

Dated

11th 3rd

2019

WREXHAM COUNTY BOROUGH COUNCIL (1)

and

TRUSTEES OF T H ROGERS DECEASED (2)

and

SHAUN TROWBRIDGE (3)

Planning Obligation by Deed of Agreement

under Section 106 of the Town and Country Planning Act 1990

relating to Broad Oak Farm, Llyndir Lane, Rossett, Wrexham LL12 0AU

DATE 11th July 2019

PARTIES

- (1) **WREXHAM COUNTY BOROUGH COUNCIL** of Guidlhall, Wrexham LL11 1AY ("Council");
- (2) **BEATRICE VERONICA FRANCES FORSTER** and **ROBERT ASHLEY ROGERS** of Broad Oak Farm, Rossett, Wrexham LL12 0AU and **FRANCES CHRISTINE ROGERS** of 1 Chelsea Road, Portsmouth PO5 1NH as **TRUSTEES OF T H ROGERS DECEASED** ("the Owner"); and
- (3) **SHAUN TROWBRIDGE** of 84 Cherry Lane, Lymm, Cheshire WA13 0PD ("Developer")

INTRODUCTION

- A** 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 in which the Site is situated and is the local planning authority by whom planning obligation is enforceable.
- B** The Owner are the proprietors of the freehold interest in the Site, which is registered at Land Registry together with other land under title number CYM76123
- C** The Developer has an option agreement to purchase the Site and has submitted the Application to the Council.
- D** The Council has resolved to grant the Planning Permission subject to the prior completion of this Deed without which the Planning Permission would not be granted.
- E** The Trustees and the Developer have provided this Deed in order to secure the planning obligations contained in this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings (and further definitions are contained in the First Schedule):

"Act"	the Town and Country Planning Act 1990
"Education Contribution"	the sum of £28,627 to be paid to the Council in accordance with the provisions of the Schedule to this Deed
"Application"	the application for full planning permission submitted to the Council for the Development and allocated reference number P/2018/0888
"Commencement of Development"	the carrying out of any material operation (as defined in Section 56(4) of the Act) but disregarding for the purposes of this Deed and for no other purposes operations consisting of site clearance, demolition work, archaeological

	investigations, investigations for the purpose of assessing ground conditions, contamination and site surveying, remedial work in respect of any contamination or decontamination or other adverse ground conditions, the temporary display of site notices or advertisements, temporary parking of vehicles and storage, provision of temporary services, access / egress to the Site, preparation, construction of temporary access for construction purposes only, erection of temporary means of enclosure including fences and hoarding for the purposes of site security, provision of temporary accommodation reasonably required for construction purposes only, and preliminary landscaping works including tree protection and "Commence Development" shall be construed accordingly
"Development"	the development of the Site consisting as set out in the Application
"Index"	All Items Index of Retail Prices issued by the Office for National Statistics or any successor index issued by any successor organisation
"Interest"	interest at 2 per cent above the base lending rate of Lloyds Bank Plc from time to time.
"Owner's Land"	the freehold land situated at Broad Oak Farm, Llyndir Lane, Rossett which is registered under title number CYM76123
"Plan "	the plan numbered C3873-L01-P1 attached to this Deed
"Planning Permission"	the full planning permission subject to conditions to be granted by the Council pursuant to the Application.
"Site"	the land known as Broad Oak Farm, Llyndir Lane, Rossett as shown edged red on the Plan, being the subject of the Application against which this Deed may be enforced, which is part of the Owner's Land

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 severally 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 person deriving title through or under that party and in the case of the Council and County Council the successors to their respective statutory functions.
- 2.7. The headings and contents list are for reference only and shall not affect construction.

3. LEGAL BASIS

- 3.1. This Deed is made pursuant to Section 106 of the Act and Section 111 of the Local Government Act 1972.
- 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 and to the extent that any of the obligations are not planning obligations within the Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers.

4. CONDITIONALITY

This Deed shall come into effect immediately upon completion of this Deed save for the provisions of clause 5 which is conditional upon the grant of the Planning Permission

5. THE OWNER'S COVENANTS

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

6. THE COUNCIL'S COVENANTS

The Council covenants with the Owner as follows:

- 6.1. to act reasonably properly and diligently in exercising its discretion and discharging its functions under this Deed. In particular where any notice consent approval or authorisation agreement or other similar affirmation is required under the terms of this Deed, the Council will not unreasonably withhold or delay such notice consent approval authorisation agreement or other similar affirmation;
- 6.2. to use the contributions only for the purpose for which they are paid and that it will use all reasonable endeavours to spend or commit the contributions within 5 years from the date of the final payment;
- 6.3. to repay any unexpended contribution (or part of the contribution) to the party that paid the contribution ("the Payer") at the expiration of the timeframe given in clause 6.2 above along with interest for the period from the date the payment is made to the date of the refund; and
- 6.4. to provide the Payer such evidence as the Payer may reasonably require to confirm the expenditure of the sums paid by the Payer under this Deed.

7. PARTIES NOT BOUND

- 7.1. This Deed shall not be enforceable against:
 - 7.1.1. any owners, occupiers and tenants of any individual dwellings 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 dwellings;
 - 7.1.2. 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;
 - 7.1.3. the relevant highway authority to whom any part of the Site is disposed of;
 - 7.1.4. any management company to whom any part of the Site is disposed of and upon which residential units will not be constructed;
 - 7.1.5. 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 Deed or otherwise;
 - 7.1.6. any person whom the freehold reversion in a completed dwelling that is subject to a long lease for a term in excess of 99 years is transferred.
- 7.2. Without prejudice to the provisions of clause 7.1 of this Deed, any mortgagee of the Owner from time to time 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 Site (or any part thereof) in which case it too will be bound by such

covenants, obligations and/or restrictions as if it were a person deriving title from the Owner.

8. MISCELLANEOUS

- 8.1. The Developer shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed.
- 8.2. No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 8.3. The Owner and the Developer acknowledge that this Deed shall be registered as a local land charge by the Council.
- 8.4. Where the agreement, approval, consent or expression of satisfaction is required by the Owner and/or Developer from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall be given on behalf of the Council by the Head of Planning and Transport.
- 8.5. Following the performance and satisfaction of all the obligations contained in this Deed the Owner or the Developer may in writing request the Council to provide written confirmation of such discharge in which case the Council shall forthwith cancel any entries made in the register of Local Land Charges in respect of this Deed and supply evidence of the same to the Owner.
- 8.6. 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, legality or enforceability of the remaining provisions of this Deed.
- 8.7. 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 and Developer) it is modified by any statutory procedure or expires prior to the Commencement of Development, in all which cases the Council shall forthwith cancel any entries made in the register of Local Land Charges in respect of this Deed and supply evidence of the same to the Owner.
- 8.8. 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 respective interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest. The parties declare that a party who retains a legal interest in reversion in any part of the Site but who has granted a long leasehold interest in it to another party for a term exceeding 99 years shall be deemed for the purposes of this clause to have parted with all interest in the part of the Site so leased.
- 8.9. 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.

9. 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.

10. CHANGE IN OWNERSHIP

The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of their respective 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.

11. INDEXATION

Any sum referred to in the 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 paid.

12. 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.

13. VAT

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

14. NOTICES

14.1. Any notice, demand or other communication to be delivered to a party under this Deed shall be in writing and shall be in the manner and marked for the attention of the person from time to time designated by it to the other parties to this Deed. The initial details so designated are as follows:

- 14.1.1. The Council: Senior Manager, Planning and Strategic Transport, Guidlhall, Wrexham LL11 1AY quoting the reference number of the Application
- 14.1.2. The Owner: Beatrice Forster and Robert Rogers of Broad Oak Farm, Rossett, Wrexham LL12 0AU and Frances Rogers of 1 Chelsea Road, Portsmouth PO5 1NH
- 14.1.3. The Developer: 84 Cherry Lane, Lymm, Cheshire WA13 0PD

14.2. Subject to clause 14.3 below and unless the date and/or time of actual receipt is proved a notice, demand or other communication sent by the following means is to be treated as having been served as follows:

14.2.1. If delivered by hand at the time of delivery;

14.2.2. If sent by pre-paid first class post on the second working day after posting; or

14.2.3. If sent by recorded delivery at the date and time delivery was signed for.

14.3. If a notice, demand or other communication is served after 4.00pm on a working day or on a day that is not a working day it is to be treated as having been served on the next working day and for the purpose of this clause a working day is any day from Monday to Friday (inclusive) which is neither Christmas Day nor Good Friday and not any statutory bank holiday.

15. JURISDICTION

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

IN WITNESS OF WHICH this document has been executed as a Deed on the date at the top of this Deed.

SCHEDULE

Owner's Covenants to the Council

- 1 Not to Commence Development without having served written notice on the Council of the proposed date of Commencement of Development 14 days before the actual date of Commencement of Development.
- 2 Not to Commence Development without having paid to the Council in full the Education Contribution towards the provision, improvement or extension of secondary education facilities in accordance with the following calculation :-

Calculation of the amount of contribution due

Secondary

No of dwellings 2 bedrooms: $6 \times 1293 = £7,758$

No of dwellings 3 bedrooms: $1 \times 3694 = £3,694$

No of dwellings 4+ bedrooms: $3 \times 5725 = £17,175$

Total Secondary Contribution £28,627

TOTAL CONTRIBUTION DUE £28,627

EXECUTED as a deed by affixing
THE COMMON SEAL OF
WREXHAM COUNTY BOROUGH COUNCIL
in the presence of:



S Wyn Davies

Authorised Signatory

Chief Officer Governance & Customer

Authorised Signatory

~~SIGNED as a Deed by
BEATRICE VERONICA FRANCES FORSTER
in the presence of:~~

~~DECEASED~~

Witness Signature:

Witness Name (in caps):

Witness Address:

Witness Occupation:

SIGNED as a Deed by
ROBERT ASHLEY ROGERS
in the presence of:

P.A. Rogers

Witness Signature:

Witness Name (in caps):

Witness Address:

Witness Occupation:

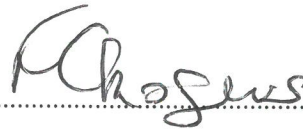
Guy D Evans

GUY EVANS

CASSIDY + ASHTON, 10 HUNTERS WALK, CHESTER

CHARTERED TOWN PLANNER

SIGNED as a Deed by
FRANCES CHRISTINE ROGERS
in the presence of:

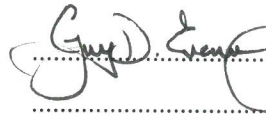

.....

Witness Signature:

Witness Name (in caps):

Witness Address:

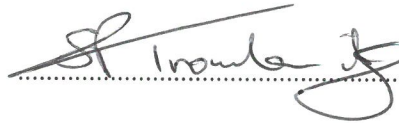
Witness Occupation:


..... GUY EVANS

CASSIDY + ASHTON, 10 HUNTERS WALK, CHESTER

CHARTERED TOWN PLANNER

SIGNED as a Deed by
SHAUN TROWBRIDGE
in the presence of:

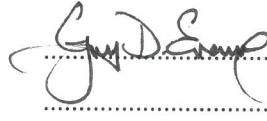

.....

Witness Signature:

Witness Name (in caps):

Witness Address:

Witness Occupation:


..... GUY EVANS

CASSIDY + ASHTON, 10 HUNTERS WALK, CHESTER

CHARTERED TOWN PLANNER



Rev.	Description	Date
Cassidy+Ashton www.cassidyashton.co.uk Architecture + Building Surveying + Town Planning 10 Hunters Walk, Canal Street, Chester, CH1 4EB 7 East Cliff, Preston, Lancashire, PR1 3JE 01244 402 900 01772 258 356		
Client Mr S Trowbridge		Drawing Title Site Location Plan
Project Broad Oak Farm Rossett		Drawn by HJ Checked by XX Date Sept 2018 Status PLANNING Scale @ A4 1:1250 Job no. C3873 Dwg.no. L01 Rev. P1

local planning guidance

This is one of a series of guidance notes providing information to help you understand our procedures and improve design standards.



27. Developer Contributions to Schools

This is one of a series of local planning guidance notes designed to amplify policy GDP2 in the Wrexham Unitary Development Plan (UDP) and identifies the circumstances and locations in which developer contributions to the provision of education facilities, such as additional classrooms, will be necessary. The (UDP) was initially adopted by the Council in February 2005. This updated version was subject to consultation between 16 July and 13 August 2018 and 1 October and 26 October 2018 and was adopted by the Executive Board on 11 December 2018. This guidance note is a material consideration in the determination of all relevant planning policies.

Education Planning in Wrexham

For education planning purposes links between certain primary schools and secondary schools in groups throughout the County Borough are maintained. The Council's School Admissions Policy grants parental preference, unless to do so would prejudice the efficient and effective use of its resources. Over 98% of pupils are allocated places in accordance with their parents' first preference.

Background to this Guidance Note

Local authorities find themselves under increasing financial pressure to meet the educational needs arising from residential development. Cumulatively, even relatively small developments can have a significant financial impact on the provision of school places. Welsh

Office Circular 13/97 'Planning Obligations' makes provision for developer contributions to offset the negative consequences of development provided there is guidance on this in the local development plan. The Wrexham UDP provides this guidance through Policy GDP2 on Capacity of Infrastructure & Community Facilities.



The rest of this note sets out further information on how this Policy will be applied.

Criteria

Any developer contribution will be based on the following considerations:

- It will only apply to proposed developments of four or more residential units, whether by new build, conversion or changes of use. Developments should not be deliberately sub-divided or phased in an attempt to avoid this threshold. Where the development has been split or phased, the resulting cumulative number of dwellings will be used to calculate the financial contribution.
- It will only apply to schools deemed to have a shortage of places taking into account other residential developments within the area and after addition of the extra pupils likely to be generated by the proposed development.
- The number, type and size of the proposed residential units. No contributions will be sought for apartments or dwellings that have only 1 bedroom. More detail is given in Table 1.
- The likely ratio of pupils per housing unit applicable to the appropriate school or schools at both primary and secondary level.
- The location of the development and likely impact on existing schools. This will be assessed using the same criteria as the Council's Schools Admissions Policy in relation to proximity.

If the potential pupils generated by the proposed development cannot be accommodated within existing schools then a commuted payment will be calculated by multiplying the additional places required by the pupil cost figure (see Table 1) to produce the commuted sum to be included in the planning obligation. Contributions by way of a release of land for a new school or direct construction may be considered as an alternative to payment of a commuted sum at the Council's discretion.

Timing of contributions

Any built educational provision will need to be completed to reflect the planned occupation of the homes. For larger developments phased payment will be considered to fit construction and occupation programmes.

Cost guidelines

The following guidelines are designed to give prospective developers an idea of the possible implications of their proposals:

- A development of 100 x 3 bedroom houses produces around 23 primary age pupils and around 20 secondary age pupils.
- For developments that generate 100 pupils and above consideration will be given to a new school on a new site dependent on location and future growth potential of the area and the applicant will be expected to contribute in proportion to the number of school places the development generates.
- The Council will specify the nature of the works or the area which the contribution will finance, which may include a completely new school.
- Where a contribution is required, a draft Section 106 Agreement should accompany the planning application. Wrexham County Borough Council's Section 106 templates are available on request from the Planning Department.



TABLE 1: Cost Guidelines

School Type	No. of pupils generated per dwelling		Building Cost Multiplier £	Contribution £
Primary 4 - 11 years	Apartments with 2 or more bedrooms	0.07	12257	858
	2 bedrooms	0.12		1471
	3 bedrooms	0.23		2819
	4+ bedrooms	0.31		3800
Secondary 11 - 16 years	Apartments with 2 or more bedrooms	0.04	18469	739
	2 bedrooms	0.07		1293
	3 bedrooms	0.2		3694
	4+ bedrooms	0.31		5725
Post 16	Apartments with 2 or more bedrooms	0.02	12000	240
	All dwellings	0.06		720

Notes

- The number of pupils generated per dwelling figures set out in the Table 1 are derived from 2011 Census statistics.
- Building cost multipliers are based on Department for Education guidelines, pupil allocations and average building cost assessment.

TABLE 2: Worked Example			
Number of dwellings	Primary	Secondary	Total
10 x 2+ bedroom apartments	10 x 858 = £8580	10 x 739 = £7390	£15970
10 x 2 bedroom houses	10 x 1471 = £14710	10 x 1293 = £12930	£27640
10 x 3 bedroom houses	10 x 2819 = £28190	10 x 3694 = £36940	£65130
10 x 4 bedroom houses	10 x 3800 = £38000	10 x 5725 = £57250	£95250
Total	£89480	£114510	£203990

contact

Environment and Planning
16 Lord Street Wrexham. LL11 1LG

E-mail: planning@wrexham.gov.uk
website: www.wrexham.gov.uk/planning

*Adopted March 2004, Revised November 2010
Updated December 2018*

available in other formats on request