

**Planning Obligation by way of Unilateral
Undertaking under Section 106 of the Town
and Country Planning Act 1990**
relating to Land at Holmesdale Ffordd Isaf,
Gwynfryn, Wrexham, LL11 5TS

Dated : 13th March 2020

CONNOR EDWARD BAKER & ABBIE NICOLE BAKER

And

MARK BAKER & CARL BAKER

And

WREXHAM COUNTY BOROUGH COUNCIL

Sioned Wyn Davies

Chief Officer Governance & Customer

Guildhall

Wrexham

LL11 1AY

Ref: HDW/034426

DATE 18th March 2018

PARTIES

- (1) **WREXHAM COUNTY BOROUGH COUNCIL** of Guildhall, Wrexham, LL11 1AY ("Council")
- (2) **CONNOR EDWARD BAKER and ABBIE NICOLE BAKER** of Bryn Foty, Ffordd Isaf, Gwynfryn, Wrexham, LL11 5TS ("the Owner")
- (3) **MARK BAKER and CARL BAKER** of Tyddyn Dedwydd, Frondeg, LL14 4ND (the Developer)

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 is situated.
- (2) The Owner is the registered proprietor of the Site
- (3) The Developer 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 theto grant the Planning Permission subject to the prior completion of this Deed.
- (5) The Developer intends to implement the Planning Permission
- (6) 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.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

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

"Application"	the application for variation of condition 1 of planning permission P/2012/0168, dated 15 th September 2018 submitted to the Council for the Development and allocated reference
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number P/2018/0786 as set out in Schedule
1

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 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.

"Commencement Date"

the date of Commencement of Development

"Development"

the development of Bryn Foty as set out in the 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 submitted to the Council and registered under reference number P/2018/0786

"Planning Permission"

the draft full planning permission subject to conditions to be granted by the Council pursuant to the Application as set out in Schedule 2.

"Subject Land"	the 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.

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
- 3.3 This Deed shall come into effect on the date of the grant of the Planning Permission
- 3.4 The obligations contained in clause 4 of this Deed are enforceable by the Council in accordance with Section 106 of the TCPA 1990

4 THE OWNER'S COVENANTS

- 4.1 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
- 4.2 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:
- 4.2.1 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.
- 4.2.2 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

5 RELEASE

No person shall be liable for any breach of 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.

6 DETERMINATION OF DEED

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

7 LOCAL LAND CHARGE

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

8 COUNCIL'S COSTS

- 8.1 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;

9 OWNERSHIP

- 9.1 The Owner warrants that no person other than the Owner has any legal or equitable interest in the Property
- 9.2 The Owner will give 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

10 NOTICES

10.1 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: Chief Officer Governance & Customer , Guildhall, Wrexham, LL11 1AY
- (b) Owner: Mark Baker of Tyddyn Dedwydd, Frondeg, LL14 4ND
- (c) Developer: c/o Ms Amy Manning, Roft Villa Beech Lane Marford Wrexham LL12 8TQ

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

10.2 Any notice or 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 9.00am 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.

11 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.

12 SEVERANCE

12.1 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

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

13 GOVERNING LAW

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formulation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

Executed as a deed by affixing
the Common Seal of
WREXHAM COUNTY BOROUGH COUNCIL
in the presence of:

S Wyn Davies

Chief Officer Governance & Customer



SIGNED as a DEED

By the said

CONNOR EDWARD BAKER

In the presence of:-

witness signature

witness name

witness address

DR. C.C. JONES

TAN Y RHIW, FRONDEG, WREXHAM LL14 4ND

SIGNED as a DEED

By the said

ABBIE NICOLE BAKER

In the presence of:-

witness signature

witness name

witness address

DR. C.C. JONES

TAN Y RHIW, FRONDEG, WREXHAM LL14 4ND

SIGNED as a DEED

By the said

MARK BAKER

In the presence of:-

witness signature

witness name

witness address

DR. C.C. JONES

TAN Y RHIW, FRONDEG, WREXHAM LL14 4ND

SIGNED as a DEED

By the said

CARL BAKER

In the presence of:-

witness signature

witness name

witness address

DR. C.C. JONES

TAN Y RHIW, FRONDEG, WREXHAM LL14 4ND

Schedule 1
Application

3. Agent Details

Title	Mr
First name	Spencer
Surname	Cullis
Company name	Cullis Architectural Design
Address line 1	25 Sunningdale Close
Address line 2	
Address line 3	
Town/city	Wrexham
Country	United Kingdom
Postcode	LL13 9QU
Primary number	07791480768
Secondary number	
Email	ajones540@btinternet.com

4. Description of the Proposal

Please provide a description of the approved development as shown on the decision letter

ERECTION OF THREE BEDROOM DWELLING WITH ATTACHED DOUBLE GARAGE

Reference number

P/2012/0168

Date of decision (date must be pre-application submission)

28/10/2013

Please state the condition number(s) to which this application relates

Condition number(s)

01

Has the development already started?

☐ Yes ☒ No

5. Condition(s) - Removal

Please state why you wish the condition(s) to be removed or changed

5. Condition(s) - Removal

THE PLANNING CONSENT IS DUE TO RUN OUT BY 28/10/2018 AND THE NEW LAND OWNER WILL NOT HAVE TIME TO MAKE A START WITHIN THIS PERIOD AS THE PROPERTY/LAND HAS ONLY RECENTLY BEEN ACQUIRED.

If you wish the existing condition to be changed, please state how you wish the condition to be varied

WE THEREFORE REQUEST AN EXSTENTION TO THE CURRENT PERMISSION BY A FURTHER 3 YEARS.

6. Site Visit

Can the site be seen from a public road, public footpath, bridleway or other public land?

☒ Yes ☐ No

If the planning authority needs to make an appointment to carry out a site visit, whom should they contact? (Please select only one)

- ☐ The agent
☒ The applicant
☐ Other person

7. Pre-application Advice

Has pre-application advice been sought from the local planning authority about this application?

☒ Yes ☐ No

If Yes, please complete the following information about the advice you were given (this will help the authority to deal with this application more efficiently):

Officer name:

Title

Mr

First name

MATTHEW

Surname

PHILLIPS

Reference

Date (Must be pre-application submission)

Details of the pre-application advice received

Dear Mr Baker,

Further to our conversation earlier, the above planning permission expires on the 28th of October 2018. Because there is a condition (condition 12) that requires details of a site investigation and, in necessary, remediation, for contamination to be carried out, submitted and then reviewed by us before development can lawfully commence, I think it is unlikely you would be in a position to be able to start work with the time available on the extant permission.

To be able to overcome the limited amount of time left on the permission, you can submit an application to vary condition 01 of the permission (the time limit condition) and apply for an additional period of time. We probably wouldn't want to extend the period beyond another 5 years and ideally as we need houses to be built in the Borough, we'd prefer a shorter period for development commence, perhaps of 2-3 years.

The form you will need can be downloaded from our website – the title of the form will be removal or variation of condition. The fee for the application is £190. Other than form an fee there isn't anything additional you will need to submit with the application. The site is however subject to a planning obligation to secure visibility splays across neighbouring land in perpetuity. The application would not be determined until a new agreement confirming the old one still applies is completed, but we would issue instructions to colleagues in legal to commence work on that and they would contact you about that in due course.

The application would need to be submitted and validated before the 28th of October. If the application is not submitted by that date then you would need to apply for full planning permission for the development accompanied by a full set of plans and a fee of £380.

I trust the above is of assistance, however please do not hesitate to contact me if you have any further questions.

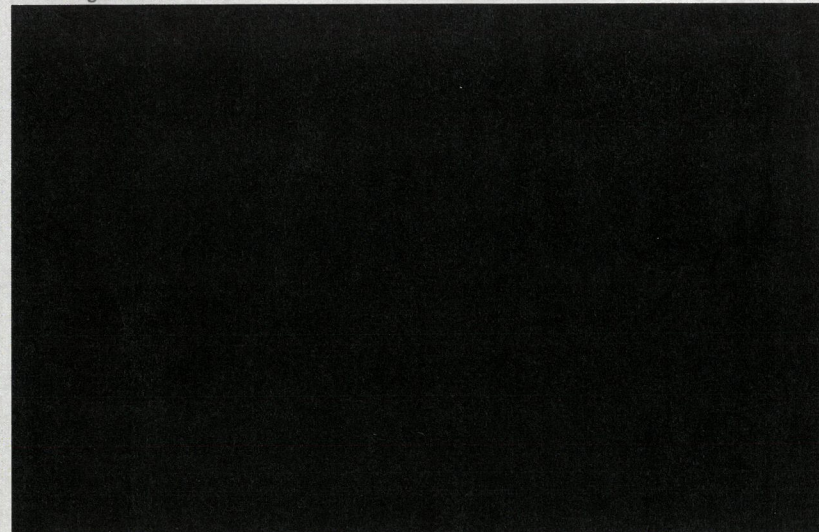
Regards

8. Ownership Certificates

Certificate of Ownership - Certificate B - Town and Country Planning (Development Management Procedure) (Wales) Order 2012

I certify/the applicant certifies that I have/the applicant has given the requisite notice to everyone else (as listed below) who, on the day 21 days before the date of this application, was the owner (owner is a person with a freehold interest or leasehold interest with at least seven years left to run) of any part of the land or building to which this application relates.

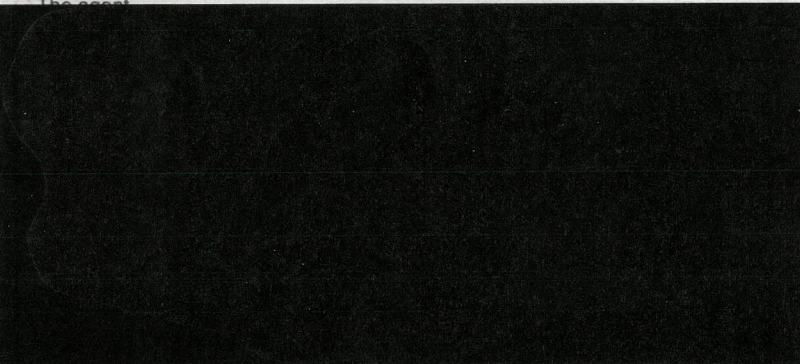
Owner/Agricultural Tenant



Person role

☒ The applicant

☐ The agent



9. Agricultural Holding Certificate Town and Country Planning (Development Management Procedure) (Wales) Order 2012

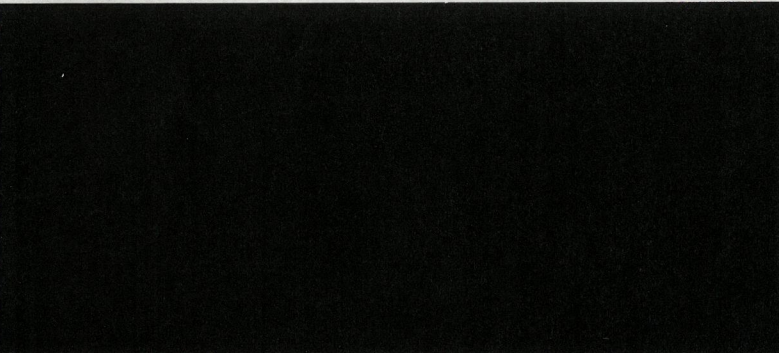
Agricultural land declaration - you must select either A or B

☒ (A) None of the land to which the application relates is, or is part of an agricultural holding

☐ (B) I have/The applicant has given the requisite notice to every person other than myself/the applicant who, on the day 21 days before the date of this application, was a tenant of an agricultural holding on all or part of the land to which this application relates, as listed below

Person role

☒ The applicant ☐ The agent



10. Declaration

I/we hereby apply for planning permission as described in this form and the accompanying plans/drawings and additional information. I confirm that, to the best of my knowledge, any facts stated are true and accurate and any opinions given are the genuine opinions of the persons giving them. ☒

Date (cannot be pre-application)

15/09/2018

Schedule 2
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 MARK BAKER	Code No	MIN P/2018/0786
Agent	CULLIS ARCHITECTURAL DESIGN MR S CULLIS 25 SUNNINGDALE CLOSE WREXHAM LL13 9QU	Date Received	15/09/2018
		Decision Date	

Town and Country Planning Act, 1990
Section 73

Location of application

BRYN FOTY, FFORDD ISAF, GWYNFRYN, WREXHAM, LL11 5TS

Description of application

APPLICATION FOR VARIATION OF CONDITION 1 IMPOSED UNDER PLANNING PERMISSION P/2012/0168 TO ALLOW AN EXTENSION OF 3 YEARS BEFORE COMMENCEMENT OF DEVELOPMENT

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

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 three 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 6723/L(-)01, L(2)01D, L(-)02, L(-)03 and as contained within the application documentation.
3. Prior to their use on the development samples of all roofing materials shall be submitted to and approved in writing by the Local Planning Authority. The development shall only be carried out in strict accordance with such details as are approved.
4. Notwithstanding the provisions of Classes A, B, C and D of Schedule 2 Part 1 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (or any order revoking, re-enacting that Order with or without modification), no further development permitted by the Classes shall take place.

Applicant	MR MARK BAKER	Code No	MIN P /2018 /0786
Agent	CULLIS ARCHITECTURAL DESIGN MR S CULLIS 25 SUNNINGDALE CLOSE WREXHAM LL13 9QU	Date Received	15/09/2018
		Decision Date	

5. All works in relation to the implementation of this permission, including deliveries to and / or leaving the site, shall be undertaken only between the hours of 7.30 and 18.00 Monday to Friday, and 08.00 to 14.00 on a Saturday, and at no time on a Sunday or a Bank Holiday unless the prior written approval of the Local Planning Authority has been obtained.

6. The site shall be developed in accordance with the ground and / or floor levels indicated on the approved plans.

7. No part of the soakaway system shall discharge directly to a watercourse or be within 10 metres of any watercourse or land drain.

8. The vehicular parking and turning areas as shown on approved drawing(s) No(s). L(2)01D 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 development shall take place until a phased site investigation of the nature and extent of contamination has been carried out and submitted to and approved in writing by the Local Planning Authority. If any contamination is found during the site investigation, no part of the development shall commence until a scheme specifying the measures that will be taken to remediate the site to render it suitable for the development hereby permitted has been submitted to and approved in writing by the Local Planning Authority. The site shall thereafter be remediated in accordance with the approved scheme. If during the course of development any contamination is found that has not been identified in the site investigation, no further development shall take place on those parts of the site where that contamination has been found until an additional scheme of remediation has been submitted to and approved in writing by the Local Planning Authority for those parts of the site. The relevant parts of the site shall thereafter be remediated in accordance with the additional scheme of remediation.

10. Each part of the site subject to the remediation under the scheme(s) approved as part of condition 09 shall not be occupied/used until a Validation Report has been completed in respect of that part of the site and submitted to and approved in writing by the Local Planning Authority.

11. Nothing shall be planted, allowed to grow or erected to a height greater than 1 metre in height above the level of the nearside edge of the adjoining highway for a distance of 2.4 metres measured back from the adjoining highway along the entire site frontage. The splays shall be provided prior to first use of the development and shall thereafter be permanently retained clear of any such obstruction.

Applicant	MR MARK BAKER	Code No	MIN P /2018 /0786
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12. Prior to first use of the vehicular 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.

13. 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.

14. Prior to first use of the development hereby approved the vehicular access shall provide visibility splays of @@ metres x @@ metres to the @@@@ and @@ metres x @@ metres to the @@@@ measured to the centreline 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.

15. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (or any order revoking, re-enacting that Order with or without modification), any window or opening in the elevation or the roof slope facing north-east shall only be glazed or re-glazed using obscure glass which shall thereafter be permanently retained.

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.
4. Due to the restricted application site and its relationship with adjoining properties it is considered important to ensure that no additional development as described in the condition is carried out without the permission of the Local Planning Authority in accordance with Policies GDP1 and PS2 of the Wrexham Unitary Development Plan.
5. To protect the amenities of the occupiers of nearby properties in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.
6. To comply with section 71ZA (2) of the Town and Country Planning Act 1990.

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7. To ensure the proper drainage of the site and to minimise the risk of pollution in accordance with Policies GDP1 and EC13 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 the amenities of the future occupants of the buildings in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.
10. In the interests of the amenities of the future occupants of the buildings in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.
11. 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.
12. 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.
13. In the interests of highway safety in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.
14. 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.
15. To protect the amenities of the occupiers of nearby properties in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.

Note(s) to applicant

The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848.

Further information is also available on the Coal Authority website at:
www.gov.uk/government/organisations/the-coal-authority

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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

DRAFT

