

DATED 14th May 2019

(1) WREXHAM COUNTY BOROUGH COUNCIL

- and -

(2) NUNNDALE LIMITED

DEED OF VARIATION

pursuant to Section 106A of the Town and Country Planning Act 1990
relating to

Land at Moreton Avenue, Johnstown, Wrexham LL14 2AR

Wrexham County Borough Council
Guildhall
Wrexham
LL11 1AY

THIS DEED is made the 14th day of May 2019

BETWEEN

- (1) **Wrexham County Borough Council** of Guildhall, Wrexham LL11 1 AY ("the Council")
- (2) **Nunndale Limited** (Co Regn No 01243565) c/o Haswell Brothers LLP, Pembroke House, Ellice Way, Wrexham Technology Park, Wrexham LL13 7YT ("the Owner")

WHEREAS:

- (1) This Deed is supplemental to the Original Agreement relating to the development of the Land.
- (2) The Original Agreement contained obligations on the Owner to pay financial contributions which are to be used towards the provision of primary education facilities and off-site public open space.
- (3) The Council granted the Original Planning Permission for the development of the Land on 18 June 2008.
- (4) The Council is the local planning authority for the area in which the Land is situated and the person by whom the obligations contained in the Original Agreement (as varied by this Deed) are enforceable.
- (5) The Owner is the freehold owner of the Land registered at the Land Registry under title number CYM147454 free from encumbrances.
- (6) The Owner has submitted the 2017 Application to the Council.
- (7) The parties have agreed to vary the Original Agreement by entering into this Deed for the purpose of reducing the financial contribution payable towards the

provision of primary education facilities under paragraph 1 of the Third Schedule of the Original Agreement.

- (8) This Deed is supplemental to and varies the Original Agreement on the terms set out in the Schedule to this Deed.

NOW THIS DEED WITNESSETH as follows:-

1 INTERPRETATION

1.1 In this Deed:

"2017 Application"

means the planning application validated by the Council on 11 April 2017 and allocated reference number P/2017/0294;

"Original Agreement"

means the agreement pursuant to Section 106 of the Act dated 9 June 2008 and made between (1) the Council and (2) the Owner in relation to the Original Planning Permission;

"Original Planning Permission"

means planning permission reference P/2007/1069 granted by the Council on 18 June 2008;

- 1.2 Unless the context requires otherwise, all other words and phrases beginning with a capital letter in this Deed shall have the same meaning as that which is ascribed to them in the Original Agreement.

2 LEGAL EFFECT

- 2.1 This Deed is made pursuant to Section 106 and Section 106A of the Act, Section 111 of the Local Government Act 1972, Section 2 of the Local Government Act 2000 and all other enabling powers.

- 2.2 The covenants, restrictions and requirements imposed under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority in relation to the Land.

3 VARIATION

- 3.1 Pursuant to Section 106A of the Act the Council and the Owner agree that the Original Agreement shall be varied as follows:

- 3.1.1 Recital (3) shall be deleted and replaced with the following:

*"By an application dated 31 August 2007 which has been allocated reference number P/2007/1069 (hereinafter called **"the Original Application"**) and an application dated 11 April 2017 which has been allocated reference number P/2017/0294 (hereinafter called **"Application 0294"**) (together referred to as **"the Application"**), application has been made to the Council for planning permission for the development specified in the Second Schedule hereto (hereinafter called **"the Development"**) on the Land."*

- 3.1.2 The Second Schedule shall be deleted and replaced with the following:

"SECOND SCHEDULE **("the Development")**

- (1) The following development in accordance with the planning permission granted pursuant to the Original Application:

*Residential development (9 dwellings and 1 block of 6 flats) and alteration to existing vehicular and pedestrian access (**"the Original Development"**).*

Or

- (2) *The following development in accordance with the planning permissions granted pursuant to the Original Application and Application 0294:*

*Residential development (8 dwellings and 1 block of 6 flats) and alteration to existing vehicular and pedestrian access ("**the Revised Development**")."*

3.1.3 The Third Schedule shall be deleted and replaced with the following:

"THIRD SCHEDULE
("the Obligation")

To pay to the Council within 14 days of occupation of 6 (Six) of the dwellings constructed on the Land as part of the Development:

- (1) *the sum of £17,640 (Seventeen Thousand, Six Hundred and Forty Pounds) as a contribution towards the provision of primary education facilities within Rhosllanerchrugog Y Grango catchment area, such sum to be expended by the Council for that purposes and in the manner set out in the Council's published Local Planning Guidance Note No. 27 entitled "Developer Contributions to Schools" or any document which may replace or supplement that document from time to time SAVE THAT in the event that the Revised Development is completed in full with the result that only 8 dwellings and 1 block of 6 flats are constructed on the Land then the contribution payable under this paragraph 1 shall be reduced to £15,680.00 (Fifteen Thousand, Six Hundred and Eighty Pounds); and*
- (2) *the sum of £20,000 (Twenty Thousand Pounds) as a contribution towards the provision of off-site public open space in accordance with the Council planning policy CLF5."*

4 GENERAL

- 4.1 The Original Agreement shall henceforth take effect as varied by this Deed and shall be read and construed accordingly.
- 4.2 The covenants, conditions and provisions of the Original Agreement shall continue in full force and effect as varied by this Variation Agreement.
- 4.3 If any provision in this Deed shall in whole or part be held to be invalid, illegal or unenforceable under any enactment or rule of law, the validity, legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected or impaired. In the event of deletion of such clause, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative provision in place of the provision so deleted.
- 4.4 This Deed shall be registrable as a local land charge by the Council.
- 4.4 Nothing constrained or implied in this Deed shall prejudice or affect the rights, powers, duties and obligations of the Council in the exercise of its functions as a local planning authority and its rights, powers, duties and obligations under all public and private statutes, byelaws and regulations may be fully and effectually exercised as if the Council were not a party to this Deed.
- 4.5 The Owner shall pay to the Council its legal fees incurred upon completion of this Deed.
- 4.6 The Original Agreement and this Deed are to be interpreted in accordance with the law of England and Wales as it applies in Wales, and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

IN WITNESS whereof the parties hereto have executed this document as a Deed the day and year first before written

EXECUTED as a DEED by the affixation
of the COMMON SEAL of
WREXHAM COUNTY BOROUGH COUNCIL
in the presence of:



114/19(a)

S Wyn Davis
.....
Chief Legal and Democratic Services Officer

~~Chief Officer~~
Chief Officer Governance & Customer

EXECUTED as a DEED by
NUNNDALE LIMITED
acting by:

David A Thomas
.....
Director

Sup. Thomas
.....
Director / Company Secretary