

# *In the Royal Court of Jersey*

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**Samedi Division**

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**In the year two thousand and eighteen, the ninth day of July.**

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 La Plage Hotel Limited in relation to the development of Residence de la Plage, Havre des Pas, 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 Residence de la Plage, Havre des Pas, St. Helier, Jersey JE2  
4HL

Dated

2<sup>nd</sup> July

2018

The Chief Officer for the Environment (1)

La Plage Hotel Limited (2)

DATE

2<sup>nd</sup> July

2018

## PARTIES

- (1) The Chief Officer for the Environment of States Offices, South Hill, St Helier, Jersey JE2 4US ("**the Chief Officer**");
- (2) La Plage Hotel Limited ("**the Owner**") of 1 Wharf Street, St Helier, Jersey JE4 0ZX

## RECITALS

- 1 The Owner warrants that it is the owner in perpetuity (*à fin d'héritage*) of the Site (i) in part by purchase by contract dated 28<sup>th</sup> April 1936 from Amy Ellen Thacker née Barnett, (ii) in part by purchase by contract dated 9<sup>th</sup> April 1938 from Edward Arnold Watson and Walter Leslie Watson, (iii) in part by purchase by contract dated the said 9<sup>th</sup> April 1938 from Henry Alexander Dunstan Gould and (iv) in part by purchase by contract dated 6<sup>th</sup> December 1958 from the said Edward Arnold Watson and Walter Leslie Watson.
- 2 The Owner submitted an application (accorded the reference P/2017/1372) for planning permission for the Development.
- 3 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.
- 4 The parties hereto have agreed to enter into this Agreement in order to secure the planning obligations contained herein.
- 5 The parties acknowledge that this Agreement is legally binding.
- 6 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;

<b>"Application"</b>	the application for planning permission in respect of the Site and described as "Convert part of ground and first floor into 7 No. one bed and 1 No. two bed apartments with basement stores. Various external alterations" and given the reference P/2017/1372;
<b>"Chief Officer"</b>	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;
<b>"Commencement"</b>	the date on which any operation (but not including any enabling, exploratory or investigative works, nor asbestos removal or stripping-out works) 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;
<b>"Cycleway Contribution"</b>	the sum of ten thousand eight hundred pounds (£10,800) to be paid by the Owner to the Treasurer of the States to be applied by the Minister for Infrastructure for the purposes of the Eastern Cycle Network;
<b>"Development"</b>	the development of the Site as set out in the Application;
<b>"GST"</b>	goods and services tax under the Goods and Services Tax (Jersey) Law 2007;
<b>"Index"</b>	the all Items Index of Retail Prices for Jersey as issued from time to time by the Statistics Unit to the States 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>"Law"</b>	the Planning and Building (Jersey) Law 2002;
<b>"Plan"</b>	the plan of the Site attached at the First Schedule to this Agreement;
<b>"Planning Permit"</b>	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;
<b>"Royal Court"</b>	the Royal Court of the Island of Jersey;
<b>"Site"</b>	Residence de la Plage, Havre des Pas, St. Helier, Jersey JE2 4HL, as shown for the purpose of identification shaded on the Plan.

## 2 CONSTRUCTION OF THIS AGREEMENT

- 2.1 Where in this Agreement reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Agreement.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced

against all of them jointly and against each individually unless there is an express provision otherwise.

- 2.5 Any reference to a law of the States of Jersey shall include any modification, extension or re-enactment of that law for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Law or deriving validity from it.
- 2.6 References to any party to this Agreement shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Chief Officer the successors to his statutory functions.
- 2.7 This Agreement shall be construed so as to give effect to the purpose of the Law.

### **3 LEGAL BASIS**

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

### **4 CONDITIONALITY**

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

### **5 OWNER COVENANTS**

The Owner covenants and agrees with the Chief Officer as set out in the Third Schedule so that this Agreement shall be enforceable without limit of time against the Owner and any person claiming or deriving title through or under the Owner to the Site or any part or parts thereof.

### **6 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 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.

- 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 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.

#### **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 Plan**



copyright Digi map J49 design plus  
DP1657 001  
date: 17/07/17

# Residence de La Plage Harve des Pas, St Helier JE2 4UQ

- scale 1:2500

**d+design plus**  
architects interior design  
13-15 don street, st helier, jersey JE2 4UQ

SECOND SCHEDULE

**The Planning Permit**



# Draft Decision Notice



## PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2017/1372

**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:**

Convert part of ground and first floor into 7 No. one bed and 1 No. two bed apartments with basement stores. Various external alterations.

**To be carried out at:**

Residence de la Plage, Havre des Pas, St. Helier, Jersey JE2 4HL.

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.

APPROVED

# Draft Decision Notice



## PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2017/1372

### Condition:

1. No part of the development hereby approved shall be occupied until details of additional cycle parking facilities (including their number and proposed location) have been submitted to the Department of the Environment for approval and, following their approval, wholly constructed in accordance with the approved details. The facilities shall thereafter be retained solely for the use of occupants of the development and their visitors and maintained as such.

### Reason:

1. In the interests of promoting sustainable patterns of development, in accordance with Policies TT 9 and SP 6 of the Adopted Island Plan 2011 (Revised 2014).

### FOR YOUR INFORMATION

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

The following plans have been approved:

Location Plan

Proposed Site Plan and Basement Layout 104B

Proposed Ground and First Floor Plans 105B

Proposed Design Statement

Proposed 3D Visuals 107B

Proposed Elevations 106B

Proposed Site Plan and Basement Layout 108B

DECISION DATE: 13/06/2018

# Decision Notice



## PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2017/1372

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:

**COMMENCEMENT**

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

**CONTRIBUTIONS**

- 2 To pay the Cycleway Contribution to the Treasurer of the States prior to the Commencement of any part of the Development.
- 3 Not to Commence any part of the Development until such time as the Cycleway 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 to use 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.
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 four years of the date of receipt by the Treasurer of the States of such payment.



Signed on behalf of

by .....

in the presence of ...

this 2<sup>nd</sup> day of July 2018

Signed on behalf of La Plage Hotel Limited

by .....

in the presence of .....

this 29 day of June 2018