

Appellant's response

This response is submitted further to the email submitted by Lancashire County Council to the Inspector on 6 May 2026 at 6:49pm in respect of the dispute between the Appellant and the County Council in relation to clause 5 of the section 106 agreement. This response has been prepared at the request of the Inspector following the roundtable discussion on 7 May 2026.

Clause 5 of the bi-lateral section 106 and the unilateral undertaking states as follows. The point in dispute between the Appellant and the County Council relates to clause 5.1.1 below.

5.1 No Party shall be bound by the terms of this Agreement or be liable for the breach of any covenants restrictions or obligations contained in this Agreement:

5.1.1 occurring prior to he or it acquiring an interest in the Site or the part in respect of which such breach occurs;

5.1.2 occurring after he or it has parted with his or its interest in the Site or the part in respect of which such breach occurs (but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest);

5.1.3 if he she or it shall be an individual owner, individual occupier or individual lessee of individual Dwellings or if it shall be a mortgagee and/or chargee and/or their respective successors in title and/or receiver appointed by the mortgagee and/or chargee of a Dwelling SAVE THAT in relation to the appropriate provisions at Schedule 1, Paragraph 2 this exclusion shall not apply to an individual owner, individual occupier or individual lessee of an individual Affordable Housing Unit; or

5.1.4 if it is a Statutory Undertaker which has an interest in any part of the Site for the purposes of its undertaking.

The Appellant maintains this drafting position for the following reasons.

The effect of clause 5.1.1 is that a successor in title to the Owner under the agreement would not be held liable for any breaches which occurred prior to that successor acquiring its interest in the Site.

Correspondingly, the effect of clause 5.1.2 is that any party who parts with its interest in the Site is no longer bound or held liable under the agreement, save in respect of any breach committed by that party which occurred prior to it disposing of its interest in the Site.

The Appellant's position is that clause 5.1.2 is correctly drafted to allow the County Council to enforce against previous owners for any subsisting breaches. This reflects a well-established and widely accepted approach, commonly used in phased developments, unit disposals, and forward-funded structures to enable effective delivery and land transactions.

The drafting does not seek to preclude any party who is a successor in title being held liable and enforced against for breaches committed while that party is in occupation.

From a practical standpoint, in its capacity as Promotor selling the Site, the Appellant would ensure that there are no extant breaches of planning permission at the point at which it disposes of its interest in the Site to a new owner.

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However, the Appellant does not wish to be in a position, commercially, where it has to provide an indemnity to future purchaser(s) of the Site (which would likely be required if clause 5.1.1 is removed from the drafting) in relation to any subsisting breaches when, in any event under clause 5.1.2, the County Council has the ability to pursue a previous owner (and their creditors) for their breach.

On a large, phased scheme with multiple developers acquiring parcels separately, removing clause 5.1.1 risks creating the requirement for a chain of indemnities between successive landowners. This presents a clear commercial issue, as future purchasers are unlikely to accept liability for breaches arising from previous owners, making plots harder to dispose of and potentially constraining delivery of development.

The Appellant acknowledges the County Council's position that section 106 obligations arise from statute and exist to protect the public interest.

The Courts have reinforced the fundamental principle that a section 106 agreement is a contract between the parties which falls to be construed according to ordinary principles of contractual interpretation.

The case of *Hampshire County Council v Beazer Homes Ltd. [2010] EWHC 3095 (QB)* concerned whether a local authority's expenditure out of money paid by a developer towards highway improvements should be reasonably and properly incurred. This case reiterated that if unambiguous and express wording is included in an agreement, these terms are to be applied, even if a Court considers some other term may have been more suitable. Accordingly, where an agreement is consistent with the statutory framework and clearly identifies, on its face, the parties responsible for compliance and enforcement in respect of any breach, those provisions ought properly to be given effect.

Further, in *R (Millgate Development Ltd) v Wokingham BC [2011] EWHC 6 (Admin), 2011 WL 1581* the Court in this case noted that section 106 agreements are contractual in nature. As such, if an agreement contains a provision releasing a party upon disposal of its interest, this will be a legally binding term on the Council.

Section 106(3) of the Town and Country Planning Act 1990 provides that an agreement *made under this section with any person interested in land may be enforced by the local planning authority against persons deriving title under that person in respect of that land as if the local planning authority were possessed of adjacent land and as if the agreement had been expressed to be made for the benefit of such land.*

Clause 5.1.1 does not seek to subvert the intention of section 106(3). A successor in title to the owner is bound to the obligations required by the agreement by virtue of clause 1.2.6. The drafting of clause 5.1.1 simply seeks to carve out a successor in title's liability in respect of any breaches committed by a previous owner. It does not seek to prevent successors in title from being bound by the terms of the agreement in respect of the Site.

As appears to be of concern to the County Council, if a previous owner were to go into liquidation or insolvent and, for example, there was an outstanding financial contribution which should have been paid by that owner, the enforcing authority has the ability to pursue the insolvent owner's creditors for any outstanding contributions.

The enforcing authority has recourse against both previous owners (or its creditors) for their breaches, and any current owners for their breaches.

The wording of Clause 5 in its entirety is also accepted by Ribble Valley Borough Council who is the enforcing planning authority for the obligations in the bilateral obligation, which in itself should provide comfort of its enforceability and compliance with section 106 of the Town and Country Planning Act 1990.