

DATED 14th December 2017

BRIAN STANLEY EVISON (1)

to

WREXHAM COUNTY BOROUGH COUNCIL (2)

UNILATERAL UNDERTAKING

Pursuant to Section 106 of the Town and Country Planning Act 1990
in respect of Residential Development at Big Green Farm, Ellesmere Lane, Penley

THIS UNDERTAKING is given this 14th day of December 2017

BY:

- (1) **BRIAN STANLEY EVISON** of 30, Meaux Road, Wawne, Hull, HU7 5XD ('the Owner')

TO:

- (2) **WREXHAM COUNTY BOROUGH COUNCIL** of Guildhall Wrexham LL11 1AY ('the Council')

RECITALS

- (A) The Council is the local housing authority and the Local Planning Authority for the purposes of Section 106 of the 1990 Act for the area in which the Land is situated
- (B) The Owner is the owner of the freehold interest in The Big Green Farm, Penley, Wrexham, LL13 0LP and as shown edged in red on the Plan, which land forms part of the land in title number WA923619, free from encumbrances that would prevent the Owner from giving this Undertaking
- (C) The Owner has submitted the Planning Application to the Council for Development of the Land.
- (D) The Council refused to grant that Planning Permission under their delegated powers and a Refusal Notice was issued by the Council
- (E) The Owner enters into this Undertaking to secure payment to the Council of an Education Contribution and a Public Open Space Contribution in consideration of planning permission for Development of the Land being granted
- (F) The Owner has agreed to enter into this Undertaking with the intention that the obligations contained in this Undertaking may (subject to Clause 4) be enforced by the Council against the Owner and his respective successors in title in the manner set out in this Undertaking

NOW THIS UNDERTAKING WITNESSES as follows:

1. DEFINITIONS

In this document unless the contrary intention appears the following terms shall have the following meanings:

'1990 Act'	means the Town and Country Planning Act 1990 as amended
'CDM Regulations'	means the Construction (Design and Management) Regulations 2007 including any modification extension or re-enactment of them or any other regulations of a similar nature in force at any time during the course of the Development
'Commencement of Development'	means the carrying out on the Land of any Material Operation
'Contributions'	means the Education Contribution and the Public Open Space Contribution and "Contribution" shall be construed accordingly
'Development'	means the development of the Land in accordance with the Planning Permission
'Development Requirements'	means: (i) in accordance with the Planning Permission; and (ii) in accordance with current building regulations; and (iii) in accordance with the CDM Regulations
'Dwelling'	means any residential unit (including a house flat or maisonette) constructed on the Land pursuant to the Planning Permission
'Education Contribution'	means the sum determined in accordance with LPG27 in relation to the Development which at the date of this Agreement is the sum of £58,608
'Implementation Notice'	means the notice to be served in writing by the Owner upon the Council when Commencement of Development has occurred

'Land'	means the land comprised in the application for Development being land south of the Big Green Farm, Ellesmere Lane, Penley, Wrexham, LL13 0LP as shown edged red on the Plan for the purposes of identification only
'LPG27'	means the Council's Local Planning Guidance Note No. 27 "Developer Contributions to Schools" a copy of which is annexed to this Agreement at Annex 1
'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'	means the plan annexed to this Agreement
'Planning Application'	means the application for Planning Permission for the Development of the Land submitted to the Council by the Owner under reference P/2016/1118
'Planning Inspector'	means the Inspector appointed by the Secretary of State to preside over the Owner's appeal against the Refusal Notice
'Planning Permission'	means the grant of planning permission by the Council pursuant to the Planning Application and any associated reserved matters approval(s)
'Public Open Space Contribution'	means the sum of £1,000 per Dwelling to be paid by the owner to the Council and expended by the Council in according with the provisions of the First Schedule

'Refusal Notice'

means a notice of refusal to grant Planning Permission issued by the Council on the 12th day of April 2017

'Secretary of State'

means the Secretary of State for Communities and Local Government or any other Minister or Authority for the time being entitled to exercise the powers given under Sections 77, 78 and 79 of the 1990 Act and/or under any relevant section of the Act

'Working Days'

means any day falling between Monday and Friday (both days inclusive) upon which the clearing banks in the City of London are open for normal business which is not Good Friday or a statutory bank holiday

2 INTERPRETATION

- 2.1 A reference in this Undertaking to an Act of Parliament or section of such Act or to any order regulation statutory instrument or the like shall include a reference to any replacement modification amendment or re-enactment of the same
- 2.2 Wording importing the masculine gender includes the feminine and neuter genders and vice versa.
- 2.3 Words in the singular include the plural and vice versa.
- 2.4 Words importing individuals shall be treated as importing firms companies corporations authorities and other bodies and vice versa
- 2.5 Any heading or side notes are for ease of reference only and shall not affect the construction of this Undertaking
- 2.6 Covenants made hereunder
 - 2.6.1 if made by more than one person are made jointly and severally; and
 - 2.6.2 are to the intent that the same bind whomsoever shall become successor or successors in title to the Land
- 2.7 Where in this Undertaking 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 Undertaking

3 EFFECT OF THIS UNDERTAKING

- 3.1 This Undertaking is given pursuant to Section 106 of the 1990 Act. To the extent that they fall within the terms of Section 106 of the 1990 Act, the obligations contained in this Undertaking are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the Council pursuant to all powers enabling and all enactments which may be relevant for the purpose of giving validity hereto or facilitating the enforcement of the obligations herein contained and shall bind the Owner's interest in the Land
- 3.2 This Undertaking is capable of and may be registered as a local land charge by the Council
- 3.3 Nothing in this Undertaking prohibits or limits the right to develop any part of the Land in accordance with a planning permission, other than the Planning Permission, granted after the date of this Undertaking whether or not pursuant to an appeal
- 3.4 Notwithstanding anything to the contrary contained or referred to in this Undertaking, nothing in this Undertaking shall be binding upon nor enforceable against any statutory undertaker or other utility suppliers or any person who acquires any part of the Land or any wayleave or easement or any other interest in it by virtue of the location of their structures or other apparatus on the Land (including the acquisition and construction of electricity sub-stations, poles, stays, gas governor stations or pumping stations) and for the purposes of the supply of electricity, gas, water, drainage, telecommunications or public transport services and/or for any other purpose in connection with carrying out their statutory duties
- 3.5 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Undertaking such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed
- 3.6 Following the performance of satisfaction of all the obligations contained in this Undertaking the Council may forthwith effect the cancellation of all entries made in the register of local land charges in respect of this Undertaking
- 3.7 This Undertaking 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, it is modified by any strategy procedure or expires prior to the Commencement of Development

3.8 The provisions of this Undertaking are conditional upon and shall come into effect upon the last of the following to occur:

3.8.1 the grant of the Planning Permission by the Planning Inspector or the Secretary of State

3.8.2 the date of Commencement of Development

4 THE OWNER'S COVENANTS

4.1 The Owner hereby undertakes to the Council on behalf of itself and its successors in title to each and every part of the Land to:

4.1.1 comply with the obligations relating to Public Open Space set out in the First Schedule to this Agreement

4.1.2 comply with the obligations set out in the Second Schedule to this Agreement relating to the Education Contribution

4.1.3 serve upon the Council (addressed to the Council's Head of Community Wellbeing and Development) the Implementation Notice within 10 Working Days from but not including the date of Commencement of Development

5. TERMINATION OF THIS UNDERTAKING

5.1 This Undertaking will come to an end if:

5.1.1 the Owner's appeal against the Refusal Notice is dismissed (unless proceedings are commenced in relation to the dismissal of that appeal in which case this Undertaking will come to an end if on the final determination of such proceedings the decision to dismiss the Planning Appeal is upheld); or

5.1.2 the Planning Permission is quashed, revoked or otherwise withdrawn or modified at any time so as to render this Undertaking or any part of it irrelevant impractical or unviable; or

5.1.3 the Planning Permission expires before the Commencement of Development without having been implemented

5.2 If, in determining the Planning Appeal, the Secretary of State or the Planning Inspector expressly states in his decision letter that any obligation contained in this Undertaking:

5.2.1 is not a material planning consideration; or

5.2.2 that no weight can be attached to the obligation in determining the Planning Appeal; or

5.2.3 fails to comply with Regulation 1.2.2 of the Community Infrastructure Regulations 2010

then such obligation(s) shall not be enforceable by the Council

6 AGREEMENTS AND DECLARATIONS

- 6.1 No person shall be liable for any breach of any of the planning obligations or other provisions of this deed after parting with his entire interest in the Land but without prejudice to liability for any subsisting breach arising before parting with that interest or in parting with that interest.
- 6.2 In the event that any difference or dispute arises between the Owner and the Council in accordance with the rights duties liabilities or obligations of the Owner in this Undertaking (including sums of money and the construction of this Undertaking) then such difference or dispute shall be referred to for determination by an appropriately qualified independent expert (of not less than ten years standing) experienced in the relevant matter ("the Expert") to be agreed between the Owner and the Council or in default nominated on the application of any party by the President (or other available officer able to make such appointment) of the Royal Institution of Chartered Surveyors ("RICS") Provided That the provisions of this clause shall not prejudice prevent or delay the right of any party to seek the resolution of any matter relating to this Undertaking by the Courts and/or in accordance with Section 106(6) of the 1990 Act
- 6.3 The expressions "the Owner" and "the Council" shall include their respective successors in title
- 6.4 If any of the terms obligations and/or covenants in this Undertaking or the application thereof to any party or circumstances shall to any extent be invalid or unenforceable the same shall be severable from the remainder of this Undertaking and the remainder of this Undertaking or the application of such terms obligations and/or covenants to parties or circumstances other than as to which such terms obligations and/or covenants is held invalid or unenforceable shall not be affected thereby and each of the other terms obligations and/or covenants of this Undertaking and the Planning Permission shall be valid and be enforceable to the full extent permitted by law
- 6.5 Any notice or other written communication shall be validly served if delivered to the relevant party by hand or if sent by ordinary first class post or recorded delivery post:

- 65.1 in the case of the Council at the Guildhall Wrexham LL11 1AY or such other address as shall be notified in writing to the Owner from time to time
- 6.5.2 in the case of the Owner to the addresses given in this Undertaking or such other addresses of such parties as may be notified in writing to the Council from time to time
- 6.5.3 any notice or other written communication to be given by the Council shall be deemed valid and effectual if on its face it is signed on behalf of the Council by an officer or duly authorised signatory

THE FIRST SCHEDULE

Public Open Space

1. The Owner will pay the Public Open Space Contribution to the Council prior to the occupation of the 6th Dwelling.
2. The relevant Public Open Space Contribution shall be used by the Council towards the provision and / or improvement of open space facilities within the local area

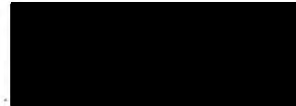
THE SECOND SCHEDULE

Education Contribution

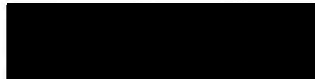
1. The Owner will pay to the Council the Education Contribution in two equal instalments, the first instalment being due prior to the occupation of the 1st Dwelling and the second instalment being due prior to the occupation of the 6th Dwelling. The Owner acknowledges that the Education Contribution is towards the provision, improvement or extension of primary and secondary education facilities in accordance with LPG27
2. For the avoidance of doubt it is acknowledged that the obligation to pay the Education Contribution is not conditional upon receiving any demand, request, invoice, or other communication from the Council
3. In the event that the Education Contribution is paid later than 12 months from the Commencement of Development it shall be increased by the same percentage as the percentage increase in the all items figure of the Index of Retail Prices published two months before the date of payment by the Office for National Statistics or any successor government department or office when compared with the all items figure at the said Index in existence at the date of this Agreement until the date of actual payment
4. If the Education Contribution is not paid on the date due in accordance with this Schedule, the Owner will pay interest thereon to the Council at a rate of 5% per annum on a day to day basis from the date the payment is due to the date when such payment is made together with such sum as is equivalent to the costs reasonably and properly incurred by the Council in recovering such sums

EXECUTED as a DEED on the date specified at the commencement of this Undertaking

Executed as a deed by
the above-named
BRIAN STANLEY EVISON
In the presence of:



Witness Sign



Witness Print Name

M. HODGSON

Witness Address

28 Meaux Rd

Landup H 75x12

Witness Occupation

Retired

ANNEX 1 LPG27



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 adopted by the Council in February 2005 and this note is a material consideration in the determination of all relevant planning policies.

Education Planning in Wrexham

For education planning purposes links between certain infant and junior schools and between junior/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 96% of pupils are allocated places in accordance with their parents' first preference.

Available in accessible formats

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 and type of proposed residential units (large or small houses, bungalows or apartments). 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 and feeder schools. A map of school catchment areas is available from the Planning Department.

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

Table 1: Cost guidelines

School Type	No. of pupils generated by each 2-3 bed house	Building Cost Multiplier £	Contribution £
Primary 4 - 11 years	0.28	7000	1960
Secondary 11 - 16 years	0.20	10000	2000
Post 16	0.04	12000	480
Totals			
School with 6th Form	0.52		4440
School without 6th Form	0.48		3960

Notes

- Building cost multipliers are based on Department for Education guidelines, pupil allocations and average building cost assessment.
- School Catchment Areas are secondary schools and their feeder primary schools plus current Council policy on pupil proximity to schools.
- 1 bedroom and accommodation for the elderly no charge. 2/3 bedrooms standard charge (shown above). 4 + bedrooms plus 20%.
- School population assessments to be reviewed annually.

Worked example for Johnstown Infants School catchment area

For the development of: -

- 10 - 1 bedroom Units
- 10 - 2 bedroom Units
- 10 - 3 bedroom Units
- 10 - 4 bedroom Units

Charges at primary school level

10 - 1 bedroom	no charge
10 - 2 bedroom	standard charge
10 * £1960	= £19600
10 - 3 bedroom	standard charge
10 * £1960	= £19600
10 - 4 bedroom	standard charge
	+20%
10 * £2352	= £23520

Charges at secondary school level

No shortage, no charge.



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:

- Every 100 houses produces around 28 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.



Schools where contributions are likely to be required

The list below shows schools where contributions are likely to be required. At all other schools there is likely to be some spare capacity to accommodate some development. This is not a definitive list, but a guide to developers.

Secondary schools

Bryn Alyn, Gwersyllt	(11 to 16 years)
Maelor, Penley	(11 to 18 years)
Darland, Rossett	(11 to 18 years)

Primary schools

Gwersyllt - Bryn Alyn School Catchment

Brymbo Aided, St Mary's
Brynteg C.P.
Gwersyllt C.P.
New Broughton C.P., Ysgol Penrhyn
Pentre Broughton C.P.
Tanyfron C.P.

Llangollen - Dinas Bran (Denbighshire) School Catchment

No schools

Penley - Maelor School Catchment

Hanmer
Penley Madras
Marchwiell C.P.

Rhosllanerchrugog - Y Grango School Catchment

Johnstown Infants
Johnstown Junior
Penycae C.P.

Rossett - Darland School Catchment

Gresford
Marford C.P.

Ruabon - Rhiwabon (11 to 18 years) School Catchment

Acrefair C.P.
Ruabon Maes y Llan C.P.
Ruabon St. Mary's

Wrexham - Clywedog School Catchment

Bwlchgwyn C.P.
Marchwiell C.P.
Rhostyllen C.P.
Victoria C.P.
St Giles

Wrexham - St. Joseph's School Catchment

St. Mary's

Wrexham - Rhosnesni School Catchment

Acton Park C.P.
Alexandra C.P.
Barkers Lane C.P.
Borras Park
Rhosddu C.P.

Wrexham - Morgan Llwyd (11 to 18 years) School Catchment

Wrexham Plas Coch C.P.

Wrexham County Borough - School Location

SECONDARY SCHOOLS

- 1 Darland High School
- 2 Bryn Alyn High School
- 3 Rhosnesni High School
- 4 Ysgol Morgan Llwyd
- 5 St Josephs RC High School
- 6 Ysgol Clywedog
- 7 Ysgol y Grango
- 8 Ysgol Rhiwabon
- 9 Ysgol Maelor

OTHER SCHOOLS

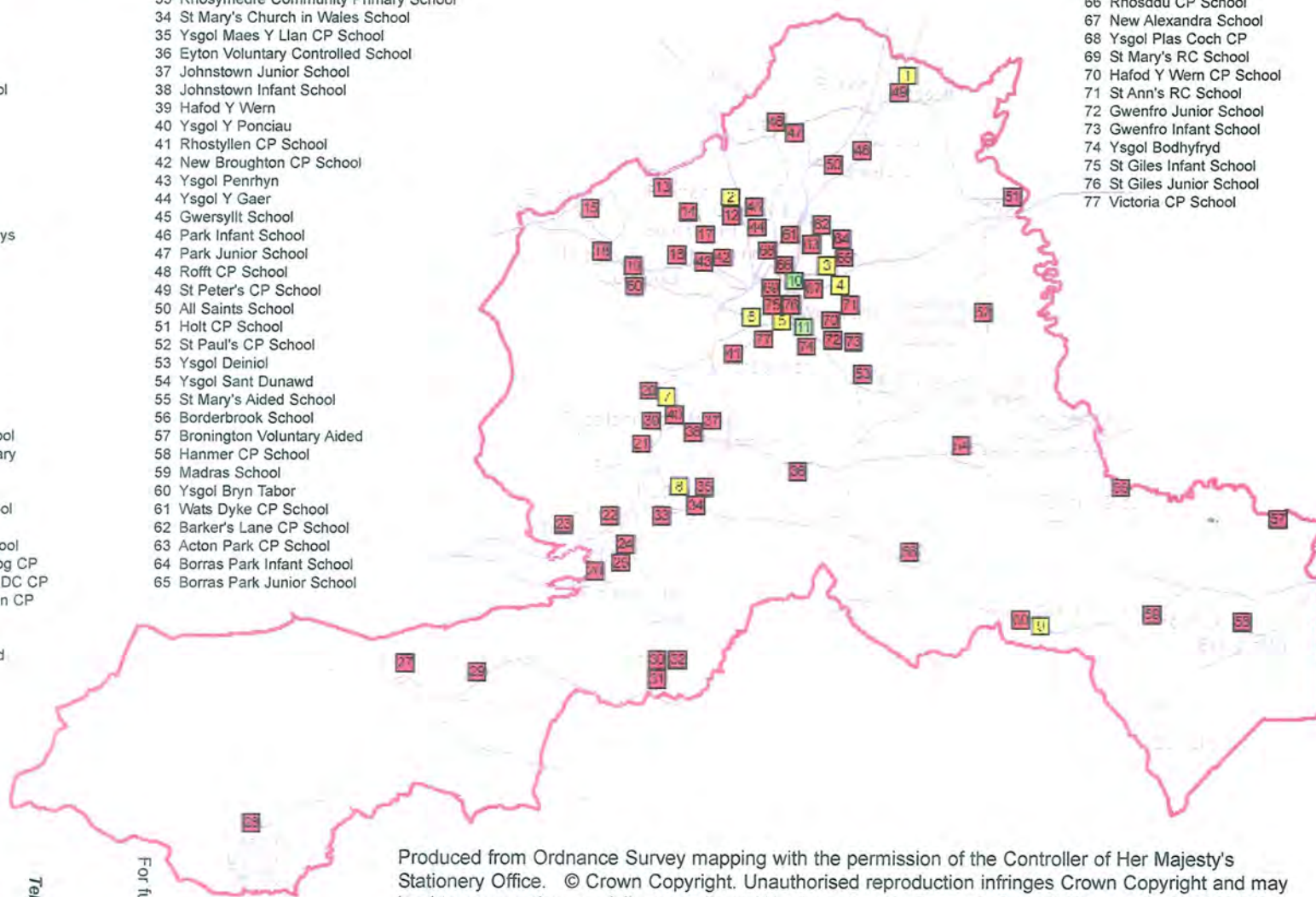
- 10 Groves
- 11 St Christophers/Ysgol Powys

PRIMARY SCHOOLS

- 12 Ysgol Heulan
- 13 Brymbo Aided School
- 14 Black Lane CP School
- 15 Bwlchgwyn CP School
- 16 Brynteg CP School
- 17 Tanyfron CP School
- 18 Minera Voluntary Aided
- 19 Penygelli CP School
- 20 Ysgol I D Hooson CP School
- 21 Penycae Community Primary
- 22 Acrefair CP School
- 23 Garth CP School
- 24 Ysgol Min Y Ddol CP School
- 25 Cefn Mawr CP School
- 26 Ysgol Froncysyllte CP School
- 27 Ysgol Cynddelw, Glynceiriog CP
- 28 Ysgol Gynradd Llanarmon DC CP
- 29 Ysgol Pontfadog, Llangollen CP
- 30 Chirk Infant School
- 31 Ceiriog Junior School
- 32 Pentre Voluntary Controlled

- 33 Rhosymedre Community Primary School
- 34 St Mary's Church in Wales School
- 35 Ysgol Maes Y Llan CP School
- 36 Eyton Voluntary Controlled School
- 37 Johnstown Junior School
- 38 Johnstown Infant School
- 39 Hafod Y Wern
- 40 Ysgol Y Ponciau
- 41 Rhostyllen CP School
- 42 New Broughton CP School
- 43 Ysgol Penrhyn
- 44 Ysgol Y Gaer
- 45 Gwersyllt School
- 46 Park Infant School
- 47 Park Junior School
- 48 Rofft CP School
- 49 St Peter's CP School
- 50 All Saints School
- 51 Holt CP School
- 52 St Paul's CP School
- 53 Ysgol Deiniol
- 54 Ysgol Sant Dunawd
- 55 St Mary's Aided School
- 56 Borderbrook School
- 57 Bronington Voluntary Aided
- 58 Hanmer CP School
- 59 Madras School
- 60 Ysgol Bryn Tabor
- 61 Wats Dyke CP School
- 62 Barker's Lane CP School
- 63 Acton Park CP School
- 64 Borras Park Infant School
- 65 Borras Park Junior School

- 66 Rhosddu CP School
- 67 New Alexandra School
- 68 Ysgol Plas Coch CP
- 69 St Mary's RC School
- 70 Hafod Y Wern CP School
- 71 St Ann's RC School
- 72 Gwenfro Junior School
- 73 Gwenfro Infant School
- 74 Ysgol Bodhyfryd
- 75 St Giles Infant School
- 76 St Giles Junior School
- 77 Victoria CP School



Produced from Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office. © Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Wrexham County Borough Council Licence No.100023429. November 2010. Not to scale.

For further information contact:

Planning Section

Lambpit Street,

Wrexham, LL11 1AR

Telephone: (01978) 292013

Fax: (01978) 292502

Asset Management Section

Management Officer

Crown Buildings, Chester Street

Wrexham, LL13 8BG

Telephone: (01978) 297205

Fax: (01978) 292502

www.wrexham.gov.uk

Adopted March 2004

Revised November 2010



ANNEX 2

The Brambles

OS Mapping obtained from Ordnance Survey Licence No. 100022432
Reproduced by Berrys under OS Licence No. 100003665

Big Green Farm

Pear Tree Ho



New Junction in location of
current farm access with
2.4m x 50m Visibility Splays

Wilmaye

Amendments	
A	Outline Planning Submission
B	Revised Submission further to planners comments
C	Revised Layout
D	Driveway added to side of Existing Farmhouse
	05/12/16
	17/02/17
	03/03/17
	09/03/17

BERRYS

PROPERTY BUSINESS PLANNING

01743 271967 512 61G

www.berrys.uk.com

Client: Wawne Developments.

Project: Outline Application for Residential Development
for 13 Dwellings on Land adjacent Ellesmere Road,
Penley, Wrexham

Drawing: Proposed Block Plan showing access and
indicative layout

Drawing:	Rev.	Scale	Paper	Drawn By:
SA22725/02N	D	1:500	A3	AB
				March 2017



50m Visibility Splays