

In the Royal Court of Jersey

Samedi Division

In the year two thousand and twenty, the first 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, Siena Properties (Bardeaux) Limited, Reto Finance Limited and Hawk Lending Limited in relation to Les Bardeaux, La Rue de Haut, St Lawrence, be registered in the Public Registry of this Island.


Greffier Substitute

LOD

Reg. Pub.



Lexstone Lawyers

A pure law firm

Execution version

PLANNING OBLIGATION AGREEMENT

Between

THE CHIEF OFFICER FOR THE ENVIRONMENT

and

BARDEAUX
SIENA PROPERTIES (JERSEY) LIMITED

and

RETO FINANCE LIMITED

and

HAWK LENDING LIMITED

in respect of Les Bardeaux, Rue de Haut, St Lawrence, Jersey, JE3 1JZ



DATE

30th March 2020**PARTIES**

- (1) The Chief Officer for the Environment of PO Box 228, St Helier Jersey JE4 9SS (the "Chief Officer");
- (2) **SIENA PROPERTIES (JERSEY) LIMITED**, a private limited liability par value company incorporated in Jersey with registration number **124509** under the Companies (Jersey) Law 1991, whose registered office is at 7 De Carteret House, Castle Street, St Helier, Jersey, JE2 3BT (the "Owner");
- (3) **RETO FINANCE LIMITED**, a private limited liability par value company incorporated in Jersey with registration number 121556 under the Companies (Jersey) Law 1991, whose registered office is at One The Esplanade, St Helier, Jersey, JE2 3QA (the "Senior Lender"); and
- (4) **HAWK LENDING LIMITED**, a private limited liability par value company incorporated in Jersey with registration number 125285 under the Companies (Jersey) Law 1991, whose registered office is at Hawk House, 22 Esplanade, St Helier, Jersey, JE2 3QA (the "Junior Lender").

RECITALS

- 1 The Owner warrants that it owns in perpetuity ("à fin d'héritage") the Site by virtue of a purchase by contract dated 24 January 2020 from James Walter Battrick and Jean Clara Battrick (née Wilkins).
- 2 The Senior Lender has an interest in the Site by virtue of a judicial hypothec (*hypothèque judiciaire*) dated 24 January 2020.
- 3 The Junior Lender has an interest in the Site by virtue of a judicial hypothec (*hypothèque judiciaire*) dated 24 January 2020.
- 4 The Owner submitted (accorded the reference P/2019/1404) for planning permission for the Development.
- 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 20 February 2020 resolved to approve the grant of planning permission for the Development subject to the prior completion of this Agreement.
- 6 The parties hereto have agreed to enter into this Agreement in order to secure the planning obligations contained herein.
- 7 The parties acknowledge that this Agreement is legally binding.
- 8 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;
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"Application"	the application for planning permission in respect of the Site and described as <i>"Demolish existing dwelling and associated buildings. Construct 10 No. two bed and 1 No. three bed residential units with basement parking and associated landscaping"</i> and given the reference P/2019/1404;
"Chief Officer"	the person appointed from time to time as 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;
"Contribution"	<p>the sum of fifty thousand and fifty pounds Sterling (£50,050.00) to be paid by the Owner to the Treasurer of the States to be applied by the Minister for Infrastructure for the following: -</p> <ul style="list-style-type: none"> (a) the implementation of a speed limit reduction along La Rue de Haut (including appropriate consultation); (b) a bus shelter and proper standing area – to be located within the grounds of Bel Royal School, at the nearest (East-bound) bus stop[on La Vallee de St Pierre; and (c) footway improvements to provide an easier crossing point within La Vallee de St Pierre at its junction with La Rue de Haut;
"Development"	the development of the Site as set out in the Application;
"Dwelling Unit" or "Dwelling Units"	a residential unit forming part of the Development to be constructed pursuant to the Planning Permit;
"GST"	goods and services tax under the Goods and Services Tax (Jersey) Law 2007;
"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 HSBC 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;
"Plan"	the plan of the Site attached at the First Schedule to this Agreement;
"Planning Permit"	the planning permission for the Development granted by the 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; and
"Site"	Les Bardeaux, Rue de Haut, St Lawrence, Jersey, JE3 1JZ, as shown for the purpose of identification edged red 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 such 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 or the Minister (as the case may be) or 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 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 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'S COVENANTS

The Chief Officer covenants and agrees with the Owner as set out in the Fourth Schedule so that this Agreement shall be enforceable without limit of time against the Chief Officer.

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 addressed to the Director – Development Control at Planning and Building Services, La Motte Street, St Helier, Jersey or as otherwise notified for the purpose by notice in writing.
- 8.2 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.
- 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 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 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 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 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 of 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) in ownership of its interest in the Site occurring before all the obligations under this Agreement have been discharged.

11 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.

12 GOODS AND SERVICES TAX

- 12.1 All cause given in accordance with the terms of this Agreement shall be exclusive of any GST properly payable in respect thereof.
- 12.2 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 has 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.

13 CONSENT OF SENIOR LENDER & JUNIOR LENDER

Each of the Senior Lender and Junior 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 Junior Lender and the Senior Lender over the Site shall take effect subject to this Agreement **PROVIDED THAT** the Junior Lender and Senior Lender shall otherwise have no liability under this Agreement unless one of them takes possession of the Site in which case it too will be bound by the obligations as a person deriving title from the Owner.



14 INDEXATION

Any sum referred to in the Third Schedule shall be increased by an amount equivalent to the increase in the Index from the date on which this Agreement is registered in the Public Registry of Contracts until the date on which such sum is payable.

15 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.

16 COUNTERPARTS

This Agreement may be executed in original and counterpart, each of which shall be deemed an original agreement and both of which shall constitute one and the same agreement. The counterparts of this Agreement may be executed and delivered by electronic signature (including portable document format) by any of the parties and the receiving party may rely on the receipt of such document so executed and delivered electronically as if the original had been received

17 JURISDICTION

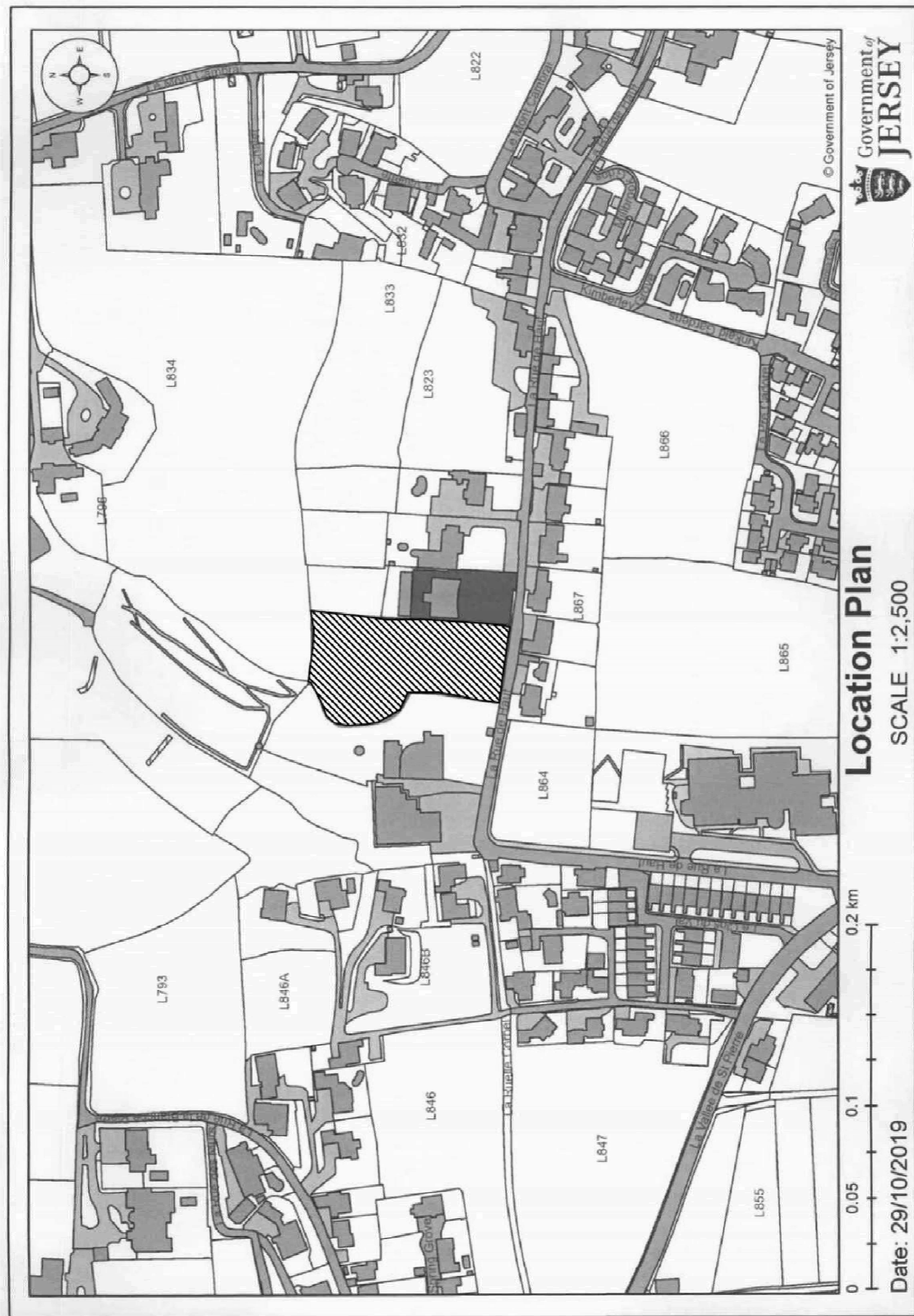
This Agreement is governed by and interpreted in accordance with the law of the Island of Jersey.

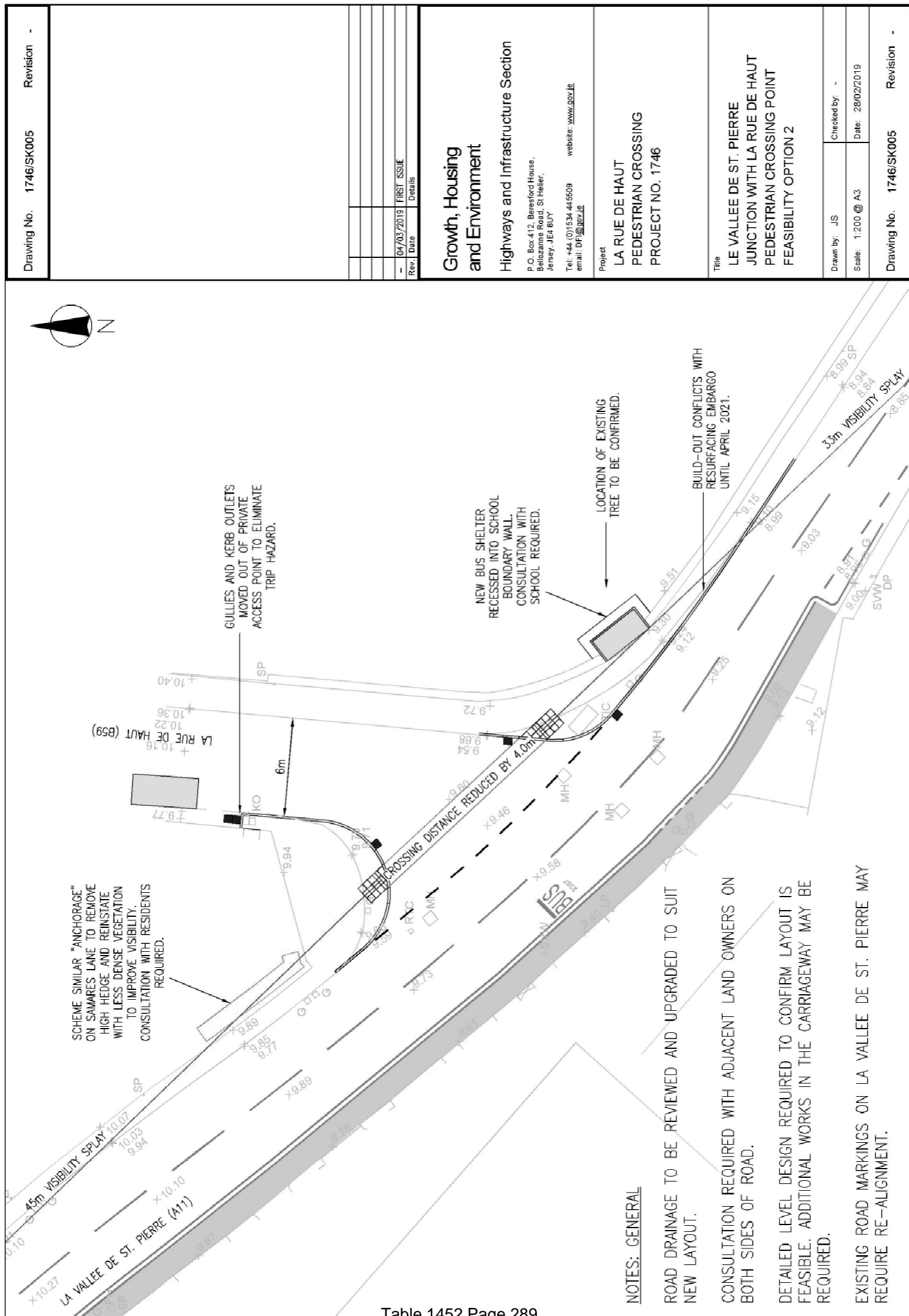


FIRST SCHEDULE

The Plan









SECOND SCHEDULE

The Planning Permit

Decision Notice



PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2019/1404

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

In respect of the following development:

Demolish existing dwelling and associated buildings. Construct 10 No. two bed and 1 No. three bed residential units with basement parking and associated landscaping.

To be carried out at:

Les Bardeaux, La Rue de Haut, St Lawrence, JE3 1JZ

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 approved scheme is for the comprehensive redevelopment of the existing site, creating a total of 11 new residential apartments.

The development site is located within the Built-Up Area, wherein there is a presumption in favour of the development of new dwelling units.

The Planning Committee is satisfied that this is a well-designed scheme, which is compliant, in all regards, with the Minister's residential standards, and which would sit comfortably within the site.

APPROVED

¹ CAUTION

This decision is purely permissive and in no way absolves 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 an applicant from the need to obtain the permission of the owner of the land to which a permission relates.

(P1; P/2019/1404; Page 1)

Decision Notice



PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2019/1404

The comments received from nearby residents are noted; however, the committee is satisfied that the development would not unreasonably harm neighbouring amenities.

The application is considered to be justified with reference to the relevant policies of the Island Plan which, in general, seek to ensure that Built-Up Area sites are developed to their highest reasonable density.

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

- A.** The development shall commence within three 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. The measures outlined in the approved Species Protection Plan (ref. NE/ES/LB.02, 18th July 2019), Nurture Ecology) shall be implemented prior to commencement of the development, continued throughout (where applicable) and thereafter retained and maintained as such. Any variations that may be required as a result of findings on site are to be agreed in writing by Natural Environment prior to works being undertaken.
2. Prior to the first use / occupation of the development hereby approved, visibility lines must be provided in accordance with the approved drawings. Everything within the visibility sight lines, including gates, walls, railings and plant growth is to be permanently restricted in height to 900mm above road level.
3. All of the obscure glazing, external fixed panels, and screening planters identified within the approved plans, must be installed prior to the first occupation of the development. Thereafter, these shall be maintained as such for the lifetime of the development.

Decision Notice



PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2019/1404

4. Prior to the commencement of construction, a detailed specification for the planting arrangements (including all sub-surface structures, and a soil specification) of the new semi-mature trees along the site's boundary, shall be submitted to, and agreed in writing by, the Development Control section of Growth, Housing, and Environment. The agreed specification shall then be implemented in full as part of the development.
5. All planting and other operations comprised in the landscaping scheme hereby approved shall be completed prior to first occupation of any element of the development.
6. Prior to the commencement of construction, a detailed scheme for surface water drainage shall be submitted to, and agreed in writing by, the Development Control section of Growth, Housing, and Environment. The agreed specification (which must take into account the consultation response from GHE Drainage dated 22/01/20) shall then be implemented in full as part of the development.
7. Prior to the first occupation of the development, an obscurely-glazed privacy screen, to a height of 1.8m, shall be installed along the eastern side of the Penthouse roof terrace. Details of such a screen shall be submitted to, and agreed in writing by, the Development Control section of Growth, Housing and Environment prior to the commencement of construction on site. Once installed, the screen must be retained and maintained as such for the lifetime of the development.

Reason(s):

1. To ensure protection of any protected species in accordance with the requirements of Policies GD 1 and NE 2 of the Jersey Island Plan, 2011 (revised 2014).
2. In the interests of highway safety, in accordance with Policy GD 1 of the Jersey Island Plan 2011 (revised 2014).
3. To safeguard the amenities and privacy of the occupants of the adjoining properties in accordance with Policy GD 1 of the Jersey Island Plan 2011 (revised 2014).
4. To safeguard the amenities and privacy of the occupants of the adjoining properties in accordance with Policy GD 1 of the Jersey Island Plan 2011 (revised 2014).
5. To ensure the benefits of the landscape scheme are not delayed, in the interests of the amenities of the area and to ensure a high quality of design

Decision Notice



PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2019/1404

in accordance with Policies SP 7 and GD 7 of the Jersey Island Plan 2011 (revised 2014).

6. To ensure that an appropriate scheme is devised for the disposal of surface water, in accordance with Policy LWM 3 (Surface water drainage facilities) of the Jersey Island Plan 2011 (revised 2014).
7. To safeguard the amenities and privacy of the occupants of the adjoining properties in accordance with Policy GD 1 of the Jersey Island Plan 2011 (revised 2014).

FOR YOUR INFORMATION

The applicants' attention is drawn to the comments of the Natural Environment Team, dated 09/12/19, with regard to that team's recommendation to install wildlife enhancement measures, and also to remove invasive 'Pampas grass' from the site.

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

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

Location Plan

- P001 – Existing Site Survey
- P002 – Existing Site Longitudinal Sections
- P003 – Existing Site and Context Photographs
- P004 A – Proposed Basement Plan
- P005 A – Proposed Ground Floor Plan
- P006 – Proposed First & Second Floor Plans
- P007 A – Proposed Penthouse and Roof Terrace Plans
- P008 A – Proposed South Elevation
- P009 A – Proposed West Elevation
- P010 A – Proposed North Elevation
- P011 A – Proposed East Elevation
- P012 A – Proposed South Street Elevation (Shutters Open)
- P013 A – Proposed North-South Logitudinal Sections
- P014 A – Sketch Visuals 01
- P015 – Sketch Visuals 02
- P016 A – Sketch Visuals 03
- P017 – Existing Visibility Splay Information
- P018 – Proposed Visibility Splay Information
- P019 A – North-South Section Illustrating Neighbouring Highgrove House Pool Relationship
- P020 A – Montage Views 01

Decision Notice



PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2019/1404

P021 – Montage Views 02
P023 – Views from Ground Floor Apartments
P024 – Views from 1st Floor Apartments
P025 – Views from 2nd Floor Apartments
P026 – Views from Penthouse Apartment
P029 – Sketch Visuals 04
P030 – Section Illustrating Balcony Views to Highgrove House Pool Terrace with Screening Vegetation
Demolition Construction Environmental Management Plan
Design and Planning Statement
Initial Ecological Assessment and Preliminary Roost Inspection
Site Waste Management Plan
Bat Survey Results Report

DECISION DATE:

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

**THRID 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 Chief Officer fourteen (14) days' notice in writing of its intention so to do.

CONTRIBUTION

- 2 To pay the Contribution to the Treasurer of the States prior to the Commencement.
- 3 Not to Commence the Development until the Owner has paid the Contribution to the Treasurer of the States.

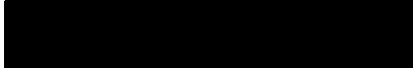


FOURTH SCHEDULE

Chief Officer's Covenants

- 1 The Chief Officer hereby covenants with the Owner to use the Contribution 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 it is to be paid.
- 2 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 years of the date of receipt by the Treasurer of the States of such payment.

Signed by or on behalf of the Chief Officer for the
Environment


PETER LE GRESLEY, DIRECTOR

in the presence of:

Position SENIOR PLANNER


Name ELIZABETH STABLES

this 30th day of March 2020

Signed on behalf of SIENA PROPERTIES (JERSEY) LIMITED

by

in the presence of:

Position

Signature

Name

this day of March 2020

Signed on behalf of RETO FINANCE LIMITED

by MARCUS KRAIG STONE
AUTHORISED SIGNATORY

in the presence of:

Position ENGLISH SOLICITOR & POLISH ATTORNEY-AT-LAW


Name AGNIESZKA JUSTYNA BIELANSKA

this 30th day of March 2020



Signed by or on behalf of the Chief Officer for the Environment

by

in the presence of:

Position

Signature

Name

this day of March 2020

BANDEAUX

Signed on behalf of SIENA PROPERTIES (~~JERSEY~~) LIMITED

by STEPHEN NEW (M.D.) 

in the presence of:

Position ASSOCIATE

Signature 

Name E. A. VAUTIER

this 30th day of March 2020

Signed on behalf of RETO FINANCE LIMITED

by

in the presence of:

Position

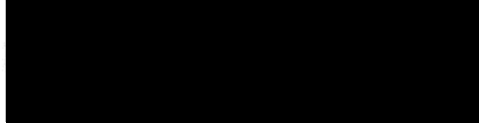
Signature

Name

this day of March 2020



Signed on behalf of HAWK LENDING LIMITED



in the presence of:



Position MANAGING DIRECTOR

Signature AS ABOVE

Name KIRI CAULL

this 30th day of March 2020