

Corporate Director Housing & Adult Social Servcies

T 020 7527 8178

Kevin O'Leary Corporate Director of Environment and Regeneration Please reply to: Sean Mclaughlin

Email:

sean.mclaughlin@islington.gov.uk

Dated: 12 October 2017

Legal Ref: NSM/705/LA

Dear Kevin O'Leary

LETTER IN THE FORM OF A SECTION 278 AND 38 AGREEMENT UNDER THE HIGHWAYS ACT 1980 FOR USE WHERE COUNCIL IS THE LANDOWNER AND HIGHWAY AUTHORITY

DOVER COURT ESTATE PLANNING APPLICATION REFERENCE: P2014/3363/FUL

Planning permission was been granted on 4 December 2015 under planning application reference P2014/3363/FUL for the redevelopment of the Dover Court Estate comprising demolition of an existing two-storey residential building (Romford House)(consisting of 18 units) and 81 garages to allow for the construction of 70 new homes (27 x 1 bed, 26 x 2 bed, 15 x 3 bed and 2 x 5 bed) across nine infill sites, consisting of the construction of a part three, part four storey block and a two semi-detached pair of dwellings facing Balls Pond Road, a two storey block between Dove Road and Balls Pond Road, alterations and extension to ground floor of Threadgold House to create a residential unit and community rooms (measuring 135.8square metres), a part two, part three storey terraced row facing Wall Street, a part single, part three and part four storey extension to the north east corner of Ongar House, a four storey extension to the west elevation of Ongar House, a three storey terraced row replacing Romford House, a four storey block between Warley House and No. 53 Mitchinson Road and a part single, part two storey terraced row to the rear of Warley House, and the provision of new green space and sports and play facilities, including a new ball court to the east of Greenhills Terrace, cycle storage, public realm improvements across the estate and the relocation of Baxter Road to the front of Romford House ("the Development").

The planning permission is subject to a Directors Letter in the form of a Section 106 Planning Obligation dated 27 November 2015 which requires a highways agreement to be entered into to secure certain highway works. These matters would normally be set out in an agreement under Section 278 and 38 of the Highways Act 1980. Such an agreement cannot be entered into as the Council is both the highway authority and the landowner. As landowner the Council through its housing department is procuring construction of the Development.

This letter from Sean Mclaughlin, Corporate Director of Housing & Adult Social Services (CDoHASS), to Kevin O'Leary, Corporate Director of Environment and Regeneration (CDoER), therefore seeks to regularise that part of the Development comprising the Works.

The CDoER is satisfied that the Works will be of benefit to the public.

The CDoHASS has requested that the following completion of the Works the CDoER adopt the Red Land as highway maintainable at the public expense

I confirm that the Housing and Adult Social Services Directorate will provide or procure the provision of the following highway matters in relation to this Development as set out below:

1 DEFINITIONS

"Act"

For the purposes of this letter the following expressions shall have the following meaning:

"Commence" the date on which any material operation (as defined by section 56(4) of the Town and Country Planning Act 1990) forming part of the

Planning Act 1990) forming part of the Development begins to be carried out and "Commencement" and "Commenced" shall be

construed according;

the Highways Act 1980;

"the Drawings" means the plans and drawings contained listed in

the Third Schedule:

"the Engineer" means the Council's Head of Highways for the time

being or such other officer of the Council nominated to act on his behalf for the purposes of

this Directors Letter:

"the Final Certificate" means the certificate issue under paragraph 12

below;

"the Green Land" the land shaded Green on the Section 278

Drawings;

"Occupation" 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, security operations or display and the terms "Occupy", "Occupier" and "Occupied" shall be construed

accordingly;

"the Parties" the CDoER and the SDoHNS;

"the Programme"

means the programme (in the form of a Gantt Chart clearly indicating the sequence of work) for the Works agreed with the CDoER together with such revisions that may be agreed between the Parties from time to time. This shall include a statement of the overall sequence in which the Works are to be carried and a general description of the agreed arrangements and methods of construction which the SDoHNS is to adopt or procure the adoption of together with an estimate of the amount of time to be spent by the SDoHNS or the contractor appointed by the SDoHNS in carrying out and completing the Works;

"the Provisional Certificate"

means the certificate issued under paragraph 10 below:

"the Red Land"

the land shaded Red on the Section 278 Drawings;

"the S278 Drawings"

the drawings numbered C(0)0550 Rev 4 (Area 1) and C(0)0550 Rev 4 (Area 2) attached to this Letter at the Fifth Schedule:

"the Site"

means the land and buildings known as Dover Court Estate and shown for identification purposes only edged red on the plan attached to this Letter at the Sixth Schedule:

"the Specification"

means the specification of the Works approved by the Engineer to be constructed in accordance with the Drawings:

"Statutory Undertaker"

any person company corporation board or authority whose apparatus is pursuant to a statutory right or to a licence granted under Section 50 of the New Roads and Street Works Act 1991 at the date of this Deed already installed in, under, over or upon the land on which the Works are to be carried out PROVIDED THAT such expression shall include the authorised successor to any such person company corporation board or authority;

"Terms and Conditions for the Execution of the Works"

means the terms and conditions as set out in the Second Schedule hereto;

"the Works"

means the highway improvement works and other works as described in the First Schedule to be carried out in accordance with the Specification and for the avoidance of doubt no new cross-overs shall be provided without the Council's express prior written consent.

2. This letter shall be noted on the local land charge register against the Site.

- **3.** The CDoHASS will provide or ensure the provision or procurement of the matters set out below and in the Schedules to this Directors Letter.
- **3.** The CDoER agrees as set out below.

CDoHASS Principal Obligations

- **4.** The CDoHASS agrees to pay to Islington Council's Legal Services on the date of this Directors Letter the reasonable legal costs incurred by Legal Services in the negotiation, preparation and execution of this Directors Letter.
- **5.** The address, email address for each party are:

for the Corporate Director of Environment and Regeneration:

Address: Strategic Planning and Transport, Planning Development, 222 Upper

Street, London N1 1XR

Email: kevin.OLeary@islington.gov.uk

for the Corporate Director of Housing and Adult Social Services:

Address: Municipal Offices, 222 Upper Street London N1

Email: Sean.McLaughlin@islington.gov.uk

- **6.** The CDoHASS shall ensure that the Works proceed diligently in accordance with the provisions of the Schedules to this Directors Letter and the Specification and Programme.
- 7. The CDoHASS agrees to procure completion of the Works (completion of which shall be evidenced by the issue by the Engineer of the Provisional Certificate) in accordance with the Programme and the Specification.
- 8. The CDoHASS agrees to secure or procure at no expense to CDoER such consents, licences or permissions as may be required for the purposes of carrying out the Works and to indemnify the CDoER against all liabilities costs claims actions demands or expenses which may arise from the CDoHASS's failure to obtain or to comply with such consents licences or permissions.
- 9. The CDoHASS agrees the following:
 - a. to pay or procure payment of the drawing and site inspection fees of the CDoER as set out in the Fourth Schedule to this Directors Letter;
 - b. to pay or procure payment from time to time during the course of the Works of the reasonable costs and expenses properly incurred by the CDoER in the testing of any materials carried out by the CDoER
 - c. to pay or procure payment of any costs properly incurred by the CDoER in connection with the diversion and/or protection of the apparatus of Statutory Undertakers as evidenced by copies of their invoices.
 - d. to pay or procure payment of any costs properly incurred by the CDoER in making and implementing any traffic regulation orders (as defined in the Road Traffic Regulation Act 1984 and any other statute) which the CDoER deems necessary as a result of the Works and whether made or implemented prior to during or following the completion of the Works.

Certification of the Works

- **10.** When the Works have been completed to the satisfaction of the Engineer he shall issue the Provisional Certificate.
- 11. The CDoHASS shall maintain or procure the maintenance of the Works for the period of 12 months from the date of issue of the Provisional Certificate and upon the expiration of that period shall as soon as practicable reinstate and make good or procure the reinstatement and making good to the satisfaction of the Engineer any defects or damage due to faulty survey design materials or workmanship which may have arisen or be discovered during such period.
- **12.** At the expiration of the twelve months maintenance period referred to in paragraph 10 then PROVIDED THAT:
 - (a) any necessary reinstatement or other works have been completed to the Engineer's satisfaction in accordance with paragraph 11; and
 - (b) all monies due to be paid to the Council under this Directors' Letter have been paid the Engineer shall issue the Final Certificate to that effect.
- **13.** Upon the issue of the Final Certificate those parts of the Works on the Green Land shall become maintainable at public expense with effect from that date.

Procuring Performance of the CDoHASS's Obligations

- **14.** It is agreed that the performance of the obligations on the part of the CDoHASS to carry out the Works on behalf of the Council may be delegated to a contractor or sub-contractors PROVIDED THAT:
 - **a.** The contractor is required to undertake the Works in accordance with the Specification and Programme; and
 - **b.** The CDoHASS shall ensure that throughout the course of the Works the contractor maintains a public liability insurance policy which provides for an amount of insurance cover against losses and claims for injuries or damage to persons or property arising out of or in consequence of the Works of not less than five million pounds £5,000,000.00 in respect of any one incident.

Street Lighting

15. The CDoHASS agrees that the design and construction of the Street Lighting Works shall be undertaken by the CDoER at the CDoHASS's expense and the CDoHASS shall give at least 3 months' written notice to the CDoER of the intended start date for the Street Lighting Works.

Trees

16. The CDoHASS agrees that all tree planting works and inspection and maintenance of the trees shall be undertaken by the CDoER at the CDoHASS's expense and that the CDoER acting in his sole discretion shall determine and source the species of trees to be planted.

Miscellaneous

17. A person who is not a party to this Directors Letter has no rights under the Contracts

(Rights of Third Parties) Act 1999 to enforce any of its terms.

Dedication and Adoption of Red Land

- 18.1 The CDoHASS hereby dedicates the Red Land as highway upon the date of issue of the Provisional Certificate but the CDoHASS shall remain the street manager for the Red Land for the purposes of Section 49(4) of the New Roads and Street Works Act 1991 until the date of issue of the Final Certificate.
- 18.2 The Red Land shall become highway maintainable at the public expense upon the date of issue of the Final Certificate.

Yours sincerely,

Sean Mclaughlin

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Corporate Director Housing & Adult Social Services (CDoHASS)

The CDoER agrees to observe and perform the obligations set out this letter.

Kevin O'Leary

Corporate Director of Environment & Regeneration (CDoER)

FIRST SCHEDULE

(The Works)

The highway works shall consist of the following on the Green and Red Land:

New footpaths, lighting, drainage, carriageway resurfacing, tactile crossing points, removal of redundant crossovers, new lighting, alterations to existing crossovers and alterations to parking layouts and associated signing and lining as shown on the Drawings.

SECOND SCHEDULE

(Terms and Conditions for the Execution of the Works)

THE CDoHASS OBLIGATIONS TO THE CDoER:

1. The Works shall be designed and executed by the CDoHASS in accordance with the Specification, Programme, Drawings and the provisions of this Deed.

Access

- 2.1 The CDoHASS shall during the progress of the Works give or procure for the CDoER and any person or persons duly authorised by them (upon 24 hours prior written notice) unfettered access to every part of the Works and permit him or them to inspect the same as they proceed and all materials used or intended to be used therein and shall give effect to any reasonable and proper requirements made or reasonable and proper direction given by the CDoER to conform to the Programme, Specification and Drawings.
- 2.2 The CDoHASS shall not cover up or put out of view any works without the approval of the CDoER and shall (upon 24 hours prior written notice) afford full opportunity for him to examine and measure any work which is about to be covered up or put out of view and to examine foundations before permanent work is placed thereon and shall give at least 2 working days' notice to the CDoER whenever any such work or foundations is or are ready or about to be ready for examination.
- 2.3. The CDoER shall without unreasonable delay (unless they consider it unnecessary and advise the SDoHNS accordingly) attend when required by the CDoHASS upon at least 2 working days' notice for the purpose of examining and measuring such works or of examining such foundations.

Testing of Materials

- 3.1 During the construction of the Works the CDoHASS shall submit for approval to the CDoER a list of suppliers from whom it wishes to obtain materials for incorporation in the Works together with test certificates for such materials and shall at its own cost provide the CDoER with any samples of materials the CDoER may reasonably request for testing purposes.
- 3.2 The CDoER shall have power in their reasonable discretion to test or require the testing of materials plant workmanship used or proposed to be used in the Works and to reject any materials plant or workmanship so tested which the CDoER may reasonably and properly find to be not in accordance with the Specification and the Drawings.
- 3.3 The CDoHASS shall as soon as is reasonably practicable replace or repair any materials plant or workmanship which have been found not to be in accordance with the Specification and the Drawings with such materials plant and machinery as are so in accordance.

- 3.4 The CDoER shall for the purposes of this Schedule be allowed reasonable access and admission to the Works or the places where materials or plant for the Works may be stored or in the course of preparation manufacture or use.
- 3.5 The CDoHASS shall as soon as is reasonably practicable remove such materials plant and workmanship as are rejected by the CDoER pursuant to paragraph 3.2 of this Schedule which are not capable of repair or remedy from the site of the Works and if the CDoHASS shall wish to continue to store such rejected irreparable materials plant and workmanship on the site of the Works they shall be stored separately from those materials plant and workmanship which have not been so rejected or which the CDoHASS shall wish in future to use in execution of the Works.

Opening Up of the Works

- 4.1 During the construction of the Works and prior to the issue of the Final Certificate the CDoER may instruct the CDoHASS to open up or expose any part of the Works which have been covered up without previously being inspected by the CDoER. If the instructions are oral the CDoER will endeavour to confirm them in writing as soon as possible thereafter.
- 4.2 Should the CDoHASS fail to comply with any such instructions the CDoER may take up or expose the Works causing as little damage or inconvenience as is possible to or in respect of any other part or parts of the Works the reasonable and proper cost of such taking up or exposure and reinstatement to be met by the CDoHASS.
- 4.3 If the Works are covered up by the CDoHASS after giving at least 2 working days' notice of the CDoHASS's intention so to do and the CDoER shall have failed to inspect the Works within that period and (upon 24 hours prior written notice) subsequently requires the Works or any part of them to be uncovered for the purposes of inspection then:
 - (a) If inspection reveals that the relevant part or parts of the Works has or have been completed in accordance with the Drawings and the Specification all reasonable and proper costs in respect of such uncovering and inspection and of reinstating the part or parts of the Works uncovered shall be borne by the CDoER and the CDoER shall be liable for any consequential costs expenses or damages which shall be directly or indirectly attributable to delay or interference occasioned by such uncovering testing and reinstatement; or
 - (b) If inspection reveals that the relevant part or parts of the Works has or have not been completed in accordance with the Drawings and the Specification all reasonable and proper costs in respect of such uncovering and inspection and of reinstating the part or parts of the Works uncovered shall be borne by the SDoHNS.

Statutory Undertakers

5. The CDoHASS at its own expense shall be responsible for arranging all works in connection with the diversion or alteration of Statutory Undertaker's apparatus, including sewers, required as part of the Works and shall ensure that all such works are implemented and completed prior to construction of the surface layers and installation of highways assets.

Prevention of mud being carried on the public highway

6. Provision shall be made at no cost to the CDoER at the site of the Works and on the adjoining public highway to prevent the deposit of mud dust and other materials on public

highways by vehicles and plant leaving the site of the Works (in accordance with the 1980 Act and Code of Practice for Construction Sites).

Traffic control

- 7.1 During the period when the Works are being executed the CDoHASS shall from time to time institute at its own expense reasonable measures approved by the CDoER before their implementation to maintain the flow and safety of traffic and pedestrians on the highways in the vicinity of the site of the Works and shall use reasonable endeavours to procure that contractor's site traffic in respect of the Works and the Development shall adhere to such route or routes when approaching or departing from the site of the Works as may from time to time be agreed with the CDoER. The CDoHASS must provide details of all traffic management proposals, diversions and working space, including storage areas for materials required to carry out the Works. This must also include details of any proposed suspensions to parking, waiting or loading. The CDoHASS will be required to consult with all emergency services and public transport operators and obtain their approval to these proposals prior to submission of plans for approval by the CDoER. The CDoHASS will be required to pay for all costs in relation to any temporary traffic management orders, suspension of parking or other costs relating to securing of the Site.
- 7.2 If at any time during the course of the Works the CDoER's representative reasonably considers further safety measures are required the CDoHASS must implement such changes immediately upon receipt of written instructions to do so.

Road safety

8. During the period over which the Works are being executed the CDoHASS shall comply with the provisions of Traffic Signs Manual Chapter 8 Traffic Safety Measures and Signs for Road Works and Temporary Situations Part 1 Design and Part 2 Operations 2009 (published by Department of Transport) and any amendment thereto for lighting and signing the Works and any further reasonable requirements of the highway authority.

Remedial works

- 9.1 If the Works or any part or parts of them (including without prejudice to generality failure to make good defects) are not executed or completed in accordance with the terms of this Deed the CDoER may execute or complete the relevant part or parts of the Works in accordance with the provisions of this Deed by its own employees or by contractors and recover its reasonable and proper costs from the CDoHASS.
- 9.2 Before starting any remedial works the CDoER shall first give the CDoHASS 28 working days' written notice or (in the event of there being a significant danger to users of the highway) such lesser period as may in the circumstances be reasonable of its intention to do so.
- 9.3 Any notice served pursuant to paragraph 9.2 above shall specify the Works which have not been executed or completed in accordance with the terms of this Deed and the period of the notice ("the Notice Period") given.
- 9.4 If before the expiry of the Notice Period the CDoHASS shall serve written notice upon the Council that the CDoHASS intends forthwith to execute and/or to complete the Works specified in the notice in accordance with the terms of this Letter the party who served the notice shall not be entitled to execute or to complete such Works unless the CDoHASS then fails to execute and/or complete them.

Final Site clearance

10. On completion of the Works the CDoHASS shall clear away and remove from the site of the Works all constructional plant surplus material rubbish and temporary works of every kind and leave the site of the Works in a workmanlike condition.

Contractors and Sub-contractors

11. No contractor or sub-contractor shall carry out works on the public highway unless approved by the CDoER in writing and accredited to do so under the New Roads and Street Works Act 1991.

Traffic Sensitive Roads

12. Some roads within this borough are considered to be traffic sensitive and as such, restrictions are in place on the allowable hours of working. The CDoER keeps a register of all such roads. The CDoER will provide this information to the CDoHASS when requested. The CDoER cannot be held responsible should the CDoHASS fail to obtain this information and will not be liable for any additional costs this restriction may cause.

Safety Audits

13. Where the Works require any change to the layout of footways or carriageways the CDoHASS shall arrange a safety audit at each stage of the Works and upon completion of the Works. The CDoHASS may use an independent accredited auditor with prior approval of the CDoER. The CDoHASS must submit to the CDoER copies of the audit at each stage and any response to the findings of this audit.

Signboards

14. Immediately upon commencement of the Works, the CDoHASS must ensure sign boards are erected at all approaches to the Site giving details of the Works, anticipated completion date, the names of the contractor and a telephone number to be called in the event of an emergency.

Safety at Street Works and Road Works Code of Practice

15. During the period over which the Works are being executed the CDoHASS shall comply with the provisions of the Safety at Street Works and Road Works Code of Practice issued under sections 65 and 124 of the New Roads and Street Works Act 1991.

THIRD SCHEDULE

(Drawings)



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FOURTH SCHEDULE

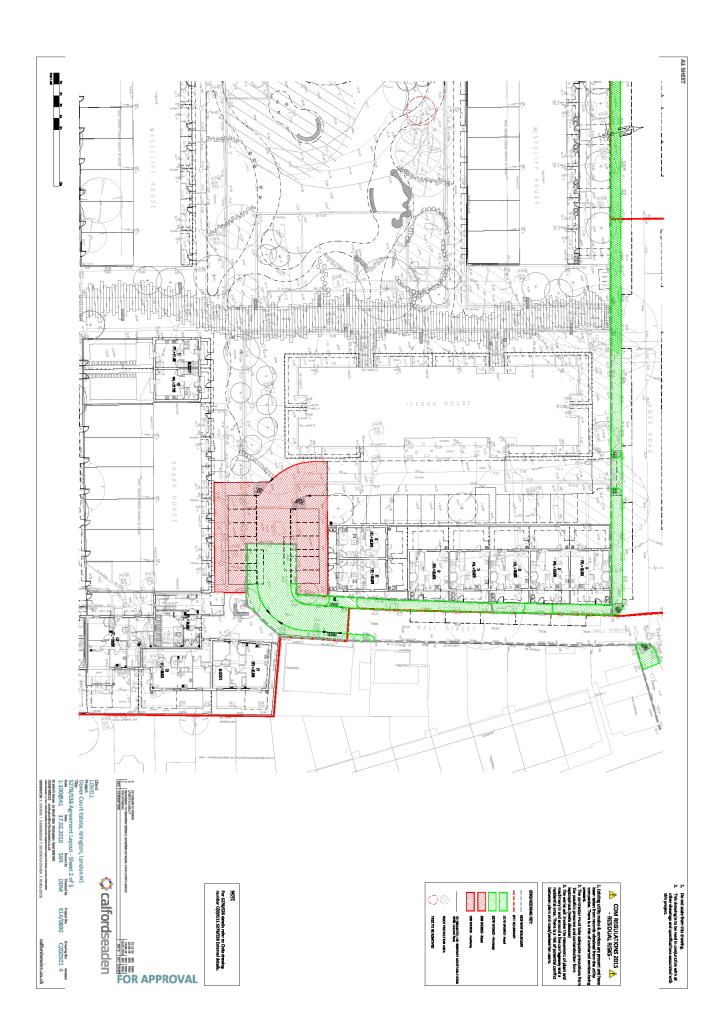
(Inspection Fees)

Project Value (Bond Value)	Drg and Specification Inspection Charge	Site Inspection Charge/per visit
up to £25,000.00	£500.00	£200.00
£25,001.00 - £100,000.00	£1,000.00	£300.00
£100,001.00 - £250,000.00	£2,500.00	£500.00
£250,001.00 - £1 million	£5,000.00	£650.00
>£1 million	£5,000.00 + £500.00 per £100,000.00	£750.00 + £100.00 per £100,000.00

FIFTH SCHEDULE

(S278 Drawings)





SIXTH SCHEDULE

(Site)



This drawing is © 2014 PTE architects
Use figured dimensions only. DO NOT SCALE.
All dimensions are in millimetres unless noted of





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