

Dated

18TH OCTOBER

2013

EIFION WYN HUGHES and PAULINE HUGHES

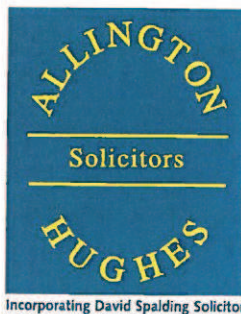
and

RICHARD CAREY SCIESINSKI

and

WREXHAM COUNTY BOROUGH COUNCIL

**PLANNING OBLIGATION BY WAY OF UNILATERAL
UNDERTAKING UNDER SECTION 106 OF THE TOWN & COUNTRY
PLANNING ACT 1990 RELATING TO LAND AT HOLMESDALE
FFORDD ISAF GWYNFRYN WREXHAM LL11 5TS**



Allington Hughes Solicitors
10 Grosvenor Road
Wrexham
LL11 1SD

This deed is dated

18TH OCTOBER

2013

- (1) **EIFION WYN HUGHES and PAULINE HUGHES** both of Holmesdale, Ffordd Isaf, Gwynfryn, Wrexham LL11 5TS (the **Owner**) and
- (2) **RICHARD CAREY SCIESINSKI** of Bryn Foty, Ffordd Isaf, Gwynfryn, Wrexham LL11 5TS (the **Developer**);

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.
- (C) The Developer has made the Planning Application and is proposing to carry out the Development.
- (D) The Developer intends to implement 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

- 1.1 The definitions and rules of interpretation in this clause apply in this Deed:

Bryn Foty; the freehold Property known as Bryn Foty, Ffordd Isaf, Gwynfryn, Wrexham LL11 5TS shown edged green on the plan

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.

Commenced and **Commences** shall be construed accordingly.

Commencement Date;	the date of Commencement of Development.
Council;	Wrexham County Borough Council of The Guildhall Wrexham LL11 1AY
Development;	the development of Bryn Foty described in the Planning Application.
Plan;	the plan attached to this Deed.
Property;	the freehold land known as Holmesdale, Ffordd Isaf, Gwynfryn, Wrexham LL11 5TS
Planning Application;	an application for planning permission registered by the Council on 6 th March 2012 under reference number P2012/0168.
Planning Permission;	the planning permission to be granted by the Council in respect of the Planning Application.
Subject Land;	that part of the Property as is shown edged red on the Plan
TCPA 1990;	Town and Country Planning Act 1990.
Unitary Development Plan;	the Wrexham Unitary Development Plan.
Working Day;	a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business.

- 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 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Council the successors to its respective statutory functions.

- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force at the date of this Deed provided that, as between the parties, no such amendment, extension or re-enactment shall apply to the deed to the extent that it would impose any new or extended obligation, liability or restriction, on, or otherwise adversely affect the rights of, any party.
- 1.9 A reference to a statute or statutory provision shall include any subordinate legislation made as at the date of this Deed under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** does not include faxes or e-mail.
- 1.11 A reference to "this Deed" or to any other agreement or document referred to in this Deed is a reference to this Deed or such other document or deed 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 An obligation in this Deed on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.14 Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.15 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. Covenants with the Council

- 3.1 The Owner and the Developer covenant with the Council to give at least 7 Working Days written notice to the Council of the Commencement Date.

3.2 The Owner jointly and severally covenants with the Council so as to burden the Property (and to benefit Bryn Foty) but in respect only of that part of the Property as forms the Subject Land that on and from the Commencement Date he will:-

3.2.1. not plant or allow the planting of any shrub tree or hedging or construct or allow the construction of any wall or fence or any other structure whatsoever on the Subject Land to a height in excess of 1 metre so as to allow full and unrestricted visibility for vehicles exiting from Bryn Foty and thus create and thereafter preserve a visibility splay for the benefit of Bryn Foty

3.2.2. carry out or permit to be carried out on the Subject Land such works as are necessary to from the visibility splay as described in condition 17 subject to which the Planning Permission will be granted

4. 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.

5. Determination of deed

5.1 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 Developer; or
- (c) is quashed following a successful legal challenge.

6. Local land charge

This Deed is a local land charge and shall be registered as such by the Council.

7. Council's costs

7.1 The Developer shall pay to the Council on the date of this Deed:

- (a) the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this Deed; and
- (b) a management fee of £250

8. Ownership

8.1 The Owner warrants that no person other than the Owner has any legal or equitable interest in the Property.

8.2 The Owner will give to the Council within 14 Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property:

- (a) the name and address of the person to whom the disposition was made; and
- (b) the nature and extent of the interest disposed of.

9. Notices

9.1 Any notice or other communication required to be given under this Deed shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to any person required to receive the notice or communication at its address as set out below:

- (a) Council: Head of Corporate and Customer Services, Guildhall, Wrexham LL11 1AY (Reference LP/AMG/10005308)
- (b) Owner: Eifion Wyn Hughes and Pauline Hughes both of Holmsdale, Ffordd Isaf, Gwynfryn, Wrexham LL11 5TS
- (c) Developer: c/o Ms Amy Manning Roff Villa Beech Lane Marford Wrexham LL12 8TQ

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

9.2 Any notice or other communication shall be deemed to have been duly received:

- (a) if delivered personally, when left at the address and for the contact referred to in this clause;
- (b) if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Working Day after posting; or
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

10. Third party rights

No person other than a party to this undertaking, and their respective successors and permitted assigns, and the Council and the successors to its respective statutory functions shall have any rights to enforce any term of this Deed.

11. Severance

11.1 If any court or competent authority finds that any provision of this Deed (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Deed shall not be affected.



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Head of Community Wellbeing and Development
Planning Services
16 Lord Steet, Wrexham
LL11 1LG
Telephone 01978 292017
E-mail: planning@wrexham.gov.uk

26/06/2012
Scale 1:1000
SJ 2552

Town & Country Planning Act 1990 Section 106 Obligation

- P/2012/0168 Bryn Foty, Ffordd Isaf, Gwynfryn, Wrexham.
- Section 106 Agreement.



- 11.2 If any invalid, unenforceable or illegal provision of this Deed would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

12. 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.

SIGNED AS a deed by EIFION WYN
HUGHES in the presence of:



SIGNATURE OF WITNESS


Eifion Wyn Hughes

NAME, ADDRESS AND OCCUPATION
OF WITNESS

Rebecca Jones
27 Newquay Drive
Wrexham
LL13 0JX
Admin Assistant

SIGNED AS a deed by PAULINE
HUGHES in the presence of:



SIGNATURE OF WITNESS


Pauline Hughes

NAME, ADDRESS AND OCCUPATION
OF WITNESS

Rebecca Jones
27 Newquay Drive
Wrexham
LL13 0JX
Admin Assistant

SIGNED AS a deed by RICHARD CAREY
SCIESINSKI in the presence of:




Richard Carey Sciesinski

SIGNATURE OF WITNESS

NAME, ADDRESS AND OCCUPATION
OF WITNESS

BEN WATTS
GARDENERS COTTAGE,
RHAGATT HALL, CARROG,
CORWEN. LL21 9HY

HADLAGE & DISTRIBUTION MANAGER