i) receipted invoices or other evidence of payment;
  - (ii) costs certified by the Owner's quantity surveyor or cost consultant or other professional (subject to such person expressly owing a duty of care to the Council);
- (b) for costs to be incurred but not yet incurred the up to date best estimate of such costs by the Owner or where available by the Owner's quantity surveyor or costs consultant (subject to such person expressly owing a duty of care to the Council);
- (c) for sales and other receipts certified copies of sales contracts or completion statements by the Owners' solicitor addressed to the Council confirming in giving such confirmation that a duty of care is owed to the Council;

- (d) in relation to any Residential Units and or commercial space which are unsold at the relevant time then such estimates (where available) made by the Owner (acting reasonably) based on sales at the Development already effected, the trend in sale prices and the expected date of sale;
- (e) Rental and Sales Schedule;

**"Surplus"** means a sum resulting from the deduction of the Costs from the Revenue in the Viability Assessment pursuant to the provisions of paragraph 6 of Schedule 3;

**"Viability Assessment"** means an assessment of the Development viability pursuant Part I (Pre-Commencement Review), Part II (Post-Occupation Review), and Part III (Market Failure Review) (as applicable) carried out in accordance with this Schedule 3 and in the same form as the Baseline Appraisal or such other reasonable industry form of assessment regime as the Council may approve (acting reasonably) in writing to properly consider and determine whether a Surplus has arisen and whether a Deferred Contribution is payable or Deferred DMR Units are to be provided;

## Part I

### 1. THE PRE-COMMENCEMENT REVIEW

- 1.1 In the event that the Owner has not Implemented the Development by the date which is 24 months after the date of this Deed, the Owner shall prior to Implementation submit a Viability Assessment to the Council.
- 1.2 The Owner shall provide the following to the Council:
- (a) a full and up to date Viability Assessment; and
  - (b) Supporting Evidence to demonstrate whether a Deficit or Surplus has arisen; and
  - (c) either a Deferred DMR Unit Scheme or a Deferred Report to the Council.
- 1.3 At the time the Viability Assessment is submitted to the Council pursuant to paragraph 1.2 the Owner shall pay to the Council the sum of £3,000 (three thousand pounds) in respect of the Council's costs of assessment of the same (including without limitation external professional costs and internal housing team costs) and upon agreement of the quantum of the Deferred Contribution or Deferred DMR Units the Owner shall pay to the Council the balance of the reasonable costs of the Council of such assessment in full.
- 1.4 If the Council (acting reasonably) makes a request for further information pursuant to paragraphs 7.1, 7.2 and 7.3 of Schedule 3 in respect of any of the documents submitted pursuant to paragraph 1.2 above the Owner shall within 4 (four) weeks of receipt of such request provide such information as has been reasonably and properly requested.
- 1.5 The Owner shall not Implement or permit Implementation of the Development unless and until:
- (a) the Council confirms in writing to the Owner that the Viability Assessment is approved and has resulted in a Deficit; or
  - (b) the Expert following Dispute Resolution subject to clause 11 confirms the Viability Assessment has resulted in a Deficit; or
  - (c) the Council confirms in writing to the Owner that the Viability Assessment is approved and has resulted in a Surplus, and the number and rent discount levels of the Deferred DMR Units proposed in the Deferred DMR Unit Scheme are approved; or
  - (d) the Expert following Dispute Resolution subject to clause 11 confirms the Viability Assessment is approved and has resulted in a Surplus, and the number and rent discount levels of the Deferred DMR Units proposed in the Deferred DMR Unit Scheme are approved; or

- (e) the Council confirms in writing to the Owner that the Viability Assessment is approved and has resulted in a Surplus, the reasoning set out in the Deferred Report is approved and the quantum of the Deferred Contribution is approved; or
  - (f) the Expert following Dispute Resolution subject to clause 11 confirms the Viability Assessment has resulted in a Surplus, the reasoning set out in the Deferred Report is approved and confirms the quantum of the Deferred Contribution.
- 1.6 The Owner covenants to provide any Deferred DMR Units as may be agreed between the parties or determined by the Expert in accordance with the Deferred DMR Unit Scheme.
- 1.7 The covenants on the part of the Owner in respect of the DMR Units in paragraph 2 of Schedule 2 shall also apply mutatis mutandis to the Deferred DMR Units (if any).
- 1.8 Prior to Occupation of any of the OMR Units the Owner shall pay to the Council the Deferred Contribution thereon and shall not Occupy or permit Occupation of any of the OMR Units until such payment has been made, unless:
- (a) the Council confirms to the Owner the Viability Assessment is approved and has resulted in a Deficit, such confirmation to be given in writing; or
  - (b) the Expert following Dispute Resolution subject to clause 11 confirms the Viability Assessment has resulted in a Deficit;
  - (c) Deferred DMR Units are being provided
- in which case the Deferred Contribution will not be payable and the restriction on Occupation above shall cease to apply.

## **Part II**

### **2. THE POST-OCCUPATION REVIEW**

- 2.1 The Owner shall conduct the Development and produce the Viability Assessment in accordance with the objectives and principles set out in this Schedule 3.
- 2.2 On the Post Occupation Review Trigger Date the Owner shall provide to the Council a full and up to date Viability Assessment with Supporting Evidence to demonstrate whether a Deficit or Surplus has arisen.
- 2.3 At the time the Viability Assessment is submitted to the Council pursuant to paragraph 2.2 the Owner shall pay to the Council the sum of £3,000 (three thousand pounds) in respect of the Council's costs of assessment of the same (including without limitation external professional costs and internal housing team costs) and upon agreement of the quantum of the Deferred Contribution the Owner shall pay to the Council the balance of the reasonable costs of the Council of such assessment in full.

- 2.4 If the Council (acting reasonably) makes a request for further information pursuant to paragraphs 7.1, 7.2 and 7.3 of Schedule 3 in respect of the Viability Assessment the Owner shall within 4 (four) weeks of receipt of such request provide such information as has been reasonably and properly requested including (without limitation) copies of Building Contracts, Final Accounts associated with such Building Contracts summaries of the costs incurred in respect of Building Contracts in respect of which no Final Account is available, and a Sales Schedule and such other Supporting Evidence as is relevant.
- 2.5 To pay to the Council the Deferred Contribution within 15 Working Days of either of the following occurring:
- (a) The Council confirms in writing (not to be unreasonably withheld or delayed) to the Owner the Viability Assessment is approved and has resulted in a Surplus and the quantum of the Deferred Contribution is approved; or
  - (b) The Expert following Dispute Resolution subject to clause 11 confirms the Viability Assessment has resulted in a Surplus and confirms the quantum of the Deferred Contribution; or
- 2.6 The Owner will not be required to pay the Deferred Contribution in the event of either of the following:
- (a) the Council confirms to the Owner the Viability Assessment is approved and has resulted in a Deficit, such confirmation to be given in writing (not to be unreasonably withheld or delayed); or
  - (b) the Expert following Dispute Resolution subject to clause 11 confirms the Viability Assessment has resulted in a Deficit;
- 2.7 In the event that the Viability Assessment does not result in a Deficit or the Owner does not wish to seek to establish a Deficit, as soon as reasonably practicable, provide the Council of written notice of the same.
- 2.8 The Owner shall not Occupy or permit the Occupation of more than 85% of the OMR Units unless and until a Deferred Contribution which is due pursuant to this Part II of Schedule 3 has been paid.

### **Part III**

#### **3. MARKET FAILURE REVIEW**

- 3.1 On the Market Failure Review Trigger Date the Owner shall provide to the Council a full and up to date Viability Assessment with Supporting Evidence to demonstrate whether a Deficit or Surplus has arisen.
- 3.2 At the time the Viability Assessment is submitted to the Council pursuant to paragraph 3.1 the Owner shall pay to the Council the sum of £3,000 (three thousand pounds) in respect of the Council's costs of assessment of the same (including without limitation

external professional costs and internal housing team costs) and upon agreement of the quantum of the Deferred Contribution the Owner shall pay to the Council the balance of the reasonable costs of the Council of such assessment in full.

- 3.3 If the Council (acting reasonably) makes a request for further information pursuant to paragraphs 7.1, 7.2 and 7.3 of Schedule 3 in respect of the Viability Assessment the Owner shall within 4 (four) weeks of receipt of such request provide such information as has been reasonably and properly requested including (without limitation) copies of Building Contracts, Final Accounts associated with such Building Contracts summaries of the costs incurred in respect of Building Contracts in respect of which no Final Account is available, and a Sales Schedule and such other Supporting Evidence as is relevant.
- 3.4 In the event that either:
- (a) the Council confirms to the Owner the Viability Assessment is approved and has resulted in a Surplus and the quantum of the Deferred Contribution is approved; or
  - (b) the Expert following Dispute Resolution subject to clause 11 confirms the Viability Assessment has resulted in a Surplus and confirms the quantum of the Deferred Contribution;

The Owner shall pay the Deferred Contribution to the Council within 10 Working Days of such approval or confirmation.

#### 4. **CALCULATION OF THE DEFERRED CONTRIBUTION**

- 4.1 In relation to the Pre-Commencement Review pursuant to Part I of this Schedule, the Deferred Contribution shall be calculated as follows:
- (a) In the event that the Surplus is less than or equal to £0 then the Deferred Contribution shall be £0;
  - (b) In the event that Surplus is calculated as being more positive than £0, then the Deferred Contribution shall be a positive sum equivalent to the Surplus,

**PROVIDED ALWAYS** that the Deferred Contribution shall never exceed the Deferred Contribution Cap.

- 4.2 In relation to the Post-Occupation Review pursuant to Part II of this Schedule, the Deferred Contribution shall be calculated as follows:
- (a) In the event that the Surplus is less than or equal to £0 then the Deferred Contribution shall be £0;
  - (b) In the event that Surplus is calculated as being more positive than £0, then the Deferred Contribution shall be a positive sum equivalent to: 50% of the Surplus

**PROVIDED ALWAYS** that the Deferred Contribution shall never exceed the Deferred Contribution Cap.

4.3 In relation to the Market Failure Review pursuant to Part III of this Schedule, the Deferred Contribution shall be calculated as follows:

(a) In the event that the Surplus is less than or equal to £0 then the Deferred Contribution shall be £0;

(b) In the event that Surplus is calculated as being more positive than £0, then the Deferred Contribution shall be a positive sum equivalent to the Surplus

[PROVIDED ALWAYS that the Deferred Contribution shall never exceed the Deferred Contribution Cap.](#)

5. **WORKED EXAMPLES**

Example 1: The Pre-Commencement Review gives a Surplus of £1,000,000:

The Deferred Contribution is £1,000,000.

Example 2: The Post-Occupation Review gives a Surplus of £1,000,000:

The Deferred Contribution is 50% of £1,000,000 = £500,000.

Example 3: The Market Failure Review gives a Surplus of £1,000,000:

The Deferred Contribution is £1,000,000.

6. **FORM AND METHOD OF ALL OF THE VIABILITY REVIEWS**

6.1 The Owner covenants to carry out any Viability Assessment required pursuant this Schedule 3 in accordance with the following provisions:

6.2 The Owner covenants in relation to the preparation of the Viability Assessment:

(a) the Viability Assessment will be produced on an open book basis under which there shall be full and frank disclosure of all relevant information; and

(b) all Costs included in the Viability Assessment shall be reasonably and properly attributable to the Development and be reasonably and properly incurred in each case.

6.3 The Viability Assessment shall be produced in the following form:

	Actual/Estimate
--	-----------------

<b>REVENUE</b>	
OMR Revenue	
DMR Revenue	
Commercial Revenue	
Any Other Revenue or Receipts	
<b>Total</b>	
<b>COSTS</b>	
Building Costs	
Design and Planning Costs	
Internal Overheads	
Finance	
Marketing (Sales Costs)	
Section 106 Costs	
Developer's Profit and Overheads	
Prelims	
Land Value	
Rental Costs	
SDLT	
Legal Fees	
CIL	
Any Other Costs	
<b>Total</b>	

6.4 The Council and the Owner will act in good faith towards each other in connection with the Viability Assessment.

6.5 For the avoidance of doubt there will be no double counting of Costs or Revenues.

**7. THE COUNCIL'S OBLIGATIONS RELATING TO VIABILITY REVIEW**

- 7.1 Within 3 (three) weeks of receipt of any Viability Assessment to use reasonable endeavours to either approve the submitted Viability Assessment or make a reasonable and proper request for further information.
- 7.2 Within 2 (two) weeks of receipt of any further information reasonably and properly requested in respect of the submitted Viability Assessment to either accept the supporting information in demonstrating whether a Surplus or Deficit has arisen and approve the Viability Assessment and further information submitted or make a further request for additional information.
- 7.3 In the event the Council reasonably requires further information subsequent to the receipt of further additional information under paragraphs 7.1 or 7.2 above the steps in paragraph 7.2 of this Schedule 3 and paragraphs 1.4, 2.4 and 3.3 of this Schedule 3 shall be repeated up to a further three more times.
- 7.4 In the event that the Council has not been able to accept any Viability Assessment and Supporting Documentation by the date that is 40 (forty) Working Days from the initial receipt of the Viability Assessment either party may refer the matter to be determined by the Expert pursuant to Clause 11.
- 7.5 To use the Deferred Contribution for Deferred Contribution Purposes.
- 7.6 To return any unspent costs paid by the Owner to the Council under paragraphs 1.3, 2.3 and 3.2 of Schedule 3 within 10 Working Days of agreement of the quantum of the Deferred Contribution or Deferred DMR Units.

## **SCHEDULE 4**

### **The Council's Covenants**

#### **1. USE OF CONTRIBUTIONS**

- 1.1 Where any payment or contribution (except the Cycle Superhighway Contribution) payable by the Owner to the Council pursuant to the Owner's Covenants is stated to be used by the Council only for a particular purpose then:
- (a) each Contribution and its respective Additional Amount (except the Cycle Superhighway Contribution) will only be used for its respective Contribution Purposes;
  - (b) if any Contribution or any part thereof (except the Cycle Superhighway Contribution) will not have been expended or committed for expenditure under the terms of a contract held by the Council within 15 years after the date upon which it will have been paid then the unspent or uncommitted part will on written request be returned to the person who made the payment together with all accrued interest.

#### **2. CYCLE SUPERHIGHWAY CONTRIBUTION**

- 2.1 Following receipt of the Cycle Superhighway Contribution from the Owner the Council shall notify TfL that the monies have been received and pay such monies to TfL when it receives a request from TfL to do so.
- 2.2 If the monies payable in respect of the Cycle Superhighway Contribution have not been paid to TfL within 5 years of the date upon which the monies were paid to the Council then the Council shall on written request repay the monies paid under the Cycle Superhighway Contribution to the person who made the payment together with all accrued interest.

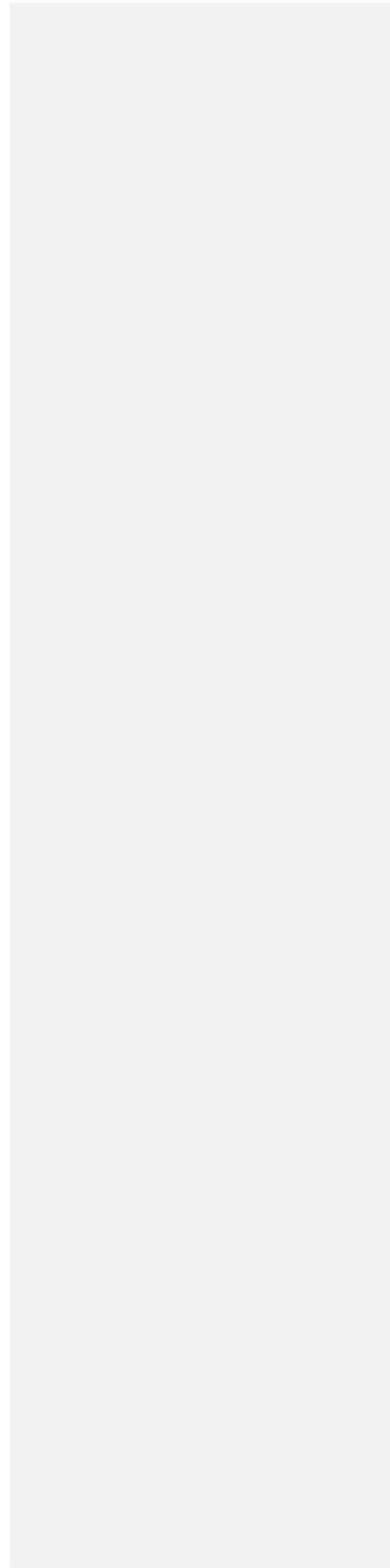
## SCHEDULE 5

### Considerate Contractor Scheme

The purpose of the Considerate Contractor Scheme is for a planned programme of measures to minimise disruption, to be in place prior to any work beginning at the Development. The Considerate Contractor Scheme should inform Local People of the works that are to take place for each phase, how long they are likely to last, and what temporary measures will likely be in place for that phase. The minimum requirements to be included within a Considerate Contractor Scheme are:

- (a) A staffed site office to be the first point of call for telephone enquiries into the Development, and any problems arising during construction.
- (b) A hotline telephone number for problems which will have first been notified to the Council.
- (c) Publicity regarding the Commencement of each construction phase, to include date of Commencement, likely completion dates and any temporary vehicular and pedestrian routes that may be in place. Publicity to include features in the local press, and leaflet drops for residents, businesses and shops within a 0.5 mile radius of any part of the Development Land.
- (d) Provision of temporary signs to highlight road alterations (whether temporary or permanent).
- (e) Prior notification of alteration to bus routes, whether permanent or temporary.
- (f) Directional signs for available car parking during construction.
- (g) If reasonably required by local residents, retailers and business groups regular meetings with the local residents, retailers and business groups.
- (h) Approved construction routes to be monitored and enforced.
- (i) Contractors to comply with the hours of working in the Planning Permission.
- (j) Construction sites to be secured at all times, and mud and dust to be controlled in accordance with the Planning Permission.
- (k) A green travel plan for construction employees.
- (l) Details of the Construction Training undertaken at the Development in accordance with this Deed.
- (m) measures to ensure that as far as it is reasonably practicable to do so construction lorries make use of access routes specified by the Council in preference to other routes.

**SCHEDULE 6**  
**Draft Planning Permission**



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

Executed as a Deed by )  
**ESSENTIAL LIVING (BRENTFORD) LIMITED** )  
a company incorporated In Jersey acting by )  
..... who, )  
in accordance with the laws of that territory is )  
acting under the authority of the company )

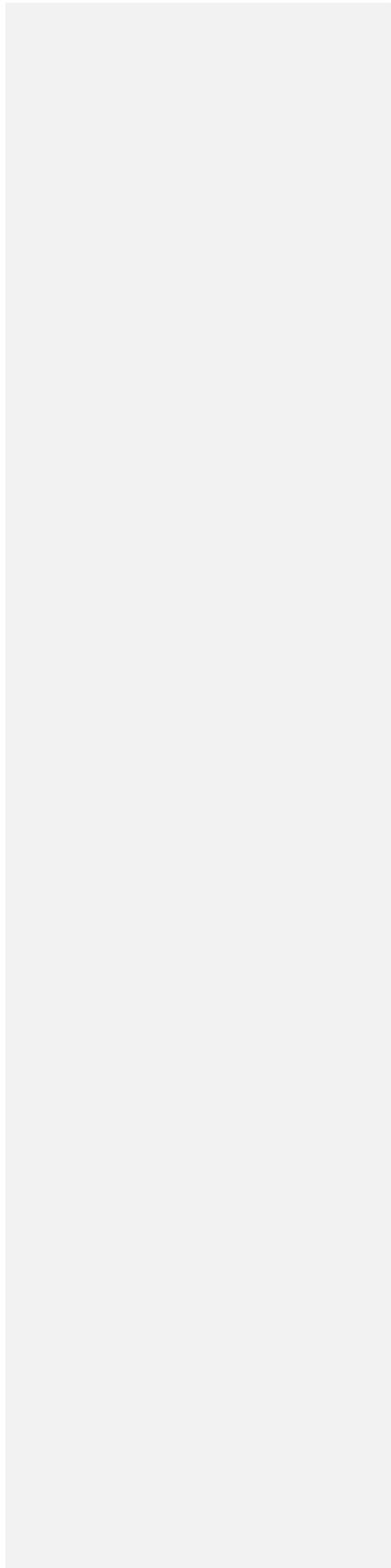
Signature in the name of the company: Essential Living (Brentford) Limited

Signature of Authorised Signatory: .....

**THE COMMON SEAL OF** )  
**THE MAYOR AND** )  
**BURGESSES OF THE** )  
**LONDON BOROUGH OF** )  
**HOUNSLOW** was affixed in )  
the presence of: )

Mayor: .....

Borough Solicitor: .....



## **APPENDIX**

### **Plans**

Plan 1 - Development Land plan

Plan 2 - Block Plan

Plan 3 - Highway Works

Plan 4 - Commercial Space

Plan 5 - Public Access Route

**Paul Robinson**

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**From:** Planning Support  
**Sent:** 24 April 2018 16:41  
**To:** [REDACTED] Alison Turner; Zoe Newcombe; [REDACTED] tfl.gov.uk;  
[REDACTED] hounslow.gov.uk; Tony Arbour; [REDACTED] boroughplanning@tfl.gov.uk;  
Nicky Gavron; PCU@communities.gsi.gov.uk; [REDACTED] tfl.gov.uk; [REDACTED]  
[REDACTED] Planning; [REDACTED] [REDACTED]  
**Subject:** GLA 4126 - Morrison's Supermarket  
**Attachments:** 4126\_L&R.pdf

Dear all

Please find the attached decision letter & report relating to the above application.

Regards

[REDACTED]

GLA Planning Support Team