

DATED

31 March.

2010

(1) NICHOLAS BERKELEY MASON and ANNETTE JOANNA NEUSTRUP MASON

and

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

A G R E E M E N T

**relating to land known as
FOLEY HOUSE, 11 EAST HEATH ROAD, LONDON NW3 1DA
pursuant to Section 106 of the Town and Country Planning
Act 1990 (as amended) and
Section 278 of the Highways Act 1980**

**Andrew Maughan
Head of Legal Services
London Borough of Camden
Town Hall
Judd Street
London WC1H 9LP**

**Tel: 020 7974 5826
Fax: 020 7974 2962**

CLS/DR/1685.320

THIS AGREEMENT is made the 31st day of March, 2010

B E T W E E N:

1. **NICHOLAS BERKELEY MASON and ANNETTE JOANNA NEUSTRUP MASON** of Foley House, East Heath Road, London NW31DA (hereinafter called "the Owner") of the first part
2. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of Town Hall, Judd Street, London WC1H 9LP (hereinafter called "the Council") of the second part

WHEREAS

- 1.1 The Owner is registered at the Land Registry as the freehold proprietor with Title absolute of the Property under Title Number NGL643820.
- 1.2 The Owner is the freehold Owner of and is interested in the Property for the purposes of Section 106 of the Act.
- 1.3 A Planning Application for the development of the Property was submitted to the Council and validated on 10 June 2009 and the Council resolved to grant permission conditionally under reference number 2009/2777/P subject to conclusion of this legal Agreement.
- 1.4 The Council is the local planning authority for the purposes of the Act for the area in which the Property is situated and considers it expedient in the interests of the proper planning of its area that the development of the Property should be restricted or regulated in accordance with this Agreement.
- 1.5 As local highway authority the Council considers the Highways Works to be carried out pursuant to this section 278 Agreement to be in the public benefit.

- 1.6 For that purpose the Owner is willing to enter into this Agreement pursuant to the provisions of Section 106 of the Act.

2. **DEFINITIONS**

In this Agreement the following expressions (arranged in alphabetical order) shall unless the context otherwise requires have the following meanings:-

- 2.1 "the Act" the Town and Country Planning Act 1990 (as amended)
- 2.2 "the Agreement" this Planning Obligation made pursuant to Section 106 of the Act
- 2.3 "the Development" the erection of two storey ancillary building for work/studio space in connection with main dwelling following demolition of existing garage as shown on drawing numbers Site Location Plan; 508/50/1; 508/50/2; 508/50/3; 508/50/4B; 508/100/1; 508/100/2; 508/100/3; 508/100/4; 508/100/5; 508/100/6; 508/100/7; 508/100/11A; 508/100/12A; 508/100/13A; 508/100/14A; 508/100/15A; 508/100/16A; 508/100/17A; 508/100/18/A; 508/200/1; 508/200/2; Development Tree Report - mm 482Ra
- 2.4 "the Highways Contribution" the sum of £4,015.66 (four thousand and fifteen pounds and sixty-six pence) to be paid by the Owner to the Council in accordance with the terms of this Agreement and to be applied by the Council in event of receipt for the carrying out works to the public highway and associated measures in the vicinity of the Property such works to include the removal of the crossover to the existing garage ("the Highways Works") all works will be subject to final measure and any

level adjustment required and for the avoidance of doubt the Council in accepting this sum does not undertake any responsibility in connection with any required statutory undertakers works and excludes any statutory undertakers costs

2.5 "the Implementation Date"

the date of implementation of the Development by the carrying out of a material operation as defined in Section 56 of the Act and references to "Implementation" and "Implement" shall be construed accordingly

2.6 "the Level Plans"

plans demonstrating the levels at the interface of the Development the boundary of the Property and the Public Highway

2.7 "Occupation Date"

the first date when any part of the Development is occupied and the phrases "Occupy", "Occupied" and "Occupation" shall be construed accordingly

2.8 "the Parties"

mean the Council and the Owner

2.9 "the Planning Application"

a planning application in respect of the development of the Property submitted to the Council and validated on 10 June 2009 for which a resolution to grant permission has been passed conditionally under reference number 2009/2777/P subject to conclusion of this Agreement

2.10 "Planning Obligations Monitoring Officer"

a planning officer of the Council from time to time allocated to deal with all planning obligations pursuant to S106 of the Act to whom

all notices, correspondence, approvals etc must be sent in the manner prescribed at clause 6.1 hereof

2.11 "the Planning Permission"

a planning permission granted for the Development substantially in the draft form annexed hereto

2.12 "the Property"

the land known as Foley House, 11 East Heath Road, London NW3 1DA the same as shown shaded grey on the plan annexed hereto

2.13 "the Public Highway"

any carriageway footway and/or verge adjoining the Property maintainable at public expense

NOW THIS DEED WITNESSETH as follows:-

- 3.1 This Agreement is made in pursuance of Section 106 of the Act, and is a planning obligation for the purposes of Section 106 as aforesaid, and shall be enforceable by the Council against the Owner as provided herein and against any person deriving title to any part of the Property from the Owner and insofar as it is not a planning obligation its provisions may be enforceable by the Council under any relevant statutory powers.
- 3.2 Words importing the singular shall include the plural and vice versa and any words denoting actual persons shall include companies corporations and other artificial persons.
- 3.3 Any reference to a specific statute or statutes include any statutory extension or modification amendment or re-enactment of such statute and any regulation or orders made under such statute.
- 3.4 The clause and paragraph headings do not form part of this Agreement and shall not be taken into account in its construction or interpretation.

- 3.5 It is hereby agreed between the Parties that save for the provisions of clauses 1, 2, 3, 5, 6 and 7 hereof all of which shall come into effect on the date hereof the covenants undertakings and obligations contained within this Agreement shall become binding upon the Owner upon the Implementation Date.
- 3.6 The Council hereby agrees to grant the Planning Permission on the date hereof.
- 3.7 The Parties save where the context states otherwise shall include their successors in title.

4. **OBLIGATIONS OF THE OWNER**

The Owner hereby covenants with the Council as follows:-

HIGHWAYS CONTRIBUTION

- 4.1 On or prior to the Implementation Date to pay to the Council the Highways Contribution in full.
- 4.2 On or prior to the Implementation Date to submit to the Council the Level Plans for approval.
- 4.3 Not to Implement or to permit Implementation until such time as the Council has received the Highways Contribution in full.
- 4.4 Not to Implement nor permit Implementation until such time as the Council has approved the Level Plans.
- 4.5 The Owner acknowledges that the Council has the right reserved to it to construct the Public Highway to levels it considers appropriate.
- 4.6 On completion of the Highway Works the Council may provide to the Owner a certificate specifying the sum ("the Certified Sum") expended by the Council in carrying out the Highway Works.

- 4.7 If the Certified Sum exceeds the Highway Contribution then the Owner shall within fourteen days of the issuing of the said certificate pay to the Council the amount of the excess.

5. **NOTICE TO THE COUNCIL/OTHER MATTERS**

- 5.1 The Owner shall give written notice to the Council on or prior to the Implementation Date specifying that Implementation of the Development has taken or is about to take place.
- 5.2 Within seven days following completion of the Development the Owner shall certify in writing to the Planning Obligations Monitoring Officer in the manner outlined at clause 6.1 hereof quoting planning reference 2009/2777/P the date upon which the Development is ready for Occupation.
- 5.3 The Owner shall act in good faith and shall co-operate with the Council to facilitate the discharge and performance of all obligations contained herein and the Owner shall comply with any reasonable requests of the Council to have access to any part of the Property or any requests to provide documentation within the Owner's possession (at the Owner's expense) for the purposes of monitoring compliance with the obligations contained herein.
- 5.4 The Owner agrees declares and covenants with the Council that it shall observe and perform the conditions restrictions and other matters mentioned herein and shall not make any claim for compensation in respect of any condition restriction or provision imposed by this Agreement and further shall jointly and severally indemnify the Council for any expenses or liability arising to the Council in respect of breach by the Owner of any obligations contained herein save to the extent that any act or omission of the Council its employees or agents has caused or contributed to such expenses or liability.
- 5.5 Payment of the Contribution pursuant to Clause 4.1 of this Agreement shall be made by the Owner to the Council sending the full amount in the form of a Banker's Draft to the Planning Obligations Monitoring Officer referring to the names dates and Parties to this Agreement and citing the specific clause of this Agreement to which such Contribution relates quoting the Income Code ZM812ZL065 or by Electronic Transfer

directly to the Co-Operative Bank plc of 1 Islington High Street London N1 9TR quoting Sort Code 08-90-33 and London Borough of Camden General Account No. 61030019 and to inform the Planning Obligations Monitoring Officer of such payment quoting the above details as if the payment had been made by Banker's Draft.

5.6 All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable in respect thereof and all parties other than the Council shall pay and indemnify the Council against any such value added tax properly payable on any sums paid to the Council under this Agreement upon presentation of an appropriate value added tax invoice addressed to the Owner.

5.7 Any sums referred to in this Agreement as payable or to be applied by any party other than the Council under this Agreement shall be paid or applied TOGETHER WITH if such payment or application is made more than three months from the date of this Agreement a further sum ("A") being equal to the original sum payable ("B") multiplied by a figure being a fraction of which the All Items of Retail Prices ("the AIIRP") figure last published by the Central Statistical Office at the date hereof is the denominator ("X") and the last AIIRP figure published before the date such payment or application is made ("Y") less the last published AIIRP figure at the date hereof ("X") is the numerator so that

$$A = B \times \frac{(Y-X)}{X}$$

5.8 All costs and expenses payable to or by the Council under this Agreement shall bear interest at the rate of 4% above the Base Rate of the National Westminster Bank plc from time to time being charged from the date such payment is due until payment is made.

6. **IT IS HEREBY AGREED AND DECLARED** by the Parties hereto that:-

6.1 The provisions of Section 196 of the Law of Property Act 1925 (as amended) shall apply to any notice or approval or agreement to be served under or in connection with this Agreement and any such notice or approval shall be in writing and shall specifically refer to the name, date and Parties to the Agreement and shall cite the clause of the Agreement to which it relates and in the case of notice to the Council

shall be addressed to the London Borough of Camden, Planning Obligations Officer, Urban Design and Renewal, Planning and Public Protection, Culture and Environment Directorate, Town Hall Annex, Argyle Street, London WC1H 9LP quoting the planning reference number 2009/2777/P and in the case of any notice or approval or agreement from the Council this shall be signed by a representative of the Council's Environment Department.

- 6.2 This Agreement shall be registered as a Local Land Charge.
- 6.3 The Owner agrees to pay the Council its proper and reasonable legal costs incurred in preparing this Agreement on or prior to the date of completion of the Agreement.
- 6.4 The Owner hereby covenants with the Council that it will within 28 days from the date hereof apply to the Chief Land Registrar of the Land Registry to register this Agreement in the Charges Register of the title to the Property and will furnish the Council forthwith on written demand with official copies of such title to show the entry of this Agreement in the Charges Register of the title to the Property.
- 6.5 Nothing contained or implied in this Agreement shall prejudice or affect the Council's powers to enforce any specific obligation term or condition nor shall anything contained or implied herein prejudice or affect any provisions, rights, powers, duties and obligations of the Council in the exercise of its functions as Local Planning Authority for the purposes of the Act or as a local authority generally and its rights, powers, duties and obligations under all public and private statutes, bye laws and regulations may be as fully and effectually exercised as if the Council were not a party to this Agreement.
- 6.6 Neither the Owner nor their successors in title nor any person deriving title from them shall be bound by the obligations in this Agreement in respect of any period during which it no longer has an interest in the Property but without prejudice to liability for any breach committed prior to the time it disposed of its interest.
- 6.7 For the avoidance of doubt the provisions of this Agreement (other than those contained in this sub-clause) shall not have any effect until this Agreement has been dated.

- 6.8 If the Planning Permission is quashed or revoked or otherwise withdrawn or expires before effluxion of time for the commencement of development or is modified (other than by agreement with or at the request of the Owner) this Agreement shall forthwith determine and cease to have effect and the Council will effect cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.

7. **JOINT AND SEVERAL LIABILITY**



- 7.1 All Covenants made by the Owner in this Agreement are made jointly and severally and shall be enforceable as such.

8. **RIGHTS OF THIRD PARTIES**

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

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

EXECUTED AS A DEED BY
NICHOLAS BERKELEY MASON
in the presence of:


.....
Witness Signature


Witness Name Sean Johnston

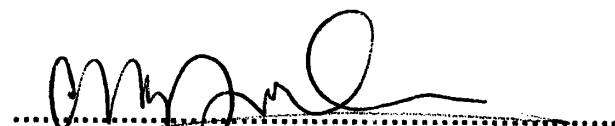
Address GPC London Limited, 35 Britannia Row, Brighton, London NE3 8Q

Occupation Director

(Continuation of Section 106 Agreement, Foley House, 11 East Heather Road, London NW3 1DA)

EXECUTED AS A DEED BY
ANNETTE JOANNA NEUSTRUP MASON
in the presence of:

} 


.....
Witness Signature

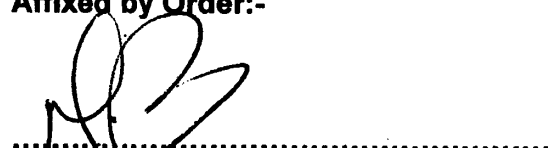
Witness Name Sean Johnston

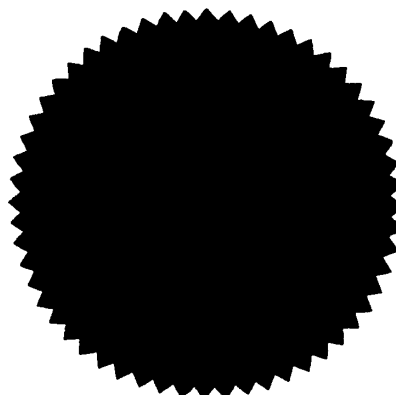
Address Call London Limited, 35 Balaamsgate, W1G 9QJ

Occupation Director

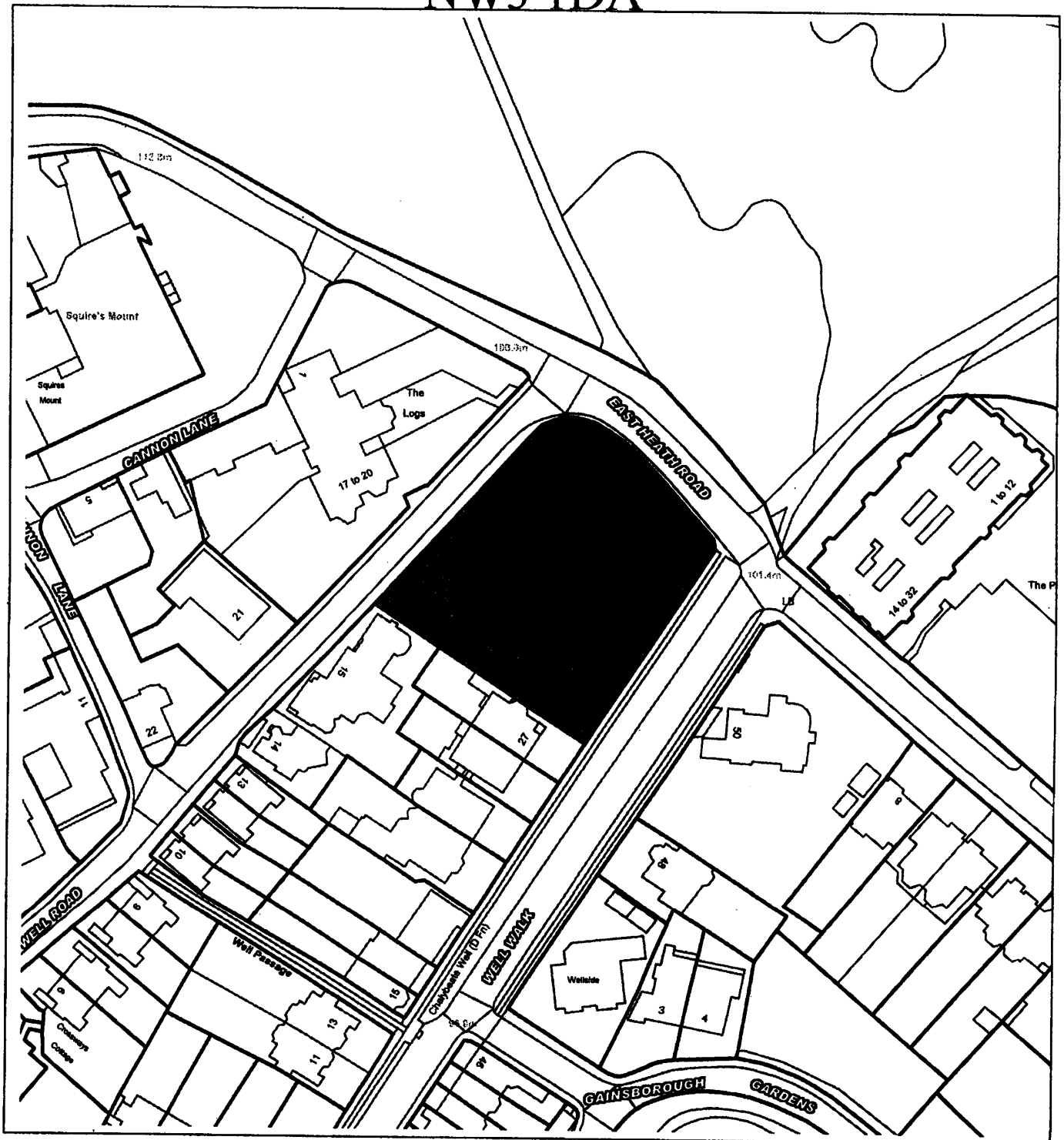
THE COMMON SEAL OF THE MAYOR
AND BURGESSES OF THE LONDON
BOROUGH OF CAMDEN was hereunto
Affixed by Order:-

)
)
)
)


.....
Authorised Signatory



NW3 1DA



This material has been reproduced from Ordnance Survey digital map data with the permission of the Controller of Her Majesty's Stationery Office, © Crown Copyright.

CGMS Consulting
Morley House
26 Holborn Viaduct
LONDON
EC1A 2AT

Application Ref: **2009/2777/P**

12 November 2009

Dear Sir/Madam

DRAFT
FOR INFORMATION ONLY - NOT A FORMAL DECISION
Town and Country Planning Acts 1990 (as amended)

DECISION SUBJECT TO A SECTION 106 LEGAL AGREEMENT

Address:
Foley House
11 East Heath Road
London
NW3 1DA

Proposal:

DECISION
Erection of two storeys rear extension to provide connection with main dwelling following demolition of existing garage.

Drawing Nos: Site Location Plan; 508/50/1; 508/50/2; 508/50/3; 508/50/4B; 508/100/1; 508/100/2; 508/100/3; 508/100/4; 508/100/5; 508/100/6; 508/100/7; 508/100/11A; 508/100/12A; 508/100/13A; 508/100/14A; 508/100/15A; 508/100/16A; 508/100/17A; 508/100/18A; 508/200/1; 508/200/2; Development Tree Report - mm 482Ra.

The Council has considered your application and decided to grant permission subject to the conditions and informatives (if applicable) listed below **AND** subject to the successful conclusion of a Section 106 Legal Agreement.

The matter has been referred to the Council's Legal Department and you will be contacted shortly. If you wish to discuss the matter please contact **Aidan Brookes** in the Legal Department on **020 7 974 1947**.

Once the Legal Agreement has been concluded, the formal decision letter will be sent to you.

Condition(s) and Reason(s):

- 1 The development hereby permitted must be begun not later than the end of three years from the date of this permission.

Reason: In order to comply with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

- 2 A sample panel of all external materials shall be provided on site and approved by the Council before the relevant parts of the works are commenced and the development shall be carried out in accordance with the approval given. The sample panel shall be retained on site until the work has been completed.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the policies B1 (General design principles) and B7 (Conservation areas) of the London Borough of Camden Replacement Unitary Development Plan 2006.

- 3 The ancillary building hereby approved shall only be used for purposes incidental to the residential use and shall not be used as a separate independent Class C3 dwelling or Class B1 business unit.

Reason: To ensure that the ancillary building does not adversely affect the amenity of adjoining residential premises and is not used for unauthorised purposes, in accordance with policies SD6 (Amenity for occupiers and neighbours), H1 (New housing) and E1 (Location of business uses) of the London Borough of Camden Replacement Unitary Development Plan 2006.

Informative(s):

- 1 Your proposals may be subject to control under the Building Regulations and/or the London Buildings Acts. You are advised to consult the Council's Building Control Service, Camden Town Hall, Argyle Street WC1H 8EQ, (tel: 020-7974 2363).
- 2 Noise from demolition and construction works is subject to control under the Control of Pollution Act 1974. You must carry out any building works that can be heard at the boundary of the site only between 08.00 and 18.00 hours Monday to Friday and 08.00 to 13.00 on Saturday and not at all on Sundays and Public Holidays. You are advised to consult the Council's Planning and Public Protection Division (Compliance and Enforcement Team), Camden Town Hall, Argyle Street, WC1H 8EQ (Tel. No. 020 7974 5613 or by email ppp@camden.gov.uk or on the website www.camden.gov.uk/pollution) or seek prior approval under Section 61 of the Act if you anticipate any difficulty in carrying out construction other than within the hours stated above.
- 3 Your attention is drawn to the fact that there is a separate legal agreement with the Council which relates to the development for which this permission is granted. Information/drawings relating to the discharge of matters covered by the Heads of Terms of the legal agreement should be marked for the attention of the Planning

Obligations Officer, Sites Team, Urban Design and Renewal, Camden Town Hall,
Argyle Street, WC1H 8EQ.

- 4 You are advised that the Council expects all development to be as sustainable and energy efficient as possible and welcomes any measures that can be introduced to facilitate this. To this end, you are encouraged to introduce measures that can practically be incorporated into the design of the new building and the subsequent operation of the use.
- 5 Reasons for granting permission.

The proposed development is in general accordance with the policy requirements of the London Borough of Camden Replacement Unitary Development Plan 2006, with particular regard to policies SD1 (Quality of life), SD2 (Planning obligations), SD6 (Amenity for occupiers and neighbours), SD7 (General design principles), B6 (Listed buildings), B7 (Conservation areas), B12 (Protecting open space), N8 (Ancient woodlands and green spaces), T1 (Capacity for transport provision), T3 (Pedestrians and cycling), T4 (Public transport and development), T8 (Car free housing and car capped housing), T9 (Impact of parking) and T12 (Works affecting highways). For a more detailed understanding of the reasons for the granting of this planning permission, please refer to the officers report.

Yours faithfully

Culture and Environment
Planning and Development

DECISION

DATED

31 March.

2010

(1) NICHOLAS BERKELEY MASON and ANNETTE JOANNA NEUSTRUP MASON

and

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

A G R E E M E N T
relating to land known as
FOLEY HOUSE, 11 EAST HEATH ROAD, LONDON NW3 1DA
pursuant to Section 106 of the Town and Country Planning
Act 1990 (as amended) and
Section 278 of the Highways Act 1980

Andrew Maughan
Head of Legal Services
London Borough of Camden
Town Hall
Judd Street
London WC1H 9LP

Tel: 020 7974 5826
Fax: 020 7974 2962

CLS/DR/1685.320