

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

Dated : 2014

CONWY COUNTY BOROUGH COUNCIL (1)
and
..... (2)
and
.....(3)

DATE

2015

PARTIES

- (1) CONWY COUNTY BOROUGH COUNCIL of Bodlondeb, Conwy, LL32 8DU ("Council")
- (2) (a company incorporated in England and Wales under Company Number) of ("the Owner")
- (3) (a company incorporated in England and Wales under Company Number of ("the Mortgagee")

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 free from incumbrances [but subject to a Legal Charge dated registered in favour of the Mortgagee].
- (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 theto be minded to grant planning permission in accordance with the Application ("the Planning Permission") subject to the prior completion of this Deed without which Planning Permission will not be granted.

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 ***** submitted to the Council for |

	the Development and allocated reference number
“Affordable Housing Contribution”	means the sum of £***** (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 ***** Schedule.
“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 by the Owner or any persons so instructed by the Owner [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.
“Cycle Path Contribution”	means the sum of £..... (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 theSchedule.
“Development”	the development of the Site consisting as set out in the Application.
“Dwelling”	a dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission.
“Education Contribution”	means the sum of £..... (indexed in accordance with the provisions of this Deed) to be paid by the Owner to the Council in accordance with the provisions of the ***** Schedule.
“Highways Contribution”	means the sum of £..... (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 ***** Schedule.

“Index”	All Items Index of Retail Prices issued by the Office for National Statistics. [All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation].
“Interest”	interest at the base lending rate of the Barclays Bank Plc from time to time.
“Plan A”	the Plan A attached to this Deed.
“Plan B”	the Plan B attached to this Deed.
“Plan C”	the Plan C attached to this Deed.
“Plan D”	the Plan D attached to this Deed.
“Open Space”	means any land used or to be used as a public garden or for the purpose of public recreation which may include allotments, or land which is a disused burial ground. Open space should be regarded as all open space of public value, including not just land, but also areas of water.
“Open Space Contribution”	means the sum of £..... (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 ***** Schedule.
“Practical Completion”	issue of a certificate of practical completion by NHBC by way of the usual NHBC cover note.
“Public Art Contribution”	means the sum of £..... (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 ***** Schedule.
“Site”	the land against which this Deed may be enforced as shown edged red on the Plan A.

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 assigns and to any deriving title through or under that party and in the case of the Council the successors to their respective statutory functions.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act (as amended by S12 of the Planning and Compensation Act 1991) Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000.
- 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 of the Site

save for the provisions of Clauses 7.1, 13, 14 and 15 legal costs clause jurisdiction and delivery clauses and monitoring 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 ***** Schedules.

6 THE COUNCIL'S COVENANTS

- 6.1 The Council covenants with the Owner as set out in the ***** Schedule.

7 MISCELLANEOUS

- 7.1 The Owner shall pay the Council on completion of this deed the reasonable legal and planning costs of the Council incurred in the negotiation, preparation and execution of this Deed in the sum of £.....
- 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:
- (i) the Council by the Head of Regulatory and Housing Services Department
- 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 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.
- 7.8 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 or the part in respect of which such breach occurs 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 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 and where there is a conflict between the two the laws of Wales shall prevail.

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 on Commencement of Development or earlier where applicable the sum of £..... in respect of administrative and monitoring fees with regard to the Obligations set out in this Deed.

16 MORTGAGEE'S CONSENT

The Mortgagee consents to the completion of this Deed and acknowledges that the Site shall be bound by the obligations and restrictions contained in this Deed and that the security of the registered charge in favour of the Mortgagee in respect of the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it will be bound by the obligations as if it were a person deriving title from the Owner

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

FIRST SCHEDULE
DESCRIPTION OF SITE

SECOND SCHEDULE
EDUCATIONAL CONTRIBUTION

Definitions (to be included in clause 1):

“Additional Education Facilities” means providing new or the upgrading, extending or remodelling of existing educational facilities within the School Catchment Area.

“Education Contribution” means the sum of [] pounds (£[.....]) to provide additional educational facilities within the [...specify Council area...] required as a consequence of the Development.

OR

“Primary School Contribution” means the sum of [] pounds (£[.....]) towards the cost of providing additional places at existing primary schools within the [...specify local education within the [...specified area...].

“Secondary School Contribution” means the sum of [] pounds (£[.....]) towards the cost of providing additional places at existing secondary schools serving the [...specify area...].

“School Catchment Area” means the school catchment area of [please insert name of secondary/primary school as appropriate] to include any primary (infant or junior) or secondary school within that area.

“School Contribution” means the total of the Primary School Contribution and the Secondary School Contribution towards the cost of providing other improvements to existing schools serving the [...specify area...].

1. The Owner shall pay the Educational Contribution to the Council in three stages during the Development as follows:-
 - a. Within 28 days of the Commencement of Development the Owner shall pay the first sum of £..... to the Council.
 - b. The second payment of £..... shall be payable prior to the Practical Completion of the ^{***} Dwelling on the Site.
 - c. The third and final payment of £..... shall be payable prior to the Practical Completion of the ^{***} Dwelling on the Site.

The Council shall acknowledge receipt of each payment representing the Educational Contribution referred to in a. to c. above within ten (10) working days of receipt and the monies paid shall be used by the Council to provide the Additional Educational Facilities.

2. The Owner shall serve on the Council a notice of Commencement of Development not less than two days before Commencement of Development.

THIRD SCHEDULE

OWNER'S COVENANTS – OPEN SPACE CONTRIBUTION

1. Prior to the Commencement of Development on the Site the Owner shall pay the Open Space Contribution to the Council which shall be used by the Council to provide, extend, maintain or improve the provision and facilities of Public Open Space in the Community Council area of the Site.
- 2.1 Prior to Commencement of Development to submit to and have secured the approval of the Council to a scheme for Neighbourhood Open Space provision on the Site comprising the area shown edged [] on the attached Plan No [] that:
 - (i) meets as a minimum the standards set out in the Council's document "Open Space Needs for Residential Development" ("the Council's Policy Standard") a copy of which is attached hereto.
 - (ii) provides a full specification of equipment, finishes, means of enclosure, separation distances from dwellings and landscaping that meet the LEAP standards current at the date of this Deed and attached as the [] Schedule hereto.
 - (iii) a programme of implementation that provides for the provision of the Neighbourhood Open Space (appropriately fenced and signed) with three units of play equipment and related safety surfacing prior to the Practical Completion of [] dwellings comprised in the Development and the subsequent installation of three further units of play equipment and related safety surfacing with all provisions in any event being completed before the expiry of three years from the Commencement of Development.
 - (iv) a management and maintenance regime that provides for and guarantees the upkeep and availability for public use the Neighbourhood Open Space.
- 2.2 To complete, retain, maintain and make available for public use the Neighbourhood Open Space in accordance with the details approved under 2.1 above.

Definitions (to be included in Clause 1):

- "Major Amenity Open Space" means urban parks, country parks, formal gardens, urban woodland, urban forestry, scrub, grasslands, open access land, wetlands, coastal land, river banks, cycleways, public rights of way and other footpaths and bridleways, promenades and civic and market squares. Major amenity open space should have open access to the public.
- "Management Agreement" means a management plan to be approved by the Council detailing the arrangements for the future

maintenance of any Open Space provided on the Site and which sets out details regarding how the Public Open Space is to be regularly maintained by a Management Company to the satisfaction of the Council.

- “Management Company” means a company appointed by the Owner and approved by the Council which is responsible for the future maintenance of any Public Open Space provided on the Site under the provisions of a Management Agreement
- “Neighbourhood Open Space” means amenity space in this context relates to the definition in Annex B of TAN 16 in terms of neighbourhood amenity and could usefully provide the buffer area between neighbourhood play spaces and adjacent properties.
- “Open Space Land” means the land shown for identification purposes coloured [] on the Plan
- “Open Space Works” works to be carried out under paragraph [] to the Third Schedule in accordance with the Open Space Works Specification
- “Open Space Works Specification” a specification for the carrying out of Open Space Works and the maintenance specification to be agreed in writing between the Owner/Developer and the Council prior to Commencement of the Development
- “Open Space Contribution” means the sum of £..... towards the provision and/or improvement of open space facilities payable in accordance with this [] Schedule
- “Public Open Space” means outdoor sports, playing pitches and children’s play space as defined by Technical Advice Note 16: Sport, Recreation and Open Space and Fields in Trust Planning and Design for Outdoor Sport and Play. It also includes major amenity and neighbourhood amenity open space, as defined in Conwy Local Development Plan 2007-2022 and Supplementary Planning Guidance LDP4: Planning Obligations
- “LEAP” means an unsupervised open access play area equipped for children of early school age (4-8 years of age) with consideration for the needs of supervised children from birth to 4 years and unaccompanied children up to the age of 14.

It should be of at least 400 square meters in size, enclosed by play specification fencing of at least one metre in height with at least 2 outward opening, self-closing gates, joined by a tarmaced footpath.

It should be overlooked by housing, or other well used public facilities and be within 5 minutes walking time from home and positioned beside a pedestrian pathway. It should be drained if the land is poorly drained.

A minimum buffer zone of 20 metres should separate the activity zone and the boundary of the nearest property containing a dwelling and a minimum buffer zone of 30 metres should separate the LEAP from the habitable room facade of the nearest dwelling.

A LEAP should have at least 6 types of play activity, of which at least 3 are individual pieces rather than part of a combination multiplay unit, with appropriate safety surfacing, a litter bin and seating for accompanying adults and all to comply with current safety standards as detailed in BSEN 1176 and 1177.

It must have a sign indicating the following information that the area is solely for use by children, adults are not allowed unless accompanied by children, dogs are excluded, smoking is forbidden name and telephone number of the operator of the facility to enable reporting of any incident or damage to the play equipment and the location of the nearest public telephone.

“NEAP”

means a neighbourhood equipped area of play being an unsupervised open access play area equipped for older children, but with play opportunities for younger children as well.

It should be of at least 1,000 square meters in size, including a hard surface area of at least 465 square meters, enclosed by play specification fencing of at least one metre in height with at least 2 outward opening, self-closing gates, joined by a tarmaced footpath.

It should be overlooked by housing, or other well used public facilities and be within 15 minutes walking time from home and positioned beside a pedestrian pathway. It should be drained if the land is poorly drained.

A minimum buffer zone of 30 metres should separate the activity zone and the boundary of the nearest property containing a dwelling and a minimum buffer zone of 40 metres should separate the NEAP from the habitable room facade of the nearest dwelling. This buffer should be greater if there is provision for a skate park.

A NEAP should have at least 9 types of play activity, with appropriate safety surfacing, a litter bin and seating for accompanying adults and all to comply with current safety standards as detailed in BSEN 1176 and 1177.

It must have a sign indicating the following information that the area is solely for use by children, adults are not allowed unless accompanied by children, dogs are excluded, smoking is forbidden name and telephone number of the operator of the facility to enable reporting of any incident or damage to the play equipment and the location of the nearest public telephone.

Convenient and secure parking facilities for bicycles should be provided.

FOURTH SCHEDULE

OWNER'S COVENANTS – TRANSPORT CONTRIBUTION

1. Prior to the Commence of Development on the Site the Owner shall pay the Cycle Path Contribution to the Council which shall be used by the Council to create, upgrade and/or maintain cycle paths within the (area to be identified).

FIFTH SCHEDULE

OWNER'S COVENANTS – HIGHWAYS CONTRIBUTION

1. Prior to the Commencement of Development on the Site the Owner shall pay the Highways Contribution to the Council which shall be used by the Council to

SIXTH SCHEDULE

OWNER'S COVENANTS – PUBLIC ART

1. Within 28 days of the Commencement of Development the Owner shall pay the Public Art Contribution to the Council which shall be used by the Council for the provision of Public Art which will include where appropriate sculpture, street furniture, landscaping and/or architectural detailing within the Development or within the area comprising ...
2. The Owner shall serve on the Council a notice of Commencement of Development not less than two days before commencement of Development.

Definitions (to be included in clause 1):

“Public Art Contribution” means a financial contribution of [] pounds (£[.....]) towards the provision of public art such provision to be entirely at the discretion of the Council in terms of size nature artistic influence and geographical location within the [Council area, or specified area]

Alternative definition:

“Public Art Contribution” means a financial contribution of [] pounds (£[.....]) towards the provision of Public Art which will include where appropriate sculpture, street furniture, landscaping and/or architectural detailing within [specify area] [within or within the vicinity of the Development as the Owner and Council may agree]

“Public Art” means [.....]

SEVENTH SCHEDULE

OWNER'S COVENANTS – AFFORDABLE HOUSING CONTRIBUTION

1. Upon completion of this Deed/prior to Commencement of Development the Owner shall pay the initial sum of ***** pounds (£*****) to the Council in respect of part of the Affordable Housing Contribution
2. Prior to the first anniversary of the date of this Deed/Commencement of Development the Owner shall pay to the Council the remainder of the Affordable Housing Contribution, being the sum of *** ***** pounds (£*****).
3. The Council shall acknowledge receipt of the Affordable Housing Contribution referred to in 1. and 2. above within ten (10) working days of their receipt and the monies paid shall be used by the Council for or towards the provision of affordable housing in accordance with any scheme as deemed reasonable by the Council's Head of Regulatory and Housing Service.
4. The Affordable Housing contribution shall not be used in respect of any scheme on the Site

EIGHTH SCHEDULE
COUNCIL'S COVENANTS
DISCHARGE OF OBLIGATIONS

- 1 The Council **HEREBY APPROVES** the development of the Site for the purposes of Part III of the Act and in accordance with the Development shown on the Application and **HEREBY COVENANTS** with the Owner that as soon as reasonably practicable upon the execution of this Deed by the parties hereto it will issue the Planning Permission
- 2 The Council covenants with the Owner to use the Educational Contribution, the Open Space Contribution, the Transport Contribution, the Highways Contribution, Affordable Housing Contribution and the Public Art Contribution **(these to be amended as required)** ("the Contributions") received from the Owner under the terms of this Deed for the purpose specified in this Deed for which they are paid
3. 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 of the date of receipt by the Council **EXCEPT** with regard to the Educational Contribution where the said ten (10) years shall commence from the date of receipt by the Council of the final payment in accordance with the provisions of Schedule ** hereto together with Interest from the date of the payment to the date of refund.

EXECUTED AS A DEED by affixing **THE**)
COMMON SEAL of)
CONWY COUNTY BOROUGH COUNCIL)
in the presence of:)

Authorised Sealing Officer

EXECUTED as a Deed by)
***** acting by a)
Director and its Secretary or two Directors:-)

.....

Director

.....

Director/Secretary

EXECUTED as a Deed by)
***** acting by a)
Director and its Secretary or two Directors:-)

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Director

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Director/Secretary