

Dated 13.03. 2020

BARBARA ANN RITCHIE, SIMON JOHN RITCHIE and AMY HELEN KENNEDY

and

PORTLAND INVESTMENTS LIMITED

**PLANNING OBLIGATION BY WAY OF UNILATERAL UNDERTAKING UNDER
SECTION 106 OF THE TOWN & COUNTRY PLANNING ACT 1990 RELATING TO
LAND TO THE NORTH OF THE GRANGE, PENLEY**

THIS DEED is dated 13 March 2020

PARTIES

- (1) BARBARA ANN RITCHIE, SIMON JOHN RITCHIE and AMY HELEN KENNEDY of 3 Oak Drive, Overton-on Dee, Wrexham LL13 0FF (hereinafter referred to as "the Owner")
- (2) PORTLAND INVESTMENTS LIMITED of London House, Town Walls, Shrewsbury, Shropshire SY1 1TX (hereinafter referred to as "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 develop the Property pursuant to the Planning Permission and has entered into a sale contract conditional on planning permission dated 11/07/2019 with the Owner.
- (E) The Owner and the Developer give this undertaking to perform the obligations set out in this Deed.

AGREED TERMS

1. Interpretation

The following definitions and rules of interpretation apply in this Deed.

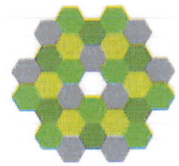
1.1 Definitions:

Base Rate	the higher of 5% and the base rate from time to time of Barclays Bank plc.
Commencement of Development	The carrying out in relation to the Development 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
Commencement Date	the date of Commencement of Development.

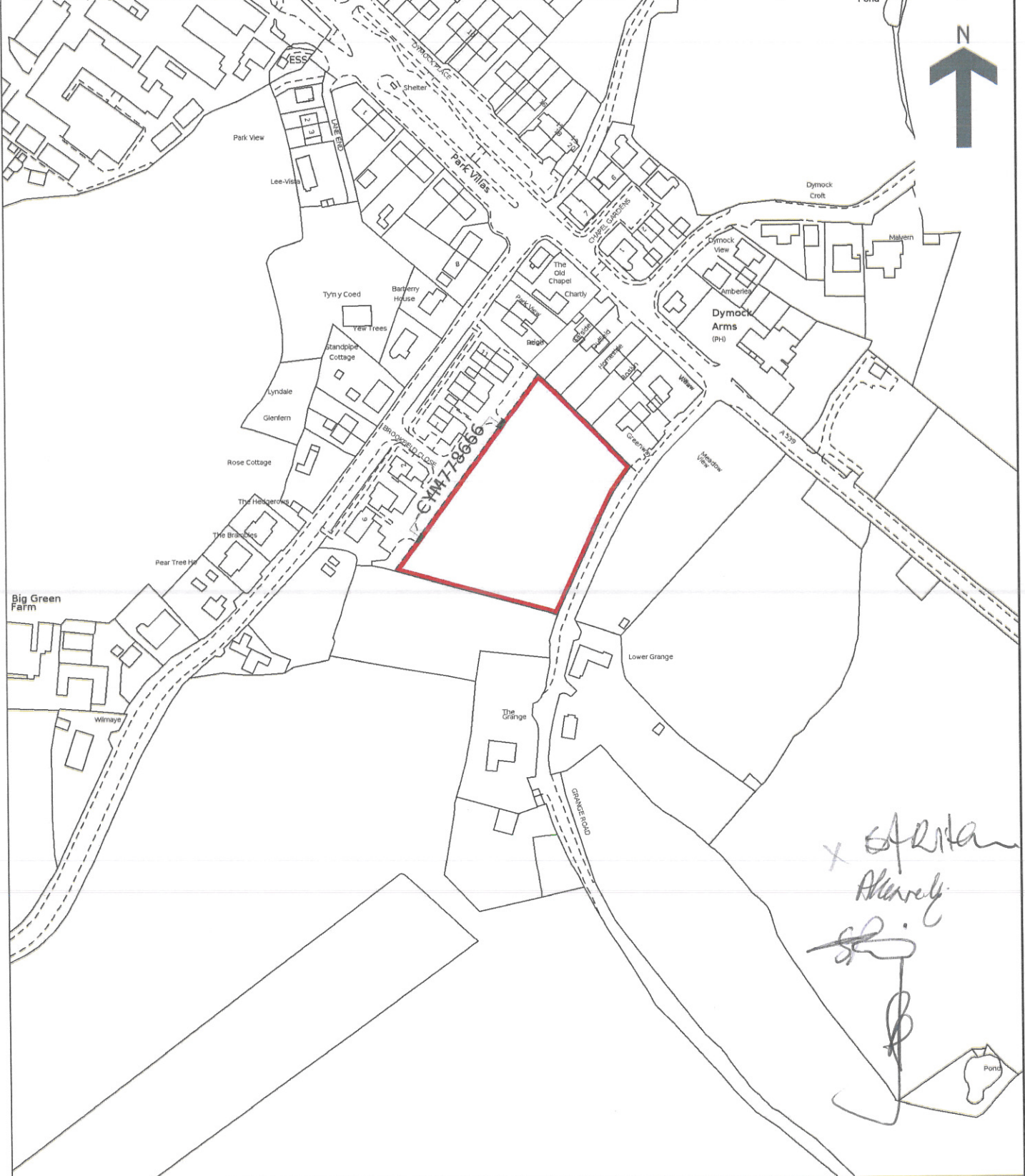
Common Parts	means all those parts of the Property which do not fall within the curtilage of any Dwelling and which include (without this list being exhaustive) access roads and ways (other than those intended to be adopted by the Council as highway authority) pathways, footways, bin stores and soft landscaped areas and planted features
Completion Date	the date when the last of the Dwellings to be constructed on the Property pursuant to the Planning Permission is occupied
Company	means the company to be formed by the Owner or Developer for the purpose of the future management of the Common Parts.
Contributions	means all of the Primary Education Contribution, Secondary Education Contribution and Off-Site Contribution
Council	Wrexham County Borough Council of Guildhall, Wrexham LL11 1AY
Default Interest Rate	4% per annum above the Base Rate.
Development	the development of the Property described in the Planning Application.
Dwelling(s)	means any residential unit (including a house flat or maisonette) constructed on the Property pursuant to the Planning Permission
Index	all Items Index of Retail Prices issued by the Office for National Statistics
Management Entity Details	the Management Entity's corporate structure details of its directors and officers and the mechanism for ensuring that it has sufficient funds to enable it to carry out the Management Plan
Off-Site Contribution	the sum of £24,000
Management Plan	the management plan to be submitted to the Council for approval in respect of the management and maintenance of the Common Parts by the Management Entity
Plan	the plan attached to this Deed
Primary Education Contribution	the sum of £31,134 towards the cost of providing additional primary educational facilities to Madras voluntary aided primary school

HM Land Registry
Official copy of
title plan

Title number **CYM762274**
Ordnance Survey map reference **SJ4139NE**
Scale **1:2500**
Administrative area **Wrexham / Wreccsam**



© Crown copyright and database rights 2019 Ordnance Survey 100026316. You are not permitted to copy, sub-license, distribute or sell any of this data to third parties in any form.



Property	Land on the north side of The Grange, Grange Road, Penley, Wrexham, LL13 0LS, edged red on the Plan, and registered at the Land Registry with title number CYM762274 at the date hereof
Planning Application	an application for planning permission registered by the Council on 23/04/2019 under reference number P/2019/0312.
Planning Permission	the planning permission to be granted by the Council in respect of the Planning Application.
Residents	means the purchasers of the Dwellings constructed on the Property pursuant to the Planning Permission
Secondary Education Contribution	the sum of £35,832 towards the cost of providing additional secondary educational facilities within the catchment area of Maelor, Penley Secondary School
TCPA 1990	Town and Country Planning Act 1990.
Working Day	any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

- 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 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.7 A reference to the Council shall include the successors to its respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** excludes faxes and e-mail.
- 1.11 A reference to **this Deed** or to any other deed or document referred to in this Deed is a reference to this Deed or such other deed or document 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 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.14 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 and the Developer 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

- 3.1 The Owner and the Developer covenant with the Council:
- (a) to give at least 2 Working Days written notice to the Council of the Commencement Date.
 - (b) On or before Commencement of Development the Developer or Owner shall form the Company and produce to the Council copies of the memorandum and articles of association and certificate of incorporation thereof. The constitution of the Company shall provide that at the first annual general meeting which falls due after the Completion Date any directors which are not Residents shall retire, and only Residents may be appointed as directors after the Completion Date.
 - (c) Not to allow the occupation of any Dwelling until the proposed Management Plan and Management Entity Details have been submitted to and approved in writing by the Council, and the Council covenants with the Owner and Developer that it shall deal with any application for approval without delay
 - (d) To procure that all Residents shall within 12 months of the Completion Date become members/shareholders and directors of the Company.
 - (e) To procure that every transfer of a Dwelling constructed pursuant to the Planning Permission contains a provision to secure to the Company in perpetuity by way of periodical payments from the purchaser thereof monies sufficient (when aggregated with those from the remainder of the Residents) to enable the Company to maintain the Common Parts, and shall lodge with the Council a specimen of the said provisions

(f) On a date no later than six months after the Completion Date to transfer the fee simple absolute in possession in respect of the Common Parts to the Company and to lodge with the Council a certified copy of such transfer within 20 Working Days thereof.

(g) Not to use the Common Parts for any purpose whatsoever other than in accordance with the Planning Permission

(h) On the Commencement Date the Owner shall pay 50% of the Off-Site Contribution to the Council and shall pay a further 50% on occupation of the eighth Dwelling which shall be used by the Council to upgrade and improve the provision and facilities of playing fields and parks namely existing play area adjacent to Nos. 22 and 23 Pendas Park, Penley, Wrexham, LL13 0NN

(i) To pay to the Council the Primary Education Contribution and to pay to the Council the Secondary Education Contribution PROVIDED THAT:

(k i) It is a condition of the payment of the Primary Education Contribution and Secondary Education Contribution that such funds shall be used by the Council for the provision of the additional primary and secondary school spaces within ten years of receipt and if any part of the Primary Education Contribution or Secondary Education Contribution remains unspent by the Council after the period of five years from the date of receipt it shall be refunded to whomsoever made that payment.

(k ii) The Primary Education Contribution and Secondary Education Contribution shall be index linked and will be payable in the following tranches

50% payable on the Commencement Date.

50% payable on occupation of the eighth Dwelling

(k iii) the Primary Education Contribution that is to be paid is in accordance with the following:-

One bedroom flats – 0

Two + bedroom apartments £858 each

Two bedroom houses at £1,471 each

Three bedroom houses at £2,819 each

Four bedroom houses at £3,800 each

(k iv) the Secondary Education Contribution that is to be paid is in accordance with the following:

Two + bedroom apartments £739 each

Two bedroom houses at £1293 each

Three bedroom houses at £3694 each

Four bedroom houses at £5725 each

4. Release

- 4.1 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 by that party which is subsisting prior to parting with such interest.
- 4.2 This Deed shall not be enforceable against any Residents or tenants of Dwellings constructed pursuant to the Planning Permission nor against those deriving title from them.

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 released by a deed given by the Council;
 - (c) is quashed following a successful legal challenge;
 - (d) the Property 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. Local land charge

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

Each part of the Contribution shall be increased by an amount equivalent to the increase in the Index from 01/01/2021 until the date on which such sum is payable

8. Interest on late payment

If the Contribution is paid late, interest will be payable at the Default Interest Rate from the date payment is due to the date of payment.

9. Council's costs

The Developer shall pay to the Council on the date of this Deed the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the completion and registration of this Deed

10. Ownership

10.1 Until the obligations in clause 3 have been complied with the Owner will give to the Council within 20 Working Days, the following details of any 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.

11. Notices

11.1 A notice to be given under or in connection with this Deed must be in writing and must be:

- (a) delivered by hand; or
- (b) sent by pre-paid first class post or other next working day delivery service.

11.2 Any notice to be given under this Deed must be sent to the relevant party at the address for said party given at the start of this Deed or as otherwise specified by the relevant person by notice in writing to each other person.

11.3 Any notice given in accordance with clause 11.1 and clause 11.2 will be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the address provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day;
- (b) if sent by pre-paid first class post or other next working day delivery service at 9.00 am on the second Working Day after posting.

11.4 A notice given under this Deed shall not be validly given if sent by e-mail.

11.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

12. Third party rights

A person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

13. 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 the above named
BARBARA ANN RITCHIE
In the presence of

[Signature]
Paul Whittaker
Brian Paul Whittaker
1 Oak Drive, Overton, Wrexham
Barrister

SIGNED as a DEED
By the above named
SIMON JOHN RITCHIE
In the presence of

[Signature]

S. G. Greenberg
S. G. GREENBERG
61, Downham Crescent, Manchester, M25 0EH
Retired

SIGNED as a DEED
By the above named
AMY HELEN KENNEDY
In the presence of

[Signature]

JLK

MISS JAYNE LOUISE DUTTON
3 BURWARDSEY COURT, BURWARDSEY,
NR TATTENHALL CHESTER
General Manager CH3 9PY.

EXECUTED as a DEED
By the above named
PORTLAND INVESTMENTS LIMITED
acting by a director
In the presence of

[Signature]
Katie Heather Gray
Solicitor

Excello Law
5 Chancery Lane
London WC2A 1LG

[Signature]