

# *In the Royal Court of Jersey*

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**Samedi Division**

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**In the year two thousand and twenty-three, the nineteenth day of April.**

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 Tunit Limited in relation to 40 King Street, St Helier, 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 40 King Street, St Helier, Jersey.

Dated

18 April

2023

The Chief Officer for the Environment (1)

Tunit Limited (2)

DATE

18 April

2023

**PARTIES**

1. The Chief Officer for the Environment of PO Box 228, St Helier Jersey JE4 9SS ("**the Chief Officer**"); and
2. Tunit Limited of 2<sup>nd</sup> Floor, The Le Gallais Building, 54 Bath Street, St Helier, Jersey JE1 1FW ("**the Owner**").

**RECITALS**

- 1 The Owner warrants that it is the owner in perpetuity (*à fin d'héritage*) of the Site by contract passed before the Royal Court on 25 June 2021 from Redcastle Limited, in Administration.
- 2 The Owner submitted the Application (accorded the reference P/2022/1657) for planning permission for the Development.
- 3 Pursuant to Article 9(5)(b) of the Law, the Chief Officer referred the Application to the Planning Committee for determination by that Committee.
- 4 Having regard to the purposes of the Law, the Island Plan 2022-25 and all other material considerations planning permission for the Development was approved subject to the prior completion of this Agreement.
- 5 The parties hereto have agreed to enter into this Agreement in order to secure the planning obligations contained in this Agreement.
- 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;
"Application"	the application for planning permission in respect of the Site and described as

	"construct third floor to create 1no. two bed residential unit. Change of use of first and second floors from Class A – Shop to create 4no two bed residential units. Replacement of existing facade" and given the reference P/2022/1657;
<b>"Chief Officer"</b>	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;
<b>"Commencement"</b>	the date on which any material operation (as defined in Article 5(7) of the Law) forming part of the Development permitted by the Planning Permit or any subsequent planning permission for the Development begins to be carried out to exclude, for the avoidance of doubt, any investigation of the Site, any clearance of the Site, removal of any asbestos from the Site and any demolition on the Site and "Commence" and "Commenced" shall be construed accordingly;
<b>"Cycle Contribution"</b>	the sum of Eight Thousand Six Hundred and Twenty Three Pounds and Forty Pence (£8,623.40) Sterling;
<b>"Cycle Network"</b>	the Jersey public cycle network being developed by the Public of the Island of Jersey;
<b>"Development"</b>	the development of the Site as set out in the Planning Permit;
<b>"GST"</b>	goods and services tax under the Goods and Services Tax (Jersey) Law 2007;
<b>"Index"</b>	the "all Items" index of retail prices for Jersey as issued from time to time by the



	Statistics Unit to the States of Jersey;
<b>"Interest"</b>	interest at three per cent (3%) above the base lending rate of the Barclays Bank Plc from time to time;
<b>"Island Plan 2022-2025"</b>	the States of Jersey Island Plan, 2022 (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 construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations;
<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>	the site comprising the property known as 40 King Street, St Helier, Jersey, the whole as shown for the purposes of identification on the plan forming the First Schedule.

## **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 one gender include all 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 is conditional upon:

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

save for any relevant provision 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. This Agreement shall be enforceable against any successor in title to the Owner and accordingly following disposal of the Site, this Agreement shall be enforceable against the Owner's successor 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 jointly and severally 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 Head of Development and Land and notice or communication to the Chief Officer pursuant to the provisions of this Agreement shall be addressed to the Head of Development and Land PO Box 228, St Helier Jersey JE4 9SS or as otherwise notified for the purpose by notice in writing.
- 8.2 Any notices served 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 in this Agreement 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 in this Agreement.
- 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 in this Agreement.
- 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 but this obligation shall not extend to any disposal of any individual Dwelling Units to a purchaser for their own, their family's or their tenant's Occupation.

## **11 INDEXATION**

Any sum referred to in the Third Schedule shall be increased by an amount equivalent to the increase in the Index from (a) the date on which the Planning



Permit becomes capable of implementation following the elapse of the statutory period for the making of a third party appeal without any such appeal having been made or, if applicable, the final determination of any third party appeal until (b) 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.

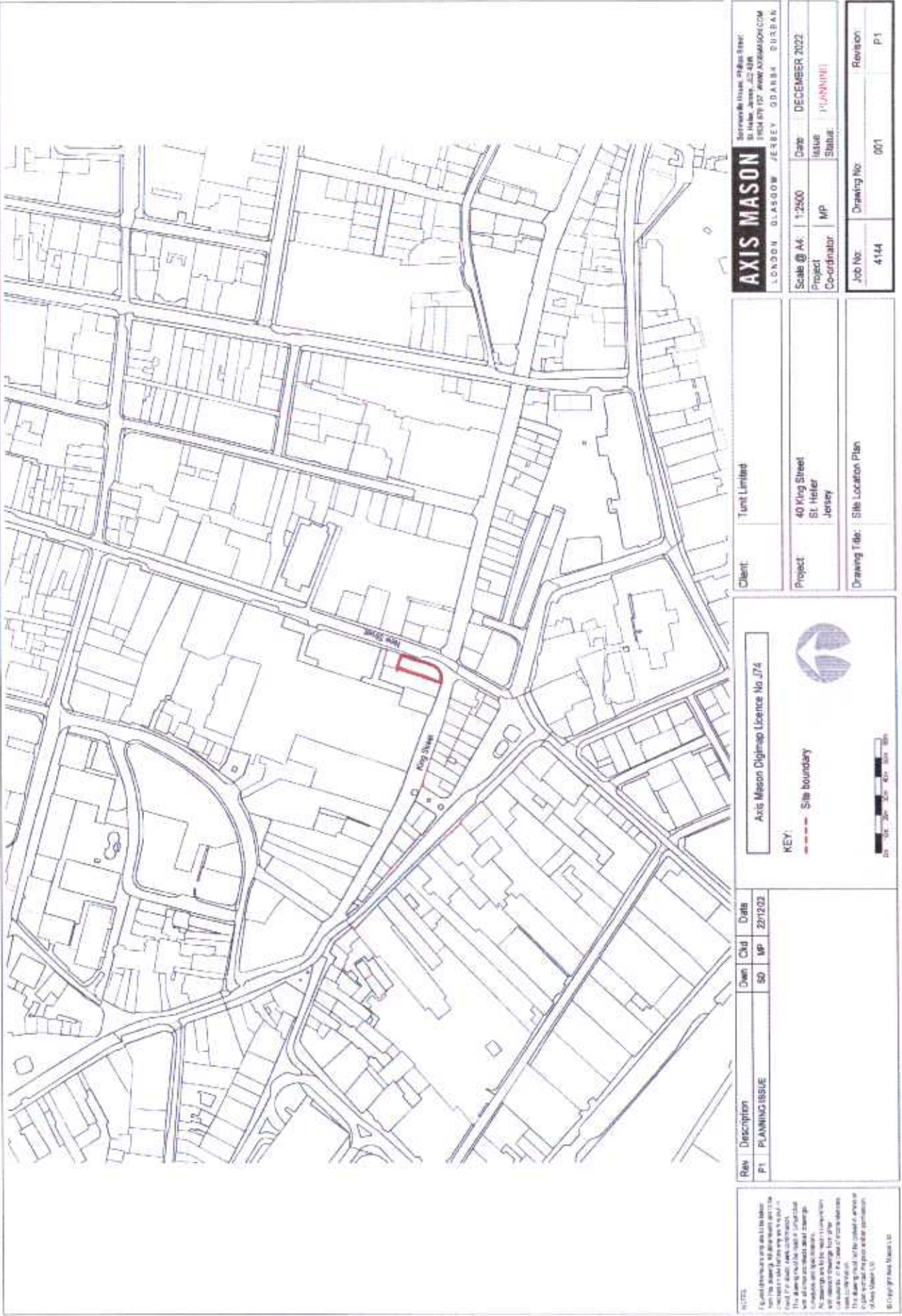
14.2 If at any time GST is or becomes chargeable in respect of any supply made in accordance with the terms of this Agreement then to the extent that GST had not previously been charged in respect of that supply the person making the supply shall have the right to issue a GST invoice to the person to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

## **16 JURISDICTION**

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

**FIRST SCHEDULE****The Site**

All that immovable property known as 40 King Street, St Helier, Jersey to which the Owner has right by contract passed before the Royal Court on 25 June 2021 from Redcastle Limited, in Administration, as the same is shown for the purpose of identification only edged in red on the Plan.





**SECOND SCHEDULE**

**The Planning Permit**

P/2022/1657

# Decision Notice



## PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2022/1657

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 third floor to create 1no. two bed residential unit. Change of use of first and second floors from Class A - Shop to create 4no. two bed residential units. Replacement of existing façade.

### To be carried out at:

40, King Street, St. Helier, JE2 4WE.

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

- 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.

### Condition(s):

1. No dwellings within the scheme shall be occupied until the **cycle parking**, and associated facilities as set out on the approved plans, including electric charging facilities, have been installed and are available for use by residents, and occupiers of the commercial unit including visitors, and such shall be kept permanently available for use by occupiers of the dwellings and commercial unit hereby approved.

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# Decision Notice



## PLANNING AND BUILDING (JERSEY) LAW 2002

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2. **Solid waste** arisings from the development hereby approved shall be managed solely in accordance with the site waste management plan (SWMP) ref 4144\_X(RP)002\_R00 22<sup>nd</sup> December 2022, submitted with the application documents, and in compliance with other waste management conditions of this permission.
3. Any plant or machinery to be installed at roof level in connection with the development hereby approved, shall be installed, maintained and operated with a specification such that noise generated shall be at least 5 dB below **background noise levels** when measured from within the curtilage and the interior of neighbouring and the proposed dwellings, in accordance with British standard 4142:2014.
4. Prior to their first use on site, **samples of all external materials**, including details of the colours for external renders that are to be used (including any hard landscaping materials) shall be submitted to and approved in writing by the Government of Jersey. The approved materials/colours shall be implemented in full and thereafter retained as such in perpetuity.
5. Prior to the commencement of the development hereby approved, details of all means of externally mounted illumination, including design and external appearance of structures housing/mounting the means of illumination, and type and strength of illumination, shall be submitted to and approved in writing by the Government of Jersey. The external illumination of the development shall only be carried out in accordance with such details as may be approved, and thereafter be retained as such.
6. Prior to the commencement of the development, details shall be submitted to and approved in writing to demonstrate that the proposed development would reduce energy consumption by 20% as measured against the **target energy rate** pursuant to the Jersey Building Bye-laws, to be demonstrated using the existing Jersey Standard Assessment Procedure (JSAP) calculator, or Simplified Building Energy Model (SBEM) tool. The development shall be carried out in accordance with such details as may be approved, and thereafter permanently retained as such.
7. Unless with the prior written consent of the Government of Jersey, **no demolition or construction work**, including the operation of mobile plant and machinery, in connection with this permission shall take place except between the hours of:
  - 8.00am to 6.00pm Monday to Friday and
  - 8.00am to 1.00pm Saturday
  - There shall be no working on Sundays or Bank/Public Holidays.
8. Prior to the first use of any residential dwelling hereby approved, the **Percentage for Art** contribution shall be delivered on site, in accordance with the details submitted in the approved Percentage for Art Statement.
9. Prior to the commencement of any work or building operations in connection with this grant of planning permission within the **bird breeding season** (March to September inclusive), an inspection of the premises will be required before such work/building operations commences. Such inspection must be carried out by a qualified ecologist or other competent person at least 5 days before the intended commencement of

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# Decision Notice



## PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2022/1657

work/building operations. If nesting birds and/or chicks are present, works must be halted until the chicks have fledged and left their nests and such is confirmed by the qualified ecologist or other competent person.

### Reason(s):

1. In order to ensure that there is sufficient provision for and encouragement of the use of alternatives to the private motor vehicle, to comply with policies TT1 and TT2 of the Bridging Island Plan 2022.
2. In order to ensure that waste arising from the scheme is minimised and, where unavoidable, is disposed of in an environmentally considerate manner, and to comply with policy WER2 of the Bridging Island Plan 2022.
3. In order to safeguard the living conditions of proposed and existing residential dwellings, and to comply with policy GD1 of the Bridging Island Plan 2022.
4. In the interests of visual amenity, and to comply with policy GD6 and HE1 of the Bridging Island Plan 2022.
5. In the interests of visual and residential amenity, and to comply with policy GD1, GD6 and HE1 of the Bridging Island Plan 2022.
6. In the interests of the delivery of energy efficient development, and to comply with policy ME1 of the Bridging Island Plan 2022.
7. To safeguard residential amenity, and to comply with policy GD1 of the Bridging Island Plan 2022.
8. To enhance the public realm and to ensure compliance with policy GD10 of the Adopted Bridging Island Plan 2022.
9. To safeguard wildlife habitats, and to comply with policy NE1 of the Bridging Island Plan 2022.

### **FOR YOUR INFORMATION**

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

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

Location Plan 4144 001 Site Location Plan  
Site Plan 4144 004 Proposed Site Plan  
Floor Plan 4144 014 Proposed Demolition Ground Floor Plan  
Floor Plan 4144 015 Proposed Demolition First & Second Floor

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# Decision Notice



## PLANNING AND BUILDING (JERSEY) LAW 2002

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Floor Plan 4144 100 Proposed Ground Floor Plan  
Floor Plan 4144 101 Proposed First Floor Plan  
Floor Plan 4144 102 Proposed Second Floor Plan  
Floor Plan 4144 103 Proposed Third Floor Plan  
Floor Plan 4144 104 Proposed Roof Plan  
Elevation Plan 4144 200 Proposed East and South Elevations  
Elevation Plan 4144 201 Proposed West and North Elevations  
Elevation Plan 4144 210 Proposed Context Elevations  
Section Plan 4144 300 Sections East to West  
Grouped Plan 4144 400 Façade Detail - Sheet 1  
Grouped Plan 4144 401 Façade Detail - Sheet 2

DECISION DATE: TBC

The development may also require building permission, for which a separate application will need to be made. You can find out if building permission is required on our website [www.gov.je/planningbuilding](http://www.gov.je/planningbuilding)

The approved plans and any conditions attached to the decision are important and should be complied with. If there is any variation from the approved plans or the conditions you need to notify us immediately. Failure to comply with the approved plans or conditions may result in enforcement action.

If you are unhappy with a condition attached to this permission, you may request a review or make an appeal. You can find out how to do this on our website [www.gov.je/planning](http://www.gov.je/planning)

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### **THIRD SCHEDULE**

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

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

#### **COMMENCEMENT**

- 1 Not to Commence the Development until either of the Owner or the Developer (as the case may be) has given to the Chief Officer seven (7) days' notice in writing of its intention so to do.

#### **CONTRIBUTIONS**

- 2 To pay the Cycle Contribution to the Treasurer of the States prior to first Occupation of any Dwelling Unit, such sum to be applied towards the Cycle Network.



#### FOURTH SCHEDULE

##### Chief Officer's covenants

1. The Chief Officer hereby covenants with the Owner to use or procure the use of all sums received by the Treasurer of the States under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid.
2. 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 five (5) years of the date of receipt by the Treasurer of the States of such payment.
3. The Chief Officer covenants with the Owner to use reasonable endeavours to issue the Planning Permit as soon as practically possible after this Agreement is recorded as registered in the Royal Court as evidenced by an Act of the Royal Court.

Signed on behalf of the Chief Officer

by .. [REDACTED] K. WHITEHEAD

in the presence of .. [REDACTED] [REDACTED]

W. JOHNSTON

this 18 day of April 2023

Signed on behalf of Tunit Limited

by .. [REDACTED] Mark Andrews .. [REDACTED] Christian Falle

in the presence of .... [REDACTED] .....

Tanya Harrison  
this 6 day of April 2023