

10th August

2020

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

relating to land adjacent to 1 Morfa Bowers
Road Acrefair Wrexham

WREXHAM COUNTY BOROUGH COUNCIL (1)

and

KENNETH MARK ITHELL and CHRISTINE SMITH (2)

and

NICHOLAS PETER EDWARDS (3)

Sioned Wyn Davies
Chief Officer Governance and Customer
Guildhall
Wrexham
LL11 1AY
Ref: NR/035146

DATE 10th August 2020

PARTIES

- (1) **WREXHAM COUNTY BOROUGH COUNCIL** of the Guildhall, Wrexham LL11 1AY ("Council") and
 - (2) **KENNETH MARK IHELL and CHRISTINE SMITH** of Hampden Way, Acrefair, Wrexham LL14 3US ("the Owner")
 - (3) **NICHOLAS PETER EDWARDS** of 1 Morfa, Bowers Road, Acrefair, Wrexham LL14 3TF ("the Adjoining Landowner")
 - (4)
-

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 via delegated authority decision on the 10th September 2019 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:

"Adjoining Landowner's Property"	All that parcel of land required to provide the Visibility Splays on the land registered at H M Land Registry in the name of the Adjoining Landowner with title absolute under title number CYM486511
"Act"	the Town and Country Planning Act 1990
"Application"	the application for full planning permission dated 1 st July 2019 submitted to the Council

	for the Development and allocated reference number P/2019/0470
"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 surveys of existing structures, 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, hoardings and scaffolding, the temporary display of site notices or advertisements, site preparation, site reclamation, preliminary landscaping and ground modelling, service diversions or decommissioning, laying of services and other works of site establishment preparatory to the commencement of construction and operations permitted by the Town and Country Planning (General Permitted Development) Order 1995 (as amended) and "Commence Development" shall be construed accordingly.
"Development"	the development of the Site consisting as set out in the Application
"Dwelling"	means any residential unit (including a house flat or maisonette) constructed on the Site pursuant to the Planning Permission
"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.
"Material Operation"	means a material operation as defined in Section 56 subsection 4(a) to (e) of the 1990 Act to implement the Planning Permission save for those operations contained in the definition of "Commencement of Development" contained in this Deed.
"Plan 1"	the Plan attached to this Deed and marked Plan 1

"Plan 2"	the Plan attached to this Deed and marked Plan 2
"Planning Permission"	the full planning permission subject to conditions to be granted by the Council pursuant to the Application and attached to this Deed
"Visibility Splays"	the visibility splays required under condition 7 of the Planning Permission
"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

+ KNIGHT

+ *[Signature]*

+ CSAW

[Signature]



X

KNOW

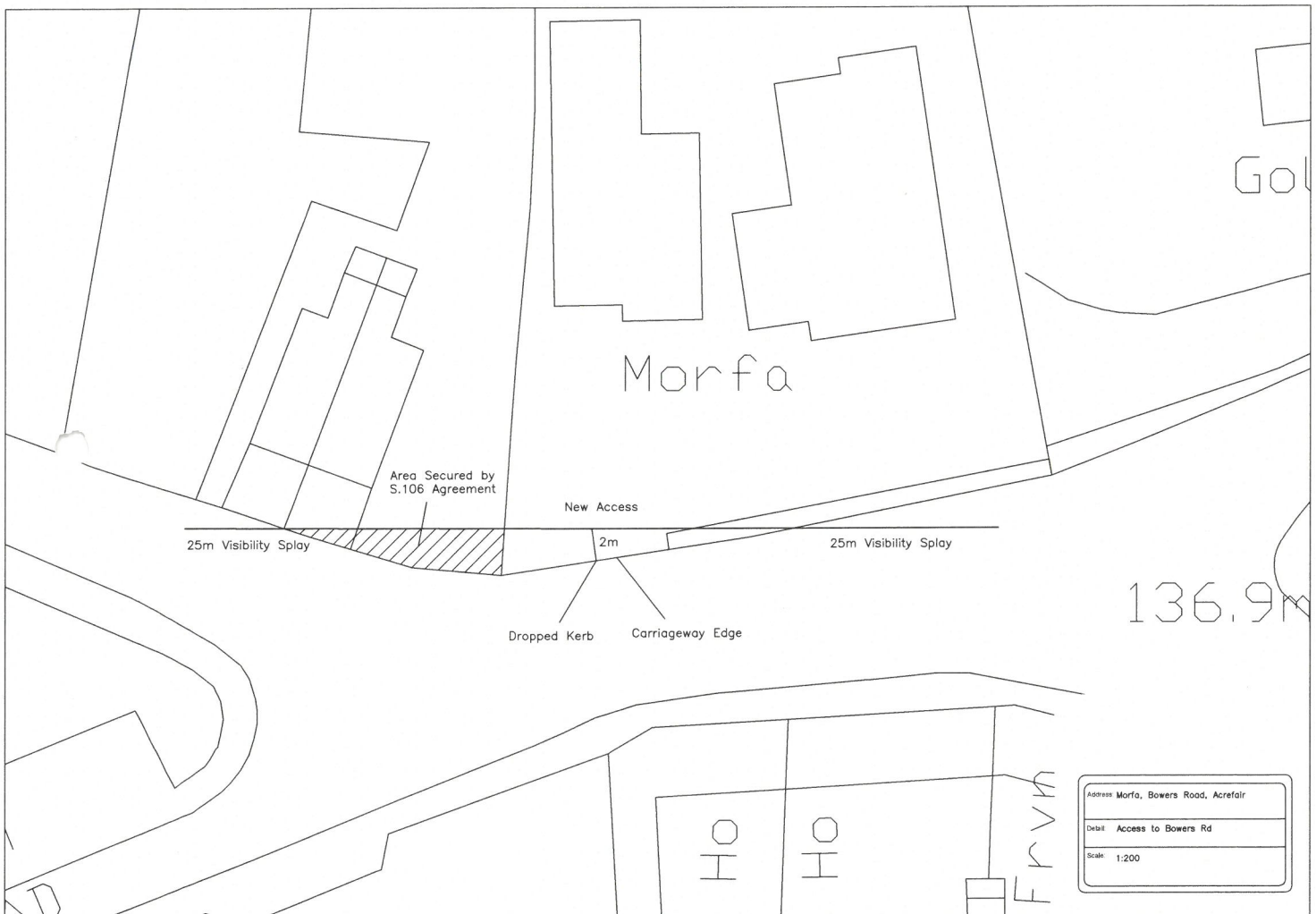
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4 CONDITIONALITY

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, 6.1, 11 and 12 (notice of commencement of development, legal costs, jurisdiction and 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 on behalf of themselves and their successors in title to the Site (but subject always to clause 6.8 of this Deed) to comply with the requirements to provide and secure the necessary visibility splays and to thereafter ensure the same are maintained as detailed and set out in the Second Schedule to this Agreement
- 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 MISCELLANEOUS

- 6.1 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 £1,000.00
- 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 registrable as a local land charge by the Council.
- 6.4 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 Wellbeing and Development. 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.
- 6.5 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.
- 6.6 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.
- 6.7 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.

6.8 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.

6.9 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.

6.10 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.

7 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.

8 CHANGE IN OWNERSHIP

The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of its interest 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

9 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.

10 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.

11 JURISDICTION

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

12 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 land adjacent to 1 Morfa, Bowers Road, Acrefair, Wrexham LL14 3TF being the land registered at H M Land Registry in the name of the Owner with title absolute under title number CYM464651 shown edged in red on the Plan 1

SECOND SCHEDULE

VISIBILITY SPLAY OBLIGATION

1. Before any Dwelling on the Development is first occupied to carry out or permit to be carried out on the Site and the Adjoining Landowner's Property as shown on Plan 2 such works as are necessary to create the Visibility Splays.
2. Not at any time in the future to allow any shrub tree hedge wall fence or other means of enclosure or anything whatsoever to grow or be erected or placed in the Visibility Splays to a height in excess of 1 metre above the level of the adjoining carriageway.

THIRD SCHEDULE

Draft planning permission

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 KENNETH ITHELL

Code Number

CEF P/2019/0470

Agent MR KENNETH ITHELL
3
HAMPDEN WAY
ACREFAIR
WREXHAM
LL14 3US

Date Received

20/06/2019

Decision Date

Town and Country Planning Act, 1990

Location of application

LAND OFF, CAE BEDW AND BOWERS ROAD, ACREFAIR, WREXHAM, LL14 3TT

Description of application

ERECTION OF 2 NO. BUNGALOWS AND ACCESS ARRANGEMENTS

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

EC11 Archaeology
GDP1 Development objectives
H4 Sub-division of dwellings

Revision	Date	Description of Decision
0		Planning permission issued

Particulars of decision that permission be GRANTED

Subject to the following:-

Condition(s)

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 1:100 General Layout, 1:200 Block Plan, 1:50 Plot 1 Elevations and Sections, 1:50 Plot 1 Plans, 1:50 Plot 2 Plans, 1:50 Plot 2 Elevations and Sections, 1:50 Plots 1 and 2 Landscape Plan, 1:200 Visibility Splays Plan and as contained within the application documentation.
3. Prior to their use on the development samples of all external facing and roofing materials shall be submitted to and approved in writing by the Local

Applicant MR KENNETH ITHELL

Code CEF P/2019/0470

Agent MR KENNETH ITHELL

Number

20/06/2019

3

Date

Received

HAMPDEN WAY

Decision

ACREFAIR

Date

WREXHAM

LL14 3US

Planning Authority. The development shall only be carried out in strict accordance with such details as are approved.

4. No part of the development shall commence until full details of a hard and soft landscaping scheme together with a plan indicating the positions, design, material and type of boundary treatment which shall include details of the gabion baskets and retaining walls, and timescale for the implementation of works shall be submitted to and approved in writing by the Local Planning Authority.

5. The landscaping scheme submitted and approved in connection with condition no. 4 shall be fully implemented in all respects within the agreed timescale and in strict accordance with the approved scheme.

6. Prior to first use of both 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.

7. Prior to first use of the development hereby approved the vehicular accesses shall provide visibility splays of 2.0 metres x 25 metres in both directions 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 nearside edge of the adjoining highway. The splays shall thereafter be permanently retained clear of any such obstruction to visibility.

8. The vehicular parking and turning areas as shown on approved drawing(s) No(s). 1:100 General Layout 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.

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.

Reason(s)

1. To comply with Section 91(3) of the Town and Country Planning Act, 1990.
2. To comply with section 71ZA (2) of the Town and Country Planning Act 1990.
3. To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area in accordance with Policies GDP1 and PS2 of the Wrexham Unitary Development Plan.

Applicant MR KENNETH ITHELL

Code CEF P/2019/0470

Agent MR KENNETH ITHELL

Number

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20/06/2019

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3

HAMPDEN WAY

ACREFAIR

WREXHAM

LL14 3US

Decision

Date

4. To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area in accordance with Policies GDP1 and PS2 of the Wrexham Unitary Development Plan.

5. To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area in accordance with Policies GDP1 and PS2 of the Wrexham Unitary Development Plan.

6. To ensure that no deleterious material is carried onto the highway, in the interests of highway safety in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.

7. To ensure that adequate visibility is provided at the proposed point of access to the highway in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.

8. 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 in accordance with Policies GDP1 and T8 of the Wrexham Unitary Development Plan.

9. In the interests of highway safety and in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.

Note(s) to applicant

The scheme of landscaping referred to in the above conditions shall include any changes to ground levels (shown by existing and proposed contours/levels) and any existing vegetation (showing that to be retained) and proposed planting. In addition, any of the following which apply to the particular site must be included:-

means of enclosure, car parking layout, access and circulation areas, materials for hard surfaced areas, any minor structures (e.g. refuse stores, lamp columns, play equipment) location of services, and any historic landscape features to be retained/improved.



Officer Appointed for this purpose
Chief Officer Planning & Regulatory

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 KENNETH ITHELL

**Code
Number
Date
Received**

CEF P/2019/0470

Agent MR KENNETH ITHELL
3
HAMPDEN WAY
ACREFAIR
WREXHAM
LL14 3US

**Decision
Date**

20/06/2019

DRAFT

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

EXECUTED as a DEED by affixing

THE COMMON SEAL of

WREXHAM COUNTY BOROUGH COUNCIL

In the presence of:



Chief Officer Governance and Customer



187/20(a)

EXECUTED as a Deed by

KENNETH MARK ITHELL



Witness signature.....

Witness Name.....STEPHEN O'SULLIVAN

Witness Address.....HILLVIEW, KING STREET

.....CEFN MAWR LL14 3BH

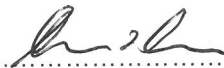
Witness Occupation.....SELF EMPLOYED

EXECUTED as a Deed by

CHRISTINE SMITH



in the presence of:

Witness signature.....

Witness Name.....STEPHEN O'SULLIVAN

Witness Address.....HILLVIEW, KING STREET

.....CEFN MAWR LL14 3BH

Witness Occupation.....SELF EMPLOYED

EXECUTED as a Deed by

NICHOLAS PETER EDWARDS

.....
In the presence of:

Witness signature.....

Witness Name.....

Witness Address.....

Witness Occupation.....

X

[Handwritten signature]

[Handwritten signature]

STEPHEN O. SULLIVAN

MILLVIEW 1 KING STREET

CETN MAWR LL14 3BT

SELF EMPLOYED

