

DATED

19 November

2015

(1) ELSWORTHY ESTATES LIMITED

-and-

(2) BANK OF LONDON AND THE MIDDLE EAST PLC

-and-

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

DEED OF VARIATION

Relating to the Agreement dated 27 November 2013
Between the Mayor and the Burgesses of the
London Borough of Camden,
Seok Yee Lau and HSBC Private Bank (UK) Limited
under section 106 of the Town and
Country Planning Act 1990 (as amended)
Relating to development at premises known as
48 Elsworthy Road London NW3 3BU

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

Tel: 020 7974 1918
Fax: 020 7974 2962

CLS/COM/ESA/1781.232
FINAL



THIS DEED is made on the 19th day of November 2015

BETWEEN

1. **ELSWORTHY ESTATES LIMITED** (incorporated in Guernsey) of 48 Elsworthy Road, London NW3 3BU (hereinafter called "the Owner") of the first part
2. **BANK OF LONDON AND THE MIDDLE EAST PLC** (Co. Regn. No. 05897786) of Sherbourne House, 119 Cannon Street, London EC4N 5AT (hereinafter called "the 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, Seok Yee Lau and HSBC Private Bank (UK) Limited entered into an Agreement dated 27 November 2013 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 NGL736860 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 Deed.
- 1.5 A new Planning Application in respect of the Property and to amend the Original Planning Permission was submitted to the Council by the Owner and validated on 14 April 2015 for which the Council resolved to grant permission conditionally under reference 2015/2083/P subject to the conclusion of this Deed.

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

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

2. **INTERPRETATION**

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

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

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

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

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

2.6 It is hereby agreed between the Parties that save for the provisions of clauses 1, 2, 3, 5 and 6 hereof all of which shall come into effect on the date hereof the covenants undertakings and obligations contained within this Deed shall become binding upon the Owner upon the Implementation Date.

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

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

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

2.8.2 "Existing Agreement" the Section 106 Agreement under the Town and Country Planning Act 1990 (as amended) dated 27 November 2013 made between the Council and Seok Yee Lau and HSBC Private Bank (UK) Limited

2.8.3 "the Original Planning Permission" means the planning permission granted by the Council on 27 November 2013 referenced 2013/2545/P allowing the excavation of basement, demolition of existing single storey side extension at ground floor level, and replacement with the construction of a two storey side extension, installation of a car lift in front driveway and associated landscaping of front garden, all in connection with existing dwelling (Class C3) as shown on drawing numbers Heritage Statement and Design and Access Statement; Basement Impact Assessment, prepared by Michael Alexander Engineers, 19th April 2013; Site Investigation Report; Design Method Statement; Desk Study & Geotechnical Geo-Environmental Interpretative Report; 400/PP/01; 400/PP/02 A; 400/PA/03 A; 400/PP/04; 400/PA/04 A; 400/PA/07 C; 400/PA/09 A; 400/PA/10 A

3. VARIATION TO THE EXISTING AGREEMENT

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

3.1.1 "Development"

variation of condition 3 (development in accordance with approved plans) and deletion of condition 6 (car lift) of planning permission dated 27/11/2013 (ref 2013/2545/P) for Excavation of basement, demolition of existing single storey side extension at ground floor level, and replacement with the construction of a single storey side extension, installation of a car lift in front driveway and associated landscaping of front garden, namely to allow omission of approved containing car lift and creation of associated internal alterations to side basement extension as shown on drawing numbers:- Heritage Statement and Design and Access Statement; Basement Impact Assessment, prepared by Michael Alexander Engineers, 19th April 2013; Site Investigation Report; Design Method Statement; Desk Study & Geotechnical Geo-Environmental Interpretative Report; Arboricultural Report, prepared by Keith Macgregor Dip Arb (RFS), M Arbor A, on 21/10/2013; 400/PP/01; 400/PP/02 B; 400/PA/03 A; 400/PP/04; 400/PA/04 A; 400/PA/07 C; 400/PA/10 A; TPP 13/718 001; 14/0296/23rev01, 53rev01, 48rev01, 70rev01, 71rev01.

3.1.2 "Planning Permission"

the planning permission for the Development under reference number 2015/2083/P granted by the Council in the form of the draft annexed hereto

3.1.3 "Planning Application" the application for Planning Permission in respect of the Property submitted on 14 April 2015 by the Owner and given reference number 2015/2083/P

3.2 All references in Clause 5 and Clause 6 of the Existing Agreement to "Planning Permission reference 2013/2545/P" shall be replaced with "Planning Permission reference 2015/2083/P".

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

4. **COMMENCEMENT**

4.1 Without prejudice to the effect of Clause 3.5 in the Existing Agreement the provisions in this Deed shall take effect on the Implementation of the Planning Permission referenced 2015/2083/P.

5 **PAYMENT OF THE COUNCIL'S LEGAL COSTS**

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


6. **REGISTRATION AS LOCAL LAND CHARGE**

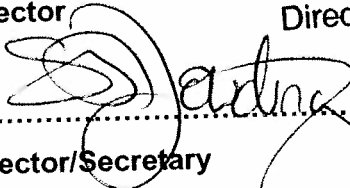
6.1 This Deed shall be registered as a Local Land Charge

CONTINUATION OF DEED OF VARIATION IN RELATION TO 48 ELSWORTHY ROAD
LONDON NW3 3BU

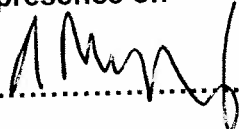
IN WITNESS WHEREOF the Council and the Owner has caused their respective Common
Seals to be affixed and the Mortgagee has caused this Deed to be executed as a Deed the
day and year first above written.

EXECUTED AS A DEED BY)
ELSWORTHY ESTATES LIMITED)
acting by a Director and its Secretary)
or by two Directors)


..... F Corbet
Director For Anson Limited
Director

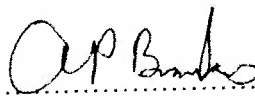

..... S J Dowding
Director for Cabot Limited
Director

EXECUTED AS A DEED BY)
BANK OF LONDON AND THE MIDDLE EAST PLC))
by)
in the presence of:-)


..... ALICE MYERS
HEAD OF REAL ESTATE



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


.....
Duly Authorised Officer



Nathaniel Lichfield & Partners
14 Regent's Wharf
All Saints Street
London
N1 9RL

Tel 020 7974 4444
Fax 020 7974 1930
Textlink 020 7974 6866

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

Application Ref: 2015/2083/P

13 August 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:
48 Elsworthy Road
London
NW3 3BU

DECISION
Proposal:

Variation of condition 3 (development in accordance with approved plans) and deletion of condition 6 (car lift) of planning permission dated 27/11/2013 (ref 2013/2545/P) for Excavation of basement, demolition of existing single storey side extension at ground floor level, and replacement with the construction of a single storey side extension, installation of a car lift in front driveway and associated landscaping of front garden, namely to allow omission of approved containing car lift and creation of associated internal alterations to side basement extension.

Drawing Nos: Heritage Statement and Design and Access Statement; Basement Impact Assessment, prepared by Michael Alexander Engineers, 19th April 2013; Site Investigation Report; Design Method Statement; Desk Study & Geotechnical Geo-Environmental Interpretative Report; Arboricultural Report, prepared by Keith Macgregor Dip Arb (RFS), M Arbor A, on 21/10/2013; 400/PP/01; 400/PP/02 B; 400/PA/03 A; 400/PP/04; 400/PA/04 A; 400/PA/07 C; 400/PA/10 A; TPP 13/718 001; 14/0296/23rev01, 53rev01, 48rev01, 70rev01, 71rev01; covering letter from nlp dated 9.4.15.

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 For the purposes of this decision, condition no.3 of planning permission 2013/2545/P shall be replaced with the following condition:

REPLACEMENT CONDITION 3

The development hereby permitted shall be carried out in accordance with the following approved plans - Heritage Statement and Design and Access Statement; Basement Impact Assessment, prepared by Michael Alexander Engineers, 19th April 2013; Site Investigation Report; Design Method Statement; Desk Study & Geotechnical Geo-Environmental Interpretative Report; Arboricultural Report, prepared by Keith Macgregor Dip Arb (RFS), M Arbor A, on 21/10/2013; 400/PP/01; 400/PP/02 B; 400/PA/03 A; 400/PP/04; 400/PA/04 A; 400/PA/07 C; 400/PA/10 A; TPP 13/718 001; 14/0296/23rev01, 53rev01, 48rev01, 70rev01, 71rev01; covering letter from nlp dated 9.4.15.

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

Informative(s):

- 1 Reason for granted planning permission

The amendments to the approved scheme involve the omission of the previously approved car lift and associated basement excavation and the consequent alteration to the openings and room layout of the remaining approved basement extension. The omission of the basement car lift is considered acceptable as it would involve less excavation works, thus have less impact on hydrology and land stability, and as it would not involve any external works, thus have no impact on the appearance of the property, conservation area or streetscene. The associated alterations at basement level are acceptable and have no impact on the appearance or size of the house.

As a consequence of the omission of the car lift, there is no need for condition 6 of the original permission (2013/2545/P) as it relates to the operation of the car lift which is clearly now superfluous.

The amended permission will require a Deed of Variation to the S106 attached to the original planning permission (2013/2545/P) to ensure that it is still subject to a Construction Management Plan.

The full impact of the scheme has already been assessed by virtue of the previous

planning permission dated 27.11.13 ref no 2013/2545/P. In the context of the approved scheme, it is considered that the variation would not have any further impact than the original scheme in terms of ground conditions, conservation area, transport or neighbour amenity.

No objections have been received in the course of this application. The site's planning history and relevant appeal decisions were taken into account when coming to this decision.

Special attention has been paid to the desirability of preserving or enhancing the character or appearance of the conservation area, under section 72 of the Listed Buildings and Conservation Areas Act 1990 as amended by the Enterprise and Regulatory Reform Act (ERR) 2013.

As such, the proposed details are in general accordance with policies CS5 and CS14 of the London Borough of Camden Local Development Framework Core Strategy, and policies DP24, DP25, DP26 and DP27 of the London Borough of Camden Local Development Framework Development Policies. The proposed development also accords with policies 7.4 and 7.6 of the London Plan 2015; and paragraphs 14, 17, 56-66 and 126-141 of the National Planning Policy Framework.

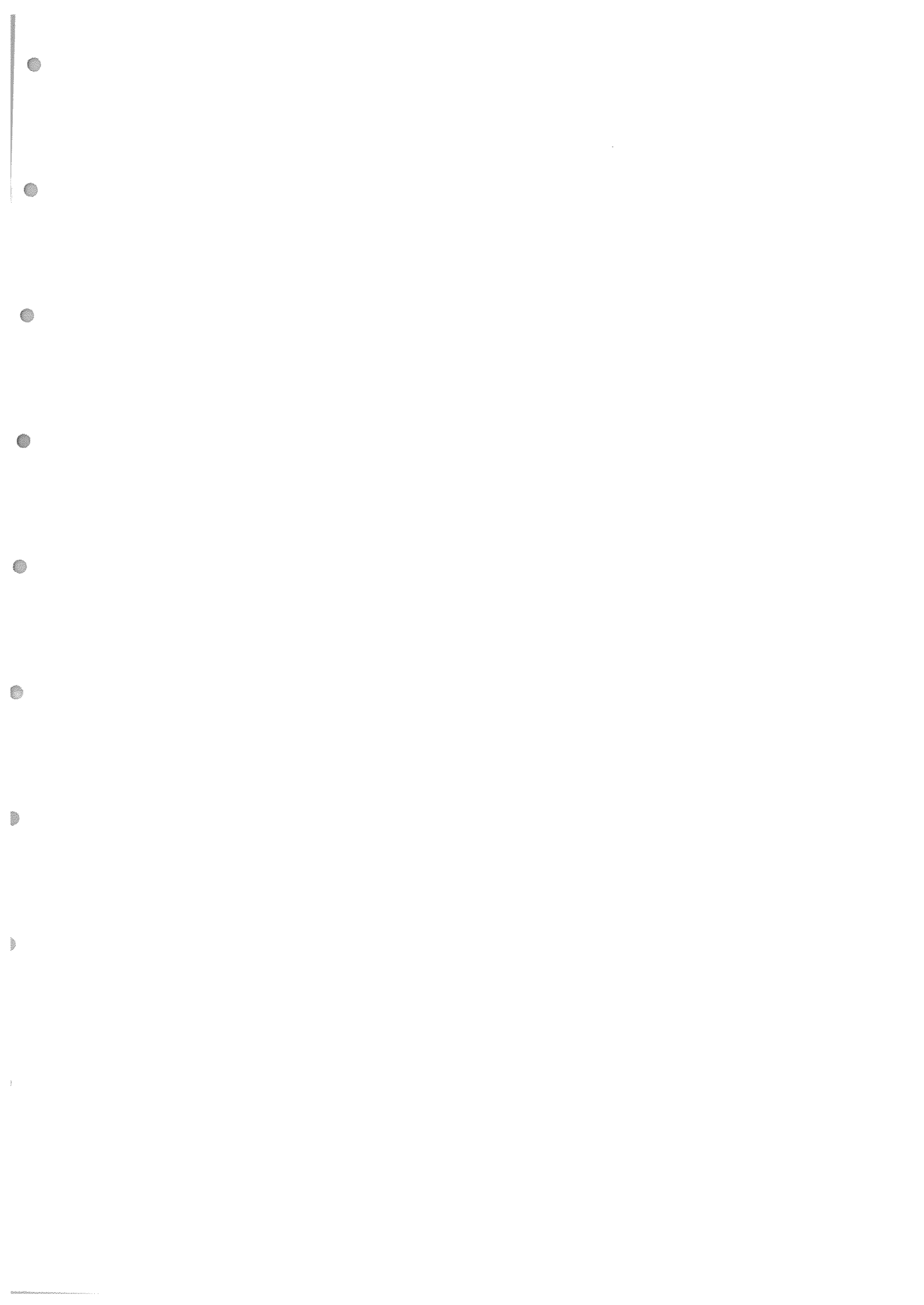
- 2 This approval under Section 73 of the 1990 Act effectively varying the relevant condition of the previous planning permission is subject otherwise to the same terms, drawings, conditions (and obligations where applicable) as attached to the previous planning permission. This includes condition 1 providing for a 3 year time period for implementation which for the avoidance of doubt commences with the date of the original decision (and not this variation).
- 3 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.

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





DATED

19 November

2015

(1) ELSWORTHY ESTATES LIMITED

-and-

(2) BANK OF LONDON AND THE MIDDLE EAST PLC

-and-

**(3) THE MAYOR AND THE BURGESSES OF
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