

In the Royal Court of Jersey

Samedi Division

In the year two thousand and twenty-one, the seventh day of July.

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, Brash Holdings Limited and Brash Holdings (2) Limited in relation to Nelson House, David Place, 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 the site known as Ground, First and Second Floors at Nelson House, 30 David Place, St Helier, Jersey

Dated

7th July

2021

The Chief Officer for the Environment (1)

Brash Holdings Limited (2)

Brash Holdings (2) Limited (3)

DATE

7th July

2021

PARTIES

1. The Chief Officer for the Environment of PO Box 55, La Motte Street, St Helier, Jersey JE4 SPE ("**the Chief Officer**");
2. Brash Holdings Limited of 15-17 Rue De Funchal St Helier Jersey JE2 4TT and Brash Holdings (2) Limited, both of 15-17 Rue De Funchal St Helier Jersey JE2 4TT ("**the Owners**")

RECITALS

- 1 The Owners warrant it is the owner in perpetuity (*à fin d'héritage*) of the Site by virtue of :-
 - (i) hereditary contract of purchase by Brash Holdings Limited in relation to lot 6 and others from J.C.N Investments (Jersey) Limited on 17 October 2003 (Table 1161 Page 237);
 - (ii) hereditary contract of purchase by Brash Holdings Limited in relation to lot 7 and others from J.C.N Investments (Jersey) Limited on 17 October 2003 (Table 1161 Page 249);
 - (iii) hereditary contract of purchase by Brash Holdings Limited in relation to lot 8 and others from J.C.N Investments (Jersey) Limited on 17 October 2003 (Table 1161 Page 241);
 - (iv) hereditary contract of purchase by Brash Holdings Limited in relation to lots 9 - 23 and others from J.C.N Investments (Jersey) Limited on 17 October 2003 (Table 1161 Page 245); and
 - (v) hereditary contract of purchase by Brash Holdings (2) Limited in relation to lot 24 and others from J.C.N Trading (Jersey) Limited on 17 October 2003 (Table 1161 Page 255).
- 2 The Owners submitted the Application (accorded the reference P/2020/1716) for planning permission for the Development.
- 3 Having regard to the purposes of the Law, the Island Plan 2011 and all other material considerations the Chief Officer resolved 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 "Change of use of ground, first and second floor offices to form habitable accommodation. Various alterations to fenestration" and given the reference P/2020/1716;
"Chief Officer"	the person appointed from time to time as the chief executive officer (or equivalent) of the administration of the States responsible for planning and building in accordance with Article 1 of the Law;
"Commencement"	the date on which any constructions works 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;
"Development"	the development of the Site as set out in the Planning Permit;
"Dwelling Unit"	a residential unit forming part of the Development to be constructed pursuant to

	the Planning Permit;
"GST"	goods and services tax under the Goods and Services Tax (Jersey) Law 2007;
"Index"	the all Items index of retail prices for Jersey as issued from time to time by the Statistics Unit to the States of Jersey;
"Interest"	interest at three per cent above the base lending rate of the Barclays Bank Plc from time to time;
"Island Plan 2011"	the States of Jersey Island Plan, 2011 (as amended from time to time);
"Law"	the Planning and Building (Jersey) Law 2002;
"Occupation", "Occupy" and "Occupied"	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;
"PoSH"	means the Parish of St Helier;
"Planning Permit"	the planning permission for the Development granted by the Chief Officer pursuant to the Application, a copy of which is attached at the Second Schedule and references to the Planning Permit include where the context permits any variations to the said planning permission from time to time;
"Public"	the Public of the Island of Jersey;

"Public Realm Contribution"	the sum of twenty five thousand six hundred and fifty pounds (£25,650) to be paid by the Owners to the Treasurer of the States to be applied by the Minister for Infrastructure towards public realm improvement works consisting of cycle and walking facilities and highways improvements at David Place
"Royal Court"	the Royal Court of the Island of Jersey;
"Site"	the site comprising ground, first and second floors at the property known as Nelson House, 30 David Place, St Helier, Jersey, the whole of the said property as shown hatched in black lines 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 Owners under this Agreement create planning obligations pursuant to Article 25 of the Law and are enforceable by the Chief Officer against the Owners.

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 Owners covenant and agree with the Chief Officer as set out in the Third Schedule. This Agreement shall be enforceable against any successor in title to the Owners and any person claiming or deriving title through or under the Owners to the Site (or any part or parts thereof).

6 CHIEF OFFICER COVENANTS

The Chief Officer jointly and severally covenants with the Owners 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 Owners from the Chief Officer under the terms of this Agreement such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction may be given on behalf of the Chief Officer by the Director - Development Control of Planning and notice or communication to the Chief Officer pursuant to the provisions of this Agreement shall be addressed to the Director - Development Control of Planning at Planning and Building Services South Hill St Helier Jersey JE2 4US or as otherwise notified for the purpose by notice in writing.
- 8.2 Any notices served on the Owners 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 Owners) 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 Owners 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 Owners 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 Owners as contained in this Agreement.

8.10 The Owners 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 Owners agree 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 any group company of the Owners, 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 COUNTERPART

This Agreement may be executed in any number of counterparts by the parties hereto on different counterparts, but shall not be effective until each party has executed at least one counterpart and each counterpart shall constitute an original of this Agreement but all the counterparts shall together constitute one and the same Agreement.

16 JURISDICTION

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

FIRST SCHEDULE

The Site



SECOND SCHEDULE

The Planning Permit

Decision Notice



PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2020/1716

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:

Change of use of ground, first and second floor offices to form habitable accommodation.

Various alterations to fenestration.

To be carried out at:

Nelson House, 30, David Place, St. Helier, JE2 4TD.

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

Given comments received during the assessment of the application, the States of Jersey recommends that the applicant should refer to the guidance on The Control of Dust and Emissions from Construction and Demolition, which can be found online at:

<https://www.gov.je/industry/construction/pages/constructionsite.aspx>

Given comments received during the assessment of the application, the States of Jersey recommends that the applicant should refer to the guidance contained in the document 'Guidelines on Noise Control for Construction Sites' which is available online at

<http://www.gov.je/Industry/Construction/Pages/ConstructionSite.aspx> and 'British Standard BS5228:2009 Code of Practice for Noise and Vibration Control on Construction and Open Sites'.

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

APPROVED

Decision Notice



PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2020/1716

- 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 part of the development hereby approved shall be occupied until the vehicular manoeuvring area and respective car parking spaces have been laid out and allocated as indicated on the approved plans. The 17 car parking spaces for this development shall thereafter be retained solely for the use of the residential occupants of the development and shall not be sub-let for any other purpose.
2. No part of the development hereby approved shall be occupied until the cycle and motorcycle parking facilities as indicated on the approved plan have been wholly constructed in accordance with the approved plans. The facilities shall thereafter be retained solely for the use of occupants of the development and maintained as such.
3. No part of the development hereby approved shall be occupied until the electric car, bicycle and motorcycle charging facilities have been wholly constructed in accordance with the approved plans. The facilities shall thereafter be retained solely for the use of occupants of the development and maintained as such.

Reason(s):

1. To ensure that the development provides adequate provision for off-street parking and manoeuvring for users of the site, in the interests of highway safety and the general amenities of the area, in accordance with Policy GD1 of the Adopted Island Plan 2011 (Revised 2014).
2. In the interests of promoting sustainable patterns of development, in accordance with Policies TT9 and SP6 of the Adopted Island Plan 2011 (Revised 2014).
3. In the interests of promoting sustainable patterns of development, in accordance with Policies TT9 and SP6 of the Adopted Island Plan 2011 (Revised 2014).

APPROVED

Decision Notice

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2020/1716



FOR YOUR INFORMATION

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

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

Site Plan
Site Location Plan
Proposed Sections 131 P2
Proposed Sections 130 P2
Proposed Ground Floor Plan 100 P4
Proposed First Floor Plan 101 P3
Proposed Second Floor Plan 102 P3
Proposed North & East Elevations 120 P2
Proposed South Elevations 121 P2
Proposed Basement Floor Plan 105 P4
Waste Management Plan

DECISION DATE:

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

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

APPROVED

THIRD SCHEDULE**The Owners' Covenants with the Chief Officer**

The Owners covenant, agree and undertake:

COMMENCEMENT

- 1 Not to Commence the Development until the Owners have given to the Chief Officer seven (7) days' notice in writing of its intention so to do.

CONTRIBUTION

- 2 To pay the Public Realm Contribution to the Treasurer of the States prior to the Commencement of the Development.
- 3 Not to Commence the Development until such time as the Public Realm Contribution has been paid to the Treasurer of the States.

FOURTH SCHEDULE

Chief Officer's covenants

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

Signed

by

HEAD OF
DEVELOPMENT AND LAND

in the presence

DANIELLE MCINTOSH

this

7th

day of

July

2021

Signed on behalf

by

in the presence

this

day

Signed on behalf

by

in the presence

this