

DATED *30 March* 2015

**(1) FITZJOHN DEVELOPMENT LIMITED**

and

**(2) UNION BANCAIRE PRIVEE UBP SA**

and

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

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

**51 FITZJOHNS AVENUE LONDON NW3 6PH**

**pursuant to Section 106 of the Town and Country Planning  
Act 1990 (as amended) and  
Section 278 of the Highways Act 1980**

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

Tel: 020 7974 2063  
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PLANNING/CJ/1685.2983  
final



THIS AGREEMENT is made the 30 day of March 2015

**BETWEEN:**

1. **FITZJOHN DEVELOPMENT LIMITED** (incorporated in British Virgin Islands) care of Mossack Fonseca & Co. (BVI) Limited, Akara Building, 24 De Castro Street, Wickhams Cay 1, Road Town, Tortola, British Virgin Islands and whose address for service in the United Kingdom is care of JD Law LLP, Fourth Floor, Temple Bar House, 23/28, Fleet Street, London EC4Y 1AA (hereinafter called "**the Owner**")
2. **UNION BANCAIRE PRIVEE UBP SA** (incorporated in Switzerland) whose address for service in the United Kingdom is 26 St James's Square, London SW1Y 4JH (hereinafter called "**the Mortgagee**")
3. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of Town Hall, Judd Street, London WC1H 9LP (hereinafter called "**the Council**")

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 436518 subject to a charge to the Mortgagee.
- 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 4 December 2013 and the Council resolved to grant permission conditionally under reference number 2013/7379/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 As local highway authority the Council considers the Highways Works to be carried out pursuant to this Section 278 Agreement of the Highways Act 1980 to be in the public benefit.

1.6 For that purpose the Owner is willing to enter into this Agreement pursuant to the provisions of Section 106 of the Act.

1.7 The Mortgagee as mortgagee under a legal charge registered under Title Number 436518 and dated 28 February 2012 is willing to enter into this Agreement to give its consent to the same.

## 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 | "Basement Construction Plan" | a plan to be submitted by the Owner and approved by the Council setting out detailed information relating to the construction of the basement forming part of the Development and providing for a programme of detailed mitigation measures to be undertaken and put in place by the Owner such plan to be designed with the objective of containing the impact of the basement construction on the structural stability of the Property and the neighbouring properties to include the following:-<br><br>(i) incorporation of the recommendations contained within the Basement Structural |

Method Statement by Croft Structural Engineers dated 24 September 2014, and the Basement Impact Assessment: Groundwater by H Fraser Consulting dated 27 May 2014;

- (ii) inclusion of a detailed monitoring regime throughout the Construction Phase;
- (iii) a method statement detailing the proposed method of ensuring the safety and stability throughout the Construction Phase of the neighbouring buildings including temporary works sequence drawings and assumptions;
- (iv) detailed design drawings prepared by a suitably qualified and experienced chartered geotechnical engineer and chartered structural engineer both with experience of sub-ground level construction commensurate with the Development whose identities shall be approved in writing in advance by the Council for all elements of the groundworks and basement authorised by the Planning Permission together with specifications and supporting calculations;
- (v) an update of the risk assessment submitted with the Planning Application based on the detailed design drawings referred to in (iv) above;
- (vi) phasing plan demonstrating that the lower ground floor and basement forming part of the Development shall be completed within

six months of the start of bulk excavations from the Property (subject to any extension agreed in writing between the parties); and

- (vii) provision of a contingency plan setting out measures that will be undertaken to ensure the safety and preservation of the adjoining properties in the event of any delay in the completion of the basement forming part of the Development

2.4 "Certificate of Practical Completion"

the certificate issued by the Owner's contractor architect or project manager certifying that the Development has been completed

2.5 "Construction Management Plan"

a plan setting out the measures that the Owner will adopt in undertaking the demolition of the part of the existing building and the construction of the Development using good site practices in accordance with the Council's Considerate Contractor Manual to ensure the Construction Phase of the Development can be carried out safely and with minimal possible impact on and disturbance to the surrounding environment and highway network including (but not limited to):-

- (i) a statement to be submitted to Council giving details of the environmental protection highways safety and community liaison measures proposed to be adopted by the Owner in order to mitigate and offset potential or likely effects and impacts arising from the demolition of the existing buildings or structures on the Property and the building out of the Development;

- (ii) incorporation of the provisions set out in the First Schedule annexed hereto
- (iii) proposals to ensure there are no adverse effects on the Conservation Area features in which the Property is located
- (iv) amelioration and monitoring effects on the health and amenity of local residences site construction workers local businesses and adjoining developments undergoing construction;
- (v) amelioration and monitoring measures over construction traffic including procedures for notifying the owners and or occupiers of the residences and businesses in the locality in advance of major operations delivery schedules and amendments to normal traffic arrangements (if any);
- (vi) the inclusion of a waste management strategy for handling and disposing of construction waste; and
- (vii) identifying means of ensuring the provision of information to the Council and provision of a mechanism for monitoring and reviewing as required from time to time

2.6 "the Construction Phase

the whole period between

- (i) the Implementation Date and
- (ii) the date of issue of the Certificate of Practical Completion

and for the avoidance of doubt includes the demolition of part of the existing building

2.7 "the Council's Considerate Contractor Manual"

the document produced by the Council from time to time entitled "Guide for Contractors Working in Camden" relating to the good practice for developers engaged in building activities in the London Borough of Camden

2.8 "the Development"

basement excavation with associated alterations, removal of rear conservatories, extension at 5th floor, replacement of dormer window with door, alterations to fenestration and conversion from 13 to 21 flats (7x1 bed, 12x2 bed, 2x3 bed) as shown on drawing numbers:- 885/01 A, 885/02 A, 885/03 A, 885/04 A, 885/05, 885/06 A, 885/07, 885/08, 885/11 B, 885/12 A, 885/13 A, 885/14 B, 885/15 B, 885/16, 885/17, Basement Structural Method Statement by Croft Structural Engineers dated 24 September 2014, Basement Impact Assessment: Groundwater by H Fraser Consulting dated 27 May 2014, Sunlight and Daylight report by JS Lewis LTD dated November 2013 and Sustainability Plan by Oakley Hough Limited

2.9 "the Education Contribution"

the sum of £11,065 (eleven thousand and sixty five pounds) to be paid by the Owner to the Council in accordance with the terms of this Agreement and to be applied by the Council in the event of receipt for the provision of education needs arising in the London Borough of Camden

2.10 "the Highways Contribution"

the sum of £15,100 (fifteen thousand one hundred pounds) to be paid by the Owner to the Council in accordance with the terms of this



Agreement and to be applied by the Council in event of receipt for the carrying out works to the public highway and associated measures in the vicinity of the Property such works to include repaving of the footway and reinstatement of the crossover adjacent to the Property ("the Highways Works") all works will be subject to final measure and any level adjustment required and for the avoidance of doubt the Council in accepting this sum does not undertake any responsibility in connection with any required statutory undertakers works and excludes any statutory undertakers costs

- 2.11 "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 save for operations consisting of archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, the temporary display of site notices or advertisements and references to "Implementation" and "Implement" shall be construed accordingly
- 2.12 "the Level Plans" plans demonstrating the levels at the interface of the Development the boundary of the Property and the Public Highway
- 2.13 "Occupation Date" the date when any part of the Development is occupied and the phrases "Occupy", "Occupied" and "Occupation" shall be construed accordingly
- 2.14 "the Parties" mean the Council the Owner and the Mortgagee

- 2.15 "the Pedestrian, Cycle and Environmental Improvements Contribution" the sum of £14,000 (fourteen thousand pounds) to be paid by the Owner to the Council in accordance with the terms of this Agreement and to be applied by the Council in the event of receipt for the provision of various pedestrian cycle and environmental improvements to the public realm in the vicinity of the Development
- 2.16 "the Planning Application" a planning application in respect of the development of the Property submitted to the Council and validated on 4 December 2013 for which a resolution to grant permission has been passed conditionally under reference number 2013/7379/P subject to conclusion of this Agreement
- 2.17 "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
- 2.18 "the Planning Permission" a planning permission granted for the Development substantially in the draft form annexed hereto
- 2.19 "the Property" the land known as 51 Fitzjohns Avenue London NW3 6PH the same as shown shaded grey on the plan annexed hereto
- 2.20 "the Public Highway" any carriageway footway and/or verge adjoining the Property maintainable at public expense

2.21 "the Public Open Space Contribution"

the sum of £12,239 (twelve thousand two hundred and thirty nine pounds) to be paid by the Owner to the Council in accordance with the terms of this Agreement and to be applied by the Council in the event of receipt for the improvement maintenance and upkeep of existing public open spaces and/or nature conservation improvements to parks and open space and/or the obtaining of land to make public open spaces in the vicinity of the Development

2.22 "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

2.23 "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

2.24 "the Sustainability Plan"

a plan securing the incorporation of sustainability measures in the carrying out of the Development in its fabric and in its subsequent management and occupation incorporating the measures set out in the submission document Sustainability Plan by Oakley Hough Limited shall include:-

- (a) a Building Research Establishment Environmental Assessment Method Refurbishment assessment with a target of achieving a Very Good rating and using

best endeavors to attain 60% of the credits in each of the Energy Water and Materials categories respectively to be carried out by a recognised independent verification body in respect of the Property

- (a) include a pre-Implementation review by an appropriately qualified and recognised independent verification body in respect of the Property certifying that the measures incorporated in the Sustainability Plan are achievable in the Development and satisfy the aims and objectives of the Council's strategic policies on sustainability contained within its Development Plan; and
- (b) measures to secure a post construction review of the Development by an appropriately qualified and recognised independent verification body in respect of the Property certifying that the measures incorporated in the Sustainability Plan have been achieved in the Development and will be maintainable in the Development's future management and occupation

**NOW THIS DEED WITNESSETH** as follows:-

- 3.1 This Agreement is made in pursuance of Section 106 of the Act and Section 278 of the Highways Act 1980 and the covenants, restrictions and requirements imposed on the Owner under this Agreement create planning obligations 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 or statutory functions as the case may be.
- 3.8 The Parties acknowledge that the Development shall be treated as being permanently designated as "car free" housing in accordance with Clause 4.1 for all relevant purposes.

#### 4. **OBLIGATIONS OF THE OWNER**

The Owner hereby covenants with the Council as follows:

##### 4.1 **CAR FREE HOUSING**

- 4.1.1 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.

4.1.2 The Owner for itself and its successors in title to the Property hereby acknowledges that the provision in Clause 4.1 above will remain permanently.

4.1.3 On or prior to the Occupation Date the Owner shall inform the Council's Planning Obligations Monitoring Officer of the official unit numbers of the residential units forming part of the Development (as issued and agreed by the Council's Street Name and Numbering Department), identifying those residential units that in the Owner's opinion are affected by the Owner's obligation in Clause 4.1 of this Agreement.

## **4.2 CONSTRUCTION MANAGEMENT PLAN**

4.2.1 On or prior to the Implementation Date to provide the Council for approval a draft Construction Management Plan.

4.2.2 Not to Implement nor allow Implementation of the Development until such time as the Council has approved the Construction Management Plan as demonstrated by written notice to that effect.

4.2.3 The Owner acknowledges and agrees that the Council will not approve the Construction Management Plan unless it demonstrates to the Council's reasonable satisfaction that the Construction Phase of the Development can be carried out safely and with minimal possible impact on and disturbance to the surrounding environment and highway network.

4.2.4 To ensure that throughout the Construction Phase the Development shall not be carried out otherwise than in strict accordance with the requirements of the Construction Management Plan (unless agreed otherwise in writing between the Parties) and not to permit the carrying out of any works comprised in demolition or building out the Development at any time when the requirements of the Construction Management Plan are not being complied with and in the event of non compliance

with this sub-clause the Owner shall forthwith take any steps required to remedy such non-compliance.

#### **4.3 BASEMENT CONSTRUCTION PLAN**

- 4.3.1 On or prior to the Implementation Date to provide the Council for approval a draft Basement Construction Plan.
- 4.3.2 Not to Implement nor allow Implementation of the Development until such time as the Council has approved the Basement Construction Plan as demonstrated by written notice to that effect.
- 4.3.3 The Owner acknowledges and agrees that the Council will not approve the Basement Construction Plan unless it demonstrates to the Council's reasonable satisfaction that the Construction Phase of the Development can be carried out safely and with minimal possible impact on and disturbance to the Property and the adjoining properties.
- 4.3.4 To ensure that throughout the Construction Phase the Development shall not be carried out otherwise than in strict accordance with the requirements of the Basement Construction Plan (unless agreed otherwise in writing between the Parties) and not to permit the carrying out of any works comprised in demolition or building out the Development at any time when the requirements of the Basement Construction Plan are not being complied with and in the event of non-compliance with this sub-clause the Owner shall forthwith take any steps required to remedy such non-compliance.

#### **4.4 SUSTAINABILITY PLAN**

- 4.4.1 On or prior to the Implementation Date to submit to the Council for approval the Sustainability Plan.
- 4.4.2 Not to Implement nor permit Implementation until the Sustainability Plan has been approved by the Council as demonstrated by written notice to that effect.
- 4.4.3 Not to Occupy or permit Occupation of the Property until a satisfactory post-completion review has been submitted to and approved by the Council in writing

confirming that the measures incorporated in the Sustainability Plan as approved by the Council have been incorporated into the Property.

- 4.4.4 Following the Occupation Date the Owner shall not Occupy or permit Occupation of any part of the Development at any time when the Development is not being managed in strict accordance with the Sustainability Plan as approved by the Council (unless agreed otherwise in writing between the Parties) and shall not Occupy or permit Occupation of the Development otherwise than in strict accordance with the requirements of the Sustainability Plan.

#### **4.5 PUBLIC OPEN SPACE CONTRIBUTION**

- 4.5.1 On or prior to the Implementation Date to pay to the Council the Public Open Space Contribution in full.

- 4.5.2 Not to Implement or to permit Implementation until such time as the Council has received the Public Open Space Contribution in full.

#### **4.6 EDUCATION CONTRIBUTION**

- 5.6.1 On or prior to the Implementation Date to pay to the Council the Education Contribution in full.

- 4.6.2 Not to Implement or to permit Implementation until such time as the Council has received the Education Contribution in full.

#### **4.7 PEDESTRIAN CYCLE AND ENVIRONMENTAL IMPROVEMENTS CONTRIBUTION**

- 4.7.1 On or prior to the Implementation Date to pay to the Council the Pedestrian, Cycle and Environmental Improvements Contribution in full.

- 4.7.2 Not to Implement or to permit Implementation until such time as the Council has received the Pedestrian, Cycle and Environmental Improvements Contribution in full.

#### **4.8 HIGHWAYS CONTRIBUTION**

- 4.8.1 On or prior to the Implementation Date to pay to the Council the Highways Contribution in full.

- 4.8.2 On or prior to the Implementation Date to submit to the Council the Level Plans for



approval.

- 4.8.3 Not to Implement or to permit Implementation until such time as the Council has received the Highways Contribution in full.
- 4.8.4 Not to Implement nor permit Implementation until such time as the Council has approved the Level Plans.
- 4.8.5 The Owner acknowledges that the Council has the right reserved to it to construct the Public Highway to levels it considers appropriate.
- 4.8.6 On completion of the Highway Works the Council may provide to the Owner a certificate specifying the sum ("the Certified Sum") expended by the Council in carrying out the Highway Works.
- 4.8.7 If the Certified Sum exceeds the Highway Contribution then the Owner shall within fourteen days of the issuing of the said certificate pay to the Council the amount of the excess.

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 2013/7379/P the date upon which the Development will be ready for Occupation.
- 5.3 The Owner shall act in good faith and shall co-operate with the Council to facilitate the discharge and performance of all obligations contained herein and the Owner shall comply with any reasonable requests of the Council to have access to any part of the Property or any requests to provide documentation within the Owner's possession (at the Owner's expense) for the purposes of monitoring compliance with the obligations contained herein.

- 5.4 The Owner agrees declares and covenants with the Council that it shall observe and perform the conditions restrictions and other matters mentioned herein and shall not make any claim for compensation in respect of any condition restriction or provision imposed by this Agreement and further shall jointly and severally indemnify the Council for any expenses or liability arising to the Council in respect of breach by the Owner of any obligations contained herein save to the extent that any act or omission of the Council its employees or agents has caused or contributed to such expenses or liability.
- 5.5 If satisfied as to the compliance of the Owner in respect of any obligation in this Agreement the Council shall (if requested to do so in writing and subject to payment of a fee of £1,000 in respect of each such obligation) provide through its Head of Legal Services a formal written certification of compliance, partial compliance or ongoing compliance (as and if appropriate) with the provisions of any such obligation.
- 5.6 Submission of any plan for approval by the Council under the terms of this Agreement shall be made by the Owner to the Council sending the full document and any appendices in electronic format (where practicable) to the Planning Obligations Monitoring Officer referring to the names dates and Parties to this Agreement and citing the specific clause of this Agreement to which such plan relates quoting the Planning Permission reference 2013/7379/P.
- 5.7 Payment of the financial contribution pursuant to Clause 4.5-4.8 of this Agreement shall be made by the Owner to the Council sending the full amount in the form of a Banker's Draft to the Planning Obligations Monitoring Officer referring to the names dates and Parties to this Agreement and citing the specific clause of this Agreement to which such Contribution relates quoting the Planning Reference 2013/7379/P or by Electronic Transfer directly to the Co-Operative Bank plc of 1 Islington High Street London N1 9TR quoting Sort Code 08-90-33 and London Borough of Camden General Account No. 61030019 and to inform the Planning Obligations Monitoring Officer of such payment quoting the above details as if the payment had been made by Banker's Draft.
- 5.8 All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable in respect thereof and all parties other than the Council shall pay and indemnify the Council against any such value

added tax properly payable on any sums paid to the Council under this Agreement upon presentation of an appropriate value added tax invoice addressed to the Owner.

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

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

- 5.10 All costs and expenses payable to the Council under this Agreement shall bear interest at the rate of 4% above the Base Rate of the National Westminster Bank plc from time to time being charged from the date such payment is due until payment is made.

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

- 6.1 The provisions of Section 196 of the Law of Property Act 1925 (as amended) shall apply to any notice or approval or agreement to be served under or in connection with this Agreement and any such notice or approval shall be in writing and shall specifically refer to the name, date and Parties to the Agreement and shall cite the clause of the Agreement to which it relates and in the case of notice to the Council shall be addressed to the London Borough of Camden, Planning Obligations Officer, 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 2013/7379/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 or the Mortgagee 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 (either in its entirety or such part as relevant) but without prejudice to liability for any breach committed prior to the time it disposed of its relevant 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 this Agreement shall forthwith determine and cease to have effect.

7. **MORTGAGEE EXEMPTION**

7.1 The Mortgagee hereby consents to the completion of this Agreement and agrees to be bound by it and to the same being registered at the Land Registry as provided in Clause 6.4 hereof and for the avoidance of doubt agrees to be bound by the said obligations only in the event that it becomes a mortgagee in possession of the Property.

8. **RIGHTS OF THIRD PARTIES**

8.1 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 and the Mortgagee have executed this instrument as their Deed the day and year first before written

EXECUTED AS A DEED ON BEHALF )  
OF **FITZJOHN DEVELOPMENT LIMITED** )  
a company incorporated in )  
British Virgin Islands )  
By *First Board Limited* )  
And *Second Board Limited* )  
being persons who, in )  
accordance with the laws of that )  
territory, are acting under )  
the authority of the company )

Signature.....*[Signature]*.....  
*First Board Limited*

Signature.....*[Signature]*.....  
*Second Board Limited*

EXECUTED AS A DEED BY  
UNION BANCAIRE PRIVEE UBP SA  
by  
in the presence of:-

)  
)  
)  
)

*Joanna Claydon-Voyce*

JOANNA CLAYDON-VOYCE  
Head of Legal UK

*h. j. j. j.*

*Anlaire Negarbone*.....

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

)  
)  
)  
)

*R. Alexander*

.....

Authorised Signatory



**THE FIRST SCHEDULE**  
**Construction Management Plan**  
**Highway Measures**

A Construction Management Plan outlines how construction work will be carried out and how this work will be serviced (e.g. delivery of materials, set down and collection of skips), with the objective of minimising traffic disruption and avoiding dangerous situations and minimising the impact on local amenity. A Construction Management Plan should cover both demolition and construction phases of development. Details of the Construction Management Plan will relate to the scale and kind and location of the development and they should assess the impact on transport and on local amenity including road user amenity. Should any one of these criteria be considered not to be relevant, then specific justification, as to why that particular criterion is not relevant, will need to be provided. The Construction Management Plan should demonstrate that the following has been considered and where necessary the impacts mitigated:

*(Note the term 'vehicles' used here refers to all vehicles associated with the implementation of the development, e.g. demolition, site clearing, delivering of plant, material and construction, staff parking etc)*

- a) A brief description of the site, surrounding area and development proposals for which the Construction Management Plan applies.
- b) Proposed start and end dates for each phase of construction.
- c) The proposed working hours within which vehicles will arrive and depart.
- d) The access arrangements for vehicles.
- e) Proposed routes for vehicles between the site and the Transport for London Road Network (TLRN). Consideration should also be given to weight restrictions, low bridges and cumulative affects of construction on the highway. A map of the TLRN can be downloaded from the following site:-  
[http://www.tfl.gov.uk/assets/downloads/TFL\\_Base\\_Map\\_Master.pdf](http://www.tfl.gov.uk/assets/downloads/TFL_Base_Map_Master.pdf)
- f) Typical sizes of all vehicles and the approximate frequency and times of day when they will need access to the site, for each phase of construction.
- g) Swept path drawings for any tight manoeuvres on vehicle routes to the site.
- h) Details (including accurate scaled drawings) of any highway works necessary to enable construction to take place.
- i) Parking and loading arrangement of vehicles and delivery of materials and plant to the site.

- j) Details of proposed parking bays suspensions and temporary traffic management orders.
- k) Proposed overhang (if any) of the public highway (scaffolding, cranes etc.).
- l) Details of hoarding required or any other occupation of the public highway.
- m) Details of how pedestrian and cyclist safety will be maintained, including any proposed alternative routes (if necessary), and any Banksman arrangements.
- n) Details of how traffic associated with the Development will be managed in order to reduce congestion.
- o) Details of any other measures designed to reduce the impact of associated traffic (such as the use of construction material consolidation centres).
- p) Details of how any significant amounts of dirt or dust that may be spread onto the public highway will be cleaned or prevented.
- q) Details of consultation on a draft Construction Management Plan with local residents, business, local groups (e.g. residents/tenants and business associations) and Ward Councillors. Details should include who was consulted, how the consultation was conducted and the comments received in response to the consultation. In response to the comments received, the Construction Management Plan should then be amended where appropriate and where not appropriate a reason should be given why not. The revised Construction Management Plan should also include a list of all the comments received. You are advised to check your proposed approach to consultation with the Council before carrying it out.
- r) Details of any Construction Working Group that will be set up, addressing the concerns of surrounding residents, as well as contact details for the person responsible for community liaison on behalf of the developer, and how these contact details will be advertised to the community.
- s) Details of any schemes such as the "Considerate Contractors Scheme" that the project will be signed up to should form part of the consultation and be notified to the Council. Contractors will also be required to follow the "Guide for Contractors Working in Camden" also referred to as "Camden's Considerate Contractor's Manual"
- t) Details of other construction sites in the local area and how your Construction Management Plan takes into consideration the cumulative effects of construction local to your site.
- u) All contractors and sub-contractors operating large vehicles over 3.5 tonnes must meet all of the following conditions:-

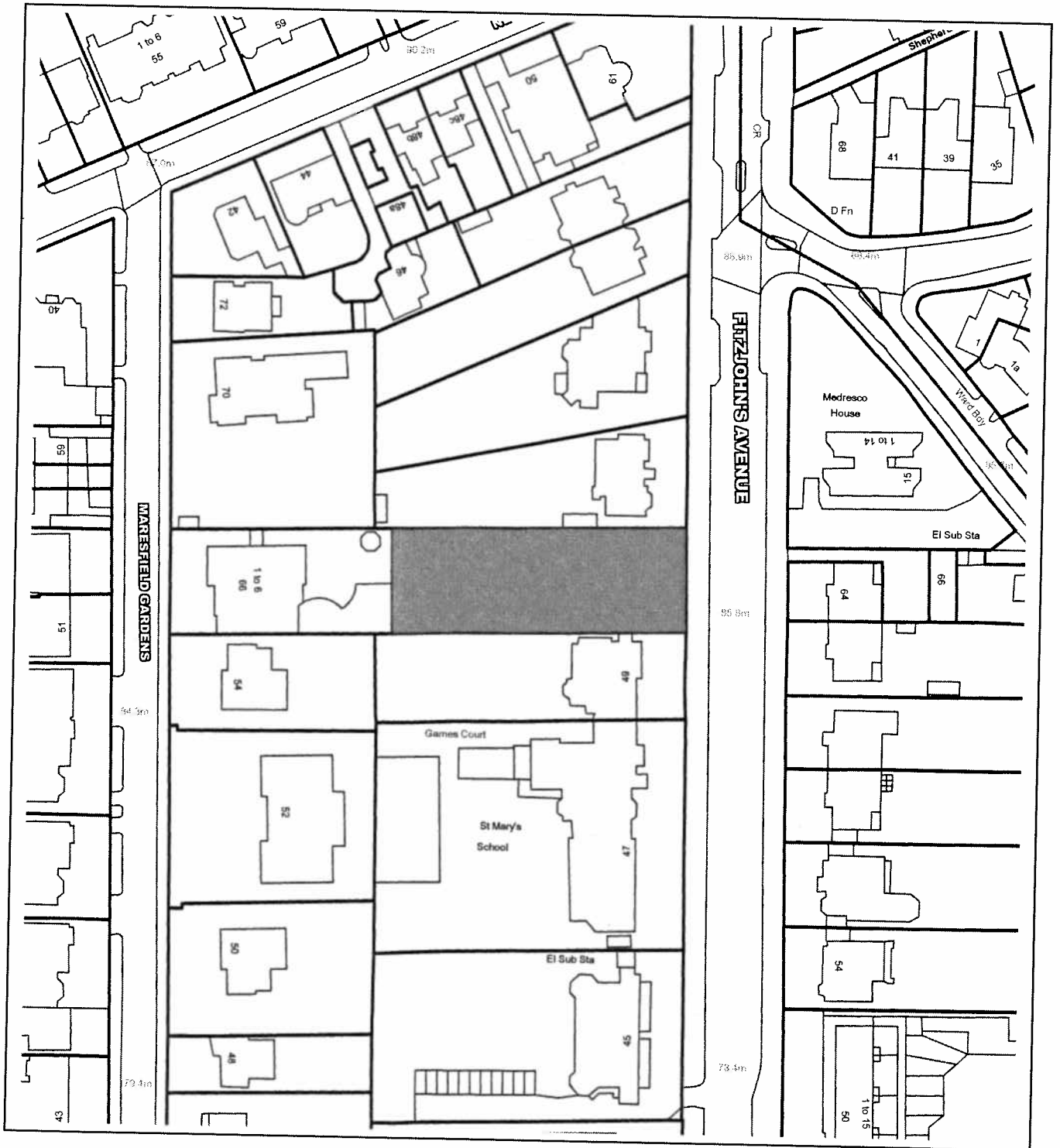


- 1) Operators must be a member of TfL's Fleet Operator Recognition Scheme ([www.tfl.gov.uk/fors](http://www.tfl.gov.uk/fors)) or similar at the Bronze level.
- 2) All drivers must have undertaken cycle awareness training such as the Safe Urban Driver module through FORS or similar.
- 3) All vehicles associated with the construction of the Development must:
  - i. Have Side Guards fitted, unless it can be demonstrated to the reasonable satisfaction of the Employer, that the Lorry will not perform the function, for which it was built, if Side Guards are fitted.
  - ii. Have a close proximity warning system fitted comprising of a front mounted, rear facing CCTV camera (or Fresnel Lens where this provides reliable alternative), a Close Proximity Sensor, an in-cab warning device (visual or audible) and an external warning device to make the road user in close proximity aware of the driver's planned manoeuvre.
  - iii. Have a Class VI Mirror
  - iv. Bear prominent signage on the rear of the vehicle to warn cyclists of the dangers of passing the vehicle on the inside.
- v) Any other relevant information with regard to traffic and transport.
- w) The Construction Management Plan should also include the following statement:-  
*"The agreed contents of the Construction Management Plan must be complied with unless otherwise agreed with the Council. The project manager shall work with the Council to review this Construction Management Plan if problems arise in relation to the construction of the Development. Any future revised plan must be approved by the Council and complied with thereafter."*

**It should be noted that any agreed Construction Management Plan does not prejudice further agreement that may be required for things such as road closures or hoarding licences**



# 51 Fitzjohns Avenue London NW3 5PH



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Oakley Hough Limited  
The Barn  
Stebbing farm  
Fishers green  
Stevenage  
Hertfordshire  
SG1 2JB

Application Ref: **2013/7379/P**

23 March 2015

Dear Sir/Madam

**DRAFT**  
**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:  
**51 Fitzjohn's Avenue**  
**London**  
**NW3 6PH**

**DECISION**  
Proposal:  
Basement excavation with associated alterations, removal of rear conservatories, extension at 5th floor, replacement of dormer window with door, alterations to fenestration and conversion from 13 to 21 flats (7x1 bed, 12x2 bed, 2x3 bed).  
Drawing Nos: 885/01 A, 885/02 A, 885/03 A, 885/04 A, 885/05, 885/06 A, 885/07, 885/08, 885/11 B, 885/12 A, 885/13 A, 885/14 B, 885/15 B, 885/16, 885/17, Basement Structural Method Statement by Croft Structural Engineers dated 24 September 2014, Basement Impact Assessment: Groundwater by H Fraser Consulting dated 27 May 2014, Sunlight and Daylight report by JS Lewis LTD dated November 2013 and Sustainability Plan by Oakley Hough Limited.

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 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 policy CS14 of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 and DP25 of the London Borough of Camden Local Development Framework Development Policies.

- 3 The development hereby permitted shall be carried out in accordance with the following approved plans 885/01 A, 885/02 A, 885/03 A, 885/04 A, 885/05, 885/06 A, 885/07, 885/08, 885/11 B, 885/12 A, 885/13 A, 885/14 B, 885/15 B, 885/16, 885/17, Basement Structural Method Statement by Croft Structural Engineers dated 24 September 2014, Basement Impact Assessment: Groundwater by H Fraser Consulting dated 27 May 2014, Sunlight and Daylight report by JS Lewis LTD dated November 2013 and Sustainability Plan by Oakley Hough Limited.

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

- 4 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 before the relevant part of the work is begun:

a) Details including sections at 1:10 of all windows (including jambs, head and cill), ventilation grills, external doors and gates;

b) Manufacturer's specification details of all facing materials (to be submitted to the Local Planning Authority) and samples of those materials (to be provided on site);

c) A sample panel of the facing brickwork demonstrating the proposed colour, texture, face-bond and pointing

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 policy CS14 of the London Borough of Camden Local Development Framework Core Strategy and policy DP24

and DP25 of the London Borough of Camden Local Development Framework Development Policies.

- 5 No lights, meter boxes, flues, vents or pipes, and no telecommunications equipment, alarm boxes, television aerials or satellite dishes shall be fixed or installed on the external face of the buildings, without the prior approval in writing of the local planning authority.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy CS14 of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 and DP25 of the London Borough of Camden Local Development Framework Development Policies.

- 6 Prior to commencement of work on the relevant part of development, full details of hard and soft landscaping to the rear garden area, including the new terrace shall be 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. 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 policy CS14 of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 of the London Borough of Camden Local Development Framework Development Policies.

- 7 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 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 policy CS14 and CS15 of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 of the London Borough of Camden Local Development Framework Development Policies.

- 8 Prior to the commencement of any works on site, details demonstrating how trees to be retained shall be protected during construction work shall be submitted to and approved by the Council in writing. Such details shall follow guidelines and standards set out in BS5837:2012 "Trees in Relation to Construction". 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 the approved protection details.

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 policy CS15 of the London Borough of Camden Local Development Framework Core Strategy.

- 9 Before the development commences, 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 policy CS18 of the London Borough of Camden Local Development Framework Core Strategy and policy DP26 of the London Borough of Camden Local Development Framework Development Policies.

- 10 The lifetime homes features and facilities, as indicated on the drawings and documents hereby approved shall be provided in their entirety prior to the first occupation of any of the new residential units.

Reason: To ensure that the internal layout of the building provides flexibility for the accessibility of future occupiers and their changing needs over time, in accordance with the requirements of policy CS6 of the London Borough of Camden Local Development Framework Core Strategy and policy DP6 of the London Borough of Camden Local Development Framework Development Policies.

- 11 Before the development commences, details of secure and covered cycle storage area for 23 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 CS11 of the London Borough of Camden Local Development Framework Core Strategy and policy DP17 of the London Borough of Camden Local Development Framework Development Policies.

Informative(s):

- 1 Your proposals may be subject to control under the Building Regulations and/or the London Buildings 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 6941).

- 2 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 Council's Compliance and Enforcement team [Regulatory Services], Camden Town Hall, Argyle Street, WC1H 8EQ (Tel. No. 020 7974 4444 or on the website <http://www.camden.gov.uk/ccm/content/contacts/council-contacts/environment/contact-the-environmental-health-team.en> 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.
- 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 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.
- 5 You are reminded that this decision only grants permission for permanent residential accommodation (Class C3). Any alternative use of the residential units

for temporary accommodation, i.e. for periods of less than 90 days for tourist or short term lets etc, would constitute a material change of use and would require a further grant of planning permission.

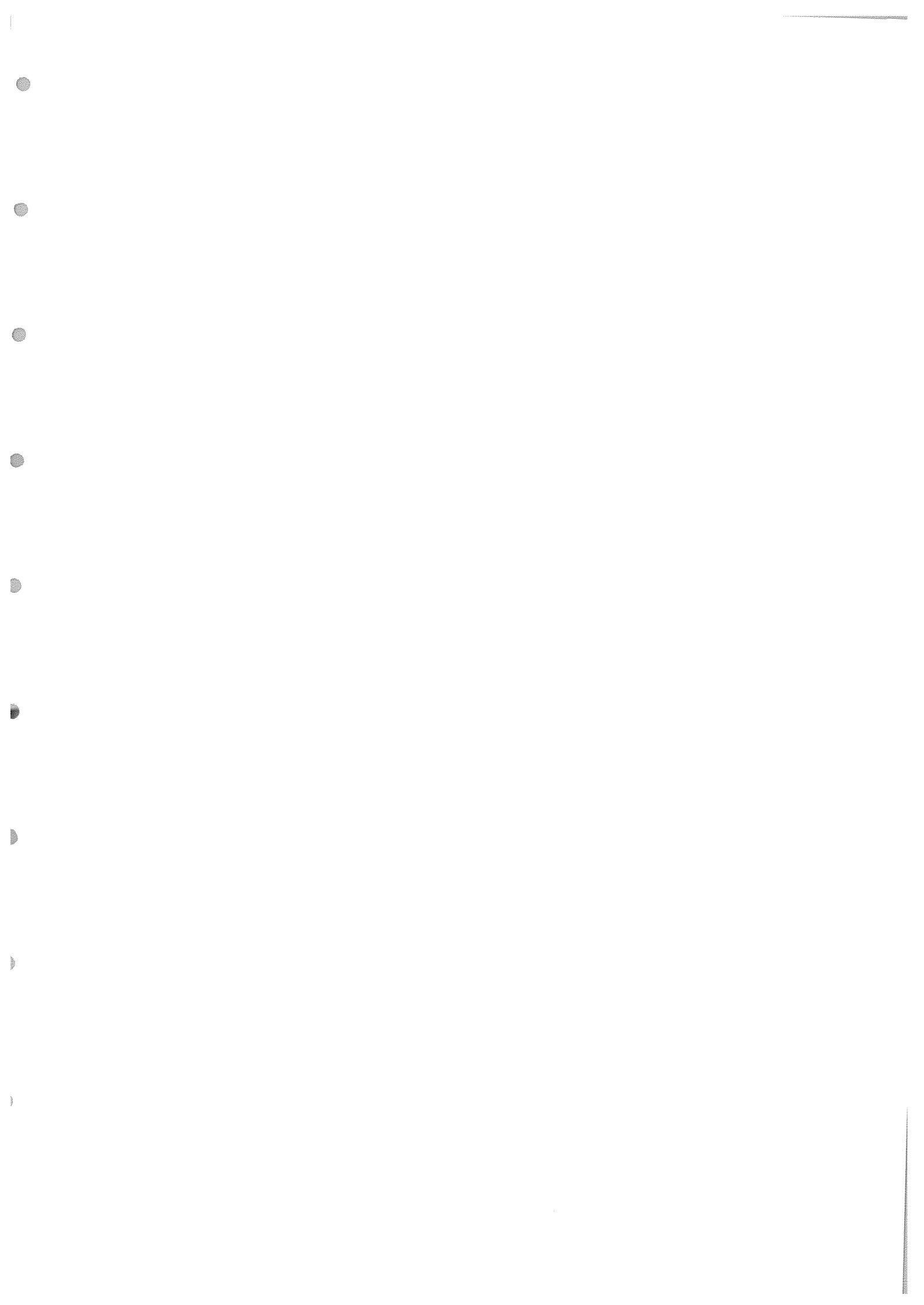
In dealing with the application, the Council has sought to work with the applicant in a positive and proactive way in accordance with paragraphs 186 and 187 of the National Planning Policy Framework.

Yours faithfully

Culture and Environment Directorate

**DRAFT**

**DECISION**



DATED

30 March

2015

**(1) FITZJOHN DEVELOPMENT LIMITED**

and

**(2) UNION BANCAIRE PRIVEE UBP SA**

and

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

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

**51 FITZJOHNS AVENUE LONDON NW3 6PH**

**pursuant to Section 106 of the Town and Country Planning  
Act 1990 (as amended) and  
Section 278 of the Highways Act 1980**

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

Tel: 020 7974 2063  
Fax: 020 7974 2962

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