

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

relating to the Capel Y Groes, Hill Street
Penycae Wrexham LL14 2RD

Dated : 24 June 2016

WREXHAM COUNTY BOROUGH COUNCIL (1)

and

**ROBERT GLYN JONES ROBERTS, DAVID ALUN JONES ROBERTS
AND ERYL WYN JONES ROBERTS (2)**

T Coxon

Head of Corporate and Customer Services

Guildhall

Wrexham

LL11 1AY

Ref: ND/10008750

DATE 24 June 2016

PARTIES

- (1) **WREXHAM COUNTY BOROUGH COUNCIL** of Guildhall Wrexham LL11 1AY ("Council")
- (2) **ROBERT GLYN JONES ROBERTS, DAVID ALUN JONES ROBERTS AND ERYL WYN JONES ROBERTS** of 49 Chapel Street Penycae Wrexham LL14 2RF ("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 Owner is the registered 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 5th May 2015 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:

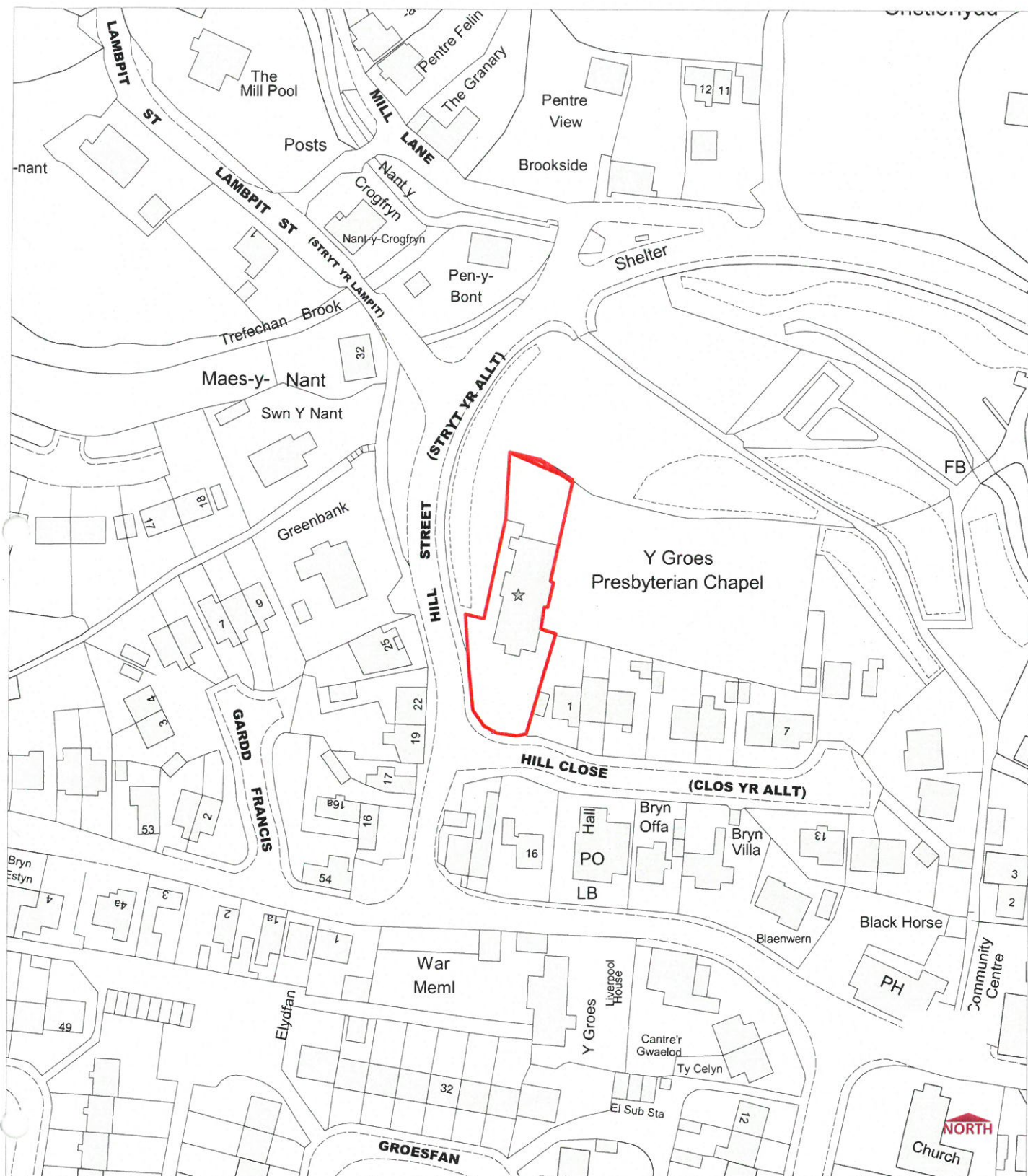
"Act"	the Town and Country Planning Act 1990
"Application"	the application for full planning permission dated 17 th November 2014 submitted to the Council for the Development and allocated reference number P/2015/0040
"Commencement of Development"	the date on which any material operation (as defined 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
"Education Contribution"	means the sum of £19,536.00 (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
"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.
"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 attached to this Deed
"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.



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Head of Community Wellbeing & Development
Planning Services
16 Lord Street, Wrexham LL11 1LG

Date: 11/05/2015
Scale: 1:1250
OS Sheet: SJ2845

**Town & Country Planning Act 1990
Section 106 Obligation**



P/2015/0040
Capel Groes Presbyterian Chapel
Hill Street, Penycae
Wrexham



Y:\shared\plpolicy\graphic\mapinfo\devc\section106

[Handwritten signature]
XRGJR

[Handwritten signature]
A Roberts
X4DAJR

[Handwritten signature]
EJ Roberts
Y4CWJR

X

- 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, delivery) fees 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 £1000.00

- 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 Community and Wellbeing 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

All that parcel of land being former Capel Y Groes Hill Street Penycae Wrexham LL14 2RD which is registered at H M Land Registry in the name of the Owner with title absolute under title number CYM669728 and shown edged in red on the Plan

SECOND SCHEDULE

EDUCATION CONTRIBUTION

Within 14 days of completion of the sale of the third house within the Development the Owner shall pay the Education Contribution to the Council and the monies paid shall be used by the Council to provide additional primary education facilities within Penrycae Community Primary School, Afoneitha Road, Penrycae, Wrexham LL14 2PF amounting to £8,624.00 and Ysgol Rhiwabon Secondary School, Pont Adam, Ruabon, Wrexham LL14 6BT amounting to £10,912.00.

THIRD SCHEDULE

Council's Covenants

Discharge of obligations

- 1 The Council covenants with the Owner to use the Education Contribution ("the 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 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 such period shall commence from the date of receipt by the Council of the final payment in accordance with the provisions of the Second Schedule hereto together with Interest from the date of the payment to the date of refund.

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 ERYL ROBERTS JONES ROBERTS PARTNERS	Code Number	PEN P/2015/0040
Agent	JONES ROBERTS PARTNERS 49 CHAPEL STREET PENYCAE WREXHAM LL14 2RF	Date Received	15/01/2015
		Decision Date	

Town and Country Planning Act, 1990

Town and Country Planning (Environmental Impact Assessment) Regulations 1999

Location of application

, CAPEL GROES PRESBYTERIAN CHAPEL, HILL STREET, PENYCAE, WREXHAM, , LL14 2SG

Description of application

DEMOLITION OF STORAGE SHEDS AT REAR OF CHAPEL AND CONVERSION OF CHAPEL INTO 4 NO. RESIDENTIAL UNITS, INCLUDING EXTERNAL AND INTERNAL ALTERATIONS AND OTHER EXTERNAL 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
EC6	Biodiversity Conservation
EC7	Conservation Areas
GDP1	Development objectives
PS1	Settlement limits
PS2	Development and the environment
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 ERYL ROBERTS
JONES ROBERTS
PARTNERS

Code Number PEN P/2015/0040

Agent JONES ROBERTS
PARTNERS
49 CHAPEL STREET
PENYCAE
WREXHAM
LL14 2RF

Date Received 15/01/2015

Decision Date

1. The development hereby permitted shall be commenced before the expiry of five years from the date of this permission.
2. No facing or roofing materials shall be used other than those detailed on the application form and within the approved application documentation.
3. 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.
4. The vehicular access hereby approved shall be a minimum width of 4.8 metres.
5. There shall be no gates or other means of enclosure across the vehicular access point within 5 metres of the highway boundary.
6. Nothing shall be planted, allowed to grow or erected to a height greater than 1 metre in height above the level of the nearside edge of the adjoining highway for a distance of 2.4 metres measured back from the adjoining highways along the entire site frontages with Hill Close and Hill Street. The splays shall be provided prior to first use of the development and shall thereafter be permanently retained clear of any such obstruction.
7. 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.
8. No part of the development shall commence until a scheme detailing the construction of the following has been submitted to and approved in writing by the Local Planning Authority:
 - 1) Detailed layout, design, drainage and construction of the proposed carriageway resurfacing.The scheme as is approved shall be fully implemented prior to first use of the development.
9. No land drainage run-off or surface water shall be permitted to discharge or connect to the public sewerage system, either directly or indirectly, and foul and surface water shall be drained separately from the site.

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10. No works shall commence until an appropriate photographic survey of the existing buildings on the site has been carried out in accordance with details to be submitted to and approved in writing by the Local Planning Authority. The resulting digital photographs should be forwarded on a CD or DVD to the Local Planning Authority, and the Development Control Archaeologist at Clwyd-Powys Archaeological Trust, 41 Broad Street, Welshpool, Powys, SY21 7RR (Tele no. 01938 553670).

11. Works shall only be carried out in strict accordance with the precautionary/mitigation measures and compensation outlined in Section 8 of the approved Protected Species Survey by Clwydian Ecology dated 8th October 2014.

12. Details of the surface treatment for the parking / turning area in front of the building shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. Works shall be carried out strictly in accordance with the details as approved and to a timescale that has been approved as part of the submitted details. Works as approved shall be retained thereafter unless otherwise agreed in writing with the Local Planning Authority.

13. Any demarcations for parking bays etc should only be made in setts rather than painted markings in accordance with details to be first approved in writing with the Local Planning Authority.

14. Prior to their installation on the building the number and position of any new meter boxes, vents and flues should be submitted to and approved in writing by the Local Planning Authority. Works shall only be carried out strictly in accordance with the details as approved and retained thereafter unless otherwise agreed in writing with the Local Planning Authority.

15. Notwithstanding the approved drawings and documentation, prior to their installation on the building drawings to scale 1:5 and 1:20 fully detailing all new or replacement windows and doors have been submitted to and approved in writing by the Local Planning Authority. The details shall fully describe the proposed materials, decorative/protective finishes, method of opening and glazing type and include cross sections for glazing bars, sills, heads etc. The works shall only be carried out in strict accordance with such details as approved and retained thereafter unless otherwise agreed in writing with the Local Planning Authority.

16. Prior to the first installation of new or replacement windows, a scheme of measures to protect the amenity of nearby existing residential properties

Applicant	MR ERYL ROBERTS JONES ROBERTS PARTNERS	Code Number	PEN P/2015/0040
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		Decision Date	

shall be submitted to and approved, in writing, by the Local Planning Authority. Works shall only be carried out as approved and retained thereafter.

17. 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:

- 1) A specification for tree protection fencing and ground protection measures that comply with British Standard 5837:2012;
- 2) 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;
- 3) 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;
- 4) Details of general arboricultural matters including proposed practices with regards to cement mixing, material storage and fires;
- 5) Details of the frequency of supervisory visits and procedures for notifying the findings of such visits to the Local Planning Authority;
- 6) Method for protecting retained trees during demolition works;
- 7) Details of all proposed tree works, including felling and pruning.

18. All works in relation to the implementation of this permission, including deliveries to and / or leaving the site, shall be undertaken only between the hours of 7.30 and 18.00 Monday to Friday, and 08.00 to 14.00 on a Saturday, and at no time on a Sunday or a Bank Holiday.

19. The vehicular parking and turning areas as shown on approved drawing(s) No(s). 0112/09 Rev A dated 19/04/15 shall be fully laid out, surfaced and drained prior to first use of the development. These areas shall thereafter be permanently retained and kept free of any obstruction, and made available solely for the parking and turning of motor vehicles at all times.

20. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting that Order with or without modification), no further development shall

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take place under Classes A, B, C, D and E of Schedule 2 Part(s) 1 and Class A Part 2, other than the development hereby granted permission.

Reason(s)

1. To comply with Section 91(3) of the Town and Country Planning Act, 1990.
2. To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area.
3. To ensure that no deleterious material is carried onto the highway, in the interests of highway safety.
4. To ensure the formation of a safe and satisfactory access.
5. 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.
6. To ensure that adequate visibility is provided at the proposed point of access to the highway.
7. In the interests of highway safety.
8. In the interests of highway safety.
9. To protect the integrity of the public sewerage system and prevent hydraulic overloading of the public sewerage system. To protect the health and safety of existing residents and to ensure no detriment to the environment.
10. To provide for a record of a building or buildings of local architectural or historic interest
11. To protect named species/habitats/biodiversity which would otherwise be damaged/lost by the development hereby permitted.
12. To soften the impact upon the appearance of the building and preserve the character of the Conservation Area.
13. To soften the impact upon the appearance of the building and preserve the character of the Conservation Area.
14. To ensure the works reflect the character and appearance of the building.
15. To ensure the works reflect the character and appearance of the building and the character of the Conservation Area.
16. In the interests of residential amenity.
17. To ensure the work is carried out to accepted arboricultural practices for the long term well being of the tree(s).
18. In the interests of nearby residential amenity.

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		Decision Date	

19. To provide for the parking and turning of vehicles clear of the highway and to ensure that reversing by vehicles into or from the highway is rendered unnecessary in the interest of traffic safety.

20. In the interests of protecting the character of the building and the Conservation Area.

Note(s) to applicant

The applicant's attention is drawn to item nos 1, 2, 3, 4 and 5 of the supplementary notes.

A licence should be obtained (as required by section 184 of the Highways Act 1980) from the Highway Authority in order to lower the kerbline and cross the footpath at the new access position. Further guidance can be obtained from the Highways Department of Wrexham County Borough Council on telephone 01978 729690.

The applicant is advised that compliance with condition no. 18 does not provide an exemption from the statutory noise nuisance provisions of the Environmental Protection Act 1990. Any complaints received relating to noise from the development during the permitted hours may still be investigated using the Council's Standardised Procedure for Dealing with Noise Nuisance Complaints and legal action may be taken where appropriate.

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. For further information and advice regarding construction noise please contact the Council's Housing and Public Protection Department on 01978 315300.

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 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

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Agent	JONES ROBERTS PARTNERS 49 CHAPEL STREET PENYCAE WREXHAM LL14 2RF	Date Received	15/01/2015
		Decision Date	

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 Housing and Public Protection Department on 01978 315300 for further advice and information.

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 Housing and Public Protection Department on 01978 315300 for further advice and information.

Your attention is drawn to the Advisory Notes attached to this decision from Welsh Water.

If bats are found during works, all works should cease and NRW or a licensed Ecologist should be contacted for advice.

The proposed development lies within an area that has been defined by The Coal Authority as containing potential hazards arising from former coal mining activity. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological features (fissures and break lines); mine gas and previous surface mining sites. Although such hazards are seldom readily visible, they can often be present and problems can occur in the future, particularly as a result of development taking place.

It is recommended that information outlining how the former mining activities affect the proposed development, along with any mitigation measures required (for example the need for gas protection measures within the foundations), be submitted alongside any subsequent application for Building Regulations approval (if relevant). Your attention is drawn to The Coal Authority Policy in relation to new development and mine entries available at: <https://www.gov.uk/government/publications/building-on-or-within-the-influencing-distance-of-mine-entries>

Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires a Coal Authority Permit. Such activities could include site investigation boreholes, digging of foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability

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**Date
Received** 15/01/2015

**Decision
Date**

purposes. Failure to obtain a Coal Authority Permit for such activities is trespass, with the potential for court action.
Property specific summary information on past, current and future coal mining activity can be obtained from: www.groundstability.com

If any of the coal mining features are unexpectedly encountered during development, this should be reported immediately to The Coal Authority on 0345 762 6848. Further information is available on The Coal Authority website at: www.gov.uk/government/organisations/the-coal-authority.



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

**Refer to the Statement of Applicant's Rights and General Information enclosed
or refer to the following link:-**

http://www.wrexham.gov.uk/english/planning_portal/publications/info_sheets.htm

CERTIFICATE

Mark Evans of **Allington Hughes Law** as solicitors for the Owner (as defined in the within written Deed) hereby certify that the First Schedule of this Deed is correct.

Signed

A handwritten signature in black ink, appearing to read 'M Evans', with a horizontal line drawn underneath the name.

Dated: 13/6/16.

EXECUTED as a DEED on the date specified as the commencement of this Deed.

EXECUTED as a DEED by affixing

THE COMMON SEAL of

WREXHAM COUNTY BOROUGH COUNCIL



87/16(a)


Head of Corporate and Customer Services

EXECUTED as a Deed by

ROBERT GLYN JONES ROBERTS



in the presence of:



EXECUTED as a Deed by

DAVID ALUN JONES ROBERTS



in the presence of:



EXECUTED as a Deed by

ERYL WYN JONES ROBERTS

E J Roberts

in the presence of:

Drillieins

*2, Chydhart,
Glarrofor,
Bontnewydd,
Caernarfon
Gwynedd.*

Occupation: Retired.

