

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

**relating to Land at Maes y Llan Farm, Maes y
Llan, Ruabon, Wrexham**

Dated : 15th August 2018

**WREXHAM COUNTY BOROUGH COUNCIL (1)
and
ROGER BLAKE AND GARETH JONES (2)**

Sioned Wyn Davies

Head of Corporate and Customer Services

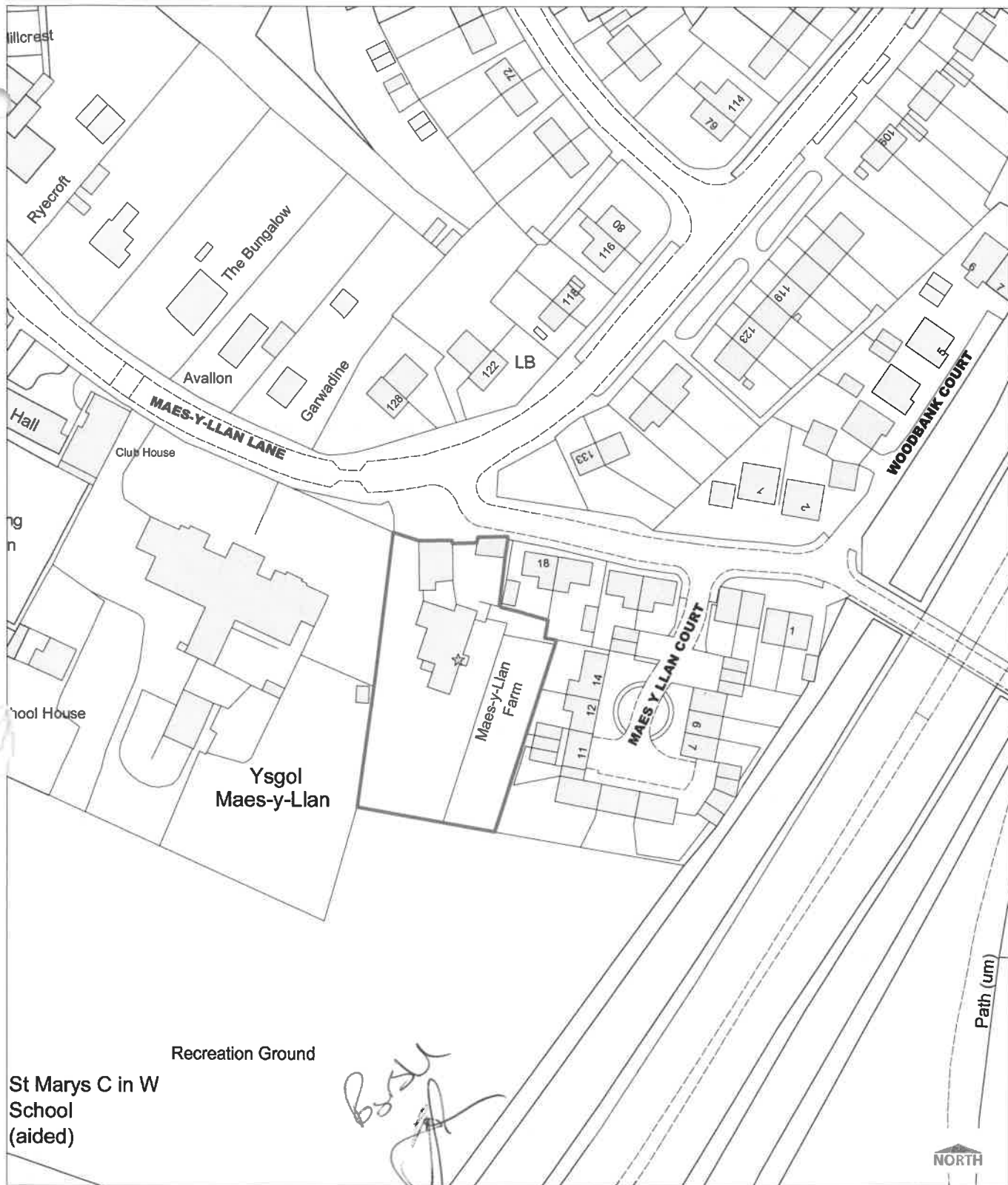
Guildhall

Wrexham

LL11 1AY

Ref: WCBC – 026551/SWD





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Head of Environment and Planning
Environment and Planning Department
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Town & Country Planning Act 1990 Section 106 Obligation



P/2016/1164
Maes Y Llan Farm, Maes Y Llan,
Ruabon, Wrexham



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DATE 15th August 2018

PARTIES

- (1) **WREXHAM COUNTY BOROUGH COUNCIL** of Guildhall, Wrexham, LL11 1AY ("Council")
- (2) **ROGER BLAKE** of Keepers Corner, Rhos y Madoc, Ruabon LL14 6LW and **GARETH JONES** of 19 Grosvenor Road, Wrexham LL11 1DE ("the 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) Moira Glenys Blake ("the Deceased") who died on 5th December 2015 is the registered proprietor of the Site
- (3) The will of the Deceased was proved by the Owner on 13th June 2016 in the District Probate Registry at Liverpool
- (4) The Owners are the Executors of the Deceased's Estate and are authorised by the Grant of Probate dated 30th June 2016 to act with regard to the site
- (5) 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.
- (6) The Council resolved on the 31 July 2017 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 outline planning permission dated 22 December 2016 submitted to the Council for the

"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
"Dwelling"	means any residential unit (including a house flat or maisonette) constructed on the Site pursuant to the Planning Permission
"Education Contribution"	means the sum determined in accordance with LPG27 in relation to the Development
"Head of Planning"	the Council's head of department or chief officer for the time being in post with responsibility for Town and Country Planning
"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.
"LPG27"	means the Council's Local Planning Guidance Note No. 27 "Developer Contributions to Schools" a copy of which is annexed to this Agreement at Annex 1
"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
"Plan A"	the Plan A attached to this Deed
"Planning Permission"	the draft outline planning permission subject to conditions to be granted by the Council pursuant to the Application as set out in Annex 2 to this Agreement
"PAR Scheme"	means the scheme relating to the implementation and management of the Private Access Road submitted to and approved in writing by the Council in accordance with the Planning Permission

"PAR Transfer"	means a transfer of the Private Access Road to a Residents Management Company
"Private Access Road"	means the private access road serving the Development to be approved as a reserved matter by the Council upon receipt of an application pursuant to condition 2 of the Planning Permission
"Residents Management Company"	means a registered company limited by guarantee that has been formed for the purposes of maintaining the Private Access Road
"Site"	the land subject to this Deed as shown edged red on the Plan A 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, 7.1, 13 and 14 (commencement of development, legal costs, jurisdiction and delivery clauses) 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 Second and Third Schedules.
- 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 THE COUNCIL'S COVENANTS

- 6.1 The Council covenants with the Owner as set out in the Fourth Schedule.

7 MISCELLANEOUS

- 7.1 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 £1,000
- 7.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 7.3 This Deed shall be registrable as a local land charge by the Council.
- 7.4 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 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.
- 7.5 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.
- 7.6 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.
- 7.7 This Deed 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.

7.8 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.

7.9 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.

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 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.

10 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.

11 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.

12 VAT

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

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.

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 at Maes y Llan Farm, Maes y Llan Lane, Ruabon, Wrexham LL14 6AD shown edged red on Plan A and registered at the Land Registry under title numbers CYM255693 and CYM511880

SECOND SCHEDULE

Owner's Covenants – Educational Contribution

On first occupation of any of the dwellings permitted by the Planning Permission, the Owners shall pay the Educational Contribution to the Council and the monies paid shall be used by the Council to provide additional primary and/or secondary educational facilities within Ruabon, where a proven need for these facilities is shown to exist.

THIRD SCHEDULE

Private Access Road

1 Not to carry out any Material Operation until:-

1.1 the Residents Management Company has been incorporated and

1.2 a copy of the proposed Articles of Association of the Residents Management Company has been submitted to and approved in writing by the Council

2 To submit to the Council the Articles of Association and Certificate of Incorporation of the Residents Management Company within 4 weeks of its incorporation

3 On the first disposal of each Dwelling to require the purchasers thereof and their successors in title to become members of the Residents Management Company with a view and to the intent that they can influence and contribute to the compliance with the obligations of this Schedule and to procure that a restriction is entered on the Proprietorship Register of all individual Dwellings in the following form:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a certificate signed by a conveyancer that the provisions of paragraph 3 of the Third Schedule of an Agreement dated [*insert date*] made between Wrexham County Borough Council (1) Roger Blake and Gareth Jones (2) have been complied with"

4. To pay to the Residents Management Company a fair and reasonable proportion (with the intention that the sum of all contributions from the Dwellings on the Site shall equal 100%) of the outgoings of the Residents Management Company incurred in complying with the relevant obligations of this Schedule

5. To observe and perform the provisions of the PAR Scheme and monitor and review it at least every 5 years 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 provide in the PAR Transfer a covenant in the following terms:

" The Transferee hereby covenants in fee simple in perpetuity to observe and perform the covenants agreements obligations and stipulations contained or referred to in the Third Schedule of an Agreement dated [] made between Wrexham County Borough Council (1) Roger Blake and Gareth Jones (2) AND to observe and perform the requirements of the PAR Scheme referred to therein".

7. Not to allow more than 60% of the Dwellings to be Occupied until the PAR Transfer has been completed and a certified copy of the PAR Transfer and the enabling Residents Management Company's Board Minute and Resolution has been submitted to the Council in evidence thereof
8. To lay out and construct and thereafter maintain and manage the Private Access Road in perpetuity in accordance with the Planning Permission the PAR Scheme and this Agreement

FOURTH SCHEDULE

Council's Covenants - Discharge of obligations

- 1 The Council covenants with the Owner to use the Educational Contribution ("the Contributions") received from the Owner under the terms of this Deed for the purpose specified in this Deed for which they are paid

2. The Council covenants with the Owner that upon receipt of a request from the Owner it will repay the Owner such amount of any of the Contributions made by the Owner to the Council under this Deed which have not been expended in accordance with the provisions of this Deed within ten (10) years of the date of receipt by the Council together with Interest from the date of the payment to the date of refund.

CERTIFICATE

Anna[Burgess], of Lanyon Bowdler as solicitor for the Owner (as defined in the within written Deed) hereby certifies that Paragraphs (2) and (3) of the Introduction to this Deed are correct.

Signed

OR

Dated 14th August 2018

[]

Lanyon Bowdler Solicitors

Hazledine House

Central Square

Telford Shropshire

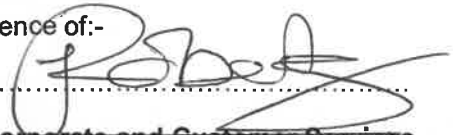
TF3 4JL

EXECUTED as a DEED by affixing

THE COMMON SEAL of **WREXHAM**

COUNTY BOROUGH COUNCIL

in the presence of:-


.....
Head of Corporate and Customer Services

Service Manager

(Legal, Planning and Registration Services)



226/18(a)

EXECUTED as a DEED by

ROGER BLAKE in the presence of:

Signature of Witness:

Name (in block capitals):

Address:

Occupation:


.....

DAVID FODEN

29/11 Church St

Wrexham

Wrexham



EXECUTED as a DEED by

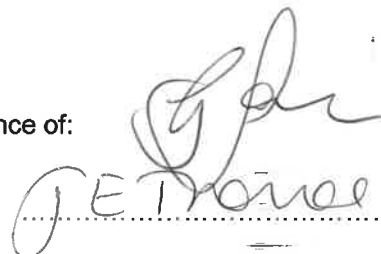
GARETH JONES in the presence of:

Signature of Witness:

Name (in block capitals):

Address:

Occupation:


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JESSICA THOMAS

CYRIL JONES & CO

19 Grosvenor Road Wrexham

Solicitor



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