

STATES OF JERSEY

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DRAFT HOWARD DAVIS FARM (ABROGATION OF COVENANT) (JERSEY) LAW 200

**Lodged au Greffe on 5th June 2008
by the Minister for Treasury and Resources**

STATES GREFFE



Jersey

DRAFT HOWARD DAVIS FARM (ABROGATION OF COVENANT) (JERSEY) LAW 200

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Chief Minister, acting on behalf of and in the temporary absence of, the Minister for Treasury and Resources has made the following statement –

In the view of the Chief Minister the provisions of the Draft Howard Davis Farm (Abrogation of Covenant) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator F.H. Walker**

REPORT

Introduction

Members will recall that in January 2007 the States Assembly approved P.170/2006 “Howard Davis Farm (Partial Abrogation of Covenant) (Jersey) Law 2007” (registered 22/06/07) to permit part of the site to be used for the proposed new dairy. P.170 was approved by 45 votes to nil against, with one abstention.

The intention of that particular debate was to facilitate the relocation of the Jersey Dairy to Howard Davis Farm. It was always recognised, and indeed was noted as part of the report accompanying the proposition that many of the other uses taking place on the site fell outside of the original terms of the gift and would need to be regularised in due course.

It has never been considered acceptable for the States to accept a gift of this nature and then to simply pass a law revising the conditions relating to the charitable purposes of the gift and use the site for other, non-charitable, purposes with no further reference to the purpose for which the gift was given.

As part of the original abrogation, it was agreed by the States that the proceeds arising from the rent of the dairy site would be transferred into a separate fund or trust (“the Trust”) which would then fulfil the terms of the original gift, slightly widened to include (for example) environmental and horticultural uses as well as the original intention of agriculture.

The proposed Law sets out to regularise the remaining existing uses on the site, and at the same time stipulates the calculation of monies to be transferred into the Trust following the principles established under P.170.

For administrative convenience this Law regularises the current uses together with the previously approved Dairy use (as approved under P.170) and also revokes the original Howard Davis Farm (Partial Abrogation of Covenant) (Jersey) Law 2007.

Background

Members will recall from the 2007 debate the generosity of Thomas Benjamin Frederick Davis and the many gifts he made to the Island. It is the view of the Minister that it continues to be essential to honour and recognize the importance of T.B. Davis as an extremely generous benefactor to the people of Jersey, and to retain the tributes to the memory of his son Howard who served with distinction and died in service for his country and the freedom of future generations.

Parkfield (later to be named Howard Davis Farm), amounting to the house, farm buildings and 40 vergées of land, was gifted to the Public of the Island by T.B. Davis and accepted by the Act of the States on the 17th December 1927. A covenant attached to the gifting imposed certain conditions as to the use of the land and buildings (the Covenant). It was one of four separate corpus-fundi transferred by Mr. Davis to the Public of the Island in perpetuity and gifted for –

“the purpose of establishing there, under the administration of the Committee of Agriculture of the States, an experimental farm for developing the study of agriculture and for instructing in that science young people and other interested parties”.

With the decline in Island agriculture and the associated need for research and training within the industry, only a small percentage of the uses now currently fall within the permitted terms of the Covenant.

Regularisation of Current Uses

The Law proposes a relaxation of the Covenant to permit (and regularise) the uses presently taking place on the site. This is achieved by defining those uses in the Schedule to the Law. The Schedule can only be amended in the future by a separate proposition brought to the States Assembly.

The Schedule to the proposed Law sets out the existing principle uses currently operating at Howard Davis Farm and in addition certain ancillary approved uses.

The aim is to permit the present uses of the site; to provide a degree of flexibility in how those uses are permitted to operate in the future; but to ensure that any significant change away from present envisaged uses would be required to be brought back to the States Assembly for further approval.

This has been achieved by restricting many of the uses by area. For example warehousing would be permitted up

to 60,000 sq feet. As a guide, the existing site represents 40 vergées of land (being approximately 18 acres or 774,000 square feet), of which the presently developed area (including the proposed dairy site, warehouses / storage sheds, glass houses, poly-tunnels, accommodation units and offices) measures approximately 277,000 square feet.

In essence what this Law aims to achieve is to permit an enhanced (and slightly more flexible) use of the Howard Davis Farm site, in return for a financial contribution to be paid into the previously mentioned Trust.

At present, the existing uses of the site comprise the following:

1. The offices, laboratories and ancillary areas for the Environmental Services Division.
2. Glass houses and poly-tunnels all but one of which are currently unused.
3. The Centre for Further Education, including an Art Block.
4. Acorn Enterprises (which is operated by the Jersey Employment Trust - a charitable Trust part financed by the States). It gives disabled people and those who find it difficult to work in an open environment the opportunity to work in horticulture and garden maintenance amongst other activities.

Additional activities include a commercial business recycling timber. There is also a small shop operated by Mencap Jersey. Acorn would like to marginally expand their retail presence to incorporate a small café, which could be used for further training of their clients.

5. Certain storage buildings in which the Transport and Technical Services Department bags recycle green waste as compost, and crushes tomatoes to liquid for clean disposal in times of surplus.
6. An animal carcass incinerator (as opposed to the pet crematorium, which is actually located on an adjacent site).
7. Three residential units, only two of which are currently used for staff working at Howard Davis Farm.
8. Ancillary car parking for those working at the Farm.
9. The site also has consent for a new Dairy.

Most of these uses do not comply with the existing Covenant (other than the Dairy, which has been granted permission under the Howard Davis Farm (Partial Abrogation of Covenant) (Jersey) Law 2007).

By way of example members may recall that in legal terms there is a distinction between horticulture and agriculture, with the former being in breach of the original covenant, and the latter being in compliance.

One new use that is proposed, and which would be permitted purely on a temporary basis, and only for a period of time fixed in the Law, is that of an animal carcass incinerator. This was requested as an emergency measure by the Department of Transport and Technical Services who were concerned to ensure adequate facilities were in place should (for example) an outbreak of Blue Tongue occur in the Island. This was discussed with the Davis Family (“the Family”) in December 2007, and a temporary period of occupation agreed.

It should be noted that as part of the 2007 debate, it was welcomed by a number of members that Treasury officials had worked with representatives of the T B Davis family, and that such communications would continue. Members will recall the statement issued by the family representatives which was reproduced in the addendum to the report accompanying P.170/2006. It is these same individuals that are referred to as ‘the Family’ in this report.

The Family have been extensively involved in the discussions over the regularisation of the current uses on the site, and have welcomed the proposals to bring the covenant up to date and thereby rejuvenate the links of the Family to Jersey. This culminated in a formal meeting in Jersey during the recent visit by representatives of the family to rededicate the restored Howard D lifeboat on the weekend of the 17th to the 20th May.

Revision of Covenant

The Family has consented to the abrogation of the covenant which shall make it lawful for the Public to lease Howard Davis Farm or any part thereof free from the covenant but subject to the restrictions set out in the schedule “Conditions of letting” of this Law and on the basis that the rental income shall be applied to the Trust in accordance with Article 3 thereof.

Following negotiation and agreement between officers and members of the Family, the means of calculating the monies to be transferred into the Trust is proposed as follows –

- (1) Howard Davis Farm is divided into 2 areas (North and South) by La Rue Asplet;
- (2) the South consists of the proposed site of the new Dairy, and the balance of the land, which includes the

main farm buildings, presently occupied by the States Environment Department;

- (3) the area to the South of the road is then further subdivided into 2 sections –
 - (a) the site to be occupied by the Dairy will be by way of a ground lease and no responsibility will fall upon the States for any property maintenance. The States have previously agreed that all of the monies arising from this lease will be paid into the Trust. This Law modifies this commitment (with the agreement of the Family) to 80% of the monies received from the Dairy being paid to the Trust, with the remainder going to the States as a contribution to the on-going maintenance costs on the rest of the Howard Davis Farm site;
 - (b) the remainder of the site contains a number of buildings, including the main farm buildings which are presently occupied by the Environment Department and three houses. In the longer term, a market rent will be payable to the Trust for the use of all of the residential units. When this occurs, 50% of the rent passing will be retained by Jersey Property Holdings as a contribution towards the maintenance of the buildings on site. However, for the States Offices a nominal rent of £7,000 p.a. has been agreed with the Davis Family. This would increase annually in line with the annual percentage rise in the Jersey Cost of Living. The proposals under this Law would firstly legitimise the present use of the site for offices of the Environment Department and residential units, and will also allow a degree of flexibility of use, such that other administrative offices could make use of the buildings if necessary. Extensions to existing buildings (subject to the requirements of Planning and payment to the Trust of a market ground rent) would also now be permitted. All of these proposals are supported by the Davis Family.
- (4) The Northern part of the site is mainly occupied by Acorn Enterprises –
 - (a) there is recognition that the activities of Acorn are welcomed by the Family and considered appropriate to the site, and it is therefore proposed that Acorn will be granted a long contract lease on a peppercorn rent in respect of the area to the North of Rue Asplet;
 - (b) the remainder of this site is currently occupied by T&TS. The medium term intention being to allow Acorn to occupy that location;
 - (c) any rent on the Northern part of the site will be on the basis of a ground rent, and accordingly 80% of any proceeds would be paid into the Trust (even if this is in respect of a peppercorn rent), with 20% retained by Property Holdings to go towards maintenance costs arising elsewhere on the site.
- (5) It should be noted that where a percentage of the rental income arising from any property on the entire Howard Davis Farm site is passed to the States to meet buildings and general site maintenance, if that money is not wholly spent on maintenance, any surplus is to be divided between the Trust and the States on an 80:20 basis.

Trust Fund

In the Howard Davis Farm (Partial Abrogation of Covenant) (Jersey) Law 2007, the Minister received approval from the States Assembly for the proceeds of any lease of the land to be held by the Treasurer of the States and kept by him in a separate interest bearing account until the setting up of a trust fund which is within the spirit of the original charitable purposes of the T. B. Davis gift.

The proposed Law further refines that intention, and gives detail (under Article 3) as to how the monies to be transferred to the Trust should be calculated.

A trust deed has been drafted by the Law Officers Department in consultation with the Family and is ready to be considered and approved by the Minister and provided the members approve this Abrogation Law.

The Trust will have the following Principal Objects –

- (1) training and research in respect of agriculture and horticulture, whether in Jersey or elsewhere; and
- (2) the protection, enhancement and monitoring of, training with regard to, and research into, the environment, whether of Jersey or elsewhere.

If this Law is approved, and once the Trust has also been approved, it is the intention of the Minister (as a one off event) to amend this Law by Order to specifically identify the Trust by name.

It is not possible to do this until the Trust exists. At the time of lodging it is likely that the proper name of the Trust will be the Howard Davis Farm Trust. This will ensure clarity, and avoids any possible confusion in the

future if another Trust were to be constituted either in Jersey or elsewhere, with similar Objects.

Financial and manpower implications

The financial implications are in respect of the obligations by the States to pay rent to the Howard Davis Trust, to receive rent from the Dairy and to invest in property maintenance as described in the law.

Over the first nine years the States will be required to increase its revenue allocation by an average of £20,600 for the first three years and £28,500 thereafter, of which £14,000 rising to £26,000 by year nine will be spent on remedial maintenance to the Farm buildings and grounds.

So by year nine the net incremental cost to the States of the regularisation of all existing uses at Howard Davis Farm and the extension of uses for the Dairy will be only £2,500 per annum.

It is considered that this represents a small sum to pay in order to regularise and allow the limited extension of all current uses at Howard Davis Farm.

There are no other financial or manpower implications for the States arising from this draft Law.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 5th June 2008 the Chief Minister, acting on behalf of and in the temporary absence of the Minister for Treasury and Resources made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Chief Minister the provisions of the Draft Howard Davis Farm (Abrogation of Covenant) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

This Law provides for the further relaxation of the condition of the gift to the Public of the Island of the land known as Howard Davis Farm. The condition of the gift was that the land be used as an experimental farm for developing the study of agriculture and for instructing in that science young people and other interested parties.

Article 1 provides for the interpretation of expressions used in this Law.

Article 2 enables the whole or any part of Howard Davis Farm to be let, subject to the conditions set out in the Schedule. The States are empowered to amend the Schedule by Regulations.

Article 3 provides for a balance of the proceeds of any letting of Howard Davis Farm to be transferred to a trust established for purposes that reflect the purposes of the original gift of the land to the Public of the Island. In the event that rental income is received before the trust is established, paragraph (3) simply requires the Treasurer of the States to place the income on deposit and then transfer it, and the interest accrued, to the trust once established. The States are empowered to amend Article 3 (but not paragraph (3)) by Regulations.

Article 4 requires that, if this draft Law is adopted, it is to be registered in the Public Registry of Contracts following its registration by the Royal Court.

Article 5 repeals the Howard Davis Farm (Partial Abrogation of Covenant) (Jersey) Law 2007, as it will be wholly superseded by this Law. Any money held by the Treasurer of the States under that Law at the time of its repeal must be paid to the trust, once established, by the Treasurer, in accordance with the terms of the 2007 Law.

Article 6 provides for the citation and commencement of this Law.

The Schedule contains the conditions of use of the land, referred to in Article 2.

Paragraph 2 describes the principal uses of the land.

Paragraph 3 describes uses which are permitted, but only if they are ancillary to the principal uses described in paragraph 2. In addition, limits are imposed on the size of the area that may be let for such ancillary usage.

Paragraph 4 places an overall restriction on the size of the area that may be used as warehousing.

Paragraph 5 allows part of the land to be used for an incinerator, but imposes restrictions as to size of the incinerator and as to duration of the use.

Paragraph 6 requires that any letting at below the open market rate requires the consent of the trustees of the trust described above. However, limited exceptions are created for 2 areas of land that are already occupied or let at an undervalue.

Paragraph 7 specifies how areas are to be measured for the purposes of the restrictions on usage described above.



Jersey

DRAFT HOWARD DAVIS FARM (ABROGATION OF COVENANT) (JERSEY) LAW 200

Arrangement

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Jersey

DRAFT HOWARD DAVIS FARM (ABROGATION OF COVENANT) (JERSEY) LAW 200

A LAW to abrogate, in relation to the land known as Howard Davis Farm, a condition subject to which the property was gifted to the Public of the Island so that the land may be leased or its occupation permitted subject to conditions approved by the States; and to provide for part of the proceeds of any lease or occupation to be remitted to a trust incorporated with objects that reflect and augment the objects of the original gift; and for connected purposes

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

(1) In this Law –

“Howard Davis Farm” means the house, farm buildings and land formerly known as ‘Parkfield’ which were gifted to the Public of the Island by the late Thomas Benjamin Frederick Davis and accepted by Act of the States of 28th November 1927;

“lease” includes –

- (a) any tenancy or licence; and
- (b) any other arrangement for the occupation and use of Howard Davis Farm or any part of it by an administration of the States,

and any reference to a lessee shall be construed accordingly;

“rent” includes –

- (a) any payment under a licence; and
- (b) any payment by or recharge to an administration of the States for the occupation and use of Howard Davis Farm or any part of it;

“Trust” means the trust which has amongst its objects the objects of promoting –

- (a) training and research in respect of agriculture and horticulture, whether in Jersey or elsewhere; and
- (b) the protection, enhancement and monitoring of, training with regard to, and research into, the environment, whether of Jersey or elsewhere,

and which has amongst its powers the power to receive the monies described in Article 3.

- (2) The Minister may, by Order, substitute the definition “Trust” in paragraph (1) so that the Trust is identified by reference to the name with which, and the date on which, it was incorporated under the Loi (1862) sur les teneures en fidéicommiss et l’incorporation d’associations.

2 Abrogation of covenant

- (1) Notwithstanding the terms of the deed by which Howard Davis Farm was gifted to the Public of the Island by the late Thomas Benjamin Frederick Davis, it shall be lawful for the Public of the Island, subject to the conditions in the Schedule, to lease Howard Davis Farm, or any part of it, to any person or persons, free from the covenant requiring that Howard Davis Farm be used as an experimental farm for developing the study of agriculture and for instructing in that science young people and other interested parties.
- (2) The Schedule has effect to specify conditions for the purposes of paragraph (1).
- (3) The States may, by Regulations, amend the Schedule.
- (4) Regulations made under paragraph (3) may make such incidental, supplementary and transitional provisions as may be appropriate.

3 Application of rental income

- (1) The following amounts shall be deducted from rent received under leases of Howard Davis Farm, or of any part of it, and remitted to the Trust –
 - (a) in respect of so much of Howard Davis Farm as lies to the south of La Rue Asplet and is let for use as a commercial dairy and milk processing facility and for uses ancillary thereto –
 - (i) for the first year, £30,000,
 - (ii) for the second year, £35,000,
 - (iii) for the third year, £40,000, and
 - (iv) for the fourth year and ensuing years, 80% of the rent received;
 - (b) in respect of so much of Howard Davis Farm as lies to the south of La Rue Asplet (other than the land described in sub-paragraph (a)) and is let for any use, not less than 50% of the rent received;
 - (c) in respect of so much of Howard Davis Farm as lies to the north of La Rue Asplet, 80% of the rent received;
 - (d) for the fourth year and ensuing years, 80% of the balance of the rent received in respect of Howard Davis Farm, after deduction of –
 - (i) the amounts required to be deducted under sub-paragraphs (a) to (c), and
 - (ii) the costs of repair, maintenance and replacement of Howard Davis Farm, or any part of it, that are committed to by or on behalf of the Public of the Island.
- (2) In paragraph (1)(a) and (d), “year” means –
 - (a) if the letting referred to in paragraph (1)(a) commenced before this Law came into force, the period of 12 months beginning on the day this Law came into force, and each period of 12 months after that;
 - (b) if the letting referred to in paragraph (1)(a) commences after this Law came into force, the period of 12 months beginning on the day the lease term commences, and each period of 12 months after that.
- (3) In the event that, at the time rent is received by the Treasurer of the States, on behalf of the Public of the Island, under leases of Howard Davis Farm, or of any part of it, the Trust has not been established, the Treasurer of the States –
 - (a) shall hold the amounts due to the Trust, separately from monies received by him or her by or

on behalf of the States, in an interest-bearing account; and

(b) upon the establishment of the Trust, shall transfer the amounts and any interest accrued on them to the Trust.

(4) The States may, by Regulations, amend this Article (apart from paragraph (3) and this paragraph).

4 Registration of Law in Public Registry

(1) The Royal Court shall, when it orders the registration of this Law, also order the registration of a copy of this Law, signed by the Greffier of the States, in the Public Registry of Contracts.

(2) The registration of a copy of this Law in the Public Registry of Contracts shall have like effect as a contract passed before the Royal Court.

(3) No fees shall be payable under the Stamp Duties and Fees (Jersey) Law 1998^[1] in relation to the registration of a copy of this Law as required by paragraph (1).

5 Repeal and saving

(1) The Howard Davis Farm (Partial Abrogation of Covenant) (Jersey) Law 2007^[2] is repealed.

(2) Notwithstanding the repeal of that Law, Article 3 of it shall continue to apply to any money that, at the time of repeal, is held by the Treasurer of the States in accordance with paragraph (1) of that Article.

6 Citation and commencement

This Law may be cited as the Howard Davis Farm (Abrogation of Covenant) (Jersey) Law 200 and shall come into force on the seventh day following its registration.

SCHEDULE

(Article 2(2))

CONDITIONS OF LETTING

1 Interpretation of Schedule

In this Schedule, unless the context otherwise requires, “land” means Howard Davis Farm, or any part of it.

2 Principal uses

- (1) Subject to the following provisions of this Schedule, the land may only be let for any of the following uses –
 - (a) light industry;
 - (b) warehousing (other than retail warehousing);
 - (c) agriculture;
 - (d) horticulture;
 - (e) as a commercial dairy and milk processing facility;
 - (f) as offices and laboratories occupied by an administration of the States.
- (2) For the purposes of sub-paragraph (1)(b), “retail warehousing” means any warehouse to which members of the public, or any class of members of the public, have access for the purpose of the retail purchase or hire of goods.

3 Ancillary uses

- (1) The land may also be let for use as commercial offices if –
 - (a) that use is ancillary to a use of the land described in paragraph 2(1)(a) to (e); and
 - (b) the aggregate square footage of Howard Davis Farm that is let for such ancillary use does not exceed 10,000.
- (2) The land may also be let for use as residential property if –
 - (a) that use is ancillary to a use of the land described in paragraph 2; and
 - (b) the aggregate square footage of Howard Davis Farm that is let for such ancillary use does not exceed 8,000.
- (3) The land may also be let for use for retail purposes (other than the retail sale of motor vehicles or use as a supermarket) if –
 - (a) that use is ancillary to a use of the land described in paragraph 2; and
 - (b) the aggregate square footage of Howard Davis Farm that is let for such ancillary use does not exceed 2,500.
- (4) The land may also be let for use for educational and training purposes if –
 - (a) that use is ancillary to the use of the land for the purposes of agriculture or horticulture; and
 - (b) the aggregate square footage of Howard Davis Farm that is let for such ancillary use does not exceed 10,000.

4 Restriction on warehousing

The square footage of warehousing permitted on the land shall not exceed, in the aggregate, 60,000.

5 Temporary, limited use for incinerator

- (1) The land may be let for use for one incinerator, to be used for the disposal of animal carcasses only.
- (2) The square footage of the incinerator permitted by sub-paragraph (1) shall not exceed 6,000.
- (3) The use permitted by sub-paragraph (1) shall terminate on or before whichever is the earlier of—
 - (a) the expiry of the period of 3 years beginning on the day the incinerator was ready for use; or
 - (b) the expiry of the period of 3 years beginning on the day this Law came into force.

6 Restriction on letting at below open market rate

- (1) The land may only be let at a rent which is below the open market rate if the trustees of the Trust so agree.
- (2) Sub-paragraph (1) shall not apply to the letting of so much of the land described in Article 3(1)(b) as was, on 5th June 2008, occupied for use as offices and laboratories by an administration of the States for which the Minister for Planning and Environment has responsibility, provided that the land continues to be occupied, for that use and by that administration, at a rent of –
 - (a) for the year beginning on the day the Law came into force, £7,000;
 - (b) for each year after that, the sum of –
 - (i) the rent paid for the preceding year, and
 - (ii) an amount that is such percentage of the rent paid for the preceding year as equates to the percentage increase in the Jersey Cost of Living Index in the preceding year.
- (3) Sub-paragraph (1) shall not apply for, the period of 25 years beginning on the day this Law came into force, to the occupation by, or letting to, the Jersey Employment Trust or any company administered by that Trust, of such part of the land described in Article 3(1)(c) as was, on 5th June 2008, occupied by or let to that Trust or such a company.

7 Determination of square footage

- (1) Where the part of the land that is let is a building or other structure, the square footage that is taken into account for the purpose of paragraph 3(1)(b), (2)(b), (3)(b) or (4)(b), 4 or 5(2) shall be the internal floor area of the building or other structure that is used for the purpose described in that provision, determined in accordance with the Code of Measuring Practice of the Royal Institution of Chartered Surveyors.
- (2) Where any glasshouse or polytunnel is principally used for agriculture or horticulture, but also has an ancillary use for retail or educational and training purposes, the square footage of the glasshouse or polytunnel shall be disregarded when applying the restriction in paragraph 3(3) or (4).

[1]

chapter 24.960

[2]

L.18/2007 (chapter 18.320)