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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>

2 June 2016 at 11:49

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

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

Dear Harman,

I understand the frustration of going back and forth between the Council and the Lender however the Council is not content with either clauses limiting the mortgagees liability.

The mortgagees suggestion in the letter is not a compromise as the agreement already provides that any successors in title – which would include anyone buying from a mortgagee in possession would be bound by the terms of the agreement.

Here the issue for the council is not only the Highways Contribution but also the Construction Management Plan. If there was a breach that was committed and continuing and the mortgagee came into possession it would fall to the Council (using public funds) to fix this and it would likely have to as CMP's are in place to protect public safety on roads and footpaths.

The Council is not gaining the benefit from this Development and if we were to agree to the Mortgagees exclusion clause they get the benefit along with the increase in value of the Property without having to comply with the obligations secured to ensure the development is acceptable in planning terms. The same reasoning applies to the Highways Contribution.

Unfortunately I do not agree to the limiting of the mortgagees liability for the reasoning said above and previously.

The Council is not being unreasonable and the vast majority of other mortgagees dealt with in the Borough have no issues with this. In saying this I do understand this does not mean the current mortgagee has to agree.

In other situations with the current mortgage provider some applicants have successfully applied to re-mortgage their property.

Kind regards,

—  
Emily Shelton-Agar  
Legal Adviser

Telephone: 02079745826



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

**Sent:** 25 May 2016 17:31

**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

Further to your last email, we again wrote to the lender (for the fourth time) and they, as expected, responded stating that they would not accept financial liability under an agreement when they have no control over the implantation of the planning permission by their borrowers. However, they have advised that they would have no objection to the clause being amended. I have attached our letter and their subsequent response.

The lender's first letter to our client suggested the following clause:

***'The mortgagee consents to this agreement and acknowledges that the agreement binds the Property. The mortgagee shall only be liable for a breach of the Agreement that it has itself caused whilst mortgagee in possession but shall not be liable for any existing breach.'***

In light of Birmingham Midshires latest letter, I have drafted what I think would potentially be a suitably amended clause to be included in the S106 agreement:

***'The mortgagee shall only be liable for a breach of the Agreement that it has itself caused whilst mortgagee in possession, however, any mortgagor purchasing the property from the bank as mortgagee in possession would be bound to fulfil any outstanding planning obligations as part of the planning consent hereby granted'.***

I think the above is reasonably worded and if you agree I will go back to BM and put this to them.

Hope this helps and look forward to your feedback.

Regards

Harman Sond | Principal Planning Consultant  
BSc (Hons), MSc, MRTPI  
[harman.sond@drawingandplanning.com](mailto:harman.sond@drawingandplanning.com)  
+44 (020) 8202 3665  
[www.drawingandplanning.com](http://www.drawingandplanning.com)  
Mercham House, 25-27 The Burroughs, Hendon, London, NW4 4AR.

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On 14 April 2016 at 11:52, Shelton-Agar, Emily <[Emily.Shelton-Agar@camden.gov.uk](mailto:Emily.Shelton-Agar@camden.gov.uk)> wrote:

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.