

DATED

6 April 2022

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

KRONOSPAN LIMITED HOLYHEAD ROAD CHIRK LL14 5NT

between

Wrexham County Borough Council

and

Kronospan Limited

and

KBC Bank N. V.

Linda Roberts

Interim Chief Officer Governance and Customer

Guildhall

Wrexham

LL11 1AY

Ref: NR/041682

This deed is dated

6 April

2022

Parties

- (1) **WREXHAM COUNTY BOROUGH COUNCIL** of Guildhall, Wrexham LL11 1AY
(Council)
- (2) **KRONOSPAN LIMITED** incorporated in England and Wales with company number 981905 whose registered office is at Maesgwyn Farm Chirk LL14 5NT (Owner)
- (3) **KBC Bank N.V.** incorporated in Belgium and registered in England and Wales with company number br004567 whose UK establishment office address is at 111 Old Broad Street London EC2N 1BR (Mortgagee)

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.
- (B) The Owner is the freehold owner of the Property subject to a debenture in favour of the Mortgagee but otherwise free from encumbrances.
- (C) The Owner has made the Planning Application and is proposing to carry out the Development.
- (D) The Mortgagee is the registered proprietor of the charge dated 18 August 2017 referred to in entries number 31 and 32 of the charges register of Title number WA609980 and has agreed to enter into this deed to give its consent to the terms of this deed.
- (E) The Council resolved at its meeting on 1 November 2021 that Planning Permission should be granted for the Development subject to the prior completion of this deed.

Agreed terms

1. Interpretation

The following definitions and rules of interpretation apply in this deed:

1.1 Definitions:

Base Rate: the higher of the base rate from time to time of Barclays Bank plc.

Commencement of Development: the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this deed and for no other purpose, the following operations:

- demolition works;

- site clearance;
- ground investigations;
- site survey works;
- temporary access construction works;
- archaeological investigation; and
- erection of any fences and hoardings around the Property.

Commence and Commences shall be construed accordingly.

Commencement Date: the date Development Commences.

Default Interest Rate: 4% per annum above the Base Rate.

Development: the development of the Property authorised by the Planning Permission.

Ecological Area any habitat areas required in accordance with the Ecological Management Plan and shown on Plan 2.

Ecological Management Entity such body or bodies that is nominated or established by the Owner for the management and maintenance of the Ecological Area in accordance with Schedule

Ecological Management Entity Details the Ecological Management Entity's corporate structure details of its directors and officers and the mechanism for ensuring that it has sufficient funds to enable it to carry out the Ecological Management Plan.

Ecological Management Plan: the ecological management plan submitted to and approved in writing by the Council in accordance with the conditions of the Planning Permission.

Material Operation a material operation as defined in Section 56 subsection 4(a) to (e) of the 1990 Act to implement the Planning Permission.

Mitigation Areas Mitigation Area as identified on Plan B.

Plan A: the plan attached as ANNEX A showing the Property

Plan B: the plan attached as ANNEX B showing the Mitigation Areas.

Planning Application: the application for full planning permission registered by the Council on 14 July 2021 under reference number P/2021/0725.

Planning Permission: the planning permission to be granted by the Council in respect of the Planning Application in the draft form attached as ANNEX C and any further planning permission granted by way of s.73 of the TCPA 1990.

Property: the Property at Kronospan Limited Holyhead road Chirk Wrexham LL14 5NT shown edged red on the Plan and being part of the Property registered at HM Property Registry with absolute title under title numbers CYM381261, WA609980 and WA921864

TCPA 1990: Town and Country Planning Act 1990.

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.

Working Day: any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in Wales.

- 1.2 Clause headings shall not affect the interpretation of this deed.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** includes fax and e-mail.
- 1.11 A reference to **this deed** or to any other deed or document referred to in this deed is a reference to this deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.
- 1.12 References to clauses and Schedules are to the clauses and Schedules of this deed.

- 1.13 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.14 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.15 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. Statutory provisions

- 2.1 This deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972, and any other enabling powers.
- 2.2 The covenants, restrictions and obligations contained in this deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns.
- 2.3 The covenants, restrictions and obligations contained in this deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.

3. Conditionality

With the exception of clause 2, clause 3, clause 5, clause 8, clause 10, clause 12, clause 13, clause 15, clause 16, clause 17, clause 18 and clause 19 (which take effect immediately), this deed is conditional on the grant and issue of the Planning Permission.

4. Covenants to the Council

The Owner covenants with the Council to:

- (a) observe and perform the covenants, restrictions and obligations contained in Annex C.
- (b) give at least 20 Working Days written notice to the Council of the intended Commencement Date.

5. Mortgagee's consent

- 5.1 The Mortgagee consents to the completion of this deed and declares that its interest in the Property shall be bound by the terms of this deed as if it had been executed and registered as a Property charge prior to the creation of the Mortgagee's interest in the Property.

- 5.2 The Mortgagee shall not be personally liable for any breach of the obligations in this deed unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Property.

6. Release

No person shall be liable for any breach of a covenant, restriction or obligation contained in this deed after parting with all of its interest in the Property, except in respect of any breach subsisting prior to parting with such interest.

7. Determination of deed

The obligations in this deed shall cease to have effect if before the Commencement of Development:

- (a) the Planning Permission expires;
- (b) is varied or revoked other than at the request of the Owner; or
- (c) the Planning Permission is quashed following a successful legal challenge.

8. Local Land charge

This deed is a local land charge and shall be registered as such by the Council.

9. Interest on late payment

If any sum or amount has not been paid to the Council by the date it is due, the Owner shall pay the Council interest on that amount at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the due date to and including the date of payment.

10. Ownership

- 10.1 The Owner warrants that no person other than the Owner and the Mortgagee has any legal or equitable interest in the Property.
- 10.2 Until the covenants, restrictions and obligations in Schedule One have been complied with, the Owner will give to the Council within 30 Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property:
- (a) the name and address of the person to whom the disposition was made; and
 - (b) the nature and extent of the interest disposed of.

11. Reasonableness

Any approval, consent, direction, authority, agreement or action to be given by the Council under this deed shall not be unreasonably withheld or delayed.

12. Disputes

Any dispute, controversy or claim arising out of or relating to this deed, including any question regarding its breach, existence, validity or termination or the legal relationships established by this deed, shall be finally resolved by arbitration in accordance with the Arbitration Act 1996. It is agreed that:

- (a) the tribunal shall consist of one arbitrator appointed jointly by the parties;
- (b) in default of the parties' agreement as to the arbitrator, the arbitrator shall be appointed on either party's request by the President for the time being of the Royal Institution of Chartered Surveyors;
- (c) the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction, then equally); and
- (d) the seat of the arbitration shall be London.

13. No fetter of discretion

Nothing (contained or implied) in this deed shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.

14. Waiver

No failure or delay by the Council to exercise any right or remedy provided under this deed or by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

15. Future Permissions

Nothing in this agreement shall prohibit or limit the right to develop any part of the Property in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission.

16. Agreements and Declarations

The parties agree that:

- (a) nothing in this deed constitutes a planning permission or an obligation to grant planning permission; and
- (b) nothing in this deed grants planning permission or any other approval, consent or permission required from the Council in the exercise of any other statutory function.

17. Notices

17.1 Any notice or other communication to be given under this deed must be in writing and must be:

- (a) delivered by hand; or
- (b) sent by pre-paid first class post or other next working day delivery service.

17.2 Any notice or other communication to be given under this deed must be sent to the relevant party as follows:

- (a) to the Council at Guildhall Wrexham LL11 1AY Clause 18.2 - marked for the attention Chief officer Planning and Environment;
- (b) to the Owner at Holyhead Road Chirk LL14 5NT marked for the attention of Mark Jones
- (c) to the Mortgagee at 111 Old Broad Street London EC2N 1BR marked for the attention of Adam Sattar

or as otherwise specified by the relevant party by notice in writing to each other party.

17.3 Any notice or other communication given in accordance with clause 17.1 and clause 17.2 will be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt [or at the time the notice or document is left at the address provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day; or
- (b) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am] on the second Working Day after posting.

17.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

18. Third party rights

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

19. Governing Law

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

20. SECTION 73 VARIATION

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 Planning 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.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

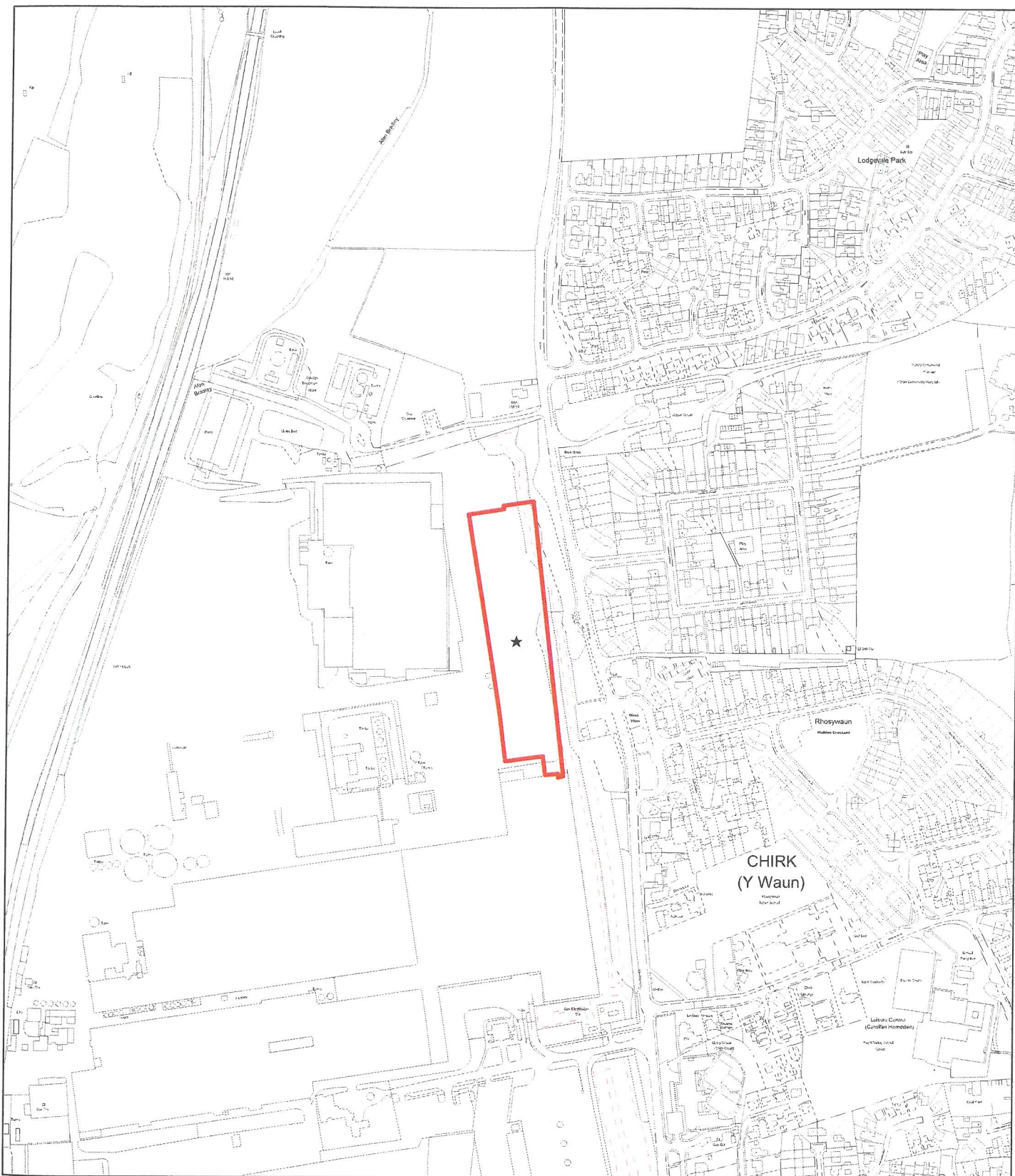
Schedule 1
Covenants to the Council

Owner's Covenants

SCHEDULE 1 THE ECOLOGICAL MANAGEMENT PLAN

1. The Owner covenants with the Council as follows:
 - 1.1 To comply with the approved Ecological Management Plan in perpetuity from the date of its approval.
 - 1.2 Not to allow Commencement of Development until the Ecological Management Entity Details have been submitted to and approved in writing by the Council.
 - 1.3 To procure that the Ecological Area is transferred to and subsequently managed and maintained by the Ecological Management Entity in accordance with the approved Ecological Management Plan.

ANNEX A Plan A



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HEAD OF PLANNING AND REGULATORY
PLANNING DEPARTMENT
16 LORD STREET
WREXHAM
LL11 1LG

2 NOVEMBER 2021
SCALE 1:5000
SJ3233

Town and Country Planning Act 1990
Section 106 Obligation



P/2021/0725
KRONOSPAN, HOLYHEAD ROAD
CHIRK


wrexham
COUNTY BOROUGH COUNCIL
CYNGOR BWRDEISTREF SIROL
wrecsam

ANNEX B Mitigation Areas

ANNEX C 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 KEITH BAKER	Code Number	CHI P/2021/0725
Agent	MR CHRISTOPHER HEATHER AXIS PED WELL HOUSE BARNS BRETTON CHESTER CH4 0DH	Date Received	14/07/2021
		Decision Date	

Town and Country Planning Act, 1990

Location of application

KRONOSPAN LTD, HOLYHEAD ROAD, CHIRK, WREXHAM, LL14 5NT

Description of application

DEVELOPMENT OF A WAREHOUSE AND ANCILLARY WORKS /
DATBLYGU WARWS A GWAITH ATEGOL

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 approved drawing(s) numbered 2936-0101, Figure 1 Site Location Plan, 700_67, 7000_649, V 1619-T1 Revision 3, 7000_607 Sheet 1/4, 7000_607 Sheet 2/4, 7000_607 Sheet 3/4 and 7000_607 Sheet 4/47000_673 and as contained within the application documentation.
3. No part of the development 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:

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- 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 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.
5. No part of the development shall commence until a scheme for the planting of trees and shrubs been submitted to and approved in writing by the Local Planning Authority.
6. Development shall not commence until a scheme of noise mitigation measures has been submitted to and approved in writing by the Local Planning Authority. The development shall not be brought into use until the measures as approved have been implemented in full. The noise mitigation measures shall thereafter be permanently retained.
7. No part of the development shall commence until a scheme of mitigation that provides the following has been submitted to and approved in writing by the Local Planning Authority:
- i. full details of the measures specified in Table 5.1: Ecological Constraints and Opportunities of Avian Ecology Preliminary Ecological Appraisal V3 dated 06/05/2021; and
 - ii. full detail of habitat enhancement measures;
 - iii. a timescale for implementation of the scheme
- The scheme as approved shall therefore be implemented in accordance with the timescale contained therein.

Applicant MR KEITH BAKER

Code CHI P/2021/0725

Agent MR CHRISTOPHER
HEATHER
AXIS PED
WELL HOUSE BARNS
BRETTON
CHESTER
CH4 0DH

Number
Date 14/07/2021
Received

Decision
Date

8. No works to remove or excavate the bund situated to the east of the development shall take place until full details of all retaining walls/structures have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in strict accordance with the details as approved.

9. Within three months of the commencement of development an Ecological and Landscape Management Plan, including long term design objectives, management responsibilities and maintenance schedules for the landscaped area to the east of the development up to the boundary with Holyhead Road and the land detailed in the Avian Ecology Biodiversity Note dated 14th October 2021 shall be submitted to and approved in writing by the Local Planning Authority. The ecological and landscape management shall thereafter be carried out in strict accordance with the details as are approved.

10. 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 Method for rating and assessing industrial and commercial sound.

11. No external lighting shall be installed on any part of the building until a lighting scheme, to include details of the extent of the site and surrounding land that will be illuminated, has been submitted to and approved in writing by the Local Planning Authority. External lighting shall thereafter only be installed in strict accordance with the scheme as approved.

12. The building hereby granted planning permission shall not be used at any time for any purpose other than one falling with Class B8 of the Town and Country Planning (Use Classes) Order 1987 (or any statutory instrument revoking and re-enacting that Order with or without amendment).

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.

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4. 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.
5. 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.
6. To protect the amenities of the occupiers of nearby properties in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.
7. In order to protect wildlife interests, which are afforded special protection in accordance with Policies GDP1 and EC6 of the Wrexham Unitary Development Plan.
8. To protect the amenities of the occupiers of nearby properties in accordance with Policy GDP1 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 and to secure long term ecological benefits in accordance with Policies GDP1, EC6 and PS2 of the Wrexham Unitary Development Plan.
10. To protect the amenities of the occupiers of nearby properties in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.
11. To protect the amenities of the occupiers of nearby properties in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.
12. To protect the amenities of the occupiers of nearby properties in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.

Note(s) to applicant

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.

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

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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.

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: healthandhousing@wrexham.gov.uk or 01978 292040. Please use the same contact details for any other enquiries regarding construction / demolition site noise.

Applicant MR KEITH BAKER

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Agent MR CHRISTOPHER
HEATHER
AXIS PED
WELL HOUSE BARNS
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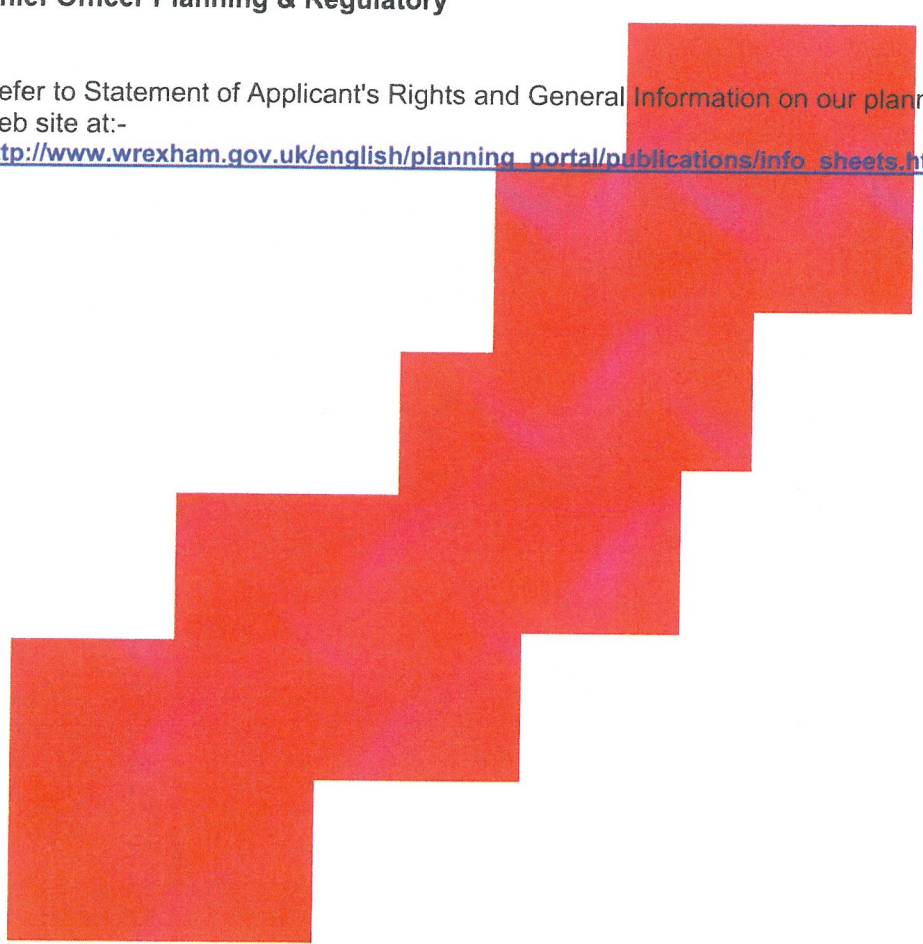
Decision
Date



Officer Appointed for this purpose
Chief Officer Planning & Regulatory

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:-

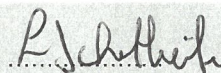


Interim Chief Officer Governance and Customer



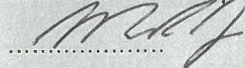
75/22

Signed as a deed by
KRONOSPAN LIMITED
acting by



SIGNATURE OF DIRECTOR

A Director in the presence of:



[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND
OCCUPATION] OF
WITNESS]

MARK JONES
20 BENTLEY DRIVE
OSWESTRY
SY11 1TA
ACCOUNTANT.

Executed as a deed by
KBC Bank N.V
acting by two
authorised signatories

