

DATED 18 NOVEMBER 2019

AGREEMENT

between

THE COUNCIL OF
THE LONDON BOROUGH OF EALING

- and -

HOXTON PROPERTY DEVELOPMENT 1 LTD

Under Section 106 of the
Town and Country Planning Act 1990
and other Statutes
relating to 23 Hereford Road, London, W3 9JW

Director of Legal and Democratic Services
London Borough of Ealing
Perceval House
Uxbridge Road
Ealing
London W5 2HL
Legal/TD/677974

THIS DEED is made the

day of

2019

DATED 18 NOVEMBER 2019

BETWEEN

(1) THE COUNCIL OF THE LONDON BOROUGH OF EALING of Town Hall
Ealing London W5 2BY ("Council")

and

(2) HOXTON PROPERTY DEVELOPMENT 1 LTD (Co. Regn. No. 11112302) of
1st Floor, 8 Kingsland Road, London E2 8DA. ("Developer")

RECITALS

- (1) The Council is the local planning authority for the area within which the Property is situated for the purposes of s106 of the Planning Act and by whom the obligations in this Deed are enforceable
- (2) The Developer is the freehold owner of the Property and is registered at HM Land Registry under title number NGL168124 as the proprietor of the Property with title absolute subject to the Mortgage
- (3) The Application has been submitted to the Council and the parties hereto have agreed to enter into this Deed in order to facilitate and enable the acceptable Development of the Property
- (4) On 08.04.2019 the Council resolved to grant planning permission for the development of the Property in accordance with the Application subject to the prior completion of this Deed

NOW THIS DEED WITNESSES and IT IS HEREBY AGREED as follows: -

DEFINITIONS

1. In this Deed (including the Recitals and Schedules) the following expressions shall unless the context otherwise requires have the meaning ascribed to them below: -

"Application" means the planning application given the Council's reference 185727FUL and received by the Council on 08.01.2019 for the Development of the Property in the manner described in the application

"Blue Badge Holders" means any persons qualifying for disabled parking permits under the Disabled Persons (Badges for Motor Vehicles) (England) (Amendment no.2) Regulations 2007 (or such relevant regulations as may supersede them)

"Chief Planning Officer" means the Chief Planning Officer for the time being of the Council or other person authorised by the Council to carry out that function

"Commencement of Development", "Commence Development" and the like means the carrying out of a material operation at the Property in accordance with Section 56 of the Planning Act SAVE FOR demolition site clearance excavations and the erection of temporary fences and hoardings and temporary buildings moveable structures works plant or machinery and storage areas required temporarily in connection with and for the duration of operations in on over or under the Property and temporary access to the same

"CPZ" means a Controlled Parking Zone in the vicinity of the Property being a parking scheme established and operated by the Council in which on-street parking in a particular area is restricted to only those vehicles with parking permits issued by the Council for that scheme

"Development" means the Development of the Property pursuant to the Planning Permission

"Low Car Housing Scheme" means a development in which Occupiers of the development affected are not entitled to parking permits allowing them or their visitors to park their vehicles within the CPZ in which the Development is located

“Occupy” (and “Occupation”, “Occupier” “Occupied” and the like means first Occupation of any purpose permitted by the Planning Permission but not including Occupation by personnel engaged in the construction fitting out or decoration or Occupation for marketing or sales purposes or occupation in relation to security operations

“Plan” means the Plan annexed to this deed at Schedule 2

“Planning Act” means the Town and Country Planning Act 1990 (as amended)

“Planning Permission” means the planning consent to be granted for the Application in the form of the draft annexed to Schedule 3 (Council reference no. 185727FUL) and for the avoidance of doubt the phrase "Planning Permission" shall for the purposes of this Deed include any varied or different planning permission granted on an application under Section 73 of the Planning Act relating to the Planning Permission

“Property” means the land against which this deed may be enforced being all that property known as 23 Hereford Road, Acton, London, W3 9JW and registered under title number NGL168124 for the purposes of identification only shown edged bold red on the Plan

“Restricted Flats” means restrictions are put in place to prevent the future occupiers of flats 1, 2, 3 from applying for on-street parking permits in the CPZ that is created by the Low Car Housing Scheme in the Property’s Development pursuant to the Planning Permission

“Section 106 Monitoring Officer” means the person for the time being appointed to monitor obligations under s106 of the Planning Act or such other person authorised by the Council to carry out that function

CONSTRUCTION OF THIS DEED

2. References to any party in this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successor to its statutory functions
3. Words importing the singular shall be construed as importing the plural and vice versa
4. Words importing one gender shall be construed as importing any other gender and words denoting natural persons shall include companies corporations and firms and all such words shall be construed interchangeable in that manner
5. References in this Deed to any statute includes any amendment modification extension consolidation or re-enactment of it for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given under that statute or deriving validity from it
6. Covenants made hereunder if made by more than one person are made jointly and severally
7. Where in this Deed any obligation of a party is required to be performed within a specified time limit that obligation shall be deemed to continue after that time limit if the party fails to comply with the obligation within the time limit but without prejudice to any remedy of the enforcing party
8. The headings in this Deed are for reference only and shall not affect construction


LEGAL BASIS

9. This Deed is made pursuant to Section 106 of the Planning Act Section 16 of the Greater London Council (General Powers) Act 1974 Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 and all other powers and enactments which may be relevant to the purpose of giving validity to this Deed or for facilitating the enforcement of the obligations contained in it with intent to bind the Developer
10. Any covenants restrictions or requirements in this Deed falling within the provisions of Section 106 of the Planning Act shall be deemed to be expressed to be planning obligations to which that said Section shall apply

CONDITIONALITY

11. Save for the provisions of clause 13 herein which shall take effect immediately the obligations in this Deed are (unless otherwise specified) conditional upon:
 - 11.1 the grant of Planning Permission; and
 - 11.2 Commencement of Development

THE DEVELOPER'S COVENANTS

12. The Developer agrees undertakes and covenants with the Council as set out in the First Schedule
13. The Developer shall pay to the Council on execution of this Deed the reasonable legal and other professional costs of the Council incurred in the negotiation preparation and execution of this Deed in the sum of ~~£500~~ £500 

MISCELLANEOUS

14. The enforceability of this Deed shall not be affected by any passage of time or any delay by or neglect or forbearance of the Council in enforcing the provisions of this Deed or any extension of time or other indulgence shown by the Council

15. The obligations contained in this Deed are intended to run with the Property and each and every part thereof and to bind the owners and occupiers thereof from time to time and this Deed shall accordingly be registrable as a local land charge by the Council

16. No parties to this Deed (save for the Council) shall be deemed to be or act as agent or contractor for the Council in the carrying out of any of the works required by this Deed and no responsibility liability claim demand cost or expense whatsoever claimed in respect of anything done or not done by any of the parties to this Deed (save for any failure of the Council to observe and perform its covenants under this Deed) shall lie against the Council in respect thereof

17. For such period of time as a CPZ shall operate within the area local to the Development:-
 - 17.1 the Development shall be a Low Car Housing Scheme and

 - 17.2 no occupier of the Restricted Flats at the Development (save for any Blue Badge Holders) shall be entitled to any permit as may be issued by the Council which would allow any such occupier (or person having any connection whatsoever or relationship with any such occupier whether contractual personal or otherwise) to park any vehicle within the CPZ

18. Any notices consents agreements approvals expressions of satisfaction or certificates required herein shall be given in writing and shall not be unreasonably withheld or delayed and if given on behalf of the Council shall be under the hand of the Chief Executive of the Council or other authorised officer of the Council and shall be properly served if sent in the case of the Council by first class recorded delivery post addressed to the Chief Planning Officer quoting references 185727FUL at Perceval House 14-16 Uxbridge Road London W5 2HL or such other officer as may be notified in writing from time to time by the Council to the other parties to this Deed and in the case of

the other parties to their respective addresses as set out above or to their registered or principal office or to the address notified by the parties hereto

20. Words in this Deed denoting an obligation on a party to do any act matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause permit or suffer any infringement of the restriction
21. Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid or unenforceable then such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed
22. Nothing in this Deed shall be construed so as to fetter any of the Council's powers duties and obligations in its capacity as highway authority and/or local planning authority and the Council's rights powers duties and obligations under all public and private statutes byelaws and regulations may be as fully and effectually exercised as if the Council were not a party to this Deed
23. If there is any conflict between the terms of this Deed and any condition on the Planning Permission the latter shall take precedence
24. Save where otherwise specifically expressed within this Deed any costs monies calculation or assessment to be calculated or made in consequence of this Deed shall be as conclusively determined by the Council acting reasonably whose decision (save for manifest error) shall be final and binding on all parties
25. No provisions of this Deed shall be construed as creating any rights enforceable by a third party as defined by the Contracts (Rights of Third Parties) Act 1999 (the "1999 Act") and all third party rights as may be implied by law or deemed to be enforceable by the 1999 Act are hereby excluded to the fullest extent permitted by law SAVE THAT FOR THE AVOIDANCE OF DOUBT the exclusion of the 1999 Act shall not prevent any successors in title

to any of the parties to this Deed from being able to benefit or enforce any of the provisions of this Deed as provided for by s106 of the Planning Act

26. This Deed shall cease to have effect (insofar only as it has not already been complied with) if prior to Commencement of Development the Planning Permission shall expire or be quashed or revoked

27. Save where otherwise expressly stated all covenants given under this Deed shall be complied with entirely at the expense of the party giving the covenant

CHANGE IN OWNERSHIP

28. No party shall be bound by any obligations contained in this Deed after they have parted with the entirety of their legal interest in the Property but without prejudice to liability for any breach or liability existing or arising prior to parting with such interest and PROVIDED ALWAYS that this clause shall be of no effect whatsoever in the event of any breach by the party in question of paragraph 8 of the First Schedule

29. The Developer shall give the Council immediate notice of any change in ownership of any of its interests in the Property occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if applicable) together with details of the area of the Property or unit of occupation transferred and with reference to a plan and Land Registry title number (if applicable)

30. This Deed shall continue to be valid and enforceable following an amendment or variation to the Planning Permission achieved through the submission of a planning application pursuant to section 73 of the Planning Act as if this Deed had been completed pursuant to such an application

DISPUTE PROVISIONS

31. In the event that there shall be any dispute between the parties to this Deed in respect of any matter arising under the terms of this Deed and which dispute the parties are unable to resolve any of the parties may refer the matter to an Expert for determination SAVE THAT in no case shall any point be referred to the Expert which is a point that is in or relates to any matter in the Planning Permission itself (where the Council's determination shall be final)
- 31.1 The Expert shall be a person with knowledge and expertise in the subject matter of the dispute and in the event that the parties cannot agree the identity of the person to be appointed as Expert pursuant to this clause within fifteen (15) working days of one party's notification to the other party of that party's decision to refer the matter to an Expert either party may seek nomination of an Expert by the President for the time being of the appropriate professional body (whose nomination shall be binding on the parties)
- 31.2 The costs of the Expert shall be in the award of the Expert
- 31.3 The Expert shall (save with the agreement of both parties) be restricted to settling disputes
- 31.4 The decision of the Expert (other than in the case of manifest error) shall be binding on the parties
- 31.5 The provisions of this clause 32 do not apply in the case of any dispute or difference arising in connection with any matter covered by this Deed to the extent that the same is a dispute or difference as to a matter of law or which concerns the interpretation of this Deed

JURISDICTION

32. This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales

EXECUTED AS A DEED but not delivered until the day and year first above written

THE FIRST SCHEDULE **COVENANTS BY THE DEVELOPER**

1. Not to occupy or cause or permit or suffer to be occupied the Development or any part thereof (save for the purpose of constructing the same) unless and until the Developer has informed all intended occupiers of the Development by formal notice in writing:-
 - 1.1 that the Development is a Low Car Housing Scheme and
 - 1.2 that (save for any Blue Badge Holders) intended occupiers of the Restricted Flats at the Development (or any person having any connection whatsoever or relationship with any such occupier whether contractual personal or otherwise and who is resident at the Development) shall not be entitled to any permits from the Council which would allow them to park any motor vehicle within the CPZ
2. The Developer will forthwith confirm in writing to the Council that he has made formal notification in accordance with sub-paragraphs 1.1 and 1.2 above
3. The Developer for itself and its successors in title (other than Blue Badge Holders) hereby waives all rights and entitlement (if any) on the part of the Developer to a parking permit in the CPZ and covenants not to lease or transfer the whole or any part of the Restricted Flats at the Property unless he has included a restrictive covenant in any such lease or transfer which provides that the tenant or owner of the whole or any part of the Restricted

Flats at the Property covenants not to apply to the Council for a resident's parking permit for the CPZ

4. To give to the Section 106 Monitoring Officer of the Council quoting reference 185727FUL no less than ten working days prior notice of the intended date of Occupation of the Development so as to enable the Council to monitor effectively the performance of the Developer's obligations under this Deed
5. To notify the Head of Planning Services and the s106 Monitoring Officer of the Council in writing quoting planning ref no. 185727FUL of the full postal address of each residential unit which has been created at the Property pursuant to the Planning Permission immediately such address has been established with Royal Mail
6. In carrying out the terms and conditions of this Deed to comply with all applicable statutory enactments and regulations as may from time to time be in force
7. To indemnify and keep indemnified the Council and every person engaged in the business of the Council from and against all actions proceedings claims and liabilities and demands whatsoever arising either directly or indirectly from the covenants and obligations of the Developer under this Deed
8. Not to assign its interest and responsibilities under this Deed without the prior consent of the Council

THE SECOND SCHEDULE

THE PLAN

The Plan annexed ~~hereto~~ **PLANNING PERMISSION JM**

THE THIRD SCHEDULE
THE PLANNING PERMISSION

As draft planning permission reference 185727FUL attached

LBE SEAL BOOK
Vol 8 No 426/2019

EXECUTED AS A DEED by the Council)
by causing its common seal to be affixed)
in the presence of.-)

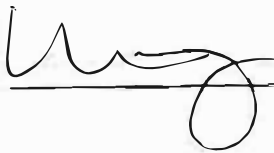
The Authorised Officer



EXECUTED AS A DEED BY
HOXTON PROPERTY DEVELOPMENT 1 LTD

Acting by

Director: 

Director/Secretary: 

NOTICE OF PLANNING DECISION

Mr Kiril Stanilov
ArcUrban Ltd
19 The Park
London
W5 5NL

Ealing Council
Perceval House
14-16 Uxbridge Road
London
W5 2HL

Reference Number:
185727FUL

Direct line: Date:
020 8825 6600 18 November 2019

Dear Sir/Madam

Your application has been considered in accordance with the provisions of the Town and Country Planning Act 1990 (as amended) and its Orders:

Application Received: 08.01.2019

Drawings/Schedules References:

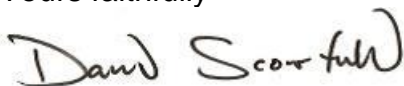
Design and Access Statement, Location Plan drawing no.1, Block Plan drawing no. 2, Proposed Site Plan drawing no: 3, Ground Floor Plan Drawing no. 4, First Floor Plan drawing no. 5, Second Floor Plan drawing no. 6, Roof Plan drawing no. 7, Sections drawing No. 8 and Elevations drawing no. 9,

Site: 23 Hereford Road Acton London W3 9JW

Proposal: Conversion of the existing property into three self-contained residential units; single storey rear extension and provision of associated cycle storage and refuse storage facilities

The Council give notice that permission is **GRANTED** subject to the conditions and informatives presented on the attached pages.

Yours faithfully



Chief Planning Officer
Decision Date: - 18 November 2019

CONDITIONS

1 The development permitted shall be begun before the expiration of three years from the date of this permission.

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

2 The development hereby approved shall be retained in accordance with drawing title number(s): Dwg No: 1, Dwg No: 2, Dwg No: 3, Dwg No: 4, Dwg No: 5, Dwg No: 6, Dwg No: 7, Dwg No: 8, Dwg No: 9, Design and Access Statement

Reason: For the avoidance of doubt, and in the interests of proper planning.

3 All external materials to be used in the development shall match the appearance of those of the existing building, and shall be consistent with those as listed within the submitted application form and the drawings / plans as listed in Condition (2).

Reason: To ensure that the materials harmonise with the surroundings, in accordance with

Policies 7.4 & 7.6 of the London Plan (2016) and Policies 7.4, 7.6 and 7B of Adopted Ealing

Development Management Plan Document (2013), policies 1.1 (k) and 1.2 (f) of the adopted

Development (Core) Strategy (2013)

4 Cycle storage for seven (7) bicycle spaces shall be provided within the front and rear gardens within a secure, lockable compound in accordance with all adopted standards prior to occupation of the building and be continuously available and retained for the life of the development hereby approved.

Reason: To provide adequate bicycle storage to align with Sustainable Transport SPG and policy 6.9 and 6.13 of the London Plan (2016).

5 The development hereby approved shall not be occupied until refuse and recycling storage within an enclosure has been provided within the front garden of the property, in accordance with the Local Planning Authority Standards and has been fully implemented and made available for use. These facilities shall thereafter be retained for use at all times.

Reason: To ensure the provision of satisfactory facilities for the storage of refuse and recycling material, in accordance with policies 1.1 and 1.2 of the Adopted Ealing Development (Core) Strategy (2012) policy 7B of the Ealing Development Management DPD (2013) and policies 7.4, and 7.6 of the London Plan (2016).

Reference No. 185727FUL

The following items are also brought to the applicant's attention:

INFORMATIVES:

- 1 The decision to grant planning permission has been taken having regard to the policies and proposals in the Adopted London Plan, the Adopted Ealing Development Management DPD and supplementary documents:

NPPF - National Planning Policy Framework (2018)

London Plan (2016)

- Policy 2.6 Outer London: Vision and Strategy
- Policy 3.1 Ensuring Equal Life Chances for All
- Policy 3.3 Increasing Housing Supply
- Policy 3.4 Optimising Housing Potential
- Policy 3.5 Quality and Design of Housing Developments
- Policy 3.8 Housing Choice
- Policy 5.13 Sustainable Drainage
- Policy 6.1 Strategic Approach
- Policy 6.3 Assessing Effects of Development on Transport Capacity

- Policy 6.9 Cycling
- Policy 6.13 Parking
- Policy 7.2 An Inclusive Environment
- Policy 7.3 Designing Out Crime Policy
- Policy 7.4 Local character
- Policy 7.5 Public Realm
- Policy 7.6 Architecture

Adopted Ealing Development Management DPD (2013)

- Policy 3.4 Optimising housing potential
- Policy 3.5 Quality and design of housing developments
- Policy 7.4 Local character
- Policy 7B Design amenity

Local Development Framework - Adopted Core Strategy (2012)

- Policy 1.1 Spatial Vision for Ealing 2026
- Policy 1.2 Delivery of the Vision for Ealing 2026

Other Relevant Planning Documents

- London Plan Housing SPG (2016)
- Technical Housing Standards - Nationally Described Space Standard

Housing SPG 2016

In reaching the decision to grant consent, specific consideration was given to the impact of the planning application on the appearance and character of the area and the neighbouring amenities. The proposal is considered acceptable on these grounds, and is also considered to comply with the relevant policies in the adopted Ealing Development Plan DPD. It is not considered that there are any other material considerations in this case that would warrant a refusal of the application.

2 The Council's Environmental Health Service has powers to control noise and disturbance during buildings works. It considers that normal and reasonable working hours for building sites are 8.00 am to 6.00 pm Monday to Friday, from 8.00 am to 1.00 pm on Saturday and not at all on Sunday or Public Holidays. If any activities take place on the site beyond these times which give rise to noise audible outside the site the Council is likely to take action requiring these activities to cease.

3 To assist applicants in a positive manner, the Local Planning Authority has produced policies and written guidance, and offers and encourages a comprehensive pre-application advice service, all of which is available on the Council's website and outlined in a 24 hours automated telephone system.

The scheme complied with policy and guidance. The Local Planning Authority delivered the decision proactively in accordance with requirements of the National Planning Policy Framework.

4 The applicant is hereby advised to remove all site notices on or near the site that were displayed in pursuant to the application.

Reference No. 185727FUL

Notes

If you are not the applicant, please make sure that these notes are drawn to his/her attention.

Please note that this decision DOES NOT imply any consent, which may be required under the **Building Regulations** or under any enactment or provision other than Section 57 of the **Town and Country Planning Act 1990**. Nor does it override any private rights which any person may have relating to the land affected by this decision, including the provisions of the **Party Wall etc. Act 1996**.

Rights of Applicants Aggrieved by Decisions of the Local Planning Authority

1. Appeals to the Secretary of State

If you are aggrieved by the decision of the local planning authority to refuse permission for the proposed development, or to grant permission subject to conditions, you may appeal to the Secretary of State for the Environment, Transport and the Regions, under Section 78 of the Town and Country Planning Act 1990.

If you want to appeal against your local planning authority's decision, then you must do so within **six months of the date of this notice**.

Appeals must be made using a form which you can get from the Planning Inspectorate using a form which can be downloaded from the Planning Inspectorate at Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN or online at <https://www.gov.uk/appeal-planning-inspectorate>.

The Secretary of State can allow a longer period for the giving of a notice of an appeal, but he will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.

The Secretary of State need not consider an appeal if it seems to him that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order, and to any directions given under a development order.

In practice, the Secretary of State does not refuse to consider appeals solely because the Local Planning Authority based its decision on a direction given by him.

2. Purchase Notices

If either the Local Planning Authority or the Secretary of State for the Environment, Transport and the Regions refuse permission to develop land, or grants it subject to conditions, whether by the local planning authority or the Secretary of State, the owner may claim that he can neither put the land to reasonably beneficial use in its existing state nor can he render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.

In these circumstances the owner may serve a purchase notice on the London Borough of Ealing. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.

3. Compensation

In certain circumstances, compensation may be claimed from the local planning authority if permission is refused or granted subject to conditions by the Secretary of State on appeal or on reference of the application to him. These circumstances are set out in Section 114 of the Town and Country Planning Act 1990.