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London

SE16 3??

<http://35percent.org/>

06 Dec 2020

Cllr Gavin Edwards

Chair, Housing Engagement Scrutiny Commission

Dear Cllr Edwards

Housing Engagement and Scrutiny Commission - Affordable Housing Delivery and Retention

We are writing to you in relation to the item 'Affordable Housing Delivery and Retention', discussed at the last meeting of the Housing and Engagement Scrutiny Commission on 1 December 2020.

The report to the committee refers to providing '*additional information online....around affordable housing at the request of the Ombudsman*' (para 48). In fact, the Council had given the Ombudsman an undertaking to take several actions, in response to a complaint about inadequate affordable housing monitoring of affordable housing delivery (made by a member of our group). The complaint cited 43 developments that were a cause for concern.

The Council's undertakings were reported in the [Ombudman's final decision](#) on the complaint, given in Nov 2016. The decision was that '*The Council failed to have in place procedure for supervising compliance with Section 106 Agreements but it recognised that failing and has remedied it by agreeing to an annual audit*'. In response to the complaint Southwark said it would;

- 1 survey the 43 developments referred to in the complaint
- 2 take proportionate action where there may be failures of compliance on those developments
- 3 conduct and publish an annual audit, to ensure future compliance
- 4 contact each housing provider annually for the purposes of the audit
- 5 sample responses for further investigation to ensure accuracy
- 6 set aside resources for these actions.

We do not consider that Southwark has fulfilled these undertakings adequately and cannot therefore be confident that the affordable housing in these developments, or indeed elsewhere, has been properly delivered.

We therefore request that the Commission consider the progress made since 2016 on these undertakings and submit the following comments to assist with this.

- 1 [A survey of 34 developments](#) (rather than 43) was supplied to the complainant by Southwark. It seems reasonable to compare what was said in this four years ago, to what now appears in the [audit](#) presented to the commission. In this comparison we find that;
 - Eight of the developments surveyed at the time of the Ombudsman's decision do not appear in the audit.
 - Eighteen of the surveyed developments have no confirmation by the registered providers of the affordable housing they provide on the developments, despite four years elapsing.
 - Three developments have a 'not known' return on the tenure of the affordable housing.
 - Four developments have audited returns of affordable rent, where the council specified in the survey that there should be social rent.
 - Three developments providing replacement homes for the Heygate estate returned affordable rent in the audit, where the council specifies in the survey there should be social rent.
 - Three developments return less social rented units than approved by planning committee.
- 2 We give details of each of these developments in an Appendix, below. We estimate that across the 34 surveyed developments the true tenure of over 900 units of social rented housing cannot be known with certainty, because there is no confirmation or returns and a further 270 or so units, specified as social rent in the survey, have been returned as affordable rent in the audit and are therefore doubtful.
- 3 We would add that while we have compared the survey with the audit, we believe the survey is itself flawed eg it does not address the issue of developments where social rented housing has been approved at committee, but defined as affordable rent, or ambiguously, in the s106 agreement or shown as affordable rent in the GLA's outturn data on affordable housing. We list 16 such developments in the Appendix.
- 4 We are not aware of any investigation of potential failures of compliance arising from either the survey or audit, other than that related to the LDHA legal action to recover affordable housing in the Jam Factory and Signal House developments, which was ongoing in 2016. It may be that the many gaps and the discrepancies between the survey supplied in response to the Ombudsman and the audit can be explained, but this is not apparent in the audit.

- 5 We are only aware of one audit since 2016, that which was presented to the commission. This audit is in fact only a list of developments, detailing the affordable housing required according to the s106 agreement or variation. A necessary link to what was actually delivered is absent and any identified breaches cannot be identified. This is best illustrated by way of example; development 10/AP/3010, Bermondsey Spa Site C is listed as delivering 44 affordable rent units (lines 426-432). In fact, the application approved by committee was for 44 social rented units, but this cannot be known by looking at the 'audit' (NB the breach was identified during the course of a CPO inquiry and resolved to the Council's satisfaction, but we believe nonetheless with a net loss of social rented housing).
- 6 It is clear from the audit that many registered providers have not responded to any inquiries from the Council, as was noted by commission members and acknowledged as '*a challenge*' in the report to the commission (para 48.4). The audit also depends entirely on the good faith and accurate record keeping of the registered provider, and without casting any doubt on the integrity of any RP, such a process is inherently weak. There is no evidence that any sample has been taken to ensure accuracy. We therefore believe an annual audit, no matter how painstaking, is unlikely to be robust enough to be relied upon as an accurate account of the various affordable housing tenures in the borough
- 7 The Housing facts and figures webpage referred to over several paragraphs in the report to the commission is very welcome and useful, and gives good information on overall delivery, but is itself of no assistance to monitoring affordable housing delivery by development.
- 8 The London District Housing Association (LDHA) case was an instance of illegitimate staircasing. There does not appear to be any routine information available to Southwark which allows it to know with confidence that intermediate housing is meeting the needs of those who properly need it and that it is not being abused .
- 9 Notwithstanding the above, we acknowledge the efforts that have been made by the council to improving monitoring, and acknowledge that this has proved to be a large and complicated task. We have followed the development of the [online monitoring tool by dxw digital](#), through 2018 to 2019, and commend Southwark for the open conduct of this work, through the council website.
- 10 We understand that the dxw tool can provide the means to identify and track individual units throughout their lifetimes, in a way that gives a high degree of certainty that affordable housing remains in the correct tenure, or only changes for legitimate reasons. We note the section of the report to the commission that says of a new planning website that '*This will be set up so that users can access planning by questions, addresses of properties and services rather than being a*

website that sets out information. Information will be searched in the same way as using a search engine' (para 47); the dxw tool would appear to allow this.

- 11 We are therefore perturbed that 4 years since the Ombudsman's report, and having been available for a year, this tool appears to have been mothballed and the live version taken offline.
- 12 We also believe that the 34 schemes surveyed by Southwark have not been properly investigated to confirm that the correct affordable housing has actually been delivered; given that this is only a sample, Southwark therefore cannot be confident about any of the affordable housing delivered over this time.
- 13 We are therefore requesting that the Commission revisit this issue, and establish first, what affordable housing has actually been delivered for the period of the audit, and second, ensure that a real-time online tool, such as that developed by dxw, is adopted by Southwark. The tool would also obviate the need for an annual audit, which appears from the work done by dxw to be onerous and unlikely to produce accurate results.
- 14 We can also see no reason that the dxw tool cannot act as a publicly available 'tenure checker', which would itself help ensure that affordable housing is delivered as it should be. This would also track losses of affordable housing through Right to Buy and staircasing. The fact that the infringements on the Jam Factory and Signal House developments were initially reported to Southwark by members of the public reinforces the case for such a 'tenure checker'. We therefore request that the Commission recommend this to the Council.
- 15 We have been in email correspondence with Ms Juliet Seymour on this issue and she has responded very readily and openly to our inquiries, with a promise of information about progress on this issue in the new year, and has our thanks for doing this. Cllrs Situ and Pollak have been copied into this correspondence and Cllr Situ has also sent us a reply, thanking us for our interest and assuring us of progress on the issue.

Yours sincerely

Jerry Flynn

Cc Cllr Johnson Situ
Cllr Leo Pollak
Juliet Seymour

Appendix

Comparison of Southwark Council survey in response to Ombudsman and audit presented to commission.

Of the 43 developments submitted to the Ombudsman in support of the complaint of inadequate monitoring;

- Eight of the developments do not appear in the audit (NB number of social rented units as per planning committee report or s106);

11/AP/0140 - 32 Crosby Row SE1 3PT – 5 social rented units
 11/AP/3251 – 34-42 Grange Rd – 8 social rented units
 06/AP/0995 – 149 Rye lane SE15 4ST – 7 social rented units
 14/AP/0175 – 166-178 Camberwell Rd SE5 – 10 social rented units
 14/AP/2102 – Bermondsey Spa Site C (Grange Yard) – 34 social rented units
 14/AP/3842 – 18 Park St – off-site, no number specified
 05/AP/0495 – 122-144 Southwark Bridge Rd – 26 social rented units
 05/AP/1957 – Wyndham Garage, Wyndham Rd SE5 0UB – 9 social rented units

- Eighteen of the developments do not have confirmation of the affordable housing from the registered provider;

11/AP/0138 - 430 Old Kent Rd SE1 5AG – 22 social rented units
 13/AP/0561 – Crown St Depot – 7 social rented units
 12/AP/1066 – 44-48 Lancaster St – 4 social rented units
 12/AP/1455 - Stead St early housing development – 84 social rented units
 12/AP/2702 – 6 Pages Walk SE1 4SB – 12 social rented units
 12/AP/4049 – 27-29 Blue Anchor Lane – 6 social rented units
 12/AP/4126 – Canada Water Site C – 34 social rented units
 13/AP/1429 – Canada Water Site E Mulberry Business Park – 23 social rented units
 06/AP/1481 – Neo Bankside – 102 social rented units (off-site)
 11/AP/0139 – Silwood estate regeneration, Site 4B – 22 social rented units
 11/AP/0217 – 20-30 C9 Wilds Rent SE1 – 6 social rented units
 11/AP/1180 – 434-452 Old Kent Rd – 8 social rented units
 12/AP/3558 – 90-92 Blackfriars Rd – 8 social rented units
 12/AP/0164 – 126 Spa Rd – 7 social rented units
 05/AP/2617 – Bermondsey Spa Regeneration Hyde Housing – 38 social rent
 06/AP/2272 – Bermondsey Spa Site C (Larnaca Works) – 17 social rent
 11/AP/2565 – Quebec Quarter (Canada Water) – 51 social rented units
 12/AP/2444 – Camberwell Rd/Medlar St – 14 social rented units

- Three developments have 'not known' return on the tenure of the affordable housing;

12/AP/4126 – Canada Water Site C – 34 social rented units
 6/AP/1481 – Neo Bankside – 102 social rented units (off-site)
 04/AP/0102 – Bermondsey Spa Regeneration – 202 social rented units

- Four developments in the audit return affordable rent, where the council specifies in the survey there should be social rent;

11/AP/0138 - 430 Old Kent Rd SE1 5AG – 22 social rented units
 10/AP/3010 – The Exchange, Bermondsey Spa – 44 social rented units
 09/AP/1870 – Canada Water regeneration on sites A – 123 social rented units
 06/AP/2272 - Bermondsey Spa Site C (Larnaca Works) – 17 social rent

- In addition to the developments surveyed, 3 other developments (providing replacement homes for the Heygate estate) also cited in the complaint returned affordable rent in the audit, where the council specifies in the survey there should be social rent;

08/AP/2406 – Albert Barnes House – 18 social rented units
 08/AP/2409 – Prospect House – 15 social rented units
 08/AP/2411- Townsend St – 37 social rented units

- Three developments return less social rented units than approved by planning committee;

06/AP/1481 - Neo Bankside – ‘not known’ units returned, 102 approved (s106)
 08/AP/2440 – Brandon St – 9 units returned, 18 approved
 11/AP/0138/4338 – 430 Old Kent Rd – 4 units returned, 22 and 18 units approved

- We also have a concern that 16 developments that are returned (confirmed or unconfirmed) as delivering social rent may in fact be delivering affordable rent. This is based on s106 definitions for the developments and/or GLA outturn data;

13/AP/0561 – Crown St Depot – 7 social rented units
 12/AP/1066 – 45-48 Lancaster St – 4 social rented units
 12/AP/1455 – Stead St early housing development – 84 social rented units
 12/AP/2332 – Aylesbury estate regeneration on Site 7 – 147 social rented units
 12/AP/4049 – 27-29 Blue Anchor Lane, Bermondsey – 6 social rented units
 10/AP/3010 – The Exchange, Bermondsey Spa – 44 social rented units (NB resolved)
 12/AP/4126 – Canada Water Site C – 34 social rented units
 13/AP/1429 – Canada Water Site E, Mulberry Business Park – 23 social rented units
 11/AP/0139 – Silwood estate regeneration Site 4B – 22 social rented units
 04/AP/0102 – Bermondsey Spa Regeneration – 202 social rented units
 11/AP/1180 – 434-452 Old Kent Rd – 8 social rented units
 12/AP/3558 – 90-92 Blackfriars Rd – 8 social rent
 12/AP/0164 – 126 Spa Rd – 7 social rent
 05/AP/2617 – Bermondsey Spa regeneration, Hyde Housing – 38 social rented units
 09/AP/2388 – Royal Rd, Heygate replacement housing site – 76 social rented units
 11/AP/2565 – Quebec Quarter (Canada Water) – 51 social rented units

