

DATED 11th December 2020

LEA VALLEY LIMITED

and

SOLUTUS ADVISORS LIMITED

UNILATERAL UNDERTAKING

under Section 106 of the
Town and Country Planning Act 1990
relating to the proposed development
at Wrexham Industrial Estate, Wrexham

DATE

11th December

2020

PARTIES

- (1) **LEA VALLEY LIMITED** (Company Registration No 05025036) whose registered office is situate at Canal Mill, Botany Bay, Chorley, Lancashire, PR6 9AF ("Owner")
- (2) **SOLUTUS ADVISORS LIMITED** (Company Registration No 07350379) whose registered office is situate at 48 Warwick Street, London, W1B 5AW ("Mortgagee")

INTRODUCTION

- 1 The Council is the Local Planning Authority for the purposes of this deed and the Town and Country Planning Act 1990 (as amended) for the area within which the Development Site and the Ecology Area are situated.
- 2 The Owner is the freehold owner of the Development Site and the Ecology Area.
- 3 The Development Site and the Ecology Area are subject to a charge dated 3 February 2020 in favour of the Mortgagee.
- 4 The Owner submitted the Application to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained herein.
- 5 The Mortgagee consents to the execution of this Deed and its inclusion as a party (subject to the provisions of clause 6.8 herein).
- 6 The Council resolved on the 01 August 2019 to grant Planning Permission subject to the prior completion of this Deed.

NOW THIS DEED is made in pursuance of Section 106 of the Town and Country Planning Act 1990 ("The Act") and is a planning obligation for the purposes of that section and **WITNESSES** as follows:

DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

"Act"	the Town and Country Planning Act 1990 (as amended).
"Application"	the application for full planning permission submitted to the Council for the Development and validated by the Council on the 01 August 2019 and allocated planning reference number P/2018/1086.
"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.
"Council"	Wrexham County Borough Council of Guildhall, Wrexham, LL11 1AY.
"Development"	the Development of the Development Site as set out in the Application.
"Development Site"	the land as shown edged red on Plan 1 and as detailed in the First Schedule.
"Ecology Area"	the land as shown hatched green on Plan 2 and as detailed in the Second Schedule.
"Habitat Management Strategy"	means the overarching habitat management strategy produced by 'Kingdom Ecology Ltd' KE1849.03 Version 3 and dated 23 November 2018 insofar as the same is applicable to the Development Site and the Ecology Area.
"Habitat Management Plan"	means a scheme to be submitted by the Owner to the Council and agreed between the Owner and the Council in writing detailing the proposed measures to be implemented by the Owner to ensure the viability, management and protection of the Ecology Area in order to mitigate for residual biodiversity impacts arising from the Development (including detail as to how and when such measures will be implemented).
"Plan 1"	means the plan attached to this Deed marked "Plan 1".
"Plan 2"	means the plan attached to this Deed marked "Plan 2".
"Planning Permission"	the full planning permission subject to conditions to be granted by the Council pursuant to the Application.

“Service Media”	all/any media for the supply or removal of heat, electricity, gas, water, sewage, energy, telecommunications, data and all other services and utilities and all structures, machinery and equipment ancillary to those media.	5
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2	CONSTRUCTION OF THIS DEED	6.1
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.	6.2
2.2	Words importing the singular meaning where the context so admits include the plural meaning and vice versa.	6.3
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.	6.4
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.	6.5
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 assigns and to any deriving title through or under that party and in the case of the Council the successors to their respective statutory functions.	6.6
2.7	A reference to laws in general is a reference to all local, national and directly applicable supranational laws as amended, extended or re-enacted from time to time and shall include all subordinate laws made from time to time under them and all orders, notices, codes of practice and guidance made under them.	6.7
3	LEGAL BASIS	
3.1	This Deed is made pursuant to Section 106 of the Act (as amended by S12 of the Planning and Compensation Act 1991) Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000.	6.8
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 as applicable.	6.9
4	CONDITIONALITY	7
4.1	This Deed is conditional upon:	
4.1.1	the grant of the Planning Permission; and	
4.1.2	the Commencement of Development on the Development Site;	
	save for the provisions of clauses 9 and 10 (jurisdiction and delivery clauses) which shall come into effect immediately upon completion of this Deed.	8

5 THE OWNER'S COVENANTS

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

6 MISCELLANEOUS

6.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

6.2 This Deed shall be registrable as a local land charge by the Council.

6.3 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 Housing and Economy 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.

6.4 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.

6.5 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 Owner) it is modified by any statutory procedure; or expires prior to the Commencement of Development; or the Development 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 Planning Permission) granted after the Planning Permission by the Council or any other competent authority and there has been no Commencement of Development.

6.6 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 Development Site or the Ecology Area or the parts of the Development Site or the Ecology Area in respect of which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

6.7 Nothing in this Deed shall prohibit or limit the right to develop any part of the Development Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

6.8 Without prejudice to the provisions of clause 6.6 of this Deed, the Mortgagee will only be liable for any breach of the covenants, obligations and/or restrictions on the part of the Owner during such periods (if any) as it is a mortgagee in possession of the Development Site and the Ecology Area (or any part thereof) in which case the Mortgagee too will be bound by such covenants, obligations and/or restrictions as if they were a person deriving title from the Owner.

6.9 For the avoidance of doubt, this Deed shall not be enforceable against any occupiers or tenants of any units constructed pursuant to the Planning Permission nor against those deriving title from them.

7 WAIVER

No waiver (whether expressed or implied) by the Council 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 from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

8 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 Development 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 Development Site (by reference to a plan) that is the subject of the change.

9 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and Wales.

10 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

("the Development Site")

All that freehold land situate at Wrexham Industrial Estate, Wrexham and shown edged in red on Plan 1 and registered at the Land Registry with absolute freehold title and forming part of title numbers CYM710345 and WA808746 (subject always to the lease dated 22 September 1988 made between Welsh Development Agency (1) and Merseyside and North Wales Electricity Board (2) registered with leasehold title WA441216).

SECOND SCHEDULE

("the Ecology Area")

All that freehold land situate at Wrexham Industrial Estate, Wrexham and shown hatched green on Plan 2 and registered at the Land Registry with absolute freehold title and forming part of title numbers CYM710345 and WA808746.

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THIRD SCHEDULE

"the Development"

The following development in accordance with the Planning Permission:

The erection of B1 light industrial unit with associated means of access, servicing, parking and landscaping treatment with ecological mitigation zone.

FOURTH SCHEDULE

The Owner's Covenants to the Council

The Owner covenants with the Council:

1. To notify the Council with a minimum period of thirty (30) days prior notice of the Commencement of Development in respect of the Development Site.
2. Prior to Commencement of Development of the Development Site to submit a Habitat Management Plan to the Council for approval.
3. Not to Commence Development of the Development Site until the Habitat Management Plan for the Development Site has been approved by the Council in writing.
4. To provide and thereafter maintain and manage the Ecology Area in accordance with the Habitat Management Plan and the Habitat Management Strategy.
5. Not to carry out any development (within the meaning of section 55 of the Act) of the whole or any part of the Ecology Area PROVIDED THAT this shall not prevent:
 - (a) the retention, use, inspection, reconstruction, replacement, relaying, alteration, maintenance, cleaning, repairing, removal, conducting and management of Service Media in, through, under, over or upon the Ecology Area together with the free flow and passage of all services and utilities through any part of the Service Media; or
 - (b) any actions taken to comply with all laws relating to the Ecology Area, the use of the Ecology Area and the use or operation of all Service Media in, through, under, over or upon the Ecology Area.

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EXECUTED AS A DEED by)
LEA VALLEY LIMITED)
acting by a director

in the presence of:

Witness Signature: *Emmabong*
Witness Name: *Emily Armstrong*
Witness Address: *Canal Mill*
Botany Brow
Chorley

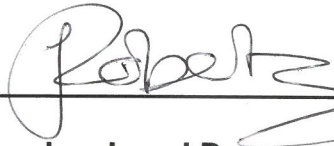
EXECUTED AS A DEED by)
SOLUTUS ADVISORS)
LIMITED acting by)
a director/authorised signatory)
in the presence of:)

Signature.....*E Clarke*
EMMA CLARKE
Name.....**AUTHORISED
SIGNATORY**

.....
Witness signature *[Signature]*
.....
Witness name *DAREN FLEET*

.....
Witness address **CANAL MILL**
BOTANY BROW
.....
Witness occupation **ASSISTANT PRG 9AF**
MANAGER.

**EXECUTED as a DEED
by WREXHAM COUNTY
BOROUGH COUNCIL by affixing its Common
Seal in the presence of:-**



Head of Service, Legal Democratic & Registration



237120(a)