

Dated

18 June

2024

WREXHAM COUNTY BOROUGH COUNCIL (1)

and

BRYMBO DEVELOPMENTS LIMITED (2)

and

PARKHILL ESTATES LIMITED (3)

Planning Obligation by Deed of Agreement

under Section 106 of the Town and Country Planning Act 1990
relating to Land at Former Brymbo Steelworks Brymbo Wrexham

Linda Roberts Chief Officer Governance and Customer

Guildhall

Wrexham

LL11 1AY

Ref: NR/041134

CONTENTS PAGE

Clause / Schedule	Page No's
1. Definitions	1
2. Construction of this Deed.....	3
3. Legal Basis	4
4. Conditionality	4
5. The Owner's Covenants	4
6. The Council's Covenants	4
7. Miscellaneous	4
8. Waiver	5
9. Change in Ownership	5
10. Indexation	6
11. Interest	6
12. VAT.....	6
13. Jurisdiction	6
14. Delivery.....	6
15. Dispute Provisions	6
Schedule 1 Description of the Site	8
Schedule 2 Owner's Covenants – Education Contribution	9
Schedule 3 Owner's Covenants – Public Open Space and Management Company ..	10
Schedule 4 Owner's Covenants – Provision of Highway Works	12
Schedule 5 Transfer of Primary School Land.....	13
Schedule 6 Council's Covenants - Discharge of obligations	14
Schedule 7 Draft Planning Permission.....	15

No's

18 June

DATE

2024

PARTIES

- (1) **WREXHAM COUNTY BOROUGH COUNCIL** of Guildhall, Wrexham, LL11 1AY ("Council")
- (2) **BRYMBO DEVELOPMENTS LIMITED** (registered Co. No. 00936369) of Fernhill estate Office, Fernhill Road, Sutton, Shropshire TF10 8DJ ("the Owner")
- (3) **PARKHILL ESTATES LIMITED** (registered Co. No. 02635632) of Fernhill estate Office, Fernhill Road, Sutton, Shropshire TF10 8DJ ("the Second 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 Schedule 1 hereto is situate and is the local planning authority by whom a planning obligation is enforceable
- (2) The Owner and the Second Owner are the registered proprietors of the Site
- (3) The Owner has submitted the Application to the Council and the parties have agreed to enter into this deed in order to secure the planning obligations contained in this Deed.
- (4) The Council resolved on the 6 September 2021 to grant the Planning Permission subject to the prior completion of this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1. DEFINITIONS

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

Act means the Town and Country Planning Act 1990.

Ancillary Works means works and measures reasonably required to be carried out by the Owner to mitigate the effects of implementing the Highway Works.

Application means the application for outline planning permission dated 14th September 2020 submitted to the Council for the Development and allocated reference number P/2020/0649.

Certificate of Practical Completion means a certificate issued by the Council under the relevant Highways Agreement or such other certificate as may be issued pursuant to the Highways Agreement to evidence that the Highway Works have been completed.

Commencement of Development means 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, earth works, 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** or **Commenced Development** shall be construed accordingly.

Commencement of Development of a Dwelling Phase means the carrying out of a Material Operation within a Dwelling Phase notwithstanding that the Planning Permission may have been implemented.

Commercial Unit means a commercial property to be constructed as part of the Development.

Development means the development of the Site consisting as set out in the Application.

Dwellings means the residential units (including houses, flats or maisonettes) permitted as part of the Development.

Dwelling Phase means any Phase of the Development that comprises a Dwelling.

Education Contribution means the sum to be paid by the Owner to the Council in accordance with the provisions of Schedule 2 of this deed.

Expert means an independent and suitable person holding appropriate professional qualifications appointed in accordance with the provisions of Clause 15 to determine a dispute.

HA 1980 means the Highways Act 1980.

Highways Agreement means an agreement made under section 38 and/or section 278 of the HA 1980 as agreed between the Owner and the Council.

Highway Works means the construction of a spine road up to a maximum of 120 metres the approximate location of which is shown edged blue on Plan A which works are required to make good a deficiency in infrastructure provision arising from the Development, and any detailed design subsequently approved by the Council together with such other Ancillary Works as the Council may require and for the avoidance of doubt the spine road is to abut the adopted highway

Index means all Items Index of Retail Prices issued by the Office for National Statistics

Interest means interest at 5 per cent above the base lending rate of the Barclays Bank Plc from time to time.

Management Company means a registered company limited by guarantee that has been formed for the purposes of amongst other obligations maintaining the

Public Open Space and for complying with and carrying out the requirements of the POS Scheme.

Necessary Highway Consents any by-law approvals, and other consents, licences, permissions and orders required from any competent authority, statutory undertaker or person for the carrying out of the Highway Works.

Plan A means the plan exhibited in Schedule 1.

Planning Permission means the draft full planning permission subject to conditions to be granted by the Council pursuant to the Application as set out in Schedule 7.

POS Scheme means the scheme relating to the implementation and management of the Public Open Space submitted to and approved in writing by the Council pursuant to the Application and relevant conditions of the Planning Permission.

POS Transfer means a transfer of the Public Open Space to a Residents Management Company.

Practical Completion means the issue of a certificate of practical completion by NHBC by way of the usual NHBC cover note.

Practical Completion of the Highway Works means completion of the Highway Works (or part of the Highway Works) that enables the road to be used for the purpose designed, save for any minor defects and **Practically Complete** shall be construed accordingly.

Primary School Land means freehold transfer of land with vacant possession shown for identification purposes only edged green on Plan A having an area of 2.1 hectares.

Public Open Space means the areas such areas of public open space trees hard and soft landscaping planted features driveways parking areas on the Development in accordance with conditions of the Planning Permission.

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all

instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

- 2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council and County Council the successors to their respective statutory functions.

3. LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 and all other enabling powers.

- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner

4. CONDITIONALITY

This Deed is conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development.

save for the provisions of Clauses 5.2, 7.1, 13 and 14 (commencement of development, legal costs, jurisdiction, and delivery) fees 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 Schedules two, three, and four and five of this Deed
- 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 Schedules 4 and 6.

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 £2,000.
- 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 Council's Chief Officer – Housing 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 or an event under Clause 7.7 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 or lessees of Dwellings or commercial units constructed pursuant to the Planning Permission nor against those deriving title from them or their mortgagee or chargee.
- 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 Schedules 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. DISPUTE PROVISIONS

15.1 In the event of any dispute or difference arising between the parties in respect of any matter contained in this Deed, such dispute or difference shall be referred to an Expert to be agreed by the parties, or in the absence of agreement, to be appointed, at the request of any of the parties, by or on behalf of the president for the time being of the professional body chiefly responsible for dealing with such matters as may be in dispute and the decision of such an Expert shall be final and binding on the parties except in the case of manifest error

15.2 The Expert shall be appointed subject to an express requirement that the Expert shall reach a decision and communicate it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight (28) Working Days from the date the Expert receives the written submissions of the parties pursuant to clause 15.3.

15.3 The Expert shall be required to give notice to each party inviting each party to submit within ten (10) working days of the Expert's appointment, written submissions and supporting material and shall afford each party a further five (5) working days to make counter-submissions to the written submissions of any other party.

15.4 The Expert's costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.

15.5 The provisions of this Clause 15 shall not fetter the Council's power to enforce this Deed by way of an application for declaratory relief or injunction.

16 SECTION 73 VARIATION

For the avoidance of doubt in the event that the Council shall at any time hereafter grant a planning permission pursuant to an application under section 73 of the Act in respect of conditions on the Planning Permission, save and in so far as this

Deed has been amended by way of a deed of variation prior to the grant of such planning permission, references in this Deed to the Application and the Planning Permission shall be deemed to include any subsequent section 73 applications and planning permissions as aforesaid and this Deed shall henceforth take effect and be read and construed accordingly.

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

SCHEDULE 1
DESCRIPTION OF THE SITE

Land known as former site of Brymbo Steelworks, Brymbo, Wrexham being the land registered at HM Land Registry under title numbers WA705202 CYM418353 and CYM194878 shown edged in red on Plan A.

The scaling of this drawing cannot be assured

SCHEDULE 3

OWNER'S COVENANTS – PUBLIC OPEN SPACE AND MANAGEMENT COMPANY

The Owner covenants with the Council:

1. Not to permit the occupation of any Dwelling until: -
 - (a) the Management Company has been incorporated and
 - (b) a copy of the proposed articles of association of the Management Company has been submitted to and approved in writing by the Council such approval not to be unreasonably withheld or delayed.
 - (c) a copy of the POS Scheme has been submitted to the Council
2. To submit to the Council the articles of association and certificate of incorporation of the Management Company within 4 weeks of its incorporation
3. On the first disposal of each Dwelling to require the purchasers thereof and their successors in title to become members of the Management Company with a view and to the intent that they can influence and contribute to the compliance with the obligations of this Schedule and to procure that a restriction is entered on the Proprietorship Register of all individual Dwellings in the following form:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a certificate signed by a conveyancer that the provisions of paragraph 3 of the Third Schedule of an Agreement dated [19 June] 2024 made between Wrexham County Borough Council (1) Brymbo Developments Limited (2) Parkhill Estates Limited (3) have been complied with"
4. To pay to the Management Company a fair and reasonable proportion (with the intention that the sum of all contributions from the Dwellings on the Site shall equal 100%) of the outgoings of the Management Company incurred in complying with the relevant obligations of this Schedule
5. To observe and perform the provisions of the POS Scheme and monitor and review it at least every 5 years and to obtain the approval of the Council to any amendments thereto so as to ensure that they remain appropriate and relevant over time
6. To provide in the POS Transfer a covenant in the following terms:

"The Transferee hereby covenants in fee simple in perpetuity to observe and perform the covenants agreements obligations and stipulations contained or referred to in the Third Schedule of an Agreement dated [19 June] 2024 made between Wrexham County Borough Council (1) Brymbo Developments Limited (2) Parkhill Estates Limited (3) AND to observe and perform the requirements of the POS Scheme referred to therein".
7. Not to allow more than 50% of the Dwellings to be occupied until the POS Transfer has been completed and a certified copy of the POS Transfer and the enabling Management Company's board minute and resolution has been submitted to the Council in evidence thereof

8. To plant lay out and construct, and provide play equipment on the Public Open Space in accordance with the POS Scheme the Planning Permission and this Agreement
9. To comply with the POS Scheme and to maintain and manage in perpetuity the Public Open Space and any play equipment erected thereon in accordance with the POS Scheme the Planning Permission and this Deed
10. Not to use the Public Open Space for any purpose whatsoever other than as public open space for the benefit of the Development being landscaped and open grassed areas and as a play area nor cause permit or allow any structures other than play equipment in accordance with the Planning Permission or other obstructions whatsoever to be erected within the Public Open Space or deposit any waste or alter ground levels or light fires within the Public Open Space

Notwith
Deed t
until t
expens
with ar
expens

Open
d this

ty the
e with

public
open
other
eosit

SCHEDULE 4

OWNER'S PROVISION OF HIGHWAY WORKS

Notwithstanding the transfer of the Primary School Land pursuant to Schedule 5 of this Deed the Council shall not occupy nor allow any occupation of the Primary School Land until the Owner has carried out and Practically Completed the Highway Works at its own expense to a standard suitable for adoption as publicly maintainable highway to connect with any vehicular highway or highway that is or are or will be maintainable at the public expense

SCHEDULE 5
TRANSFER OF PRIMARY SCHOOL LAND

Commencement of Development of a Dwelling Phase shall not take place unless and until the Primary School Land has been transferred to the Council for one pound free from encumbrances and for the avoidance of doubt the parties agree that there shall be a restrictive covenant imposed within the transfer prohibiting the use of the Primary School Land for any purpose other than for educational purposes.

1.

2.

3.

SCHEDULE 6

COUNCIL'S COVENANTS - DISCHARGE OF OBLIGATIONS

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
2. The Council covenants with the Owner that it will repay the Owner such amount of any of the Contributions made by the Owner to the Council under this Deed which have not been expended in accordance with the provisions of this Deed within ten 10 years shall commence from the date of receipt by the Council of the final payment in accordance with the provisions of Schedule 2 hereto together with Interest from the date of the payment to the date of refund.
3. The Council shall use reasonable endeavours to enter into the Highways Agreement and any Necessary Highway Consents with the Owner to secure the provision of the Highway Works and their subsequent adoption as publicly maintainable highway within a reasonable time scale so as not to cause unnecessary delay to the Development.

EXECUTED as a **DEED** by
affixing **THE COMMON SEAL** of
WREXHAM COUNTY BOROUGH COUNCIL
in the presence of:-
Chief Officer Governance and Customer

)
)
)
)
)
)



EXECUTED as a **DEED** by
BRYMBO DEVELOPMENTS LIMITED acting
by a Director and its Secretary or two
Directors:-

)
)
) Director
)
)
Director/Secretary

EXECUTED as a **DEED** by
PARKHILL ESTATES LIMITED acting by
a Director and its Secretary or two
Directors:-

)
)
) Director
)
)
Director/Secretary