

DATED

17 December

2015

(1) AJAY SINGH JAIN and MANISA JAIN

-and-

(2) BARCLAYS BANK PLC

-and-

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

FIRST DEED OF VARIATION

Relating to the Agreement dated 25 November 2009
Between the Mayor and the Burgesses of the
London Borough of Camden and
DAVID MICHAEL MAISLISH and TAMAR TSIPORA MAISLISH
under section 106 of the Town and
Country Planning Act 1990 (as amended)
Relating to development at premises known as
272 FINCHLEY ROAD LONDON NW3 7AA

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

Tel: 020 7974 5680
Fax: 020 7974 1920

1685.3044



THIS AGREEMENT is made on the 17 day of December 2015

BETWEEN

1. **AJAY SINGH JAIN and MANISA JAIN** both of ^{272 PINCHLEY ROAD, LONDON NW3 7AA} ~~3e Lindfield Gardens, London NW3-6PX~~ (hereinafter together called "the Owners") of the first part ^{Manisa Jain}
2. **BARCLAYS BANK PLC** of P.O. Box 187, Leeds LS11 1AN (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, David Michael Maislish and Tamar Tsipora Maislish entered into an Agreement ("the Original Agreement") dated 25 November 2009 pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended).
- 1.2 The Owners are registered at the Land Registry as the freehold proprietors as of the date hereof with Title Absolute under title number LN139897 subject to a charge to the Mortgagee.
- 1.3 The Owners are the freehold owners of and are 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 the Agreement as modified by this Deed of Variation ("the First Deed of Variation").
- 1.5 A Non-Material Amendment approval was granted by the Council on 25 June 2015 for the addition of an approved drawing numbers condition to the Original Planning Permission bearing the Council's reference number 2009/1354/P for erection of a detached house comprising of lower ground, ground and first floor with access from Finchley Road and one car parking space.

- 1.6 A planning application made under section 73 of the Act in respect of the Property to amend the Original Planning Permission was submitted to the Council by the Owners and validated on 2 December 2014 for which the Council has resolved to grant permission conditionally under reference 2014/4863/P subject to the conclusion of this First Deed of Variation.
- 1.7 This First Deed of Variation is made by virtue of the Town and Country Planning Act 1990 Section 106 (as amended) and is a planning obligation for the purposes of that section.
- 1.8 Without prejudice to the terms of the other covenants contained in the Original Agreement the parties hereto have agreed to vary the terms of the Original Agreement as hereinafter provided.
- 1.9 The Mortgagee as mortgagee under a legal charge registered under Title Number LN89897 and dated 30 March 2015 is willing to enter into this First Deed of Variation to give its consent to the same.

2. **INTERPRETATION**

- 2.1 All words and phrases defined in the Original Agreement shall have the same meaning in this First Deed of Variation Agreement save where the context otherwise dictates and for the avoidance of any doubt the Original Agreement shall remain in full force and effect save as varied by this First Deed of Variation.
- 2.2 All reference in this First Deed of Variation to clauses in the Original Agreement are to clauses within the Original Agreement.
- 2.3 In this First Deed of Variation the following expression shall unless the context otherwise states have the following meaning now allocated to it.
- 2.3.1 "First Deed of Variation" this First Deed of Variation executed at the date hereof
- 2.3.2 "Original Agreement" the Section 106 Agreement under the Town and Country Planning Act 1990 (as amended) dated

25 November 2009 made between the Council,
David Michael Maislish and Tamar Tsipora
Maislish

2.3.3 “the Original Planning
Permission”

means the planning permission granted by the Council on 25 November 2009 referenced 2009/1354/P allowing the erection of a detached house comprising of lower ground, ground and first floor with access from Finchley Road and two car parking spaces as shown on drawing numbers 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

- 2.4 Where in this Agreement reference is made to a clause schedule or recital such reference (unless the context otherwise requires) is a reference to a clause schedule or recital of this Agreement.
- 2.5 Headings are for ease of reference only and are not intended to be construed as part of this Agreement and shall not be construed as part of this Agreement and shall not effect the construction of this Agreement.
- 2.6 Unless the context otherwise requires references to the singular shall include the plural and vice versa.
- 2.7 References in this Agreement to the Owners and Mortgagee shall include their successors in title.

3. VARIATION TO THE ORIGINAL AGREEMENT

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

- 3.1.1 "Development" variation of condition 10 (approved plans) of planning permission 2009/1354/P dated 25/11/2009 (for erection of a detached house comprising of lower ground, ground and first floor with access from Finchley Road and one car parking space) and amended by planning permission 2015/2640/P dated 25/06/2015, namely excavation to side and rear elevations, and relocation of heat pump above ground level as shown on drawing numbers **Superseded:** A-FR272-SC-: EL04C; EL03C; EL02B; EL05 D; PL00 C; EL01 B **Proposed:** A-FR272-SC-: EL04D; EL03D; EL02C; EL05 D dated 29/7/15; PL00 D; EL01 C; Noise report prepared by Soundtesting dated 20th October 2014; and A-FR11-LD70.
- 3.1.2 "Planning Permission" the planning permission under reference number 2014/4863/P to be issued 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 23 September 2014 by the Owners and given reference number 2014/4863/P

3.2 After the words "2009/1354/P" in clause 5.2 of the Original Agreement the words "or "2014/4863/P" (as the case may be)" shall be inserted.

3.3 After the words "2009/1354/P" in clause 6.1 of the Original Agreement the words "or "2014/4863/P" (as the case may be)" shall be inserted.

3.4 In all other respects the Original Agreement (as varied by this First Deed of Variation) shall continue in full force and effect.

4. PAYMENT OF THE COUNCIL'S LEGAL COSTS

4.1 The Owners agree to pay the Council (on or prior to completion of this Agreement) its reasonable legal costs incurred in preparing this Agreement

5. REGISTRATION AS LOCAL LAND CHARGE

5.1 This Agreement shall be registered as a Local Land Charge

6. JOINT AND SEVERAL LIABILITY

6.1 All Covenants made by the Owners in this Agreement are made jointly and severally and shall be enforceable as such.

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.

IN WITNESS whereof the Council has caused its Common Seal to be hereunto affixed and the Owners and the Mortgagee have executed this instrument as their Deed the day and year first before written

EXECUTED AS A DEED BY)

AJAY SINGH JAIN)

in the presence of:)

Witness Signature:)

Witness Name: (CAPITALS))

Address:)

Occupation:)

Ajay Singh Jain
.....

Atul Kumar
.....

...ATUL...KUMAR.....

Flat 6...Unity house...

81-89 Fortess Road LONDON NW5 1AG

Portfolio Manager.....

EXECUTED AS A DEED BY)

MANISA JAIN)

in the presence of:)

Witness Signature:)

Witness Name: (CAPITALS))

Address:)

Occupation:)

Manisa Jain
.....

Atul Kumar
.....

...ATUL...KUMAR.....

Flat 6, Unity house, 81-89 Fortess Road

LONDON...NW5 1AG.....

Portfolio Manager.....

EXECUTED AS A DEED BY)

BARLCAYS BANK PLC)

By)

in the presence of:-)

[Signature]
.....

True Copy
Barclays Bank
Mayfair
20-66-11

C. Incedal 

THE COMMON SEAL OF THE MAYOR)

AND BURGESSES OF THE LONDON)

BOROUGH OF CAMDEN)

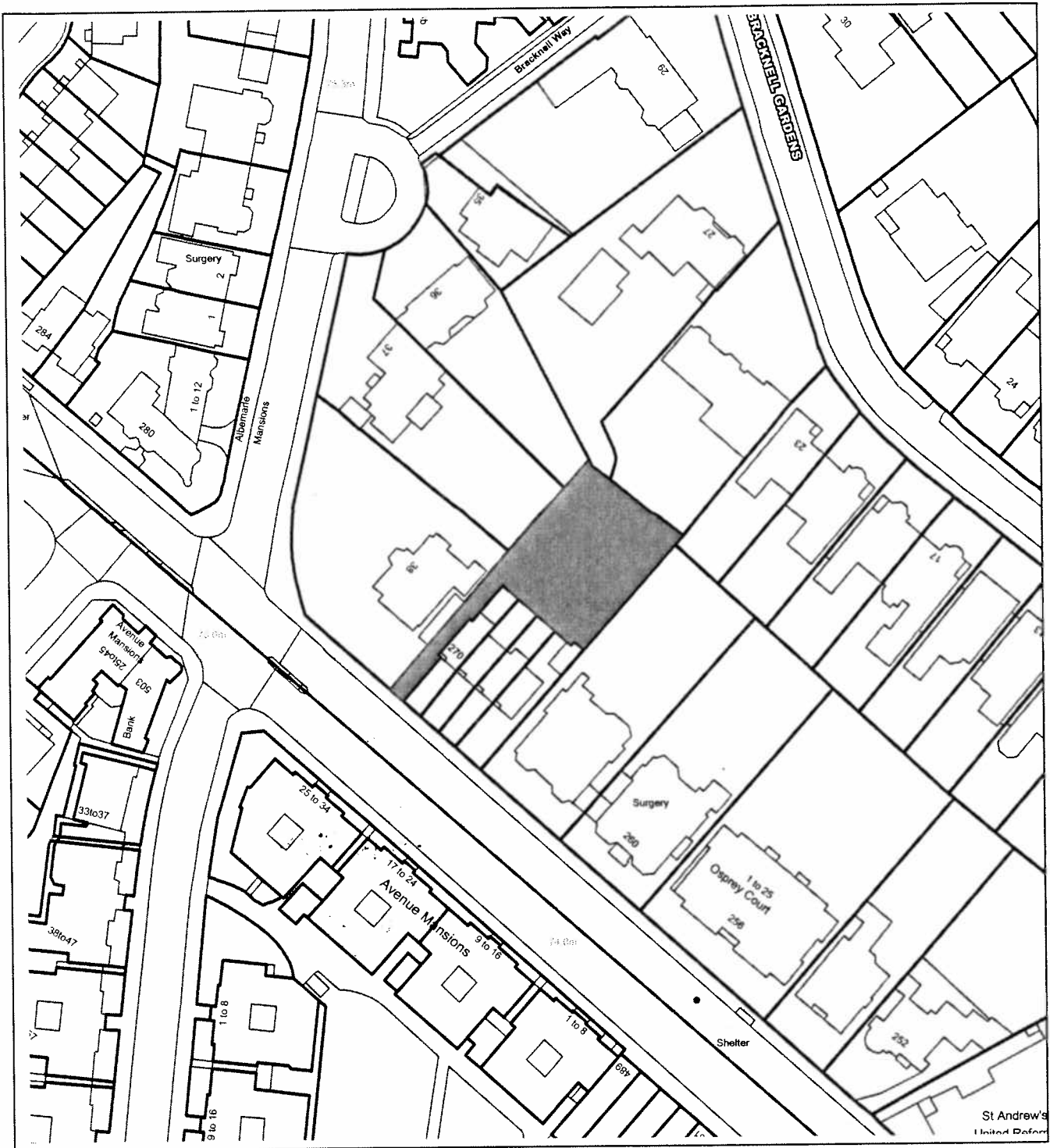
was hereunto affixed by Order:-)

R. Alexander
.....

Duly Authorised Officer



272 FINCHLEY ROAD LONDON NW3 7AA



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SIAW LTD
Winston House
Suite 332
2 Dollis Park
London
N3 1HF

Application Ref: **2014/4863/P**

25 November 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:
272 Finchley Road
London
NW3 7AA

PROPOSAL
Proposal:

Variation of condition 10 (approved plans) of planning permission 2009/1354/P dated 25/11/2009 (for erection of a detached house comprising of lower ground, ground and first floor with access from Finchley Road and one car parking space) and amended by planning permission 2015/2640/P dated 25/06/2015, namely excavation to side and rear elevations, and relocation of heat pump above ground level.

Drawing Nos:

Superseded: A-FR272-SC-: EL04C; EL03C; EL02B; EL05 D; PL00 C; EL01 B

Proposed: A-FR272-SC-: EL04D; EL03D; EL02C; EL05 D dated 29/7/15; PL00 D; EL01 C;
Noise report prepared by Soundtesting dated 20th October 2014; A-FR11-LD70

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 10 of planning permission 2009/1354/P shall be replaced with the following condition:

REPLACEMENT CONDITION 10

The development hereby permitted shall be carried out in accordance with the following approved plans: A-FR272-PL00 D; PL01 B; PL02 B; PL04; EX00; EL01 C; EL02C; EL03D; EL04D; EL05 D dated 29/7/15; 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, Acoustic report by Sharps Redmore Partnerships; Noise report prepared by Soundtesting dated 20th October 2014; A-FR11-LD70

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

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

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policy CS5 of the London Borough of Camden Local Development Framework Core Strategy and policies DP26 and DP28 of the London Borough of Camden Local Development Framework Development Policies.

- 3 Within three months of the date of this decision notice, the air source heat pump shall be provided with acoustic attenuation in accordance with the noise report hereby approved. All such measures shall thereafter be retained and maintained in accordance with the manufacturers' recommendations.

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policy CS5 of the London Borough of Camden Local Development Framework Core Strategy and policies DP26 and DP28 of the London Borough of Camden Local Development Framework Development Policies.

Informative(s):

- 1 Reasons for granting permission.

The detached house was not built according to the approved plans and so this application seeks retrospective consent for the changes which include excavation

to the side and rear elevations, and relocation of heat pump above ground level (an air source heat pump rather than a ground source heat pump).

Planning permission was granted 25/06/2015 for a non-material amendment of the original planning permission (ref: 2009/1354/P). The non-material amendment (ref: 2015/2640/P) consisted of the addition of a condition with the approved drawing numbers to the original 2009 planning permission. This application seeks to make a minor material amendment (by way of s73) to the approved scheme to regularise the development.

The location of air source heat pump adjacent to the boundary with 264 Finchley Road would be acceptable. The heat pump would be located behind a timber fence and so would not be easily visible. The heat pump measures 1.1m by 0.5m and would be 1.46m high. A noise report has been provided to support the application. The noise report indicates acoustic attenuation would be required. The noise report has been assessed by the environmental health team and is considered acceptable. A condition would be included to ensure the acoustic measures identified in the noise report are implemented. A condition would also be included on the decision to ensure the heat pump did not breach Camden's noise thresholds. The property has been constructed 1.47m away from the bank of land at the rear and 1.2m from the bank of land at the side (rather than being set into the bank as was approved). This additional excavation is considered minor and does not affect the overall appearance of the property or harm the appearance of its landscaping. As the original permission was subject to a legal agreement, a deed of variation would be required to ensure the description of development in the legal agreement would be accurate.

The planning and appeal history of the site has been taken into account when coming to this decision. One objection was received prior to making this decision and was duly taking into account.

As such, the proposed development is in general accordance with policies CS5 and CS14 of the London Borough of Camden Local Development Framework Core Strategy, and policies DP24, DP26 and DP28 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 March 2015, consolidated with alterations since 2011; and paragraphs 14, 17, and 56-66 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).

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

17 December

2015

(1) AJAY SINGH JAIN and MANISA JAIN

-and-

(2) BARCLAYS BANK PLC

-and-

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

FIRST DEED OF VARIATION

Relating to the Agreement dated 25 November 2009
Between the Mayor and the Burgesses of the
London Borough of Camden and
DAVID MICHAEL MAISLISH and TAMAR TSIPORA MAISLISH
under section 106 of the Town and
Country Planning Act 1990 (as amended)
Relating to development at premises known as
272 FINCHLEY ROAD LONDON NW3 7AA

Andrew Maughan
Borough Solicitor
London Borough of Camden
Town Hall
Judd Street
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