


In the Royal Court of Jersey

Samedi Division

In the year two thousand and nineteen, the twentieth day of June.

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, Epoch Properties Limited and Sportsdirect.com Retail Limited in relation to 8-18 King Street, St Helier, Jersey 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 8-18 King Street, St Helier, Jersey

Dated

19th June

2019

The Chief Officer for the Environment (1)

Epoch Properties Limited (2)

Sportsdirect.com Retail Limited (3)

DATE

19th June

2019

PARTIES

1. The Chief Officer for the Environment of States Offices, South Hill, St Helier, Jersey JE2 4US ("**the Chief Officer**");
2. Epoch Properties Limited (Co Regn 74753) of First Floor La Chasse Chambers Ten La Chasse St Helier Jersey JE2 4UE ("**the Owner**"); and
3. Sportsdirect.com Retail Limited (registered in England and Wales with Co Regn No 03406347) of Unit A, Brook Park East, Shirebrook, NG20 8RY ("**the Lender**")

RECITALS

- 1 The Owner warrants that it is the owner in perpetuity (à *fin d'héritage*) of the Site by hereditary purchase by contract dated 6 August 1999 from Scottish Widows Fund and Life Assurance Society.
- 2 The Lender has an interest in the Site by virtue of a judicial hypothec (hypothèque judiciaire) dated 26 August 2016
- 3 Having regard to the purposes of the Law, the Island Plan 2011 and all other material considerations the Planning Committee at its meeting on 7 March 2019 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 "Demolish existing and construct second floor to create additional retail area and construct plant area to roof. Various external alterations." and given the reference P/2018/1436;
"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;
"Cycle Contribution"	Stands	the sum of one thousand seven hundred and twenty-eight pounds (£1,728) to be paid by the Owner to the Treasurer of the States to be applied by PoSH for the provision and fitting of 7 Sheffield cycle stands;
"Development"		the development of the Site as set out in 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;
"Pavement Contribution"	the sum of thirty five thousand pounds (£35,000) to be paid by the Owner to the Treasurer of the States to be applied by PoSH for the purpose of strengthening the section of pavement across the service access at the rear of 8-18 King Street, and the re-paving in granite of this and the neighbouring section of public pavement, forming the service access in front of Don House in matching granite;
"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;
"Royal Court"	the Royal Court of the Island of Jersey;

"Site"	the site comprising the property known as 8-18, King Street, St. Helier, JE2 4WF the whole as shown for the purposes of identification coloured red on the plan at the First Schedule;

2 CONSTRUCTION OF THIS AGREEMENT

- 2.1 Where in this Agreement reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Agreement.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5 Any reference to a law of the States of Jersey shall include any modification, extension or re-enactment of that law for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that law or deriving validity from it.
- 2.6 References to any party to this Agreement shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Chief Officer the successors to his statutory functions.
- 2.7 This Agreement shall be construed so as to give effect to the purpose of the Law.

3 LEGAL BASIS

- 3.1 This Agreement is made pursuant to Article 25 of the Law.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Agreement create planning obligations pursuant to Article 25 of the Law and are enforceable by the Chief Officer against the Owner.

4 CONDITIONALITY

This Agreement is conditional upon:

- (i) the grant of the Planning Permit; and
- (ii) the Commencement of Development,

save for any relevant provision which shall come into effect immediately upon the date on which this Agreement has been recorded as registered in the Royal Court as evidenced by an Act of the said Court.

5 OWNER'S COVENANTS

The Owner covenants and agrees with the Chief Officer as set out in the Third Schedule 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 Owner as set out in the Fourth Schedule.

7. PUBLIC REGISTRY OF CONTRACTS

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

8 MISCELLANEOUS

- 8.1 Where the agreement, approval, consent or expression of satisfaction is required by the Owner 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 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 Owner in favour of the Chief Officer under this Agreement are in addition to any of the Chief Officer's statutory powers under the Law.
- 8.8 Nothing contained in this Agreement shall be construed as obviating the need for the Owner 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 in this Agreement.
- 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 in this Agreement.
- 8.11 All communications and notices served or made under this Agreement shall be in writing.

9 WAIVER

No waiver (whether expressed or implied) by the Chief Officer of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Chief Officer from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

10 CHANGE IN OWNERSHIP

The Owner agrees with the Chief Officer to give the Chief Officer written notice (as soon as reasonably practical following such change) of any change in ownership of its interest in the Site occurring before all the obligations under this Agreement have been discharged.

11 INDEXATION

Any sum referred to in the Third Schedule shall be increased by an amount equivalent to the increase in the Index from (a) the date on which the Planning Permit becomes capable of implementation following the elapse of the statutory period for the making of a third party appeal without any such appeal having been made or, if applicable, the final determination of any third party appeal until (b) the date on which such sum is payable.

12 INTEREST

If any payment due under this Agreement is paid late, Interest will be payable from the date payment is due to the date of payment.

13 DISPUTE RESOLUTION

In the event that any dispute shall arise in respect of any provision of this Agreement it shall be referred if not resolved within seven working days to the arbitration of an independent arbitrator under the provisions of the Arbitration (Jersey) Law 1998 such arbitrator to be named by the agreement of the parties to the dispute or in default of agreement by the President for the time being of the Royal Institution of Arbitrators upon the application of any party to the dispute.

14 GOODS AND SERVICES TAX

14.1 All *cause* given in accordance with the terms of this Agreement shall be exclusive of any GST properly payable in respect thereof.

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

15 LENDER'S CONSENT

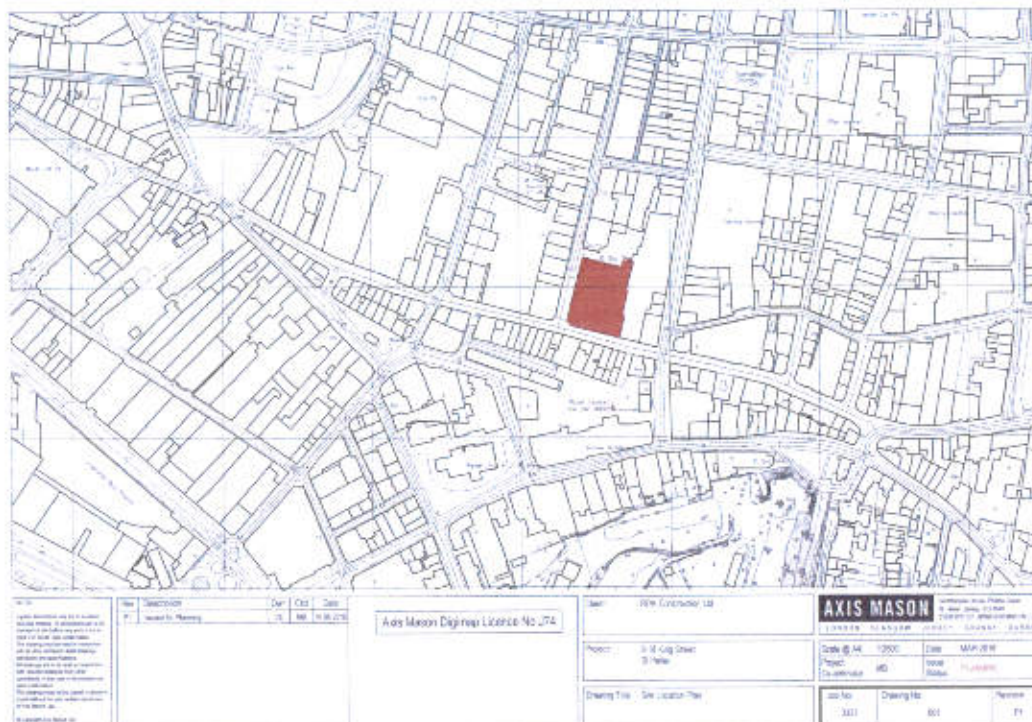
The Lender acknowledges and declares that this Agreement has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Agreement and that the security of the Lender over the Site shall take effect subject to this Agreement PROVIDED THAT the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

16 JURISDICTION

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

FIRST SCHEDULE

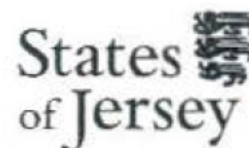
The Site



SECOND SCHEDULE

The Planning Permit

Decision Notice



PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2018/1436

In accordance with Article 19(8) of the Planning and Building (Jersey) Law 2002, as representations were made in connection with this application, this decision shall not have effect during the period of 28 days immediately after the decision date.

This permission enures (unless otherwise stated) for the benefit of the land to which it relates and of each person for the time being having an estate or interest in that land.

This decision does not absolve the parties concerned from obtaining, nor does it overrule, any other permission that may be required under any other law. In addition, it does not overrule any private property rights, nor does it absolve the need to obtain the permission of the owner of the land to which this permission relates.

This is notification of the decision to **GRANT** permission to develop land under Article 19 of the Planning and Building (Jersey) Law 2002;

In respect of the following development:

Change of use of part of ground floor to cafe. Demolish existing and construct second floor to create additional retail area and construct plant area to roof. Various external alterations.

To be carried out at:

8-18, King Street, St. Helier, JE2 4WF.

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 particularly against Policy ER2, GD1, GD5, GD7, HE1, BE6, BE7 and BE10 of the Adopted Island Plan 2011 (Revised 2014), which allow for the development of sites in the Built-Up Area for retail use where these are of good design, and would not have an unreasonable effect on neighbouring users or on the historic environment. In this case, the amended proposal will provide an additional floor of retail space, replacing an existing area of storage space at this same level. The additional floor area is considered acceptable and the alterations overall will improve the appearance of the building with minimal impact on neighbouring uses. The scheme is therefore regarded as acceptable.

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.

APPROVED

Decision Notice



PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2018/1436

- 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. Prior to their first use on site, samples of all external materials to be used (including any hard landscaping materials) shall be submitted to and approved in writing by the Department of the Environment. The approved materials shall be implemented in full and thereafter retained and maintained as such.
2. Prior to their first use on site, drawings to a scale of no less than 1:20 shall be submitted to and approved in writing by the Department of the Environment to illustrate the construction details of the stone plinth and cladding at the junction with the window reveals. No part of the development hereby approved shall be occupied until the details are implemented in full and thereafter they must retained as such.

Reasons:

1. To promote good design and to safeguard the character and appearance of the surrounding area, in accordance with Policies GD1 and GD7 of the Adopted Island Plan 2011 (Revised 2014).
2. To promote good design and to safeguard the character and appearance of the surrounding area, in accordance with Policies GD1 and GD7 of the Adopted Island Plan 2011 (Revised 2014).

FOR YOUR INFORMATION:

Informative 1: the applicant is advised that separate application for advertisement consent will be required for all of the signage indicated on the Drawings.

Informative 2: the applicant's attention is drawn to the consultation response from the Parish of St Helier (15/11/18) with regard to various issues to be agreed with them prior to commencement.

Informative 3: 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

APPROVED

Decision Notice



PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2018/1436

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.

Informative 4: the applicant's attention is drawn to the consultation response from GH&E-Transport in their letter dated 30/10/18 with regard to various highway issues and requirements.

Informative 5: the applicant's attention is drawn to the consultation response from Environmental Health in their letter dated 18/10/18 with regard to the nature of any plant required.

Informative 6: the applicant's attention is drawn to the consultation response from Jersey Fire and Rescue in their letter dated 26/10/18 with regard to compliance with Jersey legislation. 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'.

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

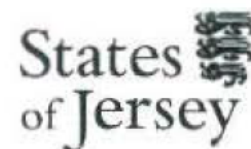
The following plans have been approved:

1. Location Plan
2. Amended Proposed Site Plan 050 P4
3. Amended Proposed Ground Floor Plan 100 P3
4. Amended Proposed First Floor Plan 101 P3
5. Proposed Second Floor Plan 102 P2
6. Proposed Roof Plan 103 P2
7. Amended King Street and Don Street Elevations 300 P4
8. North and east Elevations 301 P2
9. Proposed Sections 1 and 2, 200 P2

DECISION DATE: NO DECISION DATE AS YET

APPROVED

Decision Notice



PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2018/1436

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 Owner's Covenants with the Chief Officer

The Owner covenants, agrees and undertakes:

COMMENCEMENT

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

CONTRIBUTIONS

- 2 To pay each of the Cycle Stands Contribution and the Pavement Contribution to the Treasurer of the States prior to the Commencement of the Development.
- 3 Not to Commence the Development until such time as each of the Cycle Stands Contribution and the Pavement Contribution has been paid to the Treasurer of the States.

FOURTH 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 four years of the date of receipt by the Treasurer of the States of such payment.

Signed on behalf of the Company

by

(PETER LE GRESLEY)

in the presence of

(ELIZABETH STABLES)

this 19th day of June 2019

Signed on behalf of the Company Limited

by

in the presence of

ALEX McMILLAN

this 17 day of June 2019

Signed on behalf of the Company Limited

by

in the presence of

ALEX McMILLAN

this 17 day of June 2019

