

In the Royal Court of Jersey

Samedi Division

In the year two thousand and twenty-three, the nineteenth 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 Minister for the Environment and Dandara (Fair Acre) Limited in relation to Fair Acre, Route Orange, St Brelade, be registered in the Public Registry of this Island.



Greffier Substitute

LOD

Reg. Pub.

JB/200645.1151/15-05-2023

17 *SW*
Dated 15th May 2023

- The Minister*
CHIEF OFFICER
- (1) **THE MINISTER FOR THE ENVIRONMENT**
SG
- (2) **DANDARA (FAIR ACRE) LIMITED**

PLANNING OBLIGATION AGREEMENT

In relation to Fair Acre, Route Orange, St Brelade, JE3 8GP


Jersey office
13-14 Esplanade
St Helier, Jersey
JE1 1BD

200645.1143

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THIS AGREEMENT is dated 15th May 2023

PARTIES

- (1) **MINISTER FOR THE ENVIRONMENT** of PO Box 228, St Helier Jersey JE4 9SS (the **Minister**) of the first part; and
- (2) **DANDARA (FAIR ACRE) LIMITED** a company incorporated in Jersey with company number 129830 whose registered office is situate at 26 New Street, St Helier, Jersey JE2 3RA (the **Owner** which expression includes its successors) of the second part.

BACKGROUND

- (A) The Owner hereby warrants that it is the owner of the Site to which it has right in perpetuity (*à fin héréditaire*) by hereditary purchase from [REDACTED] by contract passed before the Royal Court of Jersey on the 11th October 2019.
- (B) The Owner submitted the Application to the Chief Officer who pursuant to Article 9(5)(b) of the Law referred the Application to the Planning Committee for determination by that Committee. Having regard to the purposes of the Law, the Island Plan 2022 and all other material considerations the Planning Committee at its meeting on 20 October 2022 refused under Article 19 of the Law the grant of planning permission with respect to the Application.
- (C) The Owner pursuant to Article 108 of the Law lodged on the 15 November 2022 an appeal against the refusal of the grant of planning permission with respect to the Application.
- (D) The Inspector nominated under Article 113(2) of the Law heard the appeal on the 6 February 2023 and by his report dated 4 March 2023 recommended that subject to the conditions contained in the recommendation which included inter alia the entry by the Owner into a planning obligation agreement to secure certain planning obligations detailed in the recommendation the appeal be allowed and planning permission be granted.
- (E) That the Assistant Minister for the Environment as provided by the Decision acting for and on behalf of the Minister determined on the 18 April 2023 in the light of the Inspector's recommendation that planning permission with respect to the Application be granted subject to the prior completion of this Agreement as the Assistant Minister for the Environment considers it expedient in the interests of proper planning that provision should be made for securing the matters more particularly described in Schedule 2.
- (F) The Minister and the Owner have agreed to enter into this Agreement in order to secure the planning obligations contained in this Agreement.
- (G) The Minister and the Owner acknowledge that this Agreement is legally binding.

NOW AGREEMENT WITNESSES AS FOLLOWS:

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement unless the context otherwise requires the following expressions have the following meanings:

Agreement: this Agreement together with any recitals or schedule;

Application: the application for planning permission submitted to the Chief Officer for planning permission under application number P/2021/1790 in respect of the Site;

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 of the Development: the date on which any material operation (as defined in Article 5(7) of the Law) forming part of the Development begins to be carried out excluding for the avoidance of any doubt operations consisting of site clearance, asbestos surveys and/or removal, demolition work, tree removal, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and the words "**Commence**" and "**Commenced**" shall be construed accordingly;

Decision: the decision of the Assistant Minister for the Environment on the Application a copy of which forms Schedule 4;

Development: the development of the Site as set out in the Application

Force Majeure: fire, flood or other exceptionally adverse weather conditions, malicious damage, terrorist action, a state of emergency declared by the Lieutenant-Governor, or other unforeseen exceptional event cause or circumstance outside the reasonable control of the Owner, their contractors or agents, and which adversely affect their ability to perform any obligation relating to any works provided for in this Agreement PROVIDED THAT the same could not reasonably have been avoided or provided against by the Owner, their contractors or agents, is not due to the negligence or default of the relevant party and is mitigated against to reduce any delay so far as reasonably practicable;

Index: the all Items Index of Retail Prices for Jersey as issued from time to time by the Statistics Unit to the Government of Jersey;

Interest: interest at three per cent (3%) above the base lending rate of the HSBC Bank Plc from time to time;

Island Plan 2022: the Bridging Island Plan 2022-2025 (as amended from time to time);

Law: the Planning and Building (Jersey) Law 2002;

Occupy: occupation for purpose 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;

Plan: the plan attached to this Agreement as Schedule 1;

Planning Committee: the body exercising the functions conferred under Article 9A of the Law;

Planning Permit: the planning permission subject to conditions to be granted pursuant to the Application and references to the Planning Permit include where the context permits any variations to the said planning permission from time to time;

Residential Unit: a residential unit of accommodation to be constructed upon the Site as part of the Development;

Royal Court: the Royal Court of the Island of Jersey;

Site: the site of the property Fair Acre Route Orange St Brelade Jersey in the ownership of the Owner and which is the subject of the Application and to which the Owner has right as set out in paragraph (A) above such as the same is illustrated on Plan 1;

- 1.2 References to a Clause, Schedule or paragraph are references where the context so admits to a clause, schedule or paragraph of this Agreement.
- 1.3 The Clause, Schedule and paragraph headings in this Agreement are for ease of reference only and shall not be taken into account in the construction or interpretation of the Clause, Schedule or paragraph to which they refer.
- 1.4 Words importing the singular meaning where the context so admits include the plural meaning and *vice versa*.
- 1.5 Words of the masculine gender include the feminine and neuter genders and words denoting natural persons include corporations and firms and all such words shall be construed interchangeably in that manner.
- 1.6 Words denoting an obligation on a party to do any act, matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to permit or allow infringement of the restriction.
- 1.7 Where two (2) or more persons are named as a party and where more than one party undertakes and obligations all their obligations can be enforced against them jointly and against each individual party unless there is an express provision otherwise
- 1.8 All references to a statute or statutory provision shall be construed as including references to any modification consolidation or re-enactment for the time being in force to any statutory rules regulations or orders made pursuant to it and to any former statutes or statutory provisions of which it is a consolidation re-enactment or modification.

- 1.9 This Agreement shall be construed so as to give effect to the purpose of the Law.
- 1.10 Any reference to something being "in writing" or "written" shall include transmission by email and the respective addresses of the Parties shall be as follow:

Minister: PO Box 228 Jersey JE4 9SS (j.gladwin@gov.je)

Owner: 26 New Street, St Helier, Jersey JE2 3RA (cpateman@dandara.com)

or such other address as any of the Parties shall notify to the others of the Parties from time to time.

- 1.11 References to time are to time in Jersey.
- 1.12 The table of contents and headings in this Agreement are inserted for convenience only and shall not affect the construction of this Agreement.

2. **LEGAL BASIS**

- 2.1 This Agreement is made pursuant to Article 25 of the Law.
- 2.2 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 Minister against the Owner.

3. **CONDITIONALITY**

- 3.1 This Agreement shall come into effect immediately upon the date upon which it has been recorded as registered in the Royal Court as evidence by An Act of the Court.

4. **THE OWNER'S COVENANTS**

- 4.1 The Owner covenants and agrees with the Minister as set out in the Schedule 2 to the intent that this Agreement shall be enforceable without limit of time against the Owner and any person claiming or deriving title through or under the Owners to the Site or any part or parts thereof.

5. **PUBLIC REGISTRY OF CONTRACTS**

- 5.1 The Minister shall as soon as practicable after the execution of this Agreement apply to the Royal Court for an order that this Agreement be registered in the Public Registry of Contracts.

6. **MISCELLANEOUS**

- 6.1 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Minister 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 Minister by the Chief Officer or Group Director of Regulation and any notice or

communication to the Minister pursuant to the provisions of this Agreement shall be addressed as provided by Clause 1.10.

- 6.2 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
- 6.3 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.
- 6.4 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.
- 6.5 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
- 6.6 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.
- 6.7 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 Minister and without prejudice to the generality of the foregoing it is agreed between Minister and the Owner that any benefit or power conferred on the Minister by any of the obligations or covenants by the Owner in favour of the Minister under this Agreement are in addition to any of the Minister's statutory powers under the Law.
- 6.8 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.
- 6.9 Nothing in this Agreement shall be construed or interpreted in such a way or permit an inference to be drawn so as to place or create a duty of care upon the Minister as a result of the Minister agreeing to accept the covenants agreements and undertakings on the part of the Owner as contained herein.
- 6.10 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.
- 6.11 All communications and notices served or made under this Agreement shall be in writing.

7. **MINISTER'S COVENANT**

- 7.1 The Minister covenants with the Owner as set out in Schedule 3.

8. **WAIVER**

- 8.1 No waiver (whether expressed or implied) by the Minister 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 Minister from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

9. **CHANGE IN OWNERSHIP**

The Owner agrees with the Minister to give the Minister written notice (as soon as reasonably practicable following such change) of any change in ownership of its interests in the Site before all the obligations under this Agreement have been discharged such notice to give details of the acquirer's full name and registered office (if a company or usual address if not) together with the area of the Site or Residential Unit acquired by reference to a plan but its obligation shall not extend to the disposal by the Owner of any individual Residential Unit forming part of the Development to a purchaser for their own, their family or a tenant's occupation.

10. **INDEXATION**

Any sum referred to in Schedule 2 shall be increased by an amount equivalent to the increase in the Index from (a) the date on which the planning permission for the Development 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.

11. **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.

12. **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 Minister and the Owner 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.

13. **GOODS AND SERVICES TAX**

- 13.1 All *cause* given in accordance with the terms of this Agreement shall be exclusive of any GST properly payable in respect thereof.
- 13.2 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.

14. FORCE MAJEURE

Notwithstanding any other provision of this Agreement, a party shall not be liable for any failure or delay in performing any of its obligations under or pursuant to this Agreement, and any such failure or delay in performing its obligations will not constitute a breach of this Agreement, if such failure or delay is due to Force Majeure.

15. GOVERNING LAW AND JURISDICTION

15.1 This Agreement shall be interpreted in accordance with and governed by the laws of Jersey.

15.2 The Courts of Jersey shall have non-exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with this Agreement and for such purposes the Parties submit to the jurisdiction of the Courts of Jersey.

IN WITNESS WHEREOF the Minister and the Owner have duly executed this Agreement on the date stated at the beginning of it.

SCHEDULE 1
Plan



SCHEDULE 2**The Owner's Covenants with the Minister**

The Owner covenants with the Minister as follows:

- 1 Not to Commence the Development until the Owner has given to the Minister seven (7) days' notice in writing of its intention so to do.
- 2 That the Owner shall pay to the Treasurer of the States not less than twenty-eight (28) days prior to the Commencement of the Development financial contribution in the sum of **£33,250** to provide for 1) bus shelters and/or other community facilities which the Minister acting reasonably may deem desirable in the area in which the Site is contained and 2) traffic calming measures which the Minister acting reasonably may deem desirable in the area in which the Site is contained;
- 3 That the Owner shall procure that the Percentage for Art contribution as detailed in the Planning Permit is duly made.
- 4 Not to Occupy the Development until such Percentage for Art contribution shall have been duly made.

SCHEDULE 3**Minister's Covenants**


- 1 The Minister hereby covenants with the Owner to use the sum received by the Treasurer of the States under the terms of this Agreement for the purposes specified in this Agreement for which it is to be paid.
- 2 The Minister covenants with the Owner that the Minister will procure or arrange that the Treasurer of the States will pay to the Owner such amount of any payment made 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.

SCHEDULE 4
Decision



Ministerial Decision Summary

Minister for Environment

Decision Reference: MD-ENV-2023-203	Public
Subject: Appeal decision: P/2021/1790 (Fair Acre, La Route Orange, St Brelade)	
Report Title: Appeal decision: (Fair Acre, La Route Orange, St Brelade)	Public
Decision(s): The Assistant Minister decided to allow the appeal and granted planning permission in respect of application reference P/2021/1790, subject to conditions.	
Reason for Decision(s): The Assistant Minister accepted and agreed with the findings, recommendations and reasoning of the Independent Planning Inspector.	
Resource Implications: There are no new financial and/or manpower implications arising as a consequence of this Ministerial Decision.	
Action Required: Department to take necessary action.	
Signature: 	Signed By: Assistant Minister for the Environment
Date Signed: 18/04/2023	Date of Decision (If different from Date Signed):



Assistant Minister for the Environment

Schedule of conditions: Fair Acre, La Route Orange, St Brelade

Planning permission: P/2021/1790

Subject to the entering into, within 6 months of the date of the Assistant Minister's decision, of a suitable planning obligation under Article 25 of the Planning and Building (Jersey) Law 2002;

(a) to pay £33,250 to provide a bus shelter for town-bound buses and as a contribution towards two bus shelters and noticeboards to the east of the site and traffic calming in the area, and

(b) to make a Percentage for Art contribution in accordance with an agreed Public Art Statement, the Assistant Minister for the Environment hereby grants planning permission, subject to the following conditions:

A. The development shall commence within three years of the Ministerial Decision.
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.

1. Prior to the first residential occupation of any of the units, visibility splays shall be laid out and constructed in accordance with the approved plans. The visibility splays shall be retained thereafter and no obstruction to visibility of any kind shall be placed within them above a height of 0.9m.

Reason: To maintain highway safety in accordance with Policy TT1 of the Bridging Island Plan.

2. Prior to the first residential occupation of any of the units, the vehicle manoeuvring area, car parking spaces, bicycle spaces and electric vehicle charging points shall be laid out and constructed in accordance with the approved plans. These facilities shall be retained thereafter for the sole use of the occupiers of the units and their visitors.

Reason: To provide adequate off-street parking facilities in accordance with Policy TT4 of the Bridging Island Plan

3. No development shall take place until samples of all the external facing materials to be used, including hard landscaping materials, have been submitted to and approved in writing by the Chief Officer. The development shall be carried out in accordance with the approved samples and retained as such.

Reason: To protect the character and identity of the area and enhance the setting of the development pursuant to Policy GD6 of the Bridging Island Plan.

4. Prior to the first residential occupation of any of the units, the balcony of the westernmost unit type 1 (unit 01-06) in the west elevation at first-floor level shall be fitted



with an obscure-glazed privacy screen along the length of its west side to a height of 1.8m above finished floor level. The screen shall thereafter be retained as such.

Reason: To protect the privacy of neighbours pursuant to Policy GD1 of the Bridging Island Plan.

5. Prior to the first residential occupation of any of the units, the balcony of the easternmost unit type 1 (unit 01-06) in the east elevation at first-floor level shall be fitted with an obscure-glazed privacy screen along the length of its east side to a height of 1.8m above finished floor level. The screen shall thereafter be retained as such.

Reason: To protect the privacy of neighbours pursuant to Policy GD1 of the Bridging Island Plan.

6. Prior to the commencement of the development, the measures set out in the approved Species Protection and Enhancement Plan (ref: NE/ES/F.03, 3rd May 2022, Nurture Ecology Ltd.) shall be implemented in full. The measures (where applicable) shall be maintained throughout the construction of the development and shall thereafter be retained as such. Any variations that may be required as a result of findings on site shall be agreed in writing by the Chief Officer prior to the variations being carried out.

Reason: To safeguard the natural environment and biodiversity and geodiversity in accordance with Policies SP5 and NE1 of the Bridging Island Plan.

7. Prior to the commencement of the development, a protection plan setting out details of the methods to be used for the protection of all retained trees on the site for the duration of the construction work shall be submitted to and approved in writing by the Chief Officer. The plan shall include details of:

- (i) the protective fencing to be erected around each retained tree, including the height of the fencing and the distance from the tree and its crown spread;
- (ii) the arrangements to be made for the handling and storage of spoil, waste and other materials generated during construction work in order to protect all retained trees; and
- (iii) all excavations and trenches for services and drains and their proximity to retained trees.

The approved protection plan shall be implemented and maintained in full for the duration of the construction work.

8. Prior to the first residential occupation of any of the units, (i) all hard and soft landscape works indicated on the approved plans shall be carried out in full and (ii) a landscape maintenance and management plan, including long-term design objectives, management responsibilities and schedules of maintenance for all landscaped areas, shall be submitted to and approved in writing by the Chief Officer. The landscape maintenance and management plan shall be implemented as approved.

Reason for Conditions 7 & 8: To protect and improve green infrastructure assets and landscape character in accordance with Policies NE2 and NE3 of the Bridging Island Plan.

9. Prior to the commencement of the development, full details of the play equipment, ground surface treatment and any works of enclosure to be installed in the communal play area shown on the "Proposed Landscape Plan 900 P2" shall be submitted to and approved in writing by the Chief Officer. The details shall also include a comprehensive and long-term maintenance schedule and a statement of responsibilities for maintenance and insurance cover for the use of the play equipment and associated features. The development shall be carried out in accordance with the approved details prior to the first



residential occupation of any of the units and thereafter retained, maintained and insured as such.

Reason: To provide appropriate play space for the units and to protect neighbours' amenities pursuant to Policies CL8 and GD1 of the Bridging Island Plan.


10. Prior to the commencement of the development, details shall be submitted to the Chief Officer to demonstrate that the development as approved will outperform the target energy rate (i.e. the minimum energy performance for new dwellings required by building bye-laws) by 20%, using the Jersey Standard Assessment Procedure (JSAP) calculator or the Simplified Building Energy Model (SBEM) tool.


Reason: To comply with Policy ME1 of the Bridging Island Plan.


END


AN

~~CHIEF OFFICER~~ SIGNATORIES

SIGNED by the **MINISTER** in the presence of: Minister SG)
) 
) 17 May 2023
KELLY WATKINS


 Witness signature Sanctus Gladwin 17/5/23

SIGNED on behalf of the **OWNER** in the presence of:)
) 
) _____


 Witness signature 