

41-49 and 49-59 Battersea Park Road, London**Summary of Section 106 Agreement**

This summary has been prepared in order to assist the Inspector in reviewing the draft Section 106 Agreement which has been negotiated between the parties and should be read alongside the CIL Compliance Schedule. It explains the provisions of the Section 106 Agreement in the order in which they appear and is designed to be read alongside each provision.

Unless expressed otherwise, any defined terms used in this summary note have the meaning given to them in the Section 106 Agreement.

All of the provisions of the Section 106 Agreement are agreed with the exception of the Intermediate Affordability Criteria applied to the LLR Units.

Reference	Provision	Commentary
<u>Key Definitions</u> <ul style="list-style-type: none"> Commencement – carrying out of a material operation under s.56(4), save for the following operations: (a) demolition; (b) ground investigation and site survey works including soil surveys; (c) construction of boundary fencing or hoarding including the erection of an enclosure for the purpose of site security; (d) archaeological investigation; (e) works of decontamination or remediation; (f) laying and diversion of services and service media; (g) construction of temporary access and/or highway works; (h) the removal of all demountable or portable buildings on land; (i) the probing of the ground for obstructions; and (j) the erection of temporary facilities for security personnel and temporary site welfare and project offices. Occupation - occupation of any part of the Development authorised by the Planning Permission with the exception of occupation by personnel engaged in construction decoration or fitting out or for marketing or display or repair or for security operations. 		
Parties to the Section 106 Agreement	-	<p>The parties to the section 106 agreement are Kent County Council (as landowner) and the Council (in its capacity as local planning authority).</p> <p>Kent County Council is the registered freehold proprietor of the Site which is registered under Title Number SGL24497 at the Land Registry.</p>
Recital (e)	Legality of the Section 106 Agreement	In accordance with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (CIL Regulations), this provides that the parties to the Section 106 consider that it is (a) necessary to make the development acceptable in planning terms, (b) directly related to the development and (c) fairly and reasonably related in kind to the Development. The Inspector will be provided with a Regulation 122 Compliance Statement addressing this in more detail.
Clause 3.1	Statutory powers and enforcing authority	Ensures that the Section 106 Agreement is made pursuant to all relevant enabling powers necessary to give effect to it, namely Section 106 of the Town and Country Planning Act 1990, Section 111 of the Local Government

		Act 1972, Section 16 of the Greater London Council (General Powers) Act 1974 and Section 1 of the Localism Act 2011.
Clause 3.2	Successors in title	Clarifies that the obligations in the section 106 agreement run with the land.
Clause 3.3 - 3.5	Exclusions from liability	Clarify that the obligations in the section 106 agreement are not binding on: <ul style="list-style-type: none"> (a) Individual occupiers of the PBSA Units / Affordable Housing Units (b) Individual occupiers of the Commercial and Community Units (save for specific provisions related to these units). (c) Statutory undertakers. (d) Future mortgagees with a charge over the Site.
Clause 4	Conditionality	Save for a number of operative provisions, the agreement is conditional upon the grant of Planning Permission and Commencement of the Development.
Clause 5	General Provisions	<p>Clause 5.1 clarifies how the Deed operates in light of the Council's duties as a local authority. It also confirms that, save for the TfL contribution, the sums paid under the S106 may be repaid to the Owner if they are unspent/uncommitted for spending within 7 years of the date of receipt.</p> <p>Clause 5.2 clarifies that the Inspector has the ability to determine that an obligation is not Regulation 122 compliant and that no weight shall be given to it and that, in such circumstances, the obligation shall cease to bind the parties.</p> <p>Clause 5.4 gives the Inspector discretion decide which of the proposed definitions of Intermediate Rent Affordability Criteria should apply under the agreement.</p>
Clause 6	Owner Covenants and Council Covenants	This clarifies that the Owner and Council are bound by the relevant Schedules to the Section 106 Agreement. The Owner agrees to notify the Council of any change of ownership of its legal interest in the Site.
Clause 7	Verification and Enforcement	This gives the Council rights of entry onto the Site for the purposes of: <ul style="list-style-type: none"> (a) verifying compliance with the Section 106 Agreement; and (b) remedying a breach of a requirement of the Section 106 Agreement (provided the Owner is given an opportunity to rectify this first).
Clause 8	Disputes	This provides that in the event of a dispute between the parties that cannot be resolved within 10 WD of the dispute arising, the dispute resolution mechanism can be employed.
Clause 9	Limit of Liability	This clarifies that once the Owner has parted with its interest in the Site or the relevant part of it, it shall not be liable for subsequent breaches.
Clause 10	Notices	Contains the provisions for the services of notices under the Section 106 Agreement.
Clause 11	Registration	The Owner is required to register a notice of the terms of the Section 106 Agreement against its freehold interest and to inform the Council when this is done / provide the Council with a copy of the updated title once available.
Clause 12	Monitoring	The Owner is required to notify the Council not less than 15WD prior to its intention to Commence Development and to notify the Council of the intended date of a number of key development milestones in advance of these.

Clause 13	Monitoring Fee	The Owner is required to pay a Monitoring Fee of £23,914.50 to the Council prior to Commencement to cover the Council's costs in monitoring compliance with the Section 106 Agreement.
Clause 14	Interest	Late payments under the agreement are subject to interest at 4% above the Bank of England base rate.
Clause 15	Contracts (Rights of Third Parties Act 1999)	This states that the agreement does not intend to create rights for any third party to enforce the terms of the agreement.
Clause 16	Termination	This clarifies that the Section 106 Agreement will terminate if the Planning Permission expires/lapses/is withdrawn/is quashed.
Clause 17	Compensation and Indemnity	This is the Council's standard drafting clarifying that the Owner indemnifies the Council against any claims against the Council relating to the Owner's non-performance of its obligations under the agreement.
Clause 18	VAT	This clarifies that all payments under the agreement are exclusive of VAT.
Clause 19	Costs	The Owner is required to pay the Council's reasonable and proper legal costs in relation to the Section 106 Agreement.
Clause 20	Good Faith	The parties agree to act in good faith.
Clause 21	Jurisdiction	The Section 106 Agreement is governed by the laws of England and Wales.
SCHEDULE 2 – PART ONE – AFFORDABLE HOUSING		
<u>Key definitions</u> <ul style="list-style-type: none"> Affordable Housing Units (AHU) – 55 AHU, split as 28 London Living Rent Housing Units and 27 Social Rented Units. Intermediate Affordability Criteria - two options have been presented to the Inspector and the Inspector is asked to exercise the blue pencil clause to decide which should apply. London Living Rent Housing Units - means rented housing provided by a Registered Provider that is required to be offered in accordance with the Intermediate Rent Affordability Criteria on a time-limited tenancy: <ul style="list-style-type: none"> (a) with a minimum term of three years unless a shorter term is requested by the prospective tenant; and (b) with a break clause allowing the tenant to end the tenancy any time after the first six months of the tenancy with one month's notice; at rents in accordance with the Intermediate Rent Affordability Criteria. Social Rented Units - rented housing owned and managed by a Registered Provider or the local housing authority and let in accordance with the Council's rent setting policy for social housing and to be provided at rent levels no higher than Target Rents as per Policy statement on rents for social housing, Chapter 2; Updated 14 December 2022 (Department for Levelling up, Housing & Communities), or such other replacement guidance in force and applicable at the relevant time and subject to the limit on rent changes and rent caps and the indexation provisions set out therein 		
1	Design / Construction	The Owner is required to construct/deliver the AHU in accordance with Plan 3 (Affordable Housing Units) and Design and Quality Standards published by the Homes and Communities Agency.
2	Approval of RP	There is a restriction on Occupation of more than 25% of the PBSA Units until the Council has approved the proposed RP for the AHU (save for in circumstances in which the proposed RP is on the Council's preferred list, in which case no approval is required).
3	Delivery of AHU	Prior to Occupation of more than 28% of PBSA Units, the Owner is required to practically complete the AHU and transfer these to an RP pursuant to terms set out in the S106 (see Appropriate Contract).

4	Delivery of AHU	Provides that in the event the Owner has used All Reasonable Endeavours to transfer the AHU to an RP but has been unable to do so prior to the stated deadline of 28% PBSA Occupation, it shall provide the Council with written evidence of this and if the Council is satisfied with the evidence, the restriction will be amended from 28% to 35% Occupation.
5	AHU Service Charge	Any agreements with the RP must include a commitment by the RP to provide schedule(s) of the service charge for the AHU annually and the service charge shall be affordable and fair and a reasonable proportion of the actual costs incurred or anticipated in relation to the AHU.
6	Wheelchair Units	The Owner is required to consult with the Council's Occupation Therapist on any changes to the agreed design of these units and to comply with the Occupational Therapist's reasonable requests.
7	Use of AHU	The AHU shall only be used as affordable housing unless otherwise agreed between any approved RP and the Council.
8	Exclusion from liability (protected tenant)	Clarifies that the AH provisions do not bind protected tenants (being those who have exercised a right to buy).
9	Exclusion from liability (mortgagee of the whole or part of the AHU)	Clarifies that the AH provisions do not bind mortgagee of the whole or part of the AHU provided that the mortgagee notifies the Council of its intention to dispose and has used reasonable endeavours over a period of three months from written notice to complete a disposal of the AHU to a RP/the Council.

SCHEDULE 2 – PART TWO – STUDENT ACCOMMODATION

Key Definitions

- Affordable Student Accommodation – 25.98% of the Student Accommodation Units (198 units)
- Affordable Student Accommodation Rent Cap: (a) for the Academic Year of First Occupation of the Affordable PBSA and the Academic Year starting on every 3rd anniversary thereafter, rents shall not exceed the London Affordable Student Accommodation Rent published by the GLA in the London Plan Annual Monitoring Report (LPAMR), unless the GLA has not increased the rent in the 3 years preceding the relevant Academic Year, in which case the rent cap can be increased by CPI;
(b) for Academic Years not falling within (a), annual rent increases can be the greater of: i) CPI; or iii) rental costs as set out by the GLA in the LPAMR.
- Cascade – in order of priority: (a) Students at a HEI within the Borough; (b) Students at other HEIs with good sustainable transport connections to the Development; (c) any other Student at a HEI; or (d) any other Student with a need to reside in London.
- Eligible Students – students eligible for the income assessed element of UK government maintenance loan for living expenses for the Academic Year that they occupy the PBSA.
- Student Nominations Agreement – an agreement to be entered into between the Owner and a HEI for the allocation of the PBSA Units to Students.

1	PC of the Affordable PBSA	Contains a restriction on Occupation of more than 50% of the PBSA Units until the Affordable PBSA has been Practically Completed.
2	Nominations Agreement for the PBSA	<p>The agreement contains a restriction on Occupation of the PBSA until the Owner has used reasonable endeavours to enter into a Student Nominations Agreement to let the majority of the PBSA Units. Such nominations agreement shall ensure that the Affordable PBSA is let only to Eligible Students during the academic year.</p> <p>If the Owner has used reasonable endeavours to enter into the Student Nominations Agreement but has not been able to secure this by 28 February in the relevant year then the Owner may directly let the PBSA Units provided that the Affordable PBSA is let in accordance with the agreed Cascade.</p> <p>The Owner remains under an obligation to continue to use reasonable endeavours to enter into a Student Nominations Agreement for the next Academic Year.</p>
3	First Occupation of the Affordable PBSA part way through the Academic Year	If the Affordable PBSA is ready for Occupation part way through the Academic Year then the Owner may directly let it in accordance with the Cascade for the remainder of the Academic Year.
4 -6	Affordable PBSA Rent Cap / charges	<p>Clarifies that the Affordable PBSA is subject to the Affordable Student Accommodation Rent Cap and the Affordable PBSA Occupants shall not be liable to any additional rent charges.</p> <p>Requires the Owner to provide annual rents for the Affordable PBSA to the Council prior to the start of each Academic Year</p>
7	Design of Affordable PBSA	Affordable PBSA units to be constructed to same standards as open market units.
8-9	Use during the Academic Year	Affordable PBSA not to be used for any purpose other than Affordable PBSA during the Academic Year. Open Market PBSA not to be used for any purpose other than PBSA during the Academic Year.
10	Use outside of the Academic Year	Clarifies that outside of the Academic Year, the PBSA may be used for wider uses, though priority should be given to those enrolled at a further and/or Higher Education Institution or who occupies the accommodation for uses relating to educational purposes etc.
SCHEDULE 3 – PART THREE – EARLY STAGE VIABILITY REVIEW (“ESR”)		
<u>Key Definitions</u> Substantial Implementation – means the following has been completed in relation to the Development (as a whole) : <ul style="list-style-type: none"> (a) All ground preparation works; (b) The foundations for the core of the Development; and (c) The construction of ground floor slab. 		

1.	Trigger for ESR	An ESR is triggered in the event that Substantial Implementation is not achieved within two years of the date of the planning permission (subject to permitted extensions in the event of judicial review proceedings and/or delays receiving Gateway 2 approvals from the Building Safety Regulator)
2-4	Determining Substantial Implementation	Outlines the procedure for notifying the Council that Substantial Implementation has occurred and the Council confirming this.
5-7	Submission of ESR information	If an ESR is triggered, the Owner is required to submit Development Viability Information to the Council within 20WD of the date that Substantial Implementation actually occurs. This shall include a statement applying the information to the relevant formula 1a within the S106 to determine if a Surplus arises.
8.	Surplus	Any Surplus arising from the ESR will be payable to the Council as a contribution towards off-site Affordable Housing. The maximum amount of any Surplus from the ESR is subject to a policy compliant amount i.e. the Affordable Accommodation Cap (being equivalent to the financial cost of 50% of habitable rooms across the AHU/PBSA being provided as Affordable PBSA).
9 - 15	Procedure for reviewing the ESR information	<p>These paragraphs contain the procedure for the Council's review of the Development Viability Information submitted as part of the ESR. It confirms that the Council may appoint an External Consultant to review the information and the Owner is responsible for the Council's costs in reviewing the Development Viability Information.</p> <p>The Council shall also notify the Owner of its conclusions within 20WD of receipt of the Development Viability Information unless otherwise agreed in writing.</p> <p>The dispute resolution mechanism shall apply to any disputes in relation to the ESR, subject to a number of viability specific qualifications.</p>
SCHEDULE 2 – PART FOUR – WHEELCHAIR ACCESSIBLE PBSA UNITS		
1-4	Wheelchair Accessible PBSA Units	The Owner shall provide Wheelchair Accessible PBSA Units to Eligible Students who require these but shall not be required to provide more than 10% of the total number of PBSA Units as Wheelchair Accessible PBSA Units. The Owner shall construct the common areas to Building Regulation requirements M4(3). The Owner is required to consult with the Council's Occupation Therapist on any changes to the agreed design of these Wheelchair Accessible PBSA Units and to comply with the Occupational Therapist's reasonable requests.
SCHEDULE 2 – PART FIVE – GENERAL PROVISIONS		
1.	CCTV	The Owner is required to submit a CCTV Scheme to the Council prior to first occupation and to implement the CCTV Scheme across the Development (though the Scheme may relate to specific Plots) and comply with the CCTV Scheme for the lifetime of the Development.
2.	Cultural Action Plan	The Owner is required to submit a Cultural Implementation Plan for the delivery of cultural projects across the Development to the Council. The first part (relating to projects during demolition and construction) shall be submitted/approved prior to Commencement. The second part (relating to projects post-Occupation) shall be

		submitted/approved prior to Occupation. The Owner is required to implement the Cultural Implementation Plan for the lifetime of the Development.
3.	Local Employment Agreement	Contains a covenant by the Owner and Council to discharge the obligations under Schedule 4 (Local Employment).
4.	Cycle Link Safeguarding	The Owner is required to reserve an area of land (the 'Cycle Link Area') shown on Plan 5 for a period of 10 years from the date of the S106 Agreement.
5.	Car Club Membership	Requires the Owner to, prior to Occupation, enter into an agreement with a Car Club Operator to permit Occupiers of the AHU to become members of a Car Club and to provide one year's free membership to this to each household.
6.	Travel Plans	Requires a Residential Travel Plan and Student Travel Plan to be submitted/approved prior to First Occupation of the relevant part of the Development and, following approval, the Owner shall implement and comply with these. Also requires payment of a Travel Plan Monitoring Fee of £730 to be paid prior to Occupation.
SCHEDULE 2 – PART SIX – CONTRIBUTIONS		
All Contributions are indexed in line with the BCIS Index except for the Carbon Offset Contribution which is indexed in line with the Consumer Price Index.		
1.	Carbon Offset Contribution	Sum of £159,127 to be paid prior to Commencement and to be used by the Council towards its carbon offset fund.
2.	Employment and Skills Contribution	Sum of £130,831.25 to be paid prior to Commencement and to be used by the Council to support the provision of jobs, training, apprenticeship placements in the Borough. If the Owner demonstrates to the Council's reasonable satisfaction that it has used All Reasonable Endeavours to achieve the local employment targets set out in Schedule 4 then the Council will return to the Owner a portion of this contribution (£43,610.42).
3.	TfL Contribution	Sum of £458,088 to be paid prior to Commencement and to be passed on to TfL for use towards the cost of delivering works on Nine Elms Lane as part of TfL's Healthy Streets Approach
4.	Children's Play Contribution	Sum of £56,250 to be paid to the Council prior to Commencement of the AHU and to be used by the Council for the provision of a calisthenics station and "make space for girls" provision at Heathbrook Park
SCHEDULE 2 – PART SEVEN – COMMUNITY SPACE		
1.	Community Space Management Plan	1 year prior to anticipated PC of Plot 1, the Owner shall submit the draft Community Space Management Plan for approval and shall not Occupy Plot 1 until the plan has been approved.
2.	Community Space Construction	The Owner is required to construct the Community Space prior to Occupation of Plot 1.
3.	Community Space Operation	The Owner is required to operate the Community Space in accordance with the management plan.
SCHEDULE 2 – PART EIGHT – PUBLIC OPEN SPACE		
1.	Public Open Space Specification	Requirement to submit specification for the construction and layout of the POS prior to Commencement.
2.	Public Open Space Works	Requirement to carry out the works set out in the specification prior to Occupation

3.	Public Open Space Management and Maintenance Scheme	Requirement to submit a scheme for the management and maintenance of the POS to the Council as soon as reasonably practicable following Commencement but in any event within 6 months.
4.	Public Open Space Management and Maintenance Scheme	Requirement to maintain the POS in accordance with the scheme for the lifetime of the Development.
5.	Council's right to inspect POS	Provides for the Council's right to access the POS to identify breaches and requires the Owner to remedy breaches
6-10.	Restriction of access / Imposition of rules and signage	Provides for instances where the Owner may be able to restrict access to the POS, impose reasonable rules and regulations governing the use of the POS and erect signage.
SCHEDULE 2 – PART NINE – DISTRICT HEATING NETWORK		
1-3.2	DHN Connection	The Development will be designed to connect to a DHN and the routing will be safeguarded throughout the Site. The Owner shall use All Reasonable Endeavours to allow installation of the DHN apparatus if a connection becomes available.
3.3 – 3.6	DHN Statement	Prior to Commencement the Owner is required to submit a DHN Statement to the Council for approval, which shall set out the energy and heat strategy for the Development and examine the potential for connection to a DHN.
3.7	Time limit	The DHN provisions shall cease to apply in the event that a DHN does not become available in the vicinity of the Development within 5 years of PC.
SCHEDULE 2 – PART TEN – CONTROLLED PARKING ZONE		
1-2	Car Free Provisions	Requirement to notify all Occupiers prior to Occupation that they are not permitted to obtain a parking permit unless they qualify for a disabled persons badge.
SCHEDULE 2 – PART ELEVEN – STUDENT ACCOMMODATION MANGEMENT PLAN		
1-2	Submission/compliance with Student Accommodation Management Plan	The Owner is required to submit a Student Accommodation Management Plan (which is to be based on the draft provided at Annex 3 to the agreement) prior to Occupation and to comply with this for the duration of the use of PBSA element of the Site.
SCHEDULE 3 – HIGHWAY WORKS		
<u>Key Definitions</u> <u>Highway Works</u> - means the works shown for illustrative purposes on Plan 2 to be carried out by the Owner at its own cost which shall include but not be limited to: <ul style="list-style-type: none"> a) provision of a new vehicular crossover ramped access on the eastern side of Sleaford Street to the south-western part of the site; b) construction of one inset loading bay on the adopted highway on the northern side of Sleaford Street; c) a Traffic Management Order under the Road Traffic Regulation Act 1984 to enable the Council to regulate the use of the loading bay detailed in b) above; 		

d) provision of trees and Sheffield cycle stands in the adopted highway on the northern side of Sleaford Street; e) dedication of land within the red-line boundary of the site to the north of the back edges of the proposed perpendicular parking bays and loading bay on the northern side of Sleaford Street, as highway maintainable at public expense, to enable the provision of a footway over which the general public have a right to pass and repass; and f) Section 247 Stopping Up Order or, if the Section 247 Stopping Up Order cannot be made, the construction of five inset parallel vehicular parking bays within the highway on the northern side of Sleaford Street;		
1.	Enter into Highways Agreement	Requirement to enter into Highways Agreement with the Council prior to First Occupation.
2.	Highway Works	Requirement to complete the Highway Works in accordance with the Highway Agreement and the Council's preferred palette of materials prior to Occupation
3.	Specifics of Highways Agreement	Requirement for the Highways Agreement to provide for a bond to be entered into by the Owner with the Council and to provide for a number of contributions to be paid to the Council prior to commencement of the Highway Works.
4.	TfL Section 72 Agreement	Requirement to enter into a Section 72 Agreement with TfL to offer the land shown on Plan 8 for adoption by TfL prior to Commencement
SCHEDULE 4 – LOCAL EMPLOYMENT AGREEMENT		
This Schedule sets out the means by which the Owner and the Council will work together to ensure commitment to maximising employment and training opportunities for businesses/people within the administrative areas of the London Boroughs of Wandsworth and Lambeth (or such other area as may be agreed in writing between the Owner and the Council).		
1.	Provision of opportunities to local businesses	The Owner will work with the Council to ensure local businesses are provided with information about the Development and given opportunities to tender for all appropriate contracts.
2.	Provision of opportunities to local residents	The Owner will work with the Council to use All Reasonable Endeavours to match opportunities in the Employment and Skills Plan (see paragraph 3 below) to residents of the local area, especially those in close proximity to the Site.
3.	Specific objectives for Owner to set out to achieve	Sets out the specific objectives the Owner should set out to achieve, including a target of 20% of supplies and services to be provided by local suppliers, creation of a positive link with schools/employers, encouraging tenants to recruit and train employees from the local area, creating an Employment and Skills Plan to encompass the provisions in the Local Employment Agreement,