

 **Planning Obligation by Deed of Agreement
under Section 106 of the Town and Country
Planning Act 1990**
relating to Land off Whalleys Way, Acrefair,
Wrexham

Dated : 12th March

2015

WREXHAM COUNTY BOROUGH COUNCIL (1)



and

WALES & WEST HOUSING ASSOCIATION LIMITED (2)



DATE

12th March

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

DEFINITIONS

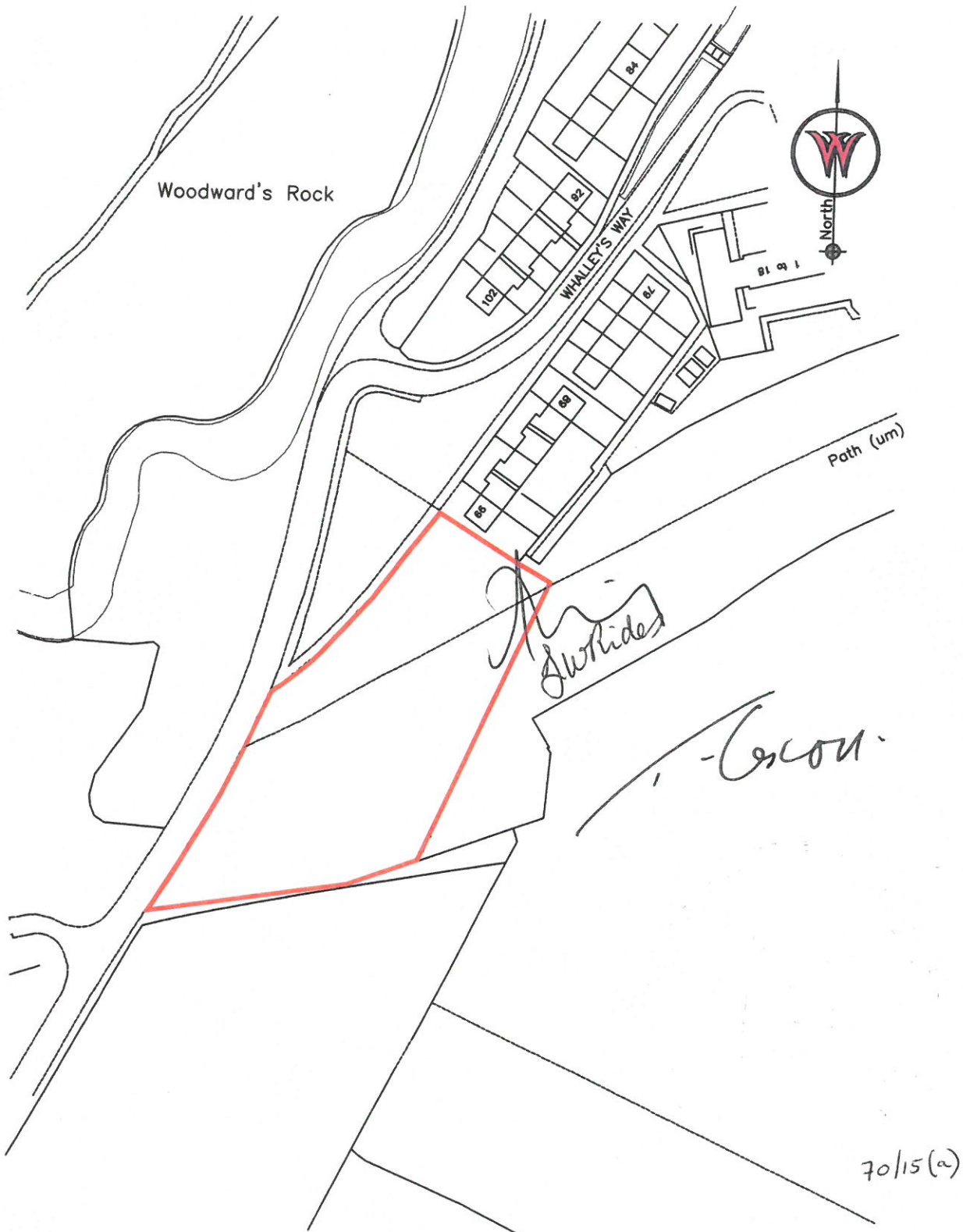
For the purposes of this Deed the following expressions shall have the following meanings:

"Act"	the Town and Country Planning Act 1990
"Application"	the application for planning permission dated 21 March 2014 submitted to the Council for the Development and allocated reference number P/2014/0188
"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
"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.
"Playing Fields and Parks Contribution"	means the sum of £14,000 (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 and more particularly described in the First Schedule.

PLAN REFERRED TO.

ACREFAIR



AREA EDGED RED 4072m² OR THEREABOUTS

PHEN T BAYLEY
D OF ASSETS AND ECONOMIC DEVELOPMENT
EXHAM COUNTY BOROUGH COUNCIL
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PLAN No.8/228/1
O.S.S. No. S.J.2842
SCALE. 1:1250
29/01/12 MD

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

- 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.

15 MONITORING FEES

The Owner shall pay the Council prior to the issue of the Planning Permission the sum of **£700** in respect of administrative and monitoring fees with regard to the Obligations set out in this Deed.

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

Land sh

FIRST SCHEDULE

Description of the Site

Land shown edged red on the Plan being land off Whalleys Way, Acrefair, Wrexham.

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 playing fields and parks in the Council ward area of Plas Madoc or the Community Council areas of Cefn or Acrefair.

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2.

THIRD SCHEDULE

Council's Covenants

Discharge of obligations

- 1 The Council covenants with the Owner to use the Playing Fields and Parks 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 the Playing Fields and Parks 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 of the date of receipt by the Council together with Interest from the date of the payment to the date of refund.

THE COMMON SEAL of WREXHAM

COUNTY BOROUGH COUNCIL

was hereunto affixed in the

presence of:-



70/15(a)


Head of Corporate and Customer Services

EXECUTED as a Deed by

WALES & WEST HOUSING ASSOCIATION

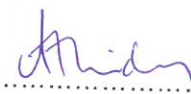
LIMITED acting by a Board Member and its Secretary

or two Board Members


.....

Director




.....

Director/Secretary

ANNEX 1
Draft Planning Permission

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 C SPARROW WALES & WEST HOUSING	Code Number	CEF P/2014/0188
Agent	LOVELOCK MITCHELL ARCHITECTS MR N MADDOCKS 3 STANLEY STREET CHESTER CHESHIRE CH1 2LS	Date Received	21/03/2014
		Decision Date	

Town and Country Planning Act, 1990

Location of application

, SITE SOUTH OF, WHALLEYS WAY, ACREFAIR, WREXHAM, , LL14 3UH

Description of application

ERECTION OF 10 DWELLINGS AND 4 APARTMENTS AND FORMATION OF VEHICULAR AND PEDESTRIAN ACCESS

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

CLF4	Playing fields, children's play areas and open space
CLF5	Open space requirements from new residential developments
GDP1	Development objectives
GDP2	Capacity of infrastructure and community facilities
H2	Residential development within settlements
PS1	Settlement limits
PS2	Development and the environment
PS3	Brownfield Land
PS4	Settlement Pattern
T8	Parking

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.

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2. Development shall not begin until the following scheme of details have been submitted to and approved in writing by the Local Planning Authority:

a) The provision and enhancement of off-site public open space facilities.

3. No part of the development shall commence until samples of all external facing 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.

4. No part of the development shall commence until full details of a hard and soft landscaping scheme together with a five year Maintenance Plan and timescale for the implementation of works shall be submitted to and approved in writing by the Local Planning Authority. The landscaping scheme to be submitted shall also include full details of the design all measures to be implemented to prevent vehicles from driving onto the adjacent public opens space area, or across to a service road behind No 99 Whalleys Way

5. The landscaping scheme submitted and approved in connection with condition no. 4 shall be fully implemented in all respects within the agreed timescale and in strict accordance with the approved scheme.

6. Within three months of the commencement of development a landscaping Management Plan, including long term management responsibilities and maintenance schedules for all soft landscaped areas which are not within the boundaries of individual plot boundaries shall be submitted to and approved in writing by the Local Planning Authority. The landscaping shall be managed and maintained in strict accordance with these details as are approved.

7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting that Order with or without modification), no extensions or additions to plot 14 as approved as part of this development adjacent to No. 99 Whalley's Way shall be erected under Class(es) A of Schedule 2 Part 1.

8. 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.

9. Prior to first use of the development hereby approved, the new estate road vehicular access point shall provide visibility splays of 2.4 metres x 56

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metres in both directions measured to the nearside edge of the adjoining highway, and before plots 1 to 4 are first occupied, each individual vehicular access points shall also be provided with visibility splays of 2.4m x 56m in both directions. Within the splays as formed there shall be no obstruction above the level of the adjoining carriageway. The splays shall thereafter be permanently retained clear of any such obstruction to visibility.

10. The estate road as shown on the approved plan shall be designed and constructed to highway adoption standards before plots 5 to 14 are first occupied, and full details of the work shall be submitted to and approved by the Local Planning Authority before development commences.

11. The site shall be developed in accordance with the ground and / or floor levels indicated on the approved plans. No changes to floor levels or external ground levels shall be made without the prior written approval of the Local Planning Authority.

12. 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.

13. No part of the development shall be occupied until a Verification Report which demonstrates that the remedial works approved as part of condition no. 12 above have been satisfactorily carried out, has been submitted to and approved in writing by the Local Planning Authority.

14. 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 07.30 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.

15. Notwithstanding the approved plans, further fencing details for plot 9 shall be submitted to and approved by the Local Planning Authority.

Reason(s)

1. To comply with Section 91(3) of the Town and Country Planning Act, 1990.

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2. To ensure that the development can be implemented with measures to improve public open space facilities in the area, in the interests of the amenities of new residents of the scheme.
3. To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area.
4. To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area and to ensure that adjacent landscaped areas are suitably protected from unauthorised use by vehicles.
5. To ensure a satisfactory standard of appearance of the development in the interests of the visual amenities of the area.
6. To ensure that the open space areas are adequately maintained in the interests of visual amenity.
7. To protect the amenities for occupiers of that adjacent property.
8. 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.
9. To ensure that adequate visibility is provided at the proposed point of access to the highway.
10. In the interests of highway safety.
11. To ensure that the development fully complies with the appropriate policies and standards.
12. In the interests of the amenities of the future occupants of the buildings
13. In the interests of the amenities of the future occupants of the buildings
14. To protect the amenities of the occupiers of nearby properties.
15. To ensure that adequate visibility is provided at the vehicular access point to this plot, in the interests of pedestrian and highway safety.

Note(s) to applicant

This permission is granted subject to the above conditions. Some conditions may require your attention prior to you carrying out any work on the proposal. These conditions are known as ""conditions precedent"". You should be aware that it is important that you comply with any ""conditions precedent"". If you do not, then any work you undertake on the development subject of this permission would not have planning permission.

You are advised that there are some trees close to the southern boundary of

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the site (adjacent to plots 1 to 8) and it cannot be assumed that this permission authorises any pruning works &/or tree removal, and foundations will need to be designed to consider the impacts of the work on trees that are not within your control.

You are advised that the site is within 250m of the former landfill site known as Woodward's Rock

Further advice on compliance with condition no. 12 may be obtained by contacting the Council's Environmental Protection Team on 01978 315733. Should the investigation identify contamination issues that may affect receptors other than the site users e.g. groundwater, then it is recommended that these works are also addressed in consultation with the Housing and Public Protection Department prior to commencement of works on site. 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 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:

- 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

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applicant should contact the Council's Housing and Public Protection Department on 01978 315300 for further advice and information.

Your attention is drawn to Highway Supplementary Notes Numbered 1, 3, 4 and 5 on the enclosed ""Applicants' Rights and General Information"".

This planning permission requires that development be carried out in accordance with the approved plans, including the construction of an estate road intended for adoption by the Council under the Highways Act 1980. It is essential therefore that the detailed proposals are submitted to the Highway Authority and confirmed as acceptable BEFORE development commences. Please contact the Highway Authority on telephone no. 01978 729690 for further guidance.

The applicant is advised that submission of a copy of the relevant section 38 adoption agreement, between the applicant and the Highway Authority, to the Local Planning Authority will allow the above condition no(s). 10 to be formally discharged in writing.


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.h
tm](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