

DATED 24 APRIL 2017

(1) DEVONSHIRE MUSEUM HOUSE LTD

and

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

A G R E E M E N T
relating to land known as

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

**Section 106 of the Town and Country Planning Act 1990 and
Section 111 of the Local Government Act 1972**

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

Tel: 020 7974 5647
Fax: 020 7974 2962

CLS/PK/1800.255

(final)



THIS AGREEMENT is made the 24th day of April 2017

B E T W E E N:

1. **DEVONSHIRE MUSEUM HOUSE LTD** (registered under company number 09808278) whose registered 12 South Molton Street, London W1K 5QN (hereinafter called "the Owner") of the first part
2. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of Town Hall, Judd Street, London WC1H 9LP (hereinafter called "the Council") of the second part

1. **WHEREAS**

- 1.1 The Owner is registered at the Land Registry as the freehold proprietor with title absolute of the Property under Title Number 279493.
- 1.2 The Owner is the freehold owner of and is interested in the Property for the purposes of Section 106 of the Act.
- 1.3 The Planning Application for the Development at the Property was submitted to the Council and validated by the Council under reference number 2016/3411/P.
- 1.4 By a decision letter dated 30th September 2016 the Council gave notice of refusal to grant planning permission for the Development and the Owner has submitted the Appeal.
- 1.5 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.
- 1.6 For that purpose the Owner is willing to enter into this Agreement pursuant to the provisions of Section 106 of the Act.

1.7 The Parties have agreed to enter into this Agreement but the Agreement shall take effect only in the event of Planning Permission being granted pursuant to the Appeal.

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
- 2.2 "Affordable Housing" low-cost housing including social rented housing, affordable rented housing and intermediate rented housing that meets the needs of people who cannot afford to occupy homes available in the open market in accordance with the National Planning Policy Framework and successor documents
- 2.3 "Affordable Housing Contribution" the sum of £275,600 (two hundred and seventy-five thousand six hundred pounds) 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 the event of receipt towards the provision of Affordable Housing in the London Borough of Camden
- 2.4 "this Agreement" this planning obligation made pursuant to Section 106 of the Act
- 2.5 "the Appeal" the appeal by the Owner to the Secretary of State under Section 78(1) of the Act against the Council's refusal of the Planning Application for the Development at the Property such appeal

having been assigned the reference number APP/X5210/W/17/3167533

2.6 "the Development"

change of use of part second and all of the third floor from Class B1 (office) use to Class C3 (residential) use creating 3 x two-bedroom apartments as shown on the drawing numbers/documents approved under the Planning Permission

2.7 "Double Count"

the application more than once of the floorspace for the purposes of calculating the aggregate floorspace of those developments in determining whether the Owner is liable to make any affordable housing contributions

2.8 "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

2.9 "Occupation Date"

the date when any part of the Development is occupied in accordance with the Planning Permission and the phrases "Occupy", "Occupied" and "Occupation" shall be construed accordingly

2.10 "the Parties"

the Council and the Owner

2.11 "the Planning Application"

a planning application in respect of the Development at the Property submitted to the Council and validated by the Council on 20th June 2016

- 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 "this Planning Permission" planning permission granted for the Development at the Property by the Secretary of State pursuant to the Appeal
- 2.14 "the Property" the land known as Museum House, 25 Museum Street, London WC1A 1JT the same as shown shaded grey on the plan at the Schedule annexed hereto
- 2.15 "Remaining Floorspace" the remaining office floorspace at the basement, first, second, third, fourth and fifth floor levels at the Property which is not the subject of:
- (i) this Planning Permission;
 - (ii) the 2015 Planning Permission;
 - (iii) the 2014 Planning Permission;
 - (iv) the 2013 Planning Permission; or
 - (v) the 1976 Planning Permission
- 2.16 "Residents Parking Bay" a parking place designated by the Council by an order under the Road Traffic Regulation Act 1984 or other relevant legislation for use by residents of the locality in which the Development is situated
- 2.17 "Residents Parking Permit" a parking permit issued by the Council under section 45(2) of the Road Traffic Regulation Act

1984 allowing a vehicle to park in Residents Parking Bays

2.18 "Secretary of State" the Secretary of State having responsibility for determining appeals in relation to England and shall include any inspector appointed to determine the Appeal

2.19 "Subsequent Planning Permission" any planning permission granted pursuant to any planning application submitted subsequent to the Planning Application for the development of the Remaining Floorspace

2.20 "the 1976 Planning Permission" the planning permission granted by the Council on 17th September 1976 under reference number 22896 for development at the Property.

2.21 "the 2013 Planning Permission" the planning permission granted by the Council on 15th October 2013 under reference number 2013/4368/P for development at the Property.

2.22 "the 2014 Planning Permission" the planning permission granted by the Council on 29th October 2014 under reference number 2013/7239/P for development at the Property.

2.23 "the 2015 Planning Permission" the planning permission granted by the Council on 11th March 2015 under reference number 2014/4117/P for development at the Property.

NOW THIS DEED WITNESSETH as follows:-

3.1 This Agreement is made in pursuance of Section 106 of the Act and Section 111 of the Local Government Act 1972 and shall be enforceable by the Council against the Owner as provided herein and against any person deriving title to any part of the

Property from the Owner and insofar as it is not a planning obligation its provisions may be enforceable by the Council under any relevant statutory powers.

- 3.2 Words importing the singular shall include the plural and vice versa and any words denoting actual persons shall include companies corporations and other artificial persons.
- 3.3 Any reference to a specific statute or statutes include any statutory extension or modification amendment or re-enactment of such statute and any regulation or orders made under such statute.
- 3.4 The clause and paragraph headings do not form part of this Agreement and shall not be taken into account in its construction or interpretation.
- 3.5 It is hereby agreed between the Parties that save for the provisions of clauses 1, 2, 3, 5, 6, 7 and 8 hereof all of which shall come into effect on the date hereof the covenants undertakings and obligations contained within this Agreement shall become binding upon the Owner upon the Implementation Date.
- 3.6 The Parties save where the context states otherwise shall include their successors in title.
- 3.7 The Parties acknowledge that the Development shall be treated as being permanently designated as "car free" housing in accordance with Clause 4.1 for all relevant purposes.

4. **OBLIGATIONS OF THE OWNER**

4.1 **AFFORDABLE HOUSING CONTRIBUTION**

- 4.1.1 On or prior to the Implementation Date to pay to the Council the Affordable Housing Contribution in full.
- 4.1.2 Not to Implement or to permit Implementation until such time as the Council has received the Affordable Housing Contribution in full.

4.2 REMAINING FLOORSPACE

4.1 If at any time after the date of this Agreement:

- (a) a Subsequent Planning Permission is granted giving permission for the further development of the Property the effect of which is to grant approval for additional residential units or additional floorspace for residential purposes;
- (b) any additional residential floorspace is created at the Property for residential purposes; or
- (c) any additional residential units are created within the Property ("**the Subsequent Development**")

the Owner shall enter into a legal agreement under Section 106 of the Act ("**the Subsequent Agreement**") with the Council to secure (amongst other matters) the following:-

- (i) that an appropriate percentage of the residential units and or residential floorspace created under the Subsequent Development is provided as Affordable Housing (as on-site contribution, off-site contribution or financial contribution) such percentage to be applied to the aggregate total of the residential units and or residential floorspace permitted by this Planning Permission, the 2013 Planning Permission, the 2014 Planning Permission and the 2015 Planning Permission and the Subsequent Development; and
- (ii) not to occupy or allow occupation of any of the additional residential units and or residential floorspace created under the Subsequent Development until such time as the additional residential units and residential floorspace has been provided as Affordable Housing (as on-site contribution, off-site contribution or financial contribution) in accordance with the provisions of this Agreement

PROVIDED that in determining whether the calculation in Clause 4.2.1(i) hereof or the contribution in clause 4.2.1(ii) hereof shall apply, the Council shall not Double Count any floorspace of the development with floorspace approved under this Planning Permission, the 2013 Planning Permission, the 2014 Planning Permission and the 2015 Planning Permission.

4.2.2 Not to implement or allow implementation of the Subsequent Development until such time as the Owner has entered into the Subsequent Agreement as referred to in clause 4.2.1 hereof.

4.3 **CAR FREE**

4.3.1 To ensure that prior to occupying any residential unit (being part of the Development) each new occupier of the Development is informed by the Owner of the Council's policy that they shall not be entitled (unless they are the holder of a disabled persons badge issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970) to:

- (i) be granted a Residents Parking Permit to park a vehicle in a Residents Parking Bay;
- (ii) buy a contract to park within any car park owned, controlled or licensed by the Council.

4.3.2 Not to occupy or use (or permit the occupation or use of) any residential unit (being part of the Development) at any time during which the occupier of the residential unit holds a Residents Parking Permit to park a vehicle in a Residents Parking Bay or is permitted to park a vehicle in any car park owned, controlled or licensed by the Council unless the occupier is the holder of a disabled persons badge issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970).

4.3.3 The Owner for itself and its successors in title to the Property hereby acknowledges that the provision in Clause 4.3.1 and 4.3.2 in this Agreement shall continue to have effect in perpetuity.

4.3.4 On or prior to the Occupation Date the Owner shall inform the Council's Planning Obligations Monitoring Officer of the official unit numbers of the residential units forming part of the Development (as issued and agreed by the Council's Street Name and Numbering Department), identifying those residential units that in the Owner's

opinion are affected by the Owner's obligation in Clause 4.3.1 and 4.3.2 of this Agreement.

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

- 5.1 The Owner shall give written notice to the Council on or prior to the Implementation Date specifying that Implementation of the Development has taken or is about to take place.
- 5.2 Within seven days following completion of the Development the Owner shall certify in writing to the Planning Obligations Monitoring Officer in the manner outlined at clause 6.1 hereof quoting planning reference 2016/3411/P the date upon which the Development will be ready for Occupation.
- 5.3 The Owner shall act in good faith and shall co-operate with the Council to facilitate the discharge and performance of all obligations contained herein and the Owner shall comply with any reasonable requests of the Council to have access to any part of the Property or any requests to provide documentation within the Owner's possession (at the Owner's expense) for the purposes of monitoring compliance with the obligations contained herein.
- 5.4 The Owner agrees declares and covenants with the Council that it shall observe and perform the conditions restrictions and other matters mentioned herein and shall not make any claim for compensation in respect of any condition restriction or provision imposed by this Agreement and further shall jointly and severally indemnify the Council for any expenses or liability arising to the Council in respect of breach by the Owner of any obligations contained herein save to the extent that any act or omission of the Council its employees or agents has caused or contributed to such expenses or liability.
- 5.5 Payment of any financial contribution pursuant to Clause 4 (Obligations of the Owner) of this Agreement shall be made by the Owner to the Council sending the full amount in the form of a banker's draft to the Planning Obligations Monitoring Officer referring to the names dates and Parties to this Agreement and citing the specific clause of this Agreement to which such Contribution relates quoting the planning application

reference 2016/3411/P or by electronic transfer 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 and to inform the Planning Obligations Monitoring Officer of such payment quoting the above details as if the payment had been made by banker's draft.

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

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

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

5.8 All costs and expenses payable to 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, Placeshaping Service, Urban Design and Development Team, 2nd Floor, 5 Pancras Square, London, N1C 4AJ quoting the planning reference number 2016/3411/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 of this Planning Permission to 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 with official copies of such title to show the entry of this Agreement in the Charges Register of the title to the Property.
- 6.5 Nothing contained or implied in this Agreement shall prejudice or affect the Council's powers to enforce any specific obligation term or condition nor shall anything contained or implied herein prejudice or affect any provisions, rights, powers, duties and obligations of the Council in the exercise of its functions as local planning authority for the purposes of the Act or as a local authority generally and its rights, powers, duties and obligations under all public and private statutes, bye laws and regulations may be as fully and effectually exercised as if the Council were not a party to this Agreement.
- 6.6 Neither the Owner nor their successors in title nor any person deriving title from them shall be bound by the obligations in this Agreement in respect of any period during which it no longer has an interest in the Property but without prejudice to liability for any breach committed prior to the time it disposed of its interest.

6.7 For the avoidance of doubt the provisions of this Agreement (other than those contained in this sub-clause) shall not have any effect until this Agreement has been dated.

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

6.9 If in relation to any of the planning obligations provided under Clause 4 (Obligations of the Owner) of this Agreement the Secretary of State in determining the Appeal states in his or her decision letter that an obligation does not comply with all the tests set out in regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010 (as amended) (such that it does not constitute a reason for granting this Planning Permission) then that obligation or those obligations shall not apply and shall be unenforceable.

7. **RIGHTS OF THIRD PARTIES**

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

8. **JURISDICTION**

This Agreement is governed by and interpreted in accordance with the law of England and the Parties agree that the courts of England shall have jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

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

EXECUTED AS A DEED BY)
DEVONSHIRE MUSEUM HOUSE LTD)
acting by a Director and its Secretary)
or by two Directors)

Director Name: (CAPITALS))

X...F...DEVONSHIRE X

Director Signature:

) J. Deane 7

Director/Secretary Name (CAPITALS)

) X JEREMY MICHAEL STREW X

Director/Secretary Signature:

) X J. M. Strew X

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

)
)
)
)

R. Alexander

Authorised Signatory





THE SCHEDULE

PLAN OF THE PROPERTY



PLAN OF THE PROPERTY

MUSEUM HOUSE, 23-26 MUSEUM STREET, LONDON, WC1A 1JT



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





DATED

24 APRIL

2017

(1) DEVONSHIRE MUSEUM HOUSE LTD

and

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

A G R E E M E N T
relating to land known as

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

**Section 106 of the Town and Country Planning Act 1990 and
Section 111 of the Local Government Act 1972**

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

Tel: 020 7974 5647
Fax: 020 7974 2962

CLS/PK/1800.255

(final)