

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

relating to Land comprising the former
Community Centre, Shones Lane, Llay New
Road, Llay, LL12 0PL, Wrexham

Dated : 27 MARCH 2018

WREXHAM COUNTY BOROUGH COUNCIL (1)
and
GRWP CYNEFIN (2)

T Coxon
Head of Corporate and Customer Services
Guildhall
Wrexham
LL11 1AY
Ref: WCBC - 028708

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DATE 27 MARCH 2018

PARTIES

- (1) **WREXHAM COUNTY BOROUGH COUNCIL** of Guildhall, Wrexham, LL11 1AY ("Council")
- (2) **GRWP CYNEFIN** (a company incorporated in England and Wales under Company Number IP21194R) whose registered office is at Ty Penygroes, Caernarfon, Gwynedd, LL54 6LY ("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) The Council is the registered proprietor of the Site and has transferred the Site to the Owner in a transfer of even date and the Owner is entitled to be registered as the proprietor of the Site
- (3) 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.
- (4) The Council resolved on the 2nd January 2018 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 26 th October 2017 submitted to the Council for the Development and allocated reference number P/2017/0859
"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"	any residential unit (including a house flat or maisonette) constructed on Site pursuant to the Planning Permission
"Education Contribution"	means the sum of £23,760 (twenty three thousand seven hundred and sixty pounds) comprising £11,760 in respect of primary education and £12,000 in respect of secondary education (indexed in accordance with the provisions of this Deed) to be paid by the Owner to the Council in accordance with the provisions of the Second Schedule
"Head of Planning"	the Council's head of department or chief officer for the time being 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.
"LPA 27"	The Council's Local Planning Guidance Note No. 27 "Developer Contributions to Schools" a copy of which is annexed to this Agreement at Appendix 2
"Occupation"	use of a Dwelling for residential use 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
"Plan"	the Plan attached to this Deed
"Planning Permission"	the draft full planning permission subject to conditions to be granted by the Council pursuant to the Application as set out in Appendix 1.
"Practical Completion"	issue of a certificate of practical completion by NHBC by way of the usual NHBC cover note
"Site"	the land subject to this Deed as shown edged red on the Plan 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 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 THE COUNCIL'S COVENANTS

- 6.1 The Council covenants with the Owner as set out in the Third 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 (one thousand pounds)

- 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 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.
- 7.10 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.

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

The freehold land comprising the site of the former Community Centre, Shones Lane, Llay New Road, Llay, Wrexham LL12 0PL being part of the land registered under title number CYM429256 at HM Land Registry at the date of this deed, and shown edged red on the Plan.

SECOND SCHEDULE

Owner's Covenants – Educational Contribution

On Commencement of Development the Owner shall pay the Educational Contribution to the Council and the monies paid shall be used by the Council to provide additional primary educational capacity at Llay County Primary School and additional secondary educational capacity at Bryn Alyn in Llay and secondary educational capacity at Bryn Alyn School.

THIRD SCHEDULE

Council's Covenants - Discharge of obligations

- 1 The Council covenants with the Owner to use the Educational Contribution 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 it will repay the Owner such amount of any of the Education Contribution made by the Owner to the Council under this Deed which have not been expended in accordance with the provisions of this Deed within 10 years of the date of receipt by the Council of the final payment in accordance with the provisions of Second Schedule hereto together with Interest from the date of the payment to the date of refund.

CERTIFICATE

Yvonne Davies (Partner) of Hugh James Solicitors, Hodge House, 114-116 St Mary Street, Cardiff, CF10 1DY as solicitor for the Owner (as defined in the within written Deed) hereby certifies that Paragraph (2) of the Introduction to this Deed is correct.

Signed

Dated

2018

EXECUTED as a DEED by affixing
THE COMMON SEAL of **WREXHAM**
COUNTY BOROUGH COUNCIL

in the presence of:-



106/18

St Wyn Jones

~~Head of Corporate and Customer Services~~

Service Manager
(Legal, Democratic and Registration Services)

EXECUTED as a Deed by affixing the common seal of
GRWP CYNEFIN

In the presence of:

[Signature]

Authorised Signatory

[Signature]

Authorised Signatory



PLAN REFERRED TO.

LLAY



STEPHEN T BAYLEY
HEAD OF HOUSING AND ECONOMY
WREXHAM COUNTY BOROUGH COUNCIL

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AREA EDGED RED = 0.36ac or 0.14 ha

PLAN No. 19/97/1
O.S.S. No. S.J.3355
SCALE. 1:500

05/08/11 MD

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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 OSIAN DYMENT GRWP CYNEFIN	Code Number	LLA P/2017/0859
Agent	WYNN ROGERS ARCHITECTURAL SERVICES LTD MR LLOYD EVANS STUDIO 3 ROSEMARY LANE DENBIGH LL16 3TT	Date Received	13/10/2017
		Decision Date	

Town and Country Planning Act, 1990

Location of application

FORMER COMMUNITY CENTRE SITE, SHONES LANE, LLAY, WREXHAM,
LL12 0PL

Description of application

RESIDENTIAL DEVELOPMENT TO PROVIDE 1 NO. TWO-STOREY 2
BEDROOM DWELLING, 1 NO. 3 BEDROOM SPECIAL NEEDS BUNGALOW
AND 1 NO. TWO-STOREY BLOCK OF 4 APARTMENTS WITH
ASSOCIATED WORKS

In reaching this decision the Council has had regard to the relevant policies in
the Wrexham Unitary Development Plan which are as follows:-

EC4	Hedgerows, Trees and Woodland
GDP1	Development objectives
GDP2	Capacity of infrastructure and community facilities
H2	Residential development within settlements
PS1	Settlement limits
PS2	Development and the environment
PS3	Brownfield Land
PS4	Settlement Pattern
T8	Parking

Revision	Date	Description of Decision
0		Planning permission issued

Particulars of decision that permission be GRANTED
Subject to the following:-

Condition(s)

Applicant	MR OSIAN DYMENT GRWP CYNEFIN	Code Number	LLA P/2017/0859
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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 T1b Rev B, T2a, T3a, T4, T5 Rev A, T11 Rev B and T12 Rev B and as contained within the application documentation.
3. Prior to their use on the development samples of all external facing materials shall be submitted to and approved in writing by the Local Planning Authority. The development shall only be carried out in strict accordance with such details as are approved.
4. Prior to their installation, details of all boundary treatments shall be submitted to and approved in writing by the Local Planning Authority. The scheme as approved shall be installed in accordance with a timescale to be approved as part of the detail and shall be retained in this condition thereafter.
5. Prior to first use of the vehicular access hereby approved, the access shall be surfaced with hard bound materials (e.g. bituminous macadam) for a minimum distance of 5 metres behind the adjoining highway.
6. There shall be no gates or other means of enclosure across the vehicular access point within 5 metres of the highway boundary.
7. Prior to first use of the development hereby approved the vehicular access shall provide visibility splays of 2.4m by 43m to the south east and 2.4m by 33m to the north west measured to the nearside edge of the adjoining highway. Within these splays there shall be no obstruction in excess of 1 metre in height above the level of the adjoining highway. The splays shall thereafter be permanently retained clear of any such obstruction to visibility.
8. Prior to first use of the development hereby approved a pedestrian visibility splay shall be established measured from the centreline of the vehicular access 2.4 metres back from the back edge of the footway to points 3.3 metres either side measured along the back edge of the footway. Within these splays there shall be no obstruction in excess of 0.6 metres in height above the level of the adjoining highway. The splays shall thereafter be permanently retained clear of any such obstruction to visibility.
9. No private surface water run off shall be permitted to flow from the development site onto the adjoining highway. An Aco drain or similar shall be provided across the approved access to intercept any such run off prior to first use of the development.

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10. The existing hedge which bounds the site facing onto Llay New Road between the points marked A and B on the approved plan shall be retained. It shall be protected during the construction phase in accordance with a scheme which has been submitted to and approved in writing by the local planning authority before development commences.

Reason(s)

1. To comply with Section 91(3) of the Town and Country Planning Act, 1990.
2. To define the scope of the planning permission
3. To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area.
4. To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area.
5. To ensure that no deleterious material is carried onto the highway, in the interests of highway safety.
6. In the interest of the free and safe movement of traffic on the adjacent highway and to ensure the formation of a safe and satisfactory access.
7. To ensure that adequate visibility is provided at the proposed point of access to the highway.
8. To ensure that adequate visibility is provided at the proposed point of access to the highway.
9. In the interests of highway safety.
10. To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area.

Note(s) to applicant

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

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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 should adhere to the times given above wherever possible. For further information and advice regarding construction noise please contact the Council's Housing and Public Protection Department on 01978 315300.

You should ensure that any difference between the plans approved under the Town and Country Planning Acts and under the Building Regulations is resolved prior to commencement of development, by formal submission of amended plans.

You are advised that building work which involves work on an existing wall shared with another property, building on the boundary with a neighbouring property or excavating near a neighbouring building may require the separate consent of the neighbour under the provisions of the Party Wall Act. If you require further information or advice please contact the Building Control Section on 01978 292050.

Prior to any connection to the existing foul drainage network, the applicant should contact Dwr Cymru Welsh Water for further advice.



**Officer Appointed for this purpose
Head of Environment and Planning**

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

Applicant MR OSIAN DYMENT
GRWP CYNEFIN

**Code
Number** LLA P/2017/0859

Agent WYNN ROGERS
ARCHITECTURAL
SERVICES LTD
MR LLOYD EVANS
STUDIO 3
ROSEMARY LANE
DENBIGH
LL16 3TT

**Date
Received** 13/10/2017

**Decision
Date**

DRAFT

