

Planning Obligation Agreement under Article 25 of the Planning and Building (Jersey)

Law 2002

relating to the development of a site at 76 St John's Road St Helier JE2 3LE

Dated

24th January

2018

The Chief Officer for the Environment(1)

Viermont Limited (2)

Paisley Holdings Limited (3)

DATE

2018

PARTIES

- (1) The Chief Officer for the Environment of States Offices, La Motte Street, St Helier, Jersey ("the Chief Officer")
- (2) Viermont Limited (Co regn. 121572) of The Barn Les Rocquettes Chemin du Radier Grouville Jersey JE3 9DR ("the Owner")
- (3) Paisley Holdings Limited (Company Registration Number 121214) of 15 -17 Rue De Funchal St Helier Jersey JE2 4TT ("the Lender")

RECITALS

- 1 The Owner warrants that it is the owner in perpetuity (*à fin d'héritage*) of the Site in accordance with the title details set out in the First Schedule.
- 2 Paisley has an interest in the Site by virtue of a judicial hypothec (*hypothèque judiciaire*) registered in the Public Registry of Jersey on 13th July 2018
- 3 The Owner has submitted the Application in respect of the Site.
- 4 Having regard to the purpose 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
- 5 The parties hereto have agreed to enter into this Agreement in order to secure the planning obligations contained herein.
- 6 The parties acknowledge that this Agreement is legally binding.
- 7 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 buildings and construct 12 No. two bed dwellings with associated landscaping and parking." and given the reference P/2018/1270.
"Bus Shelter Contribution"		means the sum of twenty thousand pounds (£20,000) to be paid by the Owner to the Treasurer of the States to be applied by the Minister for Infrastructure for the purposes of the construction of a covered bus shelter for the Clubley Estate and associated pavement adjustment works.
"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.
"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;
"Development"		the development of the Site in accordance with the Planning Permit.
"Dwelling Unit""Dwelling Units"		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 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.
"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.
"Pedestrian Footway Strip"		The strip of land shown for the purpose of identification only hatched red on drawing CH035-PL51.
"Pedestrian Footway Works"		all works necessary to create a pedestrian footway with kerb alterations on that part of the Site that is adjacent to St John's Road St Helier and shown for the purpose of identification only hatched black on drawing CH035-PL51.
"Pedestrian Footway Works Specification"		a specification for the carrying out of the Pedestrian Footway Works.
"Plan"		the plan contained in the Second Schedule to this agreement.
"Planning Permit"		the planning permission for the Development as applied for and described in the Application (P/2018/1270) a copy of which is attached in 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.
"Public Road Works Contribution"		means the sum of ten thousand pounds (£10,000) to be paid by the Owner to the Treasurer of the States to be applied by the Infrastructure Minister for the purposes of certain works to realign the Southern side of St John's Road at the sharp corner and associated traffic management measures.
"Royal Court"		the Royal Court of the Island of Jersey.

"Site"		76 St Johns Road, St. Helier JE2 3LE identified by a thick black edging and hatched black on the Plan upon which the Development is to be carried out.

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 Owners under this Agreement create planning obligations pursuant to Article 25 of the Law and are enforceable by the Chief Officer against the Owner.

4 EFFECTIVE DATE

This Agreement shall come into effect immediately upon the date 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 Owner covenants and agrees with the Chief Officer 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 CHIEF OFFICER COVENANTS

The Chief Officer covenants with the Owners as set out in the Fifth 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 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 at Planning and Building Services La Motte Street St Helier Jersey or as otherwise notified for the purpose by notice in writing.
- 8.2 Any notices on the Owner shall be deemed to have been properly served if sent by ordinary post to and addressed to such party at the address referred to above or as otherwise notified for the purpose by notice in writing.
- 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 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.
- 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 as contained herein.
- 8.10 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.
- 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 any 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 Fourth 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 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

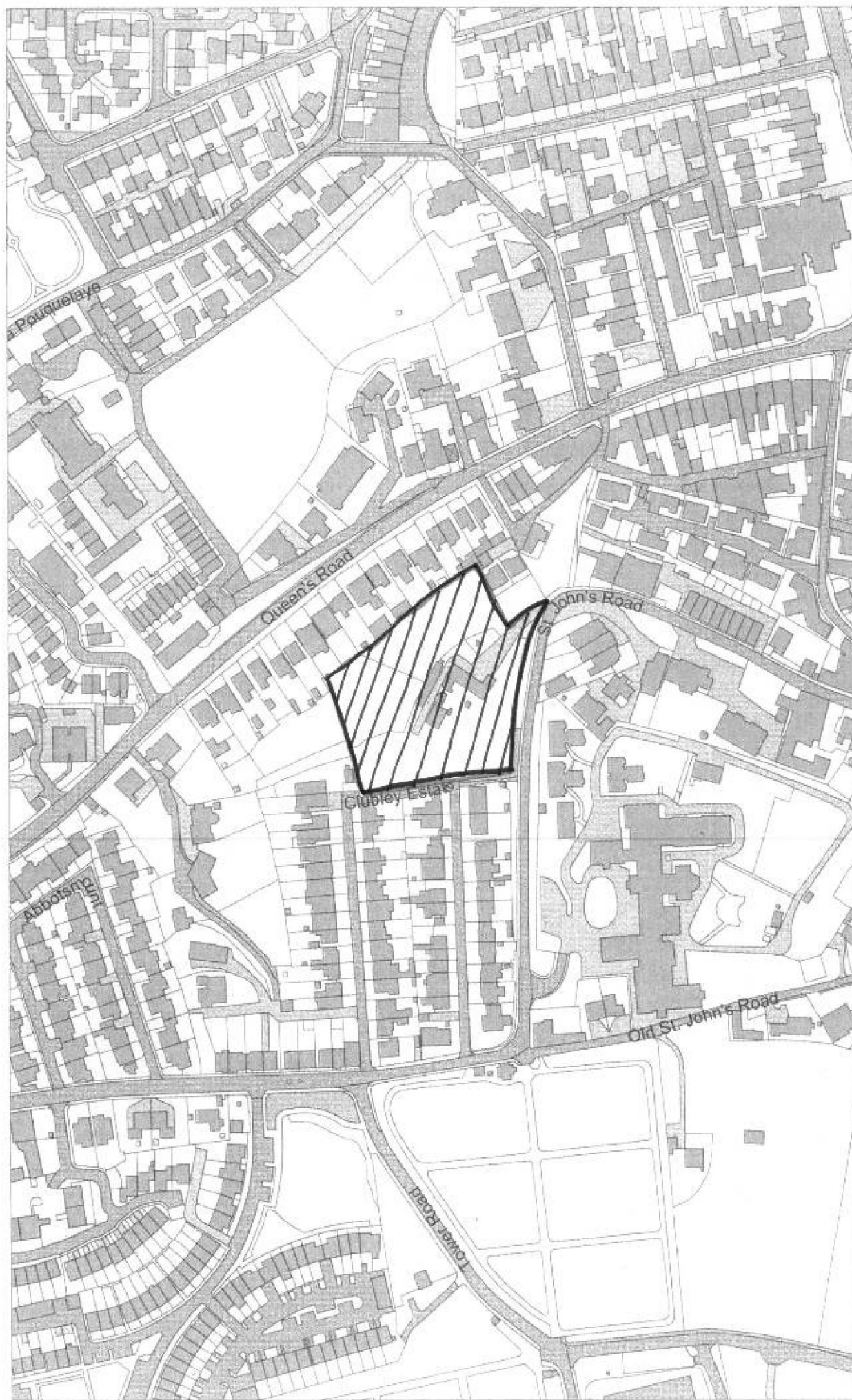
Details of the Owner's Title, and description of the Site

The Owner is the owner of all that immoveable property known as 76 St John's Road St Helier JE2 3LE including the house thereon known as Mont Martin Farm with outbuildings, yards, issues and banks as more particularly described in the contract of hereditary purchase dated 13 July 2018 made between the Owner as Purchaser and Iris Ada Davey née Touzel as Vendor (the whole the Site).

The Site is shown for the purposes of identification on the Plan.

SECOND SCHEDULE

The Plan



LOCATION PLAN

SCALE 1: 2500

30 August 2018

THIRD SCHEDULE

The Planning Permit

Decision Notice

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2018/1270

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 SUBJECT TO A PLANNING OBLIGATION AGREEMENT**, to develop land under Article 19 of the Planning and Building (Jersey) Law 2002;

In respect of the following development:

Demolish existing buildings. Construct 12 No. two bed dwellings with associated parking and landscaping. 3D Model available

To be carried out at:

76, St. Johns Road, St. Helier, JE2 3LE.

Reason for Approval: The proposed development is considered to be acceptable having due regard all of the material considerations raised. In particular, the development has been assessed against Policy GD1, GD3, GD7, BE3 and H6 of the Adopted Island Plan 2011 (Revised 2014) which presume in favour of residential development within the Built-Up Area. In this case, the proposed housing scheme is well designed, will ensure that landscaping will remain the dominant element and will promote highway safety. In addition, the representations raised to the scheme have been assessed. However, it is considered that the proposal accords with all relevant policies and minimum standards and will not cause unreasonable harm to neighbouring users.

This permission is granted subject to compliance with the following conditions and approved plans:

- 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.

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PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2018/1270

- 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. The new point of access and other works to realign the highway shall be completed prior to any construction of the houses hereby approved. The works shall be carried out in accordance with the approved plans and shall thereafter be retained as such.
2. The granite roadside boundary wall shall be completed prior to occupation of the new houses hereby approved.
3. No part of the development hereby approved shall be occupied until the vehicular manoeuvring area and respective car parking spaces have been laid out, surfaced and drained as indicated on the approved plans. The car parking spaces shall thereafter be retained solely for the use of occupants of the development and shall not be sub-let for any other purpose.
4. No part of the development hereby approved shall be occupied until the electric car and bike 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.
5. Prior to commencement of the development hereby approved, a scheme of landscaping shall be submitted to and approved in writing by the Department of the Environment. The scheme of landscaping shall provide details of the following:
 - i) all existing trees, hedgerows and other plants, walls, fences and other features which it is proposed to retain on the site;
 - ii) the position of all new trees and/or shrubs, this must include the species of plant(s)/tree(s) to be planted, their size, number and spacing and the means to be used to support and protect them;
 - iii) other landscape treatments to be carried out including any excavation works, surfacing treatments, or means of enclosure;
 - iv) the measures to be taken to protect existing trees and shrubs;
 - v) the presence of any invasive plant species on site, and if present, a detailed method statement for the removal and long-term management/ eradication of the species; and,
 - vi) A landscape management plan for the maintenance of the landscaped areas.Once agreed, the approved scheme shall be implemented in full and thereafter retained and maintained as such.

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PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2018/1270

6. No part of the development hereby approved shall be occupied until all hard and soft landscape works as indicated on the approved plan have been carried out in full. Following completion, the landscaping areas shall be thereafter maintained as such.
7. Any tree felling, hedge removal or any clearance works shall only be undertaken between the months of 1st October to 1st March in any calendar year, unless a written statement has been submitted from a qualified and competent person confirming that there are no nesting birds or other protected wildlife in any of the trees or hedgerows to be felled or removed. The written statement shall be submitted to and approved by the Department of the Environment at least 5 working days in advance of any felling or clearance works.
8. The existing connections to the foul and surface water sewers shall be protected during demolition and construction phases.
9. The measures outlined in the approved Species Protection Plan (ref. NE-ES/MM.02, 04/10/18, Nurture Ecology) shall be implemented prior to the commencement of development, continued throughout the phases of development (where applicable) and thereafter retained 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.
- Reasons:**
1. In the interests of highway safety, in accordance with Policy GD1 of the Adopted Island Plan 2011 (Revised 2014).
2. In the interests of highway safety and the appearance of the site, in accordance with Policy GD1 and GD7 of the Adopted Island Plan 2011 (Revised 2014).
3. 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).
4. In the interests of promoting sustainable patterns of development, in accordance with Policies TT9 and SP6 of the Adopted Island Plan 2011 (Revised 2014).
5. To safeguard the character and appearance of the area in accordance with Policies GD1, NE1, NE2 and NE4 of the Adopted Island Plan 2011 (Revised 2014).
6. To ensure that the benefits of the approved landscaping scheme are

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Decision Notice

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2018/1270

carried out and completed, making a positive contribution to the amenities of the site in accordance with Policies GD1, GD7, NE1, NE2 and NE4 of the Adopted Island Plan 2011 (Revised 2014).

7. To ensure the protection of any nesting birds and any recognised species in accordance with Policies NE2 and NE4 of the Adopted Island Plan 2011 (Revised 2014).

8. To allow for their reuse, to accord with the requirements of GH&E Drainage in their consultation response dated 01/11/18.

9. To ensure the protection of all protected species in accordance with Policies NE1, NE2 and NE4 of the Adopted Island Plan 2011 (Revised 2014).

FOR YOUR INFORMATION :

Informative 1: The applicant's attention is drawn to the consultation response from the Parish of St. Helier dated 18/10/18 with regard to refuse collection.

Informative 2: The applicant's attention is drawn to the consultation response from GH&E-Transport dated 26/09/18 with regard to their requirements concerning works to the highway.

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

The following plans have been approved:

1. Location Plan
2. Demolition PL-10
3. Proposed Site Layout PL-20
4. Houses 1 & 2 Floor Plans, Sections & Elevations PL-21
5. Units 3,4,5 & 6 Floor Plans Sections & Elevations PL-22
6. Units 7, 8, & 9 Floor Plans Sections & Elevations PL-23
7. Units 10, 11, & 12 Floor Plans, Sections & Elevations PL-24
8. Site Sections Proposed PL-30
9. Proposed Criblock Retaining Wall Sections PL-31
10. Roadside Elevation Existing & Proposed PL-32
11. Site Section C-C Existing & Proposed PL-33
12. Street Elevation Proposed PL-34
13. Site Sections D-D Existing & Proposed PL-35
14. Proposed Amenity Refuse & Parking PL-50
15. New Entrance PL-51
16. Levels PL-52
17. Landscape Proposala Plan PL-53
18. Bin Store, Floor Plan Elevations & Sections PL-26

APPROVED

DECISION DATE: **Currently undated**

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

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CAUTION

This decision is purely permissive and in no way absolves 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 an applicant from the need to obtain the permission of the owner of the land to which a permission relates.

(P1; «P_Ref no»; Page 1)

FOURTH 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 have given to the Chief Officer fourteen (14) days' notice in writing of its intention so to do.

PUBLIC ROAD WORKS

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

BUS SHELTER

- 4 To pay the Bus Shelter Contribution to the Treasurer of the States prior to the Commencement of any part of the Development
- 5 Not to Commence the Development until such time as the Bus Shelter Contribution has been paid to the Treasurer of the States.

FOOTWAY

- 6 Not to Occupy any part of the Development before the Pedestrian Footway Works Specification has been submitted to the Chief Officer for his approval (in consultation with the Infrastructure Minister) and has been approved by the Chief Officer.
- 7 Not to Occupy any part of the Development until the Owner has given to the Infrastructure Minister twenty-eight (28) days' notice in writing of his intention to do the Pedestrian Footway Works
- 8 That the Owner will at its own expense undertake the Pedestrian Footway Works or carry out or cause to be carried out the Pedestrian Footway Works the whole in accordance with the approved Pedestrian Footway Works Specification.

- 9 That on completion of the Pedestrian Footway Works the Owner shall provide to or procure via its architect for the Chief Officer three sets of as built plans (in such media format as the Chief Officer reasonably requires) and other information reasonably required by the Chief Officer plus a further copy for the Infrastructure Minister (for land survey and tying into the island co-ordinate system).
- 10 Not to Occupy or use or cause or permit to be Occupied more than 50% of the Dwelling Units until such time as the Owner has notified the Infrastructure Minister that the Owner considers that the Pedestrian Footway Strip is ready and complete for transfer.
- 11 Within 21 days of notification of that the Pedestrian Footway Strip is ready for transfer, the Owner shall cede and transfer and the Public shall take conveyance of the relevant property free of all charges and encumbrances by contract to be passed before the Royal Court, to ensure the Public complies with Standing Orders of the States, the Owner paying the proper and reasonable costs of and incidental to the said transfer (including all and any reasonable legal and professional costs).

FIFTH SCHEDULE

Chief Officer's Covenants

1. The Chief Officer hereby covenants with the Owner to use all sums received by the Treasurer of the States from the Owner 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 that he will procure or arrange that the Treasurer of the States will pay to the Owner such amount of any payment made by the Owner 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

Name and Position

PETER LE GRESLEY (DIRECTOR)

in the presence of

ELIZABETH STABLES

Name and Position

SENIOR PLANNER

this

24th

day of

January

2019

Signed on behalf of Vice

Name and Position

MR. J. WORTHINGTON

in the presence of

Name and Position

Katherine Marshall, Advocate

this

3

day of

JANUARY

2019

JEN

Signed on behalf of Paisley Holdings Limited

Name and Position

FRANK BRADY - DIRECTOR

in the presence of

Name and Position

MARTIN BUENS ADMINISTRATOR

this

12th

day of

JANUARY

2019

Signed on behalf of the Chief Officer

Name and Position

PETER LE GREY (DIRECTOR)

in the presence

Name and Position

ELIZABETH STABLES, SENIOR PLANNER

this 24th day of January 2018

Signed on behalf of Vice

Name and Position

MR. J. WORTHINGTON

in the presence

Name and Position

Katherine Marshall, Advocate

this 3rd day of JANUARY 2018 JN

Signed on behalf of Paisley Holdings Limited

Name and Position

in the presence of

Name and Position

this day of 2018