

DATED

30 January

2013

**(1) DAVID GRENVILLE SMITH**

-and-

**(2) NATIONAL WESTMINSTER BANK PLC**

-and-

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

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**DEED OF VARIATION**

Relating to the Agreement dated 16 November 2011  
Between the Mayor and the Burgesses of the  
London Borough of Camden,  
David Grenville Smith and National Westminster Bank PLC  
under section 106 of the Town and  
Country Planning Act 1990 (as amended)  
Relating to development at premises known as  
**48C Netherhall Gardens, London, NW3 5RG**

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Andrew Maughan  
Head of Legal Services  
London Borough of Camden  
Town Hall  
Judd Street  
London WC1H 9LP

Tel: 020 7974 1478  
Fax: 020 7974 2962

CLS/COM/JL/1685.1756  
DOV FINAL

THIS AGREEMENT is made on the 30 day of January 2013

**BETWEEN**

1. **DAVID GRENVILLE SMITH** of 48C Netherhall Gardens Hampstead London NW3 5RG (hereinafter called "the Owner") of the first part
2. **NATIONAL WESTMINSTER BANK PLC** (Co. Reg. No. 929027) whose registered address is 135 Bishopsgate London EC2M 3UR (hereinafter called "Mortgagee") of the second part
3. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of Town Hall, Judd Street, London WC1H 9LP (hereinafter called "the Council") of the third part

**WHEREAS:**

- 1.1 The Council, the Owner and the Mortgagee entered into an Agreement dated 16 November 2011 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 LN151786 subject to a charge to the Mortgagee.
- 1.3 The Owner 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 Agreement.
- 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 14 August 2012 for which the Council resolved to grant permission conditionally under reference 2012/4138/P subject to the conclusion of this Agreement.

- 1.6 This Agreement is made by virtue of the Town and Country Planning Act 1990 Section 106 (as amended) and is a planning obligation for the purposes of that section.
- 1.7 The Mortgagee as mortgagee under a legal charge registered under Title Number LN151786 and dated 19 December 2002 is willing to enter into this Agreement to give its consent to the same.
- 1.8 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 Agreement 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 Agreement.
- 2.2 All references in this Agreement to clauses in the Existing Agreement are to clauses within the Existing Agreement.
- 2.3 In this Agreement the following expression shall unless the context otherwise states have the following meaning now allocated to it.

2.3.1 "Agreement" this Deed of Variation

2.3.2 "Existing Agreement" the Section 106 Agreement under the Town and Country Planning Act 1990 (as amended) dated 16 November 2011 made between the Council, the Owner and the Mortgagee.

2.3.3 "the Original Planning Permission" means the planning permission granted by the Council on 16 November 2011 referenced 2011/1177/P allowing the erection of three storey dwelling house with basement, following

demolition of existing dwelling house as shown on drawing numbers 2249 E100; A201d, A202d, A203d, A204d, A205d, A206d, A207d, A208d, A209d, A210d, E102a, E103a, E104a, E104.1a, E105, E105.1a, E106, E107, E108; Structural Design Statement by Haskins Robinson Waters dates October 2010; Desk Study and Ground Investigation by Geotechnical and Environmental Associates date June 2011; Code for sustainable Homes Pre-Assessment by OR Consulting Engineers; Lifetime Homes statement by Brinkworth Design Limited; Tree Survey and Map (TCP – 01) by Arbtech Environmental Services

- 2.4 Where in this Agreement 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.
- 2.5 Headings are for ease of reference only and are not intended to be construed as part of this Agreement and shall not be construed as part of this Agreement and shall not effect the construction of this Agreement.
- 2.6 Unless the context otherwise requires references to the singular shall include the plural and vice versa.
- 2.7 References in this Agreement to the Owner and Mortgagee shall include their successors in title or assigns and/or any person claiming through or under them an interest or estate in the Site.

### **3. VARIATION TO THE EXISTING AGREEMENT**

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

- 3.1.1 “the Development” Minor material amendments to planning permission dated 16 November 2011 (Ref. No

2011/1177/P) for the erection of three storey dwelling house with basement, following demolition of existing dwelling house to allow for minor material amendments to include increasing the height of the glazed side section to ridge level, partial infilling of second floor front roof terrace, alterations to ground floor side addition and details of fenestrations, raising east side boundary wall, relocation of basement courtyard and stairs to rear garden, new ramp to entrance door in front garden, installation of walk on skylight (above basement level) and new timber decking in rear garden and details of altered landscaping and cycle storage as shown on drawing numbers:- (Prefix 2249) C401.1; C401.1D; C401.2D; C401.2; C401.3; C401.5 (second floor plan); C401.5 (Roof plan); C402.1; C402.2; C402.3; C403.1; C403.2; C403.3; C403.4; C403.5; C403.6; C403.7; C403.8; C403.9; C404.2; C404.3; C417A; C417.1A; C420A; C421A; C422A; C423; C424; C425; C426; C427; C428; C429; C430; C431 ;E100; E102A; E103A; E104A; E105; E105.1A; E106; E107; E108; A one-coat through coloured cementitious render (mushroom colour); Bronze finish powder coated Velfac windows RAL 8019; Marshalls fairstone granite setts, silver Grey; Hansford Dark Moroccan Brick in stretcher bond with matching flush mortar; VMZINC Pigmento Red; Structural Design Statement by Haskins Robins Waters dated October 2010; Desk Study and Ground Investigation by Geotechnical Associates dated June 2011; Code for Sustainable Homes Pre-Assessment by OR Consulting Engineers; Lifetime Homes Statement by Brinkworth Design Limited; Tree

Survey and Map (TCP-01) by Arbtech  
Environmental Services

- 3.1.2 “the Planning Application” a planning application in respect of the Development of the Property submitted to the Council and validated on 14 August 2012 for which a resolution to grant permission has been passed conditionally under reference number 2012/4138/P subject to conclusion of this Agreement
- 3.1.3 “the Planning Permission” the planning permission under reference number 2012/4138/P to be issued by the Council in the form of the draft annexed hereto
- 3.2 All references in Clause 5 and Clause 6 of the Existing Agreement to “planning reference 2011/1117/P” shall be deleted and replaced with “planning reference 2012/4138/P”.
- 3.3 The draft planning permission reference 2012/4138/P annexed to this Agreement shall be treated as being annexed to the Existing Agreement.
- 3.4 In all other respects the Existing Agreement (as varied by this Agreement) shall continue in full force and effect.
4. **PAYMENT OF THE COUNCIL’S LEGAL COSTS**
- 4.1 The Owner agrees to pay the Council (on or prior to completion of this Agreement) its reasonable legal costs incurred in preparing this Agreement
5. **REGISTRATION AS LOCAL LAND CHARGE**
- 5.1 This Agreement 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 and the Mortgagee have executed this instrument as their Deed the day and year first before written

EXECUTED AS A DEED BY  
DAVID GRENVILLE SMITH  
in the presence of:

*David Smith*

*Simon Howard*

Witness Signature

Witness Name: SIMON HOWARD

Address: 179A STONE NEWINGTON HIGH ST  
LONDON N16 0CH

Occupation: OFFICE MANAGER

EXECUTED AS A DEED BY  
NATIONAL WESTMINSTER BANK PLC  
By  
in the presence of:

SIGNED AS A DEED BY	In the Presence of:
<i>[Signature]</i>	Dated: <i>25/01/00</i>
Authorised Signature	Company Official
As the Attorney for and	National Westminster
on behalf of National	Bank PLC
Westminster Bank PLC	Po Box 12201
	Brindley Place
	Birmingham B2 2AG

CLERICAL LEVEL B  
Mortgage Operations

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

*[Signature]*

Authorised Signatory



Brinkworth  
4-6 Ellsworth Street  
London  
E2 0AX

Application Ref: **2012/4138/P**

7 January 2012

Dear Sir/Madam

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

**DECISION SUBJECT TO A SECTION 106 LEGAL AGREEMENT**

Address:  
**48 C Netherhall Gardens  
London NW3 5RG**

**Proposal:**

**DECISION**  
Variation of conditions of planning permission (to be carried out in accordance with the approved plans) pursuant to planning permission granted on 11/11/11 (ref: 11/1177/P) for the erection of three storey rear extension, including demolition of existing dwelling house to allow for minor material amendments to include increasing the height of the glazed side section to ridge level, partial infilling of second floor front roof terrace, alterations to ground floor side addition and details of fenestrations, raising east side boundary wall, relocation of basement courtyard and stairs to rear garden, new ramp to entrance door in front garden, installation of walk on skylight (above basement level) and new timber decking in rear garden and details of altered landscaping and cycle storage.

Drawing Nos: Superseded drawings- (Prefix 2249) A201d; A202d; A203d; A204d; A205d; A206d; A207d; A208d; A209d; and A210d.

Drawings for approval- (Prefix 2249) C401.1; C401.1D; C401.2D; C401.2; C401.3; C401.5 (second floor plan); C401.5 (Roof plan); C402.1; C402.2; C402.3; C403.1; C403.2; C403.3; C403.4; C403.5; C403.6; C403.7; C403.8; C403.9; C404.2; C404.3; C417A; C417.1A; C420A; C421A; C422A; C423; C424; C425; C426; C427; C428; C429; C430; C431; E100; E102A; E103A; E104A; E105; E105.1A; E106; E107; E108; A one-coat through coloured cementitious render (mushroom colour); Bronze finish powder coated Velfac windows RAL 8019; Marshalls fairstone granite setts, silver Grey; Hansford Dark Moroccan Brick in stretcher bond with matching flush mortar; and VMZINC Pigmento Red.



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 Condition 9 of the planning agreement entered into on 11/11 under reference number 2011/1177/P shall be replaced by the following condition:

#### REPLACEMENT CONDITION

The development hereby permitted shall be carried out in accordance with the following approved plans- (Prefix 2249) C401.1; C401.1D; C401.2D; C401.2; C401.3; C401.5 (second floor plan); C401.5 (Roof plan); C402.1; C402.2; C402.3; C403.1; C403.2; C403.3; C403.4; C403.5; C403.6; C403.7; C403.8; C403.9; C404.2; C404.3; C417A; C417.1A; C420A; C421A; C422A; C423; C424; C425; C426; C427; C428; C429; C430; C431 ;E100; E102A; E103A; E104A; E105; E105.1A; E106; E107; E108; A one-coat through coloured cementitious render (mushroom colour); Bronze finish powder coated Velfac windows RAL 8019; Marshalls fairstone granite setts, silver Grey; Hanford Dark Moroccan Brick in stretcher bond with matching flush mortar; VMZINC roof tiles; Sound and Vibration Study by Haskins Robins Waters dated 10/10/11; Desk Study and Ground Investigation by Geotechnical Associates dated 01/10/11; Contaminant Risk Assessment by OR Consulting Engineers; Dream Home Statement by Linkworth Design Limited; Tree Survey and Map (TCP-01) by Arbtch Environmental Services.

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

- 2 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 the air source pump in the front garden is in operation unless the air source pump 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 policy CS5 of the London Borough of Camden Local Development Framework Core Strategy and policies DP26 and DP28 of the London Borough of Camden Local Development Framework Development Policies.

Informative(s):

- 1 Your attention is drawn to the fact that there is a separate legal agreement with the Council which relates to the development for which this permission is granted. Information/drawings relating to the discharge of matters covered by the Heads of Terms of the legal agreement should be marked for the attention of the Planning Obligations Officer, Sites Team, Camden Town Hall, Argyle Street, WC1H 8EQ.
- 2 Reasons for granting permission.

The proposed variation of condition 9 would not materially deviate from the reasons stated for the approval of the parent permission (ref 2011/1177/P) granted on 16/11/11. Furthermore the minor changes sought would be in general accordance with the London Borough of Camden Local Development Framework Core Strategy, with particular regard to policies CS1 (Distribution of growth), CS4 (Areas of more limited change), CS5 (Encouraging sustainable growth and development), CS6 (Providing quality transport), CS7 (Promoting Sustainable and efficient travel), CS13 (Tackling climate change), CS14 (Promoting higher environmental standards), CS14 (Promoting high quality places and conserving our heritage) and CS19 (Delivering and monitoring the Core Strategy); and the London Borough of Camden Local Development Framework Development Policies, with particular regard to policies DP1 (Mixed use development), DP2 (Making full use of Camden's capacity for housing), DP6 (Lifetime homes and wheelchair homes), DP16 (Transport implications of development), DP17 (Walking, cycling and public transport), DP18 (Parking standards and the availability of parking), DP19 (Managing the impact of parking), DP20 (Movement of Goods and Materials), DP21 (Development connecting to the highway network), DP22 (Promoting sustainable development), DP23 (Ensuring high quality design), DP25 (Conserving and enhancing the environment), DP26 (Managing the impact of development on the environment), DP27 (Base level and Lightwells), DP28 (Noise and vibration), DP29 (Improving access) and DP31 (Provision of, and improvements to, public open space and outdoor sport and recreation facilities). For a more detailed understanding of the reasons for the granting of this planning permission, please refer to the officer report.

- 3 The Mayor of London introduced a Community Infrastructure Levy (CIL) to help pay for Crossrail on 1st April 2012. Any permission granted after this time which adds more than 100sqm of new floorspace or a new dwelling will need to pay this CIL. It will be collected by Camden on behalf of the Mayor of London. Camden will be sending out liability notices setting out how much CIL will need to be paid if an affected planning application is implemented and who will be liable.

The proposed charge in Camden will be £50 per sqm on all uses except affordable housing, education, healthcare, and development by charities for their charitable purposes. You will be expected to advise us when planning permissions are implemented. Please use the forms at the link below to advise who will be paying the CIL and when the development is to commence. You can also access forms to allow you to provide us with more information which can be taken into account in your CIL calculation and to apply for relief from CIL.

<http://www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil>

We will then issue a CIL demand notice setting out what monies needs to paid when and how to pay. Failure to notify Camden of the commencement of development will result in a surcharge of £2500 or 20% being added to the CIL payment. Other surcharges may also apply for failure to assume liability and late payment. Payments will also be subject to indexation in line with the construction costs index.

Please send CIL related documents or correspondence to [CIL@Camden.gov.uk](mailto:CIL@Camden.gov.uk)

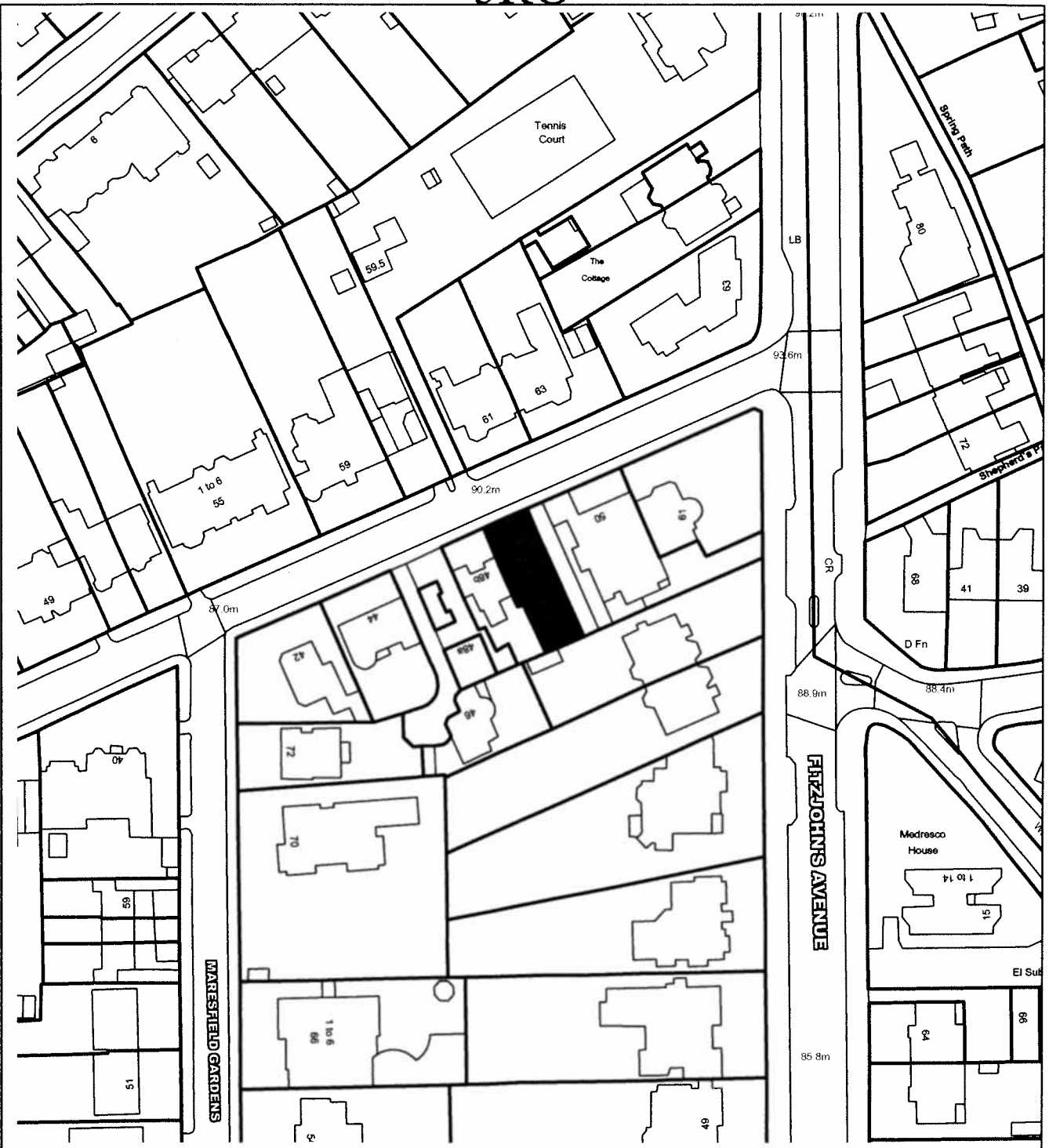
- 4 This approval under Section 73 of the 1990 Act effectively varying the relevant condition of the previous planning permission is subject otherwise to the same terms, drawings, conditions (and obligations where applicable) as attached to the previous planning permission. This includes conditions providing for a 3 year time period for implementation. The condition without doubt commences with the date of the original decision (in this case 16/11/11).
- 5 You are reminded that conditions 8 (covered cycle storage), 10 (details of drainage scheme) and 12(method statement for tree protection) of planning permission granted on 16/11/11 (ref: 2011/1177/P) are outstanding and require details to be submitted and approved.
- 6 You are advised to contact the Council's Trees and Landscape officer, Tom Little (tel: 02079745283) for further advice on method statement for tree protection measures.

In dealing with the application the Council has sought to give you the applicant in a positive and proactive way in accordance with paragraph 15 of 37 of the National Planning Policy Framework.

Yours faithfully

Culture and Environment Directorate

5RG



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PJ

*J. R.*