

1.

DATED

**PLANNING OBLIGATION BY WAY OF UNILATERAL UNDERTAKING UNDER
SECTION 106 OF THE TOWN & COUNTRY PLANNING ACT 1990**

RELATING TO

**LAND AT HAPPY DAYS COACHES, LITTLE GREEN, BRONINGTON,
WREXHAM, SY13 3HQ**

I certify that this is a true copy of the original

Signature..........Date.13.08.21

**BACKHOUSE JONES
SOLICITORS**

**The Printworks
Hey Road
Clitheroe BB7 9WD**

THIS DEED is dated

PARTIES

- (1) BRIAN VICTOR AUSTIN of Hay Loft, Manor Farm Drive, Hinstock, Market Drayton, Shropshire, TF9 2SN, NEIL GEORGE AUSTIN of 1 Moors Wood, Gnosall, Stafford, ST20 0FD, RICHARD ANTONY AUSTIN of 16 Pulteney Drive, Stafford ST16 1NU and MORGAN LLOYD TRUSTEES LIMITED (Co. Regn. No. 04867456) of The Pavilions, 69-71 Macrae Road, Pill, Bristol BS20 0DD as Trustees of The Happy Days Coaches Ltd Retirement Benefits Scheme (**Owner**).

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 owns the Property and has made the Planning Application.
- (C) The Council refused the Planning Application (the “**Planning Refusal**”) on 15 April 2021 and the Owner submitted the Appeal under section 78 of the TCPA 1990.
- (D) The Owner intends to develop the Property pursuant to the Planning Permission.
- (E) In accordance with the Council's Unitary Development Plan on planning contributions the Owner gives this undertaking to perform the obligations set out in this deed.

AGREED TERMS

1. INTERPRETATION

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

1.1 Definitions:

Appeal: means the appeal against the Council's refusal of the Planning Application.

Base Rate: 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.

Commencement Date: the date of Commencement of Development.

Contribution: a contribution towards the provision, improvement or extension of secondary education facilities at The Maelor School, Overton Road, Penley, Wrexham, LL13 0LU calculated in accordance with the following formula:

$A + B + C + D + E$ where:

A = the number of one-bedroom Dwellings authorised by the Planning Permission x 0

B = the number of 2+ bedroom apartments authorised by the Planning Permission x £739.00

C = the number of two-bedroom Dwellings (excluding any apartments which fall under “B”) authorised by the Planning Permission x £1,293.00

D = the number of three-bedroom Dwellings authorised by the Planning Permission x £3,694.00

E = the number of 4+ bedroom Dwellings authorised by the Planning Permission x £5,725.00

Council: Wrexham County Borough Council of 16 Lord St, Wrexham LL11 1LG.

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

Development: the development of the Property described in the Planning Application.

Dwellings: means the residential units (including houses, flats or maisonettes) permitted as part of the Development and “Dwelling” shall be construed accordingly

Index Linked: increased in accordance with the following formula:

Amount payable = the Contribution x (A/B) where:

A= the figure for the Retail Prices Index (All Items) that applied immediately preceding the date of actual payment.

B= the figure for the Retail Prices Index (All Items) that applied when the index was last published prior to the date of this deed.

Property: the freehold land at Happy Days Coaches, Little Green, Bronington, Wrexham and registered at HM Land Registry with absolute title under title numbers CYM37361 and CYM64370.

Planning Application: an application for planning permission registered by the Council on 12 February 2021 under reference number P /2021 /0137.

Planning Permission: the planning permission to be granted pursuant to the Appeal and any associated reserved matters approval to include any applications made under Section 73 of the TCPA 1990 and Section 96A of the TCPA 1990.

TCPA 1990: Town and Country Planning Act 1990.

Trustees: the persons named as Owner in this deed as at the date of this deed and any person appointed as trustee of The Happy Days Coaches Ltd Retirement Benefits Scheme from time to time.

Unitary Development Plan: Wrexham Unitary Development Plan 1996 – 2011, adopted February 14th 2005.

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 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.7 A reference to the Council shall include 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** excludes faxes 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 are to the clauses of this deed.
- 1.13 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.
- 1.14 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 obligations contained in clause 3 of 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 This deed shall come into effect on the date of grant of the Planning Permission.
- 2.4 The obligations contained in clause 3 of this deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.

3. CONDITIONALITY

- 3.1 The obligations contained in this deed are conditional upon:
- (a) the grant of Planning Permission; and
 - (b) the Commencement of Development.

save for the provisions of clauses 10 and 14.

4. COVENANTS WITH THE COUNCIL

- 4.1 The Owner covenants with the Council as set out in this clause 4 provided always that the Owner shall not be obliged to comply with an obligation set out in this deed if in determining the Appeal the Planning Inspectorate expressly states that the obligation either:
- (a) is not necessary to make the Development acceptable in planning terms; or

- (b) is not directly related to the Development; or
- (c) it is not fairly and reasonably related in scale and kind to the Development;
or
- (d) an immaterial planning consideration; or
- (e) has no weight attached to it in determining the Appeal.

4.2 Prior to the first occupation of 50% of Dwellings in the Development the Owner covenants to pay to the Council 50% of the Contribution with the remaining 50% of the contribution being paid prior to the occupation of 85% of the Dwellings on the Development.

5. INDEXATION OF CONTRIBUTION

5.1 All financial contributions payable to the Council shall be Index Linked.

5.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owner in writing.

6. RELEASE

No person shall be liable for any breach of an obligation, restriction or covenant 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

7.1 This deed shall be determined and have no further effect if the Planning Permission:

- (a) expires before the Commencement of Development;
- (b) is varied or revoked other than at the request of the Owner; or
- (c) 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 the Contribution has not been paid to the Council prior to or on the Commencement Date, the Owner shall pay the Council interest on the Contribution at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the Commencement Date to and including the date of payment.

10. COUNCIL'S COSTS

The Owner shall pay to the Council on the date of this deed the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this deed.

11. NOTICES

11.1 A notice or other communication to be given under or in connection with 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.

11.2 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: The Guildhall, Wrexham LL11 1AY marked for the attention of "Chief Officer Governance and Customer";
- (b) to the Owner at: 16 Glebe Lane, Gnosall, Stafford, ST20 0ER marked for the attention of Huw Austin;

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

11.3 Any notice or other communication given in accordance with clause 11.1 and clause 11.2 will be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt 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;
- (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.

11.4 A notice or other communication given under this deed shall not be validly given if sent by e-mail.

11.5 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.

12. LIMITATION OF TRUSTEES' LIABILITY

12.1 Any liability of the Trustees arising out of this deed or matters connected with it shall be limited to the value of the assets of The Happy Days Coaches Ltd Retirement Benefits Scheme in their possession from time to time.

12.2 The above provision shall no longer apply when the Property is no longer owned by the trustees for the time being of The Happy Days Coaches Ltd Retirement Benefits Scheme.

13. 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.

14. 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.

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

Executed as a deed by
Brian Victor Austin in
the presence of:

.....

.....

Name:

Address:

Executed as a deed by
Neil George Austin in
the presence of:

.....

.....

Name:

Address:

Executed as a deed by
Richard Antony Austin
in the presence of:

.....

.....

Name:

Address:

Executed as a deed by
Morgan Lloyd Trustees
Limited acting by
LUKE WALKER an
authorised signatory, in
the presence of:


.....
Authorised Signatory


.....

Name: SOLOMON MORTIMER

Address: FIAT 10 , CENTRO , Charles street , Bristol , BS13NN

Executed as a deed by
Morgan Lloyd Trustees
Limited acting by LEE
CARWITHEN an
authorised signatory, in
the presence of:



Authorised Signatory



Name: *SOLOMON MORTIMER*

Address:

FLAT 10, Centro, Charles Street, Bristol, BS1 3NN