

# *In the Royal Court of Jersey*

---

**Samedi Division**

---

**In the year two thousand and twenty-two, the twenty-sixth day of September.**

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, Fenice Limited and Lyn Olive Hamel in relation to Ingouville House, Ingouville Lane, St Helier, 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 Ingouville House, Ingouville Lane, St Helier, JE2 4SG

Dated

26th September

2022

The Chief Officer for the Environment (1)

Fenice Limited (2)

Lyn Olive Hamel(3)

DATE 26th September 2022

#### PARTIES

- (1) **The Chief Officer for the Environment** of PO Box 228, St Helier Jersey JE4 9SS ("**the Chief Officer**");
- (2) **Fenice Limited**, a limited liability company incorporated in Jersey with registration number 81918 whose registered office is situate 1st Floor, Ingouville House, Ingouville Lane, St. Helier, JE2 4SG, Jersey ("**the Owner**"); and
- (4) **Lyn Olive Hamel** of The Gathering, La Grande Route des Sablons, Grouville, Jersey JE3 9FJ ("**the Lender**").

#### RECITALS

- 1 The Owner warrants that it is the owner in perpetuity (*à fin d'héritage*) of the Site to which it has right by contract of hereditary purchase passed before the Royal Court from The National Farmers Union Mutual Insurance Society Limited dated 24 May 2002.
- 2 The Lender has an interest in the Site by virtue of a judicial hypothec (*hypothèque judiciaire*) which was registered in the Public Registry on 14 January 2022.
- 3 The Application was submitted for planning permission for the Development.
- 4 Pursuant to Article 9(5)(b) of the Law, the Chief Officer referred the Application to the Planning Committee for determination by that committee.
- 5 Having regard to the purposes of the Law, the Island Plan 2011 and all other material considerations the Planning Committee at its meeting on 13 January 2022 made a determination to approve the grant of planning permission for the Development subject to the prior completion of this Agreement.
- 6 The Planning Committee is composed of elected members of the States of Jersey.
- 7 On 25 March 2022 the elected members of the States of Jersey approved, in accordance with Article 3(1) of the Planning and Building (Jersey) Law 2002, as amended by the Covid-19 (Island Plan) (Jersey) Regulations 2021, the Island Plan 2022-25, the draft for which had been lodged *au greffe* on 19 April 2021.

- 8 The Chief Officer is satisfied that in all of the circumstances the elected members of the Planning Committee would have been cognisant of the impending approval of a new Island Plan as a factor such that, and subject to the prior completion of this Agreement, that a Planning Permit can be issued without reference back to the Planning Committee.
- 9 The parties hereto have agreed to enter into this Agreement in order to secure the planning obligations contained herein.
- 10 The parties acknowledge that this Agreement is legally binding.
- 11 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:

<b>"Agreement"</b>	this agreement including the recitals and schedules hereto;
<b>"Application"</b>	the application for planning permission (accorded the reference PP/2021/0601) in respect of the Site and described as "OUTLINE APPLICATION: Demolish existing commercial building. Construct 5 storey residential building, containing 8 No. two bed units with commercial facilities on ground floor. Reserved matters: External appearance and materials and landscape. 3D Model available. AMENDED DESCRIPTION: New ground floor plan showing improved bicycle storage arrangements. Additional ecological and structural reports received. AMENDED PLAN AND DOCUMENTS RECEIVED";
<b>"Chief Officer"</b>	the person appointed from time to time as the chief executive officer (or equivalent) of the administration of the Government responsible for planning and building in accordance with Article 1 of the Law;
<b>"Commencement"</b>	the date on which any construction 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 <b>"Commence"</b> and

	<b>"Commenced"</b> shall be construed accordingly;
<b>"Development"</b>	the development of the Site as set out in the Planning Permit;
<b>"GST"</b>	goods and services tax under the Goods and Services Tax (Jersey) Law 2007;
<b>"Index"</b>	the all items Retail Prices Index for Jersey as issued from time to time by the Statistics Unit to the Government of Jersey;
<b>"Interest"</b>	interest at three per cent above the base lending rate of the HSBC Bank Plc from time to time;
<b>"Island Plan 2011"</b>	The States of Jersey Island Plan, 2011 (as amended from time to time);
<b>"Island Plan 2022-2025"</b>	The States of Jersey Island Plan, 2022-2025 (as amended from time to time);
<b>"Law"</b>	the Planning and Building (Jersey) Law 2002;
<b>'Occupation', 'Occupy' and 'Occupied'</b>	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;
<b>"Plan"</b>	the plan of the Site attached at the First Schedule to this Agreement;

<b>"Planning Permit"</b>	the decision notice providing planning permission for the Development granted by the Chief Officer pursuant to the Application, a copy of which in draft 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;
<b>"Public Bicycle Stands"</b>	public bicycle stands within Phillips Street / Ingouville Lane, to be delivered at the Owner's expense and to a technical standard agreed by the Relevant Highway Authority (acting reasonably);
<b>"Public Realm Contribution"</b>	a financial contribution of Twelve Thousand Six Hundred Pounds (£12,600) Sterling towards a pedestrian improvement scheme within Phillips Street / Bath Street to include footpath resurfacing works within Phillips Street / Ingouville Lane;
<b>"Relevant Highway Authority"</b>	has the meaning attributed by the Article 3 of the Road Works and Events (Jersey) Law 2016;
<b>"Residential Unit"</b>	a residential unit of accommodation to be constructed upon the Site as part of the Development and <b>"Residential Units"</b> shall be construed accordingly;
<b>"Royal Court"</b>	the Royal Court of the Island of Jersey;
<b>"Site"</b>	the site as shown edged by a red line on the Plan; and

<b>"Voucher"</b>	a voucher towards the cost of joining an electric car/bicycle club in respect of the Development to the value of Five Hundred Pounds (£500) Sterling per Residential Unit to be given to the first occupiers of each of the Residential Units.
------------------	--

## 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 Government 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 Unless otherwise specified, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision and all orders, notice, codes of practice and guidance made under it.
- 2.7 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.
- 2.8 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 the provisions of Clauses 10 and 13 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 Royal 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 deemed to have been properly served if sent by ordinary post or hand delivered and (in both cases) addressed to the Director - Development Control at Infrastructure Housing

Environment – Regulation PO Box 228, St Helier Jersey JE4 9SS or as otherwise notified by the Chief Officer to the Owner for the purpose by notice in writing.

- 8.2 Any notices on Owner shall be deemed to have been properly served if sent by ordinary post to and addressed to the Owner at the address referred to above or sent by e-mail to the Owner's e-mail address as stated on the signature page 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.
- 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 herein shall be construed as obviating the need for the Owner to obtain or acquire from any third party with respect to the Development or its use any consents permits authorisations rights interests in land or servitudes.
- 8.9 Nothing in this Agreement shall be construed or interpreted in such a way or inference to be drawn so as to place or create a duty of care upon the Chief Officer as a result of the Chief Officer agreeing to accept the covenants agreements and undertakings on the part of the Owner as contained herein.
- 8.10 The Owner shall not be entitled to any costs or compensation as a result of the making of this Agreement and the obligations contained herein.
- 8.11 All communications and notices served or made under this Agreement shall be in writing.

## **9 WAIVER**

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

## **10 CHANGE IN OWNERSHIP**

The Owner agrees with the Chief Officer to give the Chief Officer written notice (as soon as reasonably practical following such change) of any change in ownership of its interest in the Site occurring before all the obligations under this Agreement have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site purchased by reference to a plan but this obligation shall not extend to the disposal of any individual Dwelling Units to a purchaser for his own, his family or his tenant's Occupation.

## **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**

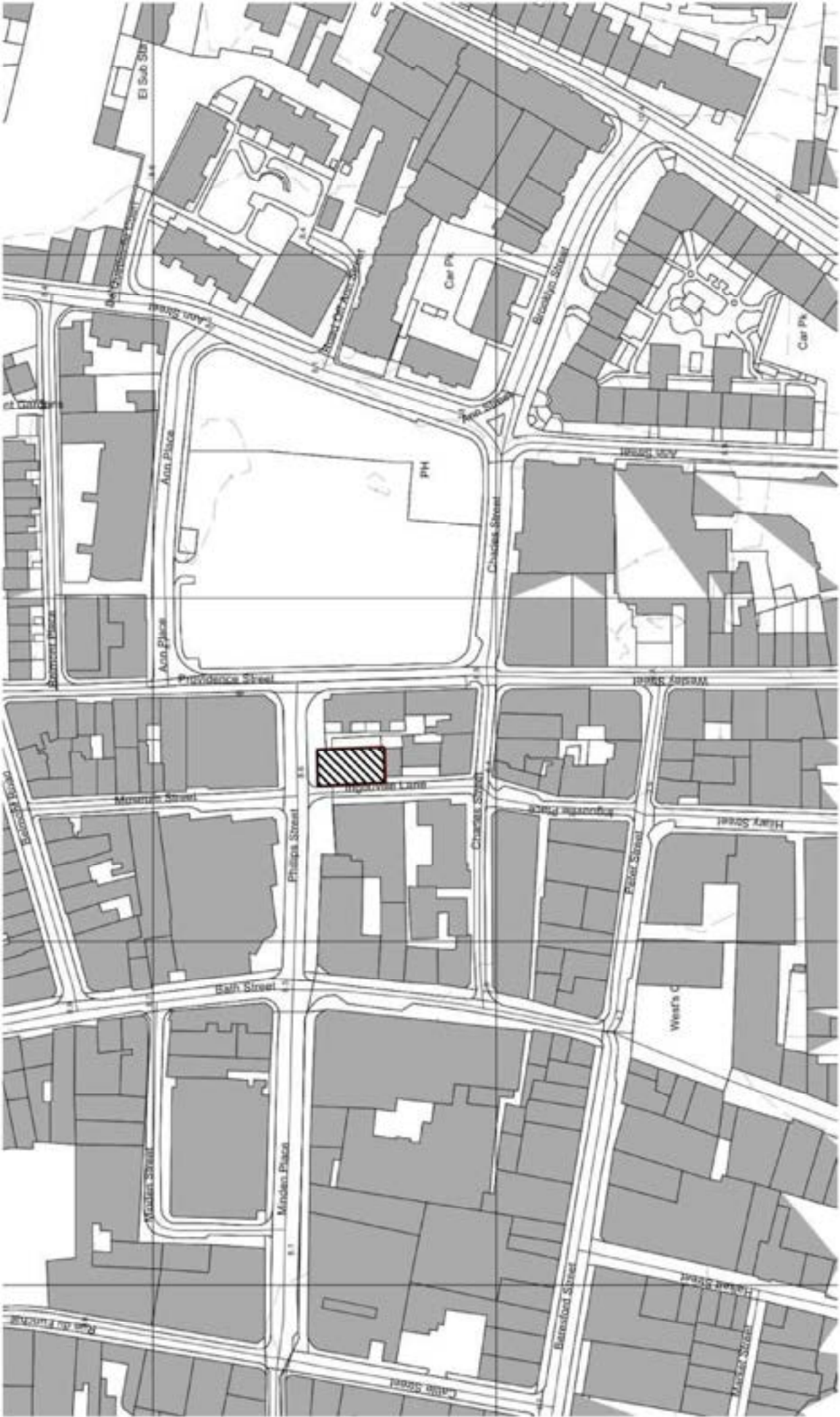
This Agreement and any dispute or claim arising out of or in connection with its subject matter or formation is governed by and interpreted in accordance with the law of the Island of Jersey and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of the Island of Jersey.

**FIRST SCHEDULE****The Plan**

5329498.4

5737236v1





**SECOND SCHEDULE**  
**The Draft Planning Permit**

5329498.4

5737236v1

# Decision Notice



## PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number PP/2021/0601

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

**In respect of the following development:**

**OUTLINE APPLICATION:** Demolish existing commercial building. Construct 5 storey residential building, containing 8 No. two bed units with commercial facilities on ground floor. Reserved matters: External appearance and materials and landscape. 3D Model available. **AMENDED DESCRIPTION:** New ground floor plan showing improved bicycle storage arrangements. Additional ecological and structural reports received. **AMENDED PLAN AND DOCUMENTS RECEIVED.**

**To be carried out at:**

Ingouville House, Ingouville Lane, St Helier, JE2 4SG

**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 consultations and representations received.

The site forms part of the Built-Up Area, and, in accordance with Policies SP 1, SP 2, GD 3, and H 6 of the Island Plan, the redevelopment of the site, increasing the scale of development, and providing new residential units, is considered to be acceptable in principle.

With reference to Policies SP 7, and GD 7, the scale and design of the development is considered to be appropriate having regard to the general character of the immediate area, in particular the emerging development on the neighbouring Ann Court site.

The new units comply with the required residential space standards, with



# Decision Notice



## PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number PP/2021/0601

access to a shared outdoor amenity space, and each with its own designated cycle parking.

The concerns raised by immediate neighbours are acknowledged, and they have been taken into account. However, on balance, the department does not believe that the proposed development will result in 'unreasonable harm' (the Policy test under Policy GD 1) being caused to the occupiers of neighbouring properties.

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 or within 2 years of the approval of the final 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 for the approval of Reserved Matters, as detailed in Condition C, shall be made before the expiration of three years from the date of this decision.

**Reason:** To accord with Article 19(6) of the Planning and Building (Jersey) Law 2002.

- C.** Approvals of the details of the external appearance of the buildings (including all external materials), and 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.

### Condition(s):

1. A Percentage for Art contribution shall be delivered as part of this permission. Details of the exact form which the artistic installation will take, must be submitted to, and approved in writing by, the Development Control section of Regulation, prior to the commencement of the development. Thereafter, the approved work of art must be installed prior to the first use / occupation of any part of the development.
2. Notwithstanding any indications within the approved plans or other documents, prior to the first occupation of the new development,

# Decision Notice



## PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number PP/2021/0601

charging points for electric bicycles shall be installed within the bicycle stores.

3. Prior to the commencement of development, a full Site Waste Management Plan must be submitted to, and agreed in writing by, the Development Control section of Regulation.

### Reason(s):

1. To accord with the provisions of Policy GD 8 of the Jersey Island Plan 2011 (Revised 2014).
2. To ensure that all of the residential units have easy access to a charging point in the future, under the provisions of Policy GD 1 of the Jersey Island Plan 2011 (Revised 2014).
3. To ensure that, before development proceeds, a full and effective Site Waste Management Plan is put in place, in accordance with Policies GD 1 and WM 1 of the Jersey Island Plan 2011 (Revised 2014).

### FOR YOUR INFORMATION

#### Informative(s)

- A. Given comments received during the assessment of the application, the States of Jersey recommends that the applicant should be aware that the site has the potential to support wildlife that is protected under the Wildlife (Jersey) Law 2021. It is an offence under this Law to cause harm to certain protected species or to remove, damage or destroy their nest, den, breeding or resting site. It is the responsibility of the applicant to inform all site workers of the legal implications should any protected species, dens or nests be found.
- B. Given comments received during the assessment of the application, the States of Jersey recommends that the applicant should be aware that if noise complaints are received in the future, the matter may be investigated and considered under the Statutory Nuisances (Jersey) Law 1999, and noise mitigation measures may then be required. These measures may themselves require planning permission.
- C. For avoidance of doubt, this permission does not include the installation of any mechanical ventilation / extraction equipment. This will need to be the subject of a future application.



# Decision Notice



## PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number PP/2021/0601

The approved plans can be viewed on the Planning Register at [www.gov.je/planning](http://www.gov.je/planning)

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

7343-01 S01 – Site Location Plan  
7343-01 P01 – Demolition & Ann Court Development Plan  
7343-01 P02 – Block Plan  
7343-01 P03 A – Ground Floor Plan  
7343-01 P04 – First & Second Floor Plan  
7343-01 P05 – Third & Fourth Floor Plan  
7343-01 P06 – Roof Terrace & Roof Plan  
7343-01 P07 – North & East Elevations  
7343-01 P08 – South & West Elevations  
7343-01 P09 – Sections  
7343-01 P10 – CGI Perspectives  
Access Statement: March 2021  
Bicycle Parking Details  
Refuse Assessment: March 2021  
Site Waste Management Plan: March 2021

DECISION DATE: xx/xx/xxxx

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](http://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](http://www.gov.je/planning)

APPROVED

### **THIRD SCHEDULE**

#### **The Owner's Covenants with the Chief Officer**

The Owner covenants, agrees and undertakes:

##### **PUBLIC BICYCLE STANDS**

- 1 Not to Commence the Development until such time as there has been submitted to and approved in writing by the Relevant Highway Authority a scheme for the provision of the Public Bicycle Stands.
- 2 Not to Occupy the Development until such time as the Public Bicycle Stands have been completed at the expense of the Owner in accordance with the scheme approved in writing by the Relevant Highway Authority .

##### **PUBLIC REALM CONTRIBUTION**

- 3 To pay to the Treasurer of the States the Public Realm Contribution prior to Commencement.
- 4 Not to Commence the Development until the Public Realm Contribution shall have been paid to the Treasurer of the States.

##### **VOUCHER**

- 5 That the Owner shall provide a Voucher to the first occupiers of each of the Residential Units contemporaneously with their taking occupation of the relevant Residential Unit.
- 6 That the Owner shall provide evidence to the Chief Officer on demand that a Voucher shall have been provided to the first occupiers of each of the Residential Units contemporaneously with their taking occupation of the relevant Residential Unit.

**FOURTH SCHEDULE****Chief Officer's covenants**

- 1 The Chief Officer covenants with the Owner to, at the written request of the Owner from time to time, provide written confirmation of the discharge of the obligations contained in this Agreement (or any of them) when and to the extent that the Chief Officer is satisfied that such obligations have been performed.

**Repayment of contributions**

- 2 The Chief Officer hereby covenants with the Owner to use or procure the use of 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.
- 3 The Chief Officer covenants with the Owner that he will procure or arrange that the Treasurer of the States will pay to the Owner such amount of any payment made by the Owner to the Treasurer of the States under this Agreement which has not been expended in accordance with the provisions of this Agreement within five (5) years of the date of receipt by the Treasurer of the States of such payment.

Signed on behalf of

by .....

in the presence of

Lawrence Davies

this 26th day of September 2022

Signed on behalf of Fenice Limited

by .

in the presence of

this day of 2022

Signed by Lyn Olive Hame

in the presence of

this 24 day of September 2022