R. Novakovic • 35% Campaign • www.35percent.org

The Secretary of State
Department for Communities & Local Government
5 St Philips Place
Colmore Row
Birmingham B3 2PW

Southwark, October 17, 2016

Planning 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

Dear Sir,
I write on behalf of the 35% Campaign, which made written and oral submissions in objection to the above compulsory purchase order and is listed as an interested party in Southwark Council's pre-action protocol 'letter before claim' dated 7th October. We are writing in response to the grounds of appeal set out in the Council's letter, pursuant to its application for a judicial review of the Secretary of State's decision on the above order.

As objectors to the order and interested parties in the case, we strongly urge you to reject the Council's appeal to quash the decision for the order and its request to re-run the public inquiry. We agree with the conclusion in Inspector Coffey's 29 Jan 2016 report that *"the CPO would not achieve the social, economic and environmental well-being sought"* and urge the Secretary of State to stand by his decision to refuse the order on the grounds given in his 16 Sep 2016 decision letter.

We believe that Southwark Council's grounds of appeal are unfounded and have listed below the reasons why we think they should be rejected.

1 Supplemental evidence submitted after close of the inquiry

Southwark Council is claiming that the Secretary of State failed to consider supplemental evidence submitted by the Council on 29th April 2016 - more than six months after the inquiry had concluded. This is also three months after Inspector Coffey's report and recommendations were completed.

On 6th June 2016, we received a copy of the Council's 29th April 2016 supplemental evidence and were asked to make *'representations on the implications, if any'*, of the new evidence that gave details of the changes in the shared ownership offer to leaseholders. As the matter had been discussed extensively during the inquiry and as the Council had already informed the inquiry that it would be making the changes referred to in its 29 April 2019 letter, we saw no new implications arising from it and decideded accordingly not to make any representations.

Paragraph 400 of Inspector Coffey's report confirms that the inquiry was fully informed of the Council's intent to update this aspect of its shared ownership offer to leaseholders:

> *".. eligible leaseholders are required to invest any capital in excess of £16,000 in any shared equity or shared ownership property. At the inquiry the Council explained that this aspect of the rehousing/compensation package is currently being reviewed."*

The inquiry was therefore well aware of the Council's intent to update its policy. Inspector Coffey's acknowledgement of this in her report is evidence that she had taken it into account in her decision not to recommend confirming the order and contradicts the Council's claim that this change to the shared ownership offer had failed to be taken into account.

2 Reasonable steps to negotiate

The Council is refuting inspector Coffey's finding that it has failed to take reasonable steps to negotiate with leaseholders.

In its grounds of appeal the Council claims that *"541 of the 566 properties had been acquired by agreement"* and goes on to state the following:

> *"Having acquired nearly 90% of the leaseholder interests within the estate, it cannot sensibly be said that the Council 'has not taken reasonable steps to acquire land interests by agreement.'(DL/18)."*

The Council's claim that it has acquired 541 of the properties on the order land by agreement is misleading. It fails to explain that the vast majority of these were tenanted properties for which no CPO was required. Vacant possession of these was obtained under the Council's rehousing policy for tenants - and via possession orders under the Housing Act 1988 for those tenants unsatisfied with the Council's rehousing offer. The 'decanting' of these tenanted households began in 2012 and was completed well before the compulsory purchase order was issued.

The precise number of leasehold versus tenanted properties on the order land was made available to inspector Coffey at the inquiry. Her report and recommendations accurately saw through and beyond such misleading claims by the acquiring authority.

The Council goes on to claim in its grounds of appeal that:

> *"At that time the Statement of Case was drafted, there were twenty one leaseholders interests which remained to be acquired within the Order lands. By the time of the first sitting date of the Inquiry (April 2015) there were seventeen leaseholders remaining, and prior to the Secretary of State's decision only eight leaseholders remained"*

Again, this information is misleading; it fails to give the number of leaseholders at the second sitting of the Inquiry (October 2015) and fails to

point out the significant time period between issuing of the order (June 2014) and the Secretary of State's decision (Sep 2016).

It also fails to take into account the difficult conditions caused by the disruption to services on the order land caused by the acquiring authority since the close of the inquiry. In May 2016, the Secretary of State had to intervene to stop the Council commencing demolition works before the order had been confirmed. The disruption to services caused by its soft-strip demolition works has been widely reported[1] in the local press, with heating/services, security and postal deliveries affected. This has taken its toll on elderly and more vulnerable leaseholders, many of whom have had no choice but to sell under the duress. Through its soft-strip demolition works, the Council has also demonstrated disdain for the compulsory purchase process by considering the result of the inquiry a foregone conclusion.

Following the close of the public inquiry, one of the leaseholders on the order land made a Freedom of Information request for a schedule of the compensation amounts paid to leaseholders to date. This showed extremely low valuations - as low as £73,000 for a 54m2 1-bed flat on the order land. This is evidence of a likelihood that leaseholders were ignorant of the CPO process and their rights and that they were being forced to sell under duress.

The schedule also shows that just 7 of the leaseholders on the order land were professionally represented in their negotiations with the Council. Given that the Council is under a statutory duty to pay for leaseholders' professional representation by a surveyor and, given the very small number of them who exercised this right, one is given reason to ask whether the Council made leaseholders sufficiently aware of their rights to representation.

3 Valuation issues

The Council claims in its grounds of appeal that inspector Coffey was wrong to infer that the Council's valuation of leaseholers' properties was low and that this should be a matter for the Upper (Lands) Tribunal rather than the CPO public inquiry:

> *"The Council's position at the inquiry was that the offers made were compliant with the compensation code, being based on "on-estate" comparables in accordance with decisions of the Lands Tribunal. No adverse finding was made in that respect by either the Inspector or the Secretary of State."*

To our knowledge, no evidence was submitted or discussed at the inquiry regarding valuation methods. There was evidence submitted by objectors demonstrating that the Council was using non-qualified and non RICS-registered officers to value their homes, but to our knowledge there was no discussion around valuation methodology.

The Council's claim that its valuation method of using *"on-estate comparables is in accordance with the decisions of the Lands Tribunal"* is factually incorrect: both of the Lands Tribunal cases for the Aylesbury estate have been explicitly dismissed as inappropriate - see **Joshua v London Bor-**

[1] See: Southwark News 22092016; Southwark News 18032015; Southwark News 24032016

ough of Southwark [2014] UKUT 0511 (LC) (paras 34-36) and **John v London Borough of Southwark [2014] UKUT 0538 (LC) (para. 58).**

4 Public Sector Equalities Duty (PSED)

In its grounds of appeal, the Council claims that:

> *"The Secretary of State further erred in failing to take into account that the adverse individual impacts that flowed from the potential need to relocate off the estate, were an inevitable consequence of the policy objective of seeking more balanced tenure within the redevelopment proposals. Put simply, there was a failure by the Secretary of State to acknowledge that the benefits which he identified could not be achieved without some adverse impacts."*

The Council clearly continues to misinterpret the PSED, which requires that the Council ensures that any 'adverse impacts' caused by its planning policies, do not fall disproportionately on the protected groups listed in the (PSED). The Secretary of State has rightly pointed out that it has failed to do so in relation to the leaseholders on the order land and has directed the Council to *"work positively with remaining leaseholders to alleviate the negative aspects he has highlighted with a view to resubmitting an order in due course."* Instead of following these directions, the Council has chosen to challenge them and thereby exacerbate rather than alleviate the negative aspects referred to in the Secretary of State's decision.

The Council's ongoing disruption to services on the order land since the close of the inquiry constitutes a further **ongoing** breach of its Public Sector Equalities Duty and we submit that the appeal should be disallowed on this basis alone.

5 Overshadowing - minimum daylight requirements

The Council is claiming that inspector Coffey's report raises the issue of overshadowing/miniumum daylight issues, but that none of the objectors raised this issue at the inquiry. This is incorrect - the issue was raised by at least one objector, Piers Corbyn, who gave written and oral evidence to the inquiry on the morning of 12 May 2015. The following is a transcript from Mr Corbyn's submission, an audio extract of which is also available online:

> *"The overcrowded nature of the new plans, I submit Inspector, will make it a shadowy, dark and dangerous place. The building by the park is high there and the park, as you know because of the way it looks, that means it is going to overshadow the whole rest of the estate."*

The detailed shortcomings concerning overshadowing and BRE minimum daylight requirements listed in paragraphs 368-369 of the Inspector's report, have clearly been referenced using the detailed evidence contained within the

planning committee report for the First Development Site, which was submitted as part of the Council's evidence.

Also available to the inspector within the core bundle of documents submitted by the Council, were objections to overshadowing/daylight requirements submitted in response to the planning application. Objection reference numbers 440 and 437 listed in the planning committee report (14/AP/3843) in the core bundle specifically make such objections concerning overshadowing and breach of minimum daylight requirements.

Further, the planning committee report itself makes the point of explicitly admitting the scheme's shortcomings in relation to overshadowing and minimum daylight requirements: *"It is acknowledged that failure to achieve full compliance with BRE guidance for minimum ADF levels is a less positive aspect of the proposal"*

6 Remedying the failure

The Council makes the further claim that the Secretary of State has *"failed to identify in what respects the Council's actions had fallen short of 'reasonable steps' or what further steps were needed to remedy the failure he concluded existed."*

However, the Secretary of State's decision letter is clear on what steps he deems it necessary and appropriate for the Council to take:

> *"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." (DL 36)*

Instead of working positively with remaining leaseholders, the Council has chosen to challenge the Secretary of State's decision and recommendations. Leaseholders have shown themselves to be reasonable and willing to engage with the Council to find a satisfactory resolution to the issues. On 10th October 2016, the leaseholders group made submissions to the Council offering three suggested ways of resolving the oustanding valuation and rehousing issues. All three options suggested by the leaseholders were rejected by the Council at the meeting.

7 Conclusion

The Council's grounds of appeal are unfounded and lack any reasoned argument based in fact. We urge the Secretary of State to contest Southwark Council's appeal of his decision to refuse the Aylesbury estate compulsory purchase order.

With proposals for the regeneration of London's council estates at scale now working their way into government policy, the Secretary of State is right to have set a bar that estate regeneration should not come at the cost of

trampling over and dispersing long-standing communities. Southwark Council's appeal is a panicked response to the CPO decision and a desperate attempt to rescue a regeneration scheme whose viability rests on the systematic breach of leaseholders' human and equalities rights.

The 35% Campaign is not opposed to regeneration per se, but when the strategy is based on abusing statutory compulsory purchase powers in order to shortchange and expel members of our local community from their homes, then we feel compelled to stand up in their defence. We will therefore continue to offer our utmost support to the Aylesbury leaseholders and will be applying to attach ourselves as interested parties to the appeal, with a view to providing all the assistance we can to Secretary of State in this case.

35% CAMPAIGN SE
LONDON BOROUGH OF SOUTHWARK

R. Novakovic