

DATED 25 November .

2009

(1) DAVID MICHAEL MAISLISH AND TAMAR TSIPORA MAISLISH

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
Rear of 264 – 270 Finchley Road, London
pursuant to Section 106 of the Town and Country Planning
Act 1990 (as amended)

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

Tel: 020 7974 5647
Fax: 020 7974 2962

THIS AGREEMENT is made the 25 day of November 2009

BETWEEN:

1. **DAVID MICHAEL MAISLISH and TAMAR TSIPORA MAISLISH** both of 36 Heath Drive, Hampstead, London NW3 (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 LN189897.
- 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 A Planning Application for the development of the Property was submitted to the Council and validated on 25 March 2009 and the Council resolved to grant permission conditionally under reference number 2009/1354/P subject to the conclusion of this legal Agreement.
- 1.4 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.
- 1.5 For that purpose the Owner is willing to enter into this Agreement pursuant to the provisions of Section 106 of the Act.

2. DEFINITIONS

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

- | | | |
|-----|---|---|
| 2.1 | "the Act" | the Town and Country Planning Act 1990 (as amended) |
| 2.2 | "the Agreement" | this Planning Obligation made pursuant to Section 106 of the Act |
| 2.3 | "The Certificate of Practical Completion" | the final certificate issued by the Council certifying that the Development has been completed to its reasonable satisfaction |
| 2.4 | "The Construction Phase" | the whole period between

(i) the Implementation Date and

(ii) the date of issue of the Certificate of Practical Completion. |
| 2.5 | "Construction Management Plan" | the plan produced by the Owner to outline a scheme of management of the measures to protect the amenity of residential and business occupiers in the vicinity of the Development during the Construction Phase in accordance with the Council's Considerate Contractor Manual |
| 2.6 | "the Council's Considerate Contractor Manual" | the document produced by the Council from time to time entitled "Considerate Contractor Manual" relating to the good practice for developers engaged in building activities in the London Borough of Camden |

- 2.7 "the Development" the erection of a detached house comprising of lower ground, ground and first floor with access from Finchley Road and two car parking spaces
- 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 first date when any part of the Development is occupied and the phrases "Occupy", "Occupied" and "Occupation" shall be construed accordingly
- 2.10 "the Parties" mean the Council and the Owner
- 2.11 "the Planning Application" a planning application in respect of the development of the Property submitted to the Council and validated on 25 March 2009 for which a resolution to grant permission has been passed conditionally under reference number 2009/1354/P subject to conclusion of this Agreement
- 2.12 "Planning Obligations Monitoring Officer" a planning officer of the Council from time to time allocated to deal with all planning obligations pursuant to S106 of the Act to whom all notices, correspondence, approvals etc must be sent in the manner prescribed at clause 6.1 hereof

- 2.13 "the Planning Permission" a planning permission granted for the Development substantially in the draft form annexed hereto
- 2.14 "the Property" the land known as land to rear of 264 – 270 Finchley Road, London the same as shown outlined in red on the plan annexed hereto and subject to the matters detailed on Title Number LN189897
- 2.15 "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
- 2.16 "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
- 2.17 "the Sustainability Measures" the measures set out under the heading "Sustainability Measures" in the Design and Access Statement produced by S. Ilan Architectural Workshop Limited in support of the Planning Application including but not limited to :
- A green roof
 - Bathroom installation with low float rate showers, flow restricted taps and dual flush WCs.
 - Passive solar design
 - Use of heat exchange units
 - Use of heat pumps
 - Use of glass integrated solar panels

- Use of Micro CHP unit
- Walls and windows to at least meet current thermal and acoustic regulations

NOW THIS DEED WITNESSETH as follows:-

- 3.1 This Agreement is made in pursuance of Section 106 of the Act, and is a planning obligation for the purposes of Section 106 as aforesaid, and shall be enforceable by the Council against the Owner as provided herein and against any person deriving title to any part of the Property from the Owner and insofar as it is not a planning obligation its provisions may be enforceable by the Council under any relevant statutory powers.
- 3.2 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 Council hereby agrees to grant the Planning Permission on the date hereof.
- 3.7 The Parties save where the context states otherwise shall include their successors in title.

3.8 The Parties acknowledge that the Development shall be treated as being permanently designated as "car capped" housing in accordance with Clause 4.1 for all relevant purposes.

4. OBLIGATIONS OF THE OWNER

4.1 CONSTRUCTION MANAGEMENT PLAN

- 4.1.1 On or prior to Implementation to provide the Council for approval the Construction Management Plan.
- 4.1.2 Not to Implement or allow Implementation until such time as the Council has approved the Construction Management Plan such approval not to be unreasonably withheld.
- 4.1.3 To ensure that throughout the Construction Phase the Development shall not be carried out otherwise than in accordance with the requirements of the Construction Management Plan and in the event of non compliance with this sub-clause the Owner shall upon notice from the Council forthwith take any steps reasonably required by the Council to remedy such non-compliance

4.2 CAR CAPPED DEVELOPMENT

- 4.2.1 The Owner hereby covenants with the Council to ensure that prior to occupying any residential unit forming part of the Development each new resident 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 be granted a Residents Parking Permit to park a vehicle in a Residents Parking Bay and will not be able to buy a contract to park within any car park owned, controlled or licensed by the Council.
- 4.2.2 The Owner for itself and its successors in title to the Property hereby acknowledges that the provision in Clause 4.2.1 above will remain permanently.
- 4.2.3 On or prior to the Occupation Date the Owner shall inform the Council's Planning Obligations Monitoring Officer of the official dwelling number or name of the Development (as issued and agreed by the Council's Street Name and Numbering

Department), identifying it as the residential unit that in the Owner's opinion are affected by the Owner's obligation in Clause 4.2.1 of this Agreement.

4.3 SUSTAINABILITY PLAN

- 4.3.1 To implement the Sustainability Measures and carryout the construction of the Development in strict accordance with the Sustainability Measures.
- 4.3.2 Not to Occupy or permit the Occupation of the Development unless the Sustainability Measures have been implemented in the construction of the Development.

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 2009/1354/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.

6. IT IS HEREBY AGREED AND DECLARED by the Parties hereto that:-

- 6.1 The provisions of Section 196 of the Law of Property Act 1925 (as amended) shall apply to any notice or approval or agreement to be served under or in connection with this Agreement and any such notice or approval shall be in writing and shall specifically refer to the name, date and Parties to the Agreement and shall cite the clause of the Agreement to which it relates and in the case of notice to the Council shall be addressed to the London Borough of Camden, Planning Obligations Officer, Urban Design and Renewal, Planning and Public Protection, Culture and Environment Directorate, Town Hall Annex, Argyle Street, London WC1H 9LP quoting the planning reference number 2009/1354/P and in the case of any notice or approval or agreement from the Council this shall be signed by a representative of the Council's Environment Department.
- 6.2 This Agreement shall be registered as a Local Land Charge.
- 6.3 The Owner agrees to pay the Council its proper and reasonable legal costs incurred in preparing this Agreement on or prior to the date of completion of the Agreement.
- 6.4 The Owner hereby covenants with the Council that it will within 28 days from the date hereof apply to the Chief Land Registrar of the Land Registry to register this Agreement in the Charges Register of the title to the Property and will furnish the Council forthwith 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 the Planning Permission is quashed or revoked or otherwise withdrawn or expires before effluxion of time for the commencement of development or is modified (other than by agreement with or at the request of the Owner) this Agreement shall forthwith determine and cease to have effect and the Council will effect cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.

7. **JOINT AND SEVERAL LIABILITY**

- 7.1 All Covenants made by the Owner(s) in this Agreement are made jointly and severally and shall be enforceable as such.


8. **RIGHTS OF THIRD PARTIES**

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

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
DAVID MICHAEL MAISLISH
in the presence of:

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)
) 



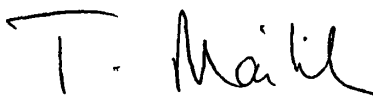
.....
Witness Signature

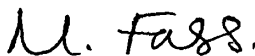
Witness Name: MICHAL FASS

Address: 37 BERRIDGE MEWS
LONDON NW6 1RF

Occupation: BRAND MANAGER

EXECUTED AS A DEED BY
TAMAR TSIPORA MAISLISH
in the presence of:

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)
) 



.....
Witness Signature

Witness Name: MICHAL FASS

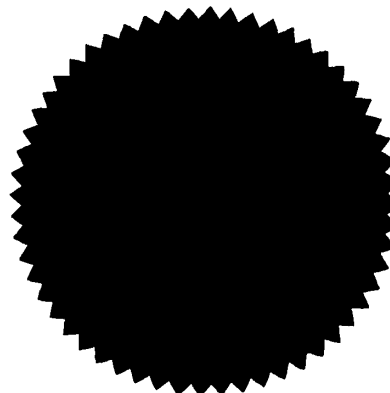
Address: 37 BERRIDGE MEWS
LONDON NW6 1RF

Occupation: BRAND MANAGER

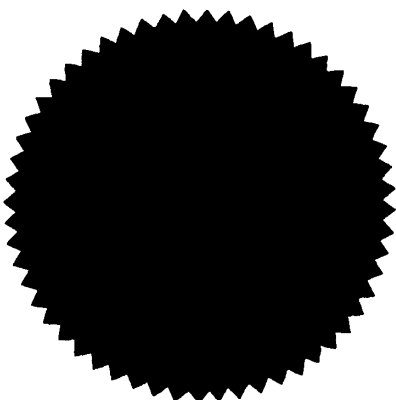
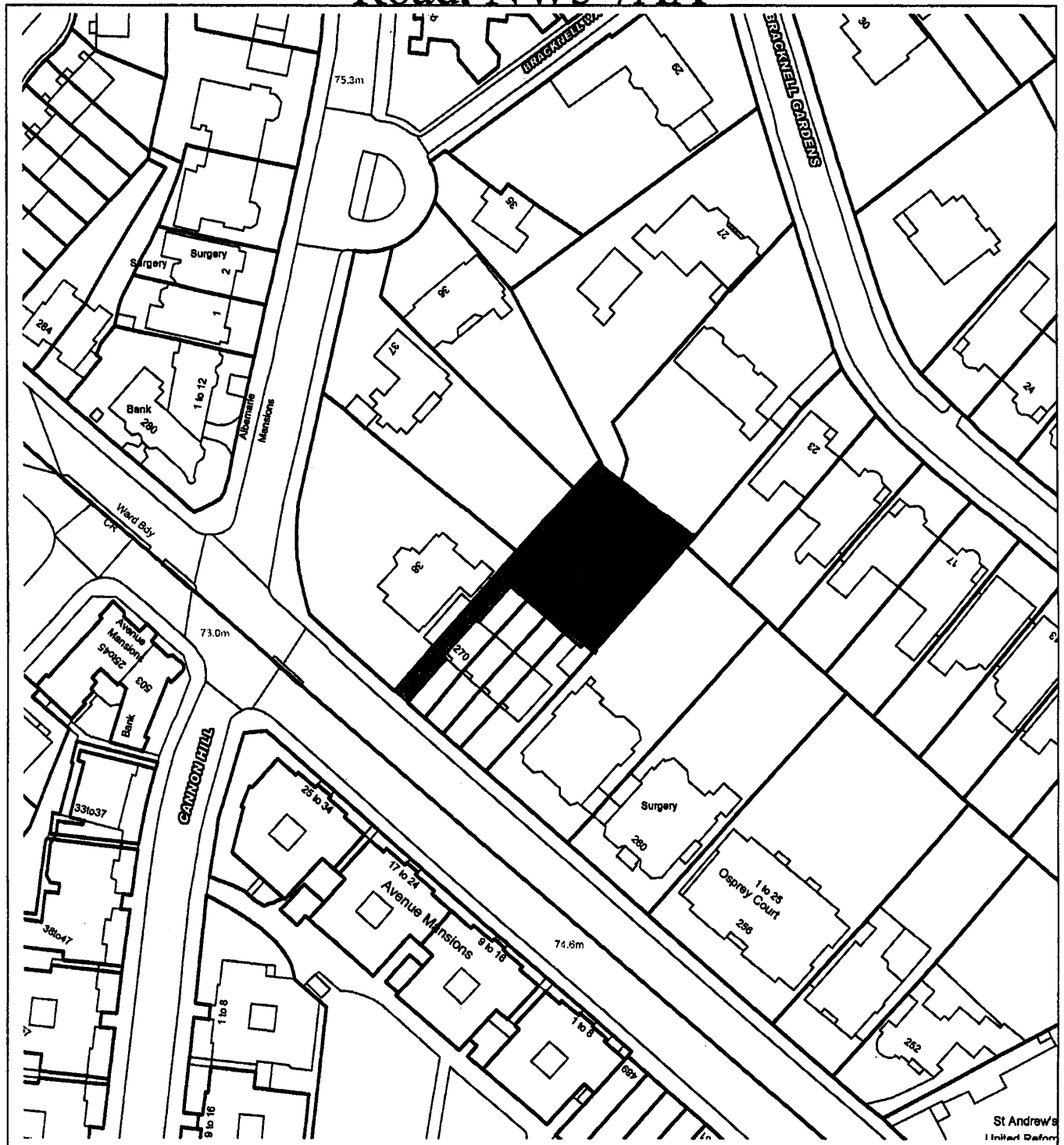
THE COMMON SEAL OF THE MAYOR
AND BURGESSES OF THE LONDON
BOROUGH OF CAMDEN was hereunto
Affixed by Order:-

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)
)


.....
Authorised Signatory



Land to the rear of 264 – 270 Finchley
Road. NW3 7AA



Maugh
T. Maugh
MR

SIAW
Winston House
Suite 332
2 Dollis Park
LONDON
N3 1HF

Application Ref: **2009/1354/P**

02 November 2009

Dear Sir/Madam

DRAFT

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

DECISION SUBJECT TO A SECTION 106 LEGAL AGREEMENT

Address:

**Land to rear of 264-270 Finchley Road
London
NW3**

Proposal:

Erection of a detached house comprising of two floors, ground floor with access from Finchley Road and one bedroom on first floor.

DECISION

Drawing Nos: A-FR272-PL00 C; PL01 B; PL02 B; PL04; EX00; EL01 B; EL02B; EL03C; EL04C; EL05 D; ENV (Aug 09); Sustainable Construction Information; Covering Letter dated 19/12/08 From Geoffrey Bunyan; Design & Access Statement; Groundwater site investigation by Soil Environment Services Ltd dated May 2009 and Acoustic report by Sharps Redmore Partnerships.

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 this permission.

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

- 2 No development shall take place until full details of hard and soft landscaping and means of enclosure of all un-built, open areas have been submitted to and approved by the Council. [Such details shall include details of any proposed earthworks including grading, mounding and other changes in ground levels.] The relevant part of the works shall not be carried out otherwise than in accordance with the details thus approved.

Reason: To enable the Council to ensure a reasonable standard of visual amenity in the scheme in accordance with the requirements of policies B1 and N8 of the London Borough of Camden Replacement Unitary Development Plan 2006.

- 3 All hard and soft landscaping works shall be carried out to a reasonable standard 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] whichever is the sooner. Any trees or areas of planting 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 Council gives written consent to any variation.

Reason: To ensure that the landscaping is carried out within a reasonable period and to maintain a satisfactory standard of visual amenity in the scheme in accordance with the requirements of policies B1 and N8 of the London Borough of Camden Replacement Unitary Development Plan 2006.

- 4 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. Details shall be submitted to and approved by the Council before works commence on site to demonstrate how trees to be retained shall be protected during construction work: such details shall follow guidelines and standards set out in BS5837:2005 "Trees in Relation to Construction"

Reason: To ensure that the Council may be satisfied that the development will not have an adverse effect on existing trees and in order to maintain the character and amenities of the area in accordance with the requirements of policy N8 of the London Borough of Camden Replacement Unitary Development Plan 2006.

- 5 The car parking space shall only be provided in strict accordance with the details demonstrated on the approved drawings. Thereafter, the car parking provision shall be retained in accordance with the details demonstrated on the approved drawings

and shall not be increased in extent or in terms of the numbers of vehicles parked within the site. The car parking space shall not be used for any purpose other than for the parking of vehicles of the occupiers and users of the development.

Reason: To ensure that the car parking provision is in accordance with the requirements of Policy T7 of the London Borough of Camden Replacement Unitary Development Plan 2006 and the Council's parking standards as set out in Camden Planning Guidance 2006, and that the premises does not add to traffic congestion in surrounding streets or noise and disturbance to adjoining premises which would be contrary to policies SD6 and T7 of the London Borough of Camden Replacement Unitary Development Plan 2006.

- 6 Prior to commencement of development, details of the sustainable urban drainage system shall be submitted to and approved by the Council and such a system shall be implemented as part of the development and thereafter retained and maintained.

Reason: To reduce the rate of surface water run-off from the buildings and limit the impact on the storm-water drainage system in accordance with policy SD9 of the London Borough of Camden Replacement Unitary Development Plan 2000, The London Plan (Consolidated with Alterations Since 2004) and Camden Planning Guidance 2006.

- 7 Full details of the green roof (including details of maintenance) in the area indicated on the approved roof plan shall be submitted to and approved by the Council before the development commences. The building shall not be occupied until the approved details have been implemented, and these works shall be permanently retained and maintained thereafter.

Reason: In order to ensure the development at the site takes reasonable measures to take account of biodiversity and the environment in accordance with policies N5 and SD9B of the London Borough of Camden Replacement Unitary Development Plan 2006 and Camden Planning Guidance 2006.

- 8 Prior to the commencement of construction, a wildlife survey of the site shall be carried out to assess whether there are any nesting birds present on the site. Should any nesting birds be identified, then methods to protect these species together with the results of the survey shall be submitted to the Council for approval prior to construction commencing. The development shall thereafter be undertaken in accordance with any approved details.

Reason: To ensure that the proposed development will not result in a detrimental impact on the habitat of nesting birds in accordance with the requirements of policy N7 Protected Species and their habitats.

- 9 Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 as amended by the (No. 2) (England) Order 2008 or any Order revoking and re-enacting that Order, no development within Part 1 (Classes A, B, C, D and F) of Schedule 2 of that Order shall be carried out without the grant of planning permission having first been obtained from the Council.

Reason: To safeguard the visual amenities of the area and to prevent over development of the site by controlling proposed extensions and alterations in order to ensure compliance with the requirements of policies B1 and SD6 of the London Borough of Camden Replacement Unitary Development Plan 2006.

Informative(s):

1 Reasons for granting permission.

The proposed development is in general accordance with the policy requirements of the London Borough of Camden Replacement Unitary Development Plan 2006, with particular regard to policies SD1, SD2, SD4, SD6, SD7, SD8, SD9, SD12, H1, H7, B1, B7, N5, N7, N8, T1, T2, T3, T7, T8, T9, and T12. For a more detailed understanding of the reasons for granting the planning permission, please refer to the officers report.

2 Your proposals may be subject to the Building Regulations and/or the London Building Acts which 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, Argyle Street WC1H 8EQ, (tel: 020-7974 2363).

3 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 are advised to consult the Camden Environmental Health Service, Camden Town Hall, Argyle Street, WC1H 8EQ, (tel: 020-7974 2090 or by email enquiries@camden.gov.uk or the website www.camden.gov.uk/pollution/) or seek prior approval under Section 61 of the Act if you anticipate any difficulty in carrying out construction other than within the hours stated above.

4 If a revision to the postal address becomes necessary as a result of this development, application under Part 2 of the London Building Acts (Amendment) Act 1939 should be made to the Council's Records and Information Team, Culture and Environment Directorate, Environment Department (Street Naming & Numbering) Camden Town Hall, Argyle Street, WC1H 8EQ (tel: 020-7974 5613).

5 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 Sites Team, Urban Design and Regeneration.

Yours faithfully

Culture and Environment Directorate

DRAFT

DECISION

DATED 25 NOVEMBER

2009

(1) DAVID MICHAEL MAISLISH AND TAMAR TSIPORA MAISLISH

and

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

A G R E E M E N T
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