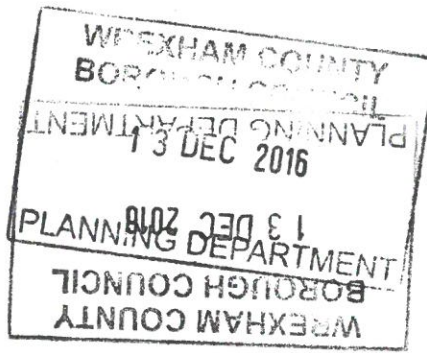


Ref: APP/H6955/A/16/3163233

09 December 2016



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Wrexham County Borough Council
Planning Department
16 Lord Street
Wrexham
LL11 1LG

Dear Sir/Madam,

**RE: APPEAL REFERENCE APP/H6955/A/16/3163233 LAND ADJACENT TO THE FIVE
CROSSES INN, RUTHIN ROAD, WREXHAM, LL11 3UT.**

Further to the above planning appeal, please find enclosed completed planning obligation by deed of Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990.

We trust that this is acceptable, however please do not hesitate to contact me should you have any further queries or require any clarification.

Yours sincerely

Tom Hallett
Planner

For and on behalf of
PETER BRETT ASSOCIATES LLP



5 December

2016

(1) NEWRIVER TRUSTEE 7 LIMITED AND NEWRIVER TRUSTEE 8 LIMITED

(2) HATFIELD PHILIPS AGENCY SERVICES LIMITED

TO

(3) WREXHAM COUNTY BOROUGH COUNCIL

**PLANNING OBLIGATION BY DEED OF UNILATERAL UNDERTAKING UNDER SECTION 106 OF
THE TOWN AND COUNTRY PLANNING ACT 1990
relating to Land at Five Crosses Inn Ruthin Road Bwlchgwyn Wrexham LL11 3UT**

**DWF LLP
1 Scot Place
2 Hardman Street
Manchester
M3 3AA**

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THIS AGREEMENT is dated

5 December 2016

FROM

- (1) **NEWRIVER TRUSTEE 7 LIMITED and NEWRIVER TRUSTEE 8 LIMITED** both of 13 Castle Street, St Helier, Jersey JE4 5UT (the "**Owner**");
- (2) **HATFIELD PHILIPS AGENCY SERVICES LIMITED** (company number 06892862) whose registered office is 34th Floor, 25 Canada Square, Canary Wharf, London E14 5LB (the "**Mortgagee**");

TO

- (3) **WREXHAM COUNTY BOROUGH COUNCIL** of the Guildhall, Wrexham LL11 1AY (the "**Council**").

BACKGROUND

- (A) 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 schedule 1 hereto is situate and is the local planning authority by whom a planning obligation is enforceable.
- (B) The Owner is the registered proprietor of the Site.
- (C) The Mortgagee is the mortgagee of the Site under legal charges dated 18 December 2013 15 July 2016 and registered at the Land Registry.
- (D) The Owner has submitted the Application to the Council and the Council refused the Application in a decision notice dated 5 September 2016.
- (E) An appeal against the refusal was submitted on 15 November 2016 and the Owner has agreed to enter into this Deed to secure the planning obligations within.

TERMS AGREED

1. Definitions and interpretation

1.1 In this Agreement:

"1990 Act"	the Town and Country Planning Act 1990;
"Appeal"	the planning appeal against the refusal of planning permission for the Development submitted by the applicant under section 78(1) of the Act in respect of the Application, and given reference APP/H6955/A/16/3163233;
"Application"	the application for full planning permission dated 8 June 2016 submitted to the Council for the Development and allocated reference number P/2016/0540;
"CIL Regulations"	the Community Infrastructure Levy Regulations 2010;

"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;
"Retail Store"	any retail unit constructed on the Site pursuant to the Planning Permission;
"Index"	all Items Index of Retail Prices issued by the Office for National Statistics;
"Inspector"	the inspector appointed by the Welsh Ministers to preside over the Appeal;
"Interest"	interest at 5 per cent above the base lending rate of the Barclays Bank Plc from time to time;
"Material Operation"	a material operation as defined in section 56 subsection 4(a) to (e) of the 1990 Act to implement the Planning Permission;
"Occupation"	use of the Retail Store for retail sales but not including occupation by personnel engaged in construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupied" shall be construed accordingly;
"the Plan"	the Plan attached to this Deed;
"Planning Obligation(s)"	the covenants by the Owner contained in clause 4 and schedule 2 hereto;
"Planning Permission"	the full planning permission subject to conditions to be granted by the Welsh Ministers or their Inspector pursuant to the Appeal;
"Site"	the land subject to this Deed as shown for the purpose of identification only edged red on the Plan and more

particularly described in schedule 1.

"Traffic Regulation Order"

such an order, temporary or permanent in nature, made for the site in accordance with the provisions of the Road Traffic Regulation Act 1984;

"Traffic Regulation Order and Implementation Contribution"

the sum of £3,000.00 indexed in accordance with this deed to be paid by the Owners to the Council in accordance with the provisions of schedule 2.

- 1.2 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.
- 1.3 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 1.4 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.
- 1.5 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.
- 1.6 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.
- 1.7 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.

2. Legal basis

- 2.1 This Deed is made pursuant to section 106 of the 1990 Act.
- 2.2 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.

3. Conditionality

- 3.1 Save for the provisions of clause 5.2 (Land charge), 10 (Jurisdiction) and 11 (Delivery) which shall come into effect immediately upon completion of this Deed, this Deed is conditional upon:
 - 3.1.1 the grant of the Planning Permission by the Welsh Ministers or their Inspector;

3.1.2 Commencement of Development; and

3.1.3 the Planning Obligations in this Deed being deemed by the Welsh Ministers or their Inspector to be:

3.1.3.1 necessary to make the Development acceptable in planning terms;

3.1.3.2 directly related to the Development;

3.1.3.3 fairly and reasonably related in scale and kind to the Development;

3.1.3.4 to comply in all other respects with regulation 122 of the CIL Regulations; and

3.1.3.5 to comply in all respects with regulation 123 of the CIL Regulations.

3.2 In the event that the Welsh Ministers or their Inspector expressly states in their decision letter that any individual Planning Obligation within this Deed is not compliant with the CIL Regulations or is immaterial to the grant of Planning Permission and that no weight has been given to the same in reaching his decision then that Planning Obligation or those Planning Obligations will cease to have effect and the Owner shall not be obliged to comply with the terms of that obligation and the remaining clauses will remain in full force and effect provided that severance is achievable.

4. The Owner's covenants

4.1 The Owner covenants with the Council on behalf of themselves and their successors in title to the Site to comply with the obligations relating to the Traffic Regulation Order Consultation and Implementation Contribution and set out in schedule 2 to this Agreement.

4.2 The Owner shall serve on the Council a notice of Commencement of Development not less than 7 days after Commencement of Development.

5. Miscellaneous

5.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

5.2 This Deed shall be registrable as a local land charge by the Council.

5.3 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.

5.4 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.

5.5 This Deed shall cease to have effect (insofar only as it has not already been complied with) if:

5.5.1 the Planning Permission shall be quashed revoked or otherwise withdrawn or (without the consent of the Owner) is modified by any statutory procedure;

5.5.2 the Planning Permission shall expire prior to the Commencement of Development; or

5.5.3 the Site is developed under a new planning permission granted after the Planning Permission by the Council or any other competent authority and there has been no Commencement of Development.

5.6 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 that part to which the breach relates but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

5.7 This Deed shall not be enforceable against owner-occupiers or tenants of any Retail Unit constructed pursuant to the Planning Permission nor against those deriving title from them.

5.8 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.

6. Mortgagee's consent

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 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 and the Mortgagee will not be liable for any breach of this Agreement occurring prior to the date on which the Mortgagee takes possession of the Site and provided further that the Mortgagee shall only be liable for any breach that it has itself caused whilst mortgagee in possession and shall not be liable for any breach of this Deed arising prior to being in possession of the Site.

7. Indexation

Any sum referred to in schedule 2 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.

8. 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.

9. VAT

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

10. **Jurisdiction**

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

11. **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.

12. **Owner**

The Owner enters into this Deed in their capacity as trustee of NewRiver Retail Property Unit Trust No. 4 and as such any liability on their part pursuant to this Deed is limited to the assets held by them for the time being as trustee of NewRiver Retail Property Unit Trust No. 4.

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

SCHEDULE 1

Description of the Site

All that parcel of land being part of the Five Crosses Inn, Ruthin Road, Minera, Wrexham, LL11 3UT which is registered at the Land Registry in the name of the Owner with title absolute under title number WA757924 and shown for the purpose of identification only edged red on the Plan.

SCHEDULE 2

Owner's covenants - Traffic Regulation Order Consultation and Implementation Contribution

To pay to the Council within 7 days of the Commencement of Development the Traffic Regulation Order Consultation and Implementation Contribution and the monies paid shall be used by the Council to carry out the Traffic Regulation Order works in accordance with the Planning Permission.

SIGNATURE PAGE

EXECUTED (but not delivered until the date hereof) as a **DEED** by **NEWRIVER TRUSTEE 7 LIMITED** a company incorporated in Jersey acting by SIMON VARDON and PHILIP TURPIN being persons who, in accordance with the laws of that territory, are acting under the authority of that company

AUTHORISED SIGNATORY

Signature:

Ardon

Name (in block capitals):

SIMON VARDON

AUTHORISED SIGNATORY

Signature:

S

Name (in block capitals):

PHILIP TURPIN

EXECUTED (but not delivered until the date hereof) as a **DEED** by **NEWRIVER TRUSTEE 8 LIMITED** a company incorporated in Jersey acting by SIMON VARDON and PHILIP TURPIN being persons who, in accordance with the laws of that territory, are acting under the authority of that company

AUTHORISED SIGNATORY

Signature:

Ardon

Name (in block capitals):

SIMON VARDON

AUTHORISED SIGNATORY

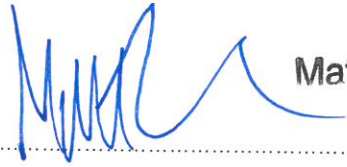
Signature:

S

Name (in block capitals):

PHILIP TURPIN

EXECUTED (but not delivered until the date hereof) as a DEED by HATFIELD PHILIPS AGENCY SERVICES LIMITED acting by ~~MATT CARSON~~ director, in the presence of:

 Matt Carson

DIRECTOR

WITNESS

Signature: 

Name: MBAMA Meloy

Address: 36K Place

25 Canada Square

ELU 5 LB London

Occupation: Analyst