

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

relating to Land at 120 Rhosnesni Lane in the  
County Borough of Wrexham LL11 3TN

Dated : 13 February 2024

**WREXHAM COUNTY BOROUGH COUNCIL (1)**

and

**DEBRA CLIFTON, PAUL ROBERTS CLIFTON, AJ BELL TRUSTEES LIMITED (2)**

and

**CLIFTONS OF WREXHAM LIMITED (3)**

Linda Roberts

Chief Officer Governance and Customer

Guildhall

Wrexham

LL11 1AY

Ref: NR/047965



DATE 13 February 2024

#### PARTIES

- (1) **WREXHAM COUNTY BOROUGH COUNCIL** of Guildhall, Wrexham, LL11 1AY ("Council")
- (2) **DEBRA CLIFTON, PAUL ROBERTS CLIFTON, AJ BELL TRUSTEES LIMITED** of 4 Exchange Quay Salford M5 3EE ("the Owner")
- (3) **CLIFTONS OF WREXHAM LIMITED (Company Registration number 04671099) having its Registered Office at 45 City Road Chester CH1 3AE** ("the Adjoining Land 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 Adjoining Owner is the registered proprietor of the Adjoining Land
- (4) 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.
- (5) The Council resolved on 2<sup>nd</sup> October 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

"Application" the application for full planning permission dated 23 January 2023 submitted to the

Council for the Development and allocated  
reference number P/2022/1082

|                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| "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                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| "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                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| "Plan A"                      | the Plan A attached to this Deed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| "Plan B"                      | the Plan B attached to this Deed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| "Planning Permission"         | the draft full planning permission subject to conditions to be granted by the Council pursuant to the Application                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| "                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| "Site"                        | the land subject to this Deed as shown edged red on the Plan A and more particularly described in the First Schedule.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| "Visibility Splay Land"       | the land subject to this Deed as shown dashed pink on the Plan B and more particularly described in the Second 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, 11 and 12 (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 first 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 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 £750.00
- 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 Head of Community Wellbeing and Development 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 shall cease to have effect (insofar only as it has not already been complied with) if:-
- 6.7.1 the Planning Permission shall be quashed revoked or otherwise withdrawn or (without the consent of the Owner) is modified by any statutory procedure
  - 6.7.2 the Planning Permission shall expire prior to the Commencement of Development; or
  - 6.7.3 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 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 dwellings 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 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.

**8 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

**9 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.

**10 VAT**

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

**11 JURISDICTION**

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

**12 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.

**13 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 adjoining 124 Rhosnesni Lane, Wrexham LL12 7NB which is registered at H M Land Registry in the name of the Owner with title absolute under title number CYM789339 and shown edged in red on Plan A.

**SECOND SCHEDULE**

**DESCRIPTION OF THE VISIBILITY SPLAY LAND**

116 and 118 Rhosnesni Lane Wrexham LL12 7NB which is registered at H M Land Registry in the name of the Adjoining Land Owner with title absolute under title number WA921898 and shown dashed pink on Plan B

### **THIRD SCHEDULE**

#### **VISIBILITY SPLAY**

1. Before the Development is first occupied to carry out or permit to be carried out on that part of the Site and the Visibility Splay Land which is dashed pink on Plan B such works as are necessary to allow that part of the Site and the Visibility Splay Land to form part of the visibility splays referred to in condition 11 of the Planning Permission.
2. Not at any time in the future to allow any shrub, tree, hedge, wall, fence or other means of enclosure or any other thing whatsoever to grow in or be erected or placed in that part of the Site and Visibility Splay Land to a height in excess of 1 metre above the level of the adjoining carriageway

EXECUTED as a DEED by affixing

THE COMMON SEAL of

WREXHAM COUNTY BOROUGH COUNCIL

in the presence of:-

Chief Officer Governance and Customer



37/24

SIGNED as a Deed by **DEBRA CLIFTON**

in the presence of:

Signature of Witness:

Name (*in block capitals*):

Address:

Occupation:

.....  
Ian M. Edwards Solicitor  
Allington Hughes Law  
10 Grosvenor Road  
Wrexham. LL11 1SD  
DX 26651  
Tel: 01978 291000 Fax: 01978 290493  
www.allingtonhughes.co.uk

SIGNED as a Deed by **PAUL ROBERTS CLIFTON**

in the presence of:

Signature of Witness:

Name (*in block capitals*):

.....  
Ian M. Edwards Solicitor  
Allington Hughes Law  
10 Grosvenor Road  
Wrexham. LL11 1SD  
DX 26651  
Tel: 01978 291000 Fax: 01978 290493  
www.allingtonhughes.co.uk

Address:

Occupation:

EXECUTED as a DEED by

**AJ BELL TRUSTEES LIMITED LIMITED** acting by a

Director and its Secretary or two Directors:-

  
.....

Director

  
.....

Director/Secretary

**EXECUTED** as a Deed by

**CLIFTONS OF WREXHAM LIMITED acting by**

PAUL ROBERTS CLIFTON, a Director,

  
.....

in the presence of:

Signature of Witness:

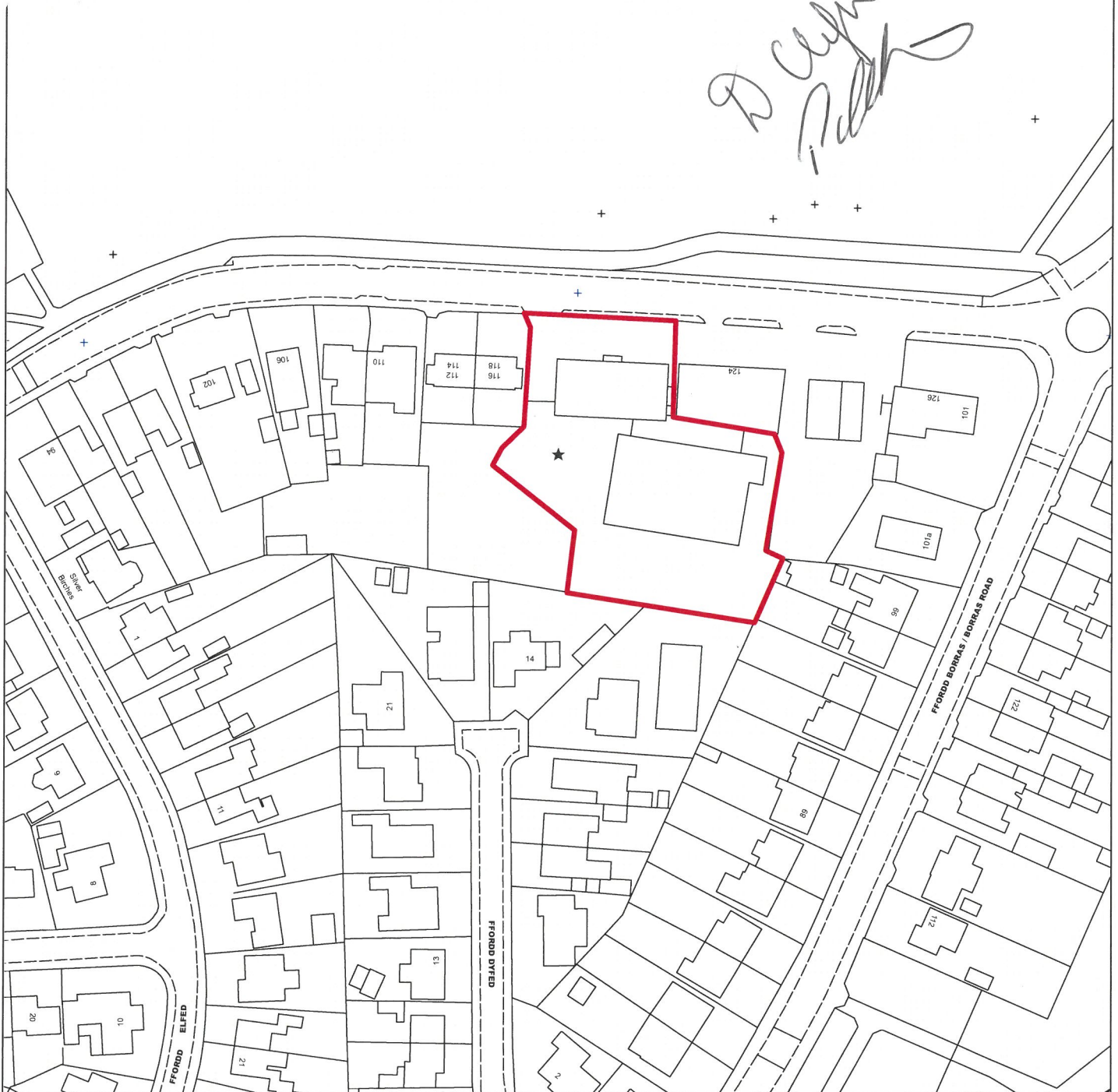
  
.....

Name (in block capitals):

Address:

Occupation:

.....  
Ian M. Edwards Solicitor  
Allington Hughes Law  
10 Grosvenor Road  
Wrexham, LL11 1SD  
DX 26651  
Tel: 01978 291000 Fax: 01978 290493  
www.allingtonhughes.co.uk  
.....



© Crown copyright. All rights reserved. 100023429. 2019

HEAD OF ECONOMY AND PLANNING  
PLANNING DEPARTMENT  
LAMPIT STREET  
WREXHAM  
LL11 1AR

3 OCTOBER 2023  
SCALE 1:1250  
SJ3451

**Town and Country Planning Act 1990  
Section 106 Obligation**



P/2022/1082  
120 RHOSNESNI LANE,  
WREXHAM

  
**wrexham**  
COUNTY BOROUGH COUNCIL  
CYNGOR BWRDEISTREF SIROL  
**wrecsam**



AD BEC TZW AFF CTO