

**Planning Obligation by Deed of Agreement  
under Section 106 of the Town and Country  
Planning Act 1990**

**relating to Land as 120 Rhosnesni Lane,  
Wrexham**

**Dated :** 15 July 2019

**WREXHAM COUNTY BOROUGH COUNCIL (1)  
and  
Home Aids (Developments) Limited (2)**

**Sioned Wyn Davies**

**Head of Corporate and Customer Services**

**Guildhall**

**Wrexham**

**LL11 1AY**

**Ref: NR/032704**

DATE 15 July 2019

#### PARTIES

- (1) Wrexham County Borough Council of Guildhall Wrexham LL11 1AY ("Council")
- (2) Home Aids (Developments) Limited (Co. No: 00759693) whose registered office is 110 Swan Mews, Swan Road, Lichfield, Staffordshire WS13 6TU the Owner")

#### 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 unregistered 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 3<sup>rd</sup> December 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 16 July 2018 submitted to the Council for the Development and allocated reference number P/2018/0588                                                                |
| "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                                                                                                                                                                                                                                                                                                                                                              |
| "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.                                                                                                                                                                                                                                                                                                                                    |
| "Plan A"                                | the Plan A attached to this Deed                                                                                                                                                                                                                                                                                                                                                                                                  |
| "Planning Permission"                   | the draft outline planning permission subject to conditions to be granted by the Council pursuant to the Application as set out in the Fourth Schedule.                                                                                                                                                                                                                                                                           |
| "Playing Fields and Parks Contribution" | means the sum of thirteen thousand pounds £13,000.00 (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 A and more particularly described in the First Schedule.                                                                                                                                                                                                                                                                                                             |



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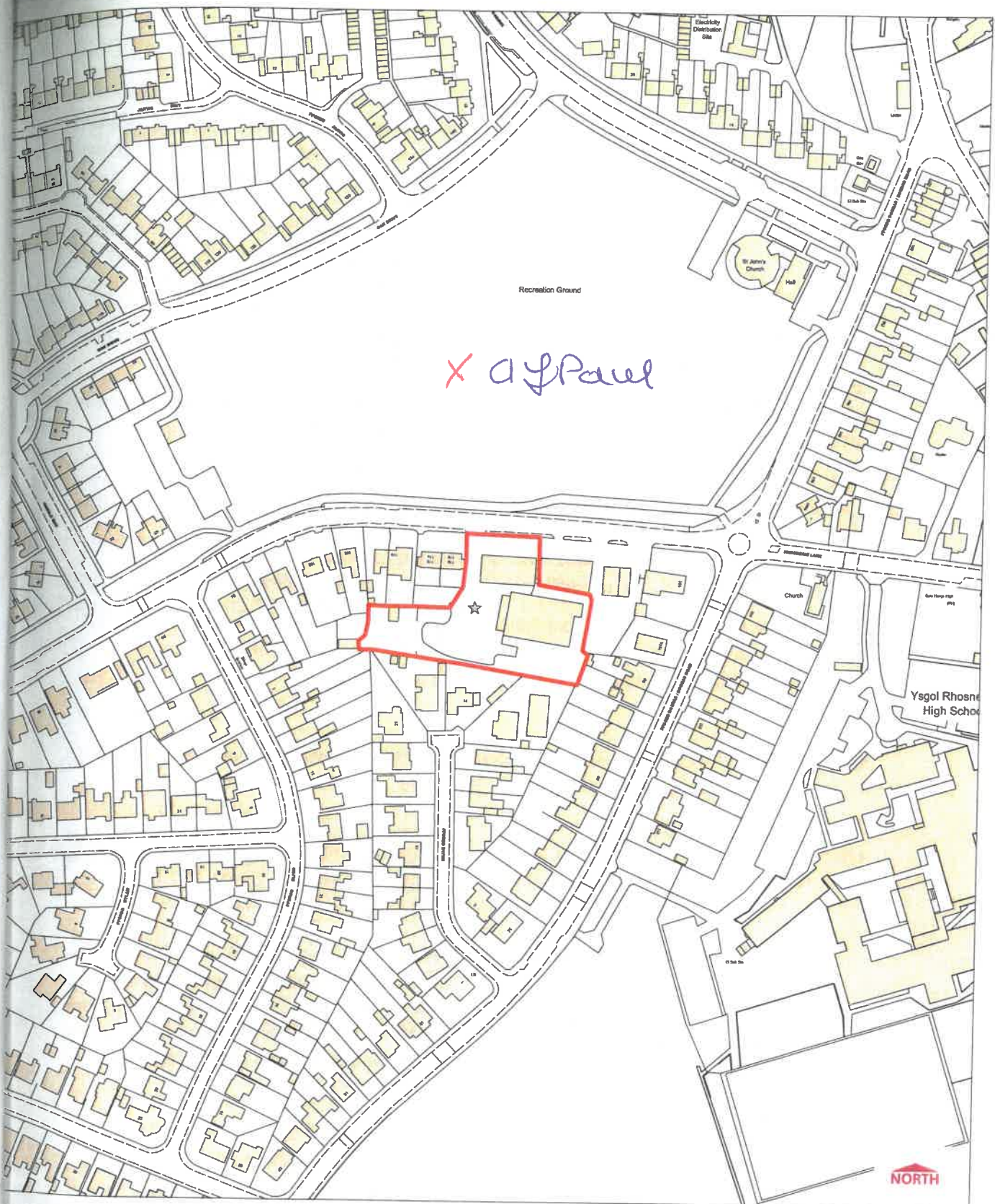
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**Town & Country Planning Act 1990  
Section 106 Obligation**



P/2018/0588  
120 Rhosnesni Lane, Rhosnesni, Wrexham

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## **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 as set out in the Second Schedule.
- 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 Third 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 one thousand pounds £1000.00
- 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 Environment and Planning 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 owner-occupiers or tenants of dwellings constructed pursuant to the Planning Permission nor against those deriving title from them.

- 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

The land known as 120 Rhosnesni Lane, Rhosnesni, Wrexham in the names of the Owner with title absolute under title which remains unregistered and conveyed to the Owner under a conveyance dated 22 March 1973 and made between Edward Clarke (1) and the Owner (2), a conveyance dated 29 July 1983 and made between Arthur Jeffrey Kirkham (1) and the Owner (2) and a conveyance dated 1 March 1985 and made between Edward Clarke (1) and the Owner (2) and for identification purposes shown edged in red on the Plan

## **SECOND SCHEDULE**

### **Owner's Covenants – Playing Fields and Parks Contribution**

On Commencement of Development the Owner shall pay the Playing Fields and Parks Contribution to the Council which shall be used by the Council to extend and improve the provision and facilities of Acton park play facilities.

### **THIRD 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 years of the date of receipt by the Council

**FOURTH SCHEDULE**  
**DRAFT PLANNING PERMISSION**

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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 I PAUL

**Code No** WRA P/2018/0588

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

**Date Received** 16/07/2018

**Decision Date**

## Town and Country Planning Act, 1990

### **Location of application**

120, RHOSNESNI LANE, RHOSNESNI, WREXHAM, LL12 7NE

### **Description of application**

DEMOLITION OF EXISTING SHOP AND STORAGE UNIT AND OUTLINE APPLICATION FOR RESIDENTIAL DEVELOPMENT (13 DWELLINGS)

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                     |
| H2   | Residential development within settlements |
| 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.

|                  |                                                                                                                       |                      |                 |
|------------------|-----------------------------------------------------------------------------------------------------------------------|----------------------|-----------------|
| <b>Applicant</b> | MR I PAUL                                                                                                             | <b>Code No</b>       | WRA P/2018/0588 |
| <b>Agent</b>     | BLUEPRINT LTD<br>MR DAFYDD EDWARDS<br>OFFICE 3K4, REDWITHER TOWER<br>WREXHAM INDUSTRIAL ESTATE<br>WREXHAM<br>LL13 9XT | <b>Date Received</b> | 16/07/2018      |
|                  |                                                                                                                       | <b>Decision Date</b> |                 |

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 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. 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.
5. Each part of the site subject to the remediation under the scheme(s) approved as part of condition 5 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.
6. 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.
7. No land drainage run-off or surface water shall be permitted to discharge or connect to the public sewerage system, either directly or

Applicant MR I PAUL

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WREXHAM  
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indirectly, and foul and surface water shall be drained separately from the site.

8. No part of the development shall commence until a Construction Traffic Management Plan including provisions for contractor parking has been submitted to and approved in writing by the Local Planning Authority and the Plan as is approved has been fully implemented.

#### 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. In the interests of the amenities of the future occupants of the buildings
5. In the interests of the amenities of the future occupants of the buildings
6. To protect the amenities of the occupiers of nearby properties.

Applicants are advised that compliance with condition no. 6 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.

7. To protect the integrity of the public sewerage system and prevent hydraulic overloading of the public sewerage system. To protect the health and safety of existing residents and to ensure no detriment to the environment.

|                  |                                                                                                                       |                      |                 |
|------------------|-----------------------------------------------------------------------------------------------------------------------|----------------------|-----------------|
| <b>Applicant</b> | MR I PAUL                                                                                                             | <b>Code No</b>       | WRA P/2018/0588 |
| <b>Agent</b>     | BLUEPRINT LTD<br>MR DAFYDD EDWARDS<br>OFFICE 3K4, REDWITHER TOWER<br>WREXHAM INDUSTRIAL ESTATE<br>WREXHAM<br>LL13 9XT | <b>Date Received</b> | 16/07/2018      |
|                  |                                                                                                                       | <b>Decision Date</b> |                 |

8. In the interests of highway safety.

**Note(s) to applicant**

Prior to any excavation taking place, the Council's Chief Public Protection Officer should be consulted regarding the possibility of any contamination on site and the necessity for the analysis of any soil samples. The Chief Public Protection Officer should be notified of any contamination discovered during the course of the work.

Applicants are advised that compliance with condition no. 7 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.



**Officer Appointed for this purpose**  
**Head of Environment and Planning**

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](http://www.wrexham.gov.uk/english/planning_portal/publications/info_sheets.htm)

### **CERTIFICATE**

Gareth Kelly of Gittins McDonald solicitors for the Owner (as defined in the within written Deed) hereby certifies that Paragraph (2) of the Introduction to this Deed is correct.

Signed

Dated

2019

EXECUTED as a DEED by affixing

THE COMMON SEAL of

WREXHAM COUNTY BOROUGH COUNCIL

in the presence of:-

*S Wyn Davies*

Head of Corporate and Customer Services

*Chief Officer Governance & Customer*

EXECUTED as a Deed by

HOME AIDS (DEVELOPMENTS) LIMITED ACTING BY:-

DIRECTOR *X of Paul* 30/6/2019

*Andrey Fay* IAN PAUL

in the presence of:

Signature *[Signature]*

Name

*GARETH MOSEY*

Address

*12 Grosvenor Road Wrexham*

Occupation

*Solicitor*

*2611 1800*

