

What compulsory purchase climbdown means for estate regeneration

26 May 2017 by Jamie Carpenter , Be the First to Comment

A ministerial decision to block a compulsory purchase order that experts said appeared to give more weight to human rights issues than previous verdicts in this area has been quashed following a legal challenge.



Aylesbury Estate: compulsory purchase order blocked (picture: Matt Brown, Flickr)

When the communities secretary last September blocked a compulsory purchase order (CPO) that would have forced the few remaining residents of a London housing estate to sell their homes ahead of a regeneration scheme, the decision made national newspaper headlines. In his decision, Sajid Javid refused to authorise the London Borough of Southwark's request for powers to compulsorily

purchase an area of the Aylesbury Estate, ruling that the CPO would breach the human rights of the eight remaining leaseholders.

The decision (*Planning*, 7 October 2016, p9) was welcomed by campaigners as a landmark victory. But it alarmed councils and developers, who felt that the secretary of state had shifted the goalposts. "The decision not to confirm the CPO gives far more weight to human rights and community issues than has been seen in previous CPO decisions," said Southwark Council's director of law, Doreen Forrester-Brown, in a note seen by *Planning*.

However, following a legal challenge from Southwark Council, whoever is communities secretary after the general election will be required to make a fresh decision on the CPO. At the end of last month, it emerged that Javid had decided to consent to judgment in the case. As a result, his September decision has been quashed and a new public inquiry will now be convened.

Observers say last autumn's decision was significant because it appeared to introduce a new policy test for compulsory purchase.

James Pereira QC of Francis Taylor Building, who is acting for the council, said that the decision implied that it was not enough for authorities to base compensation offers on the open market value of actual properties as set out in the compensation code. Instead, he said, it suggested that "some kind of enhanced value" should be given that reflected the open market value of properties in the general area, including properties not on the estate itself. "That would be a very different way of looking at land valuation," he said.

So does Javid's decision not to contest the legal challenge clear the issue up? Jerry Flynn, a spokesman for the 35% Campaign, which is supporting the Aylesbury leaseholders, said that Javid had decided not to defend his decision on a "very narrow ground", which was that he did not give enough consideration to a change of policy on compensation introduced by Southwark Council after the inquiry had ended. The issues raised in Javid's decision letter - including that the authority had failed in its public sector equality duty and had not taken reasonable steps to acquire land by agreement - are "all aspects we think remain grounds for refusal". The campaign group is now preparing for the next public inquiry. "We are confident that the leaseholders' case is a good one," Flynn said.

Pereira confirmed that Javid's decision to consent to judgment was on the basis that he "did not give sufficient reasons to explain what he thought about the policy change". This was "quite a narrow basis", Pereira said. "The ground on which the

secretary of state has consented to judgment does not really cast any light on the more controversial issues that arose in his decision," he added.

Richard Guyatt, a partner at law firm Bond Dickinson, said that Javid's initial decision had been seen as significant because, historically, the secretary of state has been unwilling to look at the conduct of negotiation and the state of compensation offers made by acquiring authorities. Although Javid had consented to judgment, Guyatt said the government may "look again to impose more rigour on acquiring authorities". He added. "I think it should be considered by acquiring authorities to still be a bit of a warning flag."

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