

DATED

21 APRIL

2016

**(1) PEGASUSLIFE DEVELOPMENT LIMITED**

-and-

**(2) DEUTSCHE BANK AG, LONDON BRANCH**

-and-

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

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**DEED OF VARIATION**

Relating to the Agreement dated 28 August 2015  
Between the Mayor and the Burgesses of the  
London Borough of Camden,  
Pegasuslife Development Limited and Deutsche Bank AG, London Branch  
under section 106 of the Town and  
Country Planning Act 1990 (as amended) and section 278 of the Highways Act 1980  
relating to development at premises known as  
Arthur West House, 79 Fitzjohn's Avenue, London NW3 6PA

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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/GR/1781.575 79 Fitzjohn's Avenue London NW3 6PA



THIS DEED is made on the

21<sup>ST</sup> day of APRIL

2016

**BETWEEN**

1. **PEGASUSLIFE DEVELOPMENT LIMITED** (Co. Regn. No.9340939) whose registered office is at Royal Court, Church Green Close, Kings Worthy, Winchester SO23 7TW (hereinafter called "the Owner") of the first part
2. **DEUTSCHE BANK AG, LONDON BRANCH** (incorporated in Germany) of Winchester House, 1 Great Winchester Street, London EC2N 2DB (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, the Owner and the Mortgagee entered into an Agreement dated 28 August 2015 pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) (the "Act") and Section 278 of the Highways Act 1980.
- 1.2 The Owner is registered at the Land Registry as the freehold proprietor with Title Absolute under title number 162429 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 26 October 2015 for which the Council resolved to grant permission conditionally under reference 2015/5881/P subject to the conclusion of this Deed.

1.6 This Deed is made by virtue of Section 106A of the Act 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 Deed.

2.4 Headings are for ease of reference only and shall not be construed as part of this Deed or affect its construction.

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, 5, 6 and 7 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 Construction 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 agreement pursuant to Section 106 of the Act and Section 278 of the Highways Act 1980 dated 28 August 2015 made between the Council, the Owner and the Mortgagee

2.8.3 "the Original Planning Permission"

means the planning permission granted by the Council on 28 August 2015 referenced 2014/7851/P allowing the demolition of hostel and erection of 3 – 6 storey building plus roof plant enclosure and excavation of 2 storey basement to provide 33 self-contained wheelchair accessible flats for the care and well-being of older people (13 x 2 bed & 20 x 3 bed) including ancillary extra-care and treatment rooms, restaurant, health & well-being facility, gym, communal lounges, guest suite, cycle and mobility scooter storage and staff facilities with basement level car park communal garden and associated landscaping as shown on drawing numbers : -

**Existing drawings:**

276/4001, 276/4100, 276/4110, 276/4111,  
276/4112, 276/4113, 276/4114, 276/4115,  
276/4116, 276/4150, 276/4151, 276/4175,  
276/4176, 276/4177 & 276/4178

**Proposed drawings:**

276/4200b, 276/4221b, 276/4222b, 276/4223d,  
276/4224b, 276/4225e, 276/4226b, 276/4227b,  
276/4228d, 276/4229, 276/4230c, 276/4260c,  
276/4261d, 276/4262c, 276/4263, 276/4295c,

276/4296c, 276/4297c, 276/4298c, 276/4400,  
LL489000-0001B, LL489-150-0011 & J4901

**Supporting documents:**

Cover letter by Tibbalds dated 19 December 2014; Cover letter by Tibbalds dated 26 March 2015; Planning, Design and Access Statement (incorporating the landscape strategy prepared by Camlins and Townscape and Heritage Visual Impact Assessment) by Sergison Bates Architects, Tibbalds and Barton Willmore dated December 2014; Planning, Design and Access Statement Addendum by Sergison Bates dated March 2015; Addendum to Heritage and Conservation Assessment by Tibbalds dated March 2015; Addendum to Heritage and Conservation assessment by Tibbalds dated March 2015; Townscape and Visual Addendum by Barton Willmore dated March 2015; Townscape and Visual Addendum Verified Photomontages – Methodology and Supporting Evidence by Designhive dated March 2015; Photomontage Views P1, P2, P4 & P5, Summer and Winter, Full Size by Barton Willmore dated March 2015; Area Schedule Rev E by Sergison Bates dated 5th May 2015; Statement of Community Involvement by Keeble Brown dated December 2014; Construction Management Plan by Gleeds dated December 2014; Construction Management Plan Addendum by Gleeds dated March 2015; Sustainability and Energy Statement- Design and Construction by Max Fordham LLP Issue D dated 17 December 2014; Basement Impact Assessment by Symmetrys Limited dated December 2014; Transport Assessment (including Delivery and Servicing Plan and Travel Plan) by TTP

Consulting dated March 2015; Draft Delivery and Servicing Plan by TTP Consulting dated March 2015; Arboricultural Survey and Impact Assessment by Tree Maintenance Limited dated December 2014; Tree Survey, Implications Assessment and Outline Protection Method Statement (Addendum) by Tree Maintenance Limited dated March 2015; Noise and Vibration Report Issue D by Max Fordham LLP dated 17 December 2014; Ground Investigation Survey and Contaminated Land Assessment (Phase 2) by Ian Farmer Associates Limited dated November 2014; Ecological Appraisal by Camlins dated August 2014; Daylight, Sunlight and Overshadowing Assessment by EB7 dated 13 March 2015; Letter recommending no archaeological requirement from English Heritage dated 30 October 2014; Air Quality Assessment by AECOM dated February 2015; Air Quality Assessment Addendum by AECOM dated March 2015; Molecular Filter Lifetime Determination Report by Camfil dated 26 February 2015; Financial Viability Report by GL Hearn dated 19 February 2015; Development Appraisal by GL Hearn dated 1 April 2015; Addendum Design & Access Statement to accompany revisions by Tibbalds dated June 2015; Daylight & Sunlight Addendum Report by JLL dated 15/06/15; and Revised Consultation Summary by Keeble Brown undated.

### **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"

the development authorised by the Original Planning Permission as amended by the following: Variation of condition 2 (approved plans) of planning permission 2014/7851/P dated 28/08/2015 (for demolition of hostel and erection of 3 - 6 storey building and basement to provide 33 self-contained flats and ancillary extra-care and support facilities) namely to allow reduction in flat count to 29, relocation of substation, bin store and cycle store and alterations to windows on rear elevation, ground floor elevation, roof extract and downpipes as shown on the Addendum Design and Access Statement dated October 2015 and drawing revision numbers:-

276/4221c, 276/4222c, 276/4223e, 276/4224c, 276/4225f, 276/4226c, 276/4227c, 276/4228e, 276/4260d, 276/4261e, 276/4262d, 276/4263a, 276/4296d, 276/4298d; Cover letter by Tibbalds dated 19 October 2015; Planning report – Rainwater pipes; Area Schedule 6300 B

### 3.1.2 "Planning Permission"

the planning permission for the Development under reference number 2015/5881/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 19 October 2015 by the Owner and given reference number 2015/5881/P

3.2 All references in Clause 5 and Clause 6 of the Existing Agreement to "Planning Reference 2014/7851/P", "planning reference 2014/7851/P", "Planning Permission reference 2014/7851/P" and "Planning reference number 2014/7851/P" shall be replaced with "Planning Permission reference 2015/5881/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 clause 3 of this Deed shall take effect on the Implementation of Construction of the Planning Permission

**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

**7. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 7.1 All third party rights arising under the Contracts (Rights of Third Parties) Act 1999 are excluded and no one other than the parties hereto shall have any right to enforce any obligation or term of this Deed.

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

CONTINUATION OF DEED OF VARIATION FOR ARTHUR WEST HOUSE

79 FITZJOHN'S AVENUE, LONDON NW3 6PA

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

.....

Director

.....

Director/Secretary

EXECUTED AS A DEED on behalf of )  
DEUTSCHE BANK AG, )  
LONDON BRANCH )  
by )

in the presence of:- )

.....

.....

Susan Rose  
Vice President

.....

Christopher English  
Vice President

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

.....  
Duly Authorised Officer



CONFIDENTIAL

## **APPENDIX**

### **Draft Planning Permission**





Tibbalds Planning and Urban Design  
19 Maltings Place  
169 Tower Bridge Road  
London  
SE1 3JB  
United Kingdom

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

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

Application Ref: **2015/5881/P**

02 March 2016

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:

**Arthur West House  
79 Fitzjohn's Avenue  
London  
Camden  
NW3 6PA**

Proposal:

**DECISION**

Variation of condition 2 (approved plans) of planning permission 2014/7851/P dated 28/08/2015 (for demolition of hostel and erection of 3 - 6 storey building and basement to provide 33 self-contained flats and ancillary extra-care and support facilities) namely to allow reduction in flat count to 29, relocation of substation, bin store and cycle store and alterations to windows on rear elevation, ground floor elevation, roof extract and downpipes.

Drawing Nos:

Superseded: 276/4221b; 276/4222b; 276/4223d; 276/4224b; 276/4225e; 276/4226b; 276/4227b; 276/4228d; 276/4260c; 276/4261d; 276/4262c; 276/4263; 276/4296c; 276/4298c; Area schedule 4300 Rev E

Proposed: 276/4221c; 276/4222c; 276/4223e; 276/4224c; 276/4225f; 276/4226c; 276/4227c; 276/4228e; 276/4260d; 276/4261e; 276/4262d; 276/4263a; 276/4296d; 276/4298d; Cover letter by Tibbalds dated 19th October 2015; Planning report - Rainwater pipes; Area Schedule 6300 B

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.2 of planning permission 2014/7851/P dated 28/08/2015 shall be replaced with the following condition:

**REPLACEMENT CONDITION 2**

The development hereby permitted shall be carried out in accordance with the following approved plans:

**Existing drawings:**

276/4001, 276/4100, 276/4110, 276/4111, 276/4112, 276/4113, 276/4114, 276/4115, 276/4116, 276/4150, 276/4151, 276/4175, 276/4176, 276/4177 & 276/4178

**Proposed drawings:**

276/4200b, 276/4221c, 276/4222c, 276/4223e, 276/4224c, 276/4225f, 276/4226c, 276/4227c, 276/4228e, 276/4229, 276/4230c, 276/4260d, 276/4261e, 276/4262d, 276/4263a, 276/4295c, 276/4296d, 276/4297c, 276/4298d, 276/4400, LL489000-0001B, LL489-150-0011 & J4901

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

Informative(s):

1 Reasons for granting permission.

All GIA/ NIA floorspaces would remain the same and the allocation of space between residential and communal floorspace would remain as per the original permission. However, following more detailed internal space planning, the units at floor level 2 have been reduced from 6 to 5; at level 3 from 6 to 4 and at level 4 from 3 to 2 units (an overall reduction of 4 units). Although there would be a reduction in the number of units (from 33 to 29) those units remaining would be larger. Overall the revised scheme would have 9 large 2 beds and 19 small 2 beds and 1 x 1 bed (rather than 20 large 2 beds and 13 small 2 beds). The reduction in the number of units and the mix of units are both considered acceptable. The relocated cycle store (at basement level) would still allow step free access. The relocated refuse store at basement level would have a dedicated bin lift to ground floor level. The revised location of the bin and cycle store would therefore be acceptable. The alterations to the windows in the rear elevation and the downpipes would also be acceptable. A deed of variation to the original legal agreement would be required.

The planning and appeal history of the site has been taken into account when

coming to this decision. No objections were received prior to making this decision.

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

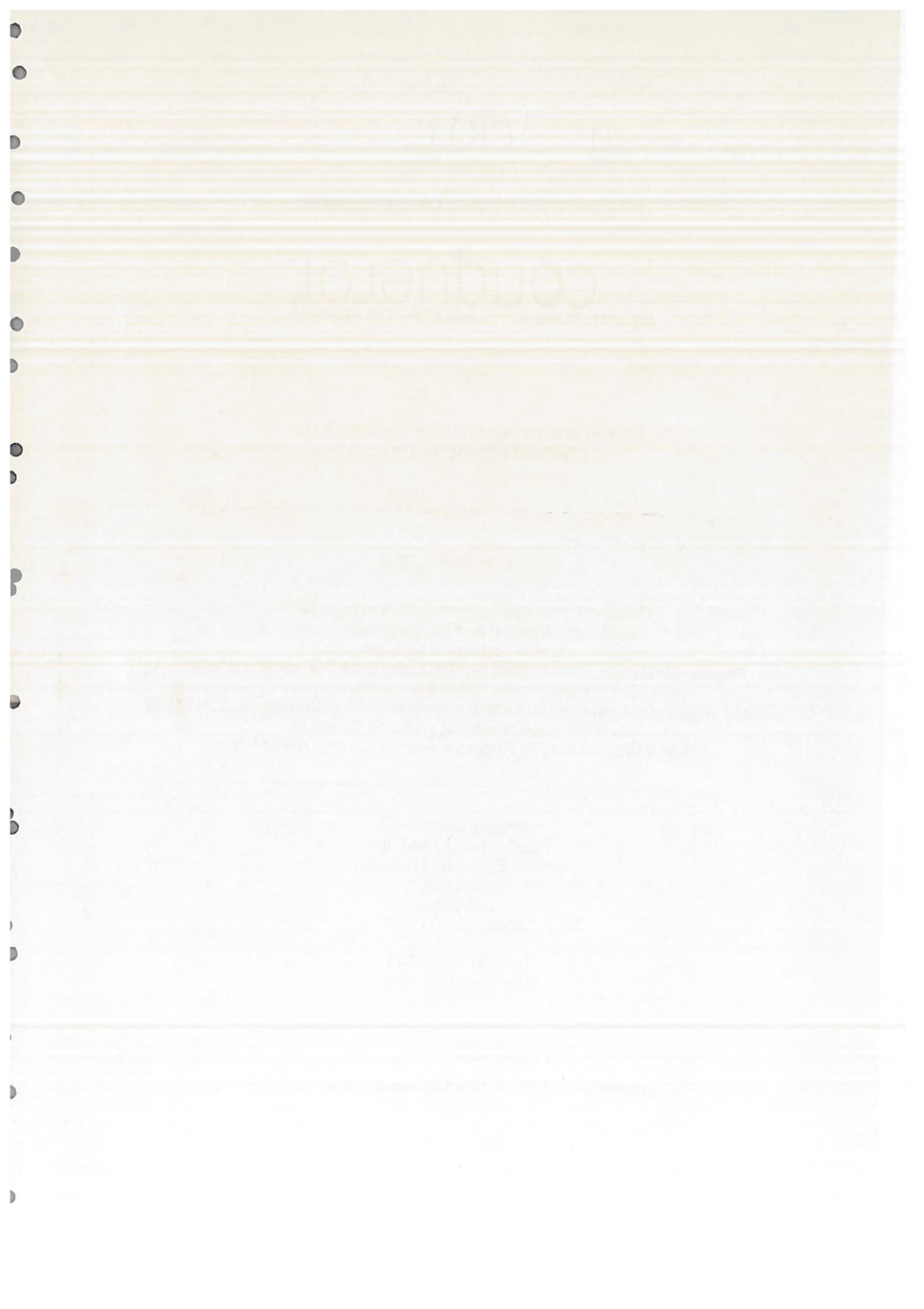
As such, the proposed development is in general accordance with policies CS5, CS6, CS11, CS14 and CS18 of the London Borough of Camden Local Development Framework Core Strategy, and policies DP2, DP5, DP7, DP17, DP18, DP24, DP25 and DP26 of the London Borough of Camden Local Development Framework Development Policies. The proposed development also accords with policies 7.4, 7.6 and 7.8 of the London Plan March 2015, consolidated with alterations since 2011; 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 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





DATED

21 APRIL

2016

**(1) PEGASUSLIFE DEVELOPMENT LIMITED**

-and-

**(2) DEUTSCHE BANK AG, LONDON BRANCH**

-and-

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

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