

# *In the Royal Court of Jersey*

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**Samedi Division**

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**In the year two thousand and eighteen, the third day of May.**

Before the Judicial Greffier.

Upon the application of Her Majesty's Attorney General, IT IS ORDERED that the Planning Obligation Agreement between The Chief Officer for the Environment and Moonlight Limited in relation to Field Nos. 519, 520, 521, 524, 525, 527 & 528, La Rue Guerdain, Trinity, be registered in the Public Registry of this Island.



Greffier Substitute

LOD

Reg. Pub.

**Planning Obligation Agreement under Article 25 of the Planning and Building (Jersey)****Law 2002**

relating to the development of Field No. T519, T520, T521, T524, T525, T527 & T528, La  
Rue Guerdain, Trinity.

Dated

*2nd May*

2018

The Chief Officer for the Environment (1); and

Moonlight Limited (2)

DATE

2018

## PARTIES

- (1) The Chief Officer for the Environment of States Offices, South Hill, St Helier, Jersey JE2 4US ("**the Chief Officer**"); and
- (2) Moonlight Limited (co. registration number 109927) ("**the Owner**") of 9 Le Grand Clos, La Rue Es Picots, Trinity, Jersey JE3 5GG.

## RECITALS

- 1 The Owner warrants that by right under hereditary contracts of purchase: (i) dated 30 March 2012 from Trinity Holdings Limited; and (ii) dated 21 September 2012 from Wendy Lambert, it is the owner in perpetuity (*à fin d'héritage*) of the Site.
- 2 Mr and Mrs L Agnes submitted an application (accorded the reference P/2017/1026) for planning permission for the Development on behalf of the Owner.
- 3 Pursuant to Article 9(5)(b) of the Law the Chief Officer referred the application for the Development to the Planning Committee for determination by that Committee.
- 4 Having regard to the purposes of the Law, the Island Plan 2011 and all other material considerations, the Planning Committee at its meeting on 15 February 2018 resolved to approve the grant of planning permission for the Development subject to the prior completion of this Agreement to secure the obligations contained herein.
- 5 The parties hereto have agreed to enter into this Agreement in order to secure the planning obligations contained herein.
- 6 The parties acknowledge that this Agreement is legally binding.
- 7 This Agreement shall be construed so as to give effect to the purpose and intention of the Law.

## NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

## OPERATIVE PART

## 1 DEFINITIONS

For the purposes of this Agreement the following expressions shall have the following meanings:

"Agreement"		this agreement including the recitals and

	schedules hereto;
<b>"Application"</b>	the application for planning permission in respect of the Site and described as "Construct 1 No. three bedroom dwelling to North of Field T519. Construct agricultural shed and alter ground level to Field T521. Alter vehicular access onto La Rue Guerdian. Increase size of existing pond between Field T520 and Field T528." and given the reference P/2017/1026;
<b>"Chief Officer"</b>	the person appointed from time to time as the chief executive officer (or equivalent) of the administration of the States department responsible for planning and building in accordance with Article 1 of the Law;
<b>"Commencement"</b>	the date on which any operation forming part of the Development permitted by the Planning Permit or any subsequent planning permission for the Development begins to be carried out, and "Commence" and "Commenced" shall be construed accordingly;
<b>"Development"</b>	the development of the Site as set out in the Application;
<b>"Island Plan 2011"</b>	The States of Jersey Island Plan, 2011 (as amended from time to time);
<b>"Law"</b>	the Planning and Building (Jersey) Law 2002;
<b>"Occupation, Occupy and Occupied"</b>	occupation for the purposes permitted by the Planning Permit but not including occupation by personnel engaged in demolition, site clearance, construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations;

<b>"Plan"</b>		the plan of the Site attached at the First Schedule;
<b>"Planning Permit"</b>		the planning permission for the Development granted by the Chief Officer pursuant to the Application, a copy of which is attached at the Second Schedule and references to the Planning Permit include where the context permits any variations to the said planning permission from time to time;
<b>"Royal Court"</b>		the Royal Court of the Island of Jersey;
<b>"Site"</b>		Fields Nos. T519, T520, T521, T524, T525, T527 & T528, La Rue Guerdain, Trinity, the whole as shown for the purpose of identification hatched on the Plan;

## 2 CONSTRUCTION OF THIS AGREEMENT

- 2.1 Where in this Agreement reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Agreement.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5 Any reference to a law of the States of Jersey shall include any modification, extension or re-enactment of that law for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Law or deriving validity from it.
- 2.6 References to any party to this Agreement shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Chief Officer the successors to the Chief Officer's statutory functions.

- 2.7 This Agreement shall be construed so as to give effect to the purpose of the Law.

### **3 LEGAL BASIS**

- 3.1 This Agreement is made pursuant to Article 25 of the Law.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Agreement create planning obligations pursuant to Article 25 of the Law and are enforceable by the Chief Officer against the Owner.

### **4 CONDITIONALITY**

This Agreement is conditional upon

- (i) the grant of the Planning Permit; and
- (ii) the Commencement of Development,

save for the provisions of Clause 12 (jurisdiction) which shall come into effect immediately upon the date on which this Agreement has been recorded as registered in the Royal Court as evidenced by an Act of the said Court.

### **5 OWNER'S COVENANTS**

The Owner covenants and agrees with the Chief Officer as set out in the Third Schedule so that this Agreement shall be enforceable without limit of time against the Owner and any person claiming or deriving title through or under the Owner to the Site or any part or parts thereof.

### **6 PUBLIC REGISTRY OF CONTRACTS**

The Chief Officer shall as soon as practicable apply to the Royal Court for an order that this Agreement be registered in the Public Registry of Contracts.

### **7. MISCELLANEOUS**

- 7.1 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Chief Officer under the terms of this Agreement such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction may be given on behalf of the Chief Officer by the Director - Development Control of Planning and notice or communication to the Chief Officer pursuant to the provisions of this Agreement shall be addressed to the Director - Development Control of Planning at Planning and Building Services South Hill St Helier Jersey JE2 4US or as otherwise notified for the purpose by notice in writing.
- 7.2 Any notices on the Owner shall be deemed to have been properly served if sent by ordinary post to and addressed to such party at the address referred to above or as otherwise notified for the purpose by notice in writing.
- 7.3 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement.



- 7.4 This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permit shall be quashed, cancelled, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified (other than by process under Article 10 of the Law) by any statutory procedure or expires prior to the Commencement of Development.
- 7.5 No person shall be liable for any breach of any of the planning obligations or other provisions of this Agreement after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.6 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permit) granted (whether or not on appeal) after the date of this Agreement.
- 7.7 Except in so far as legally or equitably permitted this Agreement shall not prejudice or fetter or affect any statutory power discretion or duty of the Chief Officer and without prejudice to the generality of the foregoing it is agreed between the parties hereto that any benefit or power conferred on the Chief Officer by any of the obligations or covenants by the Owner in favour of the Chief Officer under this Agreement are in addition to any of the Chief Officer's statutory powers under the Law.
- 7.8 Nothing contained herein shall be construed as obviating the need for the Owner to obtain or acquire from any third party with respect to the Development or its use any consents permits authorisations rights interests in land or servitudes.
- 7.9 Nothing in this Agreement shall be construed or interpreted in such a way or inference to be drawn so as to place or create a duty of care upon the Chief Officer as a result of the Chief Officer agreeing to accept the covenants agreements and undertakings on the part of the Owner as contained herein.
- 7.10 The Owner shall not be entitled to any costs or compensation as a result of the making of this Agreement and the obligations contained herein.
- 7.11 All communications and notices served or made under this Agreement shall be in writing.

## **8 WAIVER**

No waiver (whether expressed or implied) by the Chief Officer of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Chief Officer from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

## **9 CHANGE IN OWNERSHIP**

The Owner agrees with the Chief Officer to give the Chief Officer written notice (as soon as reasonably practical following such change) of any change in legal ownership of the Site occurring before all the obligations under this Agreement have been discharged.

## **10 DISPUTE RESOLUTION**

In the event that any dispute shall arise in respect of any provision of this Agreement it shall be referred if not resolved within seven (7) working days to the arbitration of an independent arbitrator under the provisions of the Arbitration (Jersey) Law 1998 such arbitrator to be named by the agreement of the parties to the dispute or in default of agreement by the President for the time being of the Royal Institution of Arbitrators upon the application of any party to the dispute.

## **11 GOODS AND SERVICES TAX**

11.1 All *cause* given in accordance with the terms of this Agreement shall be exclusive of any GST properly payable in respect thereof.

11.2 If at any time GST is or becomes chargeable in respect of any supply made in accordance with the terms of this Agreement then to the extent that GST had not previously been charged in respect of that supply the person making the supply shall have the right to issue a GST invoice to the person to whom the supply was made and the GST shall be paid accordingly.

## **12 JURISDICTION**

This Agreement is governed by and interpreted in accordance with the law of the Island of Jersey.

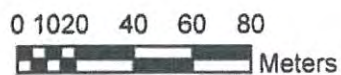
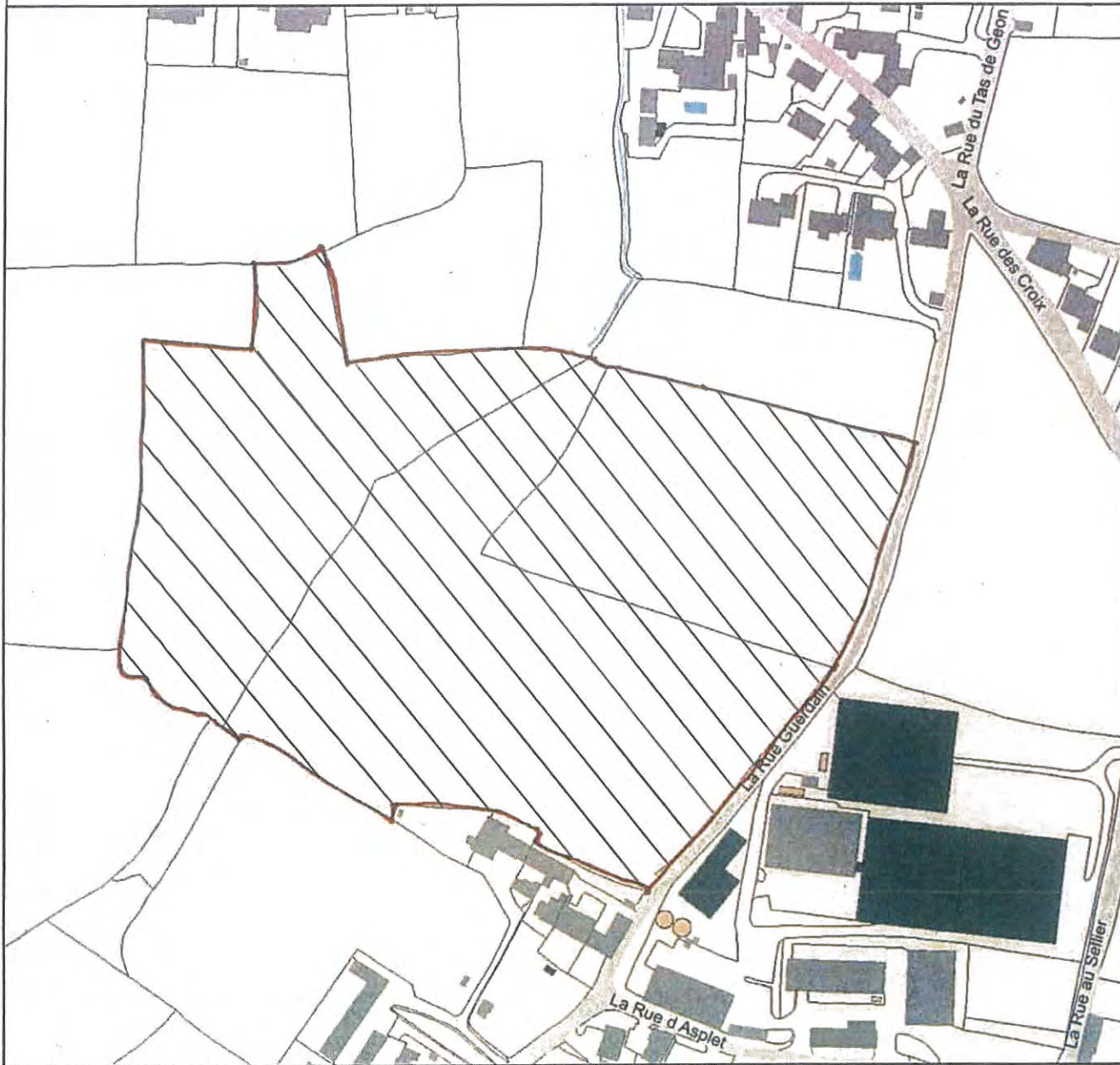


FIRST SCHEDULE

**The Plan**



Licence No 64



Scale 1:2,500

Copyright States of Jersey 2017



FIELD NO. T520  
LA RUE DE LA MONNAIE  
Trinity

Vingtaine : l'Eveque  
Type : Agricultural  
UPRN : 69218016

SECOND SCHEDULE

**The Planning Permit**

Planning Application Number P/2017/1026

# DRAFT

## Decision Notice

### PLANNING AND BUILDING (JERSEY) LAW 2002

In accordance with Article 19(8) of the Planning and Building (Jersey) Law 2002, as representations were made in connection with this application, this decision shall not have effect during the period of 28 days immediately after the decision date.

This permission enures (unless otherwise stated) for the benefit of the land to which it relates and of each person for the time being having an estate or interest in that land.

This decision does not absolve the parties concerned from obtaining, nor does it overrule, any other permission that may be required under any other law. In addition, it does not overrule any private property rights, nor does it absolve the need to obtain the permission of the owner of the land to which this permission relates.

This is notification of the decision to GRANT permission to develop land under Article 19 of the Planning and Building (Jersey) Law 2002;

**In respect of the following development:**

Construct 1 No. three bedroom dwelling to North of Field T519. Construct agricultural shed and alter ground level to Field T521. Alter vehicular access onto La Rue Guerdain. Increase size of existing pond between Field T520 and Field T528. 3D Model available.

**To be carried out at:**

Field No. T519, T520, T521, T524, T525, T527 & T528, La Rue Guerdain, Trinity.

**Reason For Approval:** The proposed development has been assessed against Policies SP 1; SP 4; GD 1; GD 7; NE 7; ERE 1; ERE 6; H9; LWM 2 and LWM 3 of the Adopted Island Plan 2011 (Revised 2014) and the Rural Economic Strategy 2017 to 2021.

In this instance, there is considered to be sufficient justification for new development in the Green Zone having due regard to all of the material considerations raised and the precise needs of the applicant to secure his future in the agricultural industry. The development will also provide an agricultural workers dwelling in accordance with the aims of the Rural Economic Strategy and the relevant Island Plan policy context.

In addition, the representations raised to the scheme on the grounds of i) the site is within the Green Zone with a presumption against all forms of

APPROVED



# Decision Notice

## PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2017/1026

development and ii) there is no requirement to live on site all times have been addressed.

However, it is considered that the proposal is an appropriate departure to the terms of Policies GD 1, ERE 1, ERE 6, H9 and NE 7 of the Adopted 2011 Island Plan (Revised 2014) in that new entrants to agriculture should be encouraged where they are able to demonstrate the right track record and proper business approach and where it can be demonstrated that animal welfare is best served by having a dwelling on site and with the proposed barn sited away from local residents.

### **This permission is granted subject to compliance with the following conditions and approved plans:**

- A. The development shall commence within three years of the decision date.  
**Reason:** The development to which this permission relates will need to be reconsidered in light of any material change in circumstance.
- B. The development hereby approved shall be carried out entirely in accordance with the plans, drawings, written details and documents which form part of this permission.  
**Reason:** To ensure that the development is carried out and completed in accordance with the details approved.

### **Additional Conditions:**

1. Prior to their first use on site, samples of all external materials to be used (including any hard landscaping materials) shall be submitted to and approved in writing by the Department of the Environment. The approved materials shall be implemented in full and thereafter retained as such.
2. Notwithstanding the provisions of the Planning and Building (General Development) (Jersey) Order 2011, or any amendment to or replacement of that order, no works involving the erection of a building, extension, structure, gate, wall, fence or other means of enclosure, tank, conversion of garages or lofts, the creation of any new openings in the external fabric of the building (or the replacement of any windows with doors or vice versa), or the introduction of any hard standing to any ground surface, nor the installation of any external lighting is permitted without the prior written approval of the Department of the Environment.
3. No part of the development hereby approved shall be occupied until the means of vehicular and pedestrian access as indicated on the approved plan has been wholly modified in accordance with the approved plans and shall

APPROVED

# Decision Notice

## PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2017/1026

### FOR YOUR INFORMATION

- i. This permission is also subject to a Planning Obligation Agreement.
- ii. Be aware that the site has been identified as having the possible presence of protected wildlife species. It is the responsibility of the applicant to inform all site workers of the possibility of protected species on site and the implications under the Conservation of Wildlife Law (2000) and you are advised that it is your duty under the Law to stop work and notify the Department of Environment on +44 (0) 1534 441600 immediately should any species be found.

The approved plans can be viewed on the Planning Register at [www.gov.je/planning](http://www.gov.je/planning)

The following plans have been approved:

Location Plan

Proposed Site Plan and Sections PL02A

Proposed Floor Plan and Sections - Shed PL05

Proposed Elevations - Shed PL06

Proposed Floor Plans and Sections - House PL03

Proposed Elevations and Sections PL04

Existing and Proposed Vehicular Access PL07A

**DECISION DATE: TO BE CONFIRMED ONCE POA IS FINALISED**

**The development will also require building permission, for which a separate application will need to be made. If you are in any doubt as to whether building permission is required please telephone the Building Applications Team on 448407.**

APPROVED



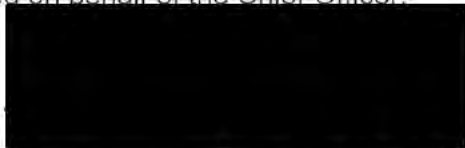
## THIRD SCHEDULE

**The Owner's Covenants with the Chief Officer**

The Owner (in regard to the Site) covenants, agrees and undertakes:

- 1 Not to Commence the Development until the Owner has given to the Chief Officer not less than seven (7) days' notice in writing of its intention so to do.
- 2 That the Occupation of the staff unit within the Development shall be limited to:
  - 2.1 a person solely or mainly working in the agricultural business occupying the Site, or a widow or widower (which shall include the live-in partner, whether married or in a civil partnership or not) of such a person, and any resident dependants, or
  - 2.2 a person solely or mainly working in agriculture, or a widow or widower (which shall include the live-in partner, whether married or in a civil partnership or not) of such a person, and any resident dependants.

Signed on behalf of the Chief Officer:



Name and Position: PETER LG GRESLEY (DIRECTOR)

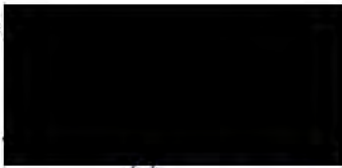
in the presence of



Name and Position: CHRISTOPHER JONES SENIOR PLANNING OFFICER

this 2<sup>nd</sup> day of May 2018

Signed on behalf of



Name and Position: Director

in the presence of



Name and Position: GEORGINA COOKE

this 30<sup>th</sup> day of April 2018