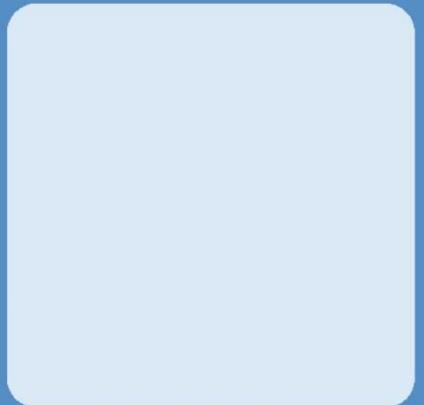
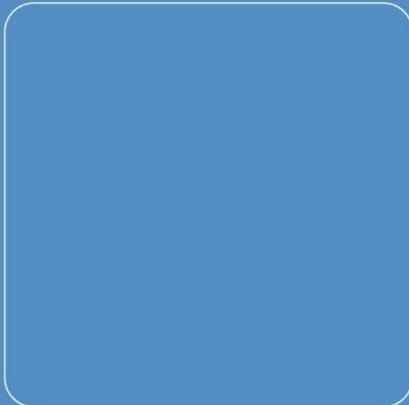


**Museum House, 23-26 Museum Street,
London, WC1A 1JT**

**Statement of Case for the Appeal against
the Refusal of Planning Permission for the
Change of Use of part of the Second Floor
and all of the Third Floor from Office to
Residential (Application Ref: 2016/3411/P)**



RPS

**23-26 MUSEUM STREET, CAMDEN,
LONDON, WC1A 1JT**

**REFUSAL OF PLANNING PERMISSION
FOR THE CHANGE OF USE OF PART
OF THE SECOND FLOOR AND ALL OF
THE THIRD FLOOR FROM OFFICE TO
RESIDENTIAL (APPLICATION REF:
2016/3411/P)**

APPEAL STATEMENT

Date: January 2017

Our Ref: OXF9392

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1 INTRODUCTION

- 1.1 This Appeal Statement has been prepared by RPS Planning and Development Limited (RPS), on behalf of Devonshire Museum House Limited [the Appellant], in support of an appeal against the refusal to grant planning permission (Application No: 2016/3411/P, and referred to as *the current application* in this report) by the London Borough of Camden (hereafter referred to as *the Council* or *LPA* as appropriate) for the “*Change of Use of part second and all of the third floor from Class B1 (Office) use to Class C3 (Residential) use creating 3 two bedroom apartments.*” The appeal site is located at Museum House, 23-26 Museum Street, London WC1A 1JT.
- 1.2 The application that is the subject of this Appeal was refused by the London Borough of Camden on 30th September 2016 (the Decision Notice can be found in Appendix 1a of This Statement). In summary the reasons for refusal are:
- The proposal would result in the loss of employment floorspace which remains suitable for use, it would fail to support economic activity in Camden, particularly small sized businesses and would result in the loss of employment opportunities within the Borough contrary to Policies CS8 of the adopted Local Development Framework (LDF) Core Strategy (CS) and DP13 of the adopted LDF Development Policies (DP)
 - The proposed development, by reason of lack of affordable housing contribution would fail to contribute towards the supply of affordable housing in the Borough and would be contrary to Policy CS6 and CS19 of the CS, and Policy DP3 of the DP.
 - The proposed development, in the absence of a legal agreement to secure the development as *car-free* would be likely to contribute unacceptably to parking congestion in the surrounding area and promote the use of non-sustainable modes of transport, contrary to Policies CS11 and CS19 of the CS, and Policy DP18 of the DP.
- 1.3 This Appeal Statement addresses the reasons for refusal, and sets out the case in support of the proposed development.
- 1.4 The structure of the Statement is as follows: Section 1 of this statement provides an introduction; Section 2 describes the site, the surroundings, the proposed development, relevant background discussions and planning history; Section 3 reviews key Development Plan policies, including national planning policy guidance; Section 4 addresses the reasons for refusal and sets out the Appellant’s case; and, Section 5 sets out the conclusions.
- 1.5 The Appeal statement is submitted together with a number of supporting documents, as follows:
- Completed Appeal forms (see Appendix 2).
 - Copy of all application documentation (see Appendix 1b), including:
 - Application Forms;
 - Application drawings (forming existing floor plans and elevations, and proposed floor plans and elevations) (see Appendix 1c);

- Design, Access and Lifetime Homes Statement;
 - Planning Statement (including marketing information contained within Appendices A-E).
- Draft Statement of Common Ground (Appendix 3).
 - Two draft Unilateral Undertakings, as follows
 - Unilateral Undertaking A (Appendix 4a), which covers only ~~£~~Car-Free developments clauses
 - Unilateral Undertaking B (Appendix 4b), which covers both ~~£~~Car-Free developments and ~~£~~Payment-in-lieu for Affordable Housing Contributions clauses
- 1.6 The Appellant has separately launched an application for costs, which will be dealt with separately to this Appeal.
- 1.7 This statement should be read in conjunction with application documentation associated with Application Reference: 2016/3411/FUL, attached in Appendix 1b of this Report and summarised in Section 2 of this Report.
- 1.8 In summary, the Appellant's case is:
- 1.9 The building has been demonstrated to be not suitable for office occupiers. This is because the numerous changes that would be necessary to enable the building to become attractive to potential occupiers are either not viable or impossible to achieve given the age and design of the building. In addition to demonstrating that the building is not suitable for office use and therefore highly unlikely to be occupied, the Appellant has undertaken a marketing exercise across 9 months, with no interest after the site had been viewed. Planning policy does not require a 2 year marketing exercise for Class B1(a) office development, as suggested by the Council, and it would in any event be unnecessary when the building is patently unsuitable. The Council has consistently agreed with this position on previous applications and has changed its position for no apparent reason, when the same policies apply now as with previous applications.
- 1.10 The building does not breach the thresholds for affordable housing provision/contributions. This is because the new structure erected on the roof has not been considered by the Council to be part of the same development, so is not linked for the purposes of affordable housing. Other permissions have been tied in by a section 106 agreement. In any event, even if this floor was to be included, the building is not capable of accommodating the 10 family units required to breach the threshold for affordable housing. These requirements do not, therefore, apply. As with the employment use issue above, the Council has changed the position it has held on previous applications for no clear reason, when the same policies apply.
- 1.11 The Appellant accepts the need for a legal agreement to ensure that the development is car-free, and accordingly a unilateral undertaking is submitted with the appeal. A secondary Unilateral Undertaken has been submitted in the event that the Inspector considers that an affordable housing contribution is required.

2 SITE, SURROUNDINGS AND THE PROPOSAL

- 2.1 This section sets out a brief description of the site, its surroundings, its planning history and the proposed development.

The Site

- 2.2 The site has been described in detail in the Planning Statement submitted with the original planning application (see Section 2). However, for completeness, the site is located at part of the second and all of the third floors of Museum House, 23-26 Museum Street, London WC1A 1JT, and its current use is for Class B1a (offices). The site is currently vacant.
- 2.3 The site lies within the Bloomsbury Conservation Area and the Central Activities Zone (Central London).
- 2.4 The application site area is approximately 321 sqm, representing the gross internal floorspace of the two floors forming the proposed development (described below).

Surroundings

- 2.5 The surroundings of the site are also described in detail in Section 2 of the Planning Statement. Museum House comprises some 7 floors of uses (including a lower ground floor). The ground floor comprises commercial enterprises, e.g. hairdresser, estate agency office, gift shop and cafe. The majority of the basement is used for storage, with 45 sqm let to Portico for storage and offices ancillary to the use of the business of a letting agent and/or for the business of video and new media producers, with two rooms being used for cycle storage. Part of the first floor forms a single residential unit (converted in the 1970s from offices). The remainder of the first, part of the second, and all of the fourth floor are in the process of being converted from office uses to residential uses following the grant of planning permission (see Planning History below), and a fifth floor residential extension has been implemented on the top of the building. The conversion of the building has generally been as a result of the floors having been vacant for some time with no prospect of their use for office purposes; once it has been established that there is no interest from office users, the Landlord has applied to convert from offices to residential.
- 2.6 The site is located within the Bloomsbury Area of the Borough, which can be described as being an area of mixed character with predominantly commercial uses located at the ground floor of buildings and residential uses occupying the upper floors. There are a limited number of commercial units occupying upper floors.

The Proposed Development

- 2.7 The proposed development is described in full in the accompanying Planning Statement and Design, Access and Lifetime Homes Statement. However, for completeness, we briefly describe the development below.
- 2.8 The Appellant has applied to change the use of two existing vacant Class B1a (office) spaces on part 2nd floor (shown on Collado Collins drawing E1-002, Revision P1 and Titled ~~Existing~~ Second Floor Plan) and the entirety of the 3rd floor (shown on Collado Collins drawing E1-

103, Revision P1 and Titled ~~Existing~~ Third Floor Plan of Museum House to Class C3 (residential) comprising 3 x 2-bedroom units. To accommodate the additional cycle storage required for this application the Applicant can make alterations to the proposed works in the existing lower ground floor currently allocated for cycle storage, and which was submitted and accepted by Camden as part of the application. This is set out on Collado Collins drawing E1-0099 RA, Revision A and titled ~~Existing~~ Lower Ground Floor Plan

- 2.9 The total floorspace being changed comprises 99.4sqm on the 2nd floor and 222.8sqm on the 3rd floor (gross internal areas listed). The layout of the proposed development can be found on the submitted proposed floor plan drawings (Collado Collins drawings P1-102 and titled ~~Proposed~~ Second Floor Plan Revision P1 and P1-103, Revision P1 and titled ~~Proposed~~ Third Floor Plan).
- 2.10 The structural changes to the existing internal layout of the building are minimal and shown on drawings (Collado Collins drawing P1-202, Revision P1 and titled ~~Existing~~ Second Floor Plan . Apartment B, Impact on Existing Fabric and Collado Collins drawing P1-203, Revision P1 and titled ~~Existing~~ Third Floor Plan, Impact on Existing Fabric). No external alterations are proposed with the development. Replacement windows throughout the building have been installed but matched the existing. Cleaning and repairs to the external brickwork are being undertaken.
- 2.11 Application drawings can be found in Appendix 1c.

Planning History

- 2.12 The current application subject to this Appeal is reviewed below. Commentary on previous applications at Museum House (including a previous application for the same proposal subject to this Appeal) can be found in Appendix 5, and for applications/decisions in the surrounding area can be found in Appendix 17. A brief history can also be found in Section 3 of the Planning Statement.

Application Subject to This Appeal – Planning Reference: 2016/3411/P – change of use of part second floor and all of the third floor from Class B1 (offices) to Class C3 (residential)

- 2.13 The current application was submitted on 20th June 2016 and it sought consent for Change of use of part second and all of the third floor from Class B1 (office) to Class C3 (residential) use creating three 2-bedroom apartments. Only internal works were proposed and there would be no external works carried out as part of the development. Access would be derived via the existing access to Museum House.
- 2.14 The proposed development is as proposed in the application that was refused permission by the Council on 15 January 2016 (ref: 2015/5169/P) (hereafter referred to as ~~2015~~ Application), and this is reviewed in Appendix 5e. The only differences between that scheme and the current scheme subject to the Appeal are:
- The space was vacant prior to the submission of the application (previously it was occupied); and

- This application contains the submission of additional marketing information reflecting comments made in the Delegated Report and subsequent conversations with the case officer, particularly details of a specific formal marketing exercise to secure an occupier to the current office spaces.
- 2.15 The application submission included the application forms, application drawings (as listed below), covering letter, Design and Access and Lifetime Homes Statement, CIL Form, Planning Statement (including Appendices A-E regarding marketing information). Copies can be found in Appendix 1 of this report.
- 2.16 The Application form confirms, among other things, that: the site was vacant from 9th May 2016 and its last use was offices. Three 2-bedroom residential units are proposed, and the gross internal area that is proposed to be converted is 321sqm.
- 2.17 The application drawings forming the application at submission were: a Site Plan; a location plan; existing lower ground floor, second floor and third floor plans; proposed second floor and third floor plans, elevation drawings, and proposed impact drawings (relating to existing internal fabric and proposed fabric).

Relevant Correspondence

- 2.18 The Officer wrote to the Planning Agent on 12th July 2016 confirming that the application was considered valid (retrospectively to 20th June 2016 date), and that the determination date is 15th August 2016 (see Appendix 6a). It is understood that the Officer undertook a site visit on 15th July 2016, along with the Appellant's Development Agent.
- 2.19 On 1st August 2016, the Planning Agent submitted additional marketing information prepared by Glinsman Weller Property Consultants (dated 28th July 2016, see Appendix 6b). It set out the marketing tasks to date, including an email announcement to some 650 agents in the West End market on three occasions, marketing materials, including twice circulating a flyer to over 500 agency practices in Central London, Internet advertising via Showcase Each and Property Link It then provides details on the Interest in the property, and indicates that five different bodies (management Consultants, US-based Charity, Locally-based Consultants, Commercial Property Advisors and Casting Agents) viewed the property and unfortunately the space was found to be difficult to let due to inflexibility, poor specifications, lack of DDA compliance, the shared residential entrance and the quality of competition available.
- 2.20 The Officer wrote to the Planning Agent on 1st August 2016 following receipt of the attachment indicating that the consultation period ends on 5th August 2016 (see Appendix 6c), and that the application expires on 6th September 2016. The Officer indicated that they would be recommending approval based on a Section 106 Legal Agreement.
- 2.21 Following an exchange of emails (see Appendix 6d), it was acknowledged by the Officer on 2nd August 2016 that the expiry date was 15th August 2016, and that a Section 106 Legal Agreement was awaiting another Council officer's actions. The Officer requested additional information regarding the change in fenestration as noticed during the site visit and requested the relevant drawings. The email was also dated 2nd August 2016 and includes a draft version of the Section 106 Legal Agreement following discussions with the Council's legal advisor (see Appendix 6e).

Draft Section 106 Legal Agreement

- 2.22 A draft Section 106 Legal Agreement was prepared and provided to the Appellant for review (see Appendix 6f). RPS notes with interest that there is no reference to affordable housing, or in fact, tying the 2016 application back to previous permissions in calculating the need for affordable housing (discussed again elsewhere in this Report).
- 2.23 Section 4 relates to the obligations and states in Clause 4.1 that the Owner would be required to inform each new resident prior to occupation that they would not be entitled to a Resident's Parking Permit unless they are a holder of a disabled persons badge and Clause 4.2 would secure this requirement permanently.
- 2.24 It is RPS's view that this draft agreement reflects agreements attached to previous permission on the property (see below for more details).
- 2.25 The application received a number of consultation responses (six in total). These are summarised in the Delegated Report (referred to as 2016 DR) below for brevity reasons.

Transport Response

- 2.26 Comments from the Transport Strategy team at the Council (dated 4th August 2016) covered two topics: cycle provision and car parking (see Appendix 7). It discusses Development Policy and cycle standards, and indicates that 2 spaces should normally be provided per unit according to the London Plan. It goes on to state that while the proposed stores, which included 16 spaces in total, did not comply with standards found in CPG7, due to its tight nature, the site would not facilitate a suitable alternative. After discussing the adequacy of the stands and the access door, it concluded that the following revisions of the layout, at least 16 spaces (or a number appropriate to a revised layout) should be provided and 6 of these should be dedicated to residents of the new units.
- 2.27 The officer indicated on 8th August that a cycle store would need to be provided with the proposal (see Appendix 8a). The agent for the applicant responded on 9th August 2016 to state that cycle storage would be provided in the basement within the existing cycle storage area, although the total number of spaces would be 12 to meet circulation requirements. In terms of a wheelramp, which the officer requested to be located on the stairs between ground and basement level, subject to technical work the applicant had agreed to provide this and the agent asked for this to be addressed via condition. The agent confirmed that the applicant would make a contribution towards highways works on Museum Street/Little Russell Street. The email also confirmed that the applicant was willing to sign a legal agreement that this would be a car free development and that residents would not apply for parking permits.
- 2.28 The officer sought an updated basement plan to incorporate the cycle storage area and one was submitted with the application on 9th August 2016 (Proposed Lower Ground Floor Plan) and revised on 10th August 2016 (see Appendix 8b for final version). A document addressing fenestration concerns raised by the officer was also submitted on 9th August 2016 (Appendix 9).

Officers Report to Members Briefing Panel (prepared around 11th August 2016)

- 2.29 The Officer prepared a report titled 'Delegated Report (Members Briefing)' (hereafter referred to as '2016 DRMB') which we understand was prepared on or near 11th August 2016, for a

Member Briefing Panel meeting scheduled for 15th August 2016 (see Appendix 10a). The 2016 DRMB sets out the Officer's analysis of the Application based on the relevant planning legislation and material considerations and set out the Officer's proposed recommendations.

- 2.30 It provides a Site Location Plan as well as a selected number of photos at its beginning. It reports the details of the application, provides a summary of the proposed recommendation and provides a draft Decision Notice at the end of the 2016 DRMB.
- 2.31 The 2016 DRMB provides a summary of the consultation exercise, including a summary of responses received and the Officer's responses to concerns raised. RPS summarises these in the table below.
- 2.32 The 2016 DRMB describes the site and indicates, among other things, that the recent planning permissions regarding the conversion of office to residential have been partially implemented. A Planning History summarises the relevant permissions, and includes the reasons for refusal for the same application as being Appealed herewith (see below for more details). It also lists the relevant Planning Policy for the consideration of the Application.
- 2.33 Turning to the Assessment, the 2016 DRMB first discusses the Proposal. Importantly, after accurately summarising the proposal, it indicates that a previous application was refused on two grounds (Paragraphs 1.3 and 1.4).

Table 1 – Summary of Consultee Responses and Officers Comments

Consultee Comment	Officers Reponse
Car parking and pollution	Application is granted subject to Section 106 Legal Agreement securing units are being car free. If not, the scheme will be refused (see Paragraph 6.3)
Adverse impact on amenity, visual impact, character and appearance of conservation area	The comments are not relevant planning considerations as the only external changes relate to the replacement of existing windows, which is considered acceptable.
Impacts on waste collection	Not considered to a material consideration in this instance.
Proposed development disguises larger development by applying in parts	There are previous oplanning permissions for the conversion of other floors to residential and this scheme would make a "more choerent use of the site" (see Paragraph 3.9 of report)
Camden Council is except from relevant permitted development rights.	The Application is for full planning permission, not Prior Approval, and therefore it is being assessed against the main considerations.
Nosie and disturbance from existing construction on site	Every development is accompanied by building works that cause noise and disturbance, but these are controlled by other Acts and re-iterates times when these should only be heard from the boundary of the site.
The proposal does not comply with Lifetime Homes Assessment as lift is unsuitable	The lift is unsuitable given age and layout of building, and it is not a material consideration that would support a reason for refusal. As the age of the host dwelling (sic - building), structural internal changes are not achievable without causing detrimental impact to the host dwelling (sic - building).
Inappropriate marketing for office use - website is not functional	<i>"Marketing undertaken by applicant is considered satisfactorily level of detail and engagement (see paragraphs 3.5, 3.6, 3.7, 3.9). In addition the GW website has been functional and it is currently functional in relation to the marketing for Museum House."</i>
The CBRE Office Availability Schedule is not reflective of availability in surrounding	<i>"The CBRE Office Availability Schedule is considered to present a true state of the available office space in the surrounding area."</i>

2.34 Copies of Consultee responses can be found Appendix 10b of this Report

2.35 In Paragraph 1.4 however, it states that "under the current planning application sufficient evidence through marketing exercise has been submitted in order to contravene the previous reason for refusal" The current assessment will present the previous elements considered

acceptable and will emphasise the additional information provided by the applicant which is vital for the acceptability of the current in order to make the proposal acceptable.” (our emphasis)

- 2.36 Turning to principal material considerations, it lists the following as material in the determination of the application: Land Use; Residential Development Standards; Neighbouring Amenity; Transport; Impact on the Character of the Area and the Bloomsbury Conservation Area; and Affordable Housing.
- 2.37 Turning to Land Use, the 2016 DRMB notes that the previous proposal was made while the floors were occupied by a pair of solicitors firms but that the premises became vacant in March 2016 (Paragraph 3.1).
- 2.38 The relevant policies are quoted (Policy DP2, DP13 and Paragraph 7.4 of CPG5), and then it indicates in Paragraph 3.4 that the Applicant has responded to the Council’s previous reason for refusal by firstly making an assessment of the shortcomings of the office premises, using a reputable local commercial surveying practice and secondly undertaking formal marketing.
- 2.39 The following Paragraph summarises the shortcomings of the property, including its cellular design, shared aspects with residential, lack of DDA compliance, lack of modern specifications, and undesirable potential for commercial tenants, as demonstrated through its vacancy. It summarises the estate agent’s view that the prospect of achieving worthwhile lettings is extremely remote and then refers to the relevant schedule of vacant properties nearby.
- 2.40 Paragraph 3.6 summarises the marketing materials, including reference to Glinsman Weller’s marketing exercises, and then indicates in the following paragraph that the result of the exercise is that the majority of potential occupiers highlighted the existing layout being unsuitable to their needs, the lack of DDA facilities would restrict visitor access, and shared spaces were not considered appropriate, notwithstanding the office’s location as being favourable. It was noted that participants expressed desirability for a more flexible open plan space that can accommodate DDA facilities and be separated from residential units.
- 2.41 Paragraph 3.8 indicates that National Planning Policy Framework (NPPF) Paragraph 22 seeks to avoid the long term protection of employment sites where there is no reasonable prospect of a site being used for that purpose. *“It is therefore considered that a sustained marketing exercise has been undertaken and it has been demonstrated that a continued business use is not feasible. As such, the applicant has now justified the loss of employment floorspace and hence the proposal is considered in line with Policies CS8, DP13 and CPG5 (Our emphasis).”*
- 2.42 *“the existing internal layout of the dwelling appears to indicate residential use when it was first build (sic). The overall impact of the residential use of the entire building is considered acceptable and the proposed development will contribute to a much more coherent and appropriate use of Museum House building.”*
- 2.43 Turning to Residential Development Standards, the 2016 DRMB refers to Policy DP26 (h) regarding acceptable standards, then provides a summary of the relevant sizes, and concludes that the proposed habitable rooms will also have sufficient day/sunlight, ventilation good outlook and dual aspect. It was found that the proposal was acceptable in terms of residential standards (Paragraphs 4.1-4.4).

- 2.44 In terms of Neighbouring Amenity, the relevant policies (CS5 and DP26) were referred to and, it was noted that subject to certain windows being obscure glazed, the proposal would not create harmful overlooking views, impact detrimentally on the light of neighbour or other neighbouring amenities (Paragraphs 5.1-5.2).
- 2.45 With respect to Transport, the 2016 DRMB indicates that 12 cycle spaces would be provided on the Lower Ground Level which were revised based on Transport Officer comments, in compliance with CPG7 (Transport), Policy DP18 (Paragraphs 18.12 and 18.13) and the London Plan. It was noted that while the Council would prefer step-free access to the spaces, it was not considered possible given the current ground floor uses in the building (Paragraph 6.1).
- 2.46 In Paragraph 6.2, the 2016 DRMB refers to Policy DP18 regarding the provision of the minimum necessary car parking, and that the Council expects proposals in Central London to be car free. Noting that the application site scored highly on the Public Transport Accessibility Level (PTAL, 6a), the proposed units will be designated car free and this could be secured by means of a Section 106 Legal Agreement. In the absence of an acceptable scheme, the lack of a S106 forms a reason for refusal.
- 2.47 With respect to the Character of the Area and the Conservation Area, it was found in Paragraph 7.1 that as external alterations had already been implemented (regarding the replacement windows), this is considered to enhance the host dwelling and protect the character of the conservation area.
- 2.48 Affordable Housing was considered next, and Paragraph 8.1 it refers to planning permission ref: 2013/4368/P and its legal agreement. It notes that should the then *“proposed development with any ‘subsequent’ development” of the building result in residential floorspace greater than 1,000m² then the overall development may result in an affordable housing contribution.*
- 2.49 *“It is considered that taking into account subsequent relevant approvals and supporting the approval of the current scheme, the floor space converted to residential would amount to 920m² and hence approval of this scheme would not trigger an affordable housing contribution” (our emphasis).*
- 2.50 The 2016 DRMB recommended the following: **“Granted planning permission subject to a Section 106 Legal Agreement.”**
- 2.51 The 2016 DRMB includes a Draft Decision notice. This indicates that planning permission would be granted subject to the conditions and the successful conclusion of a Section 106 Legal Agreement. There would have been four conditions attached to any permission, which related to:
- Timescale of development . development to be begun within three years of date of the permission;
 - External works . all new external work would be carried out in materials that resemble the existing building in colour and texture;
 - Approved plans . the development shall be carried out with accordance with approved plans and documents; and

- Cycle storage . as per drawing P1-000-Rev P2, the cycle storage facilities shall be provided in their entirety prior to first occupation of the development and permanently retained thereafter.
- 2.52 The draft notice also included four informatives relating to building regulations, noise and construction works controls, Community Infrastructure Levy (CIL) requirements, and control of the use of the Class C3 units with regards to tourist/short-lets.
- 2.53 As an aside, the notes at the bottom of the 2016 DRMB make a reference that the decision to refer application to Planning Committee lies with the Director, and that following a meeting with Members Briefing Panel on 15th August 2016, nominated members will advise of whether they consider the application should be reported to Planning Committee.
- 2.54 RPS is therefore quite concerned that this Report appears to no longer represent the officer's professional opinion as the facts, the assessment and conclusions were all changed substantially following the members briefing.

Officers Email dated 18th August 2016 covering Members Comments

- 2.55 The application was taken to Members Briefing on 15th August 2016, and that members raised concerns regarding the level of parking, affordable housing and the proposed Section 106 agreement. The officer sent an email on 18th August 2016 (see Appendix 10c) with members comments relating to:
- marketing price as compared to similar business uses in Central Activity Zone;
 - misleading information in the planning statement regarding the other half of the first floor unit, which the officer could not find any permission which confirmed it has already been converted to residential from office (see Paragraph 3.4 of the Planning Statement);
 - that the information within the Planning Statement (paragraph 5.31, relating to whether the proposal would breach the thresholds requiring the need for an affordable housing provision) appears to be false. The officer then quoted the relevant policy and the Section 106 agreement for application 2013/4368/P (relating to part 2nd and all fourth floor conversion), including making reference to clauses relating to subsequent development at Museum House. The officer then concludes that the proposal would exceed the 1,000sqm threshold, and makes reference to the guidance found in CPG8, which would need to be checked.
- 2.56 The officer then suggested in the same email that an extension to the determination deadline would be appropriate given the comments made by members as summarised above. In a response on 19th August 2016, the agent for the Applicant confirmed an extension to the determination deadline was extended to 30th September 2016 (see Appendix 11).

Agent's Response dated 9th September 2016

- 2.57 The agent for the applicant submitted an additional response to the above officer's comments on 9th September 2016 (see Appendix 12a) which included additional information on marketing details, use of first floor; affordable housing; and third party objections (including one received on 5th September 2016 (see Appendix 12b). In terms of marketing, an update of the marketing of the site was provided through an additional letter from Glinsman Weller,

estate agents for the applicant, and indicated that in the 6 months that the property was on the market, no offers were received from potential occupiers, and no viewing has been requested since mid-July. The lack of offers, according to feedback, is due to the building's lack of DDA compliance, being a mixed use building and inflexibility of the floor areas. It also confirmed that the rent sought was not found to be a reason why offers were not being made.

- 2.58 With respect to the first floor issue (the officer indicated that part of this floor was still in office use), the agent's letter confirms that planning permission was granted for a lawful residential use on one half of the floor, and it has been taxed as a domestic property. It goes on to explain that the confusion regarding whether this part of the floor was in office use arises from the fact that it was vacated for a short basis from December 2015 to facilitate construction on site, particularly to enable contractors to gain access to a kitchen and toilet facilities. It was confirmed in the letter that the space would return to permanent residential use following completion of the works at Museum House.
- 2.59 In terms of affordable housing, the agent reviews the context behind the application, and provides additional information on the factual position regarding the relevant thresholds for making a necessary contribution, as:
- The proposal only comprises three units, and 321sqm (gross internal area);
 - If adding this amount to the previous permissions from 2013-2015, the total floor space would comprise 923sqm or 8 units, well below the Council's 1,000sqm threshold;
 - The agent points out that the legal agreement attached to the fifth floor apartment (ref: 2014/4117/P does not include the requisite legal clauses to be included in the equation. The result being that the amount of floorspace created is 774sqm (or 7 units);
 - It would not be appropriate to include the existing first floor residential unit which was created by the 1976 consent.
- 2.60 The data was previously presented to the Council in the pre-application advice request (summarised below), and the formal pre-application advice from the Council (and reviewed below) confirmed that the threshold would not be breached. The delegated report for the previous application (refused) addresses this again (see later in this Section for more details). It notes that there was no change in circumstances since that time [of the previous refusal] and thus concludes that affordable housing contribution is not required.
- 2.61 The letter then addressed third party objections, relating to: marketing; offices and change of use; car parking; and domestic waste. In terms of marketing, the agent noted that no evidence was provided by the objector regarding the questioning of the marketing evidence, and that the timing of the applications related to vacancy of spaces. In terms of change of use, the objector's interpretation of the policy was incorrect, and change of use can occur in certain circumstances. In terms of car parking, the applicant would be willing to enter into a legal agreement securing the car-free nature of the development (as with previous permissions at Museum House). With respect to waste, three points were raised covering this matter: this was not a significant issue with other recent permissions, there are internal storage spaces provided and leaving bin bags is the only practical solution during refuse collection.
- 2.62 Additional correspondence was submitted by the Agent on 23rd September 2016 (see Appendix 13a) setting out a response to one of the objectors of the planning application

(Replay Film and New Media) whom occupy part of the Lower Ground Floor of Museum House (see Appendix 13b for a copy of the objection). Their concerns related to access during construction; risks to their operation through the sharing of space with the bike storage provision; signage; condition of communal areas; impact of current works; loss of employment space where operator exists; eviction from other spaces in Lower Ground Floor; questioning of rents offered as part of marketing exercise; and landlord/tenant matters). The agent's letter indicated that the objector, who operates a business on the lower ground floor of Museum House, is in breach of the terms of their sub-lease relating to use, particularly that it operates a substantial Class D2 leisure sub-use (the Secret Studio) which was not identified within the objector's representations. The agent sets out why the use is not permitted within the context and discusses the objector's potential to submit a Certificate of Lawful Use. It concludes that the Council should not be drawn into a dispute between private landlord/tenant matters, as this is not relevant to the application (this was subsequently acknowledged by the Council - see below for more details). The agent's letter then goes on to discuss the part of the objection relevant to the application (relating to the loss of employment generating space in the building and the quality of the basement space). In terms of the first point, the agent argues that the objector has misinterpreted the policy thrusts, which in Policies CS8 and DP13 are to retain a business use, primarily those in Use Class B (office-based employment). There is only one criterion (f) of the Policy CS8 which makes reference to other employment uses. Policy DP13 is clearer that it relates to business use and makes no reference to leisure uses, such as the Secret Studio which Replay operates in the Lower Ground Floor as a sub-use to its film business and discussed earlier in the letter. The objector's concern had appeared to be related to the communal entrance, stairwells, etc and concerns regarding the movement of cycles from the ground to the basement level. The agent confirmed that the wheel-ramp on the stair case could be secured via planning conditions. The agent also put forward another potential condition requiring the communal areas and stairwell to be maintained to an agreed standard.

- 2.63 In terms of the quality of the basement space, it was argued by the agent that the basement areas were significantly poorer office space, due to the fact that there is no natural light, and while the existing business operates from the space due to its unusual requirements, it was far from a modern office space.

Officer's email dated 27th September 2016

- 2.64 A further email from the officer dated 27th September 2016 (see Appendix 14) set out that the Council still did not consider the proposal acceptable. In terms of the marketing exercise, it was found that it was insufficient, in that the policies suggest it should be undertaken for at least 2 years. The proposal was considered to be unacceptable on these grounds.
- 2.65 Turning to the Section 106 agreement, the officer indicates that the Council considers the situation to be quite clear, in that the 2013 agreement includes a clause regarding subsequent development (re-quoted in the email), and the Council did not accept the argument that was present by the agent (that as the S106 agreement attached to the fifth floor permission (ref: 2014/4117/P) did not include a similar clause tying it to the 2013 agreement, that area does not apply in the aggregate total floorspace for affordable housing purposes). The Council considers that the applicant remains bound to the terms of the 2013 S106 agreement (e.g. that an affordable housing contribution is required when 1,000sqm of aggregate residential

floorspace is created) and the Council would seek contribution to affordable housing based on its calculations that the residential floorspace created is greater than 1,000sqm.

- 2.66 The Officer also indicated that no planning records confirm that the first floor residential conversion was granted in 1976 and therefore evidence would be required to demonstrate it is a lawful use in the same email (however, this comment was withdrawn by the officer on 28th September 2016 following the identification of permission for the conversion (Ref: 22896) . see Appendix 15).
- 2.67 In the same email the officer also indicates that the business use in existence on the lower ground floor was not raised in the previous planning application, and the Lower Ground Floor plan as submitted is inaccurate.
- 2.68 The officer finished the email indicating that the application will be refused on 30th September 2016.
- 2.69 The agent replied on 28th September 2016 (see Appendix 16) with further questions regarding affordable housing, and general puzzlement regarding the comments, and asked for the Delegated Report to clearly set out the calculations regarding affordable housing. It also confirms the applicant did not want to withdraw the application.

Delegated Report

- 2.70 The Delegated Report (referred to as 2016 DRq (see Appendix 1d) indicates that 6 consultations responses were received, and a summary of the responses are listed in the report. There were responses on parking; over-development, privacy/overlooking; noise; visual impact; amenity; bulk/mass; and impact on character and appearance of conservation area; number of developments on site; prior approval concerns; accessibility; inappropriate levels of marketing; and disturbance to existing business.
- 2.71 The Bloomsbury Conservation Area Action Committee did not respond to comment, but an objection was received from the South Bloomsbury Tenants and Residents Association regarding the suitability of the marketing information submitted and concerns regarding waste.
- 2.72 A description of the site was provided, and a summary of the planning history for the property and surrounding area (including reference to 28 & 37 Museum Street. A list of relevant policies was provided as was a description of the proposal (including a note that the same proposal was recently refused permission being contrary to policies DP13 and CS8).
- 2.73 The 2016 DR considered the following principal considerations:
- Land Use
 - Conservation and Design
 - Residential Development Standards;
 - Neighbouring Amenity;
 - Transport; and
 - Affordable Housing.

- 2.74 In terms of land use, Section 3 of the 2016 DR confirms that the current use is office, and that during the life of the previous application, the floors subject to conversion were occupied by a pair of solicitors' firms, but that it was vacant from March 2016.
- 2.75 Policy DP2 indicates the Council will seek to maximise the supply of housing, but it also refers to Paragraph 28 of the supporting text stating that this does not override the need to protect non-residential uses (2016 DR Paragraph 3.2).
- 2.76 Policy DP13 is quoted in 2016 DR Paragraph 3.3 and it confirms that the Council will resist the change of business uses unless it is demonstrated that the building is no longer suitable for its existing business use; and that there is evidence that retaining, reusing or redeveloping the site for a similar or alternative business use has been fully explored over an appropriate period of time.
- 2.77 The 2016 DR Paragraph 3.4 refers to Paragraph 13.5 of the supporting text indicating that applicants must demonstrate that there is no realistic prospect of demand as an employment use by submitting "*evidence of a thorough marketing exercise, sustained over at least two years. The property should be marketed at realistic prices, include a consideration of alternative business uses and layouts and marketing strategies, including management of the space by specialist third party providers*" (Paragraph 3.4).
- 2.78 The following paragraph of the 2016 DR sets out that CPG5 provides a list of considerations when converting office space, including the criteria in Paragraph 13.3 of Policy DP13 (2016 DR Paragraph 3.5) and then the report acknowledges that the Applicant has responded to the previous reason for refusal by making an assessment of the shortcomings of the property and secondly, undertaking a formal marketing (2016 DR Paragraph 3.6).
- 2.79 The report summarises the applicant's view that the office space is unsuitable for a variety of reasons, including: its cellular design, shared aspect with residential, lack of DDA compliance, and lack of modern specifications makes it unsuitable for modern office use and undesirable for potential commercial tenants, as demonstrated by the current vacancy of the site. The report also mentions the letter from the agent, which indicates that the prospects of achieving worthwhile lettings as being extremely unlikely because the premises was of such poor specifications and lack of DDA compliance. The letter also includes reference to the availability of nearby offices and vacant properties. (2016 DR Paragraph 3.7).
- 2.80 A review of marketing information is carried out in 2016 DR Paragraph 3.8, which acknowledges that it was also submitted and updated on 1st August 2016. The report then indicates that an email announcement, marketing materials, board on site and internet advertising has taken place since the property was vacant in March 2016. Several flyer distributions to other agencies were sent out on five different occasions.
- 2.81 A summary of the results was made in 2016 DR Paragraph 3.9. The results indicate that while the location was desirable, the existing layout, being in a mixed use building, lack of DDA facilities, no data cabling, no air conditioning and other features were which were not considered appropriate (shared lift spaces, etc). It was noted during inspections, participants expressed a desire for more flexible layouts/open-plan space.
- 2.82 The 2016 DR acknowledges in Paragraph 3.10 that "*the internal layout is partitioned and the facilities may not be highly desirable for office use in their current state; however, it is considered improvement works can take place in order to accommodate such use.*" It goes on

to state that there is no demonstration of works undertaken to accommodate a range of business types such as small and medium enterprises, as stressed by Policy DP13. It also notes that there was no information submitted with the marketing exercise that suggest the premises has been marketed by a specialist third party provider, and therefore concludes that *“insufficient evidence has been provided to demonstrate the infeasibility of continued business use on the site”*.

- 2.83 In the following paragraph, the 2016 DR indicates that the previous business tenant may have left because they had come to the end of their lease as opposed to being dissatisfied with the premises, and further the time allocated to the marketing exercise (being approximately 7 months at that time) was not considered sufficient to be able to demonstrate there was no interest in the space.
- 2.84 Turning to neighbouring properties, it was found that 37 Museum Street conversion was a different situation due to its Grade 2 listing, which would unreasonably increase costs of refurbishment. It was found that with the previous approvals at Museum House, it was noted in the Report that continued office use would remain on the site (following the grant of the permissions for both the first floor and part 2nd/all fourth floor conversions, as discussed below) but this would be extinguished with the current proposal. Reference was made to an Appeal decision at 61-65 Charlotte Street where an Inspector upheld the Council’s judgement with respect to that proposal, on whether it was satisfactorily demonstrated that the floorspace was no longer suitable for continued business use.
- 2.85 Turning to the NPPF, the report discusses Paragraph 22 which indicates that Councils should avoid the long term protection of sites allocated for employment uses *‘where there is no reasonable prospect of a site being used for that purpose’*. In this respect, it was found that the time allocated to the marketing exercise was not considered sufficient and it was not demonstrated that a continued business use is not feasible.
- 2.86 In Paragraph 3.13 of the 2016 DR, it was concluded that the proposal was contrary to Policies CD8, DP13 and CPG5.
- 2.87 In terms of conservation and design matters, 2016 DR Section 4 indicates that the only external alterations to the building were already completed (the replacement of the windows) and it was considered the proposal would not harm the character of the conservation area.
- 2.88 2016 DR Section 5 covered the assessment of Residential Development Standards, Policy DP26 requires the proposal to be of an acceptable standard of accommodation (e.g. arrangement, sizes and amenity space), and the proposal was found to be acceptable, with adequate day/sunlight and ventilation provided in both the 2nd floor and 3rd floor units.
- 2.89 In terms of neighbouring amenity, 2016 DR Section 6 states that Policy CS5 sought to protect the amenity of residents and those visiting or working in the Borough and Policy DP26 sought to protect the quality of life of occupiers and neighbours by only granting permission where it would not harm neighbouring amenity. It was found that, subject to certain obscuring of windows for one of the 3rd floor units’ bathrooms, it would not create harmful overlooking, impact on light of neighbouring dwellings or amenities.
- 2.90 2016 DR Section 7 addressed transport considerations, and indicated that the proposal included provision for cycle parking spaces (having been revised) which made it comply with CPG7, Policy DP18 and the requirements of the London Plan.

- 2.91 The 2016 DR goes on to state that Policy DP18 indicates that the Council will ensure minimum necessary car parking is provided with developments, and the Council expects car-free developments in the Central London Area among elsewhere. While the site was found to have a high level of accessibility to public transport, the car-free element would be secured through a Section 106 agreement. It concludes that in the absence of an acceptable scheme, a lack of a Section 106 agreement for car-free development forms a reason for refusal.
- 2.92 2016 DR Section 8 covers affordable housing provision. The report refers to the planning permission for part of the second and all of the fourth floor, and the associated Section 106 agreement. The agreement indicated that should development, along with subsequent development, together result in greater than 1000sqm, then this may result in an affordable housing contribution. The report indicates that the proposal fails to provide affordable housing within the development or any justification as to why it could not be provided.
- 2.93 The 2016 DR refers to Policy DP3, indicating that the Council would expect any residential development with a capacity of 10 or more dwellings to contribute to affordable housing supply and that the supporting text in Paragraph 3.8 indicates that the Council sees any additional floorspace of 1,000sqm (gross) is capable of delivering 10 family dwellings. It goes on to state that CPG2 advises that floorspace would be assessed in terms of Gross External Area, and on this basis, the report indicates that gross floorspace conversions for applications: 2014/4117/P; 2013/7239/P and 2013/4268/P indicate an average of 1,035.9sqm¹
- 2.94 In Paragraph 8.4, the 2016 DR concludes that the proposal fails to contribute to the supply of affordable housing and therefore the proposal is contrary to Policy CS6 and CS19.
- 2.95 The 2016 DR provides an overall recommendation in Section 9, which is to refuse planning permission.
- 2.96 Planning permission was refused on 30th September 2016 (see Appendix 1a) with the three Reasons for Refusal as summarised in Section 1 of this Report (relating to loss of employment space; lack of contribution to supply of affordable housing; and in absence of legal agreement securing the development as being car-free, contributing to unacceptable parking congestion). An Informative was attached to the decision indicating that Clause 2.4 of the Section 106 legal agreement of planning application ref: 2013/4368/P requires the provision of affordable housing or provision of affordable housing off-site.
- 2.97 It is this decision that is subject to Appeal.

¹ It is assumed that the current proposal was also included in the area, although Paragraph 8.3 of the Report does not specifically state this.

Other Applications at Museum House, 23-26 Museum Street

2.98 The following permissions and other correspondence at Museum House are relevant to the consideration of the above application, particularly as these would shed light on how the Council has previously applied the policy tests regarding the conversion of the property.

- Planning Application Ref: 2013/4368/P . Partial change of use from office (B1a) to residential (Class C3) at fourth floor and part second floor levels to provide 3 x 2 bedroom flats, and change of use of an office at lower ground floor level for use as a bike store (hereafter referred to as the £2013 Planning Permission) . granted permission on 15th October 2013 (see Appendix 5a)
- Planning Application Ref: 2013/7239/P . Change of use of part of the first floor from offices (B1) to self contained residential flat (Class C3) (hereafter referred to as the £2014a Planning Permission) . granted on 29th October 2014 (see Appendix 5b)
- Planning Application Ref: 2014/4117/P . Erection of a 5th floor roof extension for use as a self-contained flat (Class C3) with roof terrace and cycle storage at lower ground floor (hereafter referred to as the £2014b planning permission) . granted on 11 March 2015 (see Appendix 5c)
- Pre-Application Advice Ref: 2015/3700/PRE . Pre-application Advice regarding change of use of part-second and the third floor of the property from Class B1 (office) use to class C3 (residential) use . letter dated 25th August 2015 (hereafter referred to as the £2015 pre-app advice) (see Appendix 5d)
- Planning Application Ref: 2015/5169/P . Change of Use of part second and all of the third floor from Class B1 (Office) use to Class C3 (residential) use creating 3 two bedroom apartments (hereafter referred to as the £2015 application) . refused on 15th January 2016 with two reasons for refusal (loss of employment floorspace and unacceptable contribution to parking congestion in absence of a legal agreement securing car-free development) (see Appendix 5e)

2.99 A summary of these can be found in Appendix 5 for brevity reasons.

Applications at Surrounding Properties

2.100 As noted above, a number of decisions (either at application or at appeal) were referred to by either the Applicant's agent or within the Delegated Reports. These are as follows:

- 28 Museum Street
- 31 Museum Street
- 37 Museum Street
- 61-65 Charlotte Street

2.101 Each are summarised in turn in Appendix 17 of this Report for brevity reasons.

Relevance of Planning History

- 2.102 There are a number of key points that can be derived from the planning history that we explore in further detail in later sections of this Report. In particular, there is a wide range of ways the Council has applied the test of Policy DP13, which are inconsistent. For example, in several of the consents reviewed above, the Council had not indicated that they would expect significant improvements to be undertaken, or the space to be made available on the open market, before it could be satisfactorily concluded that the buildings were considered unsuitable; however, with the 2016 Application, the 2016 DR indicates that the Council now expects significant improvements to be considered/undertaken before they reach this conclusion.
- 2.103 Furthermore, the Council has been inconsistent with regards to the amount and degree of marketing evidence required with an application to meet the requirements of Policy DP13. In particular, the Council accepted the list of available accommodation elsewhere as sufficient with respect to the 2013 and 2014a Planning Permissions, while rejecting the same amount of information or more with the 2015 and 2016 Applications. In the surrounding area, with the proposal at 28 Museum Street, there was no evidence of marketing material (only that it was vacant in the same way as the current site), nor was there any marketing information submitted for the proposal at 37 Museum Street. 31 Museum Street was in fact occupied by a tenant at the time approval was granted, without any marketing information having been submitted, and the Council accepted it would not be suitable for future business use.
- 2.104 Additionally, the Council has made reference to, but does not discuss or reflect on the guidance found in the second clause of NPPF Paragraph 22 (where it states that applications should be treated on their merits having regard to market signals), and how this clause inter-relates with Policy DP13, particularly given that the former post-dates the latter and sets out a much lower test (to reflect the priority of the Government in converting appropriate spaces to much needed housing, for example). This is discussed again in the next two sections.

3 PLANNING POLICY CONTEXT

- 3.1 For brevity reasons, this section summarises key Development Plan policies as well as other material planning policies, which RPS considers to be of relevance in the assessment of the current application. Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004 together require that planning applications should be determined in accordance with the statutory Development Plan unless material considerations indicate otherwise.
- 3.2 For the purposes of this Appeal the Development Plan comprises the policies found within the London Plan (as amended in 2016), the Camden Core Strategy (CS) and the Camden Development Policies (DP) (both adopted in November 2010), where they are consistent with the overarching principles of the National Planning Policy Framework (NPPF). The Camden Site Allocations document also forms part of the Development Plan (adopted in September 2013), but the site is not subject to a specific allocation.
- 3.3 A detailed review of all policies, material considerations and relevant extracts can be found in Appendix 18 of this Report, and for brevity reasons, only relevant policies are listed here.
- 3.4 A new Local Plan is currently being prepared to replace the adopted Development Plan, and an independent examination is currently being undertaken into the soundness of the plan. The Council has released a number of proposed modifications to the Local Plan, to address soundness considerations. The modifications version of the Plan is reviewed under Other Considerations below as it does not form part of the Development Plan at this stage, particularly as there are still objections to the soundness of the plan which will need to be resolved. However, it is possible that the Local Plan will have been adopted by the time this Appeal has been decided, and it is therefore reviewed in Appendix 18 alongside other material considerations.
- 3.5 A detailed discussion of relevant policy can be found in the following section of this report.

The Development Plan

- 3.6 The London Plan sets out strategic policies for London. Most relevant to this Appeal are:
- Policy 3.3 (Increasing Housing Supply)
 - Policy 4.2 (Offices)
 - Policy 4.3 (Mixed Use Development and Offices)
- 3.7 The CS sets out the overall strategy policies in Camden, and the most relevant policies for this Appeal are:
- CS1 (Distribution of Growth)
 - CS4 (Areas of More Limited Change)
 - CS5 (Managing the Impact of Growth and Development)
 - CS6 (Providing Quality Homes)

- CS8 (Promoting a Successful and Inclusive Camden Economy)
- CS9 (Achieving a Successful Central London)
- CS11 (Promoting Sustainable and Efficient Travel)
- CS13 (Tackling Climate Change through Promoting Higher Environmental Standards)
- CS14 (Promoting High Quality Places and Conserving Our Heritage)
- CS18 (Dealing With Our Waste and Encouraging Recycling)
- CS19 (Delivering and Monitoring the Core Strategy)
- DP1 (Mixed Use Development)

3.8 The relevant DP policies are as follows:

- DP2 (Making Full Use of Camden's Capacity of Housing)
- DP3 (Contribution to the Supply of Affordable Housing)
- DP5 (Homes of Different Sizes)
- DP6 (Lifetime Homes and Wheelchair Homes)
- DP13 (Employment Sites and Premises)
- DP16 (The Transport Implications of Development)
- DP17 (Walking, Cycling and Public Transport)
- DP18 (Parking Standards and Limiting the Availability of Car Parking)
- DP22 Promoting Sustainable Design and Construction

3.9 In addition to Development Plan policies, the following are relevant material considerations for the purposes of considering this Appeal. A summary can be found in Appendix 18, along with the relevant extracts.

- National Planning Policy Framework (NPPF), March 2012 . Paragraphs 7, 14, 17, 22 and 51.
- Camden Planning Guidance (CPG) supplementary planning documents .
 - No.2 (Housing), May 2016,
 - No.5 (Town Centres, Retail & Employment), September 2013; and
 - No. 8 (Planning Obligations), February 2015.
- Emerging Camden Local Plan (submission draft), June 2016 . Policy H1 (Maximising Housing Supply); Policy H2 (Maximising the Supply of Self-Contained Housing from Mixed-Use Scheme); Policy H4 (Maximising the Supply of Affordable Housing); and Policy E2 (Employment Premises and Sites).

- Camden Background Paper: Employment and Jobs (June 2016)
- Camden Employment Land Study 2014
- General Permitted Development Order (Schedule 2, Part 3, Class O)

4 STATEMENT OF CASE

- 4.1 In this Section, the three reasons for refusal are addressed in turn below and then it sets out the Appellant's full case with respect to why planning permission should be granted.

Reason for Refusal No. 1

- 4.2 The first reason for refusal relates to the loss of employment space which remains suitable for use, it would fail to support economic activity in Camden particularly small sized business and would result in loss of employment opportunities contrary to Policy CS8 and DP13.
- 4.3 Policy CS8 seeks to safeguard employment sites that meet the needs of modern industry, and in the supporting text both confirms that the Council has sufficient sites to meet its needs, primarily through new build development (and hence modern standards and features) and that this would result in the release of older premises for other uses, particularly for housing (Paragraph 8.8).
- 4.4 The Council has already accepted this approach in terms of land use considerations at Museum House, specifically with the 2013 and 2014a Planning Permission, and it is clear from the 2015 and 2016 DRs that the Council did not even consider CS8 in their discussion, unlike the 2013 and 2014a DRs, which clearly recognises Policy CS8's support for Museum House's conversion on those occasions (indeed, the 2013 DR clearly set out the support for converting older office premises).
- 4.5 RPS demonstrates below why Museum House does not meet the needs of modern businesses (suitability test to Policy DP13), in particular due to structural and access difficulties making the site less attractive to office users. It is RPS's view that Policy CS8 and its supporting policy specifically support the replacement of older premises as noted by previous officers and therefore the proposal is not contrary to Policy CS8.
- 4.6 RPS's view that the proposal is acceptable in policy terms was supported in the Officer's original assessment as set out in the 2016 DRMB, which states in Paragraph 3.8 that ***"the applicant has now justified the loss of employment floorspace and hence the proposal is considered in line with policies CS8, DP13 and CPG5."***
- 4.7 Policy DP13 sets out two tests regarding considering whether a property can be converted from an employment use to a residential use. We address each in turn below.

Whether the Property is Suitable?

- 4.8 The first test of the policy is whether the site/space is considered to be no longer suitable for its existing office use. CPG5 provides significantly more detail as to what the Council would be looking at when considering the suitability of the property for continued employment use. In particular, Paragraph 7.4 indicates the age, features, quality and whether it was purpose built (and whether significant investment is required to bring it up to standards), presence of existing tenants, location of premises and evidence of demand for spaces in the location, and whether the space provides accommodation for small and medium business. Evidence was submitted that the features of the building were inadequate, as found within the Planning

Statement submitted with the 2016 Application. These found that the property lacked many modern features that ranked in poorly against other properties, including:

- Inflexibility of office space . comprising a series of rooms instead of open plan offices and as most of the walls are structural, there is little prospect of moving them without significant structural works to the building;
- Poor specification . lack of: air conditioning; raised floors; LED lighting; bicycle storage; and outdoor spaces. There is also no modern computer data cabling or other support infrastructure.
- Lack of DDA compliance . steps at front entrance; lift access at half-level (noting that the lift only stops half way between floors in the stairwell); lift car size unable to accommodate a wheelchair (which could not, in any event, access the lift).

4.9 In regarding these criteria, the Council has concluded in the 2016 DR that *“the internal layout is partitioned and the facilities may not be highly desirable for office use in their current state; however it is considered improvement works can take place in order to accommodate such use.”* It was therefore found that in the latest assessment of the property was considered to be suitable. However, in examining the criteria set out in CPG5 Paragraph 7.4, Museum House has four-times been found by officers at the Council to have features which result in the office space being found unsuitable for use as modern offices, including the Appeal Site itself, as follows

- 2013 DR . *“Change of use to permanent residential is likely to be considered appropriate provided that sufficient information is submitted to justify the loss of employment floorspace. In this a letter was submitted from a local letting agent who confirmed that due to the domestic nature of the property and in particular, the rather inflexible cellular layout, has made identifying tenants more difficult as many tenants tend to look for accommodation that can be divided as necessary to suit their specific requirements; and increasingly occupiers demand more flexible space as it is more efficiently used.”*

There is no indication the evidence submitted was not considered satisfactory by the Council, and the Council did not consider renovation/upgrading as appropriate in this case.

- 2014a DR . *“In terms of justification, the applicant has submitted correspondence from a local letting agent who confirmed that due to the domestic nature of the property and in particular, the rather inflexible cellular layout, has made identifying tenants more difficult as many tenants tend to look for accommodation that can be divided as necessary to suit their specific requirements.”*

There is no indication the evidence submitted was not considered satisfactory by the Council, and the Council did not consider renovation/upgrading as appropriate in this case.

- 2015 DR . *“It is put forward by the applicant that the current office layout with its cellular design, shared aspect with residential, lack of DDA compliance, and lack of modern specifications is unsuitable for modern office use and undesirable by potential commercial tenants of the property, demonstrated by the current tenants’ intention to vacate. A letter has been provided by commercial property agents asserting that the*

'prospect of achieving worthwhile lettings is extremely remote' because of issues with the premises such as 'poor specification' and 'lack of Disability Discrimination Act compliance'. The letter also refers to the availability of nearby offices and a list of nearby vacant properties is also provided.

- *"It is considered that the existing layout and facilities of the premises is in need of updating for modern office purposes and at present may no longer be suitable for its existing business use.*

This relates to the same part 2nd floor and all of the 3rd floor as related to the proposed development, and it is clear that the officer considered that the features of the space were indeed unsuitable for modern office purposes in accordance with Policy DP13 and CPG5.

- 2015 DRMB . *"The provision of a lift unsuitable given the age and layout of the building, furthermore is not considered a material planning consideration that will support the refusal of the proposed development. Due to the age of the host dwelling structural internal changes are not achievable without causing detrimental impact to the host dwelling."* (Consultee responses)

"Paragraph 22 of the NPPF states that policies should avoid the long term protection of sites allocated for employment use only 'where there is no reasonable prospect of a site being used for that purpose'. It is therefore considered that a sustained marketing exercise has been undertaken and it has been demonstrated that a continued business use is not feasible. As such, the applicant has not justified the loss of employment floorspace and hence the proposal is considered in line with policies CS8, DP13 and CPG5." (Paragraph 3.8)

- 4.10 However, in the 2016 DR, the officer takes a completely different view, that the property could potentially be improved via investment to make it more attractive to small and medium businesses, while at the same acknowledging that the layout and facilities were not highly desirable for office use. This seems at odds with the officers previous comments and indeed, the supporting text to both Policy CS8 and the text found in CPG5. CS8 Paragraph 8.8 states that as a result of allocation of new office space in the Borough, *"consequently the Council will consider proposals for other uses of older premises if they involve the provision of permanent housing... making reference to Policy DP13,"* clearly supporting the principle of the proposal, bearing in mind that the Officer acknowledged in 2016 DRMB Paragraph 3.9 that *"the existing internal layout of the building appears to indicate a residential use when it was firstly built"*. It is also acknowledged in Policy CS8 Paragraph 8.20, when discussing the lack of high quality spaces, that small businesses are often seeking premises that have flexible terms like shorter leases, layouts that can be adapted as businesses grows and networking spaces to meet clients and interact with other businesses. There is no space for central reception or shared break out areas. Museum House is lacking all of these features identified and this makes Museum House even less desirable for small businesses. Indeed, the same paragraph indicates what the Council is seeking to introduce further high quality spaces for small businesses and states that flexible occupancy and layouts, along with networking, socialising and meeting spaces are part of the range of innovative floorspaces the Council is seeking. Again, Museum House does not have these and due to its layout, is not possible to provide these without significant investment. This was previously acknowledged by the Officer in the 2016 DRMB, which indicates that *"Due to the age of the host dwelling structural internal*

changes are not achievable without causing detrimental impact to the host dwelling.” (found in consultation responses section).

- 4.11 Turning again to the Council’s inference that improvement works could be undertaken, this also seems at odds with CPG5 Paragraph 7.4 as discussed above, and in particular, it states the Council will consider *“the age of the premises. Some older premises may be more suitable to conversion; whether the premises include features required by tenants seeking modern office accommodation; the quality of the premises and whether it is purpose built accommodation. Poor quality premises that require significant investment to bring it up to modern standards may be suitable for conversion...”*
- 4.12 It is clear that Museum House is an older block, having originally been built for residential purposes and it is likely to have been converted to offices in the inter-war years (1920s-1930s) (as acknowledged in 2016 DRMB Paragraph 3.9). It is clear that offices have occupied the property well before 1976, when one unit was converted to residential (see Planning History set out in the 2016 DR).
- 4.13 The Council has not provided any evidence to suggest that the investments to bring the property up to a marketable standard are viable or insignificant. On the contrary, evidence was submitted with the 2016 Application (see Appendix A of the Planning Statement) which demonstrates the features lacking from the site that would make the space more marketable, and that given there are significant physical constraints (access to the lift, the size of lift and its half-storey landings, stairs at front entrance, etc) which are almost impossible to overcome for DDA compliance reasons, it is clear that the property is so unsuitable for office use that significant investment may not even deliver the desired effect to make it more attractive to small businesses. Indeed, the Council has acknowledged this in the 2015 DR and 2016 DRMB as listed above, and previously the Appellant submitted detailed information on the costing of potential renovations (see Appendix E of Appendix 5e). Even if it was viable to build a completely new lift shaft (which it is not), there would be no other location in or around the building in which it could be located, and the officer noted this in the Consultation Responses in the 2016 DRMB. This can be seen from the layout plans. This is an effect of the age of the building, and this is why the Council’s policy makes reference to age as a factor. Without suitable lift access to any floor, which would not involve climbing a flight of stairs to the half-landing, the building cannot meet even the most basic of accessibility standards (again acknowledged by the Officer in the 2016 DRMB).
- 4.14 It is noted here that Museum House does not have a central reception and cannot provide one (and this was accepted as part of the unsuitability test for 37 Museum Street conversion). This is because the design and layout of the building limits this as the upper floors are accessed from a single entrance, and again, a new staircase and lift would need to be installed which is not viable or even possible. This acts as a detriment to many small businesses who would seek to share central administrative services to reduce costs (discussed again below under marketing matters).
- 4.15 Furthermore, as the Council acknowledges in Paragraph 5.42 of the emerging Local Plan, the presence of shared entrances is considered undesirable for both residential and commercial users and in any future re-build proposal or intensification of commercial uses going forward, the Council will be seeking separate access points as an important feature. This cannot be achieved at Museum House, rendering it less desirable to potential business users, particularly in light of competition for spaces and the availability of others as demonstrated in

the marketing information submitted with the 2016 Application (Appendices B & C of the Planning Statement). This concern for business users is further confirmed in an objector's letter to the 2016 Planning Application (see Appendix 13b), where concern was raised regarding the potential detrimental impact on the front lobby area following the increase of residential usage (Note that the Appellant is willing to accept a condition requiring the maintenance of the front entrance area to an acceptable standard).

- 4.16 The evidence base from the emerging plan suggest that good quality stock benefits from high occupancy rates and as Museum House has been vacant for 9 months with little interest from potential occupiers (discussed below), it would also imply that the fact that it is unsuitable for purpose plays a role in its vacancy (as acknowledged in 2016 DRMB Paragraph 3.5).
- 4.17 The Council has not raised the possibility that the property may be suitable for alternative business use, such as light industry or research and development (the Council already acknowledges in 2016 DRMB Paragraph 3.9 that "*continued business use is not feasible*"). However, for the avoidance of doubt, the presence of residential uses on various floors of the building, the lack of modern noise and vibration reducing wall and floor features, the lack of suitable delivery lifts or access, etc render the property even less suitable for other Class B employment uses than Class B1(a) Office use.
- 4.18 Even if the shared entrance and disable access issues could be overcome (which they can, as acknowledged in the 2016 DRMB Consultation Responses), the configuration of the three office areas is also undesirable. Each of the three units is essentially a residential apartment made up of several rooms, with a central corridor. Most of the walls are structural and they compartmentalise the unit in such a way that makes it highly unattractive to occupiers. From the marketing exercise and our own knowledge of the market for offices in this part of London, occupiers are looking for open plan spaces that they can either use as a single space or can partition according to their needs. The rigid internal layout of this building does not allow for this type of modern layout, and it has proven to be impossible to find an occupier who is willing to take on these restrictions, as well as the problems with the shared entrance and lift access.
- 4.19 The building also does not lend itself to modern data services. These are currently not installed within the offices, and whilst the connectivity of the office could potentially be improved, there would not be suitable space for modern servers and other office equipment. It would also be unsuitable for the installation of plant and machinery associated with air conditioning services, as the floors would be located too far from the roof and there is no space there given the newly constructed residential unit.
- 4.20 It is RPS's view that the property is completely undesirable for any sort of business use, as reflected in previous decisions taken by the Council on the property with respect to the 2013 and 2014a Planning Permissions. It is not viable to make the significant changes that would be needed to make the units attractive to occupiers, and some of these changes (such as relocation of lift, creation of separate entrance, creation of open plan areas), are simply not possible due to the design of the building and the proposed development passes the first test of Policy DP13.

Evidence of Retaining Business Use

- 4.21 The second test of Policy DP13 requires that *“there is evidence that the possibility of retaining, reusing or developing the site or building for similar or alternative business use has been fully explored over an appropriate period of time.”*
- 4.22 We note here that the NPPF itself only states that there are two tests: the reasonable prospects test and the strong economic signals test. The former requires the Appellant to demonstrate that there are no reasonable prospects of the business use (as already set out above) remaining in use and the latter requires the Council to demonstrate the strong economic reasons for retaining the employment use (not carried out, according to the 2016 DR). In other words, if the building is fundamentally unsuitable (as this one is), there does not appear to be a need to then go through a long marketing exercise.
- 4.23 An appropriate period of time is not defined within the Policy, although supporting text in Paragraph 13.5 states that it needs to be demonstrated that *“there is no realistic prospect of demand to use the site for an employment use. The applicant must submit evidence of a thorough marketing exercise, sustainable over at least two years. The property should be marketed at realistic prices, include a consideration of alternative business uses and layouts and marketing strategies, including management of the space by specialist third party providers.”* It goes on to state that more details can be found in the CPG.
- 4.24 CPG5 provides more information regarding this and sets out in Paragraph 7.18 what the Council would expect to see as part of the marketing, as follows:
- Using a reputable local or national agent with a track record of letting employment space in the borough;
 - Visible letting board (constant during the period);
 - Marketing material should published on the internet;
 - Be continuous over at least 2 year period, although it states the Council would *“consider shorter marketing periods for B1(a) office premises”* (our emphasis);
 - Advertising rents should be reasonable, reflecting market rents;
 - Lease terms should be attractive to market (at least three years, and/or shorter flexible leases);
 - Commentary on interest in building, including details of why it was not pursued; and
 - Where occupied, evidence tenants plan to move out.
- 4.25 As previously discussed, the Council has clearly acknowledges in CPG5 that the level of marketing that would be required to demonstrate that there is no interest in Class B1(a) office space is less than other uses. While there is no specific detail explaining the reasons behind this, RPS assumes that this ties back to Policy CS8, which acknowledges that sufficient new and modern office space will be delivered during the plan period and that there are many older premises in the Borough which may be better suited for other uses (see Paragraph 8.8 of the supporting text to Policy CS8). RPS strongly believes that this is applicable to Museum House, as both the 2013 and 2014a DRs recognise that the quality of office space available at

Museum House is sub-standard, and that it would be completely unreasonable to request the Appellant to undertake marketing for 2+ years on a vacant property when, in the views of a respected estate agent, there is little chance it would be attractive to tenants given the nature of the property (as discussed above) and the availability of higher quality premises in the vicinity.

- 4.26 The marketing information submitted with the 2016 Application (see Appendix D of the Planning Statement) shows the details of the marketing particulars for the site, and that the property was available from 1st April 2016, and it discusses rates expected, etc. A photo of the letting board was provided in Appendix E, and it is still posted at the time of writing this statement.
- 4.27 Additional marketing information was submitted to the Council on 8th September 2016 by the agent of the Appellant and provided additional details of the marketing effort discussed the internet/email circulation, as well as information on the 5 different enquiries received, including several site visits, after which no offers were received. It also discusses the suitability of the rental rates expected and how they compared with the market. It concluded that rental rates were not the reason for the lack of interest in the property.
- 4.28 In terms of the marketing evidence, the Council states in Paragraph 3.10 of the 2016 DR that: *“In addition, there is no suggestion by the marketing exercise that the premises have been advertised including management of the space by specialist third party providers. It is considered in this case that insufficient evidence has been provided to demonstrate the infeasibility of continued business use on site.*
- “The previous business tenants have vacated the premises in March. The fact that the premises have been vacated may reflect the end of the leases rather than dissatisfaction with the premises. The time allocated for the marketing exercise since the premises have been vacant is of approximately 7 months which is not considered sufficient to demonstrate that there is no desirability of the space in its current use.”*
- 4.29 It is noted here that the Appellant submits an updated marketing report (see Appendix 19 for email update from Glinsman Weller dated 22nd December 2016) information provided to the Council on 9th September 2016 and confirms that still no additional offers are forthcoming to take the space, despite three additional potential occupiers having visited the site. There is no commentary acknowledging this in the 2016 DR report (discussed below), although there is significant commentary on this in the 2016 DRMB. This is concerning and undermines the credibility of the Council’s report.
- 4.30 It is noted here that the 2016 Application is the first application along Museum Street proposing a similar type of development in which a formal marketing exercise was undertaken and results formally submitted, but it was still refused. It is unclear from any policy perspective why the Council has now adopted a different approach to this proposal compared to other proposals in the area, including those previously submitted at Museum House, as outlined in the Planning History section of the report. Indeed, the 2016 DRMB clearly acknowledges the results of the formal marketing exercise in Paragraph 3.6, which states that **“it is considered that a sustained marketing exercise has been undertaken and it has been demonstrated that a continued business use is not feasible.”** Property owners and developers need certainty, and for the Council to change its position on this matter for no obvious reason is, in our view, unreasonable. The Council has not responded to this point in

its formal 2016 DR (although it is unclear why the 2016 DRMB and 2016 DR differ), which was made in the Planning Statement (see Paragraph 5.8).

Formal Marketing Exercise

- 4.31 Notwithstanding this, the Appellant started a formal marketing exercise in March 2016, following receipt of the 2015 DR which indicates in Paragraph 3.4 that despite the property was considered not to be suited for its purpose, the Council still refused that application primarily due to the lack of a formal marketing exercise undertaken over two years. Following commencement, an agent of the Appellant sought to confirm to the then Case Officer to the 2015 Application the length of time the Council would expect the space to be marketed for, and on 5th April 2016, the agent spoke with the Case Officer and verbally agreed that the marketing period should be, in his view, 2-3 months. A revised application was submitted in June 2016, following almost four months of marketing on that basis and during the determination of the application, additional marketing information was provided which brought the total marketing evidence to 7 months by the time the Council refused the 2016 Application.
- 4.32 The 2016 DR makes no acknowledgement that the Appellant sought and agreed a timeframe for marketing with the Officer who dealt with the 2015 Application, and provided additional information beyond what was advised. Indeed, the 2016 DRMB clearly acknowledges this in Paragraph 3.8, and elsewhere. Instead, the 2016 DR refers back to a requirement that a full 2 years of formal marketing is needed before the Council is satisfied that there is no prospect of the use of the site for business use. This approach is completely different to the approach taken by the Council when considering the 2013 and 2014a Planning Permissions, as well as the approach used on nearby sites (e.g. with the applications at 28 and 37 Museum Street). While the Appellant acknowledges that the Inspector for the application at 61-65 Charlotte Street upheld the need for formal marketing evidence, but the Council has not adopted this approach on Museum Street. Importantly, RPS notes that the 2014a Planning Permission was issued post the Inspector's decision at 61-65 Charlotte Street; however the Council now uses that Inspector's decision as justification behind its change in approach, in that it now is requesting that the Appellant submit a long formal marketing evidence to demonstrate the lack of interest in the office space at Museum House to comply with Policy DP13 (as set out in the 2016 DR). The change in approach between the 2014a Planning Permission and the 2015 and 2016 Applications cannot therefore be explained by the Inspector's decision at 61-65 Charlotte Street as that was available to the Council during the determination of the 2014a Application.
- 4.33 Even more importantly, RPS notes the fact that the Development Plan policy context between the 2013 and 2014a Planning Permissions and 2015 and 2016 Applications has not changed, nor is it different between 2016 Application and the aforementioned similar schemes which were granted permission at nearby sites. The main policies remain Policies CS8 and DP13, which are unchanged, and the NPPF Paragraphs 22 and 51 remain extant. Yet in the most recent 2015 and 2016 Applications, the Council applied a more stringent approach without justification (despite the 2016 DRMB Paragraph 3.8 recognising that the test in NPPF Paragraph 22 has been met). Indeed, the Appellant's agents have asked the Council on a number of occasions (not the least in the Planning Statement submitted with the 2016 Application) as to why the Council has adopted a different approach, and still has not received an answer. Importantly, the Council has not explained why the 2016DR report varies so

greatly from the conclusions arrived at in the 2016 DRMB (and this is subject to part of the costs application).

- 4.34 As such, RPS is genuinely puzzled about how the Council could now apply a significantly more onerous test for the 2015 and 2016 Applications in contrast to the 2013a and 2014 Planning Permissions given that the conditions are the same within Museum House, and the policy context is no different. Moreover, the Council has accepted this approach elsewhere on Museum Street (and the officer accepted it in the consideration of 2016 Application prior to Member's Briefing), and therefore it is completely unreasonable to unilaterally change the way the policy is applied without any context to the reasons behind it. The Appellant has separately lodged an Appeal for costs as a result.
- 4.35 The Council acknowledges the property has been vacant for 7 months (now 10 months), and it speculates that the vacancy was due to the end of a lease rather than through dissatisfaction with the premises (Paragraph 3.11 of 2016 DR). The 2016 DR concludes that the time allocated for formal marketing was not considered sufficient to demonstrate no desirability of the space as offices, although CPG5 acknowledges a shorter time would be accepted for conversion of office uses. The Appellant accepts that while the property was occupied, there was little to distinguish whether the property could remain within its current use (notwithstanding the Council's approach to the application at 31 Museum Street was to allow the conversion despite it still being occupied by a tenant).
- 4.36 The 2016 DR report does not acknowledge that there have been a number of expressions of interest in the property, but in every case, no offer was made following a site visit (see Appendix D of Planning Statement as referred to above). Indeed, the 2016 DRMB acknowledges the results of the marketing exercise in Paragraph 3.7, but this is completely ignored in the 2016 DR. RPS would argue that this is clear evidence that there is little possibility of retaining the site in a similar office use according to Policy DP13. Indeed, RPS cannot see what additional prospects could exist that would indicate some potential interest in the property, when considering the following:
- Five potential occupants, and six site visits resulted in no offers on the property (plus 3 additional ones since the refusal notice . see Appendix 19);
 - The number of available office properties of similar or better quality as identified by CBRE and Colliers International in Appendices B & C of the Planning Statement for the 2016 Application;
 - The clear indication by one of the potential occupiers that they could find better spaces;
 - The fact that the Council accepted the list of vacancies in the area as proof of market evidence during their consideration of four other applications (2013 Planning Permission, 2014a Planning Permission, 28 Museum Street and 37 Museum Street) without requesting marketing evidence; and
 - The fact that CPG5 clearly indicates that 2 years of marketing is not required for B1(a) offices.
- 4.37 RPS considers this to go beyond market signals that are referred to in NPPF Paragraph 22. It clearly sets out that Councils should avoid the long-term protection of employment sites where there is no reasonable prospect of the site being used for that purpose, and alternative

uses should be considered with regard to market signals. As RPS has outlined above regarding the property's suitability, it is clear that the office space is less attractive to future occupiers when considering other available properties. This is obviously demonstrated by the formal marketing to date, which is clearly over and above what the Council considered required in the past for proposals at Museum House and Museum Street.

- 4.38 In terms of policy compliance, given the fact that the office is unsuitable for modern occupiers (as set out in Paragraphs 4.6 to 4.28 above), we would argue that it is not necessary or appropriate to market the unit for a full two years. CPG5 clearly states that a period of less than 2 years would be acceptable for Class B1(a) office use, and we would consider that this is exactly the type of unit that would fall within this category. If a unit is fundamentally unsuitable for office users (because either changes are not viable, or in the case of Museum House, not possible) then it is a pointless exercise to market it for a full two years. A shorter period should be sufficient, or even just a consideration of the suitability of the building and reference to market signals, as set out in the NPPF. RPS considers that the Council's position on the marketing of this building is not in line with their adopted policy, national guidance and contradicts the approach the Council has taken on the 2013 and 2014a Planning Permissions using the same policies.

Third Party Specialists

- 4.39 The Council was seeking evidence that third party specialist providers (e.g. those offering hot desking) were considered. It is the Appellant's view that having clearly established that Museum House lacks modern features that would make it attractive to office users, these specialist providers would unlikely seek to offer services from sub-standard locations such as Museum House. In examining the offering of established hot desking providers such as Regus and Nomad, it becomes abundantly clear that they are only attracted to acquiring modern, feature-rich spaces, or those that could be made so. This is confirmed in the Camden's Employment Land Study from 2014 (reviewed in Material Considerations in the previous section of the Report), which discussed what SMEs are looking for and notes that there are already a good number of modern and attractive spaces widely spread across London, against which Museum House competes and often is found sub-standard and unattractive.
- 4.40 For example, RPS examined current spaces offered by Regus, one of the UK's largest providers of specialist third party office space for hot desking and particularly attractive to small businesses and individual workers. It operates six locations within Fitzrovia alone (as well as numerous locations elsewhere in London), including at 48 Charlotte Street (W1T 2NS) and 85 Tottenham Court Road (W1T 4TQ), being located within a few minutes of Museum House. As can be seen by the descriptions and the photos (see Appendix 20a), it is clear that the sites are open plan offices with plenty of modern features, which attract millennials and other workers. These features are sorely lacking at Museum House and it would be difficult to introduce them (e.g. open plan office space) bearing in mind that the space at Museum House would in fact be in direct competition with Regus's spaces. Indeed, the features offered by Regus directly reflect the criteria that are emerging in the Council's new Local Plan, as set out in the supporting text to Policy E2 (see Appendix 18, Paragraphs 1.85-1.90). This is notwithstanding the fact that Museum House is not, and cannot be made, DDA compliant, and the other issues with the building design that cannot be rectified without a significant rebuilding of Museum House as a whole.

- 4.41 It is important to note that Regus office spaces always have a central reception area within easy access of the workspaces, for checking-in, security and to provide support services, which cannot be accommodated within Museum Street.
- 4.42 For the avoidance of doubt, RPS also examined the current spaces offered by Nomad (a rival to Regus), which has two properties located near to Museum House: ~~the~~ Airspace~~q~~ at 29-31 Oxford Street and ~~the~~ The Collective . Bedford Square~~q~~ It can also be seen by the description and in the photos (as taken from their website and enclosed in Appendix 20b) that both of these locations offer bright, open plan, fully-flexible office spaces, with plenty of modern features that are simply not available or possible at Museum House. Even if another rival company to Nomad or Regus would potentially consider using the space at Museum House, it would be in direct competition with the spaces offered by established providers, including the ones listed above, as well as new modern office space going up at King~~s~~ Cross (which the Council indicates in Policy CS8 as being sufficient to meet identified needs going forward) and other locations across Central London. It is clear that Museum House~~s~~ space is not suited for this type of provider.
- 4.43 It is therefore concluded that the space within Museum House would likely be unattractive to third party specialists, who prefer open plan spaces with modern features, and there are many of these types of properties within close proximity which would render it unfeasible to consider given the condition and construction of Museum House. It is also notable that none of these operators have responded to the marketing exercise, which supports the view that Museum House would not be of interest to them
- 4.44 It is therefore considered that the proposed development meets the test set out in Policy DP13, in that it has been demonstrated that the existing building is not suitable for continued use, and there is sufficient evidence to demonstrate that there is effectively no interest in the property given its lack of features and the availability of more attractive office space nearby.

NPPF Tests

- 4.45 The proposal also accords with NPPF Paragraph 22, which sets out two lower tests regarding proposals to convert employment uses to alternative uses. In particular, it sets out a test regarding ~~a~~ reasonable prospect of the site being used for that purpose~~q~~ and applications being treated on their merits ~~h~~aving regard to market signals and relative need for different land uses~~q~~ Furthermore, the additional test within Paragraph 51 is that Councils should allow the change of use of such spaces as Museum House to residential where there is a need for housing in the area (the Council relies on windfalls during the plan period, as noted in the previous section) and there are no identified ~~a~~ strong economic reasons~~q~~ why it would be inappropriate to redevelop.
- 4.46 Each are addressed in turn below.

Reasonable Prospects Test

- 4.47 The first test from the NPPF relates to reasonable prospects, and as demonstrated above, the reasonable prospects of the site being used for offices in the future is limited, in part due to structural conditions (e.g. DDA compliance, lack of modern features, no reception, shared communal areas with residential units, inflexible spaces, etc), particularly bearing in mind the Council~~s~~ explicit policy references in Policy CS8 that it will generate some 444,000sqm of

new and modern office space within the Borough which would compete for users and make older premises less attractive. This excludes the fact that there are numerous other new and modern office spaces being developed elsewhere in Central London, and numerous existing new and modern spaces (some of which were enclosed in the scheduled office availability) which would inevitably place significant pressure on the older, un-improved, stock to be converted into more appropriate uses (noting the constraints limiting the extent of improvements available at Museum House). We note that the loss of space is only 321sqm and this represents an extremely small amount in comparison to the new build in Camden alone.

- 4.48 This would accord with the rest of the NPPF, such as Paragraph 51, which indicates that Councils should normally be approving the conversion of empty spaces (i.e. the presumption in favour of the development and reflects NPPF Paragraph 14 . see below), such as Museum House to residential uses, unless the Council has set forth ~~a~~strong economic reasons for preventing this from happening (this paragraph clearly puts the onus on the Council to demonstrate the economic reasons). The Council has not indicated there being strong economic reasons to retain 321sqm (GIA) of sub-standard office space (as acknowledged in the 2013, 2014a, and 2015 DRs), particularly in light of Policy CS8 confirming the magnitude of new and modern office space coming forward in the plan period in comparison to the space lost at Museum House with this application (hence that policy's allowance to allow the loss of older stock).
- 4.49 The Council implied that this space may be suitable for small or medium businesses, but the Council provides no such data that there is a shortage of space for small or medium business that refutes the schedule of office availability submitted with the 2016 Planning Application or the results of the marketing. The proposal clearly passes the first test, and this was confirmed by the Council's officer in 2016 DRMB Paragraph 3.8), which concluded the proposal complied with NPPF Paragraph 22 (alongside Development Plan policies CS8, DP13 as well as CPG5).

Market Signals Test

- 4.50 This test indicates that where alternative uses are proposed, these types of applications should be treated on their merits having regard to market signals and the relative need for other land uses. In this case, the land use proposed has already been found acceptable in the 2016 DR (as well as the 2013, 2014a and 2015 DRs) as Camden seeks to maximise the supply of housing and will rely on windfall developments during the plan period. Furthermore, the size of the dwellings proposed as considered of high priority.
- 4.51 In terms of market signals, the Appellant had already submitted numerous items of evidence (e.g. the list showing the number and quality of available office spaces in the nearby vicinity) that clearly set out that the market is not interested in the property and as we discussed above, the Council has accepted this evidence as sufficient in the past (although they never actually state that the evidence amounts to ~~a~~market signals in this context, although in RPS's view it is exactly that). It was also accepted by the officer in the 2016 DRMB.
- 4.52 In any event, the Council has provided no evidence contrary to refute the evidence that the market has no interest in the office space at Museum House, simply an insistence set out in the 2015 and 2016 DRs. Furthermore, the Council has never actually commented on the fact that after six visits, five potential tenants rejected the property before even making an initial

offer. This sits alongside the list of competing properties as already submitted, and together both of these offer a clear signal from the market has no interest in the property. Indeed, this is in contrary to the Council's own latest evidence that the local small office market is functioning well with high occupancy rates in good quality stock, which Museum House is not.

- 4.53 This is also confirmed by the fact that it is still vacant some 9 months after its last use. The Appellant is genuinely confused as to what other marketing could be undertaken that would further demonstrate that the probability of a tenant taking the space is relatively low, noting how the Council treated this information in the past at Museum House as well as at 28, 31 and 37 Museum Street, and noting the requirements set out in CPG5 for Class B1(a) uses as discussed above.
- 4.54 It is clear from RPS's analysis of the Development Plan policies, supplementary planning documents, as well as the NPPF which post-dates those policies that there are no significant policy reasons why the loss of employment space in this instance should not be replaced by a more appropriate use that is encouraged by policy, such as residential, particularly in light of the previous decisions at Museum House which already recognised that similar proposals pass the policy tests.

Reason for Refusal No. 2

- 4.55 The second reason for refusal to grant planning permission for the proposed development relates to lack of a contribution to affordable housing within the proposed development. The Council's latest view with the 2016 Application is that with the granting of the planning permission, the total converted residential development area would then be above the specified threshold within the Policies CS6 and DP3, rendering the need for such a contribution. In particular, as set out in the Planning History section (see Paragraphs 2.55 and 2.56), the Council's officer indicated on 18th August 2016 that this obligation is secured via the 2013 Planning Permission legal agreement, which sets out that any subsequent development that brings the aggregate amount of residential floorspace since 2013 over 1,000sqm (Gross External Area), a contribution to affordable housing provision would then be required in accordance with the 2013 Planning Permission legal agreement.
- 4.56 It is noted here that both the Council and the Appellant agreed during the consideration of the 2016 Application that the first floor residential unit that was granted planning permission in 1976 and established sometime thereafter should not be included within the floorspace calculations (see Paragraphs 2.65 and 2.66 of the Planning History section). It is the change of use to new residential floorspace created since 2013 that is used for the calculation.
- 4.57 It is also noted here that Paragraph 3.8 of the supporting text to Policy DP3 (setting out the requirement for affordable housing as reviewed in the previous Section of the Report), it states that *"the Council considers 1,000 sqm (gross) as being capable of accommodating 10 family dwellings, and will expect all residential developments that would provide additional built residential floorspace of 1,000 sqm (gross) to make a contribution to the supply of affordable housing."* (our emphasis). RPS assumes family referred to in DP3 Paragraph 3.8 as being units with a minimum of 2 bedrooms, and we note the CPG2 indicates that the minimum size of a 3-person unit (i.e. 2-bedrooms) is 61sqm (Gross Internal Area or GIA). It is within this context that the capacity of the building is considered.

Whether the 2014b Extension Forms Part of the Same Development For the Purposes of the Affordable Housing Threshold

- 4.58 The 2016 DR and various emails from the Case Officer (particularly 18th August 2016) recite Clause 4.2 of the 2013 Planning Permission legal agreement (dated 15th October 2013), which states:

“If at any time after the date of this Agreement a Subsequent Planning Permission is granted which gives consent to the development of all or part of the Remaining Floorspace for residential purposes and/or additional residential units (‘the Subsequent Development’) and the aggregate of the floorspace of the Development and the Subsequent Development (or Subsequent Developments if there is more than one) is greater than 1,000m² the Subsequent Planning Permission shall be subject to an agreement with the Council (‘the Subsequent Agreement’) to secure either: -

(a) That an appropriate percentage of the residential units permitted by the Subsequent Planning Permission are allocated as affordable housing such percentage to be applied to the aggregate of the floorspace of Development and the Subsequent Development (or Subsequent Developments if there is more than one); or

(b) A contribution towards off-site affordable housing to be calculated on the basis of the aggregate of the floorspace of the Development and the Subsequent Development (or Subsequent Developments if there is more than one).”

- 4.59 The legal agreement itself defines ~~Subsequent Planning Permission~~as:

“a planning permission that may be granted in the event of any subsequent planning permission for the development of the Remaining Floorspace”

- 4.60 The ~~Remaining Floorspace~~is defined as:

“the remaining office floorspace at basement, first, second and third floor levels at the Property which is not subject of this Planning Application”

- 4.61 It is clear from the 2013 Planning Permission legal agreement that the land subject to Clause 4.2 is only the remaining areas of Museum House which are currently in employment uses (i.e. the first floor residential unit converted in 1976 is not included in this), and the Appellant acknowledges this.

- 4.62 However, while the Appellant accepts that the Council would not have been in any position to envisage a further planning permission being granted that would create a residential unit on a newly create fifth floor to the building (2014b Planning Permission), the Council did have the opportunity to ensure that the fifth floor extension was treated as a ~~Subsequent Development~~ for the purposes of the 2013 Planning Permission legal agreement Clause 4.2 on affordable housing contributions. In particular, a legal agreement accompanies the 2014b Planning Permission, and if the Council felt that this development was considered to be linked to the 2013 Planning Permission (i.e it should fall within the definitions of ~~Remaining Floorspace~~or ~~Subsequent Development~~), it should have sought specific clauses in the 2014b Planning Permission legal agreement to appropriately extend the calculations to the space created by the 2014b Planning Permission. Indeed, the Council’s Policy CS6 is clear that it would normally do this, and for the 2014a Planning Permission, the legal agreement accompanying

that permission clearly re-defined ~~Remaining Space~~ and strongly links that legal agreement to the 2013 Planning Permission legal agreement in the definitions and in Clause 4.2 of the 2014a Planning Permission legal agreement.

- 4.63 The Council had not asked for this in the 2014b Planning Permission legal agreement, and we can only assume that this was on the basis that the Council felt that the space created therewith was considered to be wholly independent from the space defined in the 2013 Planning Permission legal agreement. In other words, the ~~Remaining Floorspace~~ or ~~Subsequent Developments~~ definitions are clearly meant to represent change of use applications within Museum House only, and that extensions, etc on top of the building (which is essentially a new building erected on the roof of Museum House) would not be considered related developments with respect to a threshold for requiring an affordable housing contribution.
- 4.64 It is noted here that this was pointed out to the Council in the Planning Statement submitted with the 2016 Application, as well as through subsequent correspondence from the agent, but the 2016 DR clearly does not take this on board (and in particular, does not refer to the definition of ~~Remaining Floorspace~~). It is RPS's view that as the Appellant is simply adhering to the Clauses found within a signed and binding legal agreement (from the 2013 Planning Permission), along with subsequent permissions and legal agreements (from the 2014a Planning Permission, for example), it would be unreasonable to go beyond the definitions or clauses. The Council has clearly been of the same view by not applying this to the roof extension when planning permission was granted and the legal agreement drafted. To take a different, and wholly inconsistent, approach to that taken to previous applications is, in the Appellant's view, unreasonable (and will also be the subject of a costs application). As stated in a previous section, property owners and developers need certainty when making plans, and for a council to change the way it applies a policy, that has not changed in recent years, is unacceptable.

2015 Pre-App Advice and 2015 DR

- 4.65 Without prejudice to our view (and that of the Council's prior to the 2016 Application) that the conversion of floors within the existing building from office to residential use are not linked to the erection of a new building on the roof of Museum House, the Council has in any event changed its view regarding whether the proposed development would in fact bring the cumulative amount of newly created residential floorspace above the 1,000sqm threshold. The same application drawings were submitted with the 2015 Pre-App Advice request and the 2015 Application. The Council indicated in the 2015 Pre-App Advice received by the Appellant in August 2015 (see Appendix 5d) that the proposed development would not trigger the threshold for the contribution of affordable housing (as it would fall short), and furthermore, the Council's own Delegated Report for the 2015 Application also considered that the proposed development to convert part 2nd and all of the 3rd floor from office to residential use would not trigger an affordable housing contribution (see Section 8.0 of the 2015 DR, where it indicates the total floorspace would be 920sqm).
- 4.66 Indeed, the area calculated by the Officer in Paragraph 8.1 of the 2016 DRMB is the same as was reported in the 2015 DR (920sqm). The Appellant notes here that three times the Council concluded that the floorspace created was 920sqm, and thus would fall under the thresholds required (2016 DRMB Paragraph 8.1 states "*hence the approval of this scheme would not trigger an affordable housing contribution*"). RPS has no reason to believe that the Council

could erroneously calculate the floor space created three times over in the 2015 Pre-App, 2015 DR and 2016 DRMB.

The Amount of Floorspace Created Following 2016 Application

- 4.67 If the Inspector considers that notwithstanding the legal definitions discussed above, a contribution may be required, the Appellant submits Table 2 which is the Gross External Area (GEA) of the residential floorspace created since 2013 (including floorspace created by 2014b Planning Permission (fifth floor). This is the same amount that was reported in the 2016 DR. It excludes the area comprising the terrace on the fifth floor, which the Council has since included in subsequent correspondence with the Appellant's agent (dated 3rd November 2016, see Appendix 21). It is RPS's view that the terrace does not form part of the GEA according to the definitions found within CPG2 (see Paragraphs 1.64-1.70 of policy review found in Appendix 18) and the Council excluded this in the past.

Table 2 – Gross External Residential Floorspace Created at Museum House since 2013 for Affordable Housing Purposes

Location in Museum House	GEA (Sqm)
Part 1st Floor	121
2nd Floor	245
3rd Floor	245
4th Floor	243
5th Floor	181
Total Floorspace Created	1035

Capacity for 10 Family Dwellings

- 4.68 Policy DP3 is clear that the Council will expect all residential developments with a capacity for 10 or more additional dwellings to make a contribution to the supply of affordable housing. In Paragraph 3.8 of the supporting text, it states that *“the Council considers 1,000 sqm (gross) as being capable of accommodating 10 family dwellings, and will expect all residential developments that would provide additional built residential floorspace of 1,000 sqm (gross) to make a contribution to the supply of affordable housing.”* (our emphasis)
- 4.69 Further guidance on this can be found in CPG2 Housing Paragraphs 2.24 and 2.25, which state:

“A contribution to affordable housing is expected from schemes that add fewer than 10 dwellings but add more than 1,000 sqm floorspace (gross) on the basis that economic viability can still be achieved from a small number of larger and more expensive homes. A contribution will also be sought from schemes that add 10 or more dwellings but add less than 1,000 sqm floorspace (gross) unless the applicant demonstrates it would not be financially viable to proceed with the development on that basis (see the sub-section How will the Council consider financial viability?).

The Council will acknowledge that an addition of 1,000 sqm residential floorspace will not have a 10 dwelling capacity in every single case. In assessing capacity, the Council will take into account whether the additional area is capable of contributing to the number of homes in the scheme (e.g. does it have access to natural light?). We will also take into account other

constraints that would prevent 10 dwellings from being developed, such as where it would be impractical to provide safe vehicle access for 10 dwellings, or inappropriate to subdivide a Listed Building.” (our emphasis)

Capacity of the Residential Floorspace Created At Museum House since 2013 for Affordable Housing Purposes

4.70 RPS has not seen an assessment by the Council regarding the capacity of the residential area created by the 2013, 2014a, 2014b Planning Permission and 2016 Application (notwithstanding the view above that the 2014b permission should be excluded for the reasons set out above). However, RPS considers that CPG2 Paragraph 2.24 is proposed to ensure that larger homes contributing a smaller number of units should not be excluded from contributing to affordable housing when smaller units could have been created. The size of the units within the proposed development and those units created with the 2013 and 2014a Planning Permissions (all of which are 2-bedroom units) were all considered by the Council as to meet the requirements set out in the Residential Standards section of CPG2 Chapter 4, and it is noted here that the Council did not indicate any unit created at Museum House was particularly large. All units are 2-bedrooms, and all have been designed to ensure minimal impact to structural and other internal inflexible wall constraints while maximising opportunities for daylight/sunlight in each living space.

4.71 In the absence of the Council’s own assessment of capacity of the residential areas created since 2013, RPS has prepared the following table, which demonstrates RPS’s view on the capacity of the units based on achieving a minimum of 61sqm (gross internal area or GIA) per unit, which is the minimum floorspace for a 3-person unit according to Paragraph 4.14 of CPG2.

Table 3 – RPS Assessment of Unit Capacity of Residential Floorspace Created at Museum House since 2013 for Affordable Housing Purposes

Floor/ Unit No.	Current No. of Proposed Units	Maximum Capacity Meeting Floorspace Standards
1b	1	1
2a	1	1
2b	1	1
3a	1	1
3b	1	1
4a	1	1
4b	1	1
5	1	1
Total	8	8

4.72 All remaining units could not reasonably be split into smaller units and meet minimum internal floorspace standards for units set out in CPG2. For example, Unit 3b comprises approximately 99sqm (GIA), and any split would result in both units being below the minimum standard for 3-person units of 61sqm. Unit 3b comprises some 123sqm (GIA), and while on paper it appears sufficiently large to be split, this cannot physically be achieved due to the need to respect the existing historical layout of the building (e.g. the stairwell locations,

entrance hall/access points, presence of structural walls, the location of existing windows (noting the Conservation Area aspects) and the routing of services, etc.

- 4.73 This assessment was confirmed in a technical note prepared by ColladoCollins, which can be found in Appendix 22 of this report, which confirmed that only 8 units could be created from the floorspace created since 2013.
- 4.74 It is therefore considered that within the context of CPG2 Paragraph 2.24, the proposed development herewith along with those already granted would not give rise to 10 family units by re-organisation of any units which could be seen as being particularly ~~large~~. Indeed, within the context of CPG2 Paragraph 2.25, RPS considers that the created residential floorspace from 2013 onwards could not be re-arranged in any sort of way to generate 10 family dwellings (we assume ~~family~~ referred to in DP3 Paragraph 3.8 as being units with a minimum of 2 bedrooms). However, in the case of Museum House, it is considered that the proposed development and other newly created residential floorspace is physically incapable of accommodating 10 family dwellings, particularly due to its historical layout (structural features), age, depth of building (noting the north-western side of the building facing Little Russell Street is longer than the south-eastern wing), location of central staircase and communal areas, presence of windows, routing of servicing through walls, etc. In particular, it can be seen on the submitted floorplans to the 2016 Application that the general layout of the building, with a central stairwell, long access corridors, thick internal walls, and a small centralised lift would not be conducive to increase the number of units on any particular floor beyond one per side of the central stairwell without reducing the size of units below minimum standards set out in CPG2 Chapter 4, or to create fewer ~~family~~ units (i.e. studio/1-bedroom). This is particularly true as an increase in units would also reduce living spaces within the units by the creation of additional access corridors and internal walls.
- 4.75 Taking the physical constraints together with the relative thickness of the exterior (and many interior) walls (at almost 80cm thick in places), and the relatively short depth of the building with one less room on the eastern wing compared to the western, Museum House as converted is not physically capable of achieving 10 family units unless the ground floor currently occupied by commercial units were also to be redeveloped (the lower ground floor is not suitable at all for housing given practically no natural light penetration). This would be contrary to other Development Plan policies, and is not forming part of the current proposed development.
- 4.76 We note with interest that emerging Local Plan Policy switches to use Gross Internal Area (GIA), and assumes in Policy H4 that one unit is created by 100sqm GIA. If this is the case, then the proposed development alongside the previous permissions would have a GIA of 929sqm (see Table 2 below), and therefore only 9 units could be created. It is some 100+ sqm less than the GEA amount, further demonstrating the excess amount of floorspace being lost to useable walls, etc that prevents 10 family units from being created. Whilst this policy is not yet adopted, it does carry some weight and adds to the Appellant's view that this proposed development does not breach the 10-unit threshold as there is not capacity for 10 dwellings.

Table 4 – Gross Internal Residential Floorspace Created at Museum House since 2013 for Affordable Housing Purposes

Location in Museum House	GIA (Sqm)
Part 1st Floor	103
2nd Floor	223
3rd Floor	223
4th Floor	226
5th Floor	154
Total Floorspace Created	929

- 4.77 Museum House, including the fifth floor extension, is therefore considered to only be capable of creating a maximum of 9 family units within the residential floorspace (actual number would be 8 units if the 2016 Application is approved) created since 2013 plus the proposed developments floorspace and it should therefore be excluded from the 1,000sqm threshold to which the Council expected 10 units to be created.
- 4.78 RPS's view is that an affordable housing contribution is not required until the threshold has been breached. This view was confirmed three times by the Council in the 2015 Pre-App, 2015 DR and 2016 DRMB.

Contributions Expected

- 4.79 Without prejudice to our firm view that the 10-unit threshold has not been breached, if the Inspector considers that the fifth floor extension is included within the floorspace calculations, and also comes to the view that the proposed development, along with the 2013, 2014a, 2014b Planning Permissions, are capable of achieving 10 units and thus DP3 Paragraph 3.8 applies (and CPG2 Paragraph 2.24 and 2.25 do not apply), it is necessary to confirm the amount of contributions expected.
- 4.80 According to Paragraph 3.17 of the supporting text to Policy DP3, and Figure 1 of CPG2 (Page 15), the Council sets out a sliding scale which represents the benchmark for expected contributions to affordable housing, before viability considerations are applied. For the proposed development, in the event that a contribution is deemed to be required, the Council would set a benchmark contribution of approximately 10% for a site capacity of 10 family homes. In this respect, at 1,035sqm, there would appear to be a capacity of 10 family units, and therefore 10% contribution would be required.

Whether the Contribution Should be Expected On-Site

- 4.81 The third bullet point of Paragraph 3.17 also states that the Council would take a flexible approach to the provision of off-site affordable housing for schemes close to the threshold (between 1,000sqm and 3,500sqm), which RPS considers Museum House to be if such a contribution is required.
- 4.82 Paragraph 3.26 goes on to state that it is not usually possible for affordable housing (social rented) and market housing to share the same stair/lifts and communal spaces. This is partly due to the higher costs and maintenance requirements for market housing and the impracticalities of having different service charges for different occupiers. In Museum House, all units share the same lift/stairwell (indeed, making it also unsuitable for continued

employment use as well), and therefore on-site provision is unlikely to be supported in this respect.

- 4.83 Importantly, it states in DP3 supporting text Paragraph 3.31 that many of those in need of affordable housing already own private cars, and as the development proposed herewith would be a car-free development, there are impracticalities arising that supports the view that on-site provisions would not be appropriate.
- 4.84 Guidance sets out that the Appellant should consider an off-site contribution instead; however, the Appellant is not in control of any properties nearby which could accommodate the off-site contribution. Policy DP3 Paragraph 3.15 set out two conditions regarding whether the Council will accept a financial contribution instead of an on or off-site contribution, and the second clause applies to Museum House noting its context of being located within Central Activity Zone in London, in that *“the appropriate affordable housing contribution is too small to form a stand-alone development and there are no opportunities to link it to an alternative development nearby.”* As a result, the Appellant is proposing to provide a payment-in-lieu of providing an on-site contribution.

Baseline Payment-in-Lieu Contribution

- 4.85 A Payment-in-Lieu contribution has been calculated based on the guidance found in CPG8 (i.e. £2,650/sqm x on-site target), which in the case of this proposed development would be 10%. As the total residential GEA floorspace created since 2013 is 1,035sqm, the target floorspace is 103.5sqm, and rounded to 104sqm GEA. The contribution is therefore calculated as 104sqm * £2,650/sqm = £275,600.
- 4.86 The Council's guidance in the supporting text found in Paragraph 3.27 of Policy DP3 indicates that financial viability will be considered when assessing the degree of affordable housing contributions required. The Appellant accepts that the proposed development would be financially viable with a contribution and they propose to provide the full payment-in-lieu contribution as set out above.
- 4.87 The enclosed Unilateral Undertaking (see Appendix 4b) provides the mechanism for securing this contribution.

Reason for Refusal No. 3

- 4.88 The third reason relates to the proposed development's impact on parking congestion in the absence of a legal agreement securing the development as being car-free.
- 4.89 This is seen as a technicality as the Council found the scheme unacceptable for the two previous reasons as discussed above and the Council did not engage in any discussions regarding legal agreements to secure appropriate obligations in this regard.
- 4.90 The Appellant is willing to accept a restriction on the property ensuring that it is a car-free development (save for holders of disabled badges), and this can be secured via a legal agreement. The Appellant submits two Unilateral Undertakings (can be found in Appendices 4a & 4b) which address the matter. The Undertakings use the same wording as found within previous signed legal agreements attached to previous planning permission for residential uses at the property.

Does the Proposed Development Amount to Sustainable Development

- 4.91 NPPF Paragraph 14 indicates that there is a presumption in favour of proposals for sustainable development, and Paragraph 7 sets out the three dimensions: economic, environmental and social. Each is discussed in turn below.

Economic Considerations

- 4.92 While it is acknowledged that the space would no longer be used for business purposes, it is currently vacant and likely to remain so given the conditions of Museum House and competing high-quality office spaces nearby. The existence of long-term vacant office floorspace with virtually no prospect of being occupied in the foreseeable future does not in any way assist the local economy. The granting of permission for this change of use would provide construction jobs and would also provide accommodation for people (a proportion of whom would no doubt be in employment, so this supports jobs and the local economy). The residents would also contribute to the support of local shops and services.

Environmental Considerations

- 4.93 The proposal seeks to reuse existing underutilised space for a more appropriate use, and in this regard would provide a positive environmental improvement. It also gives new residents the opportunity to reduce their need to travel by providing a wide range of both services and facilities and good public transport options in close proximity. As there are no external alterations proposed to the building, it would conserve the historic environment, and it would achieve sustainability benefits through increased performance of the building following conversions.
- 4.94 It is therefore positive in terms of environmental considerations.

Social Considerations

- 4.95 The proposal introduces three 2-bedroom units in a highly desirable location where there is a housing shortage. The Council acknowledges in the supporting text to Policy CS6 that there is a higher priority for 2-bedroom units than other unit sizes. It is very positive in this respect.
- 4.96 It would complete the conversion of the upper floors, and reduce the conflict arising between residential and commercial uses that undesirably share current access arrangements, while still maintaining social cohesion through the retention of both commercial and residential uses (with commercial units on the ground and lower ground floor). This amounts to a positive improvement.
- 4.97 It is therefore considered that the proposed development amounts to sustainable development and a presumption in its favour should be considered according to NPPF Paragraph 14. Accordingly, with appropriate conditions, the development is considered acceptable, and it is respectfully requested that this Appeal be allowed.

5 CONCLUSION

- 5.1 The Appellant is appealing the decision of the London Borough of Council to refuse planning permission for the conversion of part 2nd floor and all of the 3rd floor from Class B1(a) offices to 3 x 2-bedroom units at Museum House, 23-26 Museum Street, London on 30th September 2016 (Application Ref: 2016/3411/P). The Council refused permission for three reasons:
- loss of employment floorspace (contrary to Development Plan Policies CS8 and DP13);
 - lack of affordable housing contribution (contrary to Policies CS6, CS19 and DP3); and
 - in the absence of a legal agreement to secure a car-free development, contributing unacceptably to parking congestion (contrary to Policies CS11, CS19 and DP18).
- 5.2 The Appellant is seeking a hearing-based Appeal.
- 5.3 RPS has examined the planning history of Museum House, which includes planning permissions granted for the conversion of other floors, as well as permissions granted for similar proposals nearby. It was found that the Council has applied the Development Plan policies inconsistently between the subject application and previous applications. It was found that in all other cases nearby, where the Council considered that a building (or part of a building) was unsuitable for office accommodation, a formal marketing exercise was not required.
- 5.4 RPS has found that the proposal would comply with the Development Plan. The proposed residential use is considered a priority use. Its use is acceptable in the location.
- 5.5 With respect to the first Reason for Refusal, it was found that the proposal would comply with Policy CS8 and its supporting text as it seeks to safeguard sites for modern industry, it has sufficient proposals coming forward to meet demands and would allow the change of older premises, such as that found at Museum House.
- 5.6 In terms of Policy DP13 (which seeks to protect appropriate employment spaces), it sets out two criteria. The proposed development is located within a building which is not suitable for its existing business use, primarily due to a lack of modern features and accessibility issues, and therefore passes the first test. In terms of the second test, while the NPPF sets lower thresholds (see below) and the Council has been very inconsistent in its application of this . even within Museum House itself . the Appellant has provided sufficient evidence to demonstrate there is no interest in the property for its continued use as offices, in accordance with the policy, supporting text and supplementary guidance. Furthermore, the NPPF sets a lower test that market signals can indicate whether there is a reasonable prospect that a property could remain in employment use.
- 5.7 In this case, 10 months of marketing has been undertaken at the time of writing (7 months at the time of decision), and this is in line with Policy DP13 and supplementary planning document CPG5. There are fundamental issues with the building which mean that it cannot be brought up to a standard that occupiers of all types require (specifically disabled access, relocation of lift, inclusion of a reception area, no conflict with residential users in communal areas, flexible internal layout). There is virtually no prospect of these units being occupied for office use, especially given the availability of a significant amount of high-quality space in the area.

- 5.8 For the second reason for refusal (affordable housing), RPS has found that the Council is not applying a consistent approach with respect to the fifth floor extension. Previously the Council has not considered this extension to form part of the same development and therefore not linked the affordable housing calculations (and therefore, unlike the other floors, does not have a similar clause in the legal agreement). Furthermore, the Policy CS6 and DP3 indicate where on aggregate 10 family units could be achieved on a property, a contribution would be expected. However, it has been found that the number of units that could be achieved through re-arrangement of the new residential floorspace since 2013 (even if the fifth floor extension was included, which we consider it should not) is at a maximum of 8 units and therefore the thresholds have not been met to warrant such a contribution. For the avoidance of doubt, RPS considers that the amount of floorspace created is 929sqm (gross internal) and 1035sqm (gross external).
- 5.9 Without prejudice to this view, we have calculated the affordable housing contribution that would be required. We have considered whether this contribution would make the development unviable and the conclusion is that a full contribution is warranted at the present time. A Unilateral Undertaken has been prepared which secures the appropriate contribution.
- 5.10 With respect to the third reason for refusal, the Appellant has already indicated its acceptance that the proposed development should be made car-free due to a lack of car parking and opportunities to access local facilities and public transport options. A Unilateral Undertaking has been submitted with the Appeal which would secure this form of development and reflects text already agreed with the Council for previous permissions at Museum House.
- 5.11 In terms of whether the proposal amounts to sustainable development, RPS has found that the proposal is positive in economic, environmental and social terms and it therefore forms a type of sustainable development. The presumption in favour of the development should be applied in accordance with the NPPF.
- 5.12 Accordingly, with appropriate conditions, the development is acceptable, and it is respectfully requested that this Appeal be allowed.
- 5.13 The Appellant has also made an application for costs, which is addressed separately to this Appeal.

APPENDICES
