

DATED

20 February 2024

**PLANNING OBLIGATION UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT
1990 RELATING TO PROPERTY AT**

**LAND OPPOSITE WILKINSON BUSINESS PARK CLYWEDOG ROAD SOUTH WREXHAM INDUSTRIAL
ESTATE LL13 9XS IN THE COUNTY BOROUGH OF WREXHAM**

between

Wrexham County Borough Council

and

Lea Valley Limited

and

Solutus Advisors Limited

Linda Roberts

Chief Officer Governance and Customer

Guildhall

Wrexham

LL11 1AY

Ref: NR/048165

This Deed is dated 20 February 2024

Parties

- (1) **WREXHAM COUNTY BOROUGH COUNCIL** of Guildhall, Wrexham LL11 1AY (**Council**)
- (2) **LEA VALLEY LIMITED (Co Regn No 05025036)** of Canal Mill, Botany Bay, Chorley, Lancashire PR6 9AF (**Owner**)
- (3) **SOLUTUS ADVISORS LIMITED (Co Regn No 07350379)** of Canal Mill, Botany Bay, Chorley, Lancashire, PR6 9AF (**Mortgagee**)

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Site is situated.
- (B) The Owner is the freehold owner of the Site registered at HM Land Registry within title numbers CYM710345 and WA808746.
- (C) The Council resolved at its meeting on 4 September 2023 that Planning Permission should be granted for the Development 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
"Application"	the application for full planning permission dated 18 August 2022 submitted to the Council for the Development and allocated reference number P/2022/0668
"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 surveys of existing structures, 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, hoardings and scaffolding, the temporary display of site notices or advertisements, site preparation, site reclamation, preliminary landscaping and ground modelling, service diversions or decommissioning, laying of services and other works of site establishment preparatory to the commencement of construction and operations permitted by the Town and Country Planning (General Permitted Development) Order 1995 (as amended) and "Commence Development" shall be construed accordingly.
"Development"	the development of the Site as set out in the Application
"Expert"	an independent person appointed in accordance with the provisions of clause 7 to determine a dispute
"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.
"LEMP"	means the Landscape & Ecological Management Plan, prepared by UES, reference UES03416/03 dated 6 th December 2021 or such other amended plan as shall be substituted by agreement
"Management Company"	a suitable company or body or other entity responsible for the MA Scheme in respect of the Mitigation Areas
"Material Operation"	means a material operation as defined in Section 56 subsection 4(a) to (e) of the 1990 Act to implement the Planning Permission save for those operations contained in the definition of "Commencement of Development" contained in this Deed.
"Plan"	the Plan attached to this Deed
"Planning Permission"	the full planning permission subject to conditions to be granted by the Council pursuant to the Application
"MA Scheme"	means the scheme as described in the LEMP, or any future amended scheme, relating to the implementation and management of the Mitigation

	Areas submitted to and approved in writing by the Council pursuant to the Application
"Practical Completion"	issue of a certificate of practical completion by NHBC by way of the usual NHBC cover note
"Mitigation Areas"	means the Mitigation Areas as shown on the Plan
"Site"	the land subject to this Deed as shown edged red on the Plan 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, 6.1, 12 and 13 (notice of 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 on behalf of themselves and their successors in title to the Site (but subject always to clause 6.8 of this Deed) to comply with the obligations set out in the Second Schedule to this Agreement.
- 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 MISCELLANEOUS

- 6.1 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 £1000.00.
- 6.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 6.3 This Deed shall be registrable as a local land charge by the Council.
- 6.4 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.
- 6.5 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.
- 6.6 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.
- 6.7 This Deed including (for the avoidance of doubt) the MA Scheme 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.

- 6.8 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 or the part of the Site in respect of which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 6.9 This Deed shall not be enforceable against owner-occupiers or tenants of any units constructed pursuant to the Planning Permission nor against those deriving title from them.
- 6.10 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.

7 RESOLUTION OF DISPUTE

- 7.1 In the event of any dispute arising between the parties, the parties will attempt to resolve that dispute amicably including holding a meeting attended by at least one representative from each party.
- 7.2 If the parties are unable to resolve the dispute amicably pursuant to clause 7.1, one party may by serving notice on all the other parties (the Notice) refer the dispute to an Expert for determination.
- 7.3 The Notice must specify:
the nature basis and brief description of the dispute;
the clause of paragraph of this Deed pursuant to which the dispute has arisen; and
the name and address of the proposed Expert.
- 7.4 In the event that the parties are unable to agree whom should be appointed as an Expert within 10 Working Days after the date of the Notice then either party may request to the President of the Law Society to nominate the Expert at their joint expense.
- 7.5 The Expert shall act as an expert and not as an arbitrator and his decision will (in the absence of manifest error) be final and binding on the parties hereto and at whose cost

shall be at his discretion or in the event that he makes no determination, such costs will be borne by the parties to the dispute in equal shares.

7.6 The Expert will be appointed subject to an express requirement that he reaches his decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not later than 25 Working Days from the date of his appointment to act.

7.7 The Expert will be required to give notice to each of the said parties inviting each of them to submit to him within 10 Working Days written submissions and supporting material and will afford to each of the said parties an opportunity to make counter submissions within a further 5 Working Days in respect of any such submission and material.

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 MORTGAGEE'S CONSENT

9.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

10 CHANGE IN OWNERSHIP

The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of its interest 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)

11 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.

12 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.

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

Land opposite Wilkinson Business Park, Clywedog Road South, Wrexham Industrial Estate, Wrexham LL13 9XS within land registered at H M Land Registry in the name of the Owner with freehold title absolute under title number CYM710345 and adjacent land comprising the Mitigation Areas registered at H M Land Registry in the name of the Owner with freehold title absolute under title number WA808746, together comprising the Site and shown edged in red on the Plan

SECOND SCHEDULE

Owner Covenants

Management Company and Mitigation Areas

1. Within six months following Commencement of Development on the Site (or such extended period as shall be agreed with the Council):-
2. The Owner is to obtain the Council's written approval to the formation and appointment of a Management Company to implement the MA Scheme in respect of the Mitigation Areas.
3. To implement or procure implementation of the MA Scheme prior to first Occupation of any part of the proposed Development.
4. To monitor and review it every 12 months and to obtain the approval of the Council to any amendments thereto so as to ensure that they remain appropriate and relevant over time.
5. To use reasonable endeavours to ensure compliance with the MA Scheme and to maintain and manage for up to 25 years the Mitigation Areas in accordance with the MA Scheme the Planning Permission and this Agreement and to rectify any non-compliance with the MA Scheme as agreed with the Council as soon as reasonably practicable.
6. Subject to paragraph 4 of this Schedule the Owner accepts that the Council may wish to monitor its compliance with the MA Scheme at reasonable intervals and with this aim the Council will propose a timetable for the Council to review the Owner's (and any Management Company's) performance in relation to the MA Scheme for the Owner's consideration and agreement.
7. To use the Mitigation Areas as Mitigation Areas for the benefit of the Development.

THIRD SCHEDULE

Council's obligations

1. To issue the Planning Permission within five working days of completion of this Deed.

Annex A Plan

ANNEX B – 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	EMILY ARMSTRONG	Code Number	ABE P/2022/0668
Agent	PLAN RED LTD RICHARD PURSER FLOOR 11 3 PICCADILY PLACE MANCHESTER M1 3BN	Date Received	15/07/2022
		Decision Date	

Town and Country Planning Act, 1990

Location of application

LAND OPPOSITE WILKINSON BUSINESS PARK, CLYWEDOG ROAD
SOUTH, WREXHAM INDUSTRIAL ESTATE, WREXHAM, LL13 9XS

Description of application

ADEILADU STORFA A WARWS DOSBARTHU (DOSBARTH B8)
ERECTION OF STORAGE AND DISTRIBUTION WAREHOUSE (CLASS B8)

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

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.
2. The development shall only be carried out in strict accordance with the details shown on the following drawings:
02-000 Revision P04 Existing Site Plan
02-001 Revision P02 Proposed Site Plan
03-001 Revision P02 Proposed Floor Plans
04-001 Revision P04 Proposed Site Sections
05-001 Revision P03 Proposed Elevations
United Environmental Services Ltd Landscape & Environmental
Management Plan dated 6 December 2021 reference UES03416/03

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3. No part of the development hereby permitted shall commence until a detailed Arboricultural Method Statement has been submitted to and approved in writing by the Local Planning Authority. No development or other operations shall take place except in strict accordance with the Method Statement as is approved. The Method Statement shall include the following:
 - a) A specification for tree protection fencing and ground protection measures that comply with British Standard 5837:2012;
 - b) A Tree Protection Plan showing the location of the trees to be removed and retained with their crown spreads, Root Protection Areas, Construction Exclusion Zones, and location of protective fencing and ground protection measures accurately plotted;
 - c) A full specification for any access, driveway, path, underground services or wall foundations within retained tree Root Protection Areas or Construction Exclusion Zone, including any related sections and method for avoiding damage to retained trees;
 - d) Details of general arboricultural matters including proposed practices with regards to cement mixing, material storage and fires;
 - e) Details of the frequency of supervisory visits and procedures for notifying the findings of such visits to the Local Planning Authority;
 - f) Method for protecting retained trees during demolition works;
 - g) Details of all proposed tree works, including felling and pruning.
4. No development shall commence until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved statement shall be adhered to throughout the construction period. The statement shall provide for:
 - i. hours of working; and
 - ii. a scheme of dust management
5. Within three months of commencement of development a timetable for the implementation of the measures set out in Section 3: Landscaping and Habitat Management of the United Environmental Services Ltd Landscape & Environmental Management Plan dated 6 December 2021 reference UES03416/03 shall be submitted for the approval of the Local Planning Authority. The measures shall be implemented in strict accordance with the approved timetable and thereafter managed and maintained in accordance with the details set out in Section 3: Section 3: Landscaping and Habitat Management of the United Environmental Services Ltd Landscape & Environmental Management Plan dated 6 December 2021 reference UES03416/03.

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6. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until a remediation strategy detailing how this unsuspected contamination shall be dealt with has been submitted to and approved in writing by the Local Planning Authority. The remediation strategy as approved shall be implemented in full.
7. Prior to first use of the development hereby permitted, both vehicular accesses shall provide visibility splays of 2.4 metres x 120 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.
8. The vehicular parking and turning areas as shown on approved drawing(s) No(s). 02-001 Revision P02 Proposed Site Plan shall be fully laid out, surfaced and drained prior to first use of the development. These areas shall thereafter be permanently retained and kept free of any obstruction, and made available solely for the parking and turning of motor vehicles at all times.
9. The rating level of any noise generated by reason of this development shall not exceed the pre-existing background level at any time. The noise levels shall be determined at nearby noise sensitive premises, and measurements and assessment shall be made in accordance with BS4142:2014 Methods for Rating and Assessing Industrial and Commercial Sound.
10. A Final Travel Plan shall be submitted to and approved in writing by the Local Planning Authority following the first anniversary of first use of the development. The approved Travel Plan shall be implemented and remain in place thereafter.
11. The development hereby permitted shall not be occupied until a scheme of low and zero carbon technology has been implemented in accordance with details that shall first have been submitted to and approved in writing by the Local Planning Authority. Thereafter the measures installed in accordance with the scheme shall be retained.
12. No external illumination within the site shall take place before a lighting scheme has been submitted to and agreed in writing by the Local Planning Authority. Thereafter, no lighting shall be used on any external part of the development except in accordance with the approved lighting scheme.

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13. The development hereby permitted shall not be occupied until the foul drainage system for the site has been completed in accordance with the details shown on drawing no. S5A-BML-XX-XX-DR-C-0500 Revision P06. Thereafter no further surface water and/or land drainage shall be allowed to connect directly or indirectly with the public sewerage system.

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 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.
4. To protect the amenities of the occupiers of nearby properties in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.
5. In order to protect wildlife interests, which are afforded special protection in accordance with Policies GDP1 and EC6 of the Wrexham Unitary Development Plan.
6. To ensure the risks associated with previously unsuspected contamination at the site are dealt with through a remediation strategy, to minimise the risk to both future users of the land and neighbouring land, and to ensure that the development can be carried out safely without unacceptable risks, in accordance with policy GDP1 of the Wrexham Unitary Development Plan.
7. 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.
8. To provide for the parking and turning of vehicles clear of the highway and to ensure that reversing by vehicles into or from the highway is rendered unnecessary in the interest of traffic safety in accordance with Policies GDP1 and T8 of the Wrexham Unitary Development Plan
9. To protect the amenities of the occupiers of nearby properties in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.
10. To support the Council's approved Integrated Transport Strategy and to reduce dependency on the motor vehicle in accordance with Policies GDP1 and PS4 of the Wrexham Unitary Development Plan.

Applicant EMILY ARMSTRONG

Code ABE P/2022/0668

Agent PLAN RED LTD
RICHARD PURSER
FLOOR 11
3 PICCADILY PLACE
MANCHESTER
M1 3BN

Number
Date 15/07/2022
Received

Decision
Date

11. To ensure the development minimises energy use and carbon emissions in accordance with policy RE1 of the draft Wrexham Local Development Plan.
12. To protect the amenities of the occupiers of nearby properties in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.
13. To prevent pollution of the water environment in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.

Note(s) to applicant

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.

Further information is also available on the Coal Authority website at:
www.gov.uk/government/organisations/the-coal-authority



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:-



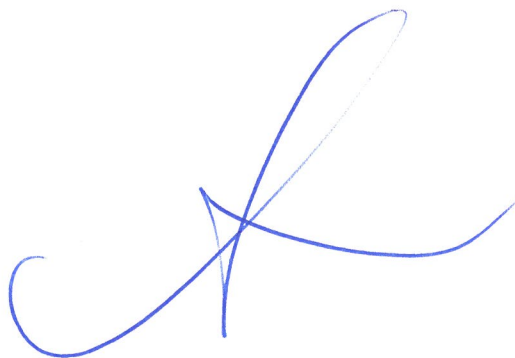
Chief Officer Governance and Customer



EXECUTED as a DEED by

LEA VALLEY LIMITED

Director



Director/Secretary



EXECUTED as a DEED by Geoffrey Ball

as attorney for SOLUTUS ADVISORS LIMITED under a power of attorney

in the presence of a witness

Authorised Signatory



Geoff Ball
Authorised
Signatory

Witness Signature



SEHAR BATOOL

Print name

Address

Canal Mill
Botany Bay
Chorley
PR6 9AF