

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

Law 2002

relating to the development of Tamba Park, La Rue de la Frontiere, St. Mary, JE3 1GX

Dated

21ST NOVEMBER

2016

The Chief Officer for the Environment (1)

Ruff Properties Limited (2)

DATE

21st NOVEMBER

2016

PARTIES

- (1) The Chief Officer for the Environment of States Offices, South Hill, St Helier, Jersey JE2 4US ("**the Chief Officer**");
- (2) Ruff Properties Limited of Tamba Park, La Rue des Varvots, St Lawrence, Jersey JE3 1GX ("**the Owners**") of

RECITALS

- 1 The Owner warrants that by right under hereditary contract of purchase from Retreat Nurseries Limited dated 7th November 2014 it is the owner in perpetuity (*à fin d'héritage*) as to the Site.
- 2 The Owner submitted an application (accorded the reference P/2016/0503) for retrospective planning permission for the Development.
- 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 22 September 2016 resolved to approve the grant of planning permission for the Development subject to the prior completion of this Agreement to secure the community benefit from the proposal.
- 5 Having regard to the purposes of the Law the Island Plan 2011 and all other material considerations the Chief Officer is minded to approve the grant of planning permission for the Development subject to the prior completion of this Agreement and payment of the Signage Contribution (as hereinafter defined).
- 6 The parties hereto have agreed to enter into this Agreement in order to secure the planning obligations contained herein.
- 7 The parties acknowledge that this Agreement is legally binding.
- 8 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;
"Application"	the application for planning permission in respect of the Site and described as "Change of use of land to form car park to West of site. Construct various structures including aviaries, storage buildings, cafe and seating area. Install various animatronic sculptures to North of site. Construct children's play area to North-West of site. Install 6 No. air conditioning units to North elevation of cafe seating area. Construct fence and acoustic fence to boundaries." and given the reference P/2016/0503;
"Chief Officer"	the person appointed from time to time as the chief executive officer (or equivalent) of the administration of the States responsible for planning and building in accordance with Article 1 of the Law;
"Commencement"	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;
"Development"	the development of the Site as set out in the Application;
"GST"	goods and services tax under the Goods and Services Tax (Jersey) Law 2007;
"Index"	the all Items Index of Retail Prices for Jersey as issued from time to time by the Statistics Unit to the States of Jersey.

"Interest"	interest at three per cent above the base lending rate of the HSBC Bank Plc from time to time.
"Island Plan 2011"	The States of Jersey Island Plan, 2011 (as amended from time to time);
"Law"	the Planning and Building (Jersey) Law 2002;
"Minister for Infrastructure"	the Minister for Infrastructure, including his or her successor and any person or body to whom the functions of the Minister for Infrastructure may be transferred hereafter or lawfully delegated from time to time
"Plan"	the plan of the Site attached at the First Schedule to this Agreement;
"Planning Permit"	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;
"Royal Court"	the Royal Court of the Island of Jersey;
"Signage Contribution"	the sum of five thousand five hundred pounds (£5,500) to be paid by the Owners to the Treasurer of the States to be applied by the Minister for Infrastructure towards off-site advance directional signage.
"Site"	Tamba Park, La Rue de la Frontiere, St. Mary, JE3 1GX, as shown for the purpose of identification edged by a thick black line

	and hatched black on the Plan;
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2 CONSTRUCTION OF THIS AGREEMENT

- 2.1 Where in this Agreement reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or 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 his 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 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 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 CHIEF OFFICER COVENANTS

The Chief Officer covenants with the Owner as set out in the Fourth Schedule.

7. 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.

8 MISCELLANEOUS

- 8.1 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.
- 8.2 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.
- 8.3 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.
- 8.4 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.
- 8.5 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.
- 8.6 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.
- 8.7 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.
- 8.8 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.

- 8.9 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.
- 8.10 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.
- 8.11 All communications and notices served or made under this Agreement shall be in writing.

9 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.

10 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 ownership of its interest in the Site occurring before all the obligations under this Agreement have been discharged.

11 INDEXATION

Any sum referred to in the Third Schedule shall be increased by an amount equivalent to the increase in the Index from the date on which this Agreement is registered in the Public Registry of Contracts until the date on which such sum is payable.

12 INTEREST

If any payment due under this Agreement is paid late, Interest will be payable from the date payment is due to the date of payment.

13 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 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.

14 GOODS AND SERVICES TAX

- 14.1 All *cause* given in accordance with the terms of this Agreement shall be exclusive of any GST properly payable in respect thereof.
- 14.2 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.

15 JURISDICTION

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

FIRST SCHEDULE

The Plan

SECOND SCHEDULE

The Planning Permit

Planning Application Number P/2016/0503

Decision Notice

PLANNING AND BUILDING (JERSEY) LAW 2002

In accordance with Article 19(8) of the Planning and Building 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:

RETROSPECTIVE: Change of use of land to form car park to West of site. Construct various structures including aviaries, storage buildings, cafe and seating area. Install various animatronic sculptures to North of site. Construct children's play area to North-West of site. Install 6 No. air conditioning units to North elevation of cafe seating area. Construct fence and acoustic fence to boundaries.

To be carried out at:

Tamba Park, La Rue de la Frontiere, St. Mary, JE3 1GX.

REASON FOR APPROVAL: Permission has been granted having taken into account the relevant policies of the approved Island Plan, together with other relevant policies and all other material considerations, including the consultations and representations received.

In particular, the development has been assessed against the policies of the Island Plan and in this case, the proposed development is considered acceptable in relation to the character of the Green Zone and the amenities of neighbours.

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Decision Notice

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2016/0503

In addition, the representations raised to the scheme have been assessed. It is considered that the long established tourist facility represents a strong material consideration for reviewing the impact on amenities, and with the framework of conditions there is not considered that there will be unreasonable harm to amenities of neighbours.

This permission is granted subject to compliance with the following conditions and approved plan(s):

- A. 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.
- B. **Reason:** To ensure that the development is carried out and completed in accordance with the details approved.

Condition(s):

1. No machinery shall be operated, no process shall be carried out and no deliveries taken at or despatched from the site outside the following times 08.00 to 18.00hrs weekdays, 08.00 to 13.00hrs Saturdays, and 10.00 to 11.00hrs on Sundays, Bank or Public Holidays. For the avoidance of doubt, this does not include the animatronic features within the external areas of the park.
2. The external areas of the site shall not be open to visitors before 10.00hrs daily, and shall be closed to visitors before 18.00hrs daily.
3. Within 2 calendar months of the date of this decision an acoustic survey shall be undertaken by the applicant, to a methodology to be first agreed in writing with the Department of the Environment, to establish the background noise level (LA 90 dB) at the site boundary. Thereafter the noise from the site (excluding patrons) shall not exceed 10dB above the agreed background noise level.
4. The acoustic fence as detailed on the approved drawings shall be maintained in a functioning condition and not removed from the site unless otherwise agreed in writing by the Department of the Environment.
5. If any other structures hereby approved fall into disuse and / or disrepair, they shall be removed from the site and the land restored in accordance with a scheme of restoration to be submitted to and approved in writing by the Department of the Environment ahead of any removal occurring.
6. Within 2 calendar months of the date of this decision, a scheme of landscaping shall be submitted to and approved in writing by the Department of

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Planning Application Number P/2016/0503

the Environment. The scheme shall be implemented in full in the first planting season following its approval. The scheme of landscaping shall provide details of the following;

- i) all existing trees, hedgerows and other plants, walls, fences and other features which it is proposed to retain on the site;
- ii) the position of all new trees and/or shrubs, this must include the species of plant(s)/tree(s) to be planted, their size, number and spacing and the means to be used to support and protect them;
- iii) other landscape treatments to be carried out including any excavation works, surfacing treatments, or means of enclosure;
- iv) the measures to be taken to protect existing trees and shrubs;
- v) the presence of any invasive plant species on site, and if present, a detailed method statement for the removal and long-term management/ eradication of the species; and,
- vi) A landscape management plan for the maintenance of the landscaped areas.

Once agreed, the approved scheme shall be implemented in full and thereafter retained and maintained as such.

7. Within 2 calendar months of the date of this decision notice, drawings in plan, elevation and section to show separation of access and egress routes within the site and enhanced visibility (to the standards required by DFI Highways) in a northbound direction from the car park egress to La Rue de la Frontiere, shall be submitted to and approved in writing by the Department of the Environment. The approved details shall be implemented within 2 calendar months of their approval, and be shall then be maintained thereafter and no visual obstruction of any kind over the height of 900mm shall be erected within them.

Reason(s):

1. To protect the amenities of occupiers of neighbouring properties, in accordance with Policy GD1 of the Adopted Island Plan 2011 (Revised 2014).
2. To protect the amenities of occupiers of neighbouring properties, in accordance with Policy GD1 of the Adopted Island Plan 2011 (Revised 2014).
3. To protect the amenities of occupiers of neighbouring properties, in accordance with Policy GD1 of the Adopted Island Plan 2011 (Revised 2014).
4. To protect the amenities of occupiers of neighbouring properties, in accordance with Policy GD1 of the Adopted Island Plan 2011 (Revised 2014).
5. To safeguard the long term character and appearance of the area in accordance with Policies GD1, NE1, NE2, NE4 and NE7 of the Adopted Island Plan 2011 (Revised 2014).

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6. To safeguard the character and appearance of the area in accordance with Policies GD1, NE1, NE2, NE4 and NE7 of the Adopted Island Plan 2011 (Revised 2014).
7. In the interests of highway safety, in accordance with Policy GD1 of the Adopted Island Plan 2011 (Revised 2014).

FOR YOUR INFORMATION

The approved plans can be viewed on the Planning Register at www.gov.je/planning

The following plan(s) has/have been approved:

Location Plan
Site Photographs
2013 Site Plan PBL08
Existing Site Plan PBL01-B
Previous and Existing Floor Plan PBL-B
New Structures 1/2 PBL04
New Structures 2/2 PBL06
Previous and Existing Site Sections PBL03-B
Fence Details PBL05
Planning and Design Statement

DECISION DATE:

The development may 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 covenants, agrees and undertakes to pay the Signage Contribution to the Treasurer of the States forthwith on the registration of this Agreement.

FOURTH SCHEDULE

Chief Officer's covenants

1. The Chief Officer covenants with the Owner to, at the written request of the Owner from time to time, to provide written confirmation of the discharge of the obligations contained in this Agreement (or any of them) when and to the extent that the Chief Officer is satisfied that such obligations have been performed.
2. The Chief Officer hereby covenants with the Owner to use all sums received by the Treasurer of the States from the Owner under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid.
3. The Chief Officer covenants with the Owner that he will procure or arrange that the Treasurer of the States will pay to the Owner such amount of any payment made by the Owner to the Treasurer of the States under this Agreement which has not been expended in accordance with the provisions of this Agreement within seven years of the date of receipt by the Treasurer of the States of such payment.

Signed on behalf of the Chief Officer:

[Redacted Signature]

Name and Position: PETER LE GRESLEY (DIRECTOR)

in the presence of

[Redacted Signature]

Name and Position: JOHN NICHOLSON (PLANNING OFFICER)

this 21st day of November 2016

Signed on behalf of Ruff Properties Limited:

[Redacted Signature]

Name and Position: JEWATHAN RUFF Director

in the presence of

[Redacted Signature]

Name and Position: STEVEN SLATER
ADVOCATE

this 16th day of November 2016