

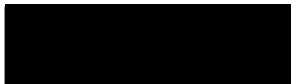
In the Royal Court of Jersey

Samedi Division

In the year two thousand and twenty-one, the twentieth day of September.

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 John Terry Limited and in relation to 8/9 Esplanade and 10/12 Commercial Street, St Helier, Jersey, 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 8/9 Esplanade and 10/12 Commercial Street, St
Helier, Jersey

Dated

20th

September 2021

The Chief Officer for the Environment (1)

John Terry Limited (2)

DATE

20th

September 2021

PARTIES

1. The Chief Officer for the Environment of Government Offices, Planning and Building Control, PO Box 228, Jersey, JE4 9SS (**'the Chief Officer'**);
2. John Terry Limited (**'the Owner'**) a limited liability company incorporated in Jersey with number 30 the registered office of which is situate at 26 New Street St Helier Jersey JE2 3RA

RECITALS

- 1 The Owner warrants that it is the owner in perpetuity (*à fin d'héritage*) of the Site by virtue of i) a contract of purchase in respect of 8/9 Esplanade and 10 Commercial Street (together with 8 Commercial Street) from Le Rossignol & Rossier Limited passed before the Royal Court on 20th February 1929 as to part and ii) a contract of purchase from Ada Lilian Fox passed before the Royal Court on 11th March 1939 as to the remainder.
- 2 The Owner submitted the Application for planning permission for the Development.
- 3 The Application was submitted to the Chief Officer who having regard to the purposes of the Law, the Island Plan 2011 and all other material considerations resolved to approve the grant of planning permission with respect to the Application subject to the prior completion of this Agreement as it considers it expedient in the interests of proper planning that provision should be made for securing certain public realm improvements more particularly described in the Third Schedule.
- 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;
'Application'		the application for planning permission in respect of the Site and described as, "Demolish existing buildings except Listed buildings No. 10 Commercial Street and the façade to No. 9 Esplanade. Construct up to 5 storeys of (Class C) Office with car parking and bicycle storage. Change of use of No. 10 Commercial Street to (Class C) Office and retain existing car park within warehouse", and given the reference P/2020/1778;
'Walking and Cycling Contribution'		the sum of fifty-eight thousand five hundred and twenty-eight pounds eighty pence (£58,528.80) to be paid by the Owner to the Treasurer of the States to be applied towards the improvement of the St Helier cycle network and walking routes in proximity to the Site;
'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 construction works forming part of the Development permitted by the Planning Permit or any subsequent planning permission for the Development begins to be carried out to exclude, for the avoidance of

		doubt, any investigation of the Site, any clearance of the Site, removal of any asbestos from the Site and any demolition on the Site and 'Commence' and 'Commenced' shall be construed accordingly;
'Development'		the development of the Site as set out in the Planning Permit;
'GST'		Goods and Services Tax under the Goods and Services Tax (Jersey) Law 2007;
'Index'		the All Items Retail Prices Index of Jersey as issued from time to time by the Statistics Unit to the Government of Jersey.
'Interest'		interest at three percent above the base lending rate of the Barclays Bank Plc.
'Island Plan 2011'		the States of Jersey Island Plan, 2011 (Revised 2014);
'Law'		the Planning and Building (Jersey) Law 2002;
'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;
'Public'		the Public of the Island of Jersey;

'Royal Court'		the Royal Court of the Island of Jersey;
'Site'		the site comprising the property known as 8/9 Esplanade and 10/12 Commercial Street, St Helier, Jersey, the whole as shown for the purposes of identification on the plan forming the First Schedule.

2 CONSTRUCTION OF THIS AGREEMENT

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

3 LEGAL BASIS

3.1 This Agreement is made pursuant to Article 25 of the Law.

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

4 CONDITIONALITY

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

5 OWNER'S COVENANTS

The Owner covenants and agrees with the Chief Officer as set out in the Third Schedule 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 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, Customer and Local Services PO Box55, LaMotte Street, St Helier, Jersey, JE4 8PE or as otherwise notified for the purpose by notice in writing.
- 8.2 Any notices served on the Owner shall be deemed to have been properly served if sent by ordinary post to and addressed to the address of the Owner referred to above or sent by e-mail to the Owner's e-mail address as stated on the signature page 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 covenant's 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 COUNTERPARTS

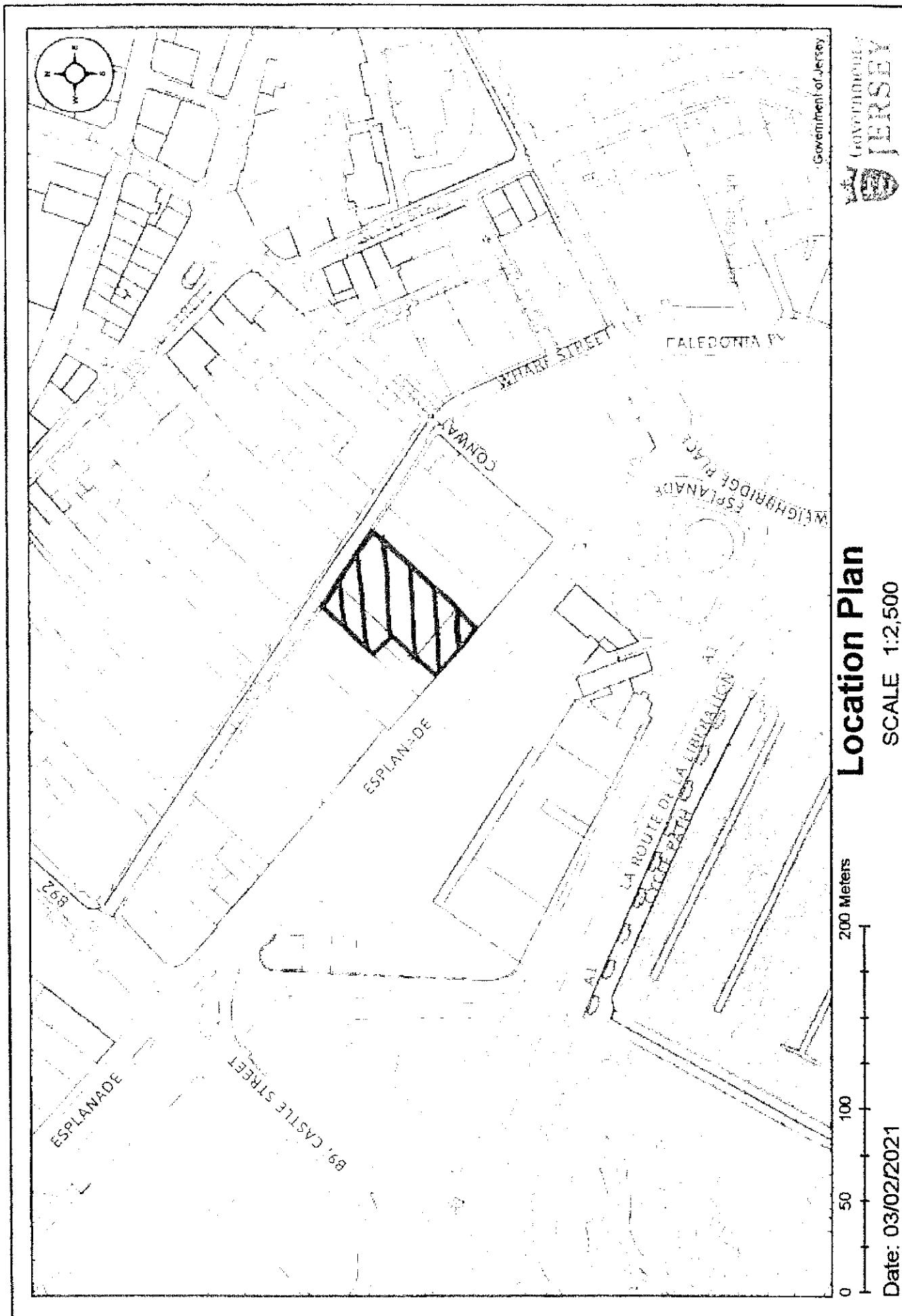
This Agreement may be executed in any number of counterparts by the parties hereto on different counterparts, but shall not be effective until each party has executed at least one counterpart and each counterpart shall constitute an original of this Agreement but all the counterparts shall together constitute one and the same Agreement.

16 JURISDICTION

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

FIRST SCHEDULE

The Site



Location Plan

SCALE 1:2,500

Date: 03/02/2021

SECOND SCHEDULE
The Planning Permit

Decision Notice



PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2020/1778

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 buildings except Listed buildings No. 10 Commercial Street and the façade to No. 9 Esplanade. Construct up to 5 storeys of (Class C) Office with car parking and bicycle storage. Change of use of No. 10 Commercial Street to (Class C) Office and retain existing car park within warehouse. 3D Model available.

To be carried out at:

8-9 Esplanade & 10-12 Commercial Street, St. Helier.

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

In addition, the representations raised to the scheme on the grounds Of the proposals do not meet the requirements of the relevant Island Plan policies on the retention of historic fabric, proposal is based on profit, not people, no carbon assessment has been included and no information on how much steel will be required have been assessed.

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PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2020/1778

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

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. Prior to the development commencing a full BREEAM pre-assessment demonstrating that 'BREEAM Very Good' can be met by the development must be submitted to and approved in writing by the Department. The pre-assessment must be drawn up by an appropriately qualified assessor. The proposal shall include a grey water recycling system, details of the building heating system and energy efficient lighting. The development must then be carried out in accordance with the details specified in the approved assessment. Within six months of the first occupation of the building a post construction review shall be submitted - again drawn up by an appropriately qualified assessor - demonstrating that 'BREEAM Very Good' has been achieved.
2. Prior to the commencement of development hereby permitted, details shall be submitted to and approved by the Department, implemented and thereafter maintained, of a Skills and Training Plan, to support the development and training needs of Island residents. The Methodology for the Skills and Training Plan shall first have been agreed with the Department.
3. Prior to commencement of the development hereby permitted, a full engineering specification and method statement for the retention of the facade to No. 9 The Esplanade shall be submitted to and approved by the Department to be thereafter implemented prior to first occupation and maintained in perpetuity. The details shall include works necessary to meet any phased construction programme.
4. If hidden historic features are revealed during the course of works they should be retained in-situ until examined by the Historic Buildings Officer.

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PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2020/1778

Works shall be suspended in the relevant area of the building and the Historic Buildings Officer notified immediately with a view to agreeing the appropriate action. Failure to do so may result in unauthorised works being carried out and an offence being committed

5. Prior to commencement of the development hereby permitted, a programme of recording and analysis of the protected structures to be lost (the rear No. 9 The Esplanade and all of No. 8 The Esplanade) to the terms of a brief shall be submitted to and approved by the Department and thereafter implemented in accordance with the agreed brief.

6. No development shall take place until a scheme of foul drainage and surface water drainage has been submitted to and approved by the Department. The approved scheme shall be completed before the development is first brought into use.

7. No part of the development hereby permitted shall be begun until a Demolition/Construction Environmental Management Plan has been submitted to and approved by the Department. The Demolition/Construction Environmental Management Plan shall be thereafter implemented in full until the completion of the development and any variations agreed in writing by the Department prior to such work commencing. The Plan shall secure an implementation programme of mitigation measures to minimise the adverse effects of the proposal on the environment, and shall include but not be limited to:

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

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

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

D. Specified hours of working;

E. Details of site compound location during demolition and construction works to include any materials delivery arrangements and materials storage on site.

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

9. No part of the development hereby approved shall be occupied until the cycle parking facilities as indicated on the approved plan have been wholly

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PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2020/1778

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.

10. Prior to their first use on site, samples of all external materials to be used in the construction of the development (including any hard landscaping materials) shall be submitted to and approved in writing by the Department. The approved materials shall be implemented in full and thereafter retained as such.

11. The findings and required mitigation measures outlined in the Ecology Assessment dated 15th December 2020 under NE/ES/ESP.01 shall be implemented prior to the commencement of development, continued throughout the phases of development (where applicable) and thereafter retained as such. Any variations that may be required as a result of findings on site are to be agreed in writing by the Department prior to works being undertaken.

12. Prior to the commencement of development of the above ground superstructure, precise details of the proposed Percentage for Art scheme shall be submitted and approved in writing by the Department. The approved scheme shall be implemented in full prior to first occupation and thereafter retained as such.

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

Reason(s):

1. In the interests of sustainable development and energy efficiency, in accordance with Policy SP 2 of the Adopted Island Plan 2011 (Revised 2014).
2. In the interests of promoting sustainable patterns of development and supporting economic growth and diversification, and to accord with Policies GD 1 and SP 5 of the Adopted Island Plan 2011 (Revised 2014).
3. To ensure a high quality of design and in accordance with Policies SP 7 and GD 7 of the Adopted Island Plan 2011.
4. To ensure that special regard is paid to the interests of protecting the architectural and historical interest, character and integrity of the building under the provisions of Policies SP 4 and HE 1 of the Adopted Island Plan 2011 (Revised 2014).
5. To ensure that special regard is paid to the interests of protecting the architectural and historical interest, character and integrity of the building under the provisions of Policies SP 4 and HE 1 of the Adopted Island Plan 2011 (Revised 2014).

Decision Notice



PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2020/1778

6. To ensure satisfactory drainage arrangements in accordance with Policies LWM 2 and 3 of the Adopted Island Plan 2011 (Revised 2014).
7. To ensure the development does not have an adverse impact on public health or the wider environment, in accordance with Policies GD 1, GD 6 and WM 1 of the Adopted Island Plan 2011 (Revised 2014).
8. To ensure that the development provides adequate provision for off-street parking and manoeuvring for users of the site, in the interests of highway safety and the general amenities of the area, in accordance with Policy GD1 of the Adopted Island Plan 2011 (Revised 2014).
9. In the interests of promoting sustainable patterns of development, in accordance with Policies TT9 and SP6 of the Adopted Island Plan 2011 (Revised 2014).
10. To promote good design and to safeguard the character and appearance of the surrounding area, in accordance with Policies GD1 and GD7 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).
12. To ensure provision of a Percentage for Art scheme as required by Policy GD 8 of the Adopted Island Plan 2011 (Revised 2014).
13. To protect the amenities of the occupiers of neighbouring properties and the visual amenities of the surrounding area, in accordance with Policies GD 1 and WM 1 of the Adopted Island Plan 2011 (Revised 2014).

FOR YOUR INFORMATION

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

The following plans have been approved:

Location Plan
Proposed Site Plan
No. 10 Commercial Street - Proposed Facade Detail
No. 12 Commercial Street - Proposed Facade Detail
No. 8 Esplanade - Proposed Facade Detail
No. 9 Esplanade - Proposed Facade Detail
Proposed Commercial Street and Lightwell Elevation
Proposed Commercial Street Elevation
Proposed East and West Elevation
Proposed Esplanade Elevation

Decision Notice



PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2020/1778

Proposed Ground Floor Plan
Proposed First Floor Plan
Proposed Second Floor Plan
Proposed Third Floor Plan
Proposed Fourth Floor Plan
Proposed Roof Plan
Proposed Section 1
Proposed Section 2

DECISION DATE: 26/07/2021

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

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 Walking and Cycling Contribution prior to the Commencement of the Development.
- 3 Not to Commence the Development until such time as the Walking and Cycling 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.

IN WITNESS whereof the parties hereto have executed this Agreement the day and year first before written.

Signed on behalf of the Chief Officer

Print Name: PETER LE GREESLEY

Signature: 

in the presence of

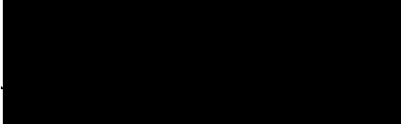
Print Name: CHRISTOPHER JONES

Signature: 

this 20th day of September 2021

Signed on behalf of the Owner

Print Name: MARTIN CLANCY

Signature: 

in the presence of

Print Name: COLIN PATERSON

Signature: 

this 16th day of September 2021

Owner's e-mail address: cpateman@dandara.com