

In the Royal Court of Jersey

Samedi Division

In the year two thousand and nineteen, the sixth 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, Basil Maurice Jeanne, Susan Ann Jeanne née De La Haye and Royal Bank of Scotland International Limited in relation to Belle Hougue, La Route des Cotes du Nord, Trinity, JE3 5BJ 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 Belle Hougue, La Route des Cotes du Nord, Trinity, JE3 5BJ

Dated

6th June

2019

The Minister for the Environment (1)

Basil Maurice Jeanne and Susan Ann Jeanne, née de la Haye (2)

Royal Bank of Scotland International Limited (3)

DATE

6th June

2019

PARTIES

- (1) The Minister for the Environment of States Offices, South Hill, St Helier, Jersey JE2 4US ("**the Minister**");
- (2) Basil Maurice Jeanne and Susan Ann Jeanne, née de la Haye ("**the Owners**") of Belle Hougue, La Route des Cotes du Nord, Trinity, JE3 5BJ
- (3) The Royal Bank of Scotland International Limited (Company Registration Number 2304) trading as NatWest of, Royal Bank House 71 Bath Street St Helier Jersey JE2 4SU ("**the Lender**")

RECITALS

- 1 The Owners warrant that by right under hereditary contracts of purchase passed on 16 October 2003 with Mr. Michael Harold James Parlett and 24 April 2009 with Maurice Alfred Philip Jeanne and Lucille Marguerite Jeanne née Gouédard they are the owners in perpetuity (*à fin d'héritage*) as to the Site.
- 2 The Lender has an interest in the Site by virtue of a judicial hypothec (*hypothèque judiciaire*) dated 28 January 2011.
- 3 The Owners submitted the Application (accorded the reference P/2015/1022) for planning permission for the Development.
- 4 On 12 November 2015 the Committee on a request for reconsideration endorsed the refusal of planning permission subsequent to which the applicant exercised his right under Article 108 of the 2002 Law to appeal the said refusal of planning permission ("the Appeal").
- 5 The Appeal was heard by an Inspector ("the Inspector") on the 11 May 2016.
- 6 Having regard to the purposes of the Law the Island Plan 2011 and all other material considerations the Inspector in his report dated 27 May 2016 ("the Inspector's Report") to the Minister recommended that the Minister allow the Appeal and grant planning permission for the Development subject to the applicant entering into a planning obligation to secure the preclusion of the construction of the garage extension approved on 1 March 2016 (ref: P/2016/0070).
- 7 Having considered the Inspector's Report the Minister has given effect to the Inspector's recommendation to allow the appeal and grant planning permission subject to the prior completion of this Agreement to secure the obligations contained herein.
- 8 The parties hereto have agreed to enter into this Agreement in order to secure the planning obligations contained herein.
- 9 The parties acknowledge that this Agreement is legally binding.

- 10 This Agreement shall be construed so as to give effect to the purpose and intention of the Law.

NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

For the purposes of this Agreement the following expressions shall have the following meanings:

"Agreement"	this agreement including the recitals and schedules hereto;
"Application"	the application for planning permission in respect of the Site and described as "Demolish various structures and construct store to North-West of site with associated earthworks." and given the reference P/2015/1022;
"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;
"Existing Planning Consent"	Means planning permission granted on 1 March 2016 under reference P/2016/0070 to "Construct extension to existing garage North of site"
"Development"	the development of the Site as set out in

	the Application;
"GST"	goods and services tax under the Goods and Services Tax (Jersey) Law 2007;
"Island Plan 2011"	The States of Jersey Island Plan, 2011 (as amended from time to time);
"Law"	the Planning and Building (Jersey) Law 2002;
"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 Minister pursuant to the Appeal, 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"	Belle Hougue, La Route des Cotes du Nord, Trinity, JE3 5BJ 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 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 Minister and 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 the Third Schedule and any other 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 OWNERS COVENANTS

- 5.1 The Owners covenant and agree with the Minister as set out in the Third 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.
- 5.2 The Owners hereby surrender and relinquish without claiming any compensation the rights conferred by the Existing Planning Consent which shall be deemed to be revoked by this Agreement.

6. PUBLIC REGISTRY OF CONTRACTS

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

7 MISCELLANEOUS

- 7.1 Where the agreement, approval, consent or expression of satisfaction is required by the Owners from the Minister under the terms of this Agreement such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction may be given on behalf of the Minister by the Director - Development Control of Planning and notice or communication to the Minister pursuant to the provisions of this Agreement shall be addressed to the Director - Development Control 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.
- 7.2 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.
- 7.3 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement.
- 7.4 This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permit shall be quashed, cancelled, revoked or otherwise withdrawn or (without the consent of the 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.
- 7.5 No person shall be liable for any breach of any of the planning obligations or other provisions of this Agreement after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.6 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permit) granted (whether or not on appeal) after the date of this Agreement.
- 7.7 Except in so far as legally or equitably permitted this Agreement shall not prejudice or fetter or affect any statutory power discretion or duty of the Minister and without prejudice to the generality of the foregoing it is agreed between the parties hereto that any benefit or power conferred on the Minister by any of the obligations or covenants by the Owners in favour of the Minister under this Agreement are in addition to any of the Minister's statutory powers under the Law.
- 7.8 Nothing contained herein shall be construed as obviating the need for the 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.
- 7.9 Nothing in this Agreement shall be construed or interpreted in such a way or inference to be drawn so as to place or create a duty of care upon the Minister as a result of the Minister agreeing to accept the covenants agreements and undertakings on the part of the Owners as contained herein.

7.10 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.

7.11 All communications and notices served or made under this Agreement shall be in writing.

8 WAIVER

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

9 CHANGE IN OWNERSHIP

The Owners agree with the Minister to give the Minister 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.

10 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.

11 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.

12 LENDER'S CONSENT

The Lender acknowledges and declares that this Agreement has been entered into by the Owners 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 Owners

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.

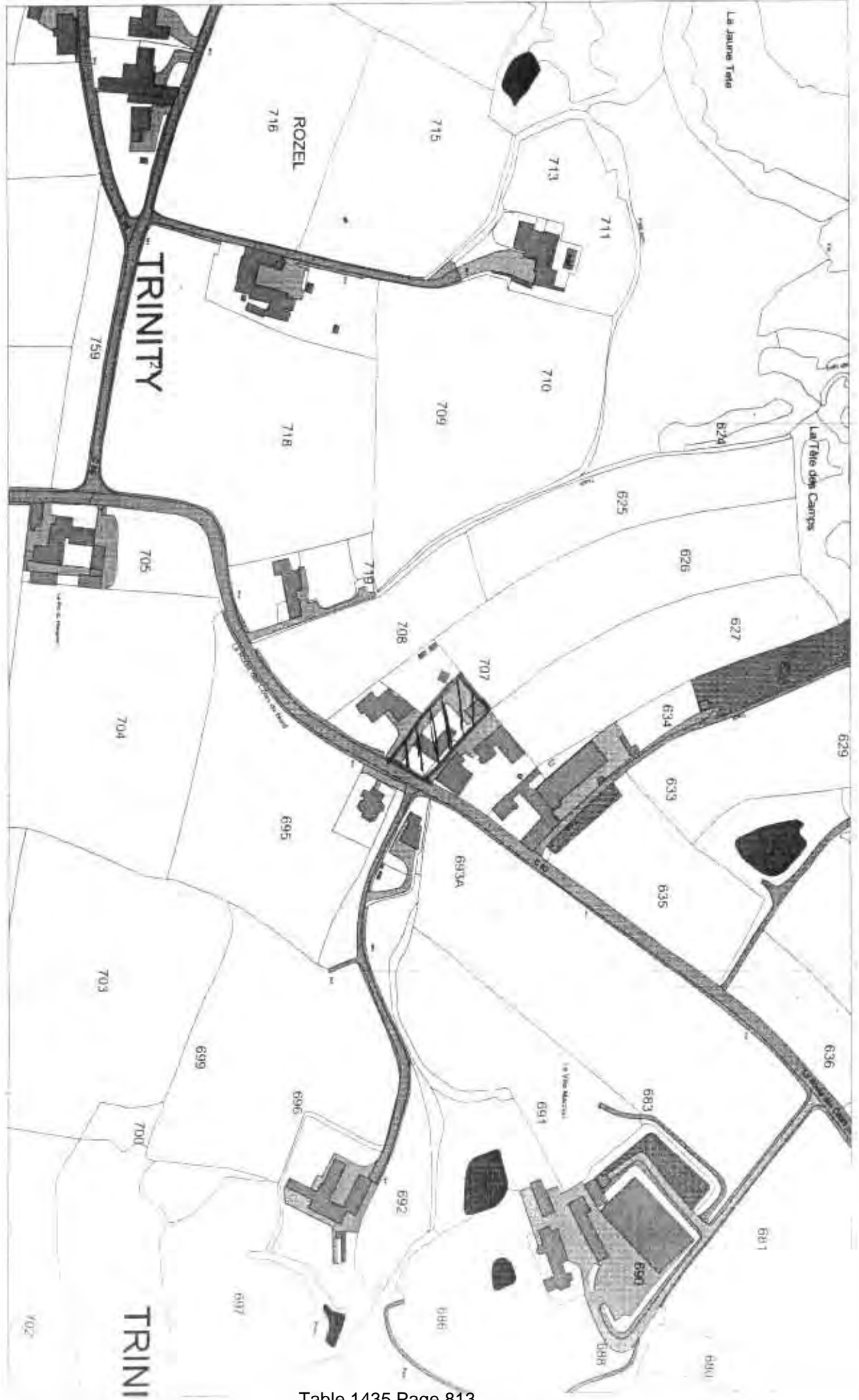
FIRST SCHEDULE

The Plan

22 January 2016

LOCATION PLAN

SCALE 1 : 2500



SECOND SCHEDULE

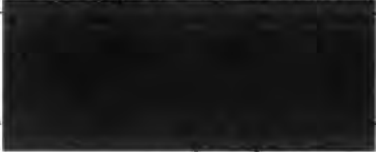
The Planning Permit

Decision Summary

Department of the Environment

Ministerial Decision

Decision Reference: MD- PE- 2016 – 0080			
Decision Summary Title:	Appeal Decision – P/2015/1022 Belle Hougue, La Route des Cotes du Nord, Trinity	Date of Decision Summary:	01 June 2016
Decision Summary Author:	Judicial Greffier	Decision Summary: Public or Exempt?	Public
Type of Report: Oral or Written?	Written	Person Giving Oral Report:	n/a
Written Report Title:	Report to the Minister for the Environment	Date of Written Report:	27 May 2016
Written Report Author:	D A Hainsworth LL.B(Hons) FRSA	Written Report : Public or Exempt?	Public
Subject:			
Appeal under Article 108 of the Planning and Building (Jersey) Law 2002 against a refusal to grant planning permission at Belle Hougue, La Route des Cotes du Nord, Trinity (P/2015/1022)			
Decision:			
The Minister allowed the appeal in full and was minded to grant planning permission to develop land under Article 116 of the Planning and Building (Jersey) Law 2002.			
In respect of the following development: "Demolish various structures and construct store to North-West of site with associated earthworks."			
To be carried out at Belle Hougue, La Route des Cotes du Nord, Trinity.			
The Minister is minded to grant permission but only subject to the appellant entering into a planning obligation pursuant to Article 25 of the Planning and Building (Jersey) Law 2002 (as amended) that precludes the construction of the garage extension approved on 1 March 2016 (ref: P/2016/0070);			
And any permission to be granted shall be subject to compliance with the following conditions and approved plan(s):			
A. The development shall commence within five 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 shall be carried out entirely in accordance with the plans, drawings, written details and documents which form part of any permission. Reason: To ensure that the development is carried out and completed in accordance with the details approved.			
1. The store shall only be used for the purposes ancillary to the enjoyment of the			

dwellinghouse, Belle Hougue, as such, and for no other purpose. Reason: To protect the amenities of nearby residents.	
Reason(s) for Decision: The Minister agrees with the overall conclusion of the Inspector as detailed within their report dated 27 May 2016 and is minded to grant planning permission subject to the appellant entering into a planning obligation agreement that is designed to protect the Green Zone from the cumulative impact of development at Belle Hougue.	
Resource Implications:- None	
Action required: Request the Judicial Greffe to inform interested parties of the decision.	
Signature: Deputy S Luce	 Position: Minister for the Environment
Date Signed: 2/6/16	Date of Decision (If different from Date Signed):

THIRD SCHEDULE**The Owners Covenants with the Minister**

The Owners covenant, agree and undertake:

COMMENCEMENT

- 1 Not to Commence the Development until the Owners have given to the Minister not less than fourteen (14) days' notice in writing of their intention so to do.

PLANNING PERMISSION P/2016/0070

- 2 Not to take any action to implement or to further implement the Existing Planning Consent in all or any regard in respect of the Site (including each and every part thereof)
- 3 Not to object to or seek or claim or take any action to obtain any compensation as a result of this Agreement, any deemed revocation or any future revocation order under the Law in respect of the Existing Planning Consent

Signed on behalf of the Minister:

[Redacted signature]

Name and Position: PETER LE GREY (DIRECTOR)

in the presence of

[Redacted signature]

Name and Position: REBECCA HAMPSON (OFFICER)

this 6th day of June 2019

Signed by Basil Maurice Jeanne

[Redacted signature]

[Redacted signature]

Stephen J Crane
Advocate
12 Hill Street
St. Helier

Name and Position: JERSEY JE2 4UA

this 14th day of May 2019

Signed by Susan Ann Jeanne, née de la Haye

[Redacted signature]

[Redacted signature]

Stephen J Crane
Advocate
12 Hill Street
St. Helier
JERSEY JE2 4UA

Name and Position:

this 14th day of May 2019

Signed on behalf of the Royal Bank of Scotland International Limited:



Name and Position: SIMON PARKER - BUSINESS MANAGER

in the presence of

GRAEME HEBENTON 

Name and Position: RELATIONSHIP DIRECTOR

this 21 day of MAY 2019