

STATES OF JERSEY



DRAFT FORMER LA MOTTE STREET SCHOOL (VALIDATION AND ABROGATION OF COVENANTS) (JERSEY) LAW 201- (P.9/2016): ADDENDUM TO REPORT

**Presented to the States on 31st August 2016
by the Minister for Infrastructure**

STATES GREFFE

ADDENDUM TO REPORT

The debate by the States Assembly of [P.9/2016](#) on 26th April 2016 reached a position whereby Deputy J.A. Martin of St. Helier proposed a reference back on the following points –

1. To seek to establish the principal heirs of the original parties who created the respective 1840 and 1926 covenants.
2. That if such principal heirs are traced (1. above), to seek their views on the proposal to abrogate the respective 1840 and 1926 covenants.
3. To clarify the position of the covenants created when the Parish sold the site to the Public in 1964.
4. To propose an arrangement to respect the ‘charitable intent’ of the respective 1840 and 1926 covenants.

The reference back was approved by 22 votes in favour, 18 votes against, and one abstention.

Set out below is the response to the 4 aspects of the reference back.

Firstly however, this addendum will cover some items of clarification to certain points which it appears were inadequately covered in P.9/2016.

- A. The first covenant was created when the Reverend James Hemery Janvrin sold part of the site to Major General Touzel and Messrs. Hammond & Hemery, Trustees of “the company instituted in the Island for the Education of the Children of the Poor” on 2nd May 1840; and was subsequently modified on 22nd April 1865, when the surviving Trustees (Messrs. Hammond & Hemery – Major General Touzel having pre-deceased them) transferred the premises on behalf of the company (which had, by then, renamed itself and the school – “The Jersey Infant School”) to a new Trust entitled “The St. James’ Schools”.

The age of the original covenant, and the complexity associated with the Trustees who were part of the 1865 transaction when the covenant was modified, were amongst the factors which led Jersey Property Holdings (“JPH”) and the Law Officers’ Department (“LOD”) towards the view that it would be unusually difficult to trace every possible party who could claim an interest in the use restriction.

It was also those factors which led JPH to contact the present incumbent of the Ecclesiastical District of St. Luke with St James to seek his views on the abrogation of the covenant – the Church being the party which might be said to have been the beneficiary (in right of the 1865 Trustees) up to the transfer of the school to the Parish in 1904.

The positive response from the Church was read out during the debate on 26th April 2016 and is copied to this addendum under **Appendix 1**.

During the States debate on 26th April 2016, some States Members expressed concern that all descendants had not been traced and contacted. It is hoped that this clarification explains the position.

- B. Neither the 1840 covenant created by Reverend Janvrin, nor the 1926 covenant created by Sir Jesse Boot, provides that the respective parcels of land should revert to the heirs of the vendors in the event that the subject covenants are not complied with.

Accordingly, the heirs have no status in law in respect of the subject parts of the site, and they have no power to agree the variation or abrogation of those covenants.

It would be unusual to invite heirs to enter into negotiations over the abrogation of historic covenants when they have no legal status to do so.

- C. The covenant in the case of Sir Jesse Boot in 1926 was a personal one, and not expressed to be in perpetuity. Any entitlement to sue on default of that covenant ended on his death in 1931.
- D. During the debate of P.9/2016 on 26th April 2016, the 2008 abrogation of a 1927 covenant at Howard Davis Farm, Trinity, was raised. The subject covenant was for the farm, which was directly gifted to the Public by the late Thomas B.F. Davies, to be used as an experimental farm for developing the study of agriculture and for instructing in that science young people and other interested parties.

The 2008 proposition to abrogate that covenant was driven by a private commercial application to build on part of the land, and for the company to either purchase or long-lease the site.

It was considered to be unacceptable for private commercial gain to be derived from land gifted to the Public, and therefore a compromise was proposed – that a percentage of the annual rental from the private development would be passed to a specially established Trust for grant aiding-approved applications.

The factors which distinguish the Howard Davis Farm abrogation from La Motte Street are –

- i. there is no plan for private commercial use to be made of the La Motte Street site;
- ii. no part of the La Motte Street site was gifted to the Public. The main part of the site was sold in 1840 by the late Reverend Janvrin, and the secondary part was gifted by the late Baron Trent of Nottingham to the Parish. The Public purchased the whole site from the Parish without benefit of any financial subsidy;
- iii. there may have been an identified beneficiary of the Howard Davis Farm covenant who would be deprived of their rights in the event of the covenant being breached. In the case of La Motte Street, the LOD has advised that there are no third party legal rights at large;

iv. the Davis covenant was, in 2008, still capable of being complied with, even if the demand for local crop experimentation and scientific agricultural training had declined with time. At La Motte Street, it is inconceivable that the site could still be used in accordance with the 1840 covenant.

E. During the debate of P.9/2016 on 26th April 2016, an argument was made that the States should seek to negotiate out the covenants with the beneficiaries, or compulsorily purchase them, rather than using a *Projet de loi*, i.e. that a beneficiary of a covenant who is deprived of their rights should be provided with compensation.

JPH approach such cases (which occur relatively infrequently) from the position that if a person can be identified who has valid legal rights in the matter, then negotiation will take place.

In this case, the LOD has advised that there are no third party legal rights at large and the *projet* is very much a last resort to ‘clean up’ the title.

The process followed by JPH in such cases is –

- i. identify beneficiaries, negotiate terms (financial or otherwise) for cancellation/revision of covenant and pass ratifying contract, failing which;
- ii. apply to the Royal Court by Representation for clarification of terms of covenant and then revert to beneficiaries for further negotiations, failing which;
- iii. consider applying to States for compulsory purchase powers to buy out the covenant if there is some overriding public interest in so doing, compensation being due once assessed by a Board of Arbitration, or, where no beneficiaries can be identified;
- iv. lodge a *Projet de loi* to request the States to legislate the rights away.

In the case of La Motte Street, JPH and the LOD worked through the above-mentioned hierarchy and came to position iv. (*above*), in that there are no third party legal rights at large.

Turning now to the response to the 4 aspects of the reference back –

1. The principal heirs of the original parties who created the respective 1840 and 1926 covenants.

a. The 1840 ‘Janvrin Covenant’

La Motte Street School was constructed in about late-1839.

Reverend Janvrin sold the premises in 2 sections to Major General Touzel and Messrs. Hammond & Hemery, Trustees of “the company

instituted in the Island for the Education of the Children of the Poor” on 2nd May 1840.

The premises (comprising 2 sections) were sold for £467-13-9, made of up of 2 cash sums already paid to Reverend Janvrin and the capital value of the *rente* of £203-1-6.

£467-13-9 inflated to 2016 value using retail price indices produces a figure in excess of £34,000. Inflated in terms of property values over this period is likely to produce a considerably higher figure.

The user covenant in the 2nd May 1840 contract related to the building which existed at the time and was worded (translated) –

“..... on which land there has been erected a certain building which shall in the future serve as a school for the education of the children of the poor, of an age between 18 months and 6 years and in accordance with the present rules of the aforesaid Company (i.e. the Purchaser)”.

On 22nd April 1865, the surviving Trustees (Messrs. Hammond & Hemery – Major General Touzel having pre-deceased them) transferred the premises of behalf of the Company (which had, by now, renamed itself and the school “The Jersey Infant School”) to a new Trust entitled “The St. James’ Schools”.

The description in the transfer contract makes it clear that the original school building had been extended “... to enlarge the said “Jersey Infant School” ...” and the original user requirement was restated but with some modification (translated) –

“..... and also for and on condition that the said house, school room, buildings, yards, land and appurtenances shall be employed in the future in perpetuity for the exclusive use of a school or schools for the education of children of the poor and for no other purpose and that the premises shall further be disposed and administered to furnish and provide religious education to at least 150 children from the age of 18 months to 6 years and this in addition to such other school as may be run there.”.

The family tree of the late Reverend Janvrin has been further researched since P.9/2016 was drafted. Unfortunately, as of 24th August 2016, the further research has been inconclusive as to the identity of the principal heir to the late Reverend Janvrin. The research identified a family member who in 1918 was living in Dundee – that being as far as the research could be taken locally. Arising from that, a genealogy research practice based in England was commissioned by JPH to further the research. As of 24th August 2016, an application by that practice to the court in St. Andrew’s, Scotland, had been unsuccessful in locating the necessary probate documents (a lengthy period of time was given for

the search and it is understood that the court undertook extensive research).

In addition, on 6th May 2016, JPH wrote to a person resident in Jersey who is believed to be distantly related to the late Reverend Janvrin. The purpose of the letter was to enquire as to information on the Janvrin family tree. At the time of drafting this addendum, no reply has been received to that letter.

In summary, at the time of drafting this addendum, despite extensive further research locally and in the UK, it has not been possible to identify the principal heir of the late Rev. James Hemery Janvrin.

b. The 1926 ‘Boot Covenant’

By late 1923, Sir Jesse Boot (later Baron Trent of Nottingham) had reached agreement with the Parish authorities to provide an extension to the school (now referred to as “St. Helier School (La Motte Street)”) and he acquired adjoining properties at 36 and 38 La Motte Street which, similar to the school premises, extended from La Motte Street to New St. James’ Place.

It is not clear from the property contracts to what extent those properties were demolished and/or remodelled, but it is certain that a new extension was added to the old school buildings and, on 14th May 1926, Sir Jesse Boot transferred that extension and other relevant structures already in use as a part of the school to the Parish of St. Helier.

The only stipulation made by Sir Jesse Boot (which was not technically a covenant in any event) was that he transferred the new extension for and in consideration of it being incorporated into the older part of the school and that it thereafter would be held and possessed in all respects under the terms of the 1912 Education Law in the same manner as if it had already formed a part of the school and in accordance with Article 10 of the 1912 Law. The 1912 Law has since been superseded by the Education (Jersey) Law 1999. The clause is recited (translated) –

“The said gift, cession and transfer was made for and on condition that he said immoveable shall be incorporated within the original school “La Motte Street School” and shall be held and possessed by the said Donees in all respects under the terms of the said “Loi sur l’Instruction Primaire” in the same manner as if the said extension already formed part of “La Motte Street School” at the same moment as this cession of enjoyment thereof and in accordance with Article 12 of the said Law.”

As mentioned above under paragraph C. (*above*), this was not a perpetual covenant or restriction, but one personal to Sir Jesse Boot.

The family tree of the late Baron Trent has been further researched since P.9/2016 was drafted. The further research identified more than

one family member who potentially could be the principal heir, and arising from that, JPH identified and contacted an English archivist who was understood to hold detailed information on the Boot family tree. Unfortunately, that archivist did not hold the required information and was not in a position to conduct the research to identify the principal heir. Arising from that, a genealogy research practice based in England was commissioned by JPH to further the research. That research has identified the principal heir of the late Baron Trent – a gentleman in his early-80s living in Windsor, England. JPH wrote to that gentleman to inform him of the proposal to abrogate the 1926 covenant. A copy of that letter is attached under **Appendix 2**. A copy of the gentleman's reply dated 11th July 2016 is attached under **Appendix 3** and is recited as follows –

“Dear [JPH Officer]

Many thanks for your most interesting letter of July 6th, your reference PBA 0138-01-001 regarding La Motte Street, St Helier.

How time and circumstances change in the past 50+ years.

I give my consent to have the property “converted” to office buildings, and to be used for a different purpose to the covenant in 1926.

I would like you and the Department to be thanked for “tracing” me as the Principal Heir of Baron Trent, and informing me of the recent developments.

Yours sincerely

[Principal Heir]”.

Additional to the above, prior to the debate of P.9/2016 on 26th April 2016, JPH wrote to a known granddaughter of the late Baron Trent residing in England. At the time of writing, the lady was not believed to be the principal heir of the late Baron Trent, and that position has since been confirmed by the further research. JPH did not receive a response from the lady.

Also prior to the 26th April 2016 debate, Officers of JPH and the LOD, together with the Minister for Infrastructure, met 4 locally based ‘Boot family members’, including a granddaughter of the late Baron Trent. None of those family members is the principal heir of the late Baron Trent. The views expressed by the family members at the meeting on the matter of P.9/2016 were divided, with some speaking in favour of the proposal and some against.

2. If such principal heirs are traced (*paragraph 1. above*), to seek their views on the proposal to abrogate the respective 1840 and 1926 covenants:

As explained above under paragraph 1., at the time of drafting this addendum –

- a. Despite extensive further research being carried out, it has not been possible to identify the principal heir of the late Reverend Janvrin.
- b. Research carried out by an English genealogy research practice has identified the principal heir of the late Baron Trent. That gentleman is content for the 1926 covenant to be abrogated.

Notwithstanding the above, it is reiterated that the advice received from LOD is that the heirs of the 2 subject parties who transacted in parts of the site in the past have no legal rights in connection with the covenants, and any views expressed by the heirs should be considered in that context.

3. To clarify the position of the covenants created when the Parish sold the site to the Public in 1964.

Both the modified 1865 covenant, and the 1926 covenant were recited in the 1964 sale from the Parish of St. Helier to the Public.

The recital of the covenants appears to have followed customary conveyancing practice, as the Public was to acquire the property with the benefits and burdens accompanying it. However, the 1926 Boot “covenant” ought not to have been included, let alone recast, as a perpetual one. As explained above, it was personal to Sir Jesse Boot and its enforceability lapsed on his death in 1931.

Although the 1926 covenant was arguably purportedly modified in the 1964 contract to give it perpetual status, this had no effect in law. The 1964 contract does not change the personal status of the original 1926 covenant made by Sir Jesse Boot.

Only the Parish of St. Helier has a theoretical right to sue in relation to the 2 covenants, but such a right is theoretical, as, even if it exists, it would be subject to a 40-year limitation period which has now expired and, indeed, an Act of the States from 1963 refers to the former La Motte School and the indication that it was to be used for the purposes of further education, contrary to the 2 covenants. This may have been connected with the decision for the sale to be subject to a £12,000 consideration – a commercial payment of consideration and not a gift – to reflect that the premises would potentially be used for other public purposes.

4. To propose an arrangement to respect the ‘charitable intent’ of the respective 1840 and 1926 covenants.

The Minister and officers at the Department for Infrastructure and JPH have worked on this matter since the debate on 26th April 2016, including liaising with other States Departments regarding possible projects to which a financial contribution could be made.

It is considered appropriate to base the level of contribution on a previous abrogation – an arrangement reached in 1989 between the States and the Trustees of the former maternity hospital to allow a new use to take place. £25,000 was the agreed figure in that case, which inflated to present day, equates to approximately £60,000.

At the time of drafting this addendum, it has not been possible to identify a local project linked to the welfare and development of young children to which a one-off, but lasting, contribution could be made.

The proposal is therefore to hold £70,000 and to continue to work with other States Departments and children's charities to identify an appropriate project to which a contribution could be made. The Minister undertakes to inform the States of the chosen project.

In addition, it is intended that the future redevelopment of the La Motte Street site will have an appropriate feature recording the history and the contributions made by Messrs. Janvrin and Boot.

Re-issue Note

This Addendum is re-issued because the second reference on page 9 to “£60,000” should have been a reference to “£70,000”. This error has now been corrected.

**The Parish of
St Luke with St James
Jersey**

The Vicarage
Longueville Farm
Longueville Road
St Saviour
Jersey
JE2 7WG

Treasury and Resources Department
Jersey Property Holdings
Maritime House
La Route du Port Elizabeth
St Helier
JE2 3NW

29 January 2016

Your Ref: PBA 0138-01-001

Dear Mr [REDACTED]

La Motte Street Former Youth Centre

Thank you for your letter of 22 December 2015. You are indeed correct that I am the present Incumbent of the Ecclesiastical District of St Luke with St James. Having arrived in Jersey relatively recently, I was not aware of the covenant attached to the La Motte Street Youth Centre, nor that I am the successor beneficiary. Accordingly, I sought the opinion of our legal advisor before replying to you.

I am pleased to inform you that we have no objection to the abrogation of the 1904 covenant; as far as we are concerned, you may proceed as you see fit.

With every good wish.

Yours sincerely

[REDACTED]

JPH			
File:	0138		
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Circulation	2	4	

Department for Infrastructure
Jersey Property Holdings
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06 July 2016

[REDACTED]
24-28 St Leonards Road
Windsor
Berkshire
SL4 3BU

Our ref: PBA 0138-01-001
Your ref:

[REDACTED]

La Motte Street Former School/Youth Centre, Jersey

I am writing in connection with the above-named property, which the Public of Jersey purchased from the Parish of Helier in 1964.

The property is subject to certain historic covenants, one of which was included in a contact of cession of part of the site by the late Baron Trent to the Parish of St Helier in 1926. The subject covenant is as follows (translated):

"The said gift, cession and transfer was made for and on condition that he said immoveable shall be incorporated within the original school "La Motte Street School" and shall be held and possessed by the said Donees in all respects under the terms of the said "Loi sur l'Instruction Primaire" in the same manner as if the said extension already formed part of "La Motte Street School" at the same moment as this cession of enjoyment thereof and in accordance with Article 12 of the said Law."

In the 50+ years since the property was acquired by the Public, it has not been used in accordance with that covenant. Essentially, the property is unsuitable for a present day primary school, and the function of providing primary education has advanced significantly since the law referred to in the 1926 covenant.

Therefore, rather than continuing to use the property for a purpose(s) different to that set-out in 1926, this department considers that the title should be tidied-up by passing a law to cancel the historic covenants. That is considered by this department to be a more satisfactory position than the present one.

The advice which this department has received in connection with the covenant of Baron Trent in 1926 is that it was a personal condition, and not expressed to be in perpetuity. Therefore any entitlement to action on default of that covenant ended on his death in 1931.

Notwithstanding that, this department has decided to follow best practise by seeking to trace the principal heir of Baron Trent to inform him/her of the proposal.

Through research conducted by an English based genealogy research practice, we believe that you are the principal heir of the late Baron Trent.

I trust therefore that this letter explains the matter, however should you require clarification on any points, or any further information, please do not hesitate to contact me.

If you wish to comment on this matter, please feel free to do so, and I will ensure that that is passed to my Minister. You may wish to take you own advice, and in that regard, I am happy to provide further information if that is required, such as a copy of the contract passed in 1926.

Yours sincerely

A rectangular area of the document is redacted with three thick, horizontal black bars, completely obscuring the signature and any text underneath.

www.gov.ie

24/28, St. Leonards Road,
Windsor,
Berks. SL4 3BB.

July 11th. 2016.

Dear [REDACTED]

Many thanks for your
most interesting letter of July 6th.
Your reference PBA 0138-01-01 -
regarding La Motte Street, St. Helier.

How time and
circumstances change in the past
50+ years.

I give my consent
to have the property converted

to office buildings, and to be
used for a different purpose to
the covenant in 1926.

I would like you
and the Department to be
hands on tracing me as the
Principal Heir of Baron Trent, and
informing me of all the recent
developments.

Yours sincerely,

JPH			
File:	0138	[REDACTED]	
15 JUL 2016			
Circulation	1 PA 3		
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