

Sarah Ballantyne-Way <[sballantyneway@hghconsulting.com](mailto:sballantyneway@hghconsulting.com)>

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**RE: 2019/0508/5 the hexagon**

1 message

**Obushenkova, Olga** <[Olga.Obushenkova@camden.gov.uk](mailto:Olga.Obushenkova@camden.gov.uk)>

19 November 2019 at 16:46

To: "[sballantyneway@hghconsulting.com](mailto:sballantyneway@hghconsulting.com)" <[sballantyneway@hghconsulting.com](mailto:sballantyneway@hghconsulting.com)>Cc: "Whittredge, Emily" <[Emily.Whittredge@camden.gov.uk](mailto:Emily.Whittredge@camden.gov.uk)>

Dear Sarah

While we do not necessarily agree on the NPPG interpretation (and this would be up to a Court to decide), the NPPG is clearly discussing 'planning obligations' in terms of contributions to infrastructure (i.e open space, schools) not a 'reasonable cost' associated with the successful management of construction impacts on surrounding residents and properties. Nonetheless, even if 'planning obligation' as used in that paragraph of the NPPG was inferred as any use of S106, the NPPG is just a material consideration (it is simply a guidance) and managing construction impacts within the adopted Camden policy would be given more weight by the Council in determining how the obligations should be imposed.

As explained previously, the obligations are in line with the appropriate policies and accordingly the Council does require your client to enter into the s106 agreement. Please note that this is the same approach we apply to every applicant and there is no reason for your client to be given any different or preferential treatment.

My response is based on the discussions I had with our planning policy officers. If you have any further points to raise regarding planning policy, you will need to discuss those with the Planning policy officers as I will only discuss legal points. I would also like to note you that I have now spent more time as would be normally required on negotiating this type of a s106 agreement and my client is likely to instruct me to start charging any further time spent on this on an hourly basis (as set out in my original email on 14 August).

Regards

--  
Olga Obushenkova  
Lawyer

Telephone: 020 7974 4125

**From:** Sarah Ballantyne-Way <[sballantyneway@hghconsulting.com](mailto:sballantyneway@hghconsulting.com)>**Sent:** 18 November 2019 10:11**To:** Obushenkova, Olga <[Olga.Obushenkova@camden.gov.uk](mailto:Olga.Obushenkova@camden.gov.uk)>**Cc:** Whittredge, Emily <[Emily.Whittredge@camden.gov.uk](mailto:Emily.Whittredge@camden.gov.uk)>**Subject:** Re: 2019/0508/5 the hexagon

Dear Olga,

Many thanks for your reply.

I'm afraid I cannot agree with you that the reference remains solely related to affordable housing, as in the previous iteration.

The heading of that section is, '*Are there any specific circumstances where contributions through planning obligations should not be sought from developers?*' It makes no specific reference to affordable housing. The paragraphs that follow relate to specific circumstances where contributions through planning obligations should not be sought. The first 3 paragraphs relate to circumstances where affordable housing contributions should not be sought, and the fourth paragraph, which we are concerned with, sets out where planning obligations should not be sought i.e. where developments consist only of a residential annexe or extension to an existing home.

The last sentence simply provides a reference to paragraph 63 and glossary in relation to the preceding paragraphs regarding affordable housing. This has no bearing on the meaning of the fourth paragraph.

I enclose an email from MHCLG confirming that this is the case.

The fact that the NPPF does not refer to house extensions or residential annexes is unsurprising. It is a strategic policy document, the detail is provided in the PPGs.

In response to your comments regarding previous correspondence with our client, I appreciate that you have set out the Council's justification for planning obligations and how you consider they meet the tests set out in the NPPF, however the above makes it plain that requesting that my client enter into a S106 agreement in order to secure a CMP plus monitoring fee for a house extension is inappropriate. It can and should be dealt with via condition.

I look forward to hearing from you in due course.

Kind regards

Sarah

On Thu, 7 Nov 2019 at 17:10, Obushenkova, Olga <[Olga.Obushenkova@camden.gov.uk](mailto:Olga.Obushenkova@camden.gov.uk)> wrote:

Dear Sarah

Thank you for your comment regarding the recent changes made to the NPPG (Paragraph: 023 Reference ID: 23b-023-20190901). However, please note that that specific paragraph should not be taken out of context – it is clearly in relation to affordable housing only, even though the words may have been removed from this sentence: "*Planning obligations should not be sought from any development consisting only of the construction of a residential annex or extension to an existing home.*"

As you will be aware, the sentence is part of the paragraph which relates to affordable housing and the relevant policy is also to do with the affordable housing only. The reference to the relevant policy is set out in the paragraph you refer to as follows "*See related policy: National Planning Policy Framework paragraph 63 and glossary*".

Please note also that the general policies under the NPPF relating to planning obligations (paragraphs 54-57) do not state anything regarding small residential developments. Furthermore, the planning obligations proposed under the s106 for this development satisfy the tests set out in the NPPF (paragraphs 54-57) – this has already been discussed in great detail in my email of 11 October 2019 (attached).

While it is unfortunate that your client is having an issue with their mortgagee, the Council considers it necessary to secure this obligation under the s106 agreement (explained in the attached correspondence) and I have already provided reasoning as to why the mortgagee must be a party to the agreement. Your client may wish to consider re-mortgaging or providing an indemnity to their mortgagee. It is unclear why the mortgagee is unwilling to enter into the agreement and why they would refuse to accept an indemnity from your client as the s106 agreement only involves one obligation which will not apply in perpetuity.

As noted previously, I am aware of situations where other applicants have been successful in re-mortgaging their properties and finding mortgagees who would be willing to enter into a s106 agreement. This is one of the options open to your client.

As my original email sent to your client's agent on 14 August stated - it was and remains your client's responsibility to have arrangements in place for all the relevant parties to sign the agreement, your client has had sufficient time to discuss the agreement with their mortgagee and to look for another mortgagee if necessary.

Regards

--

Olga Obushenkova  
Lawyer

Telephone: 020 7974 4125



**From:** Sarah Ballantyne-Way <[sballantyneway@hghconsulting.com](mailto:sballantyneway@hghconsulting.com)>

**Sent:** 31 October 2019 16:48

**To:** Obushenkova, Olga <[Olga.Obushenkova@camden.gov.uk](mailto:Olga.Obushenkova@camden.gov.uk)>; Whittredge, Emily <[Emily.Whittredge@camden.gov.uk](mailto:Emily.Whittredge@camden.gov.uk)>

**Cc:** Rachel <[rmp@airlocations.com](mailto:rmp@airlocations.com)>

**Subject:** Fwd: 2019/0508/5 the hexagon

Dear Olga and Emily,

I am writing on behalf of my client, Rachel Munro-Peebles, in regard to the S106 Agreement you have requested she enter into order to secure a Construction Management Plan and associated monitoring fee contribution for planning permission to be granted for the proposed extension at 5 The Hexagon (planning reference L 2019/0508/P).

As I believe Rachel and her architects (Chris Dyson Architects) have explained to you, the mortgage company is refusing to be a signatory to the S106 and as such they have been unable to move forward with the S106 Agreement, despite having an otherwise acceptable scheme before officers.

I have reviewed this situation, and the relevant guidance and legislation associated with planning obligations, and note that a recent change has been made to the Planning Obligations NPPG where it is now made clear that planning obligations should not be sought for residential extension or annexes.

Paragraph: 023 Reference ID: 23b-023-20190901 sets out the specific circumstances where contributions through planning obligations should not be sought from developers. This paragraph has recently been amended (1st September 2019) and now states specifically:

*"Planning obligations should not be sought from any development consisting only of the construction of a residential annex or extension to an existing home."*

Previously, this paragraph related only to affordable housing, but it has since been amended to all planning obligations.

As such, I would ask that you review your request. Rachel has already provided a draft CMP, and this is something that can be secured via condition. I note your comment that a S106 is more appropriate in this instance as the Fitzroy Park Residents Association need to be consulted however they have already provided detailed comments and asked that they are embedded in any planning condition (our emphasis) should permission be granted. There is no reason why a detailed condition, which meets the tests, could not be drafted to ensure these specific items are addressed within the CMP. Furthermore, our client has already provided a draft CMP and received an agreement in principle from the Fitzroy Park Residents Association.

I look forward to hearing from you in this regard and to securing planning permission for the above scheme at the earliest opportunity.

Kind regards

Sarah

----- Forwarded message -----

From: **Rachel Munro-Peebles** <[rmp@airlocations.com](mailto:rmp@airlocations.com)>  
Date: Mon, 21 Oct 2019 at 11:32  
Subject: Fwd: 2019/0508/5 the hexagon  
To: Sarah Ballantyne-Way <[sballantyneway@hghconsulting.com](mailto:sballantyneway@hghconsulting.com)>

 [cid:image028.png@01D5900E.50620280](#)

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Begin forwarded message:

**From:** "Whittredge, Emily" <[Emily.Whittredge@camden.gov.uk](mailto:Emily.Whittredge@camden.gov.uk)>  
**Subject:** RE: 2019/0508/5 the hexagon  
**Date:** 11 October 2019 at 11:56:12 BST  
**To:** Rachel Munro-Peebles <[rmp@airlocations.com](mailto:rmp@airlocations.com)>  
**Cc:** "Obushenkova, Olga" <[Olga.Obushenkova@camden.gov.uk](mailto:Olga.Obushenkova@camden.gov.uk)>, nealmunro-peebles <[nmunropeebles@gmail.com](mailto:nmunropeebles@gmail.com)>

Dear Rachel,

Olga will be emailing you today with the Council's response to the questions and concerns you have raised.

Kind regards,

--

Emily Whittredge  
Junior Planner

Telephone: 020 7974 2362

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**From:** Rachel Munro-Peebles <[rmp@airlocations.com](mailto:rmp@airlocations.com)>  
**Sent:** 11 October 2019 10:34  
**To:** Rachel Munro-Peebles <[rmp@airlocations.com](mailto:rmp@airlocations.com)>  
**Cc:** Whittredge, Emily <[Emily.Whittredge@camden.gov.uk](mailto:Emily.Whittredge@camden.gov.uk)>; Obushenkova, Olga <[Olga.Obushenkova@camden.gov.uk](mailto:Olga.Obushenkova@camden.gov.uk)>; nealmunro-peeblees <[nmunropeeblees@googlemail.com](mailto:nmunropeeblees@googlemail.com)>  
**Subject:** Re: 2019/0508/5 the hexagon

Hi Emily,

I have yet to hear from you - which is pretty alarming given the situation.

Can you tell me when you will be returning my email?

Many Thanks

Rachel

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On 9 Oct 2019, at 12:30, Rachel Munro-Peebles <[rmp@airlocations.com](mailto:rmp@airlocations.com)> wrote:

Dear Emily and Olga,

I am the owner of [5 The Hexagon, n6 6hr](#).

We would like to know why you are insisting on serving a section 106 on our property, and not granting us planning permission until it is signed by ourselves and our mortgage lender. There are questions here as to why this has been put upon such a SMALL development in this estate, and at such short notice:

1. A section 106 - is usually given to a property that would not usually receive planning permission - at no point on this journey have you stated that we would not receive planning permission, and we all agreed to the reduced small extension. A rough increase of 600 sq foot.
2. We have not seen you serve this section 106 on other similar size schemes, it seems odd that this is served now.
3. This was never raised in the pre - app, and neither at any point in the 12 months approximately taken to achieve planning permission, of which is still pending.

We have read the relevant documents regarding this section 106 and what is required to protect the Fitzroy Estate, and it is ludicrous that you are insisting this is served on our very small house, in comparison to the giant schemes that exist on the estate. Camden have neglected their professional duties here, and have not informed us as property owners that we could be at risk because of this document.

Our home is now sat empty, our lenders - (like the majority of lenders WILL NOT sign something like this - as you well know, as a Section 106's refer to large developments) , and now we are left with a house that it is not liveable for our family. We are losing thousands of pounds monthly, which do not include fees from our Architects or Builders. Camden is at fault and should look at this case and revise its decision immediately.

This is totally unacceptable and I would like an immediate response to arrange a meeting with senior people in the planning team to discuss this situation you have left us in.

My number is 07956 439 520 should you wish to call me.

Rachel Munro-Peebles

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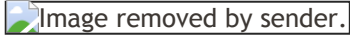
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**Sarah Ballantyne-Way**

Director



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**Sarah Ballantyne-Way**

Director



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