

DATED

18 August

2017

**(1) PAUL CROCKER and VANESSA CROCKER**

-and-

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

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**DEED OF VARIATION**

Relating to the Agreement dated 13 April 2017  
Between the Mayor and the Burgesses of the  
London Borough of Camden, Paul Crocker and Vanessa Crocker  
under section 106 of the Town and  
Country Planning Act 1990 (as amended)  
Relating to development at premises known as  
**115 Frognal London NW3 6XR**

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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/ESA/1800.330  
DoV FINAL



THIS DEED is made on the 18<sup>th</sup> day of August 2017

**BETWEEN**

1. **PAUL CROCKER and VANESSA CROCKER** of 115 Frognal, London NW3 6XR (hereinafter called "the Owner") of the first part
2. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of Town Hall, Judd Street, London WC1H 9LP (hereinafter called "the Council") of the second part

**WHEREAS:**

- 1.1 The Council, Paul Crocker and Vanessa Crocker entered into an Agreement dated 13 April 2017 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 NGL755909.
- 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 May 2017 for which the Council resolved to grant permission conditionally under reference 2017/2917/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 13 April 2017 made between the Council and Paul Crocker and Vanessa Crocker
- 2.8.3 "the Original Planning Permission" means the planning permission granted by the Council on 13 April 2017 referenced 2016/5380/P allowing the erection of a 2 storey, 4-bed dwellinghouse following demolition of existing dwellinghouse, and associated landscaping works as shown on drawing numbers:- FRG-P-001; FRG-X-100; FRG-X-101; FRG-X-300; FRG-X-301; FRG-X-302; FRG-P2-005; FRG-P2-006; FRG-P2-007; FRG-P2-100; FRG-P2-101; FRG-P2-102; FRG-P2-300; FRG-P2-301; Design & Access Statement (as amended); Heritage Statement (dated October 2016); Arboricultural Impact Assessment and Preliminary Arboricultural Method Statement (dated 08/02/2017); Daylight & Sunlight Report (dated 28/09/2016)

### **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 Original Planning Permission as varied by :- variation of condition 2 (approved plans) of planning permission 2016/5380/P, dated 13/04/2017 (for erection of 2 storey, 4-bed dwellinghouse following demolition of existing





dwellinghouse, and associated landscaping works), namely to allow creation of basement, alterations to fenestration, installation of air-con units on roof of garage:-

Revised Plans:

FRG-P3-001 Rev A; FRG-P3-100 Rev A; FRG-P3-101 Rev A; FRG-P3-102 Rev A; FRG-P3-103 Rev A; FRG-P3-200 Rev A; FRG-P3-201 Rev A; FRG-P3-300 Rev A;

Superseded Plans:

FRG-P2-005; FRG-P2-007; FRG-P2-100; FRG-P2-101; FRG-P2-102; FRG P2-300; FRG-P2-301

3.1.2 "Planning Permission" the planning permission for the Development under reference number 2017/2917/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 26 May 2017 by the Owner and given reference number 2017/2917/P

3.2 All references in Clause 5 and Clause 6 of the Existing Agreement to "Planning Permission reference 2016/5380/P" shall be replaced with "Planning Permission reference 2017/2917/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 2017/2917/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

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

EXECUTED AS A DEED BY  
PAUL CROCKER  
in the presence of:

)  
)  
)  


  
.....  
Witness Signature

Witness Name: HELEN TOUMAZIS

Address: 59 ROSSLYN HILL, LONDON NW3 5UG

Occupation: COUNSELLOR

EXECUTED AS A DEED BY  
VANESSA CROCKER  
in the presence of:

)  
)  
)  


  
.....  
Witness Signature

Witness Name: HELEN TOUMAZIS

Address: 59 ROSSLYN HILL, LONDON NW3 5UG

Occupation: COUNSELLOR



CONTINUATION OF DEED OF VARIATION AGREEMENT IN RELATION TO 115  
FROGNAL LONDON NW3 6XR

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

*F. Alexander*

.....  
Duly Authorised Officer





Studio Mark Ruthven  
92 Prince of Wales Road  
London  
NW5 3NE

Application Ref: **2017/2917/P**

11 August 2017

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:  
**115 Frognal**  
**London**  
**NW3 6XR**

**DECISION**  
Proposal:  
Variation of condition 2 (approved plans) of planning permission 2016/5380/P, dated 13/04/2017 (for erection of 2 storey, 4-bed dwellinghouse following demolition of existing dwellinghouse, and associated landscaping works), namely to allow creation of basement, alterations to fenestration, installation of air-con units on roof of garage

Drawing Nos:  
Revised Plans:  
FRG-P3-001 Rev A; FRG-P3-100 Rev A; FRG-P3-101 Rev A; FRG-P3-102 Rev A; FRG-P3-103 Rev A; FRG-P3-200 Rev A; FRG-P3-201 Rev A; FRG-P3-300 Rev A;  
Superseded Plans:  
FRG-P2-005; FRG-P2-007; FRG-P2-100; FRG-P2-101; FRG-P2-102; FRG P2-300; FRG-P2-301

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 begin not later than the end of three years from the date of the original permission 2016/5380/P, dated 13/04/2017.

Reason: In order to comply with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

- 2 For the purposes of this decision, condition no. 2 of planning permission 2016/5380/P, dated 13/04/2017 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:

FRG-P-001; FRG-X-100; FRG-X-101; FRG-X-300; FRG-X-301; FRG-X-302; FRG-P2-006; FRG-P3-001 Rev A; FRG-P3-100 Rev A; FRG-P3-101 Rev A; FRG-P3-102 Rev A; FRG-P3-103 Rev A; FRG-P3-200 Rev A; FRG-P3-201 Rev A; FRG-P3-300 Rev A; Design & Access Statement (as amended); Heritage Statement (dated October 2016); Arboricultural Impact Assessment and Preliminary Arboricultural Method Statement (dated 08/02/2017); Daylight & Sunlight Report (dated 28/09/2016).

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

- 3 Development works (other than demolition) shall not take place until 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:

a) 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 in the form of sample panels).

b) Details including sections at 1:10 of all windows (including jambs, head and cill) and external doors.

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 D1 of the Camden Local Plan 2017.



- 4 Development works (other than demolition) shall not take place until a comprehensive energy strategy for the development including
  - (a) energy efficient measures
  - (b) the feasibility for appropriate renewable or low carbon sustainable energy sources with the aim of reducing the development's carbon emission by at least 20%
  - (c) any associated air quality or noise management reports (including mitigation measures) shall have been submitted to and approved by the local planning authority.

The development shall thereafter not proceed other than in complete accordance with all the measures as recommended in the approved strategy, which shall be permanently retained and utilised as the main power sources for the development. The measures shall include the installation of a meter to monitor the energy output from the approved systems.

Reason: In order to secure the optimum energy and resource efficiency measures and on-site renewable energy generation in accordance Policies CC1, CC2, CC3 and CC4 of the Camden Local Plan 2017.

- 5 Full details in respect of the green roof in the area indicated on the approved roof plan shall be submitted to and approved by the local planning authority before the relevant part of the development commences. The buildings shall not be occupied until the approved details have been implemented and these works shall be permanently retained and maintained thereafter.

Reason: In order to ensure the development undertakes reasonable measures to take account of biodiversity and the water environment in accordance with Policies CC2 and A3 of the Camden Local Plan 2017.

- 6 Development works (other than demolition) shall not take place until detailed plans showing the location and extent of photovoltaic cells to be installed on the building shall have been submitted to and approved by the Local Planning Authority in writing. The measures shall include the installation of a meter to monitor the energy output from the approved renewable energy systems. The cells shall be installed in full accordance with the details approved by the Local Planning Authority and permanently retained and maintained thereafter.

Reason: To ensure the development provides adequate on-site renewable energy facilities in accordance with the requirements of Policy CC2 of the Camden Local Plan 2017.

- 7 The approved cycle storage facility shall 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 T1 of the Camden Local Plan 2017.



- 8 Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 as amended by the (No. 2) (England) Order 2008 or any Order revoking and re-enacting that Order, no development within Part 1 (Classes A-H) [and Part 2 (Classes A-C)] of Schedule 2 of that Order shall be carried out without the grant of planning permission having first been obtained from the local planning authority.

Reason: To safeguard the visual amenities of the area and to prevent over development of the site by controlling proposed extensions and alterations in order to ensure compliance with the requirements of Policies D1 and D2 of the Camden Local Plan 2017.

- 9 The development hereby approved shall achieve a maximum internal water use of 110litres/person/day. The dwelling/s shall not be occupied until the Building Regulation optional requirement has been complied with.

Reason: To ensure the development contributes to minimising the need for further water infrastructure in an area of water stress in accordance with Policy CC3 of the Camden Local Plan 2017.

- 10 No development shall take place until full details of hard and soft landscaping, including replacement tree planting, and means of enclosure of all un-built, open areas have been 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 Policies D1, A2 and A3 of the Camden Local Plan 2017.

- 11 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 prior to the occupation for the permitted use 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.

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 Policies D1, A2 and A3 of the Camden Local Plan 2017.

- 12 Replacement tree planting shall be carried out by not later than the end of the planting season following completion of the development, in accordance with the details hereby 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 Policies D1 and A3 of the Camden Local Plan 2017.

- 13 The works hereby approved shall be carried out in accordance with the methods outlined in the submitted Arboricultural Impact Assessment and Preliminary Arboricultural Method Statement (dated 08/02/2017) and the updated Arboricultural Impact Plan (dated 08/05/2017).

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 Policies D1 and A3 of the Camden Local Plan 2017.

- 14 The first floor rear-facing windows to serve 2x en-suite bathrooms in the rear wing, shall be fitted with obscure glazing and be non-openable below a height of 1.7m from the finished floor level and shall be retained and maintained thereafter.

Reason: In order to prevent unreasonable overlooking of neighbouring premises in accordance with the requirements of Policy A1 of the Camden Local Plan 2017.

- 15 The demolition hereby permitted shall not be undertaken before a contract for the carrying out of the works of redevelopment of the site has been made and full planning permission has been granted for the redevelopment for which the contract provides.

Reason: To protect the visual amenity of the area in accordance with the requirements of Policy D2 of the Camden Local Plan 2017.

- 16 The areas of flat roof at the building hereby approved shall not be used as outdoor amenity space.

Reason: To safeguard the appearance of the premises and the character of the immediate area and in order to prevent unreasonable overlooking of neighbouring premises in accordance with the requirements of Policies D1, D1 and A1 of the Camden Local Plan 2017.

- 17 Prior to first occupation of the replacement dwelling, details shall be submitted to and approved in writing by the Council, of the external noise level emitted from plant/ machinery/ equipment and mitigation measures as appropriate. The measures shall ensure that the external noise level emitted from plant, machinery/ equipment will be lower than the lowest existing background noise level by at least 10dBA, by 15dBA where the source is tonal, as assessed according to BS4142:2014 at the nearest and/or most affected noise sensitive premises, with machinery operating together at maximum capacity. A post installation noise assessment shall be carried out as required to confirm compliance with the noise criteria and additional steps to mitigate noise shall be taken, as necessary.

Approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.





Reason: To ensure that the amenity of occupiers of the development site/ surrounding premises is not adversely affected by noise from plant/mechanical installations/ equipment, in accordance with the requirements of Policies A1 and A4 of the Camden Local Plan 2017.

- 18 The development hereby approved shall not commence until such time as a suitably qualified chartered engineer with membership of the appropriate professional body has been appointed to inspect, approve and monitor the critical elements of both permanent and temporary basement construction works throughout their duration to ensure compliance with the design which has been checked and approved by a building control body. Details of the appointment and the appointee's responsibilities shall be submitted to and approved in writing by the local planning authority prior to the commencement of development. Any subsequent change or reappointment shall be confirmed forthwith for the duration of the construction works.

Reason: To safeguard the appearance and structural stability of neighbouring buildings and the character of the immediate area in accordance with the requirements of Policy A5 of the Camden Local Plan 2017.

- 19 The works hereby approved shall be carried out in accordance with the methods outlined in the Basement Impact Assessment (as amended).

Reason: To safeguard the appearance and structural stability of neighbouring buildings and the character of the immediate area in accordance with the requirements of Policy A5 of the Camden Local Plan 2017.

Informative(s):

- 1 Reasons for granting

The proposal seeks to make changes to planning permission 2016/5380/P, dated 13/04/2017, namely to allow the creation of a basement; alterations to fenestration; and the installation of air-con units on the roof of the garage.

The proposed single storey basement would be located under the eastern part of the replacement dwelling (it would extend marginally outside the footprint of the new dwelling at the front and rear due to the fact it would be rectangular in shape rather than having curved walls to match the above ground development). The basement would manifest itself above ground by way of a lightwell and stairs leading to the garden, adjacent to the eastern (side/rear) elevation of the building. It is not considered that the proposed basement would detract from the character and appearance of the host building, the wider area or the Hampstead Conservation Area. It would be screened from view in public views of the site.



The application is accompanied by a Basement Impact Assessment (BIA), which has been independently audited by Campbell Reith engineering consultants in line with the requirements of CPG4. They conclude that the BIA has adequately identified the potential impacts from basement construction and proposed sufficient mitigation. Based on the expert advice from Campbell Reith, it is considered that the proposal would accord with the requirements of policy A5 and CPG4. Planning conditions will ensure that a suitably qualified engineer is appointed to oversee the works; and that the works are carried out in accordance with the methods outlined in the BIA.

The proposed alterations to the fenestration include a new window to the staircase on the eastern elevation of the building and the insertion of a glazed balustrade across the rear-facing double doors (above the new lightwell). Both alterations are considered to be in keeping with the approved design of the replacement dwelling.

The proposed air-conditioning units would be located within a sunken area above the garage on the western side of the property. They would not be visible in views of the new dwelling, which is considered to be acceptable.

It is not considered that the proposed revisions would cause undue harm to the residential amenities of nearby and neighbouring properties by way of visual privacy and outlook; sunlight/daylight/overshadowing; noise and vibration. The application is accompanied by a Noise Assessment. A planning condition will ensure that noise levels do not exceed specified limits and the condition will also require post-installation testing to ensure compliance. The CMP, which has been secured by the legal agreement attached to the original permission, will help limit impacts from the construction phase.

Tree T11 is a Category A tree planned for retention, which is in close proximity to the proposed lightwell and part of the basement wall. The RPA extends along the garden's side retaining wall, which is being retained. The applicant has provided an updated Arboricultural Impact Plan, which includes a statement on the impact on Tree T11. It is noted that the contiguous piling required will be positioned to the west of the retaining wall, which is likely to prevent any root growth into the site. It is also noted that a mini piling rig will be used beneath the crown spread of Tree T11, which shall have a maximum height of 4 metres and minor crown lifting will be undertaken if required. This is considered to be acceptable and planning condition 13 (works to be carried out in accordance with Arboricultural Impact Assessment and Preliminary Arboricultural Method Statement) can be amended to also include reference to the updated Arboricultural Impact Plan.

- 2 Neighbouring occupiers were consulted on the application. One objection has been received prior to making this decision which has been duly taken into account prior to making this decision. The application site's planning history and relevant appeal decisions were taken into account when coming to this decision.

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



The proposed development is in general accordance with Policies G1, H1, H3, H4, H6, H7, A1, A3, A4, D1, D2, CC1, CC2, CC3, T1, T2 and T4 of the Camden Local Plan 2017. The proposed development also accords with the London Plan 2016; and the provisions of the National Planning Policy Framework 2012.

- 3 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).
- 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 Your proposals may be subject to control under the Building Regulations and/or the London Buildings Acts that 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, Judd St, Kings Cross, London NW1 2QS (tel: 020-7974 6941).
- 6 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 Noise and Licensing Enforcement Team, Camden Town Hall, Judd St, Kings Cross, London NW1 2QS (Tel. No. 020 7974 4444 or search for 'environmental health' on the Camden website 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).
- 7 You are advised that this proposal will be liable for the Mayor of London's Community Infrastructure Levy (CIL) and the Camden CIL as the additional floorspace exceeds 100sqm GIA or one unit of residential accommodation. The liable amount may be revised on the receipt of the CIL Additional Information Requirement Form or other changes in circumstances. Both CIL's will be collected by Camden after the scheme has started and could be subject to surcharges for failure to assume liability or submit a commencement notice PRIOR to commencement and/or for late payment. We will issue a formal liability notice once the liable party has been established. CIL payments will also be subject to indexation in line with the construction costs index.

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

Supporting Communities Directorate

**DRAFT**

**DECISION**







