

AWE and MOD comments on draft clauses for a section 106 planning obligation

(Appellant's Appendix S)

Concern	Comment	Legal issue
<p>Who is bound by the obligations?</p>	<p>The covenants to implement, monitor, review and amend the Site Specific Emergency Plan November 2022 (SSEP) (Appellant's Appendix S) are made by the First Owner (presumably the Appellant – but this should be clarified) “for itself and its successors in title”, with the intent that they run with the land. This is the standard position in respect of section 106 obligations, but is unlikely to be appropriate here.</p> <p>Is it the developer's intention to offload liability for compliance with the obligations onto individual homeowners?</p> <p>If it is, this is not appropriate, because:</p> <ul style="list-style-type: none"> (1) Companies retain corporate liability and have duties under the Health and Safety at Work etc. Act 1974 (HSWA). Individuals do not have similar duties under HSWA or REPPIR 2019. (2) This runs counter to the Appellant's representations around its financial standing to comply with the obligations, at paragraphs 6.42 and 6.43 of the Appellant's SOC. 	<p>In order to constitute a reason for grant of planning permission, the section 106 obligations have to satisfy the tests in CIL Regulation 122. They must be (a) necessary, (b) directly related to the development and (c) fairly and proportionately related in scale and kind to the development.</p> <p>Passing liability onto individual homeowners would breach these requirements, so the Inspector should not rely on these obligations as a reason for grant.</p> <p>Even if the First Owner retains liability (even where it parts with its interest in the Appeal Site) it is unlikely that the obligations would comply with these requirements, effectively perform the functions they purport to perform, or be enforceable, for the reasons set out below.</p>
<p>How is the Responsible Management Organisation (RMO) sustained for the lifetime of the Proposed Development?</p>	<p>In order to perform its specified functions the RMO will need to be enduring and available at all hours every day of the year.</p> <p>The organisation structure is unclear. It is also not clear who is responsible for ongoing funding and management etc. In short, the mitigation offered by the First Owner is insecure.</p>	<p>A management structure and funding mechanism needs to be specified in order for the obligation to be enforceable.</p> <p>However, funding arrangements should not be punitive to new homeowners.</p>
<p>Duplication of roles and responsibilities</p>	<p>The RMO appears to be duplicating many of the responsibilities of WBDC</p>	<p>This duplication of functions is confusing and counterproductive. It</p>

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	<p>and appears to provide very little benefit to WBDC.</p> <p>The RMO's role could be pared back but this begs the question of the role and purpose of the SSP in the first place.</p>	<p>undermines the effectiveness of the proposed mitigation.</p>
<p>Updates over time</p>	<p>The offsite emergency plan is constantly being updated and revised and the SSP needs to be consistent with this.</p> <p>It is unclear how, in practice, the SSP will be kept up to date over time.</p> <p>In practice, who would supervise revisions?</p>	<p>A review mechanism could be incorporated in to the legal agreement, but it would need to be appropriately funded and remain in place for as long as the SSP is in place.</p>
<p>Enforceability and effectiveness</p>	<p>The absence of funding or security (e.g. bond) arrangements to underwrite the obligations/ performance of the SSEP for the lifetime of the development/as long as the SSEP is in place.</p>	<p>The purported public benefits of the obligations are unlikely to accrue – the mitigation is not fit for purpose.</p> <p>Furthermore, the obligations do not remove WBDC's obligations to the public under the Awe Offsite Emergency Plan. Residents would still be able to look to WBDC for alternative accommodation if they did not find the accommodation offered by the RMO acceptable and residents would still be entitled to compensation from AWE and the UK Government under the Nuclear Installations Act 1965.</p>

AWE and MOD will expand on these arguments and, where appropriate, provide a technical critique of the SSEP in proofs of evidence.