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## 163 Sumatra Rd (2015/2203/P) - Request for revision to legal agreement

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Shelton-Agar, Emily <Emily.Shelton-Agar@camden.gov.uk>

14 April 2016 at 11:52

To: Harman Sond <harman.sond@drawingandplanning.com>

Cc: David Mansoor <david@drawingandplanning.com>, Jeremy Stein <jeremy@drawingandplanning.com>

Dear Harman,

Unfortunately the Council's position remains the same. The Council is also under no obligation to issue planning permission if the obligations that need to be secured is not secured properly. The Council has a similar risk as the Mortgagee without the financial gain.

The mortgagee clause is practically the same as drafted in the Law Society's model agreement and the majority of mortgagees accept this in Camden.

The obligations in this agreement is for a highways contribution and a CMP. If the highways contribution has not been paid before implementation or if further sums need to be obtained before the Mortgagee took possession it would mean there was a breach of the s106 and the mortgagee would not be liable for the sums to ensure any damage to the highway is fixed. The Council would have to expend this money themselves when the mortgagee would be taking the benefit of the planning permission. The Council is not willing to accept this.

If there is a pre-existing breach to the CMP and the mortgagee takes possession this would need to be remedied if the Council were to accept the mortgagees position it would mean the Council would have to remedy this as CMP's are essential to ensure the safety and amenity of other road users. The Council is not willing to do this as it means the obligation has not been secured properly.

The only other option that I can think of is the owners provide an indemnity to the mortgagee. Although I am unsure if they would accept this.

The Council is being reasonable in not accepting this risk and is under no obligation to accept it.

Kind regards,

—  
Emily Shelton-Agar  
Legal Adviser

Telephone: 02079745826



**From:** Harman Sond [mailto:[harman.sond@drawingandplanning.com](mailto:harman.sond@drawingandplanning.com)]

**Sent:** 04 April 2016 15:28

**To:** Shelton-Agar, Emily

**Cc:** David Mansoor; Jeremy Stein

**Subject:** Re: 163 Sumatra Rd (2015/2203/P) - Request for revision to legal agreement

Dear Emily

Following your email on 17th March, we wrote to Birmingham Midshires on 21st March explaining the Council's position with regards to the imposition of conditions on the s106. BM wrote to the applicant last week and unfortunately they hold the same position as before.

Could you kindly review their response and revert back to me with your stance; I have attached both our letter to them and their response. As you can imagine we are desperately trying to resolve this issue which is stopping the issuing of the consent.

I look forward to hearing from you.

Kind regards

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On 17 March 2016 at 11:32, Shelton-Agar, Emily <[Emily.Shelton-Agar@camden.gov.uk](mailto:Emily.Shelton-Agar@camden.gov.uk)> wrote:

Dear Harmond,

Apologies for the slow reply on this. Unfortunately the Council does not accept the amendments the mortgagee requires and the majority of mortgagees I have worked with accept and understand the Council's position.

As said previously it would mean the mortgagee (if they became a mortgagee in possession) were taking the benefit of the planning permission but not taking liability for any obligations secured. If there was a continuing breach when they became mortgagee in possession for instance regarding a pedestrian or traffic safety issue in relation to the CMP it would then fall on the Council to remedy this. The Council is not willing to accept this risk when it would be the mortgagee taking the benefit of the planning permission.

Kind regards,

—  
Emily Shelton-Agar  
Legal Adviser

Telephone: 02079745826