

DATED

21ST NOVEMBER

2013

WREXHAM COUNTY BOROUGH COUNCIL

and

GEORGE WIMPEY NORTH WEST LIMITED

and

COLIN CORNES

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

relating to land north of
Clifton Avenue, Brymbo Wrexham

DATE

21st NOVEMBER

2013

PARTIES

- (1) **WREXHAM COUNTY BOROUGH COUNCIL** of Guildhall Wrexham LL11 1AY ("Council"); and
- (2) **GEORGE WIMPEY NORTH WEST LIMITED** (Company Registration Number 00836029) whose registered office is at Gate House, Turnpike Road, High Wycombe, Buckinghamshire, HP12 3NR (the "**First Owner**"); and
- (3) **COLIN CORNES** of Fernhill Estates Office, Fernhill Road, Sutton, Shropshire, TF10 8DJ and of The Old Rectory, Blymhill, Shifnal, Staffordshire, TF11 8LL (the "**Second Owner**")

INTRODUCTION

- A** The Council is the local planning authority for the area in which the Site is situated.
- B** The First Owner is the proprietor of the freehold interest in part of the Site registered under Title Number CYM260201.
- C** The Second Owner is the proprietor of the freehold interest in the remainder of the Site registered under Title Number CYM285916.
- D** The First Owner intends to take a transfer of the part of the Site registered under CYM285916 from the Second Owner.
- E** The First Owner has submitted the Application to the Council.
- F** The Council has decided to grant planning permission for the Development subject to conditions in accordance with the Application subject to the execution of this Deed without which planning permission would not have been granted.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS

- 1.1** 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 detailed planning permission submitted to the Council for the Development and allocated reference number P/2013/0586;
"Commencement of Development"	the carrying out of any material operation (as defined in Section 56(4) of the Act) forming part of the Development PROVIDED ALWAYS that for the purposes of this Deed the following shall not be taken to be a material operation and shall not amount to Commencement of Development: (i) works of site clearance and demolition; (ii) ground investigation and/or site survey work; (iii) construction of boundary fencing or hoarding; (iv) archaeological investigation; (v) works of decontamination or remediation; and (vi) temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly;
"Contributions"	the Education Contribution and the Off-Site Public Open Space Contribution;
"Development"	residential development of the Site for up to 10 Dwellings with access and associated infrastructure as set out in the Application;
"Dwelling"	a dwelling constructed on the Site in accordance with the Planning Permission and "Dwellings" shall be construed accordingly;
"Education Contribution"	The sum of £42,768.00 the said sum being payable to the Council as a contribution towards the provision of primary and secondary education facilities in the Gwersyllt Bryn Alyn catchment area such sum to be expended by the Council for that

	purpose and in the manner set out in the Council's published Local Planning Guidance Note No. 27 entitled "Developer Contributions to Schools";
"Interest"	interest at 4 per cent above the base lending rate of the Barclays Bank Plc from time to time;
"Occupation"	occupation for the purposes permitted by the Planning Permission 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 and "Occupied" and "Occupier" shall be construed accordingly;
"Off-Site Public Open Space Contribution"	the sum of £10,000.00 to be used by the Council for the improvement of public open space in the Community of Brymbo;
"Owners"	the First Owner and the Second Owner;
"Plan"	the plan attached to this Deed;
"Planning Permission"	the planning permission which will be issued by the Council pursuant to the Application;
"Site"	the land situated north of Clifton Avenue, Brymbo, Wrexham and in respect of which this Deed may be enforced as shown for identification purposes only edged red on the Plan.

2. CONSTRUCTION OF THIS DEED

- 2.1 Unless otherwise indicated references to clauses and Schedules are to clauses of and Schedules to this Deed and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule.
- 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 wherever 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 the successors to its statutory functions.
- 2.7 Any covenant not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 2.8 References to the Site include any part of it.
- 2.9 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers functions or discretions in relation to the Site or otherwise.
- 2.10 The headings are for reference only and shall not affect construction.

3. **LEGAL BASIS**

- 3.1 This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers.
- 3.2 The covenants, restrictions and requirements imposed upon the Owners 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 Owners and their successors in title.

4. **CONDITIONALITY**

This Deed shall come into effect upon the date hereof save for the First Schedule which shall come into effect on Commencement of Development.

5. **THE OWNERS' AND THE COUNCIL'S COVENANTS**

- 5.1 The Owners covenant with the Council as set out in the First Schedule.
- 5.2 The Council covenants with the Owners as set out in the Second Schedule.

6. **MISCELLANEOUS**

- 6.1 The First Owner shall pay to the Council on completion of this Deed the reasonable costs of the Council incurred in the negotiation, preparation and execution of this Deed in the sum of £1250.
- 6.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 6.3 This Deed shall be registered as a local land charge by the Council.
- 6.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owners from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall be given on behalf of the Council by its Head of Community Wellbeing and Development or the successor post or any officer to whom they delegate some or all of their functions under this Deed.
- 6.5 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, legality or enforceability of the remaining provisions of this Deed.
- 6.6 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owners) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 6.7 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 interest in the Site or the part of the Site in respect of which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 6.8 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.
- 6.9 The obligations in this Deed will not be enforceable against the buyers of a Dwelling erected on the Site pursuant to the Planning Permission or a statutory undertaker after the transfer of the statutory apparatus and any land upon or in which the statutory apparatus is situated to that statutory undertaker.

7. **CHANGE IN OWNERSHIP**

Except for the disposal of a Dwelling to an individual buyer or tenant, the Owners agree 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 purchased by reference to a plan.

8. **DISPUTE RESOLUTION**

8.1 Where any dispute or difference arises between any party to this Deed any party to such dispute or difference shall be entitled to have the matter referred to the determination of an expert (the "**Appointed Expert**") having not less than 10 years' relevant experience in the field of the matter in dispute and being a member of the Royal Institution of Chartered Surveyors or if appropriate to the matter in dispute of another professional institution or body the identity of such person in default of agreement being an appointment made on the application of any party to such dispute at any time by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors provided that in the absence of a direction by the Appointed Expert in accordance with this clause as to how the costs of the reference to the Appointed Expert should be borne as between the relevant parties the parties to such dispute shall bear their own costs and shall share equally the costs and charges of the Appointed Expert.

8.2 The Appointed Expert shall:

- 8.2.1 afford to each of the parties to the dispute an opportunity to make representations to him/her in writing and if he/she so directs submissions upon one another's representations;
- 8.2.2 be entitled to stipulate the periods of time for the making of such representations as is reasonable in the circumstances;
- 8.2.3 be bound to have regard to such representations;
- 8.2.4 have the power of making directions as to the responsibility for the costs of his/her award (including both the costs of the relevant parties and the costs and charges of the appointed expert) to be met by any party behaving unreasonably;

- 8.2.5 in the making of his/her award not be liable save to the extent in law as provided in relation to the decisions of an expert;
- 8.2.6 make awards which are final and conclusive as between the parties to such dispute (except that such awards shall not remove the parties' rights of appeal on matters of law and any manifest material error); and
- 8.2.7 be replaced by a fresh appointee in the event of his/her becoming at any time unable or unwilling for any reason to proceed to discharge his/her function such fresh appointee to be appointed in the manner prescribed in this clause.

9. **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.

10. **VAT**

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

11. **COMMUNITY INFRASTRUCTURE LEVY**

11.1 For the purposes of this clause "CIL" means a tax, tariff or charge introduced by the Council pursuant to regulations enabled by the Planning Act 2008 or any subsequent proposed legislation to fund the delivery of infrastructure known as the "community infrastructure levy" or known by any other name.

11.2 If after the date of this Deed CIL is introduced that is applicable to the Development then the parties to this Deed will, should it be reasonably required in the circumstances, use reasonable endeavours to agree variations to this Deed with the intent that:

- 11.2.1 the planning benefits secured by this Deed should continue to be secured and delivered; and
- 11.2.2 the Owners should not be in a position whereby they are in a financially worse position because of CIL in respect of the obligations contained in this Deed than they would be if they performed the obligations in this Deed and no CIL had been introduced.

12. **NOTICES**

12.1 Any notice, demand or other communication to be delivered to a party under this Deed shall be in writing and shall be in the manner and marked for the attention of the person from time to time designated by it to the other parties to this Deed. The initial details so designated are as follows:

12.1.1 the Council: Head of Community Wellbeing and Development at 16 Lord Street, Wrexham, LL11 1LG quoting the reference number of the Application;

12.1.2 the Owners: At the Owners' registered addresses as shown on the first page of this Deed and copied to the First Owner's regional office situate at 1 Lumsdale Road, Stretford, Manchester, M32 0UT;

12.2 Subject to clause 12.3 below and unless the date and/or time of actual receipt is proved a notice, demand or other communication sent by the following means is to be treated as having been served as follows:

12.2.1 if delivered by hand at the time of delivery;

12.2.2 if sent by pre-paid first class post on the second working day after posting; or

12.2.3 if sent by recorded delivery at the date and time delivery was signed for.

12.3 If a notice, demand or other communication is served after 4.00pm on a working day or on a day that is not a working day it is to be treated as having been served on the next working day and for the purpose of this clause a working day is any day from Monday to Friday (inclusive) which is neither Christmas Day nor Good Friday and not any statutory bank holiday or a day falling within the period the 22nd December to the immediately following 5th January (inclusive).

13. **JURISDICTION**

This Deed is governed by and interpreted in accordance with the laws 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.

FIRST SCHEDULE

Owners' Covenants

The Owners covenant with the Council to pay the Contributions to the Council prior to the first Occupation of any Dwelling.

SECOND SCHEDULE

Council's Covenants

The Council covenants with the Owners:

1. To provide written confirmation of the discharge of the obligations contained in this Deed when it is satisfied that such obligations have been performed.
2. To provide a receipt following payment of the Contributions to the party who paid the same.
3. To use the Contributions only for the purposes specified in this Deed.
4. If any of the Contributions have not been applied towards the purpose specified in this Deed within ten years of the date of payment to the Council the unallocated Contribution or the balance thereof remaining at that date shall be refunded to the party who paid it together with any interest actually earned thereon by the Council (the Council being under no obligation to obtain the best interest rate available).

IN WITNESS OF WHICH this document has been executed as a Deed by the respective parties hereto in the appropriate manner and with the intention of such document being delivered on the part of each of them as a Deed on (but not before) the day and year first before written.

THE COMMON SEAL of
WREXHAM COUNTY BOROUGH COUNCIL
was hereunto affixed in the presence of:

)
)
)



Head of Corporate and Customer Services

[Signature]

EXECUTED as a DEED by GEORGE
WIMPEY NORTH WEST LIMITED
acting by two authorised Attorneys
in the presence of:

)
)
)
)

Attorney.....

[Signature]

David Crouch

Attorney.....

[Signature]

Louise Jones

Signature of Witness:

Name:

Kelly Ball

Address:

Occupation

Chase House

Park Plaza

Heath Hayes

Cannock

WS12 2DD

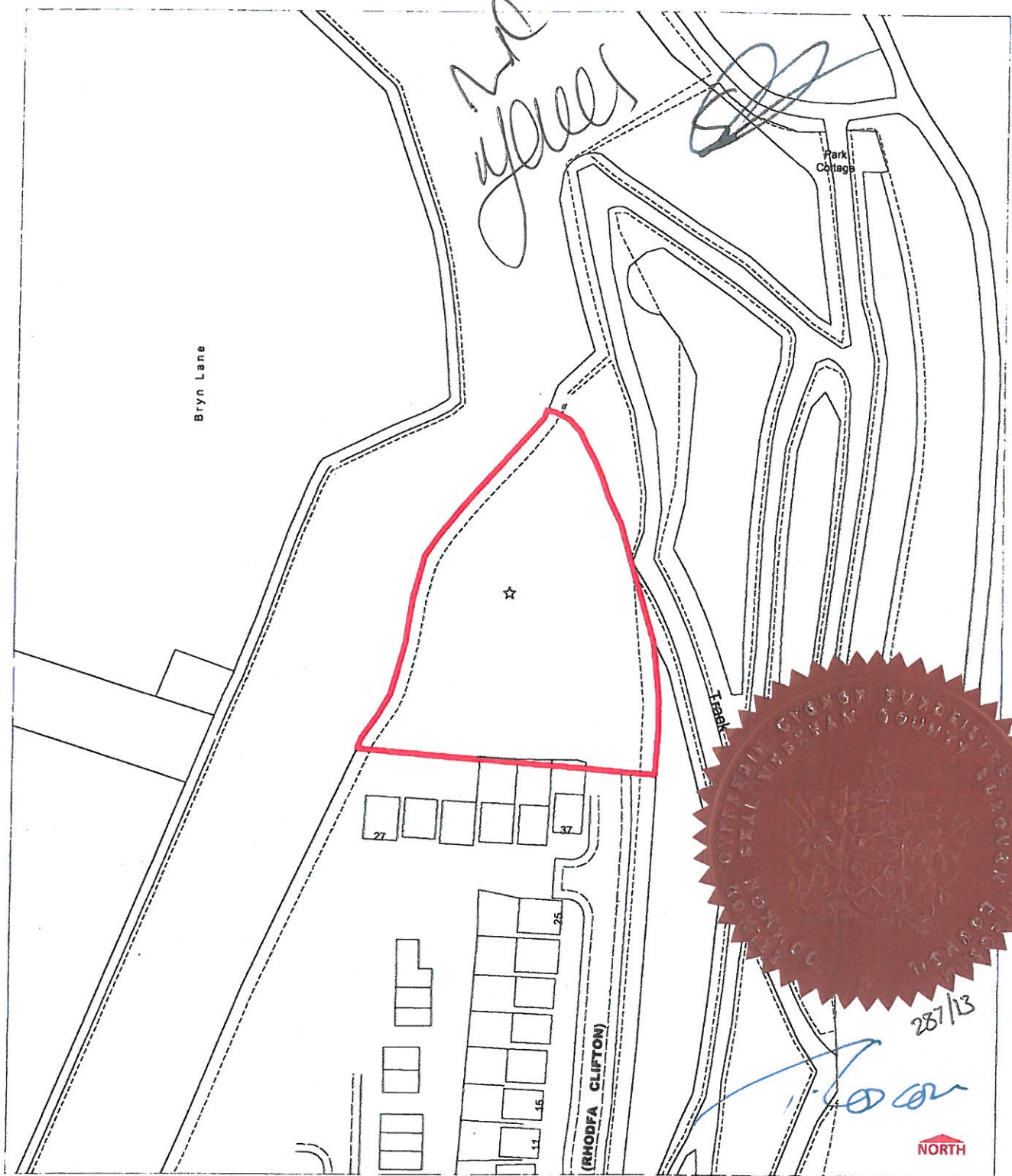
Legal
Secretary

SIGNED as a DEED by
SAMUEL CORNES
as Attorney for Colin Cornes
in the presence of:

) 
)
) SAMUEL CORNES
) as Attorney for Colin Cornes

Signature of Witness:
Name (BLOCK CAPS):
Address:


JOHN THOMPSON
16 COOPER CLOSE
STONE
STAFFS.
ST15 8XW



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21/10/2013
Scale 1:1250
SJ2953

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



P/2013/0586
Land north of Clifton Avenue,
Brymbo, Wrexham. LL11 5FS

wrexham
COUNTY BOROUGH COUNCIL
CYNGOR BWRDEISTREF SIROL
wrecsam