

DATED 26<sup>TH</sup> APRIL 2017

**(1) HER MAJESTY THE QUEEN**

and

**(2) THE CROWN ESTATE COMMISSIONERS**

and

**(3) 6-10 CAMBRIDGE TERRACE DEVELOPMENTS LIMITED**

and

**(4) CREDIT SUISSE (UK) LIMITED**

and

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

**A G R E E M E N T**

relating to land known as

Land at Chester Gate adjacent to Nos. 6-10 Cambridge Terrace  
London NW1 4JL

pursuant to Section 106 of the Town and Country Planning  
Act 1990 (as amended)

Andrew Maughan  
Borough Solicitor  
London Borough of Camden  
Town Hall  
Judd Street  
London WC1H 9LP

Tel: 020 7974 6007  
Fax: 020 7974 2962

Legal/JL/1800.180



THIS AGREEMENT is made the 26<sup>th</sup> day of April 2017

**BETWEEN:**

1. **HER MAJESTY THE QUEEN** (hereinafter called "Her Majesty")
2. **THE CROWN ESTATE COMMISSIONERS** on behalf of Her Majesty acting in the exercise of the powers conferred by the Crown Estate Act 1961 care of, 16 New Burlington Place, London W1S 2HX (hereinafter called "the Commissioners") of the second part
3. **6-10 CAMBRIDGE TERRACE DEVELOPMENTS LLP** (LLP. Regn. No. OC404108) of 42-50 Hershams Road, Walton-On-Thames KT12 1RZ (hereinafter called "the Owner") of the third part
4. **CREDIT SUISSE (UK) LIMITED** (Co. Regn. No. 2009520) of Compliance Department, Credit Suisse Private Banking, 16<sup>th</sup> Floor, Five Cabot Square, London E14 4QR (hereinafter called "the Mortgagee") of the fourth part
5. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of Town Hall, Judd Street, London WC1H 9LP (hereinafter called "the Council") of the fifth part

1. **WHEREAS**

- 1.1 Her Majesty is seised of an estate in fee simple free from encumbrances of the Property and the Commissioners manage the Property in accordance with their powers under the Crown Estate Act 1961.
- 1.2 Her Majesty and the Commissioners are interested in the Property for the purposes of Section 106 of the Act.
- 1.3 The Owner is registered at the Land Registry as the leasehold proprietor with Title absolute of the Property under Title Numbers NGL953578 and NGL953201 subject to a charge to the Mortgagee and is interested in the Property for the purposes of Section 106 of the Act.

- 1.4 A Planning Application for the Development of the Property was submitted to the Council and validated on 8 April 2016 under reference number 2016/1479/P.
- 1.5 An Application for Listed Building Consent for the Development of the Property was submitted to the Council and validated on 8 April 2016 and the Council resolved to grant consent conditionally under reference number 2016/1776/L.
- 1.6 The Council refused the Planning Application and Application for Listed Building Consent on 14 September 2016.
- 1.7 An appeal under Section 78 of the Act in respect of the refusal of the Planning Application and Application for Listed Building Consent was submitted by the Owner to the Planning Inspectorate and was given reference number APP/X5210/W/16/3162987 & Y/16/3162988.
- 1.8 The Council is the local planning authority for the purposes of the Act for the area in which the Property is situated and considers it expedient in the interests of the proper planning of its area that the Development of the Property should be restricted or regulated in accordance with this Agreement.
- 1.9 For that purpose the Owner is willing to enter into this Agreement pursuant to the provisions of Section 106 of the Act.
- 1.10 The Mortgagee as mortgagee under legal charges contained in a Debenture registered under Title Numbers NGL953578 and NGL953201 and dated 24 September 2014 and 28 April 2016 is willing to enter into this Agreement to give its consent to the same.

2. **DEFINITIONS**

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

2.1	"the Act"	the Town and Country Planning Act 1990 (as amended)
2.2	"the Agreement"	this planning obligation made pursuant to Section 106 of the Act

2.3	"the Application for Listed Building Consent"	an application for Listed Building Consent in respect of the Development of the Property submitted to the Council and validated on 8 April 2016 under reference number 2016/1776/L
2.4	"the Certificate of Practical Completion"	the certificate issued by the Owner's contractor architect or project manager certifying that the Development has been completed
2.5	"Date of Completion"	the date of issue of the Certificate of Practical Completion
2.6	"the Development"	(i) The Planning Permission the reinstatement of historic garden on Chester Gate, and associated works in accordance with the the drawings approved by the Planning Permission  (ii) The Listed Building Consent various works relating to reinstatement of historic garden on Chester Gate, including repositioning of railings and lamp posts, and associated works in accordance with the drawings approved by the Listed Building Consent
2.7	"the Implementation Date"	the date of implementation of the Development by the carrying out of a material operation as defined in Section 56 of the Act and references to "Implementation" and "Implement" shall be construed accordingly
2.8	"the Listed Building Consent"	any listed building consent granted for the Development by the Secretary of State under reference APP/X5210/ Y/16/3162988 pursuant to the appeal against the refusal of the Application for Listed Building Consent

2.9	"Date of Completion"	the date when any part of the Development is occupied and the phrases "Completed" shall be construed accordingly
2.10	"the Parties"	mean the Council Her Majesty the Commissioners the Owner and the Mortgagee
2.11	"the Planning Application"	a planning application in respect of the Development of the Property submitted to the Council and validated on 8 April 2016 under reference number 2016/1479/P
2.12	"Planning Obligations Monitoring Officer"	a planning officer of the Council from time to time allocated to deal with all planning obligations pursuant to S106 of the Act to whom all notices, correspondence, approvals etc must be sent in the manner prescribed at clause 6.1 hereof
2.13	"the Planning Permission"	any planning permission granted for the Development by the Secretary of State under reference APP/X5210/W/16/3162897 pursuant to the appeal against the refusal of the Planning Application
2.14	"the Property"	the land at Chester Gate adjacent to nos 6-10 Cambridge Terrace, London NW1 4JL the same as shown edged red on plan 1 annexed at the Schedule to this Agreement
2.15	"the Public Highway"	privately maintained public right of way
2.16	"Stopping Up Application"	means an application made by the Owner to the Council to authorise the stopping up of the Stopping Up Area pursuant to section 247 or section 253 of the Act
2.17	"Stopping Up Area"	means part of the carriageway and footway at Chester Gate as shown hatched in black on plan

		2 annexed at the Schedule to this Agreement
2.18	“Stopping Up Contribution”	means the sum of £8,500 to be paid by the Owner to the Council in accordance with the terms of this Agreement and to be applied by the Council in connection with the Stopping Up Measures
2.19	“Stopping Up Measures”	means all procedures (including statutory and internal Council procedures and consultation) required to facilitate the stopping up of the Stopping Up Area pursuant to section 247 of the Act in order to enable the Development to be carried out in accordance with the Planning Permission whether or not such procedures result in the obtaining of the Stopping Up Order and for the avoidance of doubt the carriageway and footway along Chester Gate not subject to Stopping Up Measures will remain as Public Highway
2.20	“Stopping Up Order”	means a statutory order authorising the stopping up of the Stopping Up Area

3. **NOW THIS DEED WITNESSETH** as follows:-

- 3.1 This Agreement is made in pursuance of Section 106 of the Act, and is a planning obligation for the purposes of Section 106 as aforesaid, and shall be enforceable by the Council against the Owner as provided herein and against any person deriving title to any part of the Property from the Owner and insofar as it is not a planning obligation its provisions may be enforceable by the Council under any relevant statutory powers.
- 3.2 The Commissioners enter into this Agreement solely to give effect to the obligations and more particularly solely to consent to the enforcement of the obligations against the Owner's interest in the Property and any person deriving title from the Owner but for no other purpose and for the avoidance of any doubt the Commissioners' agreement to enter into this Agreement is without prejudice to the Commissioners' right to negotiate the terms on which the Development is to take place (for example,

including but not limited to a licence for alterations, surrender and re-grant of the residential lease, payment of a premium) and shall not be deemed to constitute any consent in respect of the Development for which the Commissioners' consent is required.

- 3.3 The Commissioners agree to be bound by the terms of this Agreement only in the event that the Owner's interest in the Property is determined and if such event occurs the obligations on behalf of the Owner shall be taken to be obligations which are binding on the Commissioners as if such obligations were given by the Commissioners themselves ALWAYS PROVIDED THAT this Agreement shall be directly enforceable by the Council against any person deriving title to any part of the Property from Her Majesty in the event Her Majesty disposes of the same.
- 3.4 A covenant made by the Commissioners or implied on behalf of Her Majesty and Her Successors or the Commissioners is made or implied by the Commissioners acting in exercise of the powers of the Crown Estate Act 1961 as a body corporate without imposing liability in any personal or private capacity of any individual Commissioner acting on behalf of the Commissioners and so long only as the Property forms part of the Crown Estate save in relation to any antecedent breach prior to parting with such interest and with the effect from the date on which the Property ceases to form part of the Crown Estate such covenant shall be deemed to be made by the person from time to time entitled to the Property and all liability on the part of Her Majesty and Her Successors or the Commissioners in respect of such covenants shall cease as from such date.
- 3.5 Words importing the singular shall include the plural and vice versa and any words denoting actual persons shall include companies corporations and other artificial persons.
- 3.6 Any reference to a specific statute or statutes include any statutory extension or modification amendment or re-enactment of such statute and any regulation or orders made under such statute.
- 3.7 The clause and paragraph headings do not form part of this Agreement and shall not be taken into account in its construction or interpretation.



3.8 It is hereby agreed between the Parties that save for the provisions of clauses 1, 2, 3, 5, 6, 7, 8 and 9 hereof all of which shall come into effect on the date hereof the covenants undertakings and obligations contained within this Agreement shall be conditional on the grant of the Planning Permission and in the event of a grant of Planning Permission become binding upon the Owner upon the Implementation Date.

3.9 The Parties save where the context states otherwise shall include their successors in title.

#### 4. **OBLIGATIONS OF THE OWNER**

The Owner hereby covenants with the Council as follows:-

- 4.1 Not to Implement or to allow Implementation until such time as the Owner has:-
- (i) paid to the Council the Stopping Up Contribution in full; and
  - (ii) submitted to the Council the Stopping Up Application.
- 4.2 To pay the Council's further reasonable costs incurred in connection with the Stopping Up Measures including where reasonably requested payments on account, subject to the Council providing such information as the Owner may reasonably request to verify the Council's incurrence of such further costs.
- 4.3 On completion of the Stopping Up Measures the Council will provide to the Owner a certificate specifying the sum expended by the Council in carrying out the Stopping Up Measures ("the Stopping Up Measures Certified Sum").
- 4.4 If the Stopping Up Measures Certified Sum exceeds the Stopping Up Contribution and any other sums already paid on account by the Owner in respect of the Council's reasonable costs in carrying out the Stopping Up Measures then the Owner shall within fourteen days of the issuing of the said certificate pay to the Council the amount of the excess, subject to the Council providing such information as the Owner may reasonably request to verify the Council's incurrence of such excess sums.
- 4.5 Not to restrict or to allow the restriction of public access to the Stopping Up Area unless and until the Stopping Up Order has been made and in the event of non-

compliance with this sub-clause the Owner shall forthwith take any steps required by the Council to remedy such non-compliance.

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

- 5.1 The Owner shall give written notice to the Council on or prior to the Implementation Date specifying that Implementation of the Planning Permission has taken or is about to take place.
- 5.2 Within seven days following the date of issue of the Certificate of Practical Completion of the Development the Owner shall certify in writing to the Planning Obligations Monitoring Officer in the manner outlined at clause 6.1 hereof quoting the Planning Permission reference 2016/1479/P the Date of Completion.
- 5.3 The Owner shall act in good faith and shall co-operate with the Council to facilitate the discharge and performance of all obligations contained herein and the Owner shall comply with any reasonable requests of the Council to have access to any part of the Property or any requests to provide documentation within the Owner's possession (at the Owner's expense) for the purposes of monitoring compliance with the obligations contained herein.
- 5.4 The Owner agrees declares and covenants with the Council that it shall observe and perform the conditions restrictions and other matters mentioned herein and shall not make any claim for compensation in respect of any condition restriction or provision imposed by this Agreement and further shall indemnify the Council for any expenses or liability arising to the Council in respect of breach by the Owner of any obligations contained herein save to the extent that any act or omission of the Council its employees or agents has caused or contributed to such expenses or liability.
- 5.5 If satisfied as to the compliance of the Owner in respect of any obligation in this Agreement the Council shall (if requested to do so in writing and subject to payment of a fee of £1,000 in respect of each such obligation) provide through its Borough Solicitor a formal written certification of compliance, partial compliance or ongoing compliance (as and if appropriate) with the provisions of any such obligation PROVIDED THAT where the Owner makes an application pursuant to clause 4.1(i) or a payment pursuant to clause 4.1(ii), 4.2 or 4.4 of this Agreement the Council's Planning Obligations Monitoring Officer shall upon request provide the Owner with

written confirmation of receipt of such application or payment (as relevant) and shall otherwise confirm compliance with the Agreement without applying a fee.

- 5.6 Submission of any application or document for approval by the Council under the terms of this Agreement shall be made by the Owner to the Council sending the full document and any appendices in electronic format (where practicable) to the Planning Obligations Monitoring Officer referring to the names dates and Parties to this Agreement and citing the specific clause of this Agreement to which such plan relates quoting the Planning Permission reference 2016/1479/P.
- 5.7 Payment of any contribution pursuant to clause 4.1, 4.2 or 4.4 of this Agreement shall be made by the Owner to the Council sending the full amount via electronic transfer (where practicable). The Owner shall notify the Planning Obligations Monitoring Officer that payment has been made referring to names date and Parties to this Agreement and citing the specific clause of this Agreement to which such contribution relates quoting the planning reference 2016/1479/P. Electronic Transfer be made directly to the National Westminster Bank of Hampstead Village, Enfield Customer Service Centre, PO Box 145 Baird Road Middlesex EN1 1FN quoting Sort Code 50-30-03 and London Borough of Camden General Account no. 24299480.
- 5.8 All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable in respect thereof and all parties other than the Council shall pay and indemnify the Council against any such value added tax properly payable on any sums paid to the Council under this Agreement upon presentation of an appropriate value added tax invoice addressed to the Owner.
- 5.9 All costs and expenses payable to the Council under this Agreement shall bear interest at the rate of 4% above the Base Rate of the National Westminster Bank plc from time to time being charged from the date such payment is due until payment is made.
6. **IT IS HEREBY AGREED AND DECLARED** by the Parties hereto that:-
- 6.1 The provisions of Section 196 of the Law of Property Act 1925 (as amended) shall apply to any notice or approval or agreement to be served under or in connection with this Agreement and any such notice or approval shall be in writing and shall specifically refer to the name, date and Parties to the Agreement and shall cite the clause of the Agreement to which it relates and in the case of notice to the Council

shall be addressed to the London Borough of Camden, Planning Obligations Officer, Urban Design and Renewal, Planning and Public Protection, Culture and Environment Directorate, Town Hall Annex, Argyle Street, London WC1H 9LP quoting the Planning Permission reference number 2016/1479/P and in the case of any notice or approval or agreement from the Council this shall be signed by a representative of the Council's Environment Department.

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

- 6.8 If the Planning Permission is quashed or revoked or otherwise withdrawn or expires before effluxion of time for the commencement of development this Agreement shall forthwith determine and cease to have effect.

7. **MORTGAGEE EXEMPTION**

- 7.1 The Mortgagee hereby consents to the Owner entering into this Agreement and agrees that the security of its charges over the Property shall take effect subject to this Agreement.

- 7.2 The Parties agree that the obligations contained in this Agreement shall not be enforceable against any mortgagee of the whole or any part of the Property unless it takes possession of the Property in which case it will be bound by the obligations as a person deriving title from the Owner.

8. **INDEMNITY**

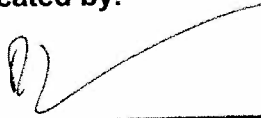
- 8.1 In consideration of the Commissioners entering into this Agreement the Owner hereby covenants with the Commissioners to observe and perform the obligations herein contained and to indemnify and keep fully indemnified Her Majesty and Her Successors and the Commissioners and their successors from and against all actions proceedings demands costs claims or other liabilities whatsoever arising directly or indirectly by reason of any breach or non-compliance with any condition or obligation or covenant contained within this Agreement or by reason of the Commissioners covenanting with the Council in the terms set out in the Agreement.

- 8.2 The Owner covenants with the Commissioners that prior to any disposal of its interest in the Property it shall procure that the disponee enters into a deed of indemnity with and in favour of the Commissioners in the same terms as those which are set out at clause 8.1

9. **RIGHTS OF THIRD PARTIES**

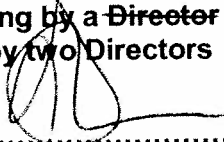
- 9.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement

THE OFFICIAL SEAL OF THE )  
CROWN ESTATE COMMISSIONERS )  
was hereto affixed )  
and authenticated by:- )

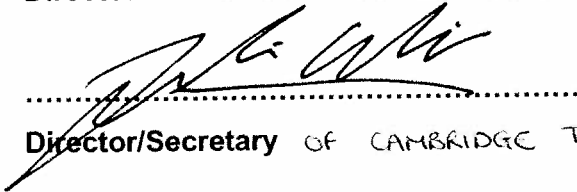


**Rhys Edward John Thomas**  
Authorised by the Crown Estate Commissioners

EXECUTED AS A DEED BY )  
6-10 CAMBRIDGE TERRACE )  
DEVELOPMENTS LLP MEMBER )  
acting by a Director and its Secretary )  
or by two Directors )



.....  
Director of CAMBRIDGE TERRACE LIMITED



.....  
Director/Secretary of CAMBRIDGE TERRACE LIMITED

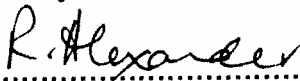
EXECUTED AS A DEED )  
BY CREDIT SUISSE (UK) LIMITED )  
By an Authorised Signatory )  
in the presence of:- )



Paul Clayton  
Vice President  
Credit Suisse (UK) Ltd

Stuart Airey  
Vice President  
Credit Suisse (UK) Limited

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



.....  
Authorised Signatory



**THE SCHEDULE**

**PLAN 1 – THE PROPERTY**

**PLAN 2 - THE STOPPING UP AREA**



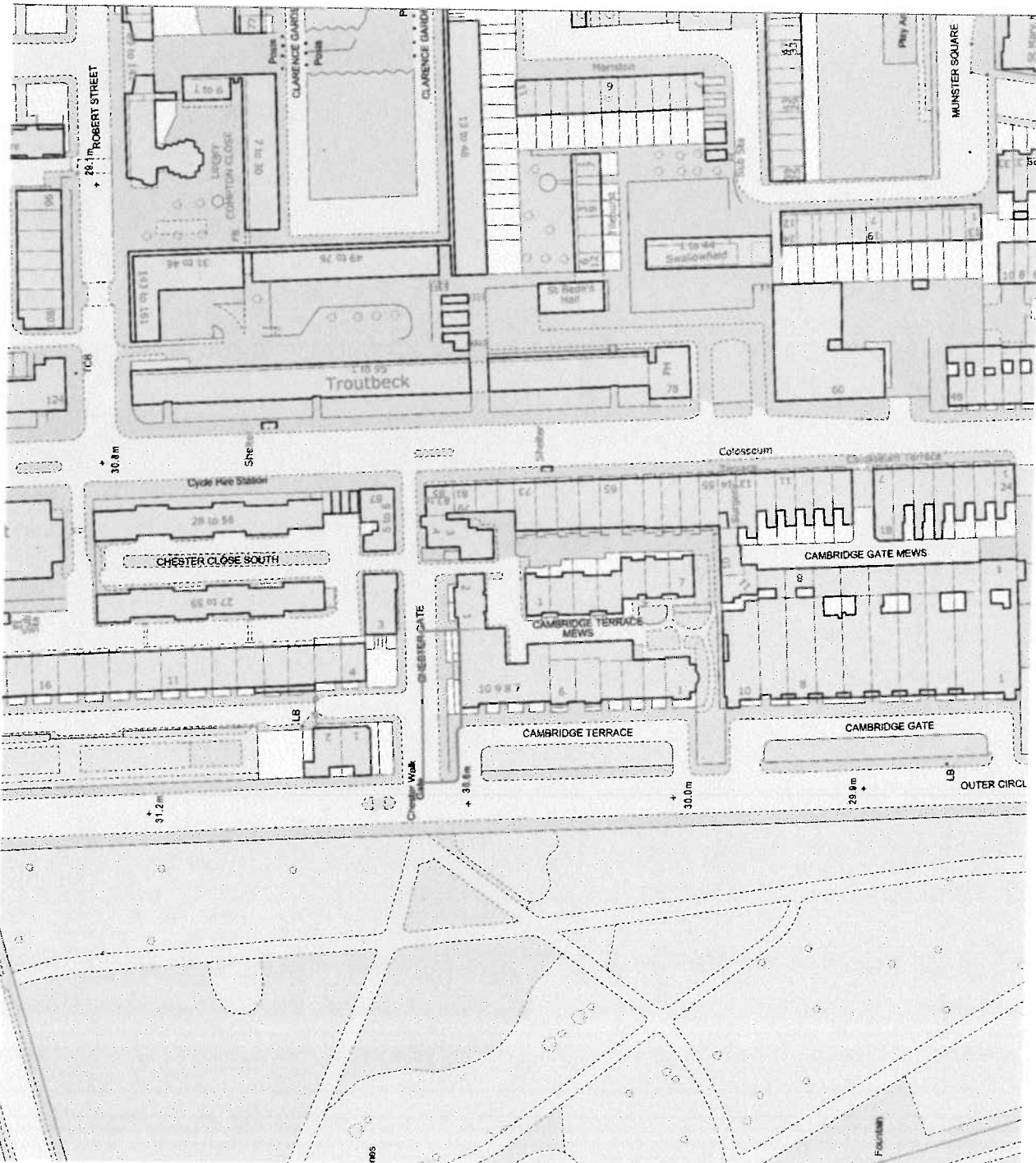


# PLAN 1

## PROJECT QUAD

Client: Drawing: 622.01 (PP) 002 Site Location Plan Chester Gate Garden  
 Project No: 622.01 Rev: PPI  
 Drawing No: 622.01 (PP) 002 Rev: PPI  
 Scale: 1:500@A3 Drawn: RJH  
 Date: March 2016 Checked:

**Robert Myers Associates**  
 Landscape Architecture  
 Hergest Estate Office,  
 Ridgebourne Road,  
 Kington,  
 Herefordshire,  
 HR5 3EG  
 Tel: +44 (0) 1544 232 035  
 Fax: +44 (0) 1544 232 031  
 mail@robertmyers-associates.co.uk  
 www.robertmyers-associates.co.uk  
 DO NOT SCALE FROM THIS DRAWING  
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Handwritten notes and signatures on the right side of the plan, including a large signature and the initials 'SA' and 'R'.

Handwritten note: R. Alton 011



# PLAN 2

CAUSERSMAN\UNFILED\DOCUMENTS\MOW\_TRANSPORT\CANEPARO ASSOCIATES\DRAWINGS\2031 - CHESTER GATE GARDEN\CA\_2031\_003 - AREA TO BE STOPPED UP.DWG

**NOTES**

1. Do not scale from this drawing.
2. This drawing to be read & printed in colour.
3. This drawing is for illustrative purposes only.

Rev	Drawn	Checked	Date

**REVISION HISTORY**

Status:  Preliminary  For Approval  For Construction  
 For Information  For Tender  As Built

Client: \_\_\_\_\_

Project: **Chester Gate Garden**

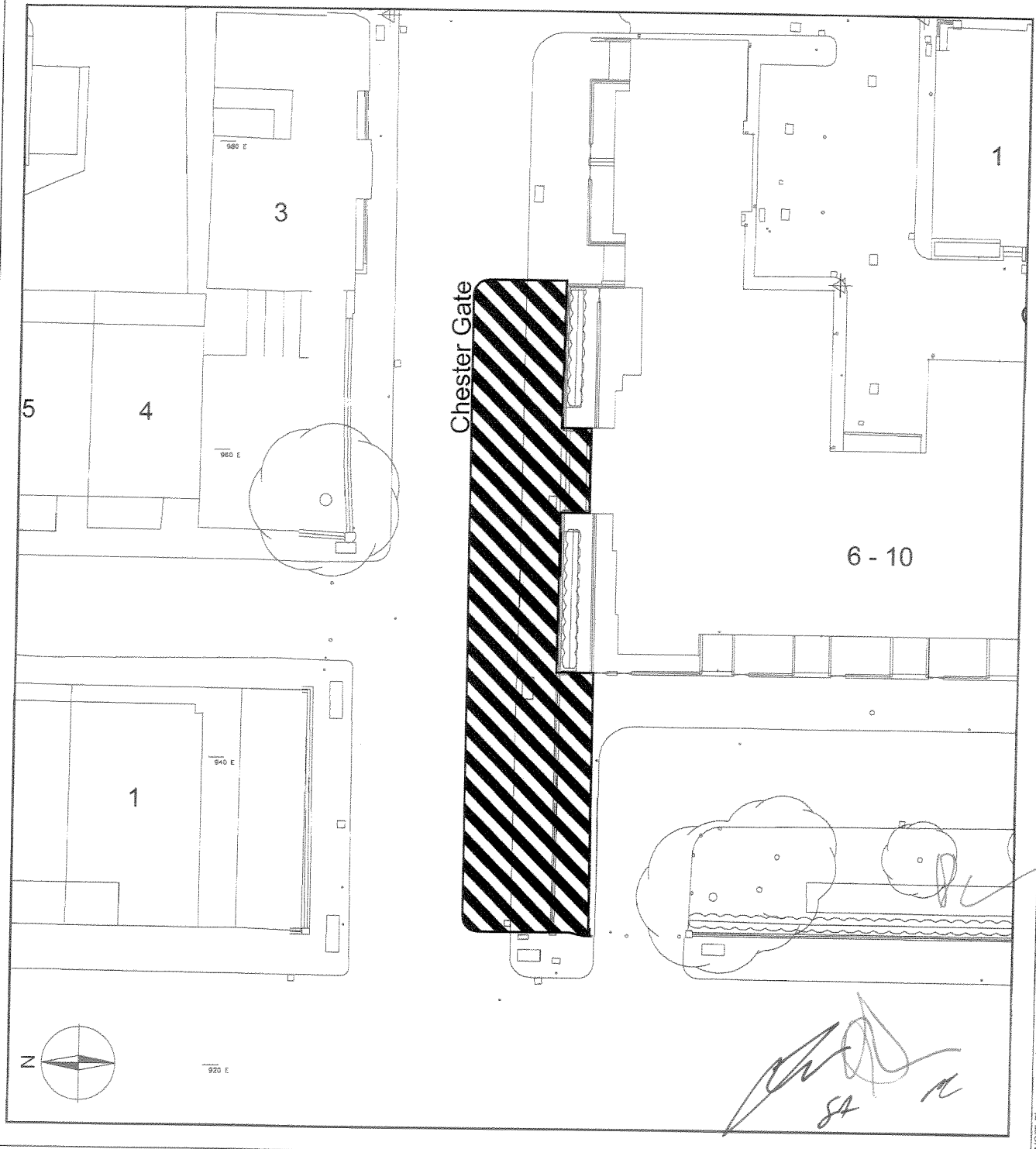
Drawing Title: **Area to be Stopped Up**

Scale: 250 Size: A3

Drawn by: MW Checked by: GS Date: 09.03.16

**CANEPARO ASSOCIATES**  
 Transport Planning & Highway Design  
 131-151 Great Titchfield Street • London • W1W 5BB • Tel: 020 3542 4840

Scheme Ref: 2031 Drawing No: 003 Sheet: 1 of 1



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R. Alexander.





DATED 26<sup>TH</sup> APRIL 2017

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and

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

**A G R E E M E N T**

relating to land known as

**Land at Chester Gate adjacent to Nos. 6-10 Cambridge Terrace  
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**pursuant to Section 106 of the Town and Country Planning  
Act 1990 (as amended)**

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