

In the Royal Court of Jersey

Samedi Division

In the year two thousand and eighteen, the nineteenth day of April.

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 Fosse au Bois Growers Limited in relation to Field Nos. 616 and 617, La Rue de la Croute, St Ouen, 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 the Fields 616 and 617 La Rue de la Croute St Ouen

Dated

16th April

2018

The Chief Officer for the Environment(1)

Fosse au Bois Growers Limited (2)

DATE

2018

PARTIES

- (1) The Chief Officer for the Environment of States Offices, South Hill, St Helier, Jersey JE2 4US ("the Chief Officer")
- (2) Fosse au Bois Growers Limited (Co Regn 43858) 62 La Ville Des Marettes St Ouen Jersey JE3 2HH("the Owner")

RECITALS

- 1 The Owner warrants that it is the owner in perpetuity (*à fin d'héritage*) of the Site to which it has title as set out in the First Schedule.
- 2 Having regard to the purpose of the Law the Island Plan 2011 and all other material considerations the Planning Applications Committee at its meeting on 28 August 2014 resolved to approve the grant of planning permission for the Development subject to the prior completion of this Agreement.
- 3 The parties hereto have agreed to enter into this Agreement in order to secure the planning obligations contained herein.
- 4 The parties acknowledge that this Agreement is legally binding.
- 5 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:

"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;

"Development"		the development of the Site in accordance with the Planning Permit;
"Dwelling Unit"		a residential unit forming part of the Development to be constructed pursuant to the Planning Permit;
"Footpath Works"		works for the provision of a new pedestrian footpath (the location of which as indicated for the purpose of identification only on drawing marked 5048_023F contained in the Second Schedule to this agreement) to the roadside boundary of the Site along Route de Vinchelez in accordance with the Footpath Works Specification;
"Footpath Works Specification"		The specification for the Footpath Works such works to include layout, structural drawings, construction specification and material specification that the Minister for Infrastructure reasonably requires to satisfy him that the work will be carried out to a standard and quality that is suitable as forming part of a public highway;
"GST"		goods and services tax under the Goods and Services Tax (Jersey) Law 2007;
"Highway Works"		The Junction Works and the Footpath Works;
"Junction Works"		the provision of highway improvements at Rue de la Croute/Route de Vinchelez junction (the location of which as indicated for the purpose of identification only on drawing marked 5048_023F contained in the Second Schedule to this agreement) in accordance with the Junction Works Specification;
"Junction Works Specification"		The specification for the Junction Works as is agreed by the Owner with the Minister for Infrastructure (each acting reasonably);
"Law"		the Planning and Building (Jersey) Law 2002;

"Minister for Infrastructure"		the Minister for Infrastructure, including his or her successor and any person or body to whom the functions of the Minister for Infrastructure may be transferred hereafter or lawfully delegated from time to time;
"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;
"Plan"		the plan marked 5048_001 contained in the Second Schedule to this agreement;
"Planning Application"		the application for planning permission in respect of the Site and described as "Construct 5 No. new 3-bed dwellings. Model Available. AMENDED PLANS: Reduce scale of proposed development. Establish public footpath along eastern boundary of site." and given the reference P/2013/0919;
"Planning Permit"		the planning permission for the Development as applied for and described in the Planning Application (P/2013/0919) a copy of which is attached in the Third Schedule;
"Royal Court"		the Royal Court of the Island of Jersey;
"Site"		Fields 616 and 617 La Rue de la Croute St Ouen identified by a thick black edging and hatched black on the Plan (and described in the First Schedule) 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 Chief Officer and the Minister for Infrastructure the successors to their respective 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 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 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 ownership of any of its interest in the Site occurring before all the obligations under this Agreement have been discharged but this obligation shall not extend to the disposal by the Owner of each Dwelling Unit to a purchaser for his own or his family or his tenant's Occupation.

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.

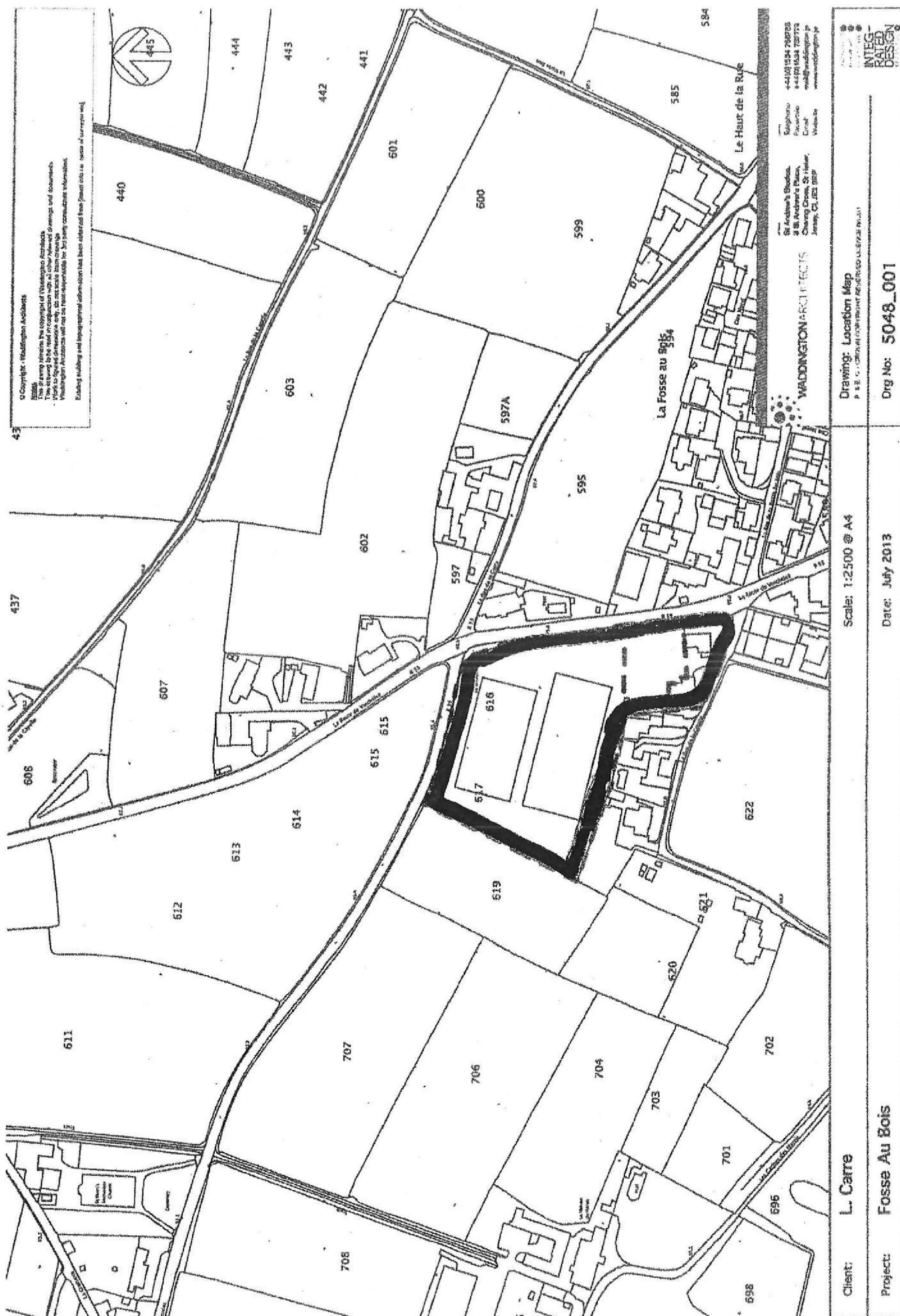
FIRST SCHEDULE**Details of the Owner's Title, and description of the Site**

All that property having right by hereditary gift, cession and transfer by contract dated 25th August 1989 from Lambert Michael Carre and Betty Margaret Carre, nee Journeaux, his wife.

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

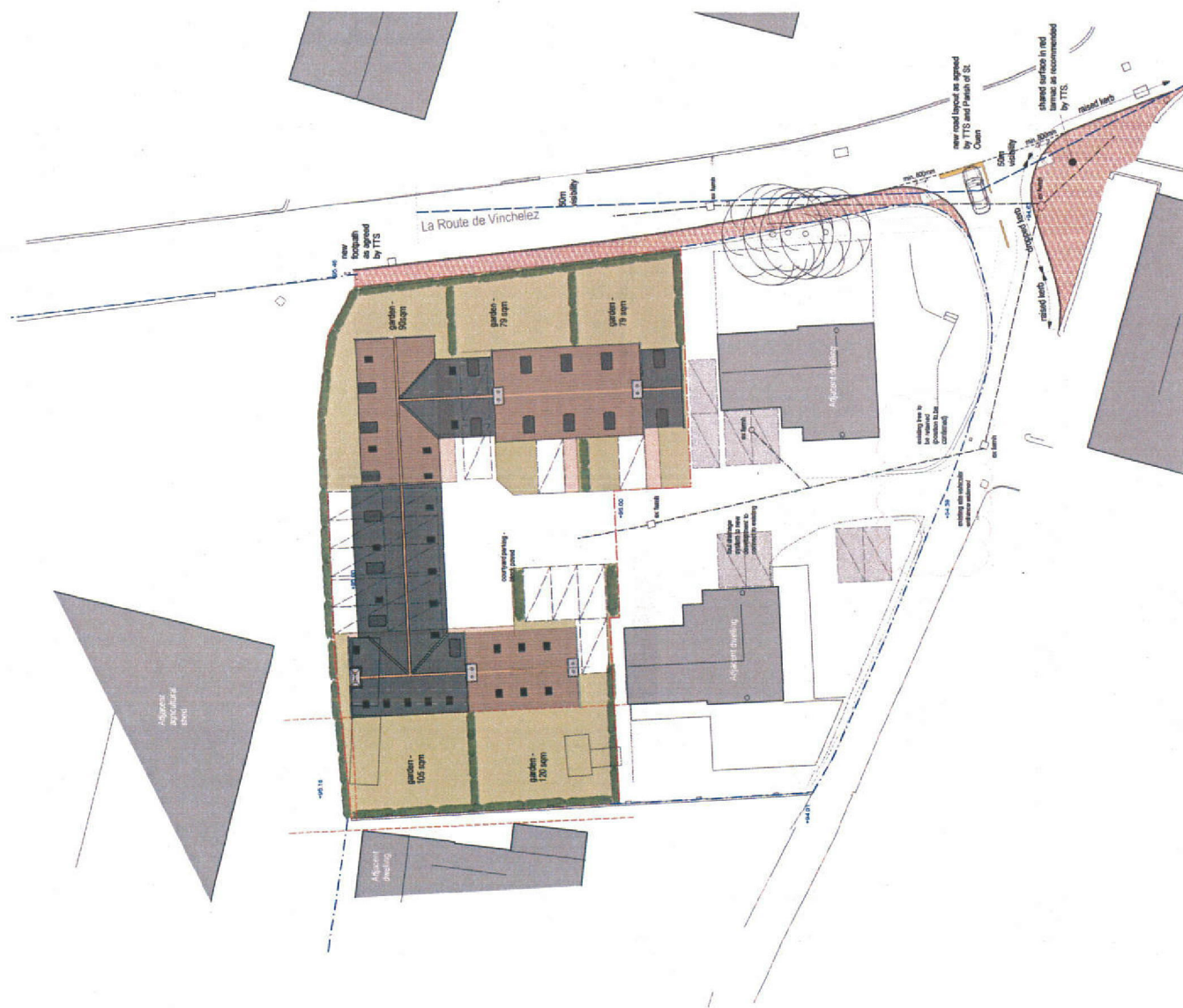
SECOND SCHEDULE

The Plan



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P&S SERVICES
12 JUN 2014



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WADDINGTON ARCHITECTS

St Andrew's Sturtess,
3 St Andrew's Place,
Wharfedale, Leeds, Wt. Hants.

44(2) 1534 760 788
44(2) 1534 737 773
und (2) wachstungsfrei: 1)

Client: **L. Carre**

Scale: 1:200 @ A1

Drawing: Site Plan / Roof Plan

Project: Fosse Au Bois

Date: April 2012

Org No: 5048_023F

Site Plan / Roof Plan

THIRD SCHEDULE

The Planning Permit

Planning Application Number P/2013/0919

Decision Notice

PLANNING AND BUILDING (JERSEY) LAW 2002

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

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

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

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

In respect of the following development:

Construct 5 New new 3-bed dwellings. Model Available. AMENDED PLANS:
Reduce scale of proposed development. Establish public footpath along eastern boundary of site.

To be carried out at:

Field No. 616 & Field No. 617 La Rue de la Croute, St Ouen

REASON FOR APPROVAL: Permission has been granted having taken into account the relevant policies of the approved Island Plan, together with other relevant policies and all other material considerations, including the submitted plans and other documents, as well as the consultations and representations received.

The approved application is for the construction of 5 new houses, in the form of a traditional farm courtyard, on an area of land on the edge of St Ouen's Village. The site is currently undeveloped and is located within the Built Up Area; in principle, therefore, the development of the site is considered to be acceptable under the provisions of the 2011 Island Plan. In addition, the site forms part of the land holding at Fosse au Bois Farm.

Two previous applications for a similar form of development were refused on several grounds, including overdevelopment, impact on neighbours, poor detailed design and adverse effect on the viability of the farm holding. As part of the current application, the Panel is now satisfied that the applicants have

APPROVED

satisfactorily addressed these issues, improving the detailed design and use of materials, and also satisfying the Land Controls Team on the issue of viability.

Crucially, the overall scale and mass of development has been reduced, and its footprint repositioned slightly, to a point where the Panel is now comfortable with the scheme. In its view, the scheme's impact on neighbouring amenity is now acceptable.

The scheme provides sufficient parking in line with the Minister's standards, and the gardens comfortably exceed the minimum required.

Finally, the arrangements for vehicle access have been altered so that now all residential traffic is to access the site via the existing southern entrance to the site, rather than sharing the existing farm entrance to the north. The applicants have agreed to the provision of a footpath along the roadside frontage of the site, as well as making improvements to the junction of Rue de la Croute and Route de Vinchelez. The highway authority, TJS Highways, supports the application on the basis of these additions.

This permission is granted 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 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.

Condition(s):

1. Prior to the commencement of development, the levels of potential contaminants in the ground shall be investigated, any risks to human health or the wider environment assessed, and mitigation measures proposed in a scheme to be submitted to, and approved in writing by, the Minister for Planning and Environment. Thereafter, the approved scheme shall be implemented to the satisfaction of the Minister for Planning and Environment and in accordance with the requirements of Supplementary Planning Guidance Planning Advice Note 2 - Development of Potentially Contaminated Land as amended. Any changes to the scheme require the express written consent of the Minister for Planning and Environment.
2. Prior to the commencement of the development hereby permitted, samples of all of the external materials to be used shall be submitted to, and approved in writing by, the Minister for Planning and Environment. High quality photographic evidence may be sufficient for some items.

APPROVED

3. Following the construction of the new pedestrian footpath, and prior to the first occupation of the development, a new granite roadside wall, which closely resembles the existing wall to be demolished, shall be constructed to the eastern boundary of the site. Prior to commencement, a detailed drawing of the roadside wall shall be submitted to, and agreed in writing by, the Minister for Planning and Environment. Thereafter, the new wall, once constructed, shall be retained in perpetuity.
4. The new hedgerows indicated on the approved site plan (plan 5048_023 F) shall be planted no later than the first planting season following the completion of the development. Thereafter, the new hedgerows, once planted, shall be maintained in perpetuity.
5. The northern site boundary shall be maintained so as to prevent vehicular access, in perpetuity; residential traffic accessing the site shall do so via the existing vehicular access to the south (onto Rue de la Croute), and not via the agricultural yard to the north of the site.

Reason(s):

1. To ensure the development does not have an unreasonable impact on public health or the wider environment and to accord with Policy GD1 and GD 6 of the 2011 Island Plan.
2. The execution of this development is considered to be critical to its success, and the Minister wishes to be assured as to the quality of these details, in accordance with Policies GD 1 and GD 7 of 2011 Island Plan.
3. To ensure the reinstatement of this important roadside feature, in accordance with Policies GD 1 and GD 7 of the 2011 Island Plan.
4. To ensure that the benefits of the approved landscaping scheme are not delayed and consequently make an early contribution to the amenity of the site in the interest of sustaining and enhancing landscape quality, in accordance with Policies GD 1 and NE 4 of the 2011 Island Plan.
5. To ensure the separation of the agricultural and residential uses on the wider site, in the interests of highway safety and amenity, in accordance with Policy GD 1 of the 2011 Island Plan.

FOR YOUR INFORMATION

APPROVED

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

The following plan(s) has/have been approved:

	Design Statement
5048_001	Location Plan
5048_020 D	Ground Floor Plans
5048_021 D	First Floor Plans
5048_023 F	Site Plan / Roof Plan
5048_024 D	Elevations Sheet 1
5048_025 D	Elevations Sheet 2

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.

DRAFT

APPROVED

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 days (14) days' notice in writing of intention so to do.

HIGHWAY WORKS

- 2 Not to Commence the Development before the Footpath Works Specification has been submitted to the Chief Officer for his approval (in consultation with the Infrastructure Minister) and has been approved by the Minister
- 3 Not to Commence the Development before the Junction Works Specification has been submitted to the Chief Officer for his approval (in consultation with the Infrastructure Minister) and has been approved by the Minister
- 4 That the Owner will at its own expense undertake the Footpath Works in accordance with the Footpath Works Specification and the requirements of the relevant highway authority.
- 5 To complete the Footpath Works in accordance with the Footpath Works Specification to the reasonable satisfaction of the Chief Officer (in consultation with the Minister for Infrastructure) prior to any Dwelling Unit in the Development being Occupied.
- 6 That the Owner will at its own expense undertake the Junction Works in accordance with the Junction Works Specification and the requirements of the relevant highway authority.
- 7 To complete the Junction Works in accordance with the Junction Works Specification to the reasonable satisfaction of the Chief Officer (in consultation with the Minister for Infrastructure) prior to any Dwelling Unit in the Development being Occupied.
- 8 Not to Occupy any part of the Development until such time as the Highway Works have been carried out and completed to the reasonable satisfaction of the Minister for Infrastructure
- 9 Within 14 days of completion of the Highway Works the Owner shall cede and transfer and the Public (in respect of a grande route) and the Parish (in respect of a Parish by-road) shall take conveyance of the relevant property free of all charges and encumbrances by contract to be passed before the Royal Court the Owner paying the proper and reasonable costs of and incidental to the said transfer (including all and any reasonable legal and professional costs)

Signed on behalf of the Chief Officer

by

PETER LG GRESELEY

in the presence of

LAWRENCE DAVIES

this 16th day of April 2018

Signed on behalf of Fosse au Bois Limited

by

in the presence of

this 4th day of April 2018