

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

relating to Land off Wheatsheaf Lane, Gwersyllt,
Wrexham

Dated :

11th August

2015

WREXHAM COUNTY BOROUGH COUNCIL (1)

and

WALES & WEST HOUSING ASSOCIATION LIMITED (2)

DATE

11th August

2015

PARTIES

- (1) **WREXHAM COUNTY BOROUGH COUNCIL** of Guildhall Wrexham LL11 1AY ("Council")
- (2) **WALES & WEST HOUSING ASSOCIATION LIMITED** (Company Number IP21114R) of 3 Alexandra Gate, Ffordd Pengam, Tremorfa, Cardiff, CF24 2UD ("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 freehold owner 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 is minded to grant the Planning Permission subject to conditions in accordance with the Application and the Owner has agreed to enter into this Deed by way of compliance with condition number 2 of the Planning Permission.

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 08 September 2014 submitted to the Council for the Development and allocated reference number P/2014/0674
"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

"Dwelling"

means a residential dwelling comprising either a flat or house within the Development

"Educational Contribution"

means the sum of £17,760.00 being the Primary Education Contribution and Secondary Education Contribution indexed in accordance with the provisions of this Deed to be paid by the Owners to the Council in accordance with the provisions of the Second Schedule

"First Occupation Date"

means the date on which the first Dwelling in the Development is first occupied for residential use (excluding any use for construction, fitting out or marketing)

"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.

"Plan"

the Plan attached to this Deed

"Planning Permission"

the planning permission subject to conditions to be granted by the Council pursuant to the Application a draft of which is annexed to this Agreement at Annex 1.

"Practical Completion"

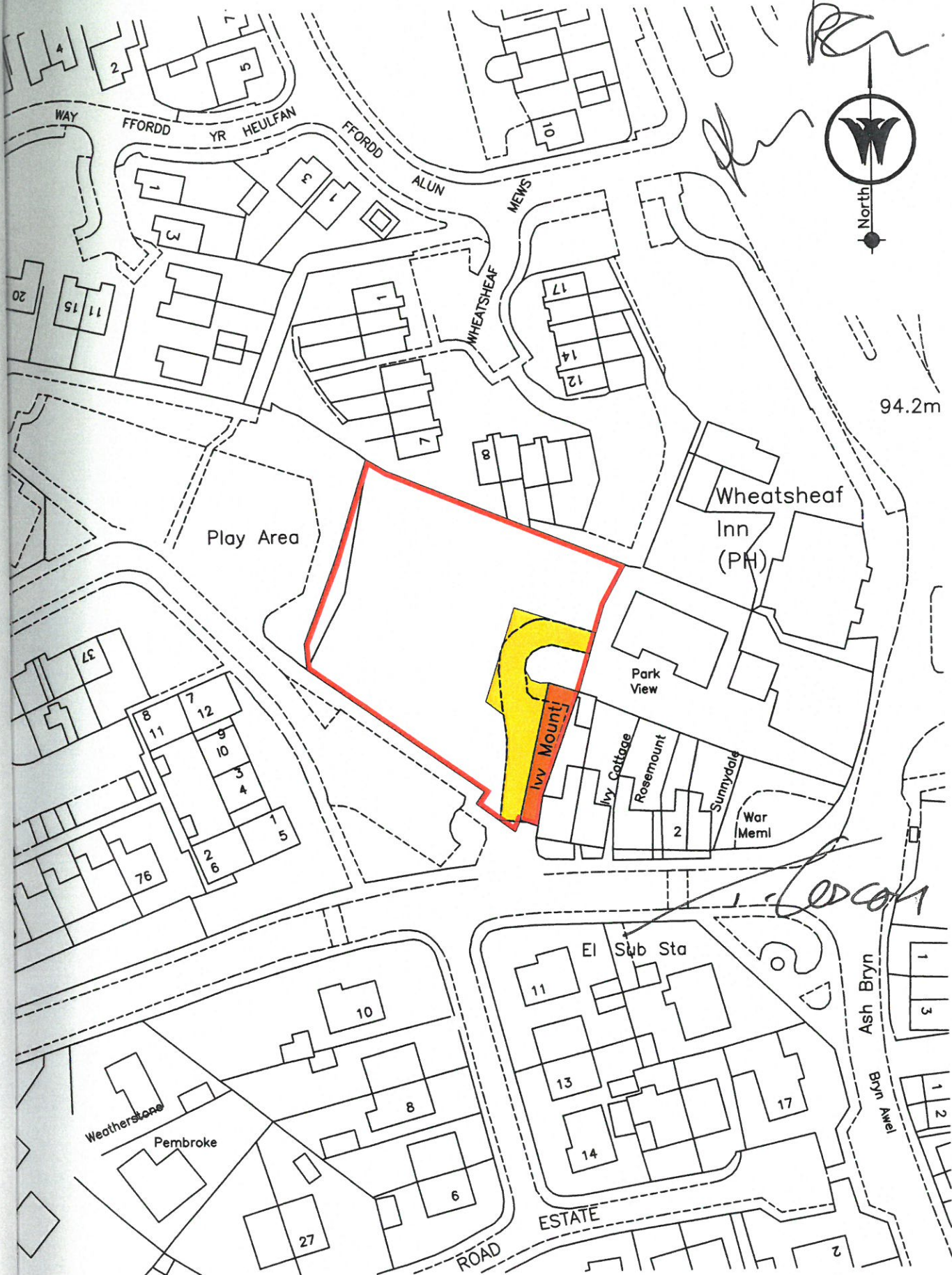
issue of a certificate of practical completion by NHBC by way of the usual NHBC cover note

PLAN REFERRED TO.

GWERSYLLT



94.2m



STEPHEN T BAYLEY
 LEAD OF ASSETS AND ECONOMIC DEVELOPMENT
 Wrexham County Borough Council

PLAN No. 14/143/4
 O.S.S. No. S.J.3153
 SCALE. 1:1000

"Primary Education Contribution"	means the sum of £7,840.00 to be utilised in accordance with Schedule 2 for the benefit of primary sector education within the Bryn Alyn School catchment area
"Secondary Education Contribution"	means the sum of £9,920.00 to be utilised in accordance with Schedule 2 for the benefit of secondary sector education at Bryn Alyn School, Wrexham
"Site"	the land subject to this Deed as shown edged red on the Plan 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 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 and 15 (commencement of development, legal costs, jurisdiction, delivery and monitoring clauses) 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 £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 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 Community Wellbeing and Development 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

Land shown edged red on the Plan being land off Wheatsheaf Lane, Gwersyllt, Wrexham.

SECOND SCHEDULE

Owner's Covenants – Education Contribution

On the First Occupation Date the Owner shall pay the Educational Contribution to the Council and the monies paid shall be used by the Council to provide for the following: -

1. Secondary Education Contribution

To be utilised for the benefit of secondary sector education at Bryn Alyn School, Wrexham

2. Primary Education Contribution

To be utilised for the benefit of primary sector education within the Bryn Alyn School catchment area.

THIRD SCHEDULE

Council's Covenants

Discharge of obligations

- to the
ig: -
- 1 The Council covenants with the Owner to use the Education Contribution received from the Owner under the terms of this Deed for the purpose specified in this Deed for which they are paid
- School,
2. The Council covenants with the Owner that it will repay the Owner such amount of the Education Contribution made by the 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.
- School

THE COMMON SEAL of WREXHAM

COUNTY BOROUGH COUNCIL

was hereunto affixed in the

presence of:-



223/15(a)

Head of Corporate and Customer Services

EXECUTED as a Deed by

WALES & WEST HOUSING ASSOCIATION

LIMITED acting by a Board Member and its Secretary

or two Board Members

Board Member

Board Member/Secretary



ANNEX 1

Draft Planning Permission

4 1 2

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	WALES & WEST HOUSING	Code Number	GWE P/2014/0674
Agent	LOVELOCK MITCHELL ARCHITECTS 3 STANLEY STREET CHESTER CHESHIRE CH1 2LS	Date Received	08/09/2014
		Decision Date	

Town and Country Planning Act, 1990

Location of application

, LAND AT, WHEATSHEAF LANE, GWERSYLLT, WREXHAM, , LL13 8RA

Description of application

RESIDENTIAL DEVELOPMENT (4 DWELLINGS) 1 PAIR OF DETACHED HOUSES (2 BEDROOM) AND 1 SEMI DETACHED BUNGALOW (2 BEDROOM) AND ONE SEMI DETACHED HOUSE (2 BEDROOM) AND ANCILLARY WORKS.

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 that permission be GRANTED
Subject to the following:-

Condition(s)

1. The development hereby permitted shall be commenced before the expiry of five years from the date of this permission.
2. No part of the development shall commence until a detailed Arboricultural Method Statement has been submitted to and approved in writing by the Local Planning Authority. No development or other operations shall take place except in strict accordance with the Method Statement as is approved. The Method Statement shall include the following:
 - 1) A specification for tree protection fencing and ground protection measures that comply with British Standard 5837:2012;
 - 2) A Tree Protection Plan showing the location of the trees to be removed and retained with their crown spreads, Root Protection Areas, Construction

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Exclusion Zones, and location of protective fencing and ground protection measures accurately plotted;

3) A full specification for any access, driveway, path, underground services or wall foundations within retained tree Root Protection Areas or Construction Exclusion Zone, including any related sections and method for avoiding damage to retained trees;

4) Details of general arboricultural matters including proposed practices with regards to cement mixing, material storage and fires;

5) Details of the frequency of supervisory visits and procedures for notifying the findings of such visits to the Local Planning Authority;

6) Method for protecting retained trees during demolition works;

7) Details of all proposed tree works, including felling and pruning.

3. No part of the development shall commence 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.

4. No part of the development shall be occupied until a Verification Report which demonstrates that the remedial works approved as part of condition no. 3 above have been satisfactorily carried out, has been submitted to and approved in writing by the Local Planning Authority.

5. Prior to their use on the development samples of all external facing and roofing materials shall be 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.

6. Within three months of commencement of development, full details of a hard and soft landscaping scheme together with a timescale for implementation of works shall be submitted to and approved in writing by the Local Planning Authority.

7. The landscaping scheme submitted and approved in connection with condition no. 6 shall be fully implemented in all respects within the agreed timescale and in strict accordance with the approved scheme.

8. The landscaping scheme as carried out in connection with condition no. 7 shall be retained for a minimum of 5 years. Within this timescale, any planting becoming severely damaged or seriously diseased, or is in poor physiological condition and/or are removed without the written permission of the Local Planning Authority shall be replaced with trees or shrubs and within

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a timescale all to be submitted to and approved in writing by the Local Planning Authority.

9. The vehicular parking and turning areas as shown on approved drawing(s) No(s). 1246 : 102 Revision i shall be fully laid out, surfaced and drained prior to first use of the development. These areas shall thereafter be permanently retained and kept free of any obstruction, and made available solely for the parking and turning of motor vehicles at all times.

10. No private surface water run off shall be permitted to flow from the development site onto the adjoining highway. An Aco drain or similar shall be provided across the approved access to intercept any such run off prior to first use of the development.

11. No dwelling shall be occupied until a management and maintenance scheme for the access road serving the development has been submitted and approved in writing by the Local Planning Authority. The road shall thereafter be managed and maintained in accordance with the scheme as approved.

12. No land drainage run-off or surface water shall be permitted to discharge or connect to the public sewerage system, either directly or indirectly, and foul and surface water shall be drained separately from the site.

13. All works in relation to the implementation of this permission, including deliveries to and / or leaving the site, shall be undertaken only between the hours of 7.30 and 18.00 Monday to Friday, and 08.00 to 14.00 on a Saturday, and at no time on a Sunday or a Bank Holiday.

Reason(s)

1. To comply with Section 91(3) of the Town and Country Planning Act, 1990.
2. To ensure the work is carried out to accepted arboricultural practices for the long term well being of the tree(s).
3. In the interests of the amenities of the future occupants of the buildings
4. In the interests of the amenities of the future occupants of the buildings
5. To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area.

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6. To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area.
7. To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area.
8. To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area.
9. To provide for the parking and turning of vehicles clear of the highway and to ensure that reversing by vehicles into or from the highway is rendered unnecessary in the interest of traffic safety.
10. In the interests of highway safety.
11. In the interests of highway safety.
12. 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.
13. To protect the amenities of the occupiers of nearby properties.

Note(s) to applicant

You should ensure that any difference between the plans approved under the Town and Country Planning Acts and under the Building Regulations is resolved prior to commencement of development, by formal submission of amended plans.

The applicant is advised that compliance with condition no. 13 does not provide an exemption from the statutory noise nuisance provisions of the Environmental Protection Act 1990. Any complaints received relating to noise from the development during the permitted hours may still be investigated using the Council's Standardised Procedure for Dealing with Noise Nuisance Complaints and legal action may be taken where appropriate.

The applicant is advised that the Council has the option to control construction noise by serving a Control of Pollution Act 1974, Section 60, Notice where deemed necessary, and failure to comply with such a Notice can result in prosecution. For further information and advice regarding construction noise please contact the Council's Housing and Public Protection Department on 01978 315300.

Burning of waste generated from construction activities is not considered to be an appropriate method of disposal and action may be taken as follows:

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- Under the Environmental Protection Act 1990 anyone found disposing of construction site waste by burning is likely to be in breach of their duty of care with regard to waste disposal;
 - Under the same Act an abatement notice may be served where smoke is judged to be causing a nuisance to neighbouring properties. Failure to comply with the requirements of the notice can result in prosecution;
 - Under the Clean Air Act 1993 it is an offence for a commercial activity to burn anything that gives rise to dark smoke.
- To prevent offences under the above named Acts there should be no bonfires on the site, to include the prohibition of the burning of cleared vegetation. The applicant should contact the Council's Housing and Public Protection Department on 01978 315300 for further advice and information.

The Applicant is advised that under the Environmental Protection Act 1990, dust from construction and/or demolition activities can be judged to be causing a statutory nuisance to neighbouring properties. A legal notice can be served requiring that any 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 Community Wellbeing and Development

Refer to the Statement of Applicant's Rights and General Information enclosed or refer to the following link:-

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

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

DRAFT