

DATE:

3RD NOVEMBER

2006

WREXHAM COUNTY BOROUGH COUNCIL (1)

AND

CLWYD ALYN HOUSING ASSOCIATION LIMITED (2)

SECTION 106 AGREEMENT

Relating to land at Britannia Depot, Rhostyllen
in the County Borough of Wrexham

3RD NOVEMBER

2006

BETWEEN

WREXHAM COUNTY BOROUGH COUNCIL of Guildhall Wrexham LL11 1AY ("the Council") (1) and

CLWYD ALYN HOUSING ASSOCIATION LIMITED of 46 – 54 Water Street Rhyl LL18 1SJ ("Clwyd Alyn") (2)

RECITALS

- (1) The Council is the local Planning Authority within the meaning of the Town and Country Planning Act 1990 ("**the Act**") for the area in which the land described in the First Schedule hereby ("**the Property**") is situate and by whom the obligations contained in this Deed are enforceable
- (2) The Owner is a registered social landlord within the meaning of the Housing Act 1996 and is the owner of the Property in fee simple in possession free from incumbrances
- (3) By virtue of an application, dated 5 December 2005 which has been allocated code number P/2005/1385 ("**the Application**") application has been made to the Council for planning permission for the development specified in the Second Schedule hereto ("**the Development**") on the Property
- (4) The Council has decided to grant planning permission for the Development subject to conditions ("**the Planning Permission**") in accordance with the Application subject to the execution of this Deed without which planning permission for the Development would not have been granted and a draft of the Planning Permission is annexed to this Deed and marked "Annexure A"

1. DEFINITIONS/INTERPRETATION

1.1 In this Deed the following words shall (unless the context otherwise requires) have the following meanings (in addition to those hereinbefore defined):-

“Affordable Housing”

means housing on the Development that will initially and successively be occupied by way of a Shared Ownership Lease by persons in housing need on terms (including those set out in paragraph 3 of the Fourth Schedule hereto) that ensure that such housing would be available for occupation on that basis in perpetuity

“Alternative Affordable Housing”

means housing on the Development that will initially and successively be occupied by persons in housing need by way of mechanisms other than that of Shared Ownership Lease (including but not limited to the relationship of landlord and tenant) which ensure that such housing will be available for occupation by persons in housing need in perpetuity.

“Close Family Association”

means that a person has a member of his or her family as defined in Section 113 of the Housing Act 1985 resident in the relevant geographical area

“Dwellings”

means dwelling unit(s) and or dwelling(s) on the Development which includes any land forming the curtilage of such unit of accommodation and any garage or other structure which may be attached to or let with such unit of accommodation

“Eligible Person”	means a person or persons in need of affordable housing and who satisfies the criteria set out in the Sixth Schedule to this agreement
“employment”	means that a person is permanently employed or self-employed full-time (or has accepted in writing a firm offer of employment)
“the Housing Obligation”	means the obligations set out in the Fourth Schedule hereto
“in housing need” and “in need of affordable housing”	describes persons who by reason of their limited income are unable to purchase a suitable house on the open market
“Market Value”	means such sum as shall be determined between a Shared Owner and Clwyd Alyn as the price at which a dwelling forming part of the Development might reasonably be expected to be let for a term of 125 years at arms length by a willing seller to a willing buyer but taking into account all encumbrances to which the dwelling is subject or if such sum cannot be agreed the average of three written valuations of the dwelling obtained by Clwyd Alyn
“the Obligations”	means the Open Space Obligation and the Housing Obligation
“the Open Space”	means the area or areas of public open space to be provided on the Development (as described in the Application and accompanying documentation by

reference to which the Planning Permission will be granted)

“the Open Space Obligation”

means the obligations set out in the Third Schedule hereto

“Open Space Transfer”

means a transfer to the Council of the freehold interest in the Open Space in a form which includes the provisions set out in the Fifth Schedule hereto for a consideration of one pound (£1) which shall actually be paid

“Shared Owner”

means an Eligible Person who is granted a Shared Ownership Lease of a dwelling on the Development

“Shared Ownership Lease”

means a lease of a dwelling on the Development between Clwyd Alyn and a Shared Owner which grants to the Shared Owner a 125 year lease at a premium of between 50% and 85% of the Market Value and requires a Shared Owner to pay rent to Clwyd Alyn in respect of the remaining percentage of the value of the leasehold

“Staircasing Provisions”

means provisions in a Shared Ownership Lease permitting the acquisition by a Shared Owner of an increased share in the dwelling

- 1.2 The expression “the Council”, and “Clwyd Alyn” shall include their respective successors in title and assigns except for the lessee or tenant of any completed dwelling forming part of the Development

NOW THIS DEED which is made in pursuance of Section 106 of the Town and Country Planning Act 1990 **WITNESSETH** as follows:-

1. Clwyd Alyn hereby covenants with the Council to perform the Obligations
2. It is hereby agreed and declared as follows:-
 - 2.1 The Obligations are a planning obligation for the purposes of Section 106 of the Act
 - 2.2 The Obligations relate to the Property
 - 2.3 The Obligations are enforceable by the Council as local planning authority
 - 2.4 The Council will issue the Planning Permission to the applicant who made the Application on completion of this Deed
 - 2.5 No party hereto shall be liable for a breach of the Obligations after they shall have parted with an interest in the Property but this provision shall not affect any liability of such party in respect of any antecedent breach of the Obligations in existence at the time such party disposes of such interest
 - 2.6 The Obligations shall take effect upon a date which shall be specified by the party intending to implement the Planning Permission in a written notice served upon the Council as the date upon which the Development is to be commenced (such notice to be served not less than seven days before such date)
 - 2.7 If the party intending to implement the Planning Permission fails to serve the notice referred to in 2.6 before commencement of the Development the Obligations shall take effect upon the actual date upon which the Development is begun within the meaning of Section 56 of the Act
 - 2.8 The Obligations are a Local Land Charge and shall be registered as such
 - 2.9 This Deed will not prevent the Council from exercising its statutory powers under any legislation

- 2.10 If that part of the Open Space Obligation which is designated (ii) in the Third Schedule hereto does not fall to be performed within two years of the date hereof the sum specified therein shall be increased in proportion to the increase in the Index of Retail Prices maintained by the Office of National Statistics between the date of this deed and the date upon which such part of the Open Space Obligation falls to be performed
- 2.11 The parties to the transfer by way of which that part of the Open Space Obligation which is designated "(i)" in the Third Schedule hereto is performed shall each bear their own legal costs in connection with such transfer
3. Clwyd Alyn will pay to the Council on the date hereof the sum of six hundred pounds (£600) inclusive of any value added tax payable thereon representing the Council's legal costs of the approval of this Deed
4. It is not intended that a third party shall have any right to enforce any provision of the Deed under the Contracts (Rights of Third Parties) Act 1999
5. Nothing in this Deed shall oblige the Council to expend the sum of money referred to in that part of the Open Space Obligation designated (ii) therein or any other specific sum upon the maintenance of the Open Space and the expenditure of the said sum shall be at the sole discretion of the Council in relation to the time when and the open space location or locations in respect of which it shall be disbursed
6. The Council undertakes with Clwyd Alyn that forthwith upon compliance with the Open Space Obligation the Council will apply to the Chief Land Registrar for entry of the Council as registered proprietor of the open space on the registers of title pursuant to the Land Registration Act 2002
7. Any dispute or difference arising between the parties with regard to their respective rights and obligations as to any matter or thing in any way arising out of or connected with this Deed shall (except as otherwise expressly provided) be referred within 10 working days of either party sending notice to the other that such a reference is necessary to the decision of a single arbitrator to be agreed by the parties on failing agreement between them to be

nominated by the President for the time being of the Royal Institution of Chartered Surveyors and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any modification of re-enactment thereof for the time being in force and the arbitrator shall act as an expert and his decision shall be final and binding on the parties to the dispute or difference and his costs shall be payable in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares

8. If at any time after the Housing Obligation has been complied with in so far as all the Dwellings have been initially let by way of Shared Ownership Leases Clwyd Alyn forms the view that it would be more advantageous to provide accommodation for an Eligible Person by way of Alternative Affordable Housing it may apply to the Council for approval to do so and the Council shall not unreasonably withhold or delay its approval provided that:-

(a) Clwyd Alyn provides such information in respect of the type of Alternative Affordable Housing for which approval is sought as the Council may reasonably require ; and

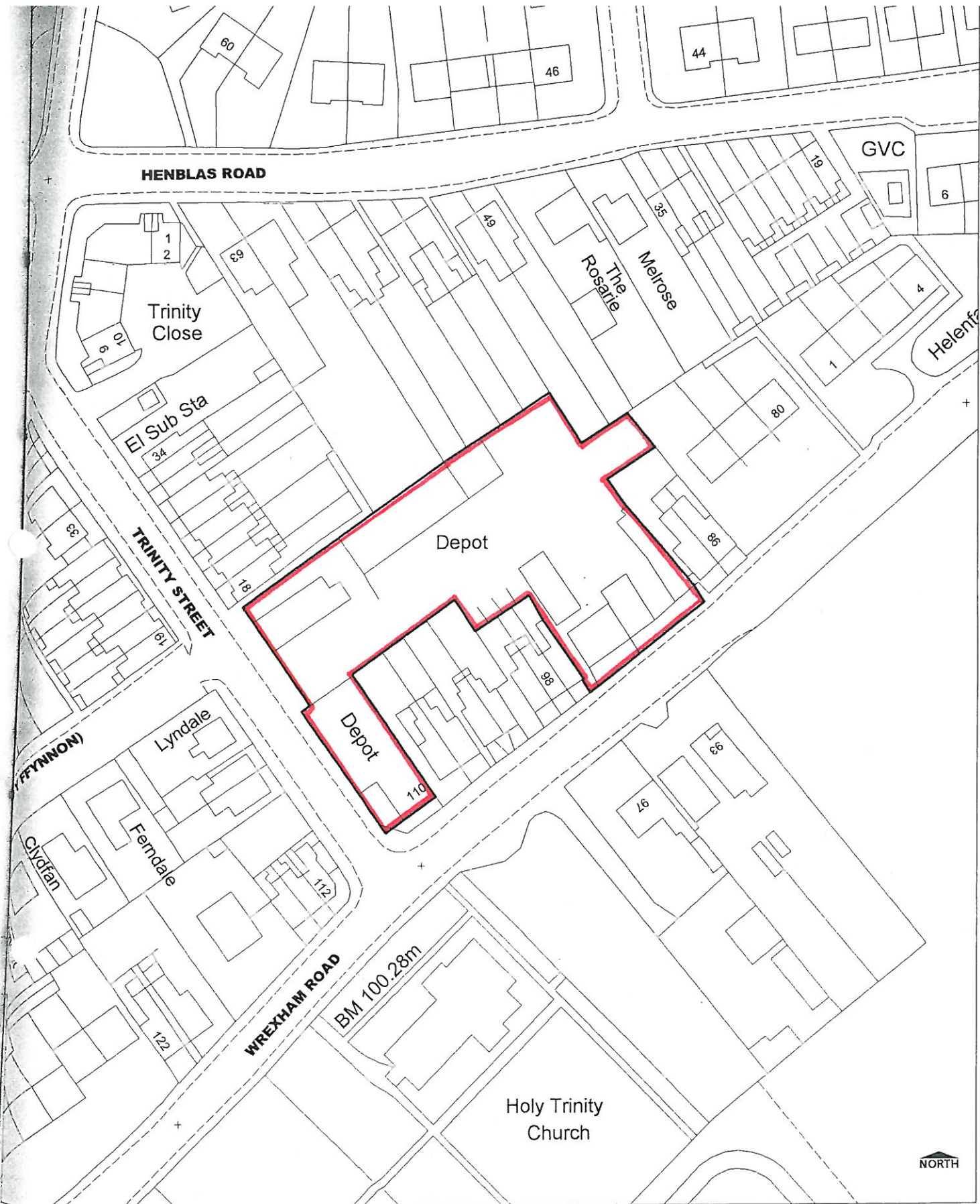
(b) those provisions of the Fourth Schedule which are applicable to the type of Alternative Affordable Housing approved by the Council pursuant to this provision shall remain in force in relation thereto

9. The provisions of the Fourth Schedule shall not be binding on a mortgagee of a Dwelling acquired by an individual or individuals jointly under a Shared Ownership Lease or a Dwelling acquired by an individual or individuals jointly pursuant to a proposal approved by the Council in accordance with clause 8 of this agreement

IN WITNESS WHEREOF the parties have executed this Deed as a deed the day and year first before written

THE FIRST SCHEDULE

("the Property")



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Chief Planning Officer
 Lampbit Street, Wrexham LL11 1AR
 Telephone 01978 292017. Fax 01978 292502
 Produced By : HG
 Date : 14/09/2006

Scale 1:1000 SJ3148

Town and County Planning Act 1990 Section 106 Obligation
 P/2005/1385 Britannia Depot,
 Wrexham Road, Rhostyllen, Wrexham.



ALL THAT freehold land situate off Wrexham Road and Trinity Street, Rhostyllen in the County Borough of Wrexham shown for identification purposes edged red on the attached plan

THE SECOND SCHEDULE

("the Development")

The construction on the Property of 14 dwellings, construction of new vehicular and pedestrian access, public open space and all associated works

THE THIRD SCHEDULE

("the Open Space Obligation")

- (i) Within 21 days of the end of the period of one year referred to in condition number three subject to which the Planning Permission will be granted to execute the Open Space Transfer
- (ii) Upon the date of completion of the Open Space Transfer to pay to the Council the sum of Seven Thousand pounds (£7,000) representing the cost of future maintenance of the Open Space

THE FOURTH SCHEDULE

("The Housing Obligation")

1. Not to dispose of any dwelling otherwise than as Affordable Housing to an Eligible Person and by way of a Shared Ownership Lease which shall contain the provisions set out in paragraph three of this Schedule
2. In allocating dwellings to Eligible Persons to afford priority to persons whose names are on the housing waiting lists held by the Council in its capacity as local housing authority or those held by Clwyd Alyn

- 3(a) A right of pre-emption in favour of Clwyd Alyn
- (b) Provisions which prevent the acquisition (whether by way of Staircasing Provisions or otherwise) by a Shared Owner of an interest in the dwelling in excess of 85%
- (c) A provision preventing the Shared Owner from letting or sub-letting the dwelling
- (d) A provision whereby a Shared Owner who wishes to dispose of their interest in the dwelling (and where the landlord does not wish to exercise the right of pre-emption referred to in sub-paragraph (a) of this paragraph shall be prevented from disposing of their interest in the dwelling other than to an Eligible Person and for a sum in excess of the premium paid by the Shared Owner on grant of the Shared Ownership Lease and being a sum equal to the same percentage of the then Market Value of the dwelling as the Shared Owner then holds pursuant to the Shared Ownership Lease
- 4. At all times to keep such full and proper records as shall enable it to demonstrate to the Council strict compliance with the provisions of this deed.
- 5. To take reasonable steps at all times to the satisfaction of the Council to ensure compliance with the provisions and covenants of the Shared Ownership Leases on the part of Shared Owners for the time being of the dwellings

THE FIFTH SCHEDULE

(Provisions to be incorporated in the Open Space Transfer)

- (a) A covenant by the Council that the Open Space shall not be used otherwise than as open space for the public amenity (such covenant to bind each and every part of the Open Space for the benefit of the remainder of the Property and each and every part thereof)
- (b) A covenant by the Council to maintain the Open Space in a condition fit for use as such (such covenant to bind each and every part of the Open Space for the benefit of the remainder of the Property and each and every part thereof)

- (c) An exception and reservation in favour of the remainder of the Property of rights and easements in respect of drainage and conducting media so far as the same shall be in existence at the date of the Open Space Transfer or required for the purpose of carrying out the Development together with rights of entry upon the Open Space to lay inspect repair renew and replace the said drainage and conducting media subject to the proviso that such exceptions reservations and rights of entry shall not materially restrict prejudice or detrimentally affect any of the landscaping planning amenity works or vegetation upon the Open Space

THE SIXTH SCHEDULE
(definition of an "Eligible Person")

An Eligible Person means a person who:-

1. has resided personally or has had a close family association in the Esclusham electoral ward of the Council's area (as identified as area 14 on the plan contained in Annexure B) for a continuous period of one year immediately preceding the date upon which he is granted a Shared Ownership Lease
or
2. is in employment at a location within the said ward and has been in employment for a period of six months immediately preceding the date upon which he is granted a Shared Ownership Lease
or
3. has previously resided or has had a close family association in the said ward or been in employment therein for a continuous period of five years

Provided that

4. If no person meeting the requirements in paragraphs 1 - 3 can be identified from the housing waiting lists referred to in paragraph 2 of the Fourth Schedule hereto and a period of at least eight weeks has elapsed after an advertisement seeking such a person has been placed in a newspaper circulating in the Wrexham locality then the references in paragraph 1 - 3 of this Schedule to the Esclusham ward shall be treated as if they included the wards immediately adjoining thereto (identified as areas 6, 11, 29, and 39 on the plan contained in

Annexure B) and any person who satisfies one of the said criteria by virtue of such treatment shall be regarded as an Eligible Person for the purposes of this deed

Provided further that

5. Where no person meeting the requirements (or who by virtue of the provisions of paragraph 4 hereof can be regarded as meeting the requirements) of paragraphs 1 – 3 hereof can be identified from the sources mentioned therein and a period of at least eight weeks has elapsed after an advertisement seeking such a person has been placed as set out in paragraph 4 hereof then the references in paragraphs 1 – 3 hereof to the Esclusham ward shall be treated as if they included any ward in the Wrexham County Borough Council area (as identified on the plan contained in Annexure B) and any person who satisfies one of the said criteria by virtue of such treatment shall be regarded as an Eligible Person for the purposes of this deed
6. If no person meeting the requirements (or who by virtue of the provision of paragraphs 4 or 5 hereof can be regarded as meeting the requirements) of paragraph 1 – 3 hereof can be identified from the sources mentioned therein and a period of at least 8 weeks has elapsed after an advertisement seeking such a person has been placed as set out in paragraph 4 hereof then the definition of "Eligible Person" in this deed shall be treated as if it had omitted reference to this Schedule and Clwyd Alyn shall in such cases be at liberty to grant or consent to an assignment of a Shared Ownership Lease to any person who is in need of affordable housing
7. If Clause 8 of this agreement operates then references in this Schedule to "Shared Ownership Lease" shall be read as if they had been references to the type of Alternative Affordable Housing agreed pursuant thereto.

ANNEXURE A
Draft Planning Permission

In pursuance of its powers under the Acts an 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

Expiry Date: 29/01/2006
Decision Notice Sent Date:
Grid Reference:
E 331521

1

348672

N

Applicant	Pennaf Ltd	Code	ESC P/2005/1385
Agent	ISP Architects 61 Regent Street Wrexham LL11 1PF	Number	
		Date	05/12/2005
		Received	
		Decision	
		Date	

DRAFT

Town and Country Planning Act, 1990

Location of application

Britannia Depot Wrexham Road Rhostyllen Wrexham LL144DL

Description of application

Demolition of existing council depot and erection of 14 no. dwellings and relaxation of Condition No. 4 of application P/2003/1201 to allow a reduced area of public open space

In reaching this decision the Council has had regard to the relevant policies in the Wrexham Unitary Development Plan which are as follows:-

Particulars of decision APPROVAL of reserved matters

Subject to the following:-

Condition(s)

1. The development hereby approved shall be commenced before 14.12.08.
2. No part of the development shall be commenced until samples of all external facing and roofing materials have been submitted to and approved in writing by the Local Planning Authority. The development shall only be carried out in strict accordance with such details as are approved.
3. The open amenity areas indicated on Drawing No. L(9)01 rev A shall be completed to a standard indicated in writing by the Local Planning Authority as

Applicant Pennaf Ltd

Code ESC P/2005/1385

Agent ISP Architects
61 Regent Street
Wrexham
LL11 1PF

Number
Date 05/12/2005
Received

Decision
Date

suitable for adoption as public open space prior to occupation of any dwelling erected on the site and shall thereafter be maintained to that standard for a minimum period of one year.

4. Development shall only be carried out in strict accordance with the approved plans or with any amendments thereto approved in writing by the Local Planning Authority

5. Development shall not begin on site until a scheme to deal with potential contamination at the site has been submitted to and approved in writing by the Local Planning Authority. This scheme shall include a phased investigation approach to identify the extent of contamination and any measures required to remediate the site, including post-development monitoring.

6. This permission shall operate only to allow development to be carried out in accordance with the approved drawings and the application documentation. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, no further development shall take place within the site (other than the painting of the buildings).

7. Drainage details required.

Reason(s)

1. To comply with the terms of the outline planning permission.
2. To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area.
3. To ensure that public open space is provided and maintained in the interests of amenity of residents.
4. To ensure that the development fully complies with the appropriate policies and standards.
5. In the interests of the amenities of the future occupants of the buildings
6. Due to the restricted application site and its relationship with adjoining properties it is considered important to ensure that no additional development as described in the condition is carried out without the permission of the Local Planning Authority.

Note(s) to applicant

It is possible that there may be a well on site and you should ensure that any measures are taken to avoid danger or pollution resulting.

It is advised that the contamination report must address issues relating to the underground fuel tanks.

Any proposed demolition works may NOT be commenced until the appropriate Notice has been served on this authority under the provisions of Section 80 of the Building Act, 1984. You are, therefore, advised to contact the Building Control Section to enable you to make the necessary application.

Applicant Pennaf Ltd

Code ESC P/2005/1385

Agent ISP Architects
61 Regent Street
Wrexham
LL11 1PF

Number
Date 05/12/2005
Received

Decision
Date

The proposed development lies within a former coal mining area. You should take account of any hazards to stability which may arise from coal working in or near the site. Specific advice on any past working may be obtained from the Coal Authority Mining Reports Service. Phone 0845 762 6848 or from www.coal.gov.uk.

Any operations which may involve entry into former workings, shafts or adits or implementation of site investigations or other works may need permission from the Coal Authority.



Officer Appointed for this purpose
Refer to the Statement of Applicant's Rights and General Information Enclosed

Chief Planning Officer, Lambpit Street, P O Box 1290, Wrexham, LL11 1WL.

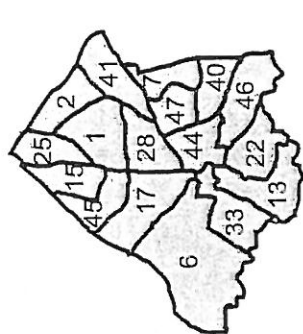
ANNEXURE B

Ward Plan

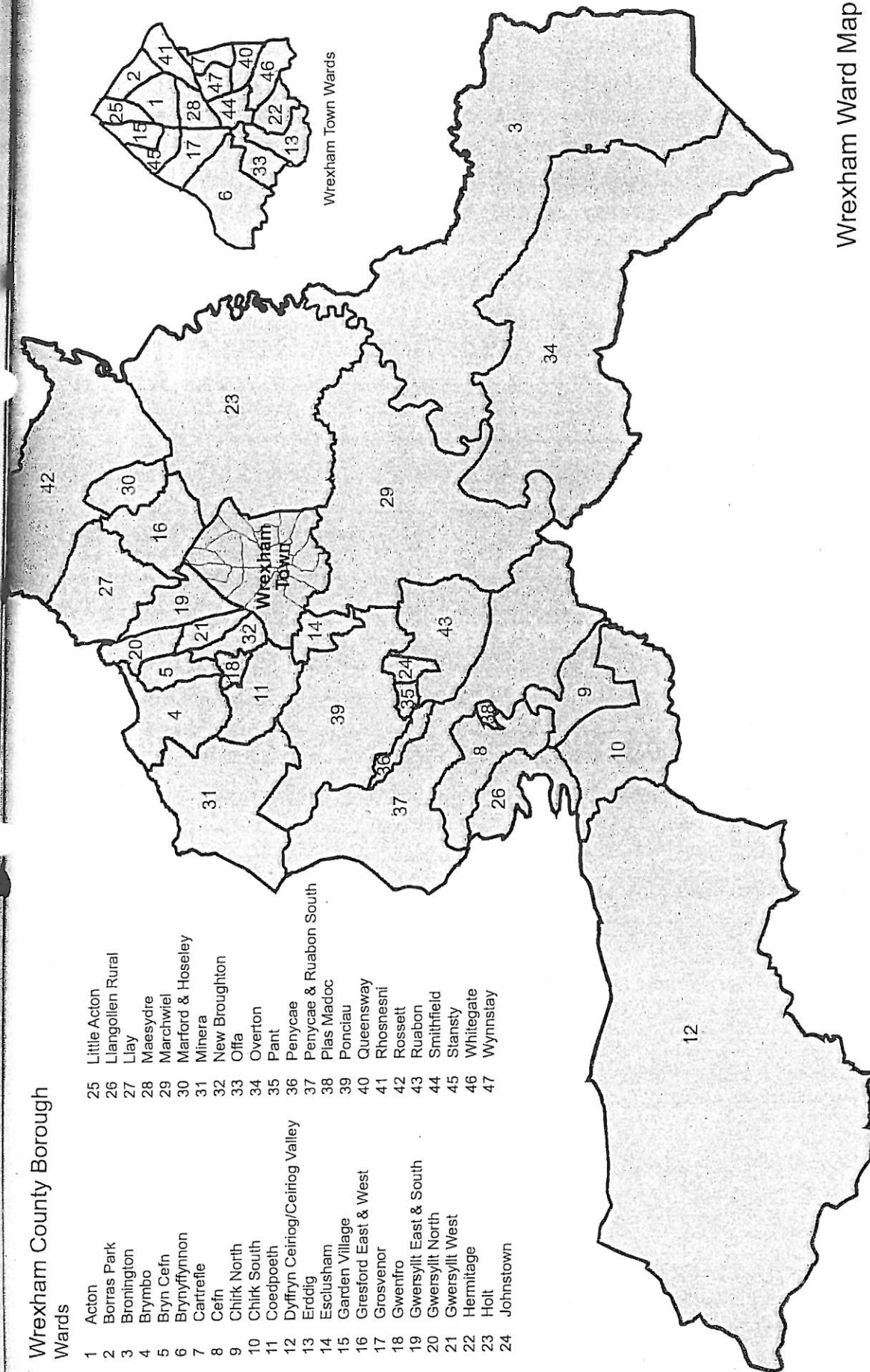
Wrexham County Borough

Wards

- | | |
|-----------------------------------|---------------------------|
| 1 Acton | 25 Little Acton |
| 2 Borras Park | 26 Liangollen Rural |
| 3 Bronington | 27 Liay |
| 4 Brymbo | 28 Maesydre |
| 5 Bryn Cefn | 29 Marchwiel |
| 6 Brynffynnon | 30 Marford & Hoseley |
| 7 Cartrefe | 31 Minera |
| 8 Cefn | 32 New Broughton |
| 9 Chirk North | 33 Offa |
| 10 Chirk South | 34 Overton |
| 11 Coedpoeth | 35 Pant |
| 12 Dyffryn Ceiriog/Ceiriog Valley | 36 Penycae |
| 13 Eddig | 37 Penycae & Ruabon South |
| 14 Esclusham | 38 Plas Madoc |
| 15 Garden Village | 39 Ponciau |
| 16 Gresford East & West | 40 Queensway |
| 17 Grosvenor | 41 Rhosnesni |
| 18 Gwernfro | 42 Rossett |
| 19 Gwersyllt East & South | 43 Ruabon |
| 20 Gwersyllt North | 44 Smithfield |
| 21 Gwersyllt West | 45 Stansty |
| 22 Hermitage | 46 Whitegate |
| 23 Holt | 47 Wynnstay |
| 24 Johnstown | |



Wrexham Town Wards

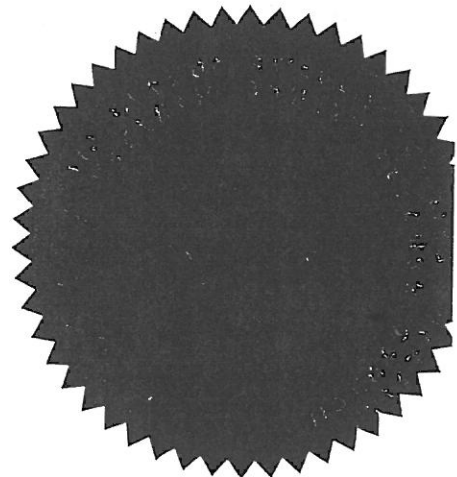


Wrexham Ward Map

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



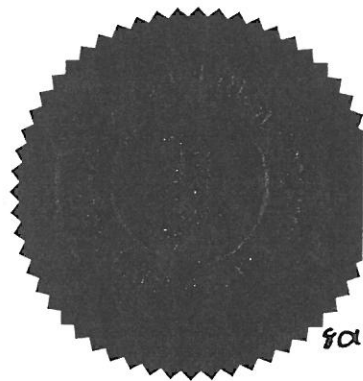
~~Chief Legal and Administration Officer~~
Principal Solicitor(Corporate)



403/06 (a)

EXECUTED as a DEED by the affixation of
THE COMMON SEAL of CLWYD ALYN
HOUSING ASSOCIATION LIMITED
in the presence of

Secretary



Board Member

