

# *In the Royal Court of Jersey*

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**Samedi Division**

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**In the year two thousand and twenty-two, the twelfth day of December.**

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 Shafique Limited in relation to Indian Cottage, 78 New 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 Indian Cottage 78, New Street St. Helier JE2 3TE

Dated

12<sup>th</sup> December

2022

The Chief Officer for the Environment (1)

Shafique Limited (2)

DATE

12<sup>th</sup> December 2022**PARTIES**

1. The Chief Officer for the Environment of PO Box 228, St Helier Jersey JE4 9SS ("**the Chief Officer**"); and
2. Shafique Limited (Regn No 61246) whose registered office is situate at No. 2 Garden Lane, St. Helier, JE2 3YE, Jersey ("**the Owner**"); and

**RECITALS**

- 1 The Owner warrants that it is the owner in perpetuity (à *fin d'héritage*) of the Site by virtue of a hereditary contract passed with the Public of the Island of Jersey before the Royal Court on 7 July 2000.
- 2 Application accorded the reference P/2022/0651 for planning permission for the Development.]
- 3 Having regard to the purposes of the Law, the Island Plan 2022-25 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.
- 4 The parties hereto have agreed to enter into this Agreement in order to secure the planning obligations contained in this Agreement.
- 5 The parties acknowledge that this Agreement is legally binding.
- 6 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 "Demolish existing building consisting of a

	vacant ground floor restaurant with single dwelling unit above. Construct 2 no. 1 bed and 2 no. 2 bed residential units. Provide communal electric bike storage and bin store. 3D Model available." and given the reference P/2022/0651;
<b>"Chief Officer"</b>	the person appointed from time to time as the chief executive officer (or equivalent) of the administration of the States of Jersey 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>"Cycle Stands"</b>	bicycle stands within within Val Plaisant / New Street as indicated within Application plan MSP-2839-PL04 (or such other location within the vicinity of the Site as agreed to by highway authority responsible for Val Plaisant / New Street), to be delivered at the Owner's expense and to a technical standard agreed by the highway authority responsible for Val Plaisant / New Street;
<b>"Development"</b>	the development of the Site as set out in the Application;
<b>"Dwelling Unit"</b>	a residential unit forming part of the Development to be constructed pursuant to the Planning Permit;
<b>'Electric Car User Provider'</b>	means an organisation, such as Evie, which provides electric cars in Jersey for hire by members of the public;

<b>"Footway/Pedestrian Safety Improvements Contribution"</b>	a financial contribution of five thousand four hundred Pounds (£5,400) Sterling Index-Linked towards the provision and enhancement of public walking;
<b>"GST"</b>	goods and services tax or GST under the Goods and Services Tax (Jersey) Law 2007;
<b>"Index"</b>	the all items Retail Prices Index 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 HSBC Bank Plc from time to time;
<b>"Island Plan 2022"</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>	means 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>"Plan"</b>	the plan of the Site annexed to this Agreement as part of 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 <a href="#">attached at the Second Schedule</a> and

	references to the Planning Permit include where the context permits any variations and amendments 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 Indian Cottage 78, New Street St. Helier JE2 3TE, 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 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 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 to the Developer, this Agreement shall be enforceable against the Developer and any person claiming or deriving title through or under the Developer to the Site (or any part or parts thereof).

#### **6 CHIEF OFFICER COVENANTS**

The Chief Officer jointly and severally covenants with the Owner and the Developer 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 and/or the Developer 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 and/or the Developer 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 and/or the

Developer) 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 and/or the Developer 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 and/or the Developer 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 and/or the Developer as contained in this Agreement.
- 8.10 The Owner and/or the Developer 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 the disposal to the Developer and any disposal of any individual Dwelling Units to a purchaser for his own, his family or his 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.

**15 LENDER'S CONSENT**

The Lender acknowledges and declares that this Agreement has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Agreement and that the security of the Lender over the Site shall take effect subject to this Agreement PROVIDED THAT the Lender shall otherwise have no liability under this Agreement unless it takes possession of the Site in which case it too will be bound by the obligations as a person deriving title from the Owner.

**16 JURISDICTION**

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

FIRST SCHEDULE

The Site



MS PLANNING  
14 Britannia Place,  
Bath Street, St Helier, Jersey, JE2 4YS  
TELEPHONE +44 (0) 1534 861 425  
EMAIL info@msplanning.co.uk



INDIAN COTTAGE  
78 NEW STREET  
ST. HELIER  
JE2 3TE

Vingtaine : de Bas du Mont-au-Pretre  
Type :  
UPRN : 69130225

Scale 1:2,500

NB The details on this plan are illustrative, not defined. The coloured boundary illustrated above does not necessarily indicate the extent of the property or curtilage

SECOND SCHEDULE

The Planning Permit

# Decision Notice



## PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2022/0651

### DRAFT PLANNING PERMISSION

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:

Demolish existing building consisting of a vacant ground floor restaurant with single dwelling unit above. Construct 2 no. 1 bed and 2 no. 2 bed residential units. Provide communal electric bike storage and bin store. 3D Model available

#### To be carried out at:

Indian Cottage, 78, New Street, St. Helier, JE2 3TE.

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.

The approved scheme is for the redevelopment of the site, leading to the creation of 4 no. units of accommodation.

In accord with the SPG: Advice note; Protection of Employment Land and consequently Policy ER1, the Applicant has demonstrated that an unsuccessful scheme of marketing has been satisfactorily undertaken.

Given the location outside of the Core Retail Area, within a predominantly residential area, and in consideration of the building being in poor condition, vacant for a number of years, the proposal is not considered to have an unacceptable impact on the overall provision of retail and town centre uses. The benefits of the scheme in respect of the generation of 4no. units of accommodation, are considered to outweigh the loss of the

# Decision Notice



## PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2022/0651

**vacant restaurant and poor-quality building.**

**It is considered that the proposed development has been well-designed, with a scale, form, and use of materials which is appropriate for the area and that the impact on neighbouring amenity would not be unreasonable.**

**The limited parking provision is acceptable in view of the central, sustainable location of the site; moreover, the applicants have agreed to contribute to public realm improvements in the local area.**

**Despite that no protected species were recorded during the assessment of the existing buildings, of the property, the report has noted the presence of potential roosting and nesting features for bats and bird species, that are protected under the Wildlife (Jersey) Law 2021. It is the responsibility of the applicant to ensure that all contractors working on the site are aware of this and that if any species, or nests or roosts are found, works in the immediate area should cease and advice from a competent ecologist should be sought before proceeding.**

**Be aware that permission must be obtained from IHE Transport - Highways Maintenance and/or Streetworks Team on +44 (0)1534 445509. The agreed work will be required to be carried out by an approved contractor to the TTS' specification at the cost of the developer.**

**The applicant must remove obsolete service boxes that are no longer used to provide a service to the applicant's site or alternatively realign/renew service boxes liaising with the appropriate utility company.**

**Obsolete dishd kerb and footpath entrances are to be removed with the kerbs and footpath lifted, which will result in making good to the asphalt for the fullwidth and length of the dishd area as a minimum. Applicant is to be aware that depending on the location of the property that red and/or black asphalt may be required for making good to the footpath. Although in some instances, the applicant may need to reset granite footpath paving. The specification and extent of the remedial works must be agreed in advance with the Parish of St Helier Infrastructure department. Only Parish approved contractors are permitted to work on the public road/footpath. All remedial works are to be at the cost of the applicant.**

**Applicant is to note that the cost for removal and relocation of any street furniture or utilities for example: lamppost, bollards, bike racks, etc. and subsequent making good to road and pavement surfaces due to this application is to be at the applicants cost. Relocation of street furniture must be agreed with the Parish in advance prior to any work commencing on site.**

**That any windows and/or doors bordering the Public Road or Footpath**

# Decision Notice



## PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2022/0651

shall be of a type whose opening lights do not open beyond the face of the building. The applicant should note that contravening this condition will mean that the Parish will take action against the applicant/owner under the Highways Encroachments (Jersey) Regulations 1957.

That no part of the foundations of the building may project under the public highway. The applicant should note that contravening this condition will mean that the Parish will take action against the applicant/owner under the Highways Encroachments (Jersey) Regulations 1957.

The refuse store/collection arrangements refuse separation and recycling strategy is to be agreed in detail with the Parish Refuse Manager.

This application is the subject of a planning obligations agreement.

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. The measures outlined in Section 10 of the Primary Roost Inspection shall be implemented prior to commencement of the development, continued throughout (where applicable) and thereafter retained and maintained as such. Any variations that may be required as a result of findings on site are to be agreed in writing by the Chief Officer prior to works being undertaken.
2. Prior to the commencement of the development, information shall be submitted to the Department to demonstrate that the building will out-perform the Target Energy Rate by at least 20%, as demonstrated using the Jersey Standard Assessment Procedure or Simplified Building Energy Model (SBEM) calculator. The development shall be carried out in accordance with such approved details and thereafter retained as such.

### Reason(s):

# Decision Notice



## PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2022/0651

1. To ensure the protection of all protected species in accordance with the requirements of policies SP5 and NE1 of the Adopted Bridging Island Plan 2022.
2. To ensure new development outperforms the target energy rate in accordance with Policy ME1 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 map.pdf  
MSP-2839-PL04 Proposed Site Plan.pdf  
MSP-2839-PL05 Proposed Floor Plans.pdf  
MSP-2839-PL06 Proposed Elevations.pdf  
MSP-2839-PL07 Proposed Section AA.pdf Rev A  
MSP-2839-PL08 Proposed Perspective Sketch.pdf

78 New Street PRI-converted-compressed.pdf  
MSP-2839-PL01 Existing Site Plan.pdf  
MSP-2839-PL02 Existing Floor Plans.pdf  
MSP-2839-PL03 Existing Elevations.pdf  
78 New Street - Planning Statement - BiP 2022.pdf  
Building Condition Report  
Marketing Report.pdf  
Flood Risk Assessment dated 4th August 2022  
2839 - Site Waste Management Plan.pdf

DECISION DATE:

# Decision Notice



## PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2022/0651

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)

APPROVED

### THIRD SCHEDULE

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

The Owner covenants, agrees and undertakes:

#### COMMENCEMENT

- 1 Not to Commence the Development until 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 to the Treasurer of the States the Footway/Pedestrian Safety Improvements Contribution prior to the Commencement of the Development.
- 3 Not to Commence the Development until the Footway/Pedestrian Safety Improvements Contribution has been paid to the Treasurer of the States.

#### CYCLE STANDS

- 4 Not to Occupy the Development until such time as the Cycle Stands have been provided.

#### ELECTRIC CARS

- 5 On or prior to the first Occupation of each Dwelling Unit provision of a £500 voucher for an Electric Car User Provider to the first household of each Dwelling Unit from the date of its Occupation.

#### DEDICATION AND CESSION

- 6 The area of land along Garden Lane (directly opposite the ground floor unit), which forms part of the existing building footprint (but not part of the new building footprint) as indicated in Application drawing MSP-2839-PL04 shall be ceded to the Parish of St Helier following completion of the Development, and prior to Occupation. The costs associated with the transfer and construction of the new widened footpath is to be at the full cost of the Owner. The specification for the footpath is to be agreed with the Parish, and work to the footpath is to be undertaken by Parish approved contractors

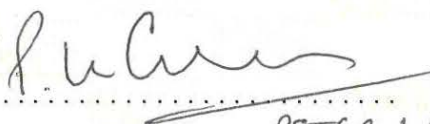
#### FOURTH SCHEDULE

##### **Chief Officer's covenants**

1. The Chief Officer hereby covenants with the Owner and/or the Developer (as applicable) to use all sums received by the Treasurer of the States from the Owner and/or the Developer 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 and/or the Developer (as applicable) that he will procure or arrange that the Treasurer of the States will pay to the Owner and/or the Developer such amount of any payment made by the Owner and/or the Developer to the Treasurer of the States under this Agreement which has not been expended in accordance with the provisions of this Agreement within five years of the date of receipt by the Treasurer of the States of such payment.

Signed on behalf of the Chief Officer

by .....



PETER LE GRESLEY

in the presence of .....



SUSIE DE GOUVEIA

this

12<sup>th</sup>

day of

December

2022

Signed on behalf of Shafique Limited

by .....



in the presence of .....



this

29<sup>th</sup>

day of

November

2022