

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

**relating to Land at Bridge Road North, adjacent
to Bridge Road Business Park, Wrexham
Industrial Estate, Wrexham**

Dated :

25th April

2019

WREXHAM COUNTY BOROUGH COUNCIL (1)

and

ANDREWS 4 WREXHAM LIMITED (2)

and

COOLPOINT LIMITED

and

NATIONAL WESTMINSTER BANK PLC

S W Davies

Head of Corporate and Customer Services

Guildhall

Wrexham

LL11 1AY

DATE

25th April

2019

PARTIES

- (1) **WREXHAM COUNTY BOROUGH COUNCIL** of Guildhall Wrexham LL11 1AY ("Council")
- (2) **ANDREWS 4 WREXHAM LIMITED** (Company Registration Number 10517423) of Portal House, Unit 2 Botterley Court, Nantwich Road, Calveley, Tarporley CW6 9GT ("the First Owner")
- (3) **COOLPOINT LIMITED** (Company Registration Number 03907391) of 10 Nicholas Street, Chester CH1 2NX ("the Second Owner")
- (4) **NATIONAL WESTMINSTER BANK PLC** (Company Registration Number 929027) of 250 Bishopsgate, London, EC2M 4AA and whose address for service is Credit Documentation PO Box 339, Manchester M60 2AH ("the Chargee")

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 First Owner is the freehold owner of the Site. There are no other legal interests in the Site.
- (3) The Second Owner is the freehold owner of adjoining land registered at HM Land Registry under Title Number WA508650 part of which is required a a visibility splay for the Development and the Chargee has a Registered Charge dated 23rd June 2014 over the land included within Title Number WA508650 and has consented to the Second Owner entering into the obligations contained herein.
- (4) The First 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.

- (5) The Council is minded to grant the Planning Permission subject to conditions in accordance with the Application and the First Owner has agreed to enter into this Deed by way of compliance with the Planning Permission and the Second Owner has agreed to enter into this Deed to the intent that the requirements of Condition 8 of the Planning Permission are met in so far as they relate to a visibility splay in the north easterly direction.

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 planning permission dated 19 th April 2018 submitted to the Council for the Development and allocated reference number P/2018/0325
"Butterflies Contribution"	means the sum of £13,940.00 (indexed in accordance with the provisions of this Deed) to be paid by the First Owner to the Council in accordance with the provisions of the Second Schedule
"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 as set out in the Application
"Great Crested Newt Contribution"	means the sum of £8,000.00 (indexed in accordance with the provisions of this Deed) to be paid by the First Owner to the Council in accordance with the provisions of the Second Schedule
"Ecological Mitigation Scheme"	means a scheme of ecological mitigation, compensation and enhancement measures to include details of a programme relating to timescales for implementation; to be submitted by the First Owner to the Council in accordance with the provisions of Clause 2 of the Second Schedule
"Off Site Habitat Mitigation Scheme Commuted Sum"	means the total sum being the Great Crested Newts Contribution and the Butterflies Contribution as set out in accordance with the provisions of this Deed to be paid by the First Owner to the Council as determined in accordance with the provisions of Clause 1 of the Second Schedule;

"Index"	All Items Index of Retail Prices issued by the Office for National Statistics
"Interest"	interest at 4 per cent above the base lending rate of the Barclays Bank Plc from time to time.
"Plans"	the Plans attached to this Deed
"Planning Permission"	the planning permission subject to conditions to be granted by the Council pursuant to the Application/the full planning permission subject to conditions to be granted by the Council pursuant to the Application
"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 Plan 1 and more particularly described in the First Schedule

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 First Owner and the second 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 First Owner and the second Owner respectively

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 OWNERS' AND CHARGEES' COVENANTS AND CONSENTS

- 5.1 The First Owner covenants with the Council as set out in the Second Schedule.
- 5.2 The First Owner shall serve on the Council a notice of Commencement of Development not less than two days before Commencement of Development.
- 5.3 The Second Owner hereby covenants with the Council to observe the obligations and restrictions specified in the Fourth Schedule hereto.
- 5.4 The Chargee hereby consents to the Second Owner entering into the obligations contained herein and acknowledges that the part of the land within Title Number WA508650 shown hatched red on Plan 2 annexed hereto being 2.4 metres x 120 metres as measured to a 400mm off set of the near side kerb ("the proposed north easterly visibility splay") shall be bound by the obligations and restrictions specified in the Schedule hereto PROVIDED THAT the Chargee shall not be held liable for any breach of the obligations herein unless committed or continuing at a time when the Chargee becomes or is a mortgagee in possession of its relevant interest

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 copied, copied or reproduced in any way, or used for any other
 purpose, without the written consent of A203 P.E.D Limited.

Follow any stated dimensions - do not scale, IF IN DOUBT ASK
 This drawing has been prepared for feasibility purposes and does
 not represent a construction plan. All dimensions are to be
 confirmed at the appropriate detailed design stage.

Section History

Rev	Description	Date
1	Issue for client approval	10/01/2018
2	Issue for client approval	10/01/2018
3	Issue for client approval	10/01/2018
4	Issue for client approval	10/01/2018
5	Issue for client approval	10/01/2018
6	Issue for client approval	10/01/2018
7	Issue for client approval	10/01/2018
8	Issue for client approval	10/01/2018
9	Issue for client approval	10/01/2018
10	Issue for client approval	10/01/2018

land to be purchased by applicant (subject to planning)

land to be subject to Section 106 agreement with the adjacent landowner / LNA, to enable building on land within the visibility splay

axis

Project: Bridge Road North Wrotham

Client: [Redacted]

Location: [Redacted]

Scale: 1:500

Drawn by: [Redacted]

Checked by: [Redacted]

Date: 10/01/2018

Revision: 1

planning environment design



Existing footpath, existing school, falls within visibility splay. This is not considered to represent a road safety hazard, with the school for the school children. In general, pedestrian crossings to visibility splay are not large enough to allow a vehicle to pass a vehicle. Including a school or other user will not have a significant impact on road safety.



Existing lighting columns (falls within visibility splay). This is not considered to represent a road safety hazard, with the school for the school children. In general, pedestrian crossings to visibility splay are not large enough to allow a vehicle to pass a vehicle. Including a school or other user will not have a significant impact on road safety.

Signature

PLAN 2

in the north easterly visibility splay..

6 THE COUNCIL'S COVENANTS

- 6.1 The Council covenants with the First Owner as set out in the Third Schedule.

7 MISCELLANEOUS

- 7.1 The First 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 £1,000.00.

- 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 First Owner or the Second 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 First 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 or the north easterly visibility splay 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 the First Owner or the Second 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 the First Owner or the Second Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

9 CHANGE IN OWNERSHIP

The First 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

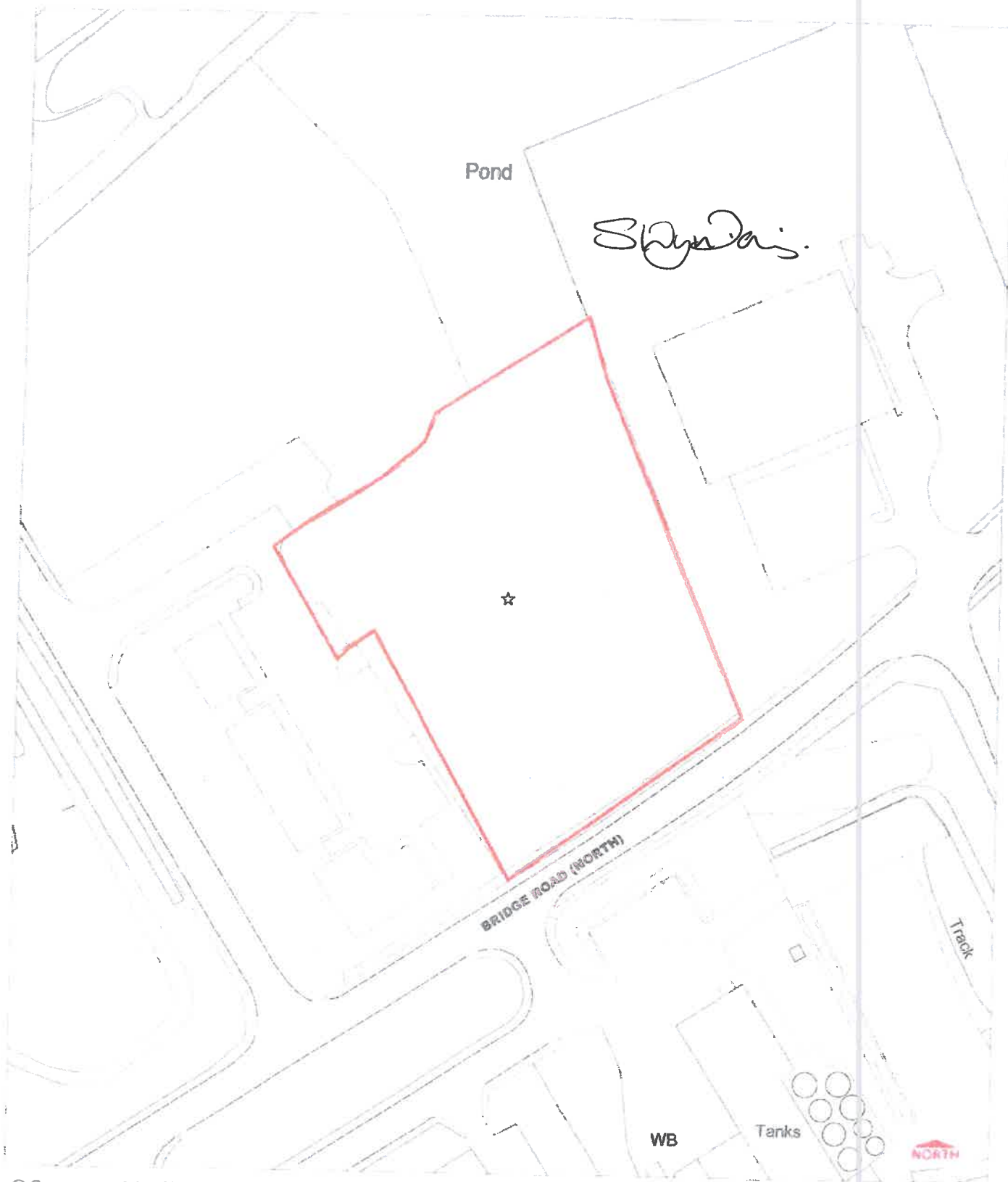
The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

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

THE FIRST SCHEDULE

Description of the Site

Land shown edged red on Plan 1 being land at Bridge Road North, adjacent to
Bridge Road Business Park, Wrexham Industrial Estate, Wrexham



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Head of Environment and Planning
Environment and Planning Department
16 Lord Street, Wrexham
LL11 1LG

22/11/2018
Scale 1:1250
SJ 3849

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



P/2018/0325
Vacant Site, Bridge Road North,
Adjacent to Bridge Road Business Park
Wrexham Industrial Estate, Wrexham

wrexham
COUNTY BOROUGH COUNCIL
CYNGOR Y WREXHAM
wrecsam

THE SECOND SCHEDULE

First Owner's Covenants

Off Site Habitat Mitigation Scheme Commuted Sum

1. On Commencement of Development the First Owner shall pay the Off Site Habitat Mitigation Scheme Commuted Sum to the Council and the monies paid shall be used by the Council to provide off site mitigation, enhancement and/or maintenance for great crested newts and butterflies within Wrexham.

Ecological Mitigation Scheme

2. The First Owner shall not Commence Development until a Ecological Mitigation Scheme has been submitted to and approved the Council

THE THIRD SCHEDULE

Council's Covenants

Discharge of obligations

- 1 The Council covenants with the First Owner to use the Off Site Habitat Mitigation Scheme Commuted Sum received from the First 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 First Owner that it will repay the First Owner such amount of the Off Site Habitat Mitigation Scheme Commuted Sum made by the First Owner to the Council under this Deed which has not been expended in accordance with the provisions of this Deed within 5 years from the date of receipt by the Council of the final payment in accordance with the provisions of the Second Schedule hereto together with Interest from the date of the payment to the date of refund.

THE FOURTH SCHEDULE

Second Owner covenants

- (1) Not to obstruct nor to permit any other person to obstruct any part of the north easterly visibility splay of 2.4 metres x 120 metres in the north easterly direction shown cross hatched red on Plan 2 annexed hereto as measured to a 400mm offset of the nearside kerb with any obstruction in excess of 1 metre in height above the level of the nearside edge of the adjoining carriageway
- (2) Permanently to retain the said north easterly visibility splay clear of any such obstruction to visibility referred to in Paragraph 1 of this Schedule

512

County Borough

The Common Seal of Wrexham District Council
was hereunto affixed in the
presence of:-

Shirley Davis

Head of Corporate and Customer Services



80/19

EXECUTED as a DEED by

ANDREWS 4 PROPERTY LIMITED

acting by

Director

Director/Secretary

EXECUTED as a DEED by

COOLPOINT LIMITED

acting by

Director

Director/Secretary

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The Common Seal of Wrexham District Council
was hereunto affixed in the
presence of:-

Head of Corporate and Customer Services

EXECUTED as a DEED by

ANDREWS 4 PROPERTY LIMITED

acting by

Director



Director/Secretary



EXECUTED as a DEED by

COOLPOINT LIMITED

acting by

Director

.....

Director/Secretary

.....

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Head of Corporate and Customer Services

EXECUTED as a DEED by
ANDREWS 4 PROPERTY LIMITED

acting by

Director

Director/Secretary

EXECUTED as a DEED by

COOLPOINT LIMITED

acting by

Director 

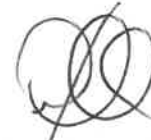
Director/Secretary 

SIGNED AND DELIVERED as a DEED for and on behalf of

NATIONAL WESTMINSTER BANK PLC

by a duly authorised attorney

in the presence of



Martyn Freeman

DOCUMENTOR
CREDIT DOCUMENTATION

REF 5535220 / mob

Signature of witness:

Name (in BLOCK CAPITALS):

Address:
DOCUMENTOR
CREDIT DOCUMENTATION

