

DATED

19 October

2023

(1) BELA MONGIA

-and-

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

DEED OF VARIATION

Relating to the Agreement dated 14 September 2020
Between the Mayor and the Burgesses of the
London Borough of Camden, and;
42 Elsworthy Road Limited, and;
Fourty Two Point 5 Elsworthy Limited, and;
Richard Woolf, and;
Daniel Brett Austin, and;
Investec Bank Plc

under section 106 of the Town and
Country Planning Act 1990 (as amended)
Relating to development at premises known as
42 ELSWORTHY ROAD LONDON NW3 3DL

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

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CLS/COMJO
DoV FINAL 1800.2534

THIS DEED is made on the 19th day of October 2023

BETWEEN

1. **BELA MONGIA** care of 76 Wardour Street London W1F 0UR (hereinafter called "the Owner") of the first part
2. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of Town Hall, Judd Street, London WC1H 9LP (hereinafter called "the Council") of the second part

WHEREAS:

- 1.1 The Council and 42 Elsworthy Road Limited and Fourty Two Point 5 Elsworthy Limited and Richard Woolf and Daniel Brett Austin and Investec Bank PLC entered into an Agreement dated 14th September 2020 pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended).
- 1.2 The Owner is registered at the Land Registry as the freehold proprietor with Title Absolute under title number NGL764842 and is the freehold owner of and is interested in the Property for the purposes of Section 106(9) of the Act.
- 1.3 The Owner is registered at the Land Registry as the leasehold proprietor with Title Absolute under title numbers NGL588959, NGL689929, NGL705138, NGL923951 and NGL751351 and is the freehold owner of and is interested in the Property for the purposes of Section 106(9) of the Act.
- 1.4 The Council is the local planning authority for the purposes of the Act 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 Deed.
- 1.5 A new Planning Application in respect of the Property and to amend the Original Planning Permission was submitted to the Council by the Owner and validated on 1st September 2022 for which the Council resolved to grant permission conditionally under reference 2022/3738/P subject to the conclusion of this Deed.

1.6 This Deed of Variation is made by virtue of the Town and Country Planning Act 1990 Section 106A (as amended) and is a planning obligation for the purposes of that section.

1.7 Without prejudice to the terms of the other covenants contained in the Existing Agreement the parties hereto have agreed to vary the terms of the Existing Agreement as hereinafter provided.

2. INTERPRETATION

2.1 All words and phrases defined in the Existing Agreement shall have the same meaning in this Deed save where the context otherwise dictates and for the avoidance of any doubt the Existing Agreement shall remain in full force and effect save as varied by this Deed.

2.2 All reference in this Deed to clauses in the Existing Agreement are to clauses within the Existing Agreement.

2.3 Where in this Deed reference is made to a clause schedule or recital such reference (unless the context otherwise requires) is a reference to a clause schedule or recital of this Agreement.

2.4 Headings are for ease of reference only and are not intended to be construed as part of this Deed and shall not be construed as part of this Agreement and shall not effect the construction of this Deed.

2.5 Unless the context otherwise requires references to the singular shall include the plural and vice versa.

2.6 References in this Deed to the Owner and Mortgagee shall include their successors in title.

2.7 In this Deed the following expression shall unless the context otherwise states have the following meaning now allocated to it.

2.8.1 "Deed"	this Deed of Variation made pursuant to Section 106A of the Act
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2.8.2 "Existing Agreement"

the Section 106 Agreement under the Town and Country Planning Act 1990 (as amended) dated 14th September 2020 made between the Council and 42 Elsworthy Road Limited and Forty Two Point 5 Elsworthy Limited and Richard Woolf and Daniel Brett Austin and Investec Bank Plc.

2.8.3 "the Original Planning Permission"

means the planning permission granted by the Council on 14th September 2020 referenced 2019/0149/P allowing the Erection of two-storey side extension following demolition of existing structure, basement excavation, alterations to existing eastern side extension and new steps into the rear garden and front side access; alterations to fenestration, front boundary wall, landscaping and provision of cycle storage as shown on drawing numbers drawing numbers : E_00; E_01; E_02; E_04; E_05; E_06; E_07; D_01 Rev. A; D_02 Rev. A; D_03 Rev. A; D_04; D_05; D_06; D_07; P_02 Rev. D; P_01 Rev. F; P_03 Rev A; P_04 Rev. C; P_05 Rev. B; P_06 Rev. B; P_07 Rev. B; P_09 Rev. B; P_10 Rev. A; P_11 Rev. A; P_12 Rev. D; P_13 Rev. B; P_16 Rev. B; P_19 Rev. C; P_20 Rev. B; Noise Assessment dated 4th September 2018; BIA documentation: Structural Engineer's Method Statement (Rev P2) dated December 2018; Geo-Environmental Assessment and Basement Impact Assessment dated September 2018; Ground Movement Assessment dated December 2018; CGL Email 18 June 2019; CGL Email 26 July 2019; Report on the Impact on Trees by John Cromar's dated 13th August 2019 and Letter dated December 2019; Daylight

and Sunlight Report dated October 2018 and letter from Hollis dated October 2019; Ecology Letter dated June 2019; Applicant residency confirmation.

3. VARIATION TO THE EXISTING AGREEMENT

- 3.1 The following definitions contained in the Existing Agreement shall be varied as follows:

- | | |
|------------------------------|---|
| 3.1.1 "Development" | variation of planning permission dated 14 th September 2020 to vary condition 4 (approved drawings) and condition 10 (tree protection measures) of planning permission ref 2019/0149/P dated 14/09/2020 (for Erection of two-storey side extension following demolition of existing structure, basement excavation, alterations to existing eastern side extension and new steps into the rear garden and front side access; alterations to fenestration, front boundary wall, landscaping and provision of cycle storage), namely changes to trees retained and tree protection measures as shown in drawing numbers Drawing Nos: Report on the Impact on Trees by John Cromar's Arboricultural Consultancy Limited ref. S87-J4-AMSCI-1 dated 18th August 2022. |
| 3.1.2 "Planning Permission" | the planning permission for the Development under reference number 2022/3738/P granted by the Council in the form of the draft annexed hereto |
| 3.1.3 "Planning Application" | the application for Planning Permission in respect of the Property submitted on 1 st |

September 2022 by the Owner and given
reference number 2022/3738/P

- 3.2 The definition at clause 2.25 of the Existing Agreement shall be deleted and replaced with the following :

" 2.25 Returning Occupants" Bela Mongia

- 3.3 All references in Clause 5 and Clause 6 of the Existing Agreement to "Planning Permission reference 2019/0149/P" shall be replaced with "Planning Permission reference 2022/3738/P".

- 3.4 In all other respects the Existing Agreement (as varied by this Deed) shall continue in full force and effect.

4. COMMENCEMENT

- 4.1 Without prejudice to the effect of Clause 3.5 in the Existing Agreement the provisions in this Deed shall take effect on the Implementation of the Planning Permission referenced 2022/3738/P.

5 PAYMENT OF THE COUNCIL'S LEGAL COSTS

- 5.1 The Owner agrees to pay the Council (on or prior to completion of this Deed) its reasonable legal costs incurred in preparing this Deed

6. REGISTRATION AS LOCAL LAND CHARGE

- 6.1 This Deed shall be registered as a Local Land Charge

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.

CONTINUATION OF DEED OF VARIATION RELATING TO 42 ELSWORTHY ROAD

EXECUTED AS A DEED BY)
BELA MONGIA)
in the presence of:)

BELA MONGIA

Witness Signature

Witness Name: ANNIE TAIT
Address: 19 UPPER TOOTING PARK, LONDON, SW17 7SN
Occupation: PERSONAL ASSISTANT

CONTINUATION OF DEED OF VARIATION RELATING TO 42 ELSWORTHY ROAD

**THE COMMON SEAL OF THE MAYOR
AND BURGESSES OF THE LONDON
BOROUGH OF CAMDEN**

was hereunto affixed by Order:-

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.....
Duly Authorised Officer



Application ref: 2022/3738/P
Contact: Alex Kresovic
Tel: 020 7974 3134
Date: 8 June 2023

Wolff Architects
Chandos Yard
83 Bicester Road
Long Crendon
Bucks
HP18 9EE

Development Management
Regeneration and Planning
London Borough of Camden
Town Hall
Judd Street
London
WC1H 9JE

Phone: 020 7974 4444

planning@camden.gov.uk
www.camden.gov.uk/planning

Dear Sir/Madam,

FOR INFORMATION ONLY - THIS IS NOT A FORMAL DECISION
Town and Country Planning Act 1990 (as amended)

DECISION SUBJECT TO A SECTION 106 LEGAL AGREEMENT

Address:
**42 Elsworthy Road
London
NW3 3DL**

Proposal:

Variation of condition 4 (approved drawings) and condition 10 (tree protection measures) of planning permission ref 2019/0149/P dated 14/09/2020 (for Erection of two-storey side extension following demolition of existing structure, basement excavation, alterations to existing eastern side extension and new steps into the rear garden and front side access; alterations to fenestration, front boundary wall, landscaping and provision of cycle storage), namely changes to trees retained and tree protection measures.

Drawing Nos: Report on the Impact on Trees by John Cromar's Arboricultural Consultancy Limited ref. S87-J4-AMSCI-1 dated 18th August 2022

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

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

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

Condition(s) and Reason(s):

- 1 The development hereby permitted must be begun not later than the end of three years from the date of the original planning permission ref 2019/0149/P dated 14 April 2020.

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

- 2 All new external work shall be carried out in materials that resemble, as closely as possible, in colour and texture those of the existing building, unless otherwise specified in the approved application.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policies D1 and D2 of the London Borough of Camden Local Plan 2017.

- 3 Before the relevant part of the work is begun, detailed drawings, or samples of materials as appropriate, in respect of the following, shall be submitted to and approved in writing by the local planning authority:

- a) Details including sections at 1:10 of all new windows (including jambs, head and cill), ventilation grilles, external doors;
- b) Manufacturer's specification details of all facing materials for the western two storey extension, and sample photos of those materials. Samples of the materials should be kept on site at all times during the construction.
- c) Details of lightwell grilles at scale 1:10;
- d) Details including sections at 1:10 and 1:20 of glazing structure on the eastern side facing no. 40 Elsworthy Road.

The relevant part of the works shall be carried out in accordance with the details thus approved and all approved samples shall be retained on site during the course of the works.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policies D1 and D2 of the London Borough of Camden Local Plan 2017.

- 4 The development hereby permitted shall be carried out in accordance with the following approved plans:

E_00; E_01; E_02; E_04; E_05; E_06; E_07; D_01 Rev. A; D_02 Rev. A; D_03 Rev. A; D_04; D_05; D_06; D_07; P_02 Rev. D; P_01 Rev. F; P_03 Rev. A; P_04 Rev. C; P_05 Rev. B; P_06 Rev. B; P_07 Rev. B; P_09 Rev. B; P_10 Rev. A; P_11 Rev. A; P_12 Rev. D; P_13 Rev. B; P_16 Rev. B; P_19 Rev. C; P_20 Rev. B; Noise Assessment dated 4th September 2018; BIA documentation: Structural Engineer's Method Statement (Rev P2) dated December 2018; Geo-Environmental Assessment and Basement Impact Assessment dated September 2018; Ground Movement Assessment dated December 2018; CGL Email 18 June 2019; CGL Email 26 July 2019; Report on the Impact on Trees by John Cromar's Arboricultural Consultancy Limited ref. S87-J4-AMSCI-1 dated 18th August 2022 and Letter dated December 2019; Daylight and Sunlight Report dated October 2018 and letter from Hollis dated October 2019; Ecology Letter dated June 2019; Applicant residency confirmation.

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

- 5 The development hereby approved shall not commence until such time as a suitably qualified chartered engineer with membership of the appropriate professional body has been appointed to inspect, approve and monitor the critical elements of both permanent and temporary basement construction works throughout their duration to ensure compliance with the design which has been checked and approved by a building control body. Details of the appointment and the appointee's responsibilities shall be submitted to and approved in writing by the local planning authority prior to the commencement of development. Any subsequent change or reappointment shall be confirmed forthwith for the duration of the construction works.

Reason: To safeguard the appearance and structural stability of neighbouring buildings and the character of the immediate area in accordance with the requirements of policies D1, D2 and A5 of the London Borough of Camden Local Plan 2017.

- 6 The roof of the new two storey south-west extension hereby permitted shall not be used as a roof terrace/balcony at any times.

Reason: In order to prevent unreasonable overlooking of neighbouring premises in accordance with the requirements of policy A1 of the London Borough of Camden Local 2017.

- 7 The development hereby approved shall be carried out strictly in accordance with the BIA (and other supporting documents) compiled by Form Structural Design Ltd, Create Consulting Engineers, Card Geotechnics Limited, Marek Wojciechowski Architects, as well as the recommendations in the Basement Impact Assessment Audit Report (Rev F1) prepared by Campbell Reith, dated August 2019.

Reason: To safeguard the appearance and structural stability of neighbouring buildings and the character of the immediate area in accordance with the requirements of policy A5 of the Camden Local Plan 2017.

- 8 Prior to the first occupation of the building, full details of hard and soft landscaping, details of at least two replacement trees and means of enclosure of all un-built, open areas have been submitted to and approved by the local planning authority in writing. Such details shall include details of any proposed earthworks including grading, mounding and other changes in ground levels, as well as details of gates, boundary walls and fences at scale 1:10 and 1:20. The relevant part of the works shall not be carried out otherwise than in accordance with the details thus approved.

Reason: To ensure that the development achieves a high quality of landscaping which contributes to the visual amenity and character of the area in accordance with the requirements of policies A2, A3, A5, D1 and D2 of the London Borough of Camden Local Plan 2017.

- 9 All hard and soft landscaping works shall be carried out in accordance with the approved landscape details by not later than the end of the planting season following completion of the development or any phase of the development, or prior to the occupation for the permitted use of the development or any phase of the development, whichever is the sooner. Any trees or areas of planting (including trees existing at the outset of the development other than those indicated to be removed) which, within a period of 5 years from the completion of the development, die, are removed or become seriously damaged or diseased, shall be replaced as soon as is reasonably possible and, in any case, by not later than the end of the following planting season, with others of similar size and species, unless the local planning authority gives written consent to any variation.

Reason: To ensure that the landscaping is carried out within a reasonable period and to maintain a high quality of visual amenity in the scheme in accordance with the requirements of policies A2, A3, A5, D1 and D2 of the London Borough of Camden Local Plan 2017.

- 10 Prior to the commencement of works on site, tree protection measures shall be installed and working practices adopted in accordance with the arboricultural report by John Cromar's Arboricultural Consultancy Limited ref. S87-J4-AMSCI-1 dated 18th August 2022. All trees on the site, or parts of trees growing from adjoining sites, unless shown on the permitted drawings as being removed, shall be retained and protected from damage in accordance with BS5837:2012 and with the approved protection details. The works shall be undertaken under the supervision of the project arboriculturalist.

Reason: To ensure that the development will not have an adverse effect on existing trees and in order to maintain the character and amenity of the area in accordance with the requirements of policies A2 and A3 of the Camden Local Plan 2017.

- 11 Notwithstanding the approved plans, prior to the first occupation of the two flats, details of secure and covered cycle storage area for 4 cycles shall be submitted to and approved by the local planning authority. The approved facility shall thereafter be provided in its entirety prior to the first occupation of any of the new units, and permanently retained thereafter.

Reason: To ensure the development provides adequate cycle parking facilities in accordance with the requirements of policy T1 of the London Borough of Camden Local Plan 2017.

- 12 Notwithstanding the approved plans, prior to the first occupation of the two flats, details of the location, design and method of waste storage and removal including recycled materials, shall be submitted to and approved by the local planning authority in writing. The facility as approved shall be provided prior to the first occupation of any of the new units and permanently retained thereafter.

Reason: To ensure that sufficient provision for the storage and collection of waste has been made in accordance with the requirements of policies CC5, A1 and A4 of the London Borough of Camden Local Plan 2017.

- 13 Prior to first occupation of the development a plan showing details of bird and bat box locations and types and indication of species to be accommodated shall be submitted to and approved in writing by the local planning authority. The boxes shall be installed in accordance with the approved plans prior to the occupation of the development and thereafter retained.

Reason: In order to secure appropriate features to conserve and enhance wildlife habitats and biodiversity measures within the development, in accordance with the requirements of policies A3 and CC2 of the London Borough of Camden Local Plan 2017.

- 14 The development hereby approved shall achieve a maximum internal water use of 110 litres/person/day. The dwelling/s shall not be occupied until the Building Regulation optional requirement has been complied with.

Reason: To ensure the development contributes to minimising the need for further water infrastructure in an area of water stress in accordance with policies CC1, CC2 and CC3 of the London Borough of Camden Local Plan 2017.

- 15 Noise levels at a point 1 metre external to sensitive facades shall be at least 5dB(A) less than the existing background measurement (LA90), expressed in dB(A) when all plant/equipment (or any part of it) is in operation unless the plant/equipment hereby permitted will have a noise that has a distinguishable, discrete continuous note (whine, hiss, screech, hum) and/or if there are distinct impulses (bangs, clicks, clatters, thumps), then the noise levels from that piece of plant/equipment at any sensitive façade shall be at least 10dB(A) below the LA90, expressed in dB(A).

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.

- 16 Before the use commences, the plant equipment shall be provided with acoustic isolation, sound attenuation and anti-vibration measures in accordance with the approved plans and Noise Assessment dated 4th of September 2018. All such measures shall thereafter be retained and maintained in accordance with the manufacturers' recommendations.

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.

Informative(s):

1 Reasons for granting permission:

Planning permission was granted on 14.9.2020 ref: 2019/0149/P for the erection of two-storey side extension following demolition of existing structure, basement excavation, alterations to existing eastern side extension and new steps into the rear garden and front side access; alterations to fenestration, front boundary wall, landscaping and provision of cycle storage.

This proposal seeks to vary conditions 4 and 10 of this permission with the submission of a revised arboricultural report, as the impact of trees has altered since the 2020 approval. The revised arboricultural report, prepared by John Cromar's Arboricultural Consultancy Limited, would supersede the originally approved arboricultural report.

The Council's Tree and Landscape Officer has reviewed the revised arboricultural report and is satisfied with the submitted information. The details are considered sufficient to demonstrate that the trees to be retained will be adequately protected throughout development in accordance with BS5837:2012. The wording of conditions 4 and 10 can be amended to reflect the revised arboricultural report.

No other works are proposed. There would be no impact on neighbouring residential amenity nor on the character and appearance of the host building and conservation area.

The full impact of the scheme has already been assessed during the determination of the permitted scheme, and it is considered that the amendments would have no material effect in terms of impact on character and appearance of the host building or the surrounding streetscene or neighbouring amenity.

No objections were received and the planning history of the site has been taken into account when coming to this decision.

As such, the proposed development is in general accordance with policies H1, H3, H7, D1, D2, A1, A3, A4, A5, T1, T2, T3, CC1 and CC2 of the Camden Local Plan 2017. The proposed development also accords with the London Plan 2021 and the National Planning Policy Framework 2021.

- 2 This proposal may be liable for the Mayor of London's Community Infrastructure Levy (CIL) and the Camden CIL. Both CILs are collected by Camden Council after a liable scheme has started, and could be subject to surcharges for failure to assume liability or submit a commencement notice PRIOR to commencement. We issue formal CIL liability notices setting out how much you may have to pay once a liable party has been established. CIL payments will be subject to indexation in line with construction costs index. You can visit our planning website at www.camden.gov.uk/cil for more information, including guidance on your liability, charges, how to pay and who to contact for more advice.
- 3 This approval does not authorise the use of the public highway. Any requirement to use the public highway, such as for hoardings, temporary road closures and suspension of parking bays, will be subject to approval of relevant licence from the Council's Streetworks Authorisations & Compliance Team London Borough of Camden 5 Pancras Square c/o Town Hall, Judd Street London WC1H 9JE (Tel. No 020 7974 4444) . Licences and

authorisations need to be sought in advance of proposed works. Where development is subject to a Construction Management Plan (through a requirement in a S106 agreement), no licence or authorisation will be granted until the Construction Management Plan is approved by the Council.

- 4 Your proposals may be subject to control under the Party Wall etc Act 1996 which covers party wall matters, boundary walls and excavations near neighbouring buildings. You are advised to consult a suitably qualified and experienced Building Engineer.
- 5 All works should be conducted in accordance with the Camden Minimum Requirements - a copy is available on the Council's website at <https://beta.camden.gov.uk/documents/20142/1269042/Camden+Minimum+Requirements+%281%29.pdf/bb2cd0a2-88b1-aa6d-61f9-525ca0f71319> or contact the Council's Noise and Licensing Enforcement Team, 5 Pancras Square c/o Town Hall, Judd Street London WC1H 9JE (Tel. No. 020 7974 4444)

Noise from demolition and construction works is subject to control under the Control of Pollution Act 1974. You must carry out any building works that can be heard at the boundary of the site only between 08.00 and 18.00 hours Monday to Friday and 08.00 to 13.00 on Saturday and not at all on Sundays and Public Holidays. You must secure the approval of the Council's Noise and Licensing Enforcement Team prior to undertaking such activities outside these hours.

- 6 You are advised the developer and appointed / potential contractors should take the Council's guidance on Construction Management Plans (CMP) into consideration prior to finalising work programmes and must submit the plan using the Council's CMP pro-forma; this is available on the Council's website at <https://beta.camden.gov.uk/web/guest/construction-management-plans> or contact the Council's Planning Obligations Team, 5 Pancras Square c/o Town Hall, Judd Street London WC1H 9JE (Tel. No. 020 7974 4444). No development works can start on site until the CMP obligation has been discharged by the Council and failure to supply the relevant information may mean the council cannot accept the submission as valid, causing delays to scheme implementation. Sufficient time should be afforded in work plans to allow for public liaison, revisions of CMPs and approval by the Council.
- 7 Your proposals may be subject to control under the Building Regulations and/or the London Buildings Acts that cover aspects including fire and emergency escape, access and facilities for people with disabilities and sound insulation between dwellings. You are advised to consult the Council's Building Control Service, Camden Town Hall, Judd St, Kings Cross, London NW1 2QS (tel: 020-7974 6941).

In dealing with the application, the Council has sought to work with the applicant in a positive and proactive way in accordance with paragraph 38 of the National Planning Policy Framework 2021.

You can find advice about your rights of appeal at:

<https://www.gov.uk/appeal-planning-decision>.

Yours faithfully

Supporting Communities Directorate

DRAFT