



Department for
Communities and
Local Government

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Your ref: LEG/RP/CONV/HR010 305

Our ref: NPCU/CPO/A5840/74092

Date: 16 September 2016

Dear Madam

**Town and Country Planning Act 1990 Section 226(1)(a)
Acquisition of Land Act 1981
The London Borough of Southwark (Aylesbury Estate Site 1B-1C) Compulsory
Purchase Order 2014 ('the Order')**

1. The report of the Inspector, Lesley Coffey BA (Hons) BTP MRTPI who held a public local inquiry into the above Order on 30 April, 1-2 May, 12 May and 13-15 October 2015 has been considered. A copy of the Inspector's report is enclosed. References in this letter to paragraphs in the Inspector's report are indicated by the abbreviation IR, followed by the relevant paragraph number.

2. The Order, if confirmed, would authorise the compulsory purchase of an area of land (IR19-29) known in the Development Partnership Agreement as the First Development Site on the Aylesbury Estate. The Order is for the purpose of facilitating the carrying out of development, redevelopment and improvement on or in relation to the land, in particular, for the purpose of securing the regeneration of the Aylesbury Estate in accordance with the provisions of the Aylesbury Area Action Plan, including the demolition of the existing residential units and the provision of a mixed tenure residential development and associated landscaping.

Inspector's Recommendation and Summary of the Decision

3. The Inspector recommends (IR 424) that the Order should not be confirmed. For the reasons given below, the Secretary of State agrees with the Inspector's recommendation and concludes that the Order should not be confirmed.

Procedural matters

4. Ten qualifying objections and one non-qualifying objection to the Order were received prior to the commencement of the inquiry. Several additional objections were made at the inquiry (IR4). The main grounds of objection related to: the failure of the scheme to ensure that social rented housing will be provided on the new Aylesbury Estate; the viability and deliverability of the scheme; refurbishment not properly considered; the scheme does not promote the social well-being of the area; a failure of the Acquiring Authority to carry out an Equality Impact Assessment in relation to the leaseholders; and the suggestion that the CPO breaches the human rights of the leaseholders.

Matters arising post close of the inquiry

5. On 29 October 2015, the Guidance on Compulsory Purchase Process and the Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion ('Guidance') was published. The Guidance replaces and cancels Circular 06/2004 'Compulsory Purchase and the Crichel Down Rules' and 13 other circulars and guidance documents. The Guidance is a material consideration in the Secretary of State's decision on the CPO and all parties to the Order were provided with the opportunity to submit comments on this matter and the Inspector has taken the views received into account. The Secretary of State has had regard to the new Guidance and has taken the views received into account and he considers, in the light of the facts of this case, that the changes to the Guidance do not alter his conclusions and decision.

6. Following the close of the public inquiry, the Secretary of State received correspondence from a number of the objectors. This includes Beverley Robinson (e-mails dated 30 October 2015, 23, 25, 27 April 2016, 4 and 14 May 2016), Paul Palley (e-mails dated 15, 18 January 2016, 15 February 2016, 24, 26 and 29 April 2016), Toby Eckersley (e-mails dated 21 April and 13 May 2016) and Judi Bos (e-mails dated 25 April 2016 and 17 May 2016).

7. On 9 June 2016, the Secretary of State wrote to all the parties to invite comments on a Southwark Council report dated 8 December 2015 which made reference to a change in policy concerning the requirement in respect of leaseholder's savings for resident homeowners affected by regeneration schemes and eligibility for council-assisted rehousing options.

8. The Secretary of State has had regard to all the views expressed in response to this report and all the correspondence received has also been taken into account. He considers, in the light of the facts of this case, that the matters raised do not alter his conclusions and decision.

Considerations

9. The Secretary of State has carefully considered whether there is a compelling case in the public interest to confirm the Order. IR325-326 sets out the relevant compulsory purchase legislation and policy in consideration of which the Secretary of State's decision is made.

Propriety of Procedures and Powers

10. The Secretary of State agrees with the Inspector for the reasons given that the Order has been made under the enabling power (IR 9).

Planning Framework

11. The Secretary of State has considered whether the purpose of which the land is being acquired fits in with the adopted Local Plan for the area and he agrees with the Inspector on what documents comprise the development plan (IR328). The Secretary of State has also had regard to the views (IR126-145) of the Aylesbury Leaseholder's Group (ALG) who suggest that the scheme will not meet the requirements of the Aylesbury Area Action Plan (AAAP). The Secretary of State agrees with the Inspector for the reasons given (IR 327-339) that the scheme, which the Order supports, is in accordance with the planning framework for the area.

Well-being

12. The Secretary of State has carefully considered the extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the area including impacts on individuals (IR 340-377).

13. As far as the economic benefits are concerned, the Secretary of State agrees with the Inspector's conclusions (IR 374) for the reasons given (IR 341-345) that the Order, if confirmed, will allow the scheme to deliver significant economic benefits in terms of jobs primarily in the construction phase but with the potential for additional jobs to be created in the post-construction period.

14. As to social benefits, and individual impacts on the leaseholders in particular, the Secretary of State agrees with the Inspector's conclusion (IR 376) for the reasons given (IR 346-354 and IR371-373) that, if the Order is confirmed, it will have considerable economic, social and environmental dis-benefits in terms of consequences for those leaseholders remaining on the Order land. The Secretary of State, however, also notes that the scheme does have some social benefits, namely the provision of early years' facilities in the form of a gym/ learning centre including facilities for people with learning disabilities and the provision of more housing for the elderly.

15. As to environmental benefits, the Secretary of State agrees with the Inspector's conclusions (IR 376) for the reasons given (IR 355-370) that the Order, if confirmed, would allow the scheme to deliver benefits in terms of sound and sustainable buildings. However, the deficiencies of the scheme include the number of dwellings that fail to meet the Council's adopted standards for sunlight and daylight, and the extent of overshadowing to the proposed amenity areas, which also conflicts with section 7 of the NPPF, which states that sustainable development is indivisible from good planning and should contribute positively to making places better for people. Overall, the Secretary of State agrees with the Inspector's conclusions on environmental wellbeing (IR 376 and 377).

Viability & Delivery

16. The Secretary of State has considered the Inspector's conclusions on viability and delivery (IR 387-391). The Secretary of State notes the Inspector's views on the scheme's viability and agrees that this is unlikely to be blocked by any physical or legal impediments. Accordingly, the Secretary of State finds the Scheme complies with paragraph 15 of the Guidance and is therefore viable.

Alternatives

17. The Secretary of State has considered the Inspector's conclusions (IR 378-386) on the issue of whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means. Objectors submitted that the aim of regenerating the estate and the provision of a mixed tenure community could be achieved by the refurbishment of the estate. No other alternative means of regeneration were considered by the Inspector. The Secretary of State agrees with the Inspector for the reasons given at IR 386 that the question of refurbishment does not, on the evidence presented, represent a viable or deliverable alternative to the scheme for the Order land.

Efforts to Negotiate

18. The General Overview to the Guidance on Compulsory Purchase Process and the Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion, states that the compulsory purchase of land is intended as a last resort in the event that attempts to acquire by agreement fail. The Secretary of State has considered the Council's case as to the efforts to negotiate (IR 222) and agrees (IR395-402) with the Inspector's view that the Council has not taken reasonable steps to acquire land interests by agreement.

Human Rights

19. The Secretary of State has carefully considered whether the purposes for which the Order was made sufficiently justify interfering with the human rights of those with an interest in the land affected. In particular, he has considered the provisions of Article 1 of the First Protocol to, and Article 8 of, the European Convention on Human Rights. The Secretary of State is not satisfied, for the reasons given by the Inspector (IR420-422), that such interference is justified.

20. In relation to Article 8 of the European Convention on Human Rights (ECHR), the Secretary of State agrees with the Inspector's analysis of the impact on leaseholders set out at IR401 and 402, namely that in practice the options for most leaseholders are either to leave the area, or to invest the majority of their savings in a new property. Article 8(1) is therefore clearly engaged. In relation to Article 8(2) (which permits interference which is proportionate when balanced against the protection of the rights and freedoms of others), the Secretary of State finds that the interference with residents' (in particular leaseholders') Article 8 rights is not demonstrably necessary or proportionate, taking into account the likelihood that if the scheme is approved, it will probably force many of those concerned to move from this area.

21. For elderly residents, who are of an age where they would probably be unable to obtain a mortgage to make up any shortfall and their future earning potential is likely to be limited, using their savings and other investments would severely limit their ability to choose how they spend their retirement and the use to which they put their savings and investments. The leaseholders are not obliged to accept either of the options to them (shared ownership or shared equity) to stay on the Estate, and could potentially purchase a property on the open market. However, many of the leaseholders will probably be unable to afford these options and will have to move away from the area. The likelihood that leaseholders will have to move away from the area will result in consequential impacts to family life and, for example, the dislocation from local family, the education of affected children and, potentially, dislocation from their cultural heritage for some residents.

22. Article 1 of the First Protocol of the ECHR entitles a person to peaceful enjoyment of their property, but also stipulates that this provision does not impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest. As mentioned below, the Inspector in this case found that the interference with residents' peaceful enjoyment of their property was not necessary to control the use of property in accordance with the general interest, and accordingly that the interference with Article 1 of the First Protocol was not proportionate (IR422). The Secretary of State agrees that interference with the residents' human rights is not proportionate in all the circumstances.

Public Sector Equality Duty

23. In making this decision, the Secretary of State must give due regard to the need to (a) eliminate unlawful discrimination, harassment, victimisation; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. Protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. This arises from the Public Sector Equality Duty, under section 149 of the Equality Act 2010.

24. The Order, if confirmed and the scheme if carried out would have negative and positive impacts on protected groups as a result of the proposal. The Secretary of State finds that, on balance, there are significant negative impacts on protected groups if the Order is confirmed.

25. The positive impacts for those with the protected characteristics of age and disability respectively would include the provision of more housing for the elderly and early years' facilities in the form of a gym/ learning including facilities for people with learning disabilities.

26. The negative impacts on protected groups would include the effect of the impact on elderly leaseholders currently resident on the Estate, as identified at IR 372 to 373 and IR 401 and 402, namely the fact that many of the leaseholders (who will have no right to be accommodated in the scheme) are of an age where they would

probably be unable to obtain a mortgage to make up any shortfall and their future earning potential is likely to be limited. Using their savings and other investments would severely limit their ability to choose how they spend their retirement and the use to which they put their savings and investments. The leaseholders are not obliged to accept either of the options open to them (shared ownership or shared equity) to stay on the Estate, and could potentially purchase a property on the open market. However, many of the leaseholders will probably be unable to afford these options and have to move away from the area. This is likely to impact particularly on those with the protected characteristic of age, including in relation to the care of older relatives and children's education (as people have to move out of the area, this will mean that the elderly are deprived of having a local family to care for them, and the children of those parents affected are likely to have to move schools when their family moves to a different area).

27. This impact on the care of older relatives may adversely affect their ability to see and be cared for by their family and potentially to integrate with the rest of society (for instance, without a family member to accompany them in a car or on public transport it may be harder for them to access the shops and public facilities like the GP surgery or local library as they will lack the freely offered assistance to do so) and therefore breaches the PSED requirement to have due regard to the need to foster good relations between persons who share a relevant protected characteristic (the elderly) and persons who do not share it (the rest of the population).

28. The impact on children's schooling may result in adverse impact on the child's exam performance and their school reports. This is in turn likely to result in a lower level of achievement than otherwise might have been the case, which is likely to result in a lower level of opportunity for the affected child in terms of their ability to apply successfully for jobs (thus adversely affecting equality of opportunity) and – in terms of uprooting them at a vulnerable stage in their development - a negative impact on the affected child's good relations with their family and extended social contacts (they are likely to go through a period of isolation as a result of being uprooted from the social networks they had established at their previous home).

29. Given the lack of clear evidence regarding the ethnic and/or age make-up of those who now remain resident at the Estate and who are therefore actually affected by any decision to reject or confirm the Order, it is not possible to clearly identify BME groups (either of the elderly or children) as disproportionately impacted by the proposal. However, given that 67% of the population living on the Estate were of BME origin (see IR 394), it is highly likely that there is a potential disproportionate impact on the elderly and children from these groups, who are likely to dominate the profile of those remaining on the Estate and who are therefore likely to have to move out of the area if the Order is confirmed.

30. There is therefore a further dimension to the adverse impacts on these groups, which is that this proposal is likely (given the predominantly BME profile of those resident on the Estate) to also have a particularly discriminatory impact on BME children and BME elderly, including both regarding their equality of opportunity (as described above – particularly, for children, in relation to their achievements at school and consequent job prospects) and in relation to their good relations with other non-protected groups (as described above – particularly, for the elderly, in

relation to their ability to see and be cared for by their family and potentially to access local facilities such as the shops, library or GP surgery with the free assistance offered by their families). Therefore the impact of confirming the Order is likely to disproportionately impact on those with the protected characteristics of both age (the elderly and children) and ethnicity (those of BME ethnicity in particular).

31. Lastly, evidence was presented to the Inquiry that BME leaseholders would be prejudiced by the proposal in relation to their ability to retain contact with their own culture. The Inspector found that the importance of remaining in the locality for cultural or family reasons is not confined to leaseholders from BME groups, and therefore that there was no disproportionate negative impact in this regard in relation to BME leaseholders (IR 394).

32. However, the Inspector's conclusion in this regard assumes that the wider make-up of the population at the site is ethnically mixed between those of BME origin and those of white British origin. In fact, there is a shortage of evidence concerning the precise ethnic make-up of those remaining resident at the Estate, who would be affected by a decision to confirm the Order (see above). If, in practice, the cultural and/or ethnic make-up of those resident at the Estate, who are unlikely to be able to remain there, is pre-dominantly those of one or more particular ethnic/cultural origins, then their cultural life is likely to be disproportionately affected by a decision to confirm the Order. There is also likely to be a negative impact on their ability to retain their cultural ties, undermining their equality of opportunity with other ethnic groups (such as white British) who may not be so disproportionately affected. This is particularly so, in that white British culture is more widely-established across the UK, including at housing sites to which residents may be moved, whereas minority cultural centres are often less widespread, which is likely to make cultural integration harder for those of BME origin who are forced to move than those of a white British origin.

33. Mitigation of negative PSED effects – by suggested modifications to the Order - is in practice not possible. Full planning permission has already been granted and it would therefore not be practical to require changes which could not in practice be put into effect. Compensation is not a relevant consideration in relation to whether the Secretary of State should confirm the Order because this issue is dealt with separately by the Upper Tribunal (Compensation).

Justification in the public interest and overall balance

34. A compulsory purchase order should only be confirmed where there is a compelling case in the public interest to justify sufficiently the interference with the human rights of those with an interest in the land affected. The Secretary of State considers that the purpose for which the land is being acquired fits in with the adopted planning framework. The Secretary of State further considers that the proposed purpose of the Order, including the facilitating of the delivery of a mixed tenure residential development and associated landscaping, will contribute to the achievement of the promotion or improvement of the economic wellbeing of the area, and that there are some social benefits from the proposal. He also considers the scheme to be viable, that there is not a viable or deliverable alternative to the scheme for the Order land. However, he does not consider that the Council has

taken reasonable steps to acquire land interests by agreement. In addition, the Secretary of State considers that the proposed purpose of the Order will have considerable economic and social dis-benefits in terms of consequences for those leaseholders remaining on the Order Land. Further, that the environmental impact of the scheme is neutral, and therefore that the well-being criteria are only partially met.

35. Moreover, the Secretary of State has carefully considered whether the purposes for which the compulsory purchase order was made sufficiently justify interfering with the human rights of the lessees under section 12(2A) of the Acquisition of Land Act 1981 and he is not satisfied that such interference is justified. In particular he has considered the provisions of Article 1 of the First Protocol to, and Article 8 of, the European Convention on Human Rights. In this respect, the Secretary of State does not consider that the order is justified or proportionate between the public interest and interests of the residents. The Secretary of State has also had due regard to the Public Sector Equality Duty in considering whether to confirm the Order.

36. The Secretary of State has given careful consideration to the Inspector's Report and the submissions of the parties. He agrees with the Inspector (IR415-423) that a compelling case in the public interest for confirming the order has not been made. Whilst he considers that this Order should not be confirmed, for the reasons above, the Secretary of State in principle welcomes regeneration and much needed residential development. He also considers that the Council's desired outcome could in principle bring with it considerable benefits. He considers that potentially there is a good opportunity for the Council to work positively with the remaining leaseholders to alleviate the negative aspects he has highlighted above with a view to resubmitting an Order in due course to achieve successfully the objectives set out in the planning framework.

37. The Secretary of State has therefore decided to accept the Inspector's recommendation not to confirm The London Borough of Southwark (Aylesbury Estate Site 1B – 1C) Compulsory Purchase Order 2014.

38. I return the sealed order and the map.

39. Copies of this letter and the Inspector's report are being sent to persons who made remaining objections and appeared or were represented at the local inquiry. Copies of the letter are also being sent to other persons who made submissions at the local inquiry.

Yours faithfully

Dave Jones

Dave Jones

Senior Planning Manager

Signed by authority of the Secretary of State for Communities and Local Government

