


In the Royal Court of Jersey

Samedi Division

In the year two thousand and twenty-two, the eighteenth day of May.

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 Michael Wintour in relation to La Mascotte, La Grande Route de la Cote, St Clement, 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 La Mascotte, La Grande Route de la Cote, St. Clement, JE2
6FF

Dated 16th May 2022

□

The Chief Officer for the Environment (1)

Michael Wintour (2)

DATE

□

PARTIES

1. The Chief Officer for the Environment of PO Box 228, St Helier Jersey JE4 9SS ("**the Chief Officer**");
2. Michael Wintour ("**the Owner**").

RECITALS

- 1 The Owner warrants that it is the owner in perpetuity (*à fin d'héritage*) of the Site by contract of purchase dated the 8th April 1980 from Winifred Ballard, née Nursey.
- 2 Having regard to the purposes of the Law, the Island Plan 2011 and all other material considerations the Chief Officer is minded 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 in this Agreement.
- 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:

"Agreement"	this agreement including the recitals and schedules hereto;
"Application"	the application for planning permission in respect of the Site and described as "OUTLINE APPLICATION: Demolish existing dwelling. Construct 2 No. one bed and 3 No. two bed apartments with associated parking. Fixed matters: Design, means of access and siting. Reserved

	<p>matters: External appearance and landscape. 3D Model available. AMENDED PLANS RECEIVED: Building to be set back by 2.7m and balustrades removed at second floor, fenestration amended to incorporate high level windows and stairwell relocated with windows removed to the North-East (rear) elevation. Relocate lean-to roof from South-East to North-West. FURTHER AMENDED PLANS: Reduce the height of building and remove lean-to element to create flat roof. Building set back further from North-East boundary. Fenestration alterations to North-East and North-West elevations.." and given the reference PP/2018/0871;</p>
"Chief Officer"	<p>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;</p>
"Commencement"	<p>the date on which any constructions works forming part of the Development permitted by the Planning Permit or any subsequent planning permission for the Development begins to be carried out to exclude, for the avoidance of doubt, any investigation of the Site, any clearance of the Site, removal of any asbestos from the Site and any demolition on the Site and "Commence" and "Commenced" shall be construed accordingly;</p>
"Cycle Path Contribution"	<p>means the sum of six thousand seven hundred and fifty pounds (£6,750) to be paid by the Owner to the Treasurer of the States to be applied by the Minister for Infrastructure towards the Eastern Cycle Route Corridor;</p>
"GST"	<p>goods and services tax under the Goods and Services Tax (Jersey) Law 2007;</p>

"Index"	the all Items index of retail prices for Jersey as issued from time to time by the Statistics Unit to the States of Jersey;
"Interest"	interest at three per cent above the base lending rate of the Barclays Bank Plc from time to time;
"Island Plan 2011"	the States of Jersey Island Plan, 2011 (as amended from time to time);
"Law"	the Planning and Building (Jersey) Law 2002;
"Occupation", "Occupy" and "Occupied"	means occupation for the purposes permitted by the Planning Permit but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations;
"Planning Permit"	the planning permission for the Development granted by the Chief Officer pursuant to the Application, a copy of which is attached at the Second Schedule and references to the Planning Permit include where the context permits any variations to the said planning permission from time to time;
"Royal Court"	the Royal Court of the Island of Jersey;
"Site"	the site comprising the property known La Mascotte, La Grande Route de la Cote, St. Clement, JE2 6FF the whole as shown for the purposes of identification on the plan forming the First Schedule;

2 CONSTRUCTION OF THIS AGREEMENT

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

3 LEGAL BASIS

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

4 CONDITIONALITY

This Agreement is conditional upon:

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

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

5 OWNER'S COVENANTS

The Owner covenants and agrees with the Chief Officer as set out in the Third Schedule. This Agreement shall be enforceable against any successor in title to the Owner and accordingly following disposal of the Site to the Developer, this Agreement shall be enforceable against the Developer and any person claiming

or deriving title through or under the Developer to the Site (or any part or parts thereof).

6 CHIEF OFFICER COVENANTS

The Chief Officer jointly and severally covenants with the Owner and the Developer 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 and/or the Developer 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 Head of Development and Land and notice or communication to the Chief Officer pursuant to the provisions of this Agreement shall be addressed to the Head of Development and Land PO Box 228, St Helier Jersey JE4 9SS or as otherwise notified for the purpose by notice in writing.
- 8.2 Any notices served on the Owner and/or the Developer shall be deemed to have been properly served if sent by ordinary post to and addressed to such party at the address referred to above or as otherwise notified for the purpose by notice in writing.
- 8.3 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement.
- 8.4 This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permit shall be quashed, cancelled, revoked or otherwise withdrawn or (without the consent of the Owner and/or the Developer) it is modified (other than by process under Article 10 of the Law) by any statutory procedure or expires prior to the Commencement of Development.
- 8.5 No person shall be liable for any breach of any of the planning obligations or other provisions of this Agreement after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 8.6 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permit) granted (whether or not on appeal) after the date of this Agreement.
- 8.7 Except in so far as legally or equitably permitted this Agreement shall not prejudice or fetter or affect any statutory power discretion or duty of the Chief Officer and without prejudice to the generality of the foregoing it is agreed

between the parties hereto that any benefit or power conferred on the Chief Officer by any of the obligations or covenants by the Owner and/or the Developer in favour of the Chief Officer under this Agreement are in addition to any of the Chief Officer's statutory powers under the Law.

- 8.8 Nothing contained in this Agreement shall be construed as obviating the need for the Owner and/or the Developer 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 and/or the Developer as contained in this Agreement.
- 8.10 The Owner and/or the Developer shall not be entitled to any costs or compensation as a result of the making of this Agreement and the obligations contained in this Agreement.
- 8.11 All communications and notices served or made under this Agreement shall be in writing.

9 WAIVER

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

10 CHANGE IN OWNERSHIP

The Owner agrees with the Chief Officer to give the Chief Officer written notice (as soon as reasonably practical following such change) of any change in ownership of its interest in the Site occurring before all the obligations under this Agreement have been discharged but this obligation shall not extend to the disposal to the Developer and any 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.

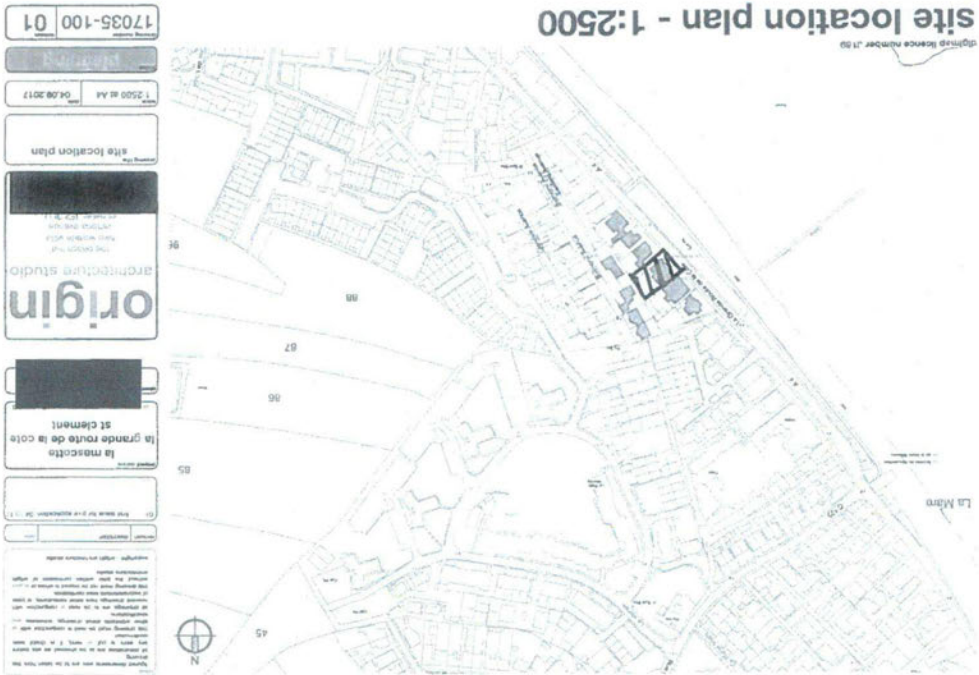
14.2 If at any time GST is or becomes chargeable in respect of any supply made in accordance with the terms of this Agreement then to the extent that GST had not previously been charged in respect of that supply the person making the supply shall have the right to issue a GST invoice to the person to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

15 JURISDICTION

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

FIRST SCHEDULE

The Site



SECOND SCHEDULE

The Planning Permit

Decision Notice



PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number PP/2018/0871

DRAFT PLANNING PERMISSION

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 dwelling. Construct 2 No. one bed and 3 No. two bed apartments with associated parking. Fixed matters: Design, means of access and siting. Reserved matters: External appearance and landscape. 3D Model available. AMENDED PLANS RECEIVED: Building to be set back by 2.7m and balustrades removed at second floor, fenestration amended to incorporate high level windows and stairwell relocated with windows removed to the North-East (rear) elevation. Relocate lean-to roof from South-East to North-West. FURTHER AMENDED PLANS: Reduce the height of building and remove lean-to element to create flat roof. Building set back further from North-East boundary. Fenestration alterations to North-East and North-West elevations.

To be carried out at:

La Mascotte, La Grande Route de la Cote, St. Clement, JE2 6FF.

REASON FOR APPROVAL: The proposed development is considered to be acceptable having due regard all of the material considerations raised. In particular, the development has been assessed against Policies SP 1; SP 2; SP 3; SP 6; SP 7; GD 1; GD 4; GD 7; H 4; H 6; NR 7; TT 3, TT 4; LWM 2; LWM 3 and WM 1 of the Adopted Island Plan 2011 (Revised 2014) in which the re-development of the site for residential development is acceptable in this sustainable location; the site can be suitably drained and accessed and the development can be provided without adversely impacting on the amenities of neighbouring properties or on the character and appearance of the area generally.

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PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number PP/2018/0871

In addition, the representations raised to the scheme on the grounds of unacceptable increase in traffic generation; lack of parking on site; unacceptable impact on neighbours by virtue of loss of privacy; out of keeping with character of the area; overdevelopment of the site; unacceptable increase in footprint and height over the original dwelling; increase in foul sewage issues and a scaffold profile should be erected prior to determination have been assessed.

However, it is considered that the proposal accords with the relevant policies of the Adopted 2011 Island Plan (Revised 2014) in that it does not have an unreasonable impact on the existing character in this location, the design is acceptable given the context of the area and the development will not impact on traffic safety.

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 external appearance of the buildings 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 2002.

Condition(s):

1. Prior to commencement of the development hereby approved, a Demolition/Construction Environmental Management Plan shall be submitted to and approved by the Department.

The Demolition/Construction Environmental Management Plan shall be thereafter implemented in full until the completion of the development and any variations agreed in writing by the Department prior to such work commencing. The Plan shall secure an implementation programme of mitigation measures to

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Planning Application Number PP/2018/0871

minimise the adverse effects of the proposal on the environment, and shall include but not be limited to:

A. A demonstration of compliance with best practice in controlling, monitoring, recording and reporting on any emissions to the environment (such as noise and vibration, air, land and water pollution);

B. Details of a publicised complaints procedure, including office hours and out of hours contact numbers;

C. Details of any proposed crushing/ sorting of waste material on site;

D. Specified hours of working;

E. The proposed parking of vehicles of site personnel, operatives and visitors; and

F. Details of the proposed loading and unloading of plant and materials and the subsequent storage thereof.

2. Waste management shall be implemented in full accordance with the approved Waste Management Strategy. Any variations shall be agreed to in writing by the Department prior to the commencement of such work.

3. No part of the development hereby approved shall be occupied until the cycle parking and charging facilities as indicated on the approved plan have been wholly constructed in accordance with the approved plans. The facilities shall thereafter be retained solely for the use of occupants of the development and maintained as such.

4. No part of the development hereby approved shall be occupied until the vehicular manoeuvring area and respective car parking spaces have been laid out, surfaced and drained as indicated on the approved plans. The car parking spaces shall thereafter be retained solely for the use of occupants of the development and shall not be sub-let for any other purpose.

5. No development shall take place until a scheme of foul drainage and surface water drainage has been submitted to and approved in writing by the Department. The submitted scheme shall include details of the proposed arrangements for the protection of the sewer connections during demolition and piling operations and precise details of the proposed separation of the foul and surface water to the public sewer. The approved scheme shall be implemented in full before the development is first brought into use and shall be retained and maintained as such.

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PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number PP/2018/0871

Reason(s):

1. To ensure the development does not have an adverse impact on public health or the wider environment, in accordance with Policies GD 1, GD 6 and WM 1 of the Adopted Island Plan 2011 (Revised 2014).
2. To protect the amenities of the occupiers of neighbouring properties and the visual amenities of the surrounding area, in accordance with Policies GD 1 and WM 1 of the Adopted Island Plan 2011 (Revised 2014).
3. In the interests of highway safety, in accordance with Policy GD1 of the Adopted Island Plan 2011 (Revised 2014).
4. To ensure that the development provides adequate provision for off-street parking and manoeuvring for users of the site, in the interests of highway safety and the general amenities of the area, in accordance with Policy GD 1 of the Adopted Island Plan 2011 (Revised 2014).
5. To ensure satisfactory drainage arrangements and to avoid flooding 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
Proposed Demolitions 102.01
Proposed Elevations & Sections 105.02
Proposed in Context 107.02
Amended Proposed Site Plan 423/25cd
Amended Proposed Ground Floor Plan 423/21
Amended Proposed First Floor Plan 423/22ab
Amended Proposed Second Floor Plan 423/23a
Amended Proposed Site Plan (indicating outline of initial scheme) 423/27
Amended Proposed Elevations 423/24
Amended Proposed Sections 423/26

DECISION DATE:

APPROVED

Decision Notice

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number PP/2018/0871



The development may also require building permission, for which a separate application will need to be made. You can find out if building permission is required on our website www.gov.je/planningbuilding

The approved plans and any conditions attached to the decision are important and should be complied with. If there is any variation from the approved plans or the conditions you need to notify us immediately. Failure to comply with the approved plans or conditions may result in enforcement action.

If you are unhappy with a condition attached to this permission, you may request a review or make an appeal. You can find out how to do this on our website www.gov.je/planning

APPROVED

THIRD SCHEDULE**The Owner's Covenants with the Chief Officer**

The Owner covenants, agrees and undertakes:

COMMENCEMENT

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

CYCLE PATH

- 2 To pay the Cycle Path Contribution to the Treasurer of the States prior to the Commencement of any part of the Development
- 3 Not to Commence the Development until such time as the Cycle Path Contribution has been paid to the Treasurer of the States.

FOURTH SCHEDULE

Chief Officer's covenants

1. The Chief Officer hereby covenants with the Owner and/or the Developer (as applicable) to use all sums received by the Treasurer of the States from the Owner and/or the Developer under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid.
2. The Chief Officer covenants with the Owner and/or the Developer (as applicable) that he will procure or arrange that the Treasurer of the States will pay to the Owner and/or the Developer such amount of any payment made by the Owner and/or the Developer to the Treasurer of the States under this Agreement which has not been expended in accordance with the provisions of this Agreement within five years of the date of receipt by the Treasurer of the States of such payment.

Signed on behalf of the **CHIEF OFFICER**

by ...

in the presence of ... CHRISTOPHER JONES ...

this 16th day of May [] 2022

Signed by **MICHAEL WINTOUR**

in the presence of ... MR. ALEX KEMP ...

this 21st day of April 2022 []