

The complaint

Miss B and Mr L complain that Nationwide Building Society unfairly declined to sign a section 106 agreement. This stopped them proceeding with plans to develop their property.

They ask that Nationwide signs the section 106 agreement, retracts negative reports to the credit rating agencies and pays compensation for the delays, stress and financial loss.

What happened

Miss B and Mr L have a mortgage with Nationwide. They applied for planning consent to develop their property and an adjoining property. The local authority asked for a section 106 agreement to be signed. In brief, this is an agreement which sets out legal obligations to mitigate impacts of the development.

Miss B and Mr L say the local authority won't grant full planning consent until all relevant parties have signed the section 106 agreement. This includes Nationwide as it has a mortgage on the property. Miss B and Mr L say all other parties have signed the section 106 agreement.

Nationwide said it wouldn't sign the section 106 agreement without an amendment. It wanted to protect its position if it ever needed to take possession of the property. It didn't want to be liable for breaches committed prior to it taking possession. The local authority didn't agree to this amendment.

Miss B and Mr L say their legal representatives have never experienced a mortgage lender blocking a section 106 agreement. They say they offered clauses to protect Nationwide's position, but it still refused to sign the agreement.

Miss B and Mr L say they took time off work to project manage the development and invested significant amounts of money. They say they can't take out development finance to buy the neighbouring plot of land and re-finance the Nationwide mortgage until they have full planning consent. Miss B and Mr L say Nationwide's decision not to sign the section 106 agreement caused significant delays, increased their costs and put the project (and their projected profits) at risk. They're on Nationwide's standard variable rate and say their credit rating has been affected.

Our investigator said Nationwide had considered Miss B and Mr L's request regarding the section 106 agreement and reached a fair decision to decline to sign it.

Miss B and Mr L didn't agree. Mr L said Nationwide hadn't understood the proposal and didn't agree that it would affect its security. He said they have no funds available to start work until development finance is in place – by which time Nationwide's mortgage would have been repaid. Mr L said there were serious implications for their financial position if the section 106 agreement isn't signed.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Nationwide says it does sign section 106 agreements. Before doing so it considers the request, including the draft agreement, the customer's plans and how its security would be affected. Here, it said it would sign the section 106 agreement, but only if it was amended so that it would not be liable for breaches committed prior to it taking possession.

The local authority said the amendment requested by Nationwide wasn't acceptable as it could potentially mean it had no-one to hold to account for a breach.

Miss B and Mr L offered to add clauses to the effect that they can't start building work until the Nationwide mortgage was redeemed. They say that would mean the obligations under the section 106 agreement wouldn't be triggered until after they'd re-financed. I appreciate that Miss B and Mr L (and their legal advisers) thought this would be a practical solution. But I can also understand why Nationwide didn't agree. Nationwide said it was possible that work could take place in breach of the undertaking, and it could find itself liable for any pre-existing breaches if it took possession. Nationwide said it wouldn't sign the section 106 agreement without the amendment it had requested.

I understand Miss B and Mr L's frustration. But I think Nationwide considered their request fairly and I don't think its decision was unreasonable. It doesn't change matters that another lender has signed the section 106 agreement. Each lender is entitled to make a commercial decision about its lending policies and risk appetite.

It follows that I don't think it's fair and reasonable to require Nationwide to sign the section 106 agreement or pay compensation. Mr L and Miss B said their credit files had been affected. Unless this is due to Nationwide recording inaccurate information (which Miss B and Mr L haven't said is the case) I can't fairly require Nationwide to correct this.

Miss B and Mr L are in a difficult position. I don't know if they've already taken advice from an independent financial adviser to explore their options to refinance or (if available) source insurance that might allow the local authority to issue the full planning consents. If not, they could consider doing so.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B and Mr L to accept or reject my decision before 24 October 2024.

Ruth Stevenson
Ombudsman