

DATED

13 JUNE

2016

(1) KINIATON CAPITAL LIMITED

-and-

(2) ABA COMMUNICATIONS (1997) LIMITED

-and-

(3) MIZRAHI TEFAHOT BANK LIMITED

-and-

(4) THE MAYOR AND THE BURGESSES OF
THE LONDON BOROUGH OF CAMDEN

SECOND DEED OF VARIATION

Relating to the Agreement dated 29 March 2012 (as varied by the First Deed of Variation dated 2 May 2014)

Between the Mayor and the Burgesses of the
London Borough of Camden,
Kiniaton Capital Limited and ABA Communications (1997) Limited
and Mizrahi Tefahot Bank Limited
under section 106 of the Town and
Country Planning Act 1990 (as amended)
Relating to development at premises known as
23a Hampstead Hill Gardens London NW3 2PJ

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

Tel: 020 7974 5680
Fax: 020 7974 1920

THIS AGREEMENT is made on the

13th

day of

JUNE

2016

BETWEEN

1. **KINIATON CAPITAL LIMITED** (incorporated in the British Virgin Islands) of Vanterpool Plaza, Wickhams Cay, Road Town, Tortola, British Virgin Islands whose address for service in the UK is at 380 Kenton Road, Harrow HA3 8DP (hereinafter called "the First Owner") of the first part
2. **ABA COMMUNICATIONS (1997) LIMITED** (incorporated in Israel) of 87 Wimpole Street, London W1G 9RL (hereinafter called "the Second Owner") of the second part
3. **MIZRAHI TEFAHOT BANK LIMITED** (incorporated in Israel, UK registration number FC011504) of 30 Old Broad Street, London EC2N 1HT (hereinafter called "the Mortgagee") of the third part
4. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of Town Hall, Judd Street, London WC1H 9LP (hereinafter called "the Council") of the fourth part

WHEREAS:

- 1.1 The First Owner and Second Owner are registered at the Land Registry as the freehold proprietors with Title absolute of the Property under Title Number LN38783 subject to a charge to the Mortgagee.
- 1.2 The First Owner and the Second Owner are the freehold Owner of and are interested in the Property for the purposes of Section 106 of the Act.
- 1.3 The First Owner and Second Owner shall hereinafter be described and known as "the Owner".
- 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 Agreement.

- 1.5 A new Planning Application in respect of the Property and to amend the Original Planning Permission as varied by the Second Planning Permission was submitted to the Council by the Owner and validated on 18 November 2015 for which the Council resolved to grant permission conditionally under reference 2015/5894/P subject to the conclusion of this Agreement.
- 1.6 This Agreement 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.
- 1.7 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.

2 INTERPRETATION

- 2.1 All words and phrases defined in the Original Agreement shall have the same meaning in this Deed 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 Deed.
- 2.2 All reference in this Deed to clauses in the Original Agreement are to clauses within the Original Agreement as varied by the First Deed of Variation.
- 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 "this Agreement" this Deed of Variation made pursuant to Section 106A of the Act

2.8.2 "the First Deed of Variation" the deed of variation under section 106A of the Town and Country Planning Act 1990 (as amended) dated 2 May 2014 made between the Council, Kination Capital Limited and ABA Communications (1997) Limited and Mizrahi Tefahot Bank Limited

2.8.3 "Original Agreement" the Section 106 Agreement under the Town and Country Planning Act 1990 (as amended) dated 29 March 2012 made between the Council, Kination Capital Limited and ABA Communications (1997) Limited and Mizrahi Tefahot Bank Limited

2.8.4 "the Original Planning Permission" means the planning permission granted by the Council on 29 March 2012 referenced 2011/2956/P and 2011/3573/C allowing the erection of a replacement 2 storey dwellinghouse with enlarged lower ground level, plus forecourt parking, front lightwell and new boundary enclosure at front, and projecting balconies at rear, following demolition of existing dwelling house (Class C3) as shown on drawing numbers revised scheme Planning and

Design Statement dated October 2011; revised scheme Sustainability Statement dated October 2011; Basement Impact Assessment report dated October 2011; tree survey report by Andrew Parry dated July 2007; letter on cherry tree from r.howorth surveyors dated 20th January 2011; site location plan; 0002A, 0003A, 0004A, 0101A, 0102A, 0103A, 0104A, 0201A; 1001A, 1002A, 1003A, 1004, 1101A, 1102A, 1103A, 1201A, 1301; draft Unilateral Undertaking dated 2011 between Kiniton Capital Limited, ABA Communications 1997 Limited and Louise Goodwin Limited

2.8.5 "the Second Planning Permission"

means the planning permission granted by the Council on 2 May 2014 referenced 2013/8020/P allowing demolition of existing dwelling house and erection of a new 3 storey dwellinghouse with lower ground floor rear extension, ground and 1st floor roof terraces, plus forecourt parking, lightwell and new boundary enclosure at the front

3. VARIATION TO THE EXISTING AGREEMENT

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

3.1.1 "The Planning Application Development"

variation of condition 2 (approved plans) of planning permission dated 2 May 2014 ref 2013/8020/P (for Demolition of existing dwelling house and erection of a new 3 storey dwellinghouse with lower ground floor rear extension, ground and 1st floor roof terraces,

plus forecourt parking, lightwell and new boundary enclosure at the front), to allow various changes to all elevations, gardens and boundary enclosures as shown on drawing numbers:

Sustainability Statement revised proposal dated January 2015 by Briary Energy; Regulation Compliance report dated 27.1.15; Schedule of material amendments revision B dated 18.11.15; proposed plans- 596/19.1 revD, 20.1 revC, 21.1 revH, 22.1 revE, 24.1 revA, 30.1 revC, 36.1 revC, 40.1 revG, 40.2 revA, 41.1 revF, 42.1 revE, 43.1 revD, LD revC

- 3.1.2 "the Planning Permission" the planning permission under reference number 2015/5894/P to be issued by the Council in the form of the draft annexed hereto
- 3.1.3 "the Planning Development Application" the application for Planning Permission in respect of the Property submitted on 18 November 2015 by the Owner and given reference number 2015/5894/P
- 3.2 All references in clause 5.2, 5.6 and 6.1 of the Original Agreement (as varied by the First Deed of Variation) to "2011/2956/P" shall be deleted and replaced with "2015/5894/P".
- 3.3 The draft planning permission reference 2015/5894/P annexed to this Agreement shall be treated as annexed to the Original Agreement in addition to the existing annexures.

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

4. COMMENCEMENT

4.1 Without prejudice to the effect of Clause 3.5 in the Original Agreement (as varied by the First Deed of Variation and this Deed) the provisions in this Deed shall take effect on the Implementation of the Planning Permission referenced 2015/5894/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 Agreement) its reasonable legal costs incurred in preparing this Agreement.

6. REGISTRATION AS LOCAL LAND CHARGE

6.1 This Deed shall be registered as a Local Land Charge.

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)

KINIATON CAPITAL LIMITED)

a company incorporated in)

the British Virgin Islands by)

LIONEL GERALD CURRY)

and)


.....
Authorised Signatory

being persons who in accordance)

with the laws of that territory are)

acting under the authority of)

the company)


.....
Authorised Signatory

CONTINUATION DEED OF VARIATION IN RELATION TO 23A HAMPSTEAD HILL
GARDENS LONDON NW3 2PJ

EXECUTED as a Deed on behalf of)

ABA COMMUNICATIONS)

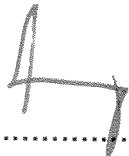
(1997) LIMITED)

a company incorporated in)

ISRAEL by)

LIONEL GERALD CURRY)

and-)


.....


Authorised Signatory

being persons who in accordance)

with the laws of that territory are)

acting under the authority of)

the company)


.....

Authorised Signatory

EXECUTED as a Deed on behalf of)

MIZRAHI TEFAHOT BANK LIMITED)

a company incorporated in)

ISRAEL by)

and)


.....

Authorised Signatory

ELTON HILLMAN

HEAD OF CREDIT

MIZRAHI TEFAHOT BANK LIMITED

LONDON BRANCH

being persons who in accordance)

with the laws of that territory are)

acting under the authority of)

the company)


.....

Authorised Signatory

ARON DAVTAR
SENIOR ACCOUNT RELATIONSHIP MANAGER
AUTHORISED SIGNATORY

CONTINUATION DEED OF VARIATION IN RELATION TO 23A HAMPSTEAD HILL
GARDENS LONDON NW3 2PJ

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

)
)
)
)



R. Alexander
.....
Duly Authorised Officer

Walker Bushe Architects Ltd
6 Highbury Corner
Highbury Crescent
London N5 1RD

Application Ref: **2015/5894/P**

20 April 2016

Dear Sir/Madam

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:
23A Hampstead Hill Gardens
London NW3 2PJ

Proposal:
Variation of condition 2 (approved plans) of planning permission dated 2.5.14 ref 2013/8020/P (for Demolition of existing dwelling house and erection of a new 3 storey dwellinghouse with lower ground floor rear extension, ground and 1st floor roof terraces, plus forecourt parking, lightwell and new boundary enclosure at the front), to allow various changes to all elevations, gardens and boundary enclosures.

Drawing Nos:

Superseded plans- Design and Access Statement 2013 Revision by 51% studios ltd; Sustainability Statement revised proposal dated December 2013 by Briary Energy; Regulation Compliance report dated 10.12.13; landscape plan; site location plan; 1001B, 1002C, 1003D, 1004C, 1101E, 1102D, 1103D, 1201D, 1104B, 1003B x 2 (ground and 1st floor accessible bathrooms);
Approved plans- Design and Access Statement Revision A dated February 2016 by Walker Bushe architects; Sustainability Statement revised proposal dated January 2015 by Briary Energy; Schedule of material amendments revision B dated 18.11.15; proposed plans- 596/19.1 revD, 20.1 revC, 21.1 revH, 22.1 revE, 24.1 revA, 30.1 revC, 36.1 revC, 40.1 revG, 40.2 revA, 41.1 revF, 42.1 revE, 43.1 revD, LD revC.

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 dated 2.5.14 ref 2013/8020/P 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- Design and Access Statement Revision A dated February 2016 by Walker Bushe architects; Sustainability Statement revised proposal dated January 2015 by Briary Energy; letter from Civic Trees dated 18.1.11; letter from r.howarth surveyors dated 20.1.11; site location plan; existing plans- 0002A, 0003A, 0004A, 0101A, 0102B, 0103A, 0104A, 0201A; Schedule of material amendments revision B dated 18.11.15; proposed plans- 596/19.1 revD, 20.1 revC, 21.1 revH, 22.1 revE, 24.1 revA, 30.1 revC, 36.1 revC, 40.1 revG, 40.2 revA, 41.1 revF, 42.1 revE, 43.1 revD, LD revC.

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

- 2 The top flat roof of the house shall only be accessible for maintenance purposes and shall not be used as an amenity terrace.

Reason: In order to prevent unreasonable overlooking of neighbouring premises in accordance with the requirements of policy CS5 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.

Informative(s):

- 1 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 (except conditions 6, 8 (2nd part) and 13 relating to submission of details of landscaping and of tree protection and relating to obscure glazing of side windows) 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

DRAFT

DECISION

DATED

13 JUNE

2016

(1) KINIATON CAPITAL LIMITED

-and-

(2) ABA COMMUNICATIONS (1997) LIMITED

-and-

(3) MIZRAHI TEFAHOT BANK LIMITED

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(4) THE MAYOR AND THE BURGESSES OF
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