

10th July

2019

**Planning Obligation by Deed of Agreement
under Section 106 of the Town and Country
Planning Act 1990**
relating to Willow Cottage, Overton Road,
Ruabon

WREXHAM COUNTY BOROUGH COUNCIL (1)

and

AMY GUY JOVY AND LUCY AISTON (2)

Sioned Wyn Davies
Chief Officer Governance and Customer
Guildhall
Wrexham
LL11 1AY
Ref: NR/032392

DATE 10th July 2019

PARTIES

- (1) **WREXHAM COUNTY BOROUGH COUNCIL** of the Guildhall, Wrexham LL11 1AY ("Council") and
- (2) **AMY GUY JOVY** of 2 Meadow View, Hatchet Lane, Winkfield, Windsor SL4 2EW and **LUCY AISTON** of 86 Green Howards Road, Saughton, Chester CH3 6FA ("the Owner") and

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 on the 5th November 2018 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:

"Act"	the Town and Country Planning Act 1990
"Application"	the application for outline planning permission dated 6 April 2018 submitted to the Council for the Development and allocated reference number P/2018/0277
"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.
"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
"Plan"	the Plan attached to this Deed
"Planning Permission"	the full planning permission subject to conditions to be granted by the Council pursuant to the Application and attached to this Deed in the Third Schedule
"Playing Fields and Parks Contribution"	means the sum of ten thousand pounds (£10,000.00) (indexed in accordance with the provisions of this Deed) to be paid by the Owner to the Council and expended by the Council in accordance with the provisions of the Second Schedule
"Practical Completion"	issue of a certificate of practical completion by NHBC by way of the usual NHBC cover note
"Site"	the land subject to this Deed as shown edged red on the Plan and more particularly described in the First Schedule

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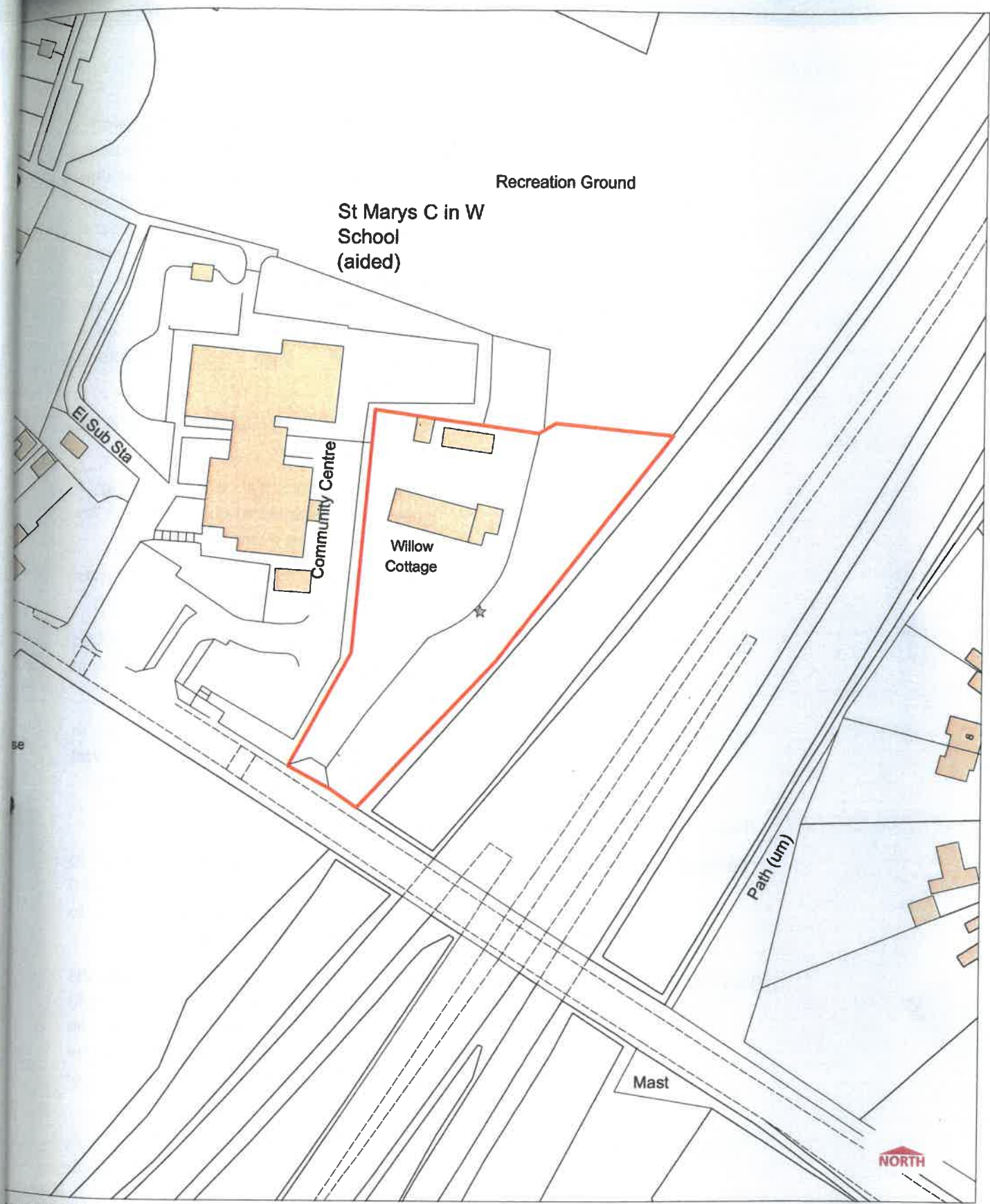
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Officer Planning and Regulatory
Planning and Regulatory Department
Ford Street, Wrexham
LL1 1LG

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

 P/2018/0277
Willow Cottage, Park Street
Ruabon, Wrexham

2019
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A. Jones

L. Aïon



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

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, 7.1, 13 and 14 (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 to:
- 5.1.1 comply with the obligations relating to the Playing Fields and Parks Contribution 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 THE COUNCIL'S COVENANTS

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

7 MISCELLANEOUS

- 7.1 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
- 7.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 7.3 This Deed shall be registrable as a local land charge by the Council.
- 7.4 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.
- 7.5 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.
- 7.6 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.
- 7.7 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.
- 7.8 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. 7.9 This Deed shall not be enforceable against:

- (a) any owners, occupiers and tenants of any individual Dwelling units constructed as part of any development of the Site nor against those deriving title from or under such owners, occupiers or tenants nor against any mortgagee in possession of any such individual Dwelling units;
- (b) any statutory undertakers, service companies or any other entities to whom any part of the Site may be transferred, let or otherwise disposed of for the provision of service media, electricity sub-stations, pumping stations, gas governor stations or similar matters;
- (c) the relevant highway authority to whom any part of the Site is disposed of;
- (d) any management company to whom any part of the Site is disposed of and upon which residential units will not be constructed; or
- (e) a local authority or other statutory body to whom any part of the Site is disposed of for use as public open space or any other public amenity area pursuant to a planning agreement or otherwise.

7.10 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.

8 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.

9 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 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

10 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.

11 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.

12 VAT

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

13 JURISDICTION

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

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 Willow Cottage, Park Street, Ruabon, Wrexham LL14 6LE which is registered at H M Land Registry in the name of the Owner with title absolute under title number CYM58874 and shown edged in red on the Plan

SECOND SCHEDULE

Owner's Covenants – Playing Fields and Parks Contribution

1. Before or within 20 days of Practical Completion of the first Dwelling the Owner shall pay the Playing Fields and Parks Contribution to the Council which shall be used by the Council to upgrade and improve the provision and facilities of playing fields and parks namely Pont Adam play area, Ruabon, Wrexham

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 MRS L AISTON

Code No RUA P/2018/0277

Agent BLUEPRINT LTD
MR DAFYDD EDWARDS
OFFICE 3K4 REDWITHER TOWER
WREXHAM INDUSTRIAL ESTATE
WREXHAM
LL13 9XT

Date
Received 09/04/2018

Decision
Date

Town and Country Planning Act, 1990

Location of application

WILLOW COTTAGE, PARK STREET, RUABON, WREXHAM, LL14 6LE

Description of application

OUTLINE APPLICATION FOR ERECTION OF 10 NO. DWELLINGS AND CONSTRUCTION OF NEW ACCESS POINT

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

GDP1	Development objectives
H5	Housing in the countryside
PS2	Development and the environment
T8	Parking

Revision	Date	Description of Decision
0		Planning permission issued

Particulars of decision that Outline Planning Permission be GRANTED
Subject to the following:-

Condition(s)

1. Approval of the following details shall be obtained from the Local Planning Authority before any part of the development is commenced:
 - a. the layout of the building(s)
 - b. the scale of the building(s)
 - c. the appearance of the building(s)
 - d. the means of access to the site and building(s)
 - e. the landscaping of the site.
2. Plans and particulars of the reserved matters referred to in condition 1 (above) shall be submitted in writing to the Local Planning Authority before

Applicant	MRS L AISTON	Code No	RUA P/2018/0277
Agent	BLUEPRINT LTD MR DAFYDD EDWARDS OFFICE 3K4 REDWITHER TOWER WREXHAM INDUSTRIAL ESTATE WREXHAM LL13 9XT	Date Received	09/04/2018
		Decision Date	

- the expiry of three years from the date of this permission. The development shall only be carried out in strict conformity with such details as are approved.
3. The development hereby approved shall be commenced before the expiry of five years from the date of this permission or before the expiry of two years from the date of approval of the last of the reserved matters required to be approved, whichever is the later.
4. The development shall only be carried out in strict accordance with the details shown on the approved drawing(s) numbered A046/004 Rev C, A046/002 Rev G, A046/003 Rev C and as contained within the application documentation.
5. Prior to first use of the development hereby approved the vehicular access shall provide visibility splays of 2.4 metres x 25 metres to the North West and 2.4 metres x 43 metres to the South East 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 adjoining highway. The splays shall thereafter be permanently retained clear of any such obstruction to visibility.
6. The development shall be carried out in strict accordance with the findings and recommendations contained within the Ecology Assessment as carried out by Susan Worsfold and dated 17th June 2018 approved as part of this application. The mitigation and compensation measures hereby approved shall be fully implemented prior to first use of the development.
7. No part of the development shall commence until a scheme for the comprehensive and integrated drainage of the site indicating how foul water, surface water and land drainage will be dealt with has been submitted to and approved in writing by the Local Planning Authority. The scheme as approved shall be implemented in accordance with a timescale to be agreed as part of the submitted details and maintained thereafter.
8. No part of the development shall commence until an appropriate Dust Management Scheme has been submitted to and approved in writing by the Local Planning Authority. The dust mitigation measures as are approved shall be fully implemented for the entire duration of the construction phase.
9. The proposed development shall be carried out in accordance with Dwg No. A046/002 Rev G and the submitted information in the AB Acoustics Report revised July 2018.
10. No part of the development shall commence until a detailed Arboricultural Method Statement has been submitted to and approved in writing by the Local Planning Authority. No development or other operations

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shall take place except in strict accordance with Method Statement as is approved. The Method Statement shall include the following:

1) A specification for tree protection fencing and ground protection measures that comply with British Standard 5837:2012;

2) A Tree Protection Plan showing the location of the trees to be removed and retained with their crown spreads, Root Protection Areas, Construction Exclusion Zones, and location of protective fencing and ground protection measures accurately plotted;

3) A full specification for any access, driveway, path, underground services or wall foundations within retained tree Root Protection Areas or Construction Exclusion Zone, including any related sections and method for avoiding damage to retained trees;

4) Details of general arboricultural matters including proposed practices with regards to cement mixing, material storage and fires;

5) Details of the frequency of supervisory visits and procedures for notifying the findings of such visits to the Local Planning Authority;

6) Method for protecting retained trees during demolition works;

7) Details of all proposed tree works, including felling and pruning.

11. No part of the development shall commence until full details for the arboricultural supervision of tree protection measures and any ground works within retained tree(s) Root Protection Areas, as specified by BS5837:2012 or as shown on a Tree Protection Plan have been submitted to and approved in writing by the Local Planning Authority. The supervisory works shall be carried out in strict accordance with the details as approved.

Reason(s)

1. To comply with the provisions of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012

2. To comply with Section 92 of the Town and Country Planning Act, 1990.

3. To comply with Section 92 of the Town and Country Planning Act, 1990.

4. To define the scope of the planning permission

5. To ensure that adequate visibility is provided at the proposed point of access to the highway.

6. To protect named species / habitats / biodiversity which would otherwise be damaged / lost by the development hereby permitted.

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7. To ensure that effective drainage facilities are provided for the proposed development, and that no adverse impact occurs to the environment or the existing public sewerage system.
8. To protect the amenities of the occupiers of nearby properties.
9. In the interest of mitigating noise to occupiers of the proposed development from the A483 dual carriageway.
10. To ensure the work is carried out to accepted arboricultural practices for the long term well-being of the trees (s).
11. To ensure the work is carried out to accepted arboricultural practices for the long term well-being of the trees (s).

Note(s) to applicant

Applicants are advised that compliance with condition no. 8 does not provide an exemption from the statutory nuisance provisions of the Environmental Protection Act 1990. Under the Act dust from any type of activity can be judged to be causing a statutory nuisance to neighbouring properties. A legal notice can be served requiring that the dust nuisance is abated and failure to comply with the requirements of the notice can result in prosecution. The applicant should contact the Council's Housing and Public Protection Department on 01978 315300 for further advice and information.

The scheme of arboricultural supervision required in connection with condition no. 11 above shall make provision for a pre-commencement site meeting between the Local Planning Authority's Arboriculturalist, the Developer/Applicant/Agent and their appointed Arboricultural Supervisor to agree matters of detail. It shall specify the frequency of arboricultural monitoring and reporting to the Local Planning Authority on the status of all tree protection measures throughout the course of the development and make provision for the submission and approval of a satisfactory arboricultural completion statement.



**Officer Appointed for this purpose
Chief Officer Planning & Regulatory**

Applicant MRS L AISTON

Code No RUA P/2018/0277

Agent BLUEPRINT LTD
MR DAFYDD EDWARDS
OFFICE 3K4 REDWITHER TOWER
WREXHAM INDUSTRIAL ESTATE
WREXHAM
LL13 9XT

**Date
Received** 09/04/2018

**Decision
Date**

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

DRAFT

FOURTH SCHEDULE

Council's Covenants - Discharge of obligations

- 1 The Council covenants with the Owner to use the Playing Fields and Parks Contribution ("the Contribution") received from the Owner under the terms of this Deed for the purpose specified in this Deed for which they are paid

- 2 The Council covenants with the Owner that it will repay the Owner such amount of any of the Contribution made by the Owner to the Council under this Deed which have not been expended in accordance with the provisions of this Deed within five 5 years of the date of receipt by the Council

CERTIFICATE

Ben Whiting of Allington Hughes Law, 2 Vicars Lane, Chester CH1 1QX as
solicitor for the Owner (as defined in the within written Deed) hereby certify that the First
Schedule of this Agreement is correct.

Signed

Dated:

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:-

Shyn Davis

Chief Officer Governance and Customer



239/19(a)

EXECUTED as a Deed by

AMY GUY JOVY

.....*A. Jovy*.....

in the presence of:

Signature

Name

Address

Occupation

R. BLAIS THOMAS

R. BLAIS THOMAS

WREXHAM PARK FARM

MD

CU24 88N

EXECUTED as a Deed by

LUCY AISTON

.....*L. Aiston*.....

in the presence of:

Signature

Name

Address

Occupation

K. James

KATHARINE JAMES

53 GRANGE FARM CRESCENT

WEST KIRBY, CU24 89D

UNDERWRITER

