

# *In the Royal Court of Jersey*

---


Samedi Division

---

**In the year two thousand and nineteen, the sixteenth 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, The Windmills Hotel Limited and Helvi Airi Eiler Preston, née Pirinen in relation to The Windmills Hotel, Le Mont Gras d'Eau, St Brelade, be registered in the Public Registry of this Island.



Greffier Substitute

LOD

Reg. Pub.

  
 DATE 12<sup>th</sup> July 2019 2019

#### PARTIES

- (1) The Chief Officer for the Environment of States Offices, South Hill, St Helier, Jersey JE2 4US (the "**Chief Officer**");
- (2) THE WINDMILLS HOTEL LIMITED, a private limited liability par value company incorporated in Jersey with registration number 1294 under the Companies (Jersey) Laws, 1861 to 1968, whose registered office is at La Ferme Du Printemps, Rue Des Bouillons, Trinity, Jersey, JE3 5BB (the "**Owner**");
- (3) HELVI AIRI EILER PRESTON (née PIRINEN) (the "**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 30 March 1963 from Mrs Anna Titterington.
- 2 The Lender has an interest in the Site by virtue of a simple conventional hypothec (*hypothèque conventionnelle simple*) dated 16 February 2018.
- 3 The Owner indirectly submitted through Arthur Leonard Robert Morton an application (accorded the reference P/2018/1441) for planning permission for the Development.
- 4 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.
- 5 The parties hereto have agreed to enter into this Agreement in order to secure the planning obligations contained herein.
- 6 The parties acknowledge that this Agreement is legally binding.
- 7 This Agreement shall be construed so as to give effect to the purpose and intention of the Law.

#### NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

##### OPERATIVE PART

#### 1 DEFINITIONS

For the purposes of this Agreement the following expressions shall have the following meanings:

<b>"Agreement"</b>	This agreement including the recitals and schedules hereto;
<b>"Application"</b>	the application for planning permission in respect of the Site and described as and given the reference P/2018/01441;
<b>"Chief Officer"</b>	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;
<b>"Commencement"</b>	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 <b>"Commence"</b> and <b>"Commenced"</b> shall be construed accordingly;
<b>"Contribution"</b>	the sum of fifty-six thousand four hundred and ten pounds Sterling thirty-one pence (£56,410.31) to be paid by the Owner to the Treasurer of the States to be applied by the Minister for Infrastructure for the junction improvement of La Route Des Genets at the top of Mont Gras D'Eau to include a signalised pedestrian crossing, a bus shelter, kerb realignment and highway resurfacing;
<b>"Development"</b>	the development of the Site as set out in the Application;
<b>"Dwelling Unit" or "Dwelling Units"</b>	a residential unit forming part of the Development to be constructed pursuant to the Planning Permit;
<b>"GST"</b>	goods and services tax under the Goods and Services Tax (Jersey) Law

	2007;
<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; and
<b>"Site"</b>	Windmills Hotel, Le Mont Gras D'Eau, St Brelade, Jersey, JE3 8ED, 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 their 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 LENDER'S CONSENT**

The Lender acknowledges and declares that this Agreement has been entered into by the Owner with her consent and that the Site shall be bound by the obligations contained in this Agreement and that the security of the Lender over the Site shall take effect subject to this Agreement **PROVIDED THAT** the Lender shall otherwise have no liability under this Agreement unless she takes possession of the Site in which case she too will be bound by the obligations as a person deriving title from the Owner.

#### 14 JURISDICTION

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

## FIRST SCHEDULE

### The Plan

28 September 2018

# LOCATION PLAN

SCALE 1: 2500



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

# Decision Notice



## PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2018/1441

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

#### In respect of the following development:

Demolish existing hotel and ancillary structures. Construct 5 No. 2 bed and 6 No. 3 bed residential units with associated. Parking and landscaping. 3D model available. AMENDED DESCRIPTION: Change 2no. visitor parking spaces to staff use. Installation of 3no. visitor cycle stands adjoining main building entrance and increase in private garage dimensions. AMENDED PLANS RECEIVED. FURTHER AMENDED DESCRIPTION: Reduction in height of new building. Additional landscaping proposed. 3D Model amended. FURTHER AMENDED PLANS RECEIVED.

#### To be carried out at:

Windmills Hotel, Le Mont Gras d'Eau, St. Brelade, JE3 8ED.

#### 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 4; SP 5; SP 6; SP 7; GD 1; GD 4; GD 7; GD 8; BE 3; H 4; H 6; NE 2; NR 7; TT 4; TT 8; 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.

In addition, the representations raised to the scheme on the grounds of

APPROVED

# Decision Notice



## PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2018/1441

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, and

D. Specified hours of working.

3. No part of the development hereby approved shall be occupied until the means of vehicular access and car parking areas as indicated on the approved plans have been wholly constructed in accordance with the approved plans and shall thereafter be retained as such.

4. No part of the development hereby approved shall be occupied until the cycle parking 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 retained as such.

5. No part of the development hereby approved shall be occupied until the electric car charging facilities 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.

6. Prior to the development being brought into first use, visibility splays shall be laid out and constructed in accordance with the approved plans. The visibility splays shall then be retained thereafter.

7. Prior to the occupation of any part of the development hereby approved, the Percentage for Art contribution shall be delivered on site, in accordance with the details submitted in the approved Percentage for Art Statement.

8. No part of the development hereby permitted shall be begun until a scheme of landscaping has been submitted to and approved in writing by the Department of the Environment. The scheme of landscaping shall provide details of the following; i) all existing trees, hedgerows and other plants, walls, fences and other features which it is proposed to retain on the site; ii) the position of all new trees and/or shrubs, this must include the species of plant(s)/tree(s) to be planted, their size, number and spacing and the means to be used to support and protect them; iii) other landscape treatments to be carried out including any excavation works, surfacing treatments, or means of

APPROVED

# Decision Notice



## PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2018/1441

Adopted Island Plan 2011 (Revised 2014).

7. In accordance with the requirements of Policy GD 8 of the Adopted Island Plan 2011 (Revised 2014).
8. To safeguard the character and appearance of the area in accordance with Policies GD1, NE1, NE2 and NE4 of the Adopted Island Plan 2011 (Revised 2014).
9. In accordance with Policy WM1 of the Adopted Island Plan 2011 (Revised 2014).
10. To ensure that the property has adequate foul and surface water drainage and in order to prevent any pollution of groundwater in accordance with Policy LWM2 and LWM 3 of the Adopted Island Plan 2011 (Revised 2014).
11. To ensure the protection of all protected species in accordance with Policies NE1, NE2 and NE4 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](http://www.gov.je/planning)

The following plans have been approved:

Location Plan  
 Cover Letter  
 Proposed External Works - South PL-71 (A)  
 Proposed External Works - North PL-70  
 Proposed First Floor Layout PL-23 (B)  
 Proposed External Works - Roof Gardens PL-72 (A)  
 Proposed Third Floor Layout PL-25  
 Proposed Ancillary Buildings PL-26 (A)  
 Proposed Second floor Layout PL-24 (A)  
 Proposed Lower Ground Floor Layout PL-21 (A)  
 Proposed Site Layout PL-20 (A)  
 Proposed Ground Floor Layout PL-22 (B)  
 Existing Site Layout With Floor Layouts PL-01  
 Site Context Distance Photos of Site PL-02  
 Existing Elevations PL-04  
 Existing Sections 1-1 & 2-2 PL-05  
 Existing Sections 5-5 & 6-6 PL-07  
 Existing Sections 3-3 & 4-4 PL-06  
 Demolition PL-10 (A)  
 Existing Site Sections PL-09  
 Existing Sections 7-7 & 8-8 PL-08

APPROVED

# Decision Notice



PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2018/1441

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

**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.

#### 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 on behalf of the Chief Officer for the  
Environment of States Office

by .

in the presence of:

Position ..

PRINCIPAL PLANNER

Signature

Name ..

A. TOWNSEND

this

day of

2019

Signed on behalf of THE WINDMILLS HOTEL LIMITED

by .

In the presence of:

Position ..

Legal Assistant

Signature

Name ..

Stephanie Skimming

this

day of

2019

(EN)

in the presence of:

Position ..

Legal Assistant

Signature

Name ..

Stephanie Skimming

this

day of

2019