

DATED

2021

GOWER HOMES LTD

to

WREXHAM COUNTY BOROUGH COUNCIL

UNILATERAL UNDERTAKING

Pursuant to Section 106 of the Town and Country Planning Act 1990
in respect of land at Tanyclawdd Johnstown Wrexham registered at the Land Registry
under Title Number WA618330

ALLINGTON HUGHES LAW
10 Grosvenor Road
Wrexham
LL11 1SD

171/147592

BETWEEN:-

- ## RECITALS

- NOW THIS DEED WITNESSES** as follows:-

1. DEFINITIONS

“1990 Act”

"CDM Regulations"

means the Construction (Design and Management) Regulations 2015 including any modification extension or re-enactment of them or any other regulations of a similar nature in force at any time during the course of the Development

"Commencement of Development"	means the carrying out on the Land of any Material Operation
"Contributions"	means the Primary Education Contribution, and the Park Contribution
"Development"	means the development of the Land in accordance with the Planning Permission
"Development Requirements"	means: (i) in accordance with the Planning Permission; and (ii) in accordance with current building regulations; and (iii) in accordance with the CDM Regulations
"Dwelling"	means any residential unit (including a house flat or maisonette) constructed on the Land pursuant to the Planning Permission
"Implementation Notice"	means the notice to be served in writing by the Owner upon the Council when Commencement of Development has occurred
"Land"	means the land being Tanyclawdd Johnstown Wrexham registered at the Land Registry under Title Number WA618330 shown edged red on the Plan for the purposes of identification only
"Market Housing Units"	those Dwellings which are general market housing for sale on the open market

"Material Operation"

means a material operation as defined in Section 56 subsection 4(a) to (e) of the 1990 Act to implement the Planning Permission

"Occupation"

means use of a Dwelling for residential use but not including occupation by personnel engaged in construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupied" shall be construed accordingly

"Occupation Date"

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

"Park Contribution"

means the sum of £1000.00 (No VAT) per Dwelling constructed on the Land capped at 10,000.00 (No VAT) in total to be paid by the Owner to the Council as determined in accordance with the provisions of the First Schedule

"Plan"

means the plan annexed to this Agreement at Annex 1

"Planning Application"

means the application for planning permission dated 04/12/2020 submitted to the Council for the Development and allocated reference number P/2020/0844

"Planning Permission"

means the grant of planning permission by the Council pursuant to the Planning Application a draft of which is annexed to this Agreement at Annex 2 and any associated reserved matters approval(s)

" Primary Education Contribution"	means the sum of £26,722.00 (no VAT) to be paid by the Owner to the Council as determined in accordance with the provisions of the First Schedule
"Units"	means the residential units comprised in the Development.
"Working Days"	means any day falling between Monday and Friday (both days inclusive) upon which the clearing banks in the City of London are open for normal business which is not Good Friday or a statutory bank holiday

2 INTERPRETATION

- 2.1 A reference in this Deed to an Act of Parliament or section of such Act or to any order regulation statutory instrument or the like shall include a reference to any replacement modification amendment or re-enactment of the same.
- 2.2 Wording importing the masculine gender includes the feminine and neuter genders and vice versa.
- 2.3 Words in the singular include the plural and vice versa.
- 2.4 Words importing individuals shall be treated as importing firms companies corporations authorities and other bodies and vice versa.
- 2.5 Any heading or side notes are for ease of reference only and shall not affect the construction of this Deed.
- 2.6 Covenants made hereunder
 - 2.6.1 if made by more than one person are made jointly and severally; and
 - 2.6.2 are to the intent that the same bind whomsoever shall become successor or successors in title to the Land.
- 2.7 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.

3 FORMAL REQUIREMENTS

- 3.1 This Undertaking is made pursuant to Section 106 of the 1990 Act Section 2 of the Local Government Act 2000 and Section 111 of the Local Government Act 1972 and all other enabling powers.

- 3.2 The covenants restrictions and requirements imposed upon the Owner under this Undertaking create planning obligations pursuant to Section 106 of the 1990 Act and that are enforceable by the Council as local planning authority against the Owner and to the extent that any of the obligations are not planning obligations within the 1990 Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972 and all other enabling powers
- 3.3 This Undertaking is a Local Land Charge for the purposes of the Local Land Charges Act 1975 and will be registered as such.

4 CONDITIONALITY

This Deed is conditional upon:

- 4.1 the grant of Planning Permission; and
- 4.2 the Commencement of Development;
- save for the provisions of clause 5.2.

5 THE COVENANTS

- 5.1 The Owner hereby covenant with the Council on behalf of itself and its successors in title to each and every part of the Land as set out in this Undertaking PROVIDED ALWAYS that the Owner shall not be obliged to comply with the obligations set out in this Undertaking if in determining the Appeal the Minister expressly states in the decision letter or by reference to the report prepared by the Planning Inspection that the obligation either
- (a) is not necessary to make the Development acceptable in planning terms, or
 - (b) is not directly related to the Development, or
 - (c) is not fairly and reasonably related in scale and kind to the Development, or
 - (d) is an immaterial planning consideration, or
 - (e) has now weight attached to it in determining the Appeal
- 5.1.2 comply with the obligations set out in the First Schedule to this Deed relating to the Contributions
- 5.1.3 serve upon the Council (addressed to the Council's Chief Officer Planning and Regulatory) the Implementation Notice within 10 Working Days from but not including the date of Commencement of Development.
- 5.2 The Owner shall pay to the Council on the on completion of this Undertaking the reasonable legal costs of the Council incurred in the approval of this Undertaking signing hereof the sum of seven hundred and fifty pounds (£750.00) in respect of the Council's legal costs for the preparation and execution of this Deed.

6. AGREEMENTS AND DECLARATIONS

- 6.1 Nothing contained or implied in this Deed shall prejudice or affect the discretions rights powers duties and/or obligations of the Council in the exercise of its functions as a local authority housing authority and local planning authority and the discretions rights powers duties and/or obligations of the Council under all public and private statutes byelaws orders and regulations may be fully and effectually exercised in relation to the Land or any part thereof and any works executed thereon as if this Deed had not been executed by the Council and in particular nothing in this Deed shall restrict the Council and/or any other local authority from exercising powers of compulsory purchase in respect of any part of the Land;
- 6.2 Nothing in this deed shall create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999 save for the avoidance of doubt it is declared that the planning obligations contained in this deed are enforceable by any successor local planning authority to the Council exercising planning powers under the Act.
- 6.3 No person shall be liable for any breach of any of the planning obligations or other provisions of this deed after parting with his entire interest in the Land but without prejudice to liability for any subsisting breach by that person arising before parting with that interest or in parting with that interest.
- 6.4 In the event that any difference or dispute arises between the parties in connection with their respective rights duties liabilities or obligations under or by virtue of this Deed (including sums of money and the construction of this Deed) then such difference or dispute shall be referred to for determination by an appropriately qualified independent expert (of not less than ten years standing) experienced in the relevant matter ("the Expert") to be agreed between the parties or in default nominated on the application of any party by the President (or other available officer able to make such appointment) of the Royal Institution of Chartered Surveyors ("RICS") Provided That the provisions of this clause shall not prejudice prevent or delay the right of any party to seek the resolution of any matter relating to this Agreement by the Courts and/or in accordance with Section 106(6) of the 1990 Act.
- 6.5 The expressions "the Owner" and "the Council" shall where the context admits include their respective successors in title.
- 6.6 If any of the terms obligations and/or covenants in this Deed or the application thereof to any party or circumstances shall to any extent be invalid or unenforceable the same shall be severable from the remainder of this Agreement and the remainder of this Deed or the application of such terms obligations and/or covenants to parties or circumstances other than as to which such terms obligations and/or covenants is held invalid or unenforceable shall not be affected thereby and each of the other terms

obligations and/or covenants of this Deed and the Planning Permission shall be valid and be enforceable to the full extent permitted by law.

- 6.7 Any notice or other written communication shall be validly served if delivered to the relevant party by hand or if sent by ordinary first class post or recorded delivery post:
- 6.7.1 in the case of the Council at the Guildhall Wrexham LL11 1AY or such other address as shall be notified in writing to the Owner from time to time.
- 6.7.2 in the case of the Owner to the addresses given in this Deed or such other addresses of such parties as may be notified in writing to the Council from time to time.
- 6.7.3 any notice or other written communication to be given by the Council shall be deemed valid and effectual if on its face it is signed on behalf of the Council by an officer or duly authorised signatory.
- 6.8 The provisions of the First Schedule shall not be binding on:-
- 6.8.1 a bona fide purchaser for value thereof from such a mortgagee in possession or any receiver appointed by such mortgagee.
- 6.9 For the avoidance of doubt it is acknowledged by the Owner that the obligation to pay any of the Contributions contained in this Deed is not conditional upon receiving any demand, request, invoice or other communications from the Council.
- 6.10 No mortgagee of the Land shall have any liability under this Deed unless it takes possession of the Land in which case it too will be bound by the obligations in this Deed as if it were a person deriving title from the Owner.
- 6.11 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.
- 6.12 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked, or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.

7. 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

THE FIRST SCHEDULE
Payment of Contributions
Primary Education Contributions

1. To pay to the Council the Primary Education Contribution to be used by the Council for the provision of additional primary school places at Ysgol Yr Hafod, Bangot Road, Johnstown and St Mary's Church in Wales School, Ruabon arising from the Development **PROVIDED THAT**

It is a condition of the payment of the Primary Education Contribution that such funds shall be used by the Council for the provision of the additional primary school spaces within five years of receipt and if any part of the Primary Education Contribution remains unspent by the Council after the period of five years from the date of receipt it shall be refunded to whomsoever made that payment.

2. The Primary Education Contribution will be payable in the following tranches

The full balance payable on the fifth dwelling house being occupied on the Development.

3. The Park Contribution that is to be paid is as follows:-

The full balance payable on the fifth dwelling house being occupied on the Development.

It is a condition of the payment of the Park Contribution that such funds shall be used by the Council for the provision upgrading the play equipment in Heol Kenyon and if any part of the Park Contribution remains unspent by the Council after the period of five years from the date of receipt it shall be refunded to whomsoever made that payment.

EXECUTED as a DEED on the date specified at the commencement of this Deed

EXECUTED AS A DEED by
GOWER HOMES LTD
ACTING BY ITS DIRECTOR
MICHAEL WILLIAM FORGRAVE
in the presence of:

M W Forgrave

D Bailey

WITNESS NAME

DOUGLAS MICHAEL BAILEY

TURNPIKE HOUSE

NAME

PONT LANE

ADDRESS

MARFORD

WREXHAM LL12 8 SH.

DIRECTOR

OCCUPATION

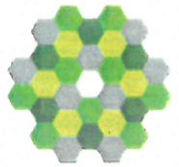
in the presence of:

[Council's Seal]

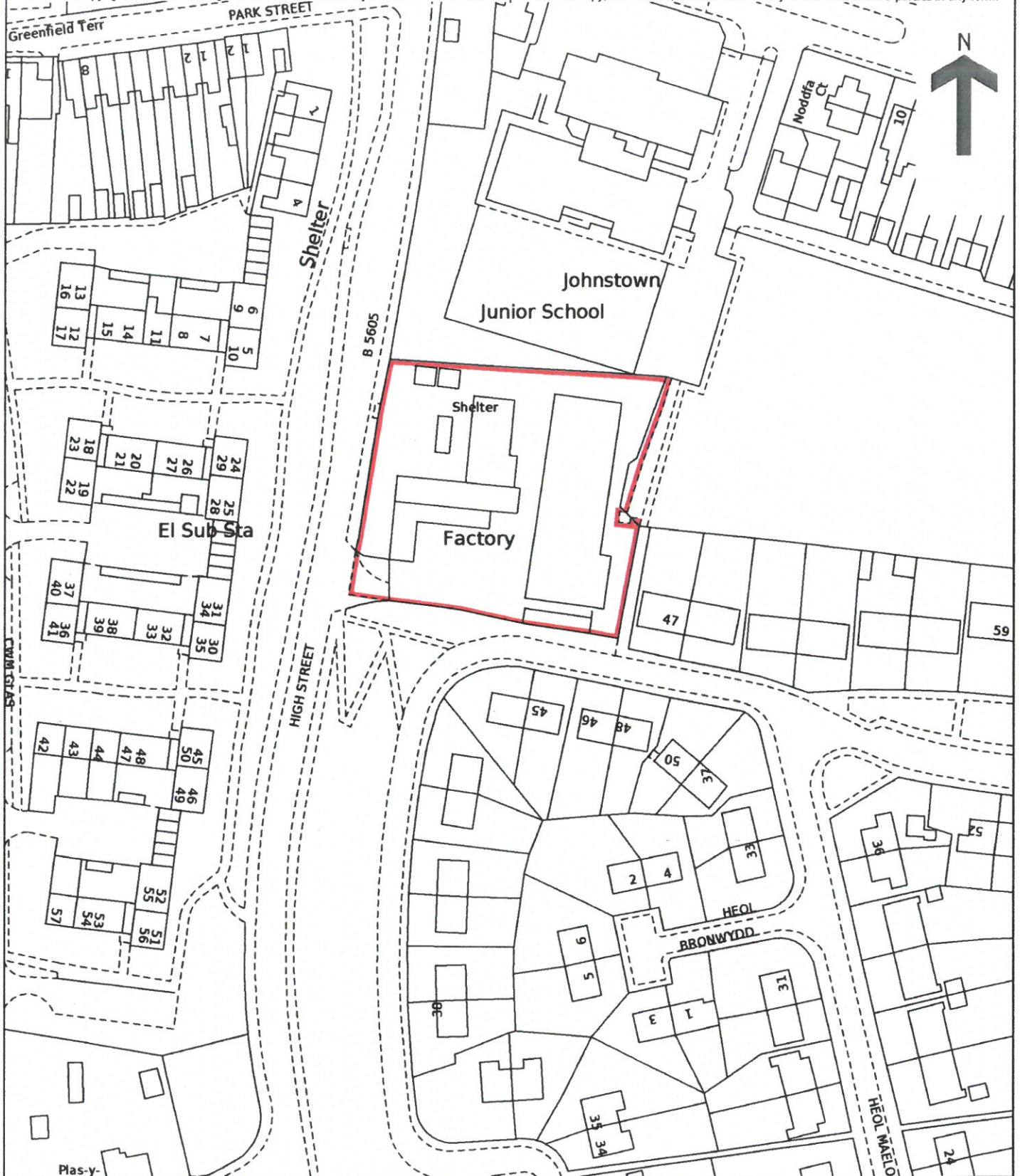
Annex 1 – Plan

HM Land Registry
Official copy of
title plan

Title number **WA618330**
Ordnance Survey map reference **SJ3045NW**
Scale **1:1250 enlarged from 1:2500**
Administrative area **Wrexham / Wrecsam**

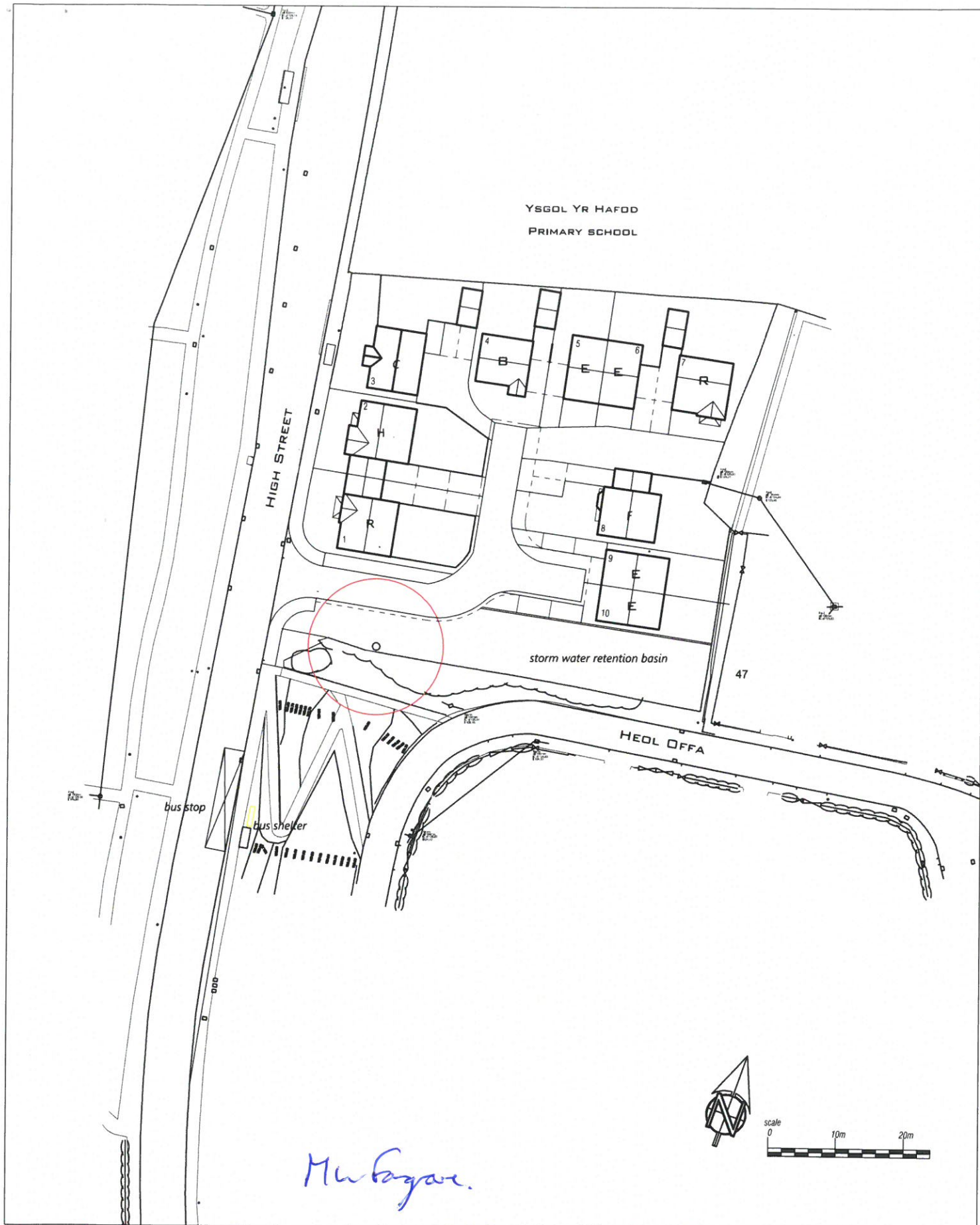


© Crown copyright and database rights 2013 Ordnance Survey 100026316. You are not permitted to copy, sub-license, distribute or sell any of this data to third parties in any form.



M. Fagan

Annex 2- Planning Application



Parry Davies Architects.

Chartered Architects.

PROJECT TITLE
LAND AT JOHNSTOWN

DATE
MAY 2021

SCALE
1:500 @ A3

DRWN
RSG

CHK

DRWG. TITLE
SITE LAYOUT PLAN C

DRWG. NOS.
19.5991/SK1

REV

Barclays Buildings, High Street, St Asaph, LL17 ORF

Tel: 01745 585517 Fax: 01745 582162. E-mail: PDPArchitects@aol.com