

In the Royal Court of Jersey

Samedi Division

In the year two thousand and eighteen, the thirteenth day of February.

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, Level Four Developments Limited and 72 Great Union Road in relation to 72, 74 & 76 Great Union Road, 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 72, 74 and 76 Great Union Road, St Helier

Dated

9th February

2018

The Chief Officer for the Environment (1)

Level Four Developments Limited (2)

72 Great Union Road Limited (3)

DATE

2018

PARTIES

- (1) The Chief Officer for the Environment of States Offices, South Hill, St Helier, Jersey JE2 4US ("**the Chief Officer**");
- (2) Level Four Developments Limited (co regn. 113926) ("**the First Owner**") of 28 Esplanade St Helier Jersey JE2 3QA
- (3) 72 Great Union Road Limited (co regn. 123130) ("**the Second Owner**") of 28 Esplanade St Helier Jersey JE2 3QA

RECITALS

- 1 The First Owner warrants that by right under hereditary contract of purchase of 9 January 2015 between CPSS Properties Limited and Anthony Dean and Nicola Louise Dean née Brady it is the owner in perpetuity (*à fin d'héritage*) as to 72 Great Union Road.
- 2 On 14 June 2016 CPSS Properties Limited changed its name to Level Four Properties Limited notice of which was registered in the Public Registry on 6 September 2016.
- 3 The Second Owner warrants that by right under hereditary contract of purchase of 24 February 2017 from the Public of the Island it is the owner in perpetuity (*à fin d'héritage*) as to "Astral House" (formerly "Montana Guest House") and numbered 74 & 76 Great Union Road.
- 4 The First Owner submitted an application (accorded the reference P/2017/0927) for planning permission for the Development.
- 5 Having regard to the purposes of the Law the Island Plan 2011 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 for a financial contribution to the bus shelter facilities as required by the Island Plan, 2011.
- 6 The parties hereto have agreed to enter into this Agreement in order to secure the planning obligations contained herein.
- 7 The parties acknowledge that this Agreement is legally binding.
- 8 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:

| | |
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| | |
| "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 buildings and construct 5 No. two bed and 8 No. one bed units." and given the reference P/2017/0927; |
| | |
| "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 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; |
| | |
| "Bus Shelter Facilities Contribution" | the sum of twenty thousand pounds (£20,000) to be paid by the Owners to the Treasurer of the States to be applied by the Minister for Infrastructure towards the provision of a bus shelter (together with accommodation and installation works and design fees) on Rouge Bouillon . |
| | |
| "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; |

| | |
|---------------------------|--|
| | |
| "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 HSBC 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; |
| | |
| "the Owners" | the First Owner and the Second Owner |
| | |
| "Plan" | the plan of the Site attached at the First Schedule to this Agreement; |
| | |
| "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; |
| | |
| "Royal Court" | the Royal Court of the Island of Jersey; |
| | |
| "Site" | 72, 74 and 76 Great Union Road, St Helier, as shown for the purpose of identification edged by a thick black line and hatched black on the Plan; |

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 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 OWNERS COVENANTS

The Owners jointly and severally covenant and agree with the Chief Officer as set out in the Fourth Schedule so that this Agreement shall be enforceable without limit of time against 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 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 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 Owner) it is modified (other than by process under Article 10 of the Law) by any statutory procedure or expires prior to the Commencement of Development.
- 8.5 No person shall be liable for any breach of any of the planning obligations or other provisions of this Agreement after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 8.6 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permit) granted (whether or not on appeal) after the date of this Agreement.
- 8.7 Except in so far as legally or equitably permitted this Agreement shall not prejudice or fetter or affect any statutory power discretion or duty of the Chief Officer and without prejudice to the generality of the foregoing it is agreed between the parties hereto that any benefit or power conferred on the Chief Officer by any of the obligations or covenants by the 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 herein 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 herein.

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 herein.

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.

11 INDEXATION

Any sum referred to in the Third Schedule shall be increased by an amount equivalent to the increase in the Index from the date on which this Agreement is registered in the Public Registry of Contracts until 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.

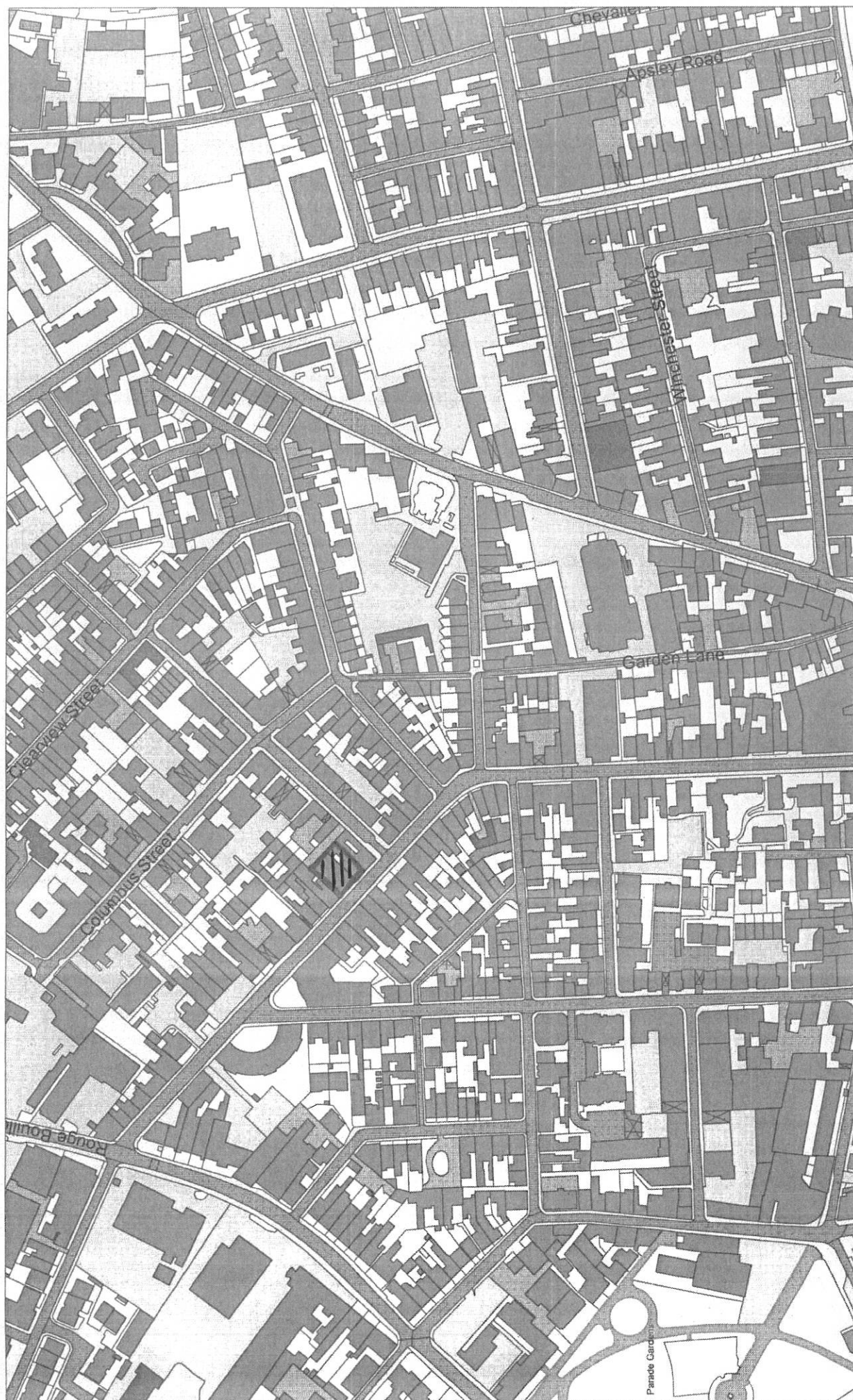
14.2 If at any time GST is or becomes chargeable in respect of any supply made in accordance with the terms of this Agreement then to the extent that GST had not previously been charged in respect of that supply the person making the supply shall have the right to issue a GST invoice to the person to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


15 JURISDICTION

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

FIRST SCHEDULE

The Plan




States
of Jersey

COPYRIGHT PLANNING & ENVIRONMENT DEPARTMENT

LOCATION PLAN

SCALE 1: 2500

20 June 2017

SECOND SCHEDULE
The Planning Permit

Department of the Environment
Planning and Building Services
South Hill
St Helier, Jersey, JE2 4US
Tel: +44 (0)1534 445508



Planning Application Number P/2017/0927

Decision Notice

PLANNING AND BUILDING (JERSEY) LAW 2002

In accordance with Article 19(8) of the Planning and Building 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 under Article 19 of the Planning and Building (Jersey) Law 2002;

In respect of the following development:

Demolish existing buildings and construct 5 No. two bed and 8 No. one bed units. 3D Model available. AMENDED DESIGN.

To be carried out at:

72, 74, 76, Great Union Road, St. Helier, JE2 3WA.

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.

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.

APPROVED

Decision Notice

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2017/0927

Conditions:

1. 1. The materials to be used in the external finishes of the development hereby approved shall be painted rendered walls, slate roofs and painted timber windows and doors.
2. 1. Prior to the development being brought into first use, visibility splays shall be laid out and constructed in accordance with the approved plans as indicated on Drawing 2582-P2 Rev C). The visibility splays shall then be maintained thereafter and no visual obstruction of any kind over the height of 900mm shall be erected within them.
3. 2. The bicycle parking area indicated within the ground floor of the development hereby approved shall be fitted with 8 No. Sheffield cycle stands spaced at 0.75m intervals within a secure cage.
4. 3. The mitigation measures outlined in the Ecology Survey Results Report (Nurture Ecology 29 September 2017) shall be implemented prior to the commencement of development, continued throughout the phases of development (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 Department of the Environment prior to works being undertaken.
5. A work of art shall be delivered with the advice of the appointed Art Advisor to accord with the Percentage for Art statement within the Design Statement submitted as part of this application. The work of art must be installed prior to the first use/occupation of the development hereby approved unless otherwise agreed in writing with the Department of the Environment.

Reasons:

1. To promote good design and to safeguard the character and appearance of the existing building and surrounding area, in accordance with Policies GD1 and GD7 of the Adopted Island Plan 2011 (Revised 2014).
2. In the interests of highway safety, in accordance with Policy GD1 of the Adopted Island Plan 2011 (Revised 2014).
3. 2. To ensure that adequate provision is made for the safe storage of bicycles within the development, to accord with Policy GD1 of the Adopted Island Plan 2011 (Revised 2014).
4. To ensure the protection of all protected species in accordance with Policies NE1, NE2 and NE4 of the Adopted Island Plan 2011 (Revised 2014).
5. To comply with the requirements of Policy GD8 of the Adopted Island Plan 2011 (Revised 2014).

Informative 1: The applicant's attention is drawn to the comments received from the Parish of St. Helier in their letter dated 26/07/17 regarding the necessity to

APPROVED

Decision Notice

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2017/0927

discuss with them the following matters. The lowering of the kerb and footpath, to be undertaken by the Parish at applicant expense; the requirement to mark the junction between the site and the pavement; that no foundation may project under the pavement; refuse matters.

Informative 2: The applicant's attention is drawn to the consultation response from the Department for Infrastructure (Drainage) dated 07/08/17 with the need to contact them concerning drainage connections.

Informative 3: Given comments received during the assessment of the application, the States of Jersey recommends that the applicant should be aware of the possible presence of ASBESTOS within the development site. It is recommended that further advice is sought from a suitably qualified professional prior to the commencement of development so as to reduce the risk to public health.

Informative 4: 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:
http://www.london.gov.uk/thelondonplan/guides/bpg/bpg_04.jsp

Informative 5: 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'.

Informative 6: Given comments received during the assessment of the application, the States of Jersey recommends that the applicant should be aware that the site has been identified as having the possible presence of protected wildlife species. It is the responsibility of the applicant to inform all site workers of the possibility of protected species on site and the implications under the Conservation of Wildlife (Jersey) Law (2000) and you are advised that it is your duty under the Law to stop work and notify the Department of Environment on +44 (0) 1534 441600 immediately should any species be found.

APPROVED

Decision Notice

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2017/0927

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:

1. Location Plan
2. Amended Site Plan P1 Rev C
3. Amended Ground Floor Plan P2 Rev C
4. Amended First Floor Plan P3 Rev C
5. Amended Second Floor Plan P4 Rev A
6. Amended Third Floor Plan P5 Rev A
7. Amended Section P6 Rev C
8. Amended Roadside Elevation P7 Rev H
9. Amended Rear Elevation P8 Rev C
10. Wildlife Mitigation measures

DECISION DATE: As yet undetermined

The development may also require building permission, for which a separate application will need to be made. If you are in any doubt as to whether building permission is required please telephone the Building Applications Team on 448407.

APPROVED

THIRD SCHEDULE

The Owner's 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.

BUS SHELTER FACILITIES

- 2 To pay the Bus Shelter Facilities Contribution to the Treasurer of the States prior to the Commencement of any part of the Development.
- 3 Not to Commence any part of the Development until such time as the Bus Shelter Facilities 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 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 seven years of the date of receipt by the Treasurer of the States of such payment.

Signed on behalf of the Chief Officer

by

(Director)

in the presence of

(Senior Planner)

this 9th day of February 2018

Signed on behalf of Level Four Developments Limited

by .

Director

in the presence of

this 8th day of February 2018

Signed by 72 Great Union Road Limited

Director

in the presence of

this 8th day of February 2018