

STATES OF JERSEY



DRAFT HOWARD DAVIS FARM (ARRANGEMENTS FOR FURTHER ABROGATION OF COVENANT) (JERSEY) LAW 201-

Lodged au Greffe on 24th October 2017
by the Minister for Infrastructure

STATES GREFFE



Jersey

DRAFT HOWARD DAVIS FARM (ARRANGEMENTS FOR FURTHER ABROGATION OF COVENANT) (JERSEY) LAW 201-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Infrastructure has made the following statement –

In the view of the Minister for Infrastructure, the provisions of the Draft Howard Davis Farm (Arrangements for further Abrogation of Covenant) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Deputy E.J. Noel of St. Lawrence**

Minister for Infrastructure

Dated: 9th October 2017

REPORT

Howard Davis Farm (“the Land”) is owned by the Public, and is used for a range of purposes, including accommodation for services provided by States departments and charitable bodies, agricultural lettings and commercial business. Members will recall that the gift of the Land to the Public was one of the many acts of generosity of Thomas Benjamin Frederick Davis.

Members will recall that it was not considered acceptable for the States to accept a gift of the nature of the Land 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. In that regard, Members will recall that the States Assembly approved [P.170/2006](#), [P.95/2008](#) and [P.67/2010](#) so as to maintain the spirit of the original charitable purposes of the T. B. Davis gift. A set proportion of the rental income earned through the Land is passed to the Howard Davis Farm Trust (“the Trust”) for use on agricultural and environmental causes.

The present administration of the Land is derived from the “*Howard Davis Farm (Abrogation of Covenant) (Jersey) Law 2008*” (“the Law”), which legislation made it lawful for the Public, subject to the conditions set out in the Schedule to the Law, to lease the Land to any person(s), free from the covenant requiring 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 (“the Covenant”).

The Law was driven by an application to let part of the Land as a commercial dairy, and because the need for an experimental or training facility in the Island devoted to agriculture had diminished. It was necessary to abrogate the Covenant to allow that letting to lawfully take place.

The Schedule to the Law sets out, *inter alia*, the ‘principal’ and ‘ancillary’ uses to which the Land may be let – which are essentially the uses prevailing at the date of the Law.

The Law permits the States, by Regulations, to amend the Schedule.

Jersey Property Holdings (“JPH”), in conjunction with the Minister for Infrastructure, liaises closely with the Trust over lettings of the Land, with the Schedule expressly stating that the Land may only be let at a rent which is below the open market rate if the Trust so agrees.

In 2010, the States agreed to amend the Schedule to allow an area of the Land to be let as the location for a pet cremator.

JPH’s management of the Land since the Law was passed has shown that the number of disparate uses, and the rate of change of the business needs of many of the tenants, is problematic to administer in terms of the time and resources required to amend the Schedule by consent of the States. A consequence of this is that some land use applications have not progressed, and others are now taking place which are not strictly in accordance with the Schedule to the Law.

The principal purpose of this proposed revision to the Law is therefore to enable the Minister for Infrastructure, in conjunction with recommendations from JPH, to liaise with the Trust to agree future uses of the Land, having regard to the needs of States departments, charitable organisations, and private tenants – and the aims of the Trust.

The second purpose of this proposed revision to the Law is to include 2 small land parcels forming part of the property which were omitted from the original Law.

In the Law, “Howard Davis Farm” is defined as the house, farm buildings and land formerly known as ‘Parkfield’, which were gifted to the Public by the late Thomas Benjamin Frederick Davis in 1927 (“the 1927 gift”).

However, the 1927 gift also included 2 fields in the same parish – Field No. 302 (La Geonnière) and ‘Côtîl at Egypt’, measuring v2.16.22 and v2.26.17 respectively, as separate *corpus fundi*. The plan attached under **APPENDIX A** to this Report shows the location of the 2 fields.

Those 2 fields were not covered by the Law, and remain subject to the Covenant.

It is not known why the 2 fields were omitted from the Law in 2008, but as the need for an experimental or training facility in the Island devoted to agriculture has diminished, the best assumption at this stage appears to be that it was an oversight.

The Trust and representatives of the Davis family have been fully involved with this proposal to revise the Law and have given their approval. A letter from the Chairman of the Trust, who is the great-granddaughter and sole surviving descendant of the late Thomas Benjamin Frederick Davis, dated 13 September 2017, is attached under **APPENDIX B** to this Report.

The Jersey Employment Trust has also been involved with this proposal to revise the Law, and has given its approval in a letter dated 19 September 2017, attached under **APPENDIX C** to this Report.

Collective responsibility under Standing Order 21(3A)

The Council of Ministers has a single policy position on this proposition, and as such, all Ministers, and the Assistant Ministers for Infrastructure, are bound by the principle of collective responsibility to support the proposition, as outlined in the Code of Conduct and Practice for Ministers and Assistant Ministers ([R.11/2015](#) refers).

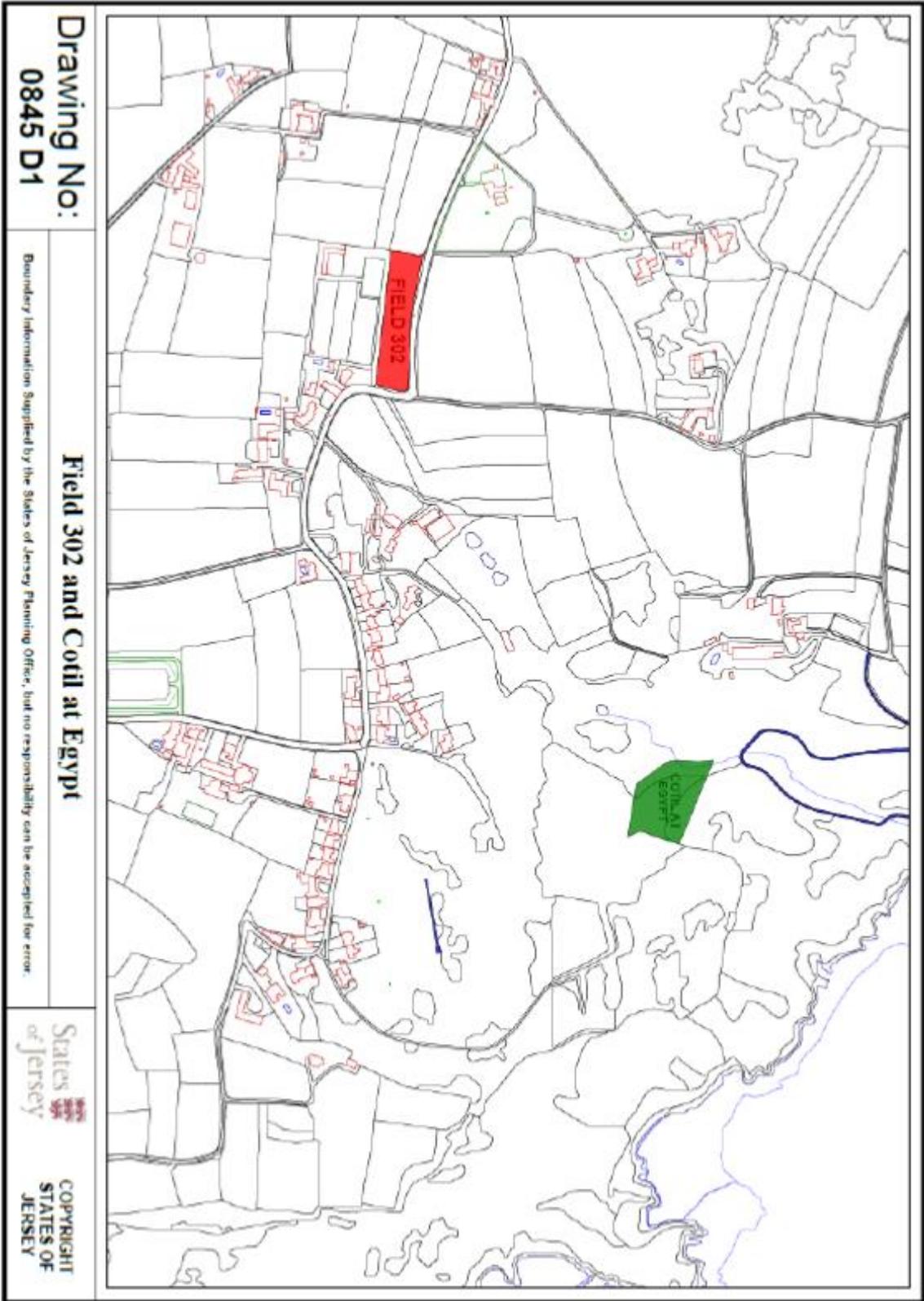
Financial and manpower implications

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

Human Rights

No human rights notes are annexed because the Law Officers’ Department has indicated that the draft Law does not give rise to any human rights issues.

APPENDIX A TO REPORT



The Howard Davis Farm Trust



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13 September 2017
Deputy E Noel
Minister For Infrastructure
Department For Infrastructure
P O Box 412
St Helier
JE4 8UY

Dear Deputy Noel

Howard Davis Farm (Arrangements for further abrogation of covenant) (Jersey) law 201-

I am writing to you in two capacities, one as chairman of The Howard Davis Farm Trust, and the other as the great granddaughter and sole surviving direct descendant of the late Mr TBF Davis who donated the Howard Davis Farm to The States of Jersey in 1927.

I can confirm that I and my fellow trustees of The Howard Davis Farm Trust have seen the draft of the above law and the accompanying report and that we are unanimous in our support for the draft law to be enacted.

We believe that the proposed new arrangements under which all future uses of the Howard Davis Farm property can be agreed by a joint decision of The States and the trustees will greatly assist the smooth running of the property.

Yours Sincerely

Mrs Aylwen Lyddell

*Trustees: Aylwen Lyddell (Chairman); Richard Pirouet (Vice Chairman and Treasurer); Paul Tucker (Secretary);
Michael Stentiford MBE; Roderick Stevens; Plerre Horsfall CBE; Atholl Swainston-Harrison*

APPENDIX C TO REPORT



19 September 2017

Deputy E Noel
Minister for Infrastructure
Jersey Property Holdings
Maritime House
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St Helier
JE2 3NW

J P H	
File:	
21 SEP 2017	
Circulation 1	3
2	4

Dear Deputy Noel

Howard Davis Farm (Arrangements for further abrogation of covenant) (Jersey) law 201-

Acorn Enterprises occupies a large section of the site comprising Howard Davis Farm, and we regularly liaise with Jersey Property Holdings and The Howard Davis Farm Trust and over proposed new land/property uses associated with the services we provide.

As an organisation we have to be responsive to adapt and develop our services to reflect changing demands from our customer base and economic factors. However, we are aware that the present abrogation law is very prescriptive as to what land uses are permissible. The process for amending the law is known to be slow, and we are concerned that new initiatives by Acorn have, and will continue to be held up.

We therefore support a modification of the law which allows the Minister and the Trust to consider applications and new uses in a timely manner.

Yours sincerely

Jocelyn Butterworth
Executive Officer
The Jersey Employment Trust

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Explanatory Note

This draft Law would enable further abrogation of the covenant applying to the gift of Howard Davis Farm and associated land to the Public of Jersey by agreement with the trustees of The Howard Davis Farm Trust.

Article 1 contains the definitions of terms used in the draft Law.

Article 2 makes it lawful for the Public of Jersey to make any use of any part of Howard Davis Farm and its associated land subject to agreement with the trustees of The Howard Davis Farm Trust. This is despite the covenant applicable to the gift of that property, to the extent that it still applies in consequence of The Howard Davis Farm (Abrogation of Covenant) (Jersey) Law 2008 (the “2008 Law”). The *Schedule* to the draft Law sets out the extent to which the covenant was abrogated by the 2008 Law.

Article 3 requires the Royal Court, when registering the draft Law, to order the registration of a copy in the Public Registry of Contracts. The registration of this copy has the same effect as the passing of a contract before the Royal Court.

Article 4 repeals the 2008 Law and *Article 5* provides for the citation of the draft Law and for it to come into force 7 days after its registration.



Jersey

DRAFT HOWARD DAVIS FARM (ARRANGEMENTS FOR FURTHER ABROGATION OF COVENANT) (JERSEY) LAW 201-

Arrangement

Article

1	Interpretation	13
2	Future further abrogation of covenant	13
3	Registration of Law in Public Registry	14
4	Repeal	14
5	Citation	14

SCHEDULE **15**

EXTENT OF ABROGATION OF COVENANT UNDER 2008 LAW		15
1	Interpretation of Schedule	15
2	Principal uses	15
3	Ancillary uses	15
4	Restriction on warehousing	16
5	Restriction on incinerators	16
6	Restriction on letting at below open market rate	16
7	Determination of square footage	17
8	Application of rental income	17



Jersey

DRAFT HOWARD DAVIS FARM (ARRANGEMENTS FOR FURTHER ABROGATION OF COVENANT) (JERSEY) LAW 201-

A LAW to allow for the further abrogation of the covenant applying to the gift of land known as Howard Davis Farm and associated land to the Public of Jersey; 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 –

“2008 Law” means the Howard Davis Farm (Abrogation of Covenant) (Jersey) Law 2008¹;

“covenant” means the terms of the deed by which Howard Davis Farm was gifted;

“Howard Davis Farm” means the house, farm buildings and land formerly known as “Parkfield” and the 2 fields known as field no. 302 (also known as “La Geonnière”) and “Côtîl at Eqypt”, all of 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;

“Trust” means The Howard Davis Farm Trust (an association incorporated under the Loi (1862) sur les teneures en fidéicommiss et l’incorporation d’associations²).

2 Future further abrogation of covenant

(1) Despite the covenant as abrogated by the 2008 Law, it is lawful for the Public of the Island to make any use of Howard Davis Farm, or any part of it, subject to the agreement of the trustees of the Trust.

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- (2) The Schedule sets out the extent to which the covenant was abrogated by the 2008 Law, namely –
- (a) the conditions under which part of Howard Davis Farm may be let free from the requirement that it be used as an experimental farm for developing the study of agriculture and for instructing in that science young people and other interested parties; and
 - (b) how the income from that letting may be applied.

3 Registration of Law in Public Registry

- (1) The Royal Court must, 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 has like effect as a contract passed before the Royal Court.
- (3) No fees are payable under the Stamp Duties and Fees (Jersey) Law 1998³ in relation to the registration of a copy of this Law as required by paragraph (1).

4 Repeal

The Howard Davis Farm (Abrogation of Covenant) (Jersey) Law 2008⁴ is repealed.

5 Citation

This Law may be cited as the Howard Davis Farm (Arrangements for further Abrogation of Covenant) (Jersey) Law 201- and shall come into force 7 days after its registration.

SCHEDULE

(Article 2(2))

EXTENT OF ABROGATION OF COVENANT UNDER 2008 LAW

1 Interpretation of Schedule

In this Schedule, unless the context otherwise requires –

“land” means Howard Davis Farm with the exception of the 2 fields known as field no. 302 (also known as “La Geonnière”) and “Côtîl at Egypt, or any part of it;

“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.

2 Principal uses

(1) Subject to the following provisions of this Schedule, the land may be let only 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;
- (g) as one or more incinerators, to be used for the disposal of animal carcasses only.

(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 –

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- (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 the land 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 the land 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 the land 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 the land 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 must not exceed, in the aggregate, 60,000.

5 Restriction on incinerators

- (1) The square footage of the incinerators permitted on the land by paragraph 2(1)(g) must not exceed, in the aggregate, 7,000.
- (2) If the Jersey Employment Trust (an association incorporated under the Loi (1862) sur les teneures en fidéicommiss et l'incorporation d'associations⁵) vacates the land lying to the north of La Rue Asplet, paragraph 2(1)(g) and this paragraph shall cease to have effect 2 years after the date of such vacation.

6 Restriction on letting at below open market rate

- (1) The land may be let only at a rent that is below the open market rate if the trustees of the Trust so agree.
- (2) Sub-paragraph (1) does not apply to the letting of so much of the land described in paragraph 8(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 the Environment has responsibility, provided that the land continues to be occupied, for that use and by that administration, at a rent that is the sum of –

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- (a) the rent paid for the preceding year; and
 - (b) 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) does not apply for, the period of 25 years beginning on the day the 2008 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 paragraph 8(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) is 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 is disregarded when applying the restriction in paragraph 3(3) or (4).

8 Application of rental income

The following amounts shall be deducted from rent received under leases of the land, or of any part of it, and remitted to the Trust –

- (a) in respect of so much of the land 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 to that use, 80% of the rent received;
- (b) in respect of so much of the land 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 the land as lies to the north of La Rue Asplet, 80% of the rent received;
- (d) 80% of the balance of the rent received in respect of the land 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 the land, or any part of it, that are committed to by or on behalf of the Public of Jersey.

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- ¹ *chapter 18.320*
² *chapter 04.120*
³ *chapter 24.960*
⁴ *L.43/2008 (chapter 18.320)*
⁵ *chapter 04.120*