

In the Royal Court of Jersey

Samedi Division

In the year two thousand and twenty-one, the eighteenth 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 (i) The Chief Officer for the Environment; (ii) Bosdet Foundation; and (iii) The Royal Bank of Scotland International Limited t/a NatWest International in relation to Les Ormes Golf & Leisure Village, Le Mont a la Brune, St Brelade, 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 Les Ormes Golf & Leisure Village, Le Mont a la Brune, St. Brelade, JE3 8FL

Dated

14th May

2021

The Minister for the Environment (1)

Bosdet Foundation (2)

The Royal Bank of Scotland International Limited t/a NatWest International (3)

DATE

14th May

2021

PARTIES

- (1) The Minister for the Environment of States Offices, La Motte Street, St Helier, Jersey ("**the Minister**");
- (2) Bosdet Foundation of Les Ormes Golf and Leisure Club, Le Mont a la Brune, St Brelade, Jersey, JE3 8FL ("**the Owner**"); and
- (3) The Royal Bank of Scotland International Limited t/a NatWest International of Royal Bank House 71 Bath Street St Helier Jersey JE4 8PJ ("**the Lender**").

RECITALS

- 1 The Owner warrants that it is the owner in perpetuity (*à fin d'héritage*) of the Site as described in the First Schedule.
- 2 The Lender has an interest in the Site by virtue of a judicial hypothec (*hypothèque judiciaire*) registered in the Public Registry of Jersey on 21 December 2018.
- 3 With the agreement of the Owner, an application (accorded the reference P/2019/0688) for planning permission for the Development has been submitted by Riva Architects.
- 4 On 19 December 2019 the Committee refused planning permission subsequent to which the Owner exercised its right under Article 108 of the Law to appeal the said refusal ("**the Appeal**").
- 5 The Appeal was heard by an inspector ("**the Inspector**") on 14 October 2020.
- 6 Having regard to the purposes of the Law, the Island Plan 2011 and all other material considerations the Inspector in his report dated 16 November 2020 ("**the Inspector's Report**") recommended that the Minister allow the Appeal and grant planning permission for the Development subject to the applicant entering into a planning obligation to secure the matters referred to in the Appendix to the Inspector's Report.
- 7 Having considered the Inspector's Report the Minister has given effect to the Inspector's recommendation to allow the appeal and grant planning permission for the Development subject to the prior completion of this Agreement to secure the obligations contained herein.
- 8 The parties hereto have agreed to enter into this Agreement in order to secure the planning obligations contained herein.
- 9 The parties acknowledge that this Agreement is legally binding.
- 10 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 tennis hall. Construct 44 No. one bed, 2 No. two bed, 13 No. four bed and 1 No. six bed self-catering accommodation units with reception and ancillary structures and landscape alterations. Construct extension to House-Keeping to North-East of site. 3D model available." and given the reference P/2019/0688;
"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;
"Island Plan 2011"		the States of Jersey Island Plan, 2011 (as amended from time to time);
"Law"		the Planning and Building (Jersey) Law 2002;

"Occupation, Occupy and Occupied"		occupation for the purposes permitted by the Planning Permit but not including occupation by personnel engaged in demolition, site clearance, construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations;
"Plan"		the plan of the southern track enhancements attached at the Second Schedule to this Agreement;
"Planning Permit"		the planning permission for the Development granted by the Minister pursuant to the Application, a copy of which is attached at the Third 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;
"Site"		Les Ormes Golf & Leisure Village, Le Mont a la Brune, St. Brelade, JE3 8FL.

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 Minister 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 Minister 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 COVENANTS

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

6 PUBLIC REGISTRY OF CONTRACTS

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

7. MISCELLANEOUS

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

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

8 WAIVER

No waiver (whether expressed or implied) by the 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 from 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 practical following such change) of any change in legal ownership of the Site occurring before all the obligations under this Agreement have been discharged.

10 DISPUTE RESOLUTION

In the event that any dispute shall arise in respect of any provision of this Agreement it shall be referred if not resolved within seven working days to the

arbitration of an independent arbitrator under the provisions of the Arbitration (Jersey) Law 1998 such arbitrator to be named by the agreement of the parties to the dispute or in default of agreement by the President for the time being of the Royal Institution of Arbitrators upon the application of any party to the dispute.

11 GOODS AND SERVICES TAX

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

12 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.

13 JURISDICTION

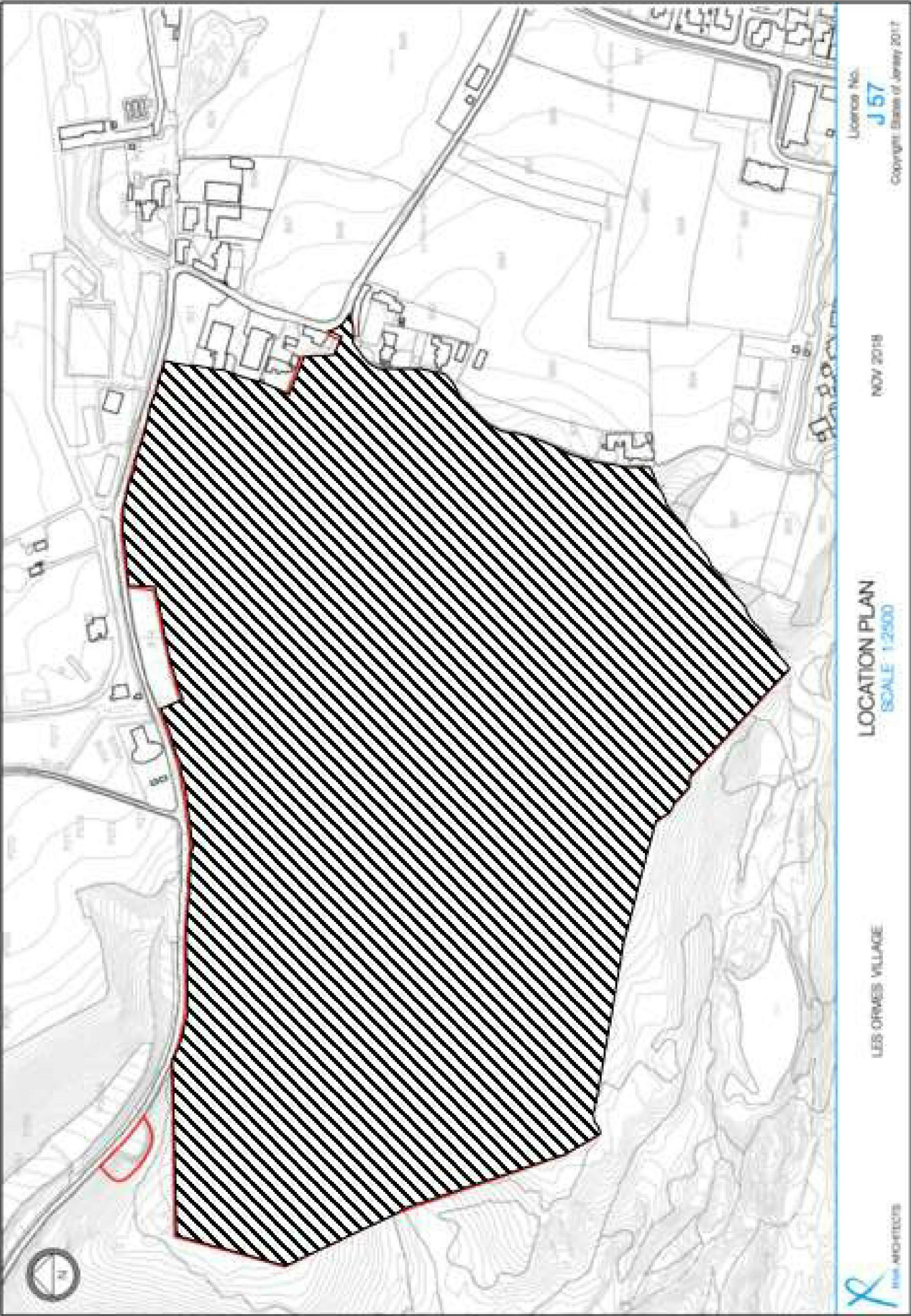
This Agreement is governed by and interpreted in accordance with the law of the Island of Jersey.

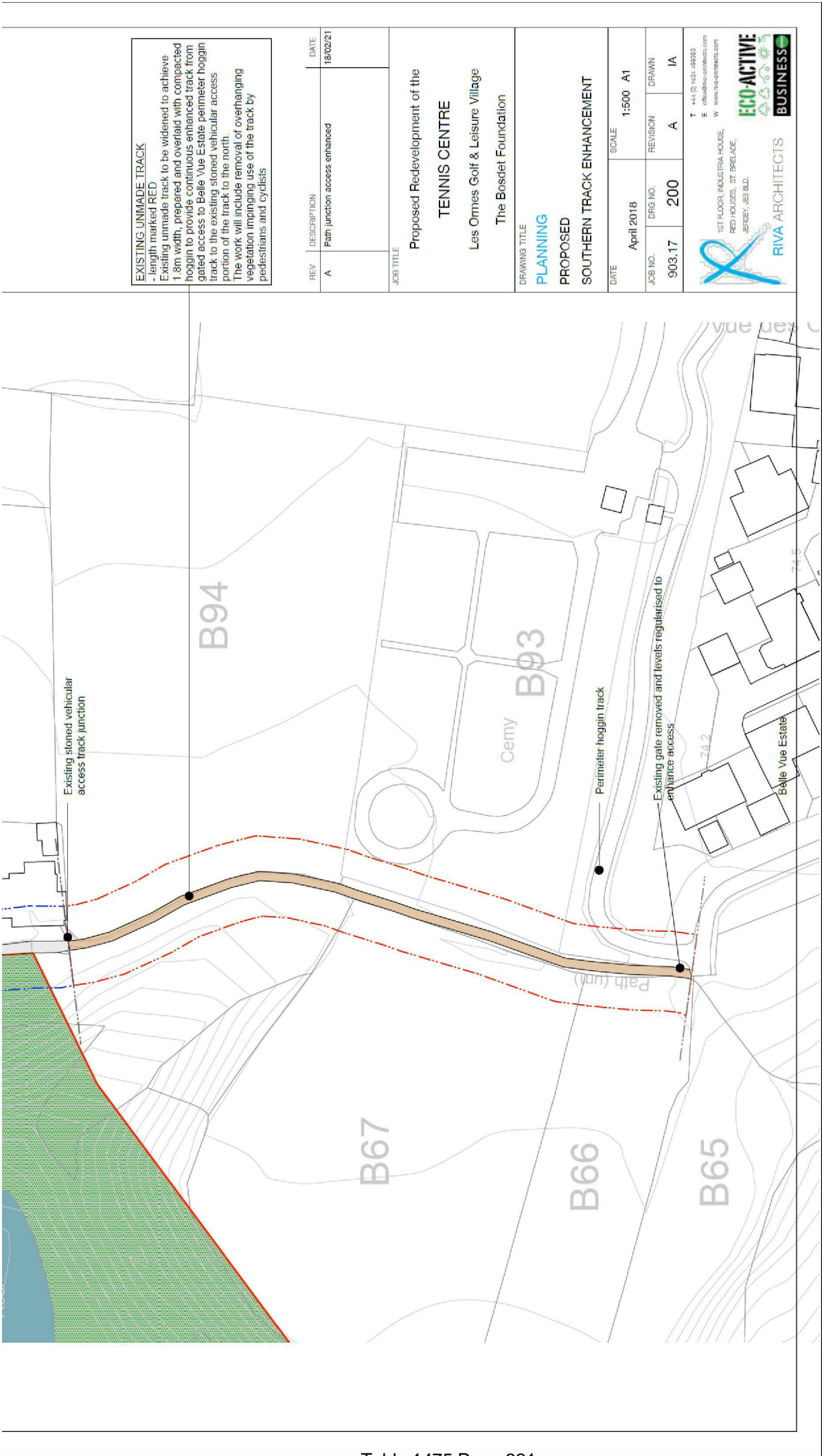
FIRST SCHEDULE**Details of the Owner's Title, and description of the Site**

The Owner is the owner of all that immovable property known as Les Ormes Golf & Leisure Village, Le Mont a la Brune, St. Brelade, Jersey by virtue of a contract of gift, cession and transfer made to it by George Alfred Bisson dated the thirteenth day of January Nineteen Eighty-Nine.

SECOND SCHEDULE

The Plan





THIRD SCHEDULE

The Planning Permit



Decision Summary

Assistant Minister for the Environment

Ministerial Decision

Decision Reference: MD-PE-2020-0099		Application Reference: P/2019/0688	
Decision Summary Title:	Appeal Decision – Les Ormes Golf & Leisure Village, Le Mont a la Brune, St Brelade	Date of Decision Summary:	01 December 2020
Decision Summary Author:	Principal Policy Planner – Strategic Policy, Planning and Performance	Decision Summary: Public or Exempt?	Public
Type of Report: Oral or Written?	Written	Person Giving Oral Report:	n/a
Written Report Title (File Name):	Inspector's Report- Les Ormes	Date of Written Report:	16 November 2020
Written Report Author:	Sue Bell MSc., BSc, FCIEEM, CEcol, CWEM - Planning Inspector	Written Report : Public or Exempt?	Public

Subject: Appeal under Article 108 of the Planning and Building (Jersey) Law 2002 against a decision to refuse planning permission, P/2019/0688, for *“Demolish tennis hall. Construct 44 No. one bed, 2 No. two bed, 13 No. four bed and 1 No. six bed self-catering accommodation units with reception and ancillary structures and landscape alterations. Construct extension to House-Keeping to North-East of site”* at Les Ormes Golf & Leisure Village, Le Mont a la Brune, St Brelade

Decision:

The Assistant Minister allowed the appeal and granted planning permission subject to the applicant entering into a suitable planning obligation agreement, pursuant to Article 25 of the Planning and Building (Jersey) Law, 2002 (as amended), in order to guarantee the provision of the following;

- i. Ensuring that the new accommodation shall be occupied for short-term holiday purposes only, and shall not be occupied as a person's sole or main place of residence;
- ii. The enhancement of the existing public path which runs southwards from the main east entrance of Les Ormes. The existing path shall be prepared and overlaid with compacted hoggin in order to create a continuous 1.8m wide path extending from a point approximately 30m south of the Les Ormes public entrance junction with La Rue Carrée, and continuing to the south for approximately 380m as far as the gated path junction with the existing pedestrian / cycle track to the perimeter of the Belle Vue estate. The works are to include the removal of overhanging vegetation that would otherwise impinge upon the use of the track by pedestrians or cyclists. The work shall be undertaken to the satisfaction of the Infrastructure, Housing and Environment Department (Transport Section), and should be completed prior to the first occupation of the development.
- iii. Upon dismantling, the steel portal frame of the existing building shall be offered to the public of the island, free of charge, for re-use elsewhere as an appropriate sporting or community facility.

The Assistant Minister also imposed the following conditions on the grant of planning permission:

- 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.



Decision Summary

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.

Conditions:

1. Notwithstanding the content of the approved Travel Plan, this document shall be amended and updated, to the satisfaction of the Infrastructure, Housing and Environment Department, in line with the comments published in its consultation response dated 17/07/19. This shall be undertaken, and the details submitted and approved, prior to the first occupation of any part of the new development.

REASON: To accord with Policy TT 9 (Travel Plans) of the adopted Island Plan 2011 (revised 2014).

2. The new cycle track through the site, as shown in Plan 176 B, shall be completed in full and made operational in accordance with a schedule of phased works to be approved prior to the commencement of the development. Thereafter, this cycle track must be made available for the use of the general public at all reasonable times during daylight hours.

REASON: To ensure that the benefits of the approved scheme are carried out and completed, in the interests of the general amenity of the wider public, in accordance with Policy GD 1 of the adopted Island Plan 2011 (revised 2014).

3. The works to improve and enhance the main eastern site entrance, as shown in Plan 176 B, shall be undertaken and completed prior to the first occupation of any part of the new development.

REASON: In the interests of highway and pedestrian safety, in accordance with Policy GD 1 of the adopted Island Plan 2011 (revised 2014).

4. All planting and other operations comprised in the landscaping scheme hereby approved shall be completed in accordance with a schedule of phased works to be approved prior to the commencement of the development.

REASON: To ensure the benefits of the landscape scheme are not delayed, in the interests of the amenities of the area and to ensure a high quality of design in accordance with Policies SP 7 and GD 7 of the adopted Island Plan 2011 (revised 2014).

5. Notwithstanding the recommendations and mitigation measures set out within the approved Initial Ecological Assessment & Preliminary Roost Inspection, prior to the commencement of development, further details in respect of the following shall be submitted to, and agreed in writing by, the Development Control section of the Infrastructure, Housing and Environment Department;

- a) details of bird and bat boxes to be incorporated into the scheme;
- b) details of any external lighting to be installed


REASON: To ensure the protection of all protected species in accordance with Policies NE 1, NE 2 and NE 4 of the adopted Island Plan 2011 (revised 2014).

6. The first two metres of all new accesses onto the highway must be hard-bound and no water run-off shall be permitted to discharge onto the highway. An adequate edge restraint within the site, adjacent to the rear of the footway, shall also be provided to the satisfaction of the Infrastructure, Housing and Environment Department.

REASON: In the interests of highway and pedestrian safety, in accordance with Policy GD 1 of the adopted Island Plan 2011 (revised 2014).



Decision Summary

Reason for Decision: The Assistant Minister agreed with the recommendations of the Inspector.	
Resource Implications: None.	
Action required: Request the Judicial Greffe to inform interested parties of the decision.	
Signature:  Deputy Gregory Guida	Position: Assistant Minister for the Environment
Date Signed: 05 02 2021	Date of Decision <i>(If different from Date Signed):</i>

FOURTH SCHEDULE

The Owner's Covenants with the Minister

The Owner covenants, agrees and undertakes:

COMMENCEMENT

- 1 Not to Commence the Development until the Owner has given to the Minister not less than twenty-eight (28) days' notice in writing of its intention so to do.

NEW ACCOMMODATION FOR HOLIDAY PURPOSES ONLY

- 2 To ensure that the new accommodation as set out within the Application shall be Occupied for holiday purposes only, and shall not be occupied as a person's sole or main place of residence.

ENHANCEMENT OF EXISTING PUBLIC PATH

- 3 The enhancement of the existing public path which runs southwards from the main east entrance of the Site. The existing vehicle track shown on the attached Plan with length marked in blue, shall remain as is with no enhancement necessary. The existing unmade track shown on the attached Plan with length marked in red shall be prepared and overlaid with compacted hoggins in order to create a continuous path of an approximate width of 1.8m (accepting that in parts the width of the existing paths may be less than 1.8m in places) extending from the existing stoned vehicular access portion of the track to the north, and continuing to the south as far as the gated path junction with the existing pedestrian / cycle track to the perimeter of the Belle Vue estate. The works are to include the removal of overhanging vegetation that would otherwise impinge upon the use of the track by pedestrians or cyclists. The work shall be undertaken to the satisfaction of Infrastructure, Housing and Environment Department (Transport Section), and should be completed prior to the first Occupation of the Development.

STEEL PORTAL FRAME TO BE MADE AVAILABLE TO THE PUBLIC

- 4 No later than 30 June 2023, the Government of Jersey will confirm to the Owner whether the public of the island of Jersey wish to take, the steel portal frame of the existing building, free of charge, for re-use elsewhere as an appropriate sporting or community facility. If so it is agreed that the Owner will provide three (3) months' notice of when the steelwork would be dismantled and the date it will be available for collection and removal following dismantling. If the steel portal frame has not been removed by the public of the island within 10 working days of the expiry of the three (3) month period, the Owner shall be free to dispose of the steel portal frame. For the avoidance of doubt, no guarantee is made by the Owner that the steel portal frame will be dismantled as it is possible the structure will stay in place as Covid-19 or economic reasons could lead to a short or longer term delay, a planning re-application, or abandonment of the Development.

Signed on behalf of the Minister:



Name and Position: PETER LE GRESELEY HEAD OF DEVELOPMENT
AND LAND

in the presence of



Name and Position: ANDREW TOWNSENDS Principal Planner

this 14th day of May 2021

Signed by Bosdet Foundation:

in the presence of

Name and Position:

this day of 2021

Signed by Excelsior is a wholly owned subsidiary of The Royal Bank of Scotland International Limited, a company incorporated in Jersey, acting by Timothy Brian Slater who, in accordance with the laws of that territory, is acting under the authority of the company.
The Royal Bank of Scotland International Limited t/a NatWest International

Signature in the name of the company, The Royal Bank of Scotland International Limited

Signature of Timothy Brian Slater

in the presence of 

Name and Position: HELEN LAGADU ASSISTANT RELATIONSHIP
DIRECTOR

this 6th day of MAY 2021

Signed on behalf of the Minister:

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Name and Position:.....

in the presence of

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Name and Position.....

this day of 2021

Signed by Bosdet Foundation:

.....

in the presence of

.....

Name and Position. BOSDET SENIOR MANAGER.....

this 6 day of May 2021

Signed by The Royal Bank of Scotland International Limited t/a NatWest International:

.....

in the presence of

.....

Name and Position.....

this day of 2021