

In the Royal Court of Jersey

Samedi Division

In the year two thousand and nineteen, the eleventh 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 Helen Christina Crichton, née Jasper in relation to Waverley Farm, Le Mont Arthur, 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 Waverley Farm, Le Mont Arthur, St. Brelade, JE3 8AH

Dated

10th September

2019

The Chief Officer for the Environment (1)

Helen Christina Crichton *née* Jasper (2)

DATE 10th September 2019

PARTIES

- (1) The Chief Officer for the Environment of States Offices, South Hill, St Helier, Jersey JE2 4US ("**the Chief Officer**");
- (2) Helen Christina Crichton née Jasper ("**the Owner**") of Waverley Farm, Le Mont Arthur, St. Brelade, JE3 8AH

RECITALS

- 1 The Owner warrants that she owns in perpetuity (*à fin d'héritage*) the Site by virtue of a deed of gift dated 25 October 2002 from Matthews Farms Limited.
- 2 The Owner submitted an application (accorded the reference P/2018/1370) 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 Planning Committee at its meeting on 13 June 2019 resolved 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;
"Application"	the application for planning permission in respect of the Site and described as "Construct 1No. one bed staff unit above garage to North of site" and

		given the reference P/2018/1370;
"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 constructions 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;
"Dependent Relative Accommodation"		the existing staff accommodation that is presently within the main house known as Waverley Farm but which is intended to be displaced for the purpose of accommodating a dependent relative of the Owner;
"Development"		the development of the Site as set out in the Application;
"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;
"Occupation" and "Occupied"	"Occupy"	means occupation for the purposes permitted by the Planning Permit but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations;

"Planning Permit"	the planning permission for the Development granted by the Chief Officer pursuant to the Application, a copy of which is attached at the Second Schedule and references to the Planning Permit include where the context permits any variations to the said planning permission from time to time;
"Royal Court"	the Royal Court of the Island of Jersey;
"Site"	Waverley Farm, Le Mont Arthur, St. Brelade, JE3 8AH, as shown for the purpose of identification edged red on the Plan;
"Staff Accommodation"	the separate dwelling shown on Application drawings 1137.02 (proposed site plan) 1137.03 (existing and proposed garage) and 1137.05 (proposed elevations) forming part of the Development;

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 is conditional upon:

- (i) the grant of the Planning Permit; and
- (ii) the Commencement of Development,

save for any relevant provision which 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. 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.

7 MISCELLANEOUS

- 7.1 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.
- 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 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.
- 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 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.
- 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 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.

9 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 their interest in the Site occurring before all the obligations under this Agreement have been discharged.

10 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 Chartered Institution of Arbitrators upon the application of any party to the dispute.

11 GOODS AND SERVICES TAX

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

11.2 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.

12 JURISDICTION

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

FIRST SCHEDULE

The Plan



LOCATION PLAN
SCALE 1: 2500

Digimap Tile Reference - 370655
Digimap Licence Number - J161

SECOND SCHEDULE

The Planning Permit

Draft Decision Notice



PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2018/1370

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:

Construct 1 No. one bed staff unit above garage to North of site. REVIEW REQUEST of refusal of planning permission.

To be carried out at:

Waverley Farm, Le Mont Arthur, St. Brelade, JE3 8AH.

REASON FOR APPROVAL: Permission has been granted having taking into account the relevant policies of the Approved Island Plan 2011 (Revised 2014), together with other relevant material considerations, and subject to a Planning Obligation Agreement to control the occupancy of the accommodation.

Whilst acknowledging that the proposed staff unit is in the Green Zone the Committee noted that staff were already accommodated on site and that the development would allow for part of the existing dwelling currently used by staff to be used to accommodate a dependent relative. This may be considered as an acceptable exception to the presumption against development in the Green Zone, and overall the development would not increase the number of staff living on site.

Given the location of the garage on the site, the proposal will not unreasonably harm the amenities of neighbouring uses, including the living conditions for nearby residents.

Further to this, the Committee noted that the construction of extensions to dwellings and outbuildings may be acceptable in the Green Zone, and that the staff unit will be formed in the extended roof of the existing

APPROVED

Draft Decision Notice



PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2018/1370

garage, which is acceptable in design and not considered to cause serious harm to landscape character.

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.

FOR YOUR INFORMATION

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

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

Location Plan
Proposed Site Plan 1137.02
Existing and Proposed Garage 1137.03
Proposed Elevations 1137.05

APPROVED

Decision Notice



PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2018/1370

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

APPROVED

THIRD SCHEDULE

The Owner's Covenants with the Chief Officer

The Owner covenants, agrees and undertakes:

1. To ensure that the Staff Accommodation shall not be used or Occupied or permitted to be used or Occupied otherwise than in conjunction with and ancillary to the main house known as Waverley Farm.
2. The Occupation of the Staff Accommodation shall be limited to persons solely or mainly employed by the Owner of the main house known as Waverley Farm for:
 - a. Maintenance of the Site; and/or,
 - b. As a home carer for a *bona fide* resident of the main house known as Waverley Farm.
3. The Staff Accommodation shall not be sold let alienated or otherwise disposed of separately from the main house known as Waverley Farm.
4. The Dependent Relative Accommodation shall only be used:
 - a. for the accommodation of a dependent relative of bone fide residents of the main house known as Waverley Farm; and/or
 - b. as an integral part of the main house known as Waverley Farm.
5. Following first Occupation of the Staff Accommodation:
 - a. the Dependent Relative Accommodation shall not at any time be used as a separate or independent unit of accommodation from the main house known as Waverley Farm;
 - b. the Dependent Relative Accommodation shall not be sold let alienated or otherwise disposed of separately from the main house known as Waverley Farm.

Signed on behalf of [redacted] by [redacted] (PETER LE GREY)

in the presence of [redacted] this 10th day of September 2019

SIGNED by Helen Christina Crichton née Jasper

[redacted]

in the presence of:

[redacted]

witness

This 30th day of August 2019