

**Planning Obligation by Deed of Agreement
under Section 106 of the Town and Country
Planning Act 1990**

relating to Former Ebeneser Chapel, 2 Chester
Road, Wrexham

Dated : 16 August 2024

WREXHAM COUNTY BOROUGH COUNCIL (1)
and
BRYN PROPERTY COMPANY LIMITED (2)

Linda Roberts

Chief Officer Governance & Customer

Guildhall

Wrexham

LL11 1AY

Ref: NR/040716

DATE 16 August 2024

PARTIES

- (1) **WREXHAM COUNTY BOROUGH COUNCIL** of Guildhall, Wrexham, LL11 1AY ("Council")
- (2) **BRYN PROPERTY COMPANY LIMITED (Co. Regn No 00975694)** of Bryn, Old Road, Minera Wrexham, LL11 3YS ("the Owner")

INTRODUCTION

- (1) The Council is the local planning authority for the purposes of this Deed and the Town & Country Planning Act 1990 (as amended) for the area within which the property described in the First Schedule hereto is situate and is the local planning authority by whom a planning obligation is enforceable
- (2) The Owner is the registered proprietor of the Site
- (3) The Owner has submitted the Application to the Council and the parties have agreed to enter into this deed in order to secure the planning obligations contained in this Deed.
- (4) The Council resolved on the 4th December 2023 to grant the Planning Permission subject to the prior completion of this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

"Act"	the Town and Country Planning Act 1990
"Affordable Housing"	subsidised housing which will be available to Eligible Persons
"Affordable Housing Contribution"	means: (the average Market Value of the Dwellings erected on Site x 30%) x 2.3* to be paid by the Owner to the Council and expended by the Council in accordance with the provisions of the Third Schedule.

* (if the number of Dwellings to be built is 23, or 2.2 if the number of Dwellings is 22 and so on, accordingly)

DTM

Example:

If average Market Value of the Dwellings is £125,000, then

$$((£125,000 \times 30\%) \times 2.3)$$

$$£37,500 \times 2.3$$

£86,250

“Application”

the application for full planning permission dated 29/3/2021 submitted to the Council for the Development and allocated reference number P/2021/0313.

“Commencement of Development”

the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “Commence Development” shall be construed accordingly.

“Development”

the development of the Site consisting as set out in the Application.

“Dwelling”

means a residential unit (including houses, flats or maisonettes) constructed on the Site pursuant to the Planning Permission.

“Eligible Person”

means a Person in housing need identified from the low cost homes ownership register or the Council's housing waiting list.

“Independent Surveyor”

must be a Fellow of the Royal Institute of Chartered Surveyors, with at least 10 years' post qualification experience including experience in development of the same type as the Development practising within a 10 miles radius of the Site.

"Index"	All Items Index of Retail Prices issued by the Office for National Statistics.
"Interest"	interest at 5 per cent above the base lending rate of the Barclays Bank Plc from time to time.
"Market Value"	the average at which the relevant Dwellings might reasonably be expected to be sold at arm's length by a willing seller to a willing buyer with vacant possession on the open market, as determined by an Independent Surveyor.
"Occupation"	the physical use of a Dwelling for a residential purpose as permitted by the Planning Permission but not including occupation by personnel engaged in construction or fitting out, or occupation for marketing and display, or occupation in relation to security operations and Occupy, Occupied and Occupier shall be construed accordingly.
"Plan A"	the Plan A attached to this Deed.
"Planning Permission"	the draft full planning permission subject to conditions to be granted by the Council pursuant to the Application as set out in the 4 th Schedule.
"Public Open Space Contribution"	means the sum of £23,000 (indexed in accordance with the provisions of this Deed) to be paid by the Owner to the Council and expended by the Council in accordance with the provisions of the Second Schedule.
"Site"	the land subject to this Deed as shown edged red on the Plan A and more particularly described in the First Schedule.

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed 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 Deed.
- 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 interchangeable 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 an Act of Parliament shall include any modification, extension or re-enactment of that Act 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 Act or deriving validity from it.
- 2.6 References to any party to this Deed 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 Council and County Council the successors to their respective statutory functions.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 and all other enabling powers.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner

4 CONDITIONALITY

This Deed is conditional upon:

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

save for the provisions of Clauses 5.2, 7.1, 13 and 14 (commencement of development, legal costs, jurisdiction and delivery) fees and any other relevant provisions which shall come into effect immediately upon completion of this Deed.

5 THE OWNER'S COVENANTS

- 5.1 The Owner covenants with the Council as set out in the Second and Third Schedule.
- 5.2 The Owner shall serve on the Council a notice of Commencement of Development not less than two days before Commencement of Development.

6 THE COUNCIL'S COVENANTS

- 6.1 The Council covenants with the Owner as set out in the Fourth Schedule.

7 MISCELLANEOUS

- 7.1 The Owner shall pay the Council on completion of this deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed in the sum of £1250.
- 7.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

- 7.3 This Deed shall be registrable as a local land charge by the Council.
- 7.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed 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 shall be given on behalf of the Council by the Chief Officer Economy and Planning and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.
- 7.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 7.6 Insofar as any clause or clauses of this Deed 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 Deed.
- 7.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if:-
- 7.7.1 the Planning Permission shall be quashed revoked or otherwise withdrawn or (without the consent of the Owner) is modified by any statutory procedure;
 - 7.7.2 the Planning Permission shall expire prior to the Commencement of Development; or
 - 7.7.3 the Site is developed under a new planning permission (other than one issued under Section 73 of the Act for variation or discharge of a condition of the Planning Permission) granted after the Planning Permission by the Council or any other competent authority and there has been no Commencement of Development.
- 7.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed 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.
- 7.9 This Deed shall not be enforceable against owner-occupiers or tenants of dwellings constructed pursuant to the Planning Permission nor against those deriving title from them.
- 7.10 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

8 WAIVER

No waiver (whether expressed or implied) by the Council or Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council or Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

9 CHANGE IN OWNERSHIP

The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

10 INDEXATION

Any sum referred to in the Second Schedule shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable.

11 INTEREST

If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

12 VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

13 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and Wales.

14 DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

15 SECTION 73 VARIATION

For the avoidance of doubt in the event that the Council shall at any time hereafter grant a planning permission pursuant to an application under section 73 of the Act in respect of conditions on the Planning Permission, save and in so far as this Deed has been amended by way of a deed of variation prior to the grant of such planning permission, references in this Deed to the Application and the Planning Permission shall be deemed to include any subsequent section 73 applications and planning permissions as aforesaid and this Deed shall henceforth take effect and be read and construed accordingly.

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

FIRST SCHEDULE

DESCRIPTION OF THE SITE

The land known as Former Ebeneser Chapel, 2 Chester Road, Wrexham LL12 7AD and registered with freehold title absolute at H M Land Registry under title number CYM662465 as delineated in red on Plan A

SECOND SCHEDULE

Owner's Covenants – Public Open Space Contribution

Prior to Commencement of Development the Owner shall pay the Public Open Space Contribution to the Council which shall be used by the Council to extend and provide improvements in the area of cenotaph War Memorial located in the junction of Chester Road/Bodhyfryd, Wrexham

THIRD SCHEDULE

Owner's Covenants - Affordable Housing Contribution

Prior to the Occupation of the twelfth Dwelling within the Development the Owner shall pay the Affordable Housing Contribution to the Council which shall be used by the Council to build extend and improve Affordable Housing within the County Borough.

FOURTH SCHEDULE

Council's Covenants - Discharge of obligations

- 1 The Council covenants with the Owner to use the Public Open Space Contribution and the Affordable Housing Contribution ("the Contributions") received from the Owner under the terms of this Deed for the purpose specified in this Deed for which they are paid

2. The Council covenants with the Owner that it will repay the Owner such amount of any of the Contributions made by the Owner to the Council under this Deed which have not been expended in accordance with the provisions of this Deed within 5 years of the date of receipt by the Council

FOURTH SCHEDULE

Draft Planning Permission

In pursuance of its powers under the Acts and Orders referred to below, the County Borough Council as Local Planning Authority, hereby determines your application in accordance with the particulars and plans comprising the application

Applicant MR JOHN SMALL

Agent MR JOHN SMALL
DMR NORTH WALES
16 PEN Y BRYN
WREXHAM
LL13 7HY

Code WRA P/2021/0313
No
Date 29/03/2021
Received

Decision
Date

DRAFT DECISION NOTICE
Town and Country Planning Act, 1990
Section 73

Location of application

FORMER EBENESER CHAPEL, 2 CHESTER ROAD, WREXHAM, LL12 7AD

Description of application

AMRYWIO AMOD 01 CYFANSODDIAD CYNLLUNIO
P/2016/0337 I ESTYNU CYFNOD AMSER AR GYFER CYFLWYNO
DATBLYGU / VARIATION OF CONDITION 01 OF PLANNING PERMISSION
P/2016/0337 TO EXTEND TIME PERIOD FOR COMMENCEMENT OF
DEVELOPMENT

In reaching this decision the Council has had regard to the relevant policies in the Wrexham Unitary Development Plan which are as follows:-

CLF5	Open space requirements from new residential
EC4	developments
EC6	Hedgerows, Trees and Woodland
GDP1	Biodiversity Conservation
GDP2	Development objectives
H2	Capacity of infrastructure and community facilities
T8	Residential development within settlements
	Parking

Revision	Date	Description of Decision
0		Planning permission issued

Particulars of decision that permission be GRANTED
Subject to the following:-

Condition(s)

1. The development hereby permitted shall be commenced before the expiry of five years from the date of this permission.

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2. The development shall only be carried out in strict accordance with the details shown on the approved drawing(s) numbered 102 Rev P4, 200 Rev P4, 201 Rev P3, 202 Rev P3, 203 Rev P3, 204 Rev P3, 205 Rev P3, 206 Rev P2, 207 Rev P2, 208 Rev P1, 300 Rev P3, 301 Rev P3 and 302 Rev P1 and contained within the application documentation.
3. Prior to their use on the development details of all external facing materials shall be submitted to and approved in writing by the Local Planning Authority. The development shall only be carried out in strict accordance with such details as are approved.
4. The development shall be carried out in strict accordance with the Arboricultural Impact Assessment reference no. Tree Solutions 16/AIA/WXM/184 (including Tree Protection Plan) and the Arboricultural Method Statement reference no. Tree Solutions 16/AIA/WXM/184. No development or other operations shall take place except in strict accordance with the reports as approved.
5. No part of the development shall commence until an investigation, by air-spade or hand digging, has been undertaken to determine whether tree roots are present in the ground within the footprint of the proposed development. The investigation shall be supervised by a qualified arboriculturist and the results of this investigation together with any necessary methods for minimising impact upon trees shall be submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in strict accordance with the details as are approved.
6. No part of the development shall commence until full details for the arboricultural supervision of tree protection measures and any ground works within retained tree(s) Root Protection Areas, as specified by BS5837:2012 or as shown on a Tree Protection Plan have been submitted to and approved in writing by the Local Planning Authority. The supervisory works shall be carried out in strict accordance with the details as approved.
7. Within three months of commencement of development, full details of a hard and soft landscaping scheme together with a five year Maintenance Plan and timescales for implementation of works shall be submitted for the written approval of the Local Planning Authority.
8. The landscaping scheme submitted and approved in connection with condition no. 7 shall be fully implemented in all respects within the agreed timescale and in strict accordance with the approved scheme.

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9. The landscaping scheme as carried out in connection with condition no. 8 shall be retained for a minimum of 5 years. Within this timescale, any planting becoming severely damaged or seriously diseased, or is in poor physiological condition and/or are removed without the written permission of the Local Planning Authority shall be replaced with trees or shrubs of similar size and species to those originally required to be planted and within a timescale all to be submitted to and approved in writing by the Local Planning Authority.
10. No land drainage run-off or surface water shall be permitted to discharge or connect to the public sewerage system, either directly or indirectly, and foul and surface water shall be drained separately from the site.
11. Prior to first use of the development hereby approved the vehicular access shall provide visibility splays of 2.4 metres x 43 metres in both directions measured to the nearside edge of the adjoining highway. Within these splays there shall be no obstruction in excess of 1 metre in height above the level of the nearside edge of the adjoining highway. The splays shall thereafter be permanently retained clear of any such obstruction to visibility.
12. No private surface water run off shall be permitted to flow from the development site onto the adjoining highway. An Aco drain or similar shall be provided across the approved access to intercept any such run off prior to first use of the development and thereafter retained.
13. The vehicular parking area as shown on approved drawing numbers 200 Rev P4 shall be fully laid out, surfaced and drained prior to first use of the development. This parking area shall thereafter be permanently retained and kept free of any obstruction, and made available solely for the parking of motor vehicles at all times.
14. Within two months of the date of this permission, a scheme of temporary fencing along the highway frontage of the site shall be implemented in accordance with details that shall first have been submitted to and approved in writing by the Local Planning Authority. The fence shall retained until the commencement of the development hereby permitted.
15. No part of the development shall commence until a plan to provide net benefit for biodiversity (NBB) i.e. a better outcome than if the site was left undeveloped has been submitted to, and approved in writing by, the Local Planning Authority. The measures shall be implemented in full, prior to first occupation / use of the development, and thereafter maintained for the lifetime of the development.

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Reason(s)

1. To comply with Section 91(3) of the Town and Country Planning Act, 1990.
2. To comply with section 71ZA (2) of the Town and Country Planning Act 1990.
3. To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area in accordance with Policies GDP1 and PS2 of the Wrexham Unitary Development Plan.
4. To protect trees which are of significant amenity value to the area.
5. To determine whether tree roots are present and to minimise harm to the retained trees in the interests of visual amenity in accordance with Policies GDP1 and PS2 of the Wrexham Unitary Development Plan.
6. To ensure the work is carried out to accepted arboricultural practices for the long term wellbeing of the tree(s) in accordance with Policies GDP1, PS2 and EC4 of the Wrexham Unitary Development Plan.
7. To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area in accordance with Policies GDP1 and PS2 of the Wrexham Unitary Development Plan.
8. To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area in accordance with Policies GDP1 and PS2 of the Wrexham Unitary Development Plan.
9. To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area in accordance with Policies GDP1 and PS2 of the Wrexham Unitary Development Plan.
10. To protect the integrity of the public sewerage system and prevent hydraulic overloading of the public sewerage system. To protect the health and safety of existing residents and to ensure no detriment to the environment in accordance with Policies GDP1 and EC13 of the Wrexham Unitary Development Plan.
11. To ensure that adequate visibility is provided at the proposed point of access to the highway in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.
12. In the interests of highway safety in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.
13. To provide for the parking of vehicles clear of the highway in accordance with Policies GDP1 and T8 of the Wrexham Unitary Development Plan

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14. To ensure a satisfactory standard of appearance of the site in the interests of the visual amenities of the area in accordance with Policies GDP1 and PS2 of the Wrexham Unitary Development Plan.
15. To ensure the development delivers net benefit to biodiversity in accordance with paragraph 6.4.5 of Planning Policy Wales 11.

Note(s) to applicant

You are advised that this grant of planning permission was made following the completion of an Agreement under Section 106 of the Town and Country Planning Act. Before undertaking any work under this permission you are advised to obtain full details of the Agreement and ensure that you are able to comply with its terms.

Your attention is drawn to Highway Supplementary Notes - Refer to Statement of Applicant's Rights and General Information on our planning web site at:-

http://www.wrexham.gov.uk/english/planning_portal/publications/info_sheets.htm

Following the commencement of Schedule 3 of the Flood and Water Management Act, the works as proposed are required to obtain approval from the SuDS Approving Body (SAB) prior to commencement of those construction works. Further details of the SAB, the new national standards, the pre-application advice service and the application for approval process can be found on the Wrexham CBC's SAB webpage: https://www.wrexham.gov.uk/english/planning_portal/sab/sab.htm or by contacting the SAB Team directly at SAB@wrexham.gov.uk

The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848.

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Further information is also available on the Coal Authority website at:

www.gov.uk/government/organisations/the-coal-authority

All works relating to this development which are audible beyond the site boundary should be carried out only between 7.30 and 18.00 hrs Monday to Friday, and 08.00 to 14.00 hrs on a Saturday, and at no time on a Sunday or a Bank Holiday. Outside these times, any works which are audible beyond the site boundary have the potential to cause unreasonable disturbance to neighbouring premises.

The applicant is advised that the Council has the option to control construction noise by serving a Control of Pollution Act 1974, Section 60, Notice where deemed necessary, and failure to comply with such a Notice can result in prosecution.

The applicant is further advised that any complaints received relating to noise of any type from the development may also be investigated using the Council's Standardised Procedure for Dealing with Noise Nuisance Complaints. This is done under the Statutory Nuisance provisions provided within the Environmental Protection Act 1990, and legal action may be taken where appropriate.

The applicant must adhere to the times given above wherever possible. If however there are urgent or unavoidable circumstances requiring works outside of the specified times, permission to proceed may be sought by contacting Environmental Health and Housing Standards at: heathandhousng@wrexham.gov.uk or 01978 292040. Please use the same contact details for any other enquiries regarding construction / demolition site noise.

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Burning of waste generated from construction activities is not considered to be an appropriate method of disposal and action may be taken as follows:

- Under the Environmental Protection Act 1990 anyone found disposing of construction site waste by burning is likely to be in breach of their duty of care with regard to waste disposal;
- Under the same Act an abatement notice may be served where smoke is judged to be causing a nuisance to neighbouring properties. Failure to comply with the requirements of the notice can result in prosecution;
- Under the Clean Air Act 1993 it is an offence for a commercial activity to burn anything that gives rise to dark smoke.

To prevent offences under the above named Acts there should be no bonfires on the site, to include the prohibition of the burning of cleared vegetation. The applicant should contact the Council's Planning & Regulatory Department on 01978 292040 for further advice and information.

The Applicant is advised that under the Environmental Protection Act 1990, dust from construction and/or demolition activities can be judged to be causing a statutory nuisance to neighbouring properties. A legal notice can be served requiring that any dust nuisance is abated and failure to comply with the requirements of the notice can result in prosecution. The applicant should contact the Council's Planning & Regulatory Department on 01978 292040 for further advice and information.

A licence must be obtained (as required by section 184 of the Highways Act 1980) from the Highway Authority in order to lower the kerbline and cross the footpath. Further guidance can be obtained from the Highway Authority of Wrexham County Borough Council on telephone 01978 729670.

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David Fitzsimon
Prif Swyddog Yr Economi a Chynllunio
Chief Officer Economy and Planning

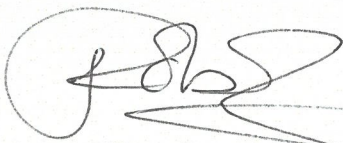
Refer to Statement of Applicant's Rights and General Information on our planning web site at:-
http://www.wrexham.gov.uk/english/planning_portal/publications/info_sheets.htm

EXECUTED as a DEED by affixing

THE COMMON SEAL of

WREXHAM COUNTY BOROUGH COUNCIL

in the presence of:-



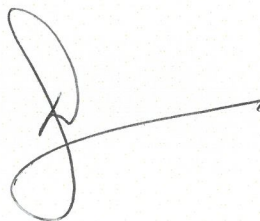
Chief Officer Governance & Customer



EXECUTED as a Deed by DAWN JONES of

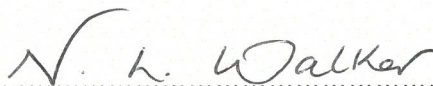
BRYN PROPERTY COMPANY LIMITED

acting by a Director



in the presence of:

Signature of Witness:



Name (in block capitals):

NIA L WALKER

Address:

87 Fferm Lidiart Werdd

Coedpoeth, LL13PT

Occupation:

Admin.