

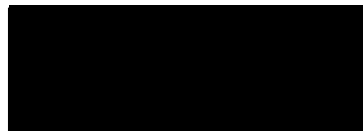
In the Royal Court of Jersey

Samedi Division

In the year two thousand and eighteen, the eighteenth 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 Conway Tower Properties Limited in relation to Wayside Café, Private Car Park and Seabreeze, Le Mont Sohier, St Brelade, 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 Wayside Cafe, Private Car Park and Seabreeze, Le Mont
Sohier, St Brelade JE3 8EA

Dated

17th July

2018

The Minister for the Environment (1)

Conway Tower Properties Limited (2)

DATE

17th July

2018

PARTIES

- (1) The Minister for the Environment of States Offices, South Hill, St Helier, Jersey JE2 4US ("**the Minister**");
- (2) Conway Tower Properties Limited (Co Regn. 117307) ("**the Owner**") of Sycamore Cottage La Rue Des Raisies St Martin Jersey JE3 6AT

RECITALS

- 1 The Owner warrants that by right under hereditary contract of purchase passed on 19 December with Richard James Colley Elizabeth Mary Frost née Colley Timothy Robert Colley and Jacqueline May Colley it is the owner in perpetuity (*à fin d'héritage*) as to the Site.
- 2 The Owner submitted the Application (accorded the reference P/2017/0574) for planning permission for the Development.
- 3 On 23 November 2017 the Committee refused planning permission subsequent to which the Owner exercised its right under Article 108 of the 2002 Law to appeal the said refusal ("the Appeal").
- 4 The Appeal was heard by an Inspector ("the Inspector") on the 6 February 2018.
- 5 Having regard to the purposes of the Law the Island Plan 2011 and all other material considerations the Inspector in his report ("the Inspector's Report") to the Minister recommended that the Minister allow the Appeal and grant planning permission for the Development subject to the applicant entering into a planning obligation to secure the matters referred to at Annex A of the Inspector's Report:
- 6 Having considered the Inspector's Report the Minister has given effect to the Inspector's recommendation to allow the appeal and grant planning permission subject to the prior completion of this Agreement to secure the obligations contained herein
- 7 The parties hereto have agreed to enter into this Agreement in order to secure the planning obligations contained herein.
- 8 The parties acknowledge that this Agreement is legally binding.
- 9 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 "demolish existing and construct new restaurant, surf shop with 1 three-bed flat above; to demolish existing 2 dwellings; to construct 2 five-bed dwellings with garage and associated landscaping and 2 one-bed staff units; to construct 1 one- bed and 1 two-bed flats; to alter vehicular access onto Le Mont Sohier; to construct bus shelter and to create public access through the site." and given the reference P/2017/0574;
"Bus Shelter"	means the erection of one bus shelter by the Owner on the Site in accordance with approved plans PL 06 B and PL 11;
"Bus Shelter Site"	the part of the Site on which the Bus Shelter comprised in the Development is to be built and shown shown for the purposes of identification only cross-hatched black on the approved plan PL 06 B annexed hereto at the Second Schedule or any part thereof
"Chief Officer"	the person appointed from time to time as the chief executive officer (or equivalent) of the administration of the States responsible for planning and building in accordance with Article 1 of the Law;
"Commencement"	the date on which any operation forming part of the Development permitted by the Planning Permit or any subsequent planning permission for the Development

		begins to be carried out, and "Commence" and "Commenced" shall be construed accordingly;
"Development"		the development of the Site as set out in the Application;
"Footpath Works"		works for the provision of a new pedestrian footpath (the location of which as indicated for the purpose of identification only edged by a thick black line and hatched black on the approved plan PL 06 B contained in the Second Schedule to this agreement) to the roadside boundary of the Site along Mont Sohier in accordance with the Footpath Works Specification;
"Footpath Specification" Works		The specification for the Footpath Works such works to include layout, structural drawings, construction specification and material specification that the Minister for Infrastructure reasonably requires to satisfy him that the work will be carried out to a standard and quality that is suitable as forming part of a public highway;
"GST"		goods and services tax under the Goods and Services Tax (Jersey) Law 2007;
"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 Minister pursuant to the Appeal as recorded in his

	decision reference MD-PE-2018-0028 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;
"Public Space"	the areas of hard and soft landscaping and amenity space for a footpath access route through the site from Le Mont Sohier to the pedestrian promenade (incorporating the public space, steps, and viewpoint as detailed in the Application) comprised in the Development, that is shown for the purposes of identification only hatched black on the approved plan PL 06 B annexed hereto at the Second Schedule or any part thereof;
"Royal Court"	the Royal Court of the Island of Jersey;
"Site"	Wayside Cafe, Private Car Park and Seabreeze, Le Mont Sohier, St Brelade as shown for the purpose of identification edged by a thick black line and hatched black 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 Minister 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 Owners under this Agreement create planning obligations pursuant to Article 25 of the Law and are enforceable by the Minister and 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'S COVENANTS

The Owner covenants and agrees with the Minister 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. PUBLIC REGISTRY OF CONTRACTS

The Minister shall as soon as practicable apply to the Royal Court for an order that this Agreement be registered in the Public Registry of Contracts.

7 MISCELLANEOUS

- 7.1 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Minister 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 Minister by the Director - Development Control of Planning and notice or communication to the Minister pursuant to the provisions of this Agreement shall be addressed to the Director - Development Control of Planning at Planning and Building Services South Hill St Helier Jersey JE2 4US or as otherwise notified for the purpose by notice in writing.
- 7.2 Any notices on the Owner shall be deemed to have been properly served if sent by ordinary post to and addressed to such party at the address referred to above or as otherwise notified for the purpose by notice in writing.
- 7.3 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement.

- 7.4 This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permit shall be quashed, cancelled, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified (other than by process under Article 10 of the Law) by any statutory procedure or expires prior to the Commencement of Development.
- 7.5 No person shall be liable for any breach of any of the planning obligations or other provisions of this Agreement after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.6 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permit) granted (whether or not on appeal) after the date of this Agreement.
- 7.7 Except in so far as legally or equitably permitted this Agreement shall not prejudice or fetter or affect any statutory power discretion or duty of the Minister and without prejudice to the generality of the foregoing it is agreed between the parties hereto that any benefit or power conferred on the Minister by any of the obligations or covenants by the Owner in favour of the Minister under this Agreement are in addition to any of the Minister's statutory powers under the Law.
- 7.8 Nothing contained herein shall be construed as obviating the need for the Owner to obtain or acquire from any third party with respect to the Development or its use any consents permits authorisations rights interests in land or servitudes.
- 7.9 Nothing in this Agreement shall be construed or interpreted in such a way or inference to be drawn so as to place or create a duty of care upon the Minister as a result of the Minister agreeing to accept the covenants agreements and undertakings on the part of the Owner as contained herein.
- 7.10 The Owner shall not be entitled to any costs or compensation as a result of the making of this Agreement and the obligations contained herein.
- 7.11 All communications and notices served or made under this Agreement shall be in writing.

8 WAIVER

No waiver (whether expressed or implied) by the Minister 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 Minister from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

9 CHANGE IN OWNERSHIP

The Owner agrees with the Minister to give the Minister 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.

10 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.

11 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.

12 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.

13 GOODS AND SERVICES TAX

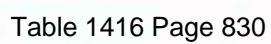
13.1 All *cause* given in accordance with the terms of this Agreement shall be exclusive of any GST properly payable in respect thereof.

13.2 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.

14 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 and approved plan PL 06 B

Decision Summary

Department of the Environment

Ministerial Decision

Decision Reference: MD- PE- 2018 – 0028			
Decision Summary Title:	Appeal Decision – Wayside Cafe, Private Car Park and Seabreeze, Le Mont Sohier, St Brelade (P/2017/0574)	Date of Decision Summary:	03 April 2018
Decision Summary Author:	Business Director	Decision Summary: Public or Exempt?	Public
Type of Report: Oral or Written?	Written	Person Giving Oral Report:	n/a
Written Report Title:	Report to the Minister for the Environment - Site at Wayside Cafe, Private Car Park and Seabreeze, Le Mont Sohier, St Brelade	Date of Written Report:	Undated
Written Report Author:	Jonathan King BA(Hons) DipTP MRTPI Planning Inspector	Written Report : Public or Exempt?	Public
Subject: Appeal under Article 108 of the Planning and Building (Jersey) Law 2002 against a refusal to grant planning permission at Wayside Cafe, Private Car Park and Seabreeze, Le Mont Sohier, St Brelade (P/2017/0574).			
Decision: The Minister allowed the appeal and hereby grants permission to develop land under Article 116 of the Planning and Building (Jersey) Law 2002 in respect of the following development; <i>"Demolish existing and construct new restaurant, surf shop with 1 three-bed flat above; to demolish existing 2 dwellings; to construct 2 five-bed dwellings with garage and associated landscaping and 2 one-bed staff units; to construct 1 one-bed and 1 two-bed flats; to alter vehicular access onto Le Mont Sohier; to construct bus shelter and to create public access through the site.</i> The permission is granted subject to compliance with the following conditions: (a) the prior signing of a Planning Obligation Agreement addressing the matters listed in Annex A of the report; and (b) issued subject to conditions addressing the matters set out in Annex B of the report			
Reason for Decision: The Minister agreed with the recommendation of the Inspector as detailed within his report.			
Resource Implications:- None			
Action required: Request the Judicial Greffe to inform interested parties of the decision.			

Signature: Deputy S Luce		Position: Minister
Date Signed: 4/4/18	Date of Decision <i>(If different from Date Signed):</i>	



THIRD SCHEDULE**The Owner's Covenants with the Minister**

The Owner covenants, agrees and undertakes:

COMMENCEMENT

- 1 Not to Commence the Development until the Owner has given to the Minister not less than fourteen (14) days' notice in writing of their intention so to do.

PUBLIC SPACE

- 2 Not to Occupy or use or cause or permit to be Occupied the Development until the Public Space has been laid out in accordance with the approved plans under the Planning Permission.
- 3 Following the Occupation of the Development:
 - 3.1 to allow free and unrestricted use for recreational purposes of the Public Space by persons living and/or working on the Development and all members of the general public on foot and by bicycle without charge subject only to:
 - 3.1.1 such rules, regulations, terms and conditions as to their use as may be approved by the Minister from time to time;
 - 3.1.2 the right to suspend public use of any part of such Public Space pending maintenance or repair of that part but subject always to reasonable prior written notice having been given to the Minister of the intended works of repair or maintenance and the duration of any such disruption being kept to the minimum reasonably necessary to carry out the works; and
 - 3.1.3 the right to exclude persons whose behaviour is abusive, intimidating, offensive, threatening, anti-social or criminal; and
 - 3.2 to keep the Public Space unobstructed and free of any gates or barriers.

BUS SHELTER

- 4 Not to Occupy or use or cause or permit to be Occupied the Development until the Bus Shelter has been constructed in accordance with the approved plans under the Planning Permission.
- 5 Following the Occupation of the Development:

- 5.1 to allow without charge the free and unrestricted use of the Bus Shelter on the Bus Shelter Site by persons living and/or working on the Development and all members of the general public for the purpose of embarking on to or disembarking from buses on such bus routes as from time to time pass by and stop at the the Bus Shelter Site subject only to:
- 5.1.1 such rules, regulations, terms and conditions as to the use of the Bus Shelter as may be approved by the Minister from time to time;
 - 5.1.2 the right to suspend public use of any part of such Bus Shelter Site pending maintenance or repair of that part but subject always to reasonable prior written notice having been given to the Minister of the intended works of repair or maintenance and the duration of any such disruption being kept to the minimum reasonably necessary to carry out the works; and
 - 5.1.3 the right to exclude persons whose behaviour is abusive, intimidating, offensive, threatening, anti-social or criminal; and
- 5.2 to keep maintain and repair in good and substantial condition the Bus Shelter and the Bus Shelter Site

FOOTPATH

- 6 Not to Commence the Development before the Footpath Works Specification has been submitted to the Minister for his approval (in consultation with the Infrastructure Minister) and has been approved by the Minister
- 7 That the Owner will at its own expense undertake the Footpath Works in accordance with the Footpath Works Specification and the requirements of the relevant highway authority.
- 8 To complete the Footpath Works in accordance with the Footpath Works Specification to the reasonable satisfaction of the Minister (in consultation with the Minister for Infrastructure) prior to the Development being Occupied.
- 9 Within 14 days of completion of the Footpath Works the Owner shall cede and transfer and the Public shall take conveyance of the relevant property free of all charges and encumbrances by contract to be passed before the Royal Court the Owner paying the proper and reasonable costs of and incidental to the said transfer (including all and any reasonable legal and professional costs)

Signed on behalf of the Minister:

[REDACTED]

Name and Position: ... PETER LE GREY (DIRECTOR)

in the presence of

[REDACTED]

Name and Position: ... LAWRENCE DAVIES (PLANNER)

this 17th day of July 2018

Signed on behalf of the Owner:

[REDACTED]

in the presence of

[REDACTED]

Name and Position: ... IAN STRANG - ADVOCATE

this 27 day of JUNE 2018

RECEIVED
COAST TOWER PROPERTIES
24.7.18