

In the Royal Court of Jersey

Samedi Division

In the year two thousand and seventeen, the twenty-ninth day of November.

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 and Potage Farm Limited in relation to Field 157, La Rue de la Hauteur, St Lawrence, 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 Field No. 157, La Rue de la Hauteur, St. Lawrence.

Dated

28th November

2017

The Chief Officer for the Environment (1)

Potage Farm Limited (2)

DATE

2017

PARTIES

- (1) The Chief Officer for the Environment of States Offices, South Hill, St Heller, Jersey JE2 4US ("**the Chief Officer**");
- (2) Potage Farm Limited (Co Regn 108572) whose registered office is situate at Beachside Business Centre Rue Du Hocq St Clement Jersey JE2 6LF ("**the Owner**")

RECITALS

- 1 The Owner warrants that it is the owner in perpetuity (*à fin d'héritage*) as to the Site by virtue of a contract of gift dated 28 June 2013 from Sally Mary Coenen née Staite.
- 2 The Owner submitted an application (accorded the reference PP/2017/0264) for outline planning permission for the Development.
- 3 Pursuant to Article 9(5)(b) of the Law the Chief Officer referred the application for the Development to the Planning Committee for determination by that Committee.
- 4 Having regard to the purposes of the Law the Island Plan 2011 and all other material considerations the Planning Committee at its meeting on 21 September 2017 resolved to approve the grant of planning permission for the Development subject to the prior completion of this Agreement to secure the obligations contained herein.
- 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:

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| | |
| "Agreement" | this agreement including the recitals and schedules hereto; |

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| "Application" | the application for outline planning permission in respect of the Site and described as "OUTLINE APPLICATION: Construct tourist accommodation with ancillary staff accommodation to East of Field No. 157. Fixed Matters: Scale and mass, siting, means of access and external appearance and materials. Reserved Matters: Landscaping." and given the reference PP/2017/0264; |
| "Chief Officer" | the person appointed from time to time as the chief executive officer (or equivalent) of the administration of the States department 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; |
| "Development" | the development of the Site as set out in the Application; |
| "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" | occupation for the purposes permitted by the Planning Permit but not including occupation by personnel engaged in demolition, site clearance, construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations; |

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| "Plan" | the plan of the Site numbered 763-15-S03 attached at the First Schedule to this Agreement; |
| | |
| "Planning Permit" | the outline planning permission for the Development granted by the Chief Officer pursuant to the Application, a copy of which is attached at the Second Schedule which said permission is granted subject to the subsequent approval of the Reserved Matters and references to the Planning Permit include where the context permits any variations to the said planning permission from time to time; |
| | |
| "Reserved Matters" | Approvals as required under Condition C of the Planning Permit of the details of the landscaping of the Site |
| | |
| "Reserved Matters Approvals" | the approval of the Reserved Matters by the Chief Officer following the granting of the Planning Permit |
| | |
| "Royal Court" | the Royal Court of the Island of Jersey; |
| | |
| "Site" | Field No. 157, La Rue de la Hauteur, St. Lawrence, the whole as shown for the purpose of identification edged by a broken black line 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 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 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 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.

7. MISCELLANEOUS

- 7.1 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.
- 7.2 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.
- 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 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.
- 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 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.
- 7.8 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.
- 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 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.

7.10 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.

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 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.

9 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 legal ownership of the Site occurring before all the obligations under this Agreement have been discharged.

10 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.

11 GOODS AND SERVICES TAX

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

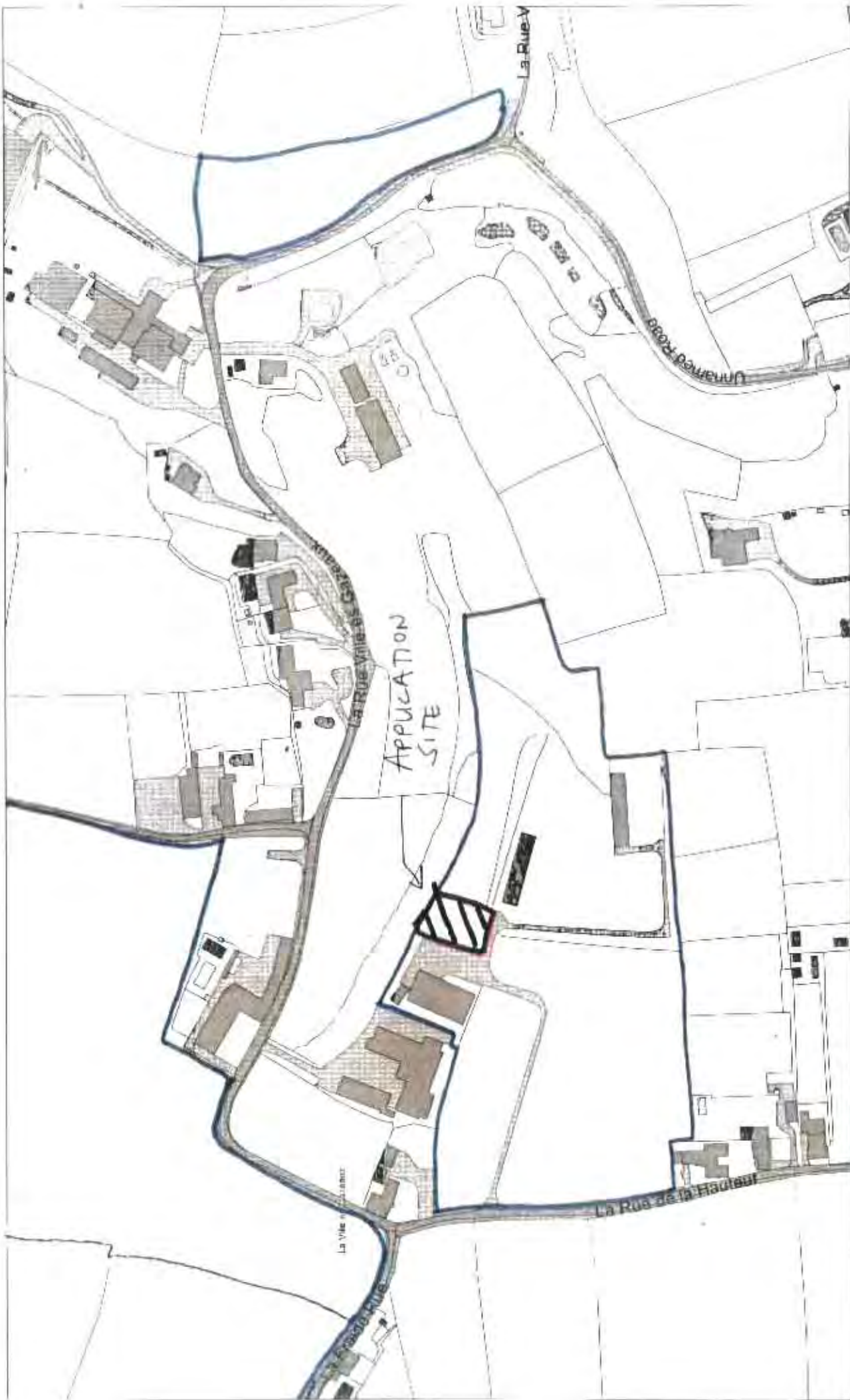
11.2 If at any time GST is or becomes chargeable in respect of any supply made in accordance with the terms of this Agreement then to the extent that GST had not previously been charged in respect of that supply the person making the supply shall have the right to issue a GST invoice to the person to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

12 JURISDICTION

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

FIRST SCHEDULE

The Plan



LOCATION PLAN

23 February 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



Mr Chris Dunne
Architecture D3 Ltd.
Office 2
Bethlehem Centre
Bethlehem Methodist Church
St Mary
JE3 3DE

Planning Application Number PP/2017/0264

Dear Sirs

| | |
|-----------------------------|--|
| Application Address: | Field No. 157, La Rue de la Hauteur, St. Lawrence. |
| Description of Work: | OUTLINE APPLICATION: Construct tourist accommodation with ancillary staff accommodation to East of Field No. 157. Fixed Matters: Scale and mass, siting, means of access and external appearance and materials. Reserved Matters: Landscaping. |

Please find enclosed the decision notice for the above application.

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 please notify us immediately.

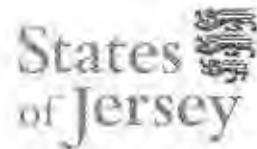
Failure to comply with the approved plans or conditions may result in enforcement action.

If you are unhappy with a condition attached to this permission, you may request a review or make an appeal. How to do this is set out in Supplementary Planning Guidance Practice Note No. 3 available online at www.gov.je

Yours faithfully

A large black rectangular redaction box covering the signature area of the letter.

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



Planning Application Number PP/2017/0264

Draft 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 outline permission under Article 19 of the Planning and Building (Jersey) Law 2002;

In respect of the following development:

OUTLINE APPLICATION: Construct tourist accommodation with ancillary staff accommodation to East of Field No. 157.

Fixed Matters: Scale and mass, siting, means of access and external appearance and materials.

Reserved Matters: Landscaping.

To be carried out at:

Field No. 157, La Rue de la Hauteur, St. Lawrence.

REASONS FOR APPROVAL: The proposed development has been assessed against Policies SP 1; SP 4; GD 1; GD 7; GD 8; NE 7; ERE 1; ERE 2; EVE 1; LWM 2 and LWM 3 of the Adopted Island Plan 2011 (Revised 2014) and the Rural Economic Strategy 2017 to 2021. In this instance, there is considered to be sufficient justification for new development in the Green Zone having due regard to all of the material considerations raised and the precise needs of the applicant to secure his future in the agricultural industry. The development will also provide a new tourism development in the countryside in conjunction with the existing farm holding, and an agricultural workers dwelling in accordance with the aims of the Rural Economic Strategy and the relevant Island Plan policy context.

APPROVED

Decision Notice

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number PP/2017/0264

In addition, the representations raised to the scheme on the grounds of i) the holiday accommodation will be permanent and if this venture fails then housing will be the outcome; ii) the site is within the Green Zone with a presumption against all forms of development; iii) the development will lead to an increase in noise, pollution, light levels; iv) there will be an increase in traffic generation given no suitable bus links; v) the proposal will result in a loss of agricultural land; vi) there is no justification for the proposal as there have been no changes from the last refusal; vii) an unacceptable precedent will be set if allowed, and viii) this is the wrong development in the wrong place, have been assessed.

However, it is considered that the proposal is an appropriate departure to the terms of Policies GD 1, ERE 1 and NE 7 of the Adopted 2011 Island Plan (Revised 2014) in that it does not have an unreasonable visual impact nor results in the loss of substantial agricultural land; the new building would be located in close proximity to the existing agricultural building on site. In terms of precedent, no other known case is so similar as to be determinative, nor does it deliver the economic benefits achieved for the agricultural and tourism industries anticipated by this scheme. The proposal does not impact adversely on neighbouring properties and can be well drained and accessed, with suitable parking arrangements. Finally, the occupancy of the proposal can be controlled by Planning Obligation Agreement.

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

- A. The development shall commence within three years from the decision date or within two years following the final approval of the reserved matters, whichever is the later.
Reason: The development to which this permission relates will need to be reconsidered in light of any material change in circumstance.
- B. Application(s) for the approval of all Reserved Matters, as detailed in Condition C, shall be made within one year of the original decision date.
Reason: To accord with Article 19(6) of the Planning and Building (Jersey) Law 2002.
- C. Approval of the details of the landscaping of the site – hereinafter called the Reserved Matters – shall be obtained by application prior to any development commencing.
Reason: To accord with Article 19(6) of the Planning and Building (Jersey) Law 2011.

APPROVED

Decision Notice

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number PP/2017/0264

Condition(s):

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. Notwithstanding the provisions of the Planning and Building (General Development) (Jersey) Order 2011, or any amendment to or replacement of that order, no works involving the erection of a building, extension, structure, gate, wall, fence or other means of enclosure, tank, conversion of garages or lofts, the creation of any new openings in the external fabric of the building (or the replacement of any windows with doors or vice versa), or the introduction of any hard standing to any ground surface, nor the installation of any lighting is permitted without the prior written approval of the Department of the Environment.
3. Before any development first commences on site, precise details of bicycle parking and storage provision and facilities for electric car charging to serve the development hereby approved shall be submitted to and approved in writing by the Department of the Environment. The approved scheme shall be implemented prior to first occupation of the development.
4. No part of the development hereby approved shall be occupied until the renewable energy measures to off-set the carbon emissions are installed in accordance with the approved plans. Thereafter, the measure shall be retained and maintained as such.
5. Before any development first commences on site, precise details of the proposed foul disposal arrangements from the site to La Fraide Rue shall be submitted to and approved in writing by the Department of the Environment. The approved scheme and the proposed soakaway installations for surface water purposes shall be installed prior to first occupation of any part of the development.

Reason(s):

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. The prominence and isolated location of the site is considered to require additional controls to safeguard the character and visual amenities of the area in accordance with Policy GD1 of the Adopted Island Plan 2011 (Revised 2014).

APPROVED

Decision Notice

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number PP/2017/0264

3. In the interests of promoting sustainable patterns of development, in accordance with Policies TT9 and SP6 of the Adopted Island Plan 2011 (Revised 2014).
4. In accordance with Policy NR7 of the Adopted Island Plan 2011 (Revised 2014).
5. To ensure satisfactory foul and surface water drainage arrangements in accordance with the requirements of Policies LWM 2 and LWM 3 of the Adopted Island Plan 2011 (Revised 2014).

FOR YOUR INFORMATION

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

The following plans have been approved:

Location Plan
Planning Statement
Business Plan
Design Statement
Proposed Site Plan and Photos P001
Proposed Basement Plan P002A
Proposed Ground Floor Plan P003A
Proposed First Floor Plan P004A
Proposed Second Floor Plan P005A
Proposed Elevations P006A
Proposed Montage View P008A
Proposed Sketch Visuals P007A

DECISION DATE:

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

Decision Notice

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number PP/2017/0264

APPROVED

THIRD SCHEDULE

The Owner Covenants with the Chief Officer

The Owner covenants, agrees and undertakes:

- 1 Not to Commence the Development until the Owner has given to the Chief Officer not less than twenty-eight (28) days' notice in writing of its intention so to do.
- 2 That the Occupation of the staff unit within the Development shall be limited to:
 - 2.1 a person solely or mainly working in the agri-tourism business occupying the Site, or a widow or widower of such a person, and any resident dependants, or
 - 2.2 a person solely or mainly working in agriculture, or a widow or widower of such a person, and any resident dependants.
- 3 No person shall occupy the farm stay units within the Development for a continuous period of more than 21 days in any calendar year and the farm stay units shall not be reoccupied by the same person/s within 28 days following the end of that period.
- 4 The farm stay units within the Development shall not be occupied as a person's sole or main place or residence.
- 5 The Owner shall maintain and keep up-to-date a register of the names of all occupiers of the farm stay units on site and of their main home address and shall make this information available for inspection at all reasonable times to the Chief Officer.
- 6 To submit a statement to the Chief Officer each year for a period of five years starting with the first anniversary of the Occupation farm stay units within the Development and then each anniversary thereafter to demonstrate how the funds generated by the agri-tourism business have been channelled back or invested in or used by and for the management operation and use of the existing farm holding known as Potage Farm.

Signed on behalf of the Chief Officer:

[Redacted signature]

Name and Position: PETER LE GREESLEY (DIRECTOR)

In [Redacted]

[Redacted]

Name and Position: CHRISTOPHER JONES (SENIOR PLANNER)

this 28th day of November 2017

Signed on behalf of Potage Farm Limited:

[Redacted signature]

Name and Position: LAURENT COGNET - DIRECTOR

in the presence of

[Redacted]

Name and Position: STEPHANIE BUTTON - PARALEGAL, OGIS

this 17 day of November 2017