THE LONDON BOROUGH OF SOUTHWARK

(Aylesbury estate phase 1b/1c)

COMPULSORY PURCHASE ORDER 2014

AYLESBURY LEASEHOLDERS GROUP

STATEMENT OF CASE

DCLG Ref:NPCU/CPO/A5840/74092

1 THE ACQUIRING AUTHORITY HAS FAILED IN ITS OBLIGATION TO SEEK TO ACQUIRE THE OBJECTORS' HOMES BY AGREEMENT

1.1 Current government Compulsory Purchase Order (CPO) guidance requires Acquriring Authorities to ***"seek to aquire land by agreement wherever possible"*** before using CPO powers, which should be used only as a last resort. [ODPM 06/04(App – D, para. 5)].

1.2 At the Executive Committee meeting, which approved the motion to redevelop the Objectors' homes, a clear strategy was agreed for negotiating the acquisition of those homes by agreement: ***"Confirmation that the compensation offered to leaseholders will be existing market value (based on the average of 2 independent valuations)"***[OCD20, para 10].

1.3 However, the Acquiring Authority failed to implement this policy; it failed to make offers of market value based on the average of 2 independent valuations; instead it has made offers based on a single valuation by its own internal officers; it has failed to commission any independent valuations of leaseholders' homes whatsoever. Leaseholders are told that if they or their instructed surveyors don't agree with the council officer's valuation then they can sue the council under the Land Compensation Act 1981.

1.4 The general costs and risks associated with litigation are well known and, as a result only two leaseholders have taken legal action against the Acquiring Authority to date. In both cases the judge ruled that the council's valuation had undervalued the properties (see ACQ/82/2013 & ACQ/100/2013).

1.5 The Acquiring Authority has repeatedly rejected calls for the valuations to be undertaken by an independent third party surveyor, even calls from the Mayor of London[OCD26]. It has clearly failed in its obligation to make reasonable efforts to acquire the Objectors' land by agreement and has instead relied upon CPO powers to aquire the land compulsorily.

1.6 The Objectors propose that in the event of confirmation, the scope of the Order be modified to make confirmation of the Order subject to the condition that the Acquiring Authority adhere to its original promise of determining market value according to **the average of 2 independent valuations**.

2. THE ORDER DOES NOT MEET THE STATUTORY PURPOSES FOR WHICH IT WAS MADE

2.01 The Acquiring Authority has made the CPO purporting to act under powers conferred by Section 226(1)(a) of the Town and Country Planning Act 1990. This statutory power gives local authorities the power to acquire land compulsorily for development and other planning purposes.

2.02 The wide power in section 226(1)(a) is subject to subsection (1A) of section 226. This provides that the acquiring authority must not exercise the power unless it thinks that there is a ***"compelling case in the public interest"*** that the redevelopment is likely to contribute to achieving the ***"improvement of the economic, social or environmental well-being of the area"***.

2.03 ODPM Circular 06/2004 states that in order to satisfy the well-being test, Orders made under this section need to be set within a clear strategic framework: ***"12. Any programme of land assembly needs to be set within a clear strategic framework, and this will be particularly important when demonstrating the justification for acquiring land compulsorily under section 226(1)(a) powers as a means of furthering the well-being of the wider area."***

2.04 The strategic framework in question is governed by the statutory spatial development strategy – the London Plan, which states that the loss of social housing ***"should be resisted unless the housing is replaced at existing or higher densities with at least equivalent floorspace."*** (Policy 3.14).

2.05 However, The planning applications underlying the Order (ref:14/AP/3843;14/AP/3844) will see the net loss of at least 1393 social rented homes[1]; and if the Objectors' concerns about the precise tenure mix are well founded, then this net loss could amount to 2,700 social rented homes. In any event, the acknowledged net loss of social housing fails to conform with the requirements of the spatial strategy framework, undermining the Acquiring Authority's ability to demonstrate the ***'compelling case in the public interest'*** which confirmation of the Order requires.

2.06 The net loss of social housing is not only in breach of the London Plan policy requirements but also of the local development plan framework - the Aylesbury Area Action Plan (AAAP): Policy 3.3.1 of the AAAP, envisages a total net loss of just 150 social rented units. Furthermore, policy 3.3 of the AAAP states clearly that 50% of all new homes should be affordable and that ***"of the affordable housing provided, 75% should be social rented".***

1 See Objectors' Core Bundle Documents Exhibit [OCD8] – FDS & Outline tenure analysis against baseline.

2.07 Some time after the Aylesbury Area Action Plan was adopted, a new affordable housing tenure was introduced by government called '**affordable rent**'. This is rented accommodation priced at up to 80% of local market rents.

2.08 According to the Acquiring Authority's Affordable Rent Study, there is a very significant difference between exising **social rents** and the new '**affordable rents**' of up to 80% market level. In the Aylesbury estate postcode (SE17), the study shows that in Dec 2014 a 1-bed social rented flat costs on average £97 per week, in contrast to the new **'affordable rent'** at 80% market rent costing £239 per week. The study shows that the 80% affordable rents would require an annual household income of £41,600, which is well beyond the £14,300 median income of existing Aylesbury estate residents[2].

2.09 In response to claims that existing tenants will not be able to afford the new '**affordable rents**', the Acquiring Authority and its development partners have insisted publicly that replacement homes will be **social rent** not '**affordable rent**'. However, the s106 planning legal agreement[3] for the last Aylesbury redevelopment phase to be granted consent, contains a definition of **social rented** units which refers to the HCA definition of **affordable rent** (i.e. up to 80% market rents). This is a deviation from the Acquiring Authority's standard legal definition used in s106 agreements, which makes specific reference to the National Rent Regime regulatory framework and guidance document defining social rented housing, an example of which can be found in Objectors' Core Document exhibit 11 [OCD11].

works	
"Social Rented Units"	The 49 (forty nine) Affordable Housing Units available for rent such that (a) the total cost of rent and service management charges meet targets for affordable rented housing set by the Homes and Communities Agency and successor bodies from time to time in existence and (b) is consistent with the Council's Affordable Housing Supplementary Planning Document extant at the time of Implementation and the requirements of the London Plan and the Mayors Housing SPG 2005 in relation to social rented units.
"Southwark Plan"	The Southwark Plan 2007:

Illustration 1: Aylesbury redevelopment - site 7 s106 legal agreement

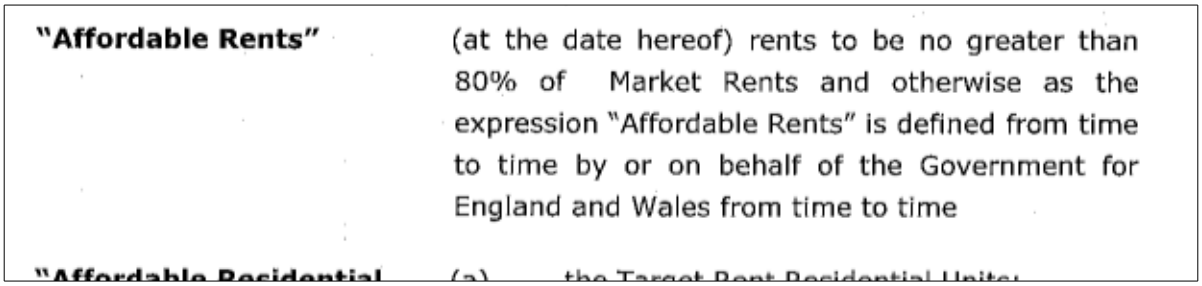
2.10 The concern that social rent is being substituted by affordable rent is further compounded by development partner Notting Hill's recently submitted masterplan application, in which its Housing Statement uses the terms 'social rent', 'affordable rent' and 'target rent' interchangably; and rather than using the established term 'social rent', Notting Hill's S106 Heads of Terms document uses the term 'social for rent'.

2.11 In addition, the Development Partnership Agreement (DPA) for the scheme underlying the Order contains no reference to **social rent**, but does make reference to '**affordable rent**', which it defines very

2 See Objectors Core Documents Exhibit [OCD1] - extract from the Council's Dec 2014 Affordable Rent Study data: http://www.southwark.gov.uk/download/downloads/id/11603/affordable_rent_study_december_2014_update

3 See Objectors Core Documents Exhibit [OCD2] – s106 legal agreement for the lastest redevelopment phase 2(site 7).

clearly as being set at a level of "**up to 80% of market rents"**.



"Affordable Rents"	(at the date hereof) rents to be no greater than 80% of Market Rents and otherwise as the expression "Affordable Rents" is defined from time to time by or on behalf of the Government for England and Wales from time to time
"Affordable Residential	(a) the Target Rent Residential Units;

Illustration 2: Extract from pg. 2 of the Development Partnership Agreement

2.12 In March 2012 the Acquiring Authority wrote to the Mayor[4] claiming that affordable rent is unaffordable to most of the borough's residents. The letter claimed that it would refuse to include the **affordable rent** tenure in its planning policies. Indeed, the Acquiring Authority claimed to be so opposed to the introduction of **affordable rent** that it embarked upon a judicial review of the Mayor's **affordable rent** policy.

2.13 If the Development Agreement underpinning the scheme, makes provision for a housing tenure that has no policy support whatsoever in the local development framework (Core Strategy and AAAP both stipulate **social rent** - not **affordable rent**), then the scheme underlying the Order can make no claim to being compliant with the development plan and thus ***"set within a clear strategic framework"*** as required by ODPM 06/04.

2.14 Notting Hill Housing Group is also developing a neighbouring site where a recent consultation event exposed the Housing Association's attempts to pass off **afforable rent** as **social rent**. The consultation document attempts to define **social rent** as ***'50% of market rent'***.

2.15 Social rent has never been defined as a percentage of market rent. Indeed, **social rent** is determined by the National Rent Regime regulatory framework as a percentage of average income. This is the main significant difference between **social rent** and **affordable rent**; **social rent** is linked to average income; **affordable rent** is linked to average market rent.

2.16 The concerns are further compounded by the fact that Notting Hill has obtained funding for the Aylesbury redevelopment from the Mayor's new Affordable Housing Programme. As explained in HCA guidance[5] and the article in [OCD3], this funding stream is conditional upon the affordable housing provider building **affordable rented** homes - not **social rented**. The prospectus for the funding programme states that funding for social rented homes will only be provided in 'exceptional circumstances'. A formal question to the Mayor from London Assembly Member Darren Johnson discovered that the £92m total funding allocation, made provision for just 81 social rented homes.

4 See Objectors' Core Documents [OCD5] – March 2012 Letter from Southwark Council to Mayor of London.
5 See paragraph 4 of appendix 6 (HCA Rent Standard Guidance – March 2012)

Question No: 2015/0845 – 25th March 2015 **From: Assembly Member Darren Johnson** **Subject: Housing covenant allocations**
Can you provide me with a breakdown of homes by (a) social rent, (b) affordable rent, (c) low cost home ownership and (d) market homes in the contract with the Notting Hill Housing Trust, which has been allocated £92,258,837 in your housing covenant programmes?
Written response from the Mayor
The allocation of £92,258,837 to Notting Hill Housing Group referred to in this MQ was to deliver: . 81 home for social rent homes, . 2,171 homes for affordable home ownership, and . 1,670 homes for Affordable Rent - split equally between discounted and capped. . No market homes were funded through this allocation.

2.17 Notting Hill & the GLA have rejected requests from the Objectors to disclose further details of the tenure linked to funding allocations[6]. The Objectors request that a copy of these along with the draft s106 planning agreements[7] securing the precise terms of the affordable housing tenure are presented to the inquiry.

2.18 The Objectors would like to draw the inspector's attention to other estate regeneration schemes where Southwark has failed to deliver on its original commitments to the replacement of social housing. This May 2004 Council Executive briefing report sets out the Acquiring Authority's policy on estate regeneration: ***"This policy is based on the principle that each regeneration scheme provides sufficient properties for the decant needs they generate"***. The report goes on to state that ***"the Council reaffirms its existing commitment to replace the social housing capacity of the Heygate estate ie. 1100 net units".***

2.19 The Acquiring Authority ultimately failed on this regeneration promise: the redeveloped Heygate will now provide just 79 social rented units, with the remaining affordable housing split between shared ownership and 'affordable rent'; a net loss of 1021 social rented units. In addition, Notting Hill is managing the regeneration of the Wood dene estate in Peckham, which saw 324 council homes demolished to make way for 333 new homes of which just 54 will be social rented; a net loss of 270 social rented homes. Notting Hill is also redeveloping sites A&B of the Elmington estate, where 375 homes have been demolished. It is building 279 new homes on these sites with just 41 of these social rented; a net loss of 334 social rented homes[8].

2.20 Notting Hill also redeveloped site C5, the largest phase of the Bermondsey spa regeneration which saw the demolition of 54 council homes. When Notting Hill submitted its planning application for demolition and replacement with 205 new homes on this site, the application documents, the officer's report[9] and the GLA report all claimed that 44 of these would be social rented. However, four weeks

6 Framework Delivery Agreement (FDA) or a Short Form Agreement (SFA) for new social housing supply under the Affordable Homes Programme 2011-15

7 Draft s106 planning obligations legal agreements for Aylesbury applications (ref:14/AP/3843 & 14/AP/3844).

8 See the GLA Stage 1 Planning report (PDU/2875/01) for details on net loss and tenure mix: http://www.london.gov.uk/sites/default/files/planning_decisions-edmund_street_se5_report.pdf

9 See Objectors' Core Documents Bundle – Exhibit [OCD7] (Officers Report for Bermondsey Spa site C5)

after the planning application was approved by committee, Southwark signed the s106 legal agreement[10] with Notting Hill, which, instead of **social rented** units provided for 44 '**affordable rented** units'.

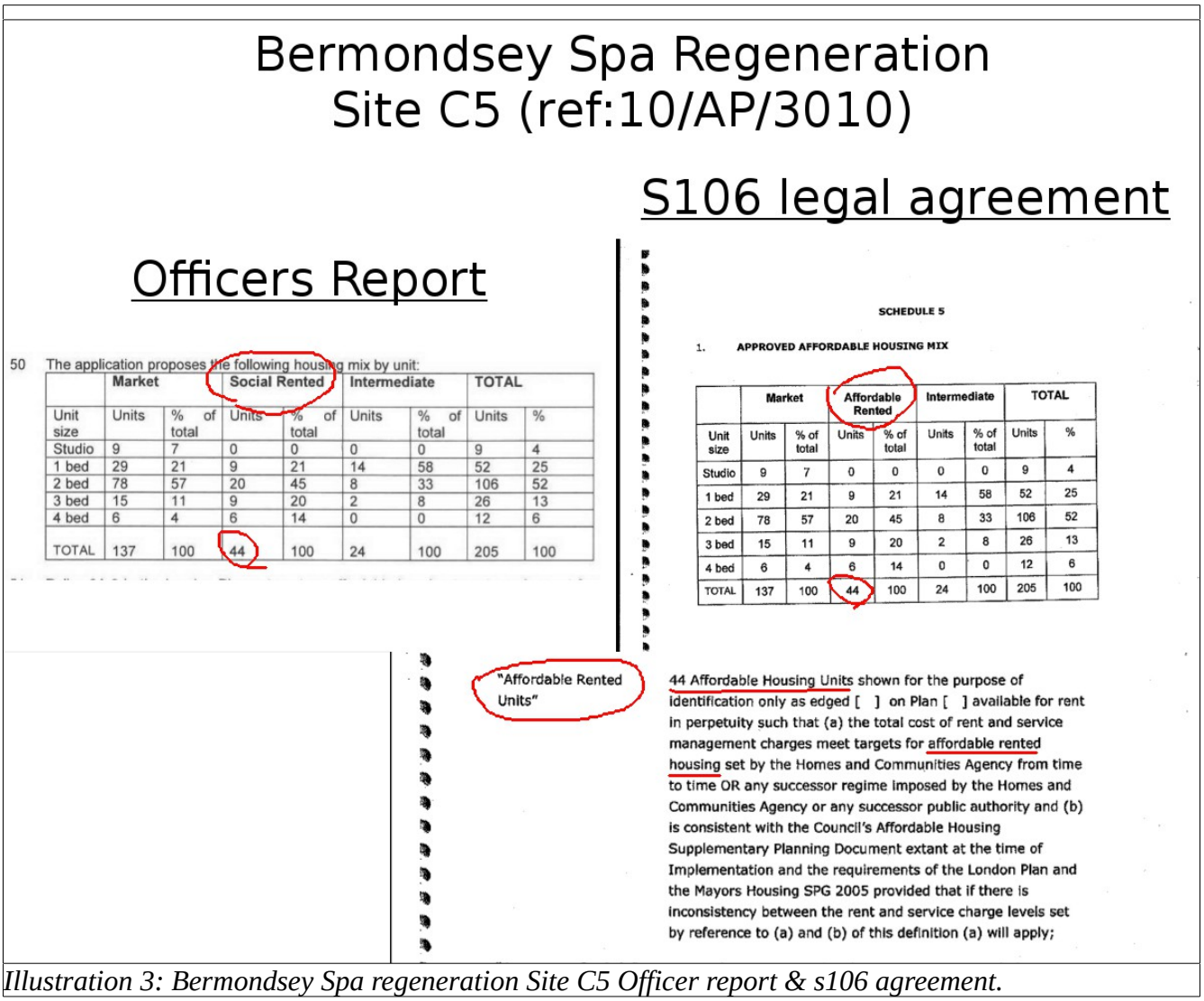


Illustration 3: Bermondsey Spa regeneration Site C5 Officer report & s106 agreement.

2.21 Given these concerns about the extent of social housing loss as a result of ambiguous social rented housing definitions in the scheme underlying the Order, the Objectors propose in the event of confirmation, that the scope of the Order be modified to include the following conditions.

- *"The s106 planning obligations legal agreement for the outline Masterplan application (ref:14/AP/3844) and all further reserved matters applications for the Aylesbury estate redevelopment must include the following planning conditions.*

- *The affordable housing offer must be such that there is no net loss in social rented housing in each application. 50% of all housing must be affordable; 75% of which must be social rented.*

- *Affordable rent (i.e. up to 80% market rent) will not form part of the affordable housing offer*

10 See Objectors' Core Documents Bundle – Exhibit [OCD6](s106 Legal Agreement for Bermondsey Spa site C5)

tenure mix. All rented housing delivered under the affordable housing component of the scheme, must be social rented housing for which guideline target rents are determined through the National Rent Regime (meaning the rent regime under which the social rents of tenants of social housing are set by The Regulatory Framework for Social Housing in England from April 2012: Annex A – Rent Standard Guidance March 2012) as changed or updated from time to time and at assured tenancies under the Housing Act 1988 with all the statutory rights as enjoyed by assured tenants under the Housing Act 1988."

2.22 The objectors point out that even if the replacement rented housing is social rented, the new housing association rent levels will be significantly higher than the existing council rents and therefore unaffordable to many of the estate's existing tenants. The illustration below compares the rent of an existing Aylesbury estate 2-bed council flat, against a 2-bed housing association (L&Q) social rented flat in the completed phase 1 of the scheme.

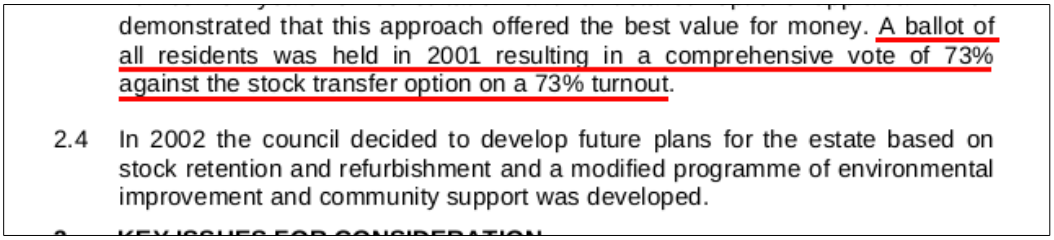
Aylesbury estate: 2 bedroom flat 2014 -2015	**Roffo Court** (Completed phase 1): – 2 Bed flat
Rent £94.62pw Estate Cleaning £4.60pw Ground Maintenance £1.09pw Estate/Common Area Lighting £1.17pw Sub-total £101.48pw (Water Rates, District Heating £22.63) **Total = £124.11pw**	Rent: £113.15pw (went up £17 from 2013/14-2014/15) Service Charges £34.20pw Sub-total £147.35pw (Water charges - £40.33pm, Heat and hot water - £43.33pm = (£19.23pw)) **Total = £166.58pw**

3. UNLAWFUL INTERFERENCE - HUMAN RIGHTS ACT 1998

3.01 Article 8 of the Human Rights Act 1998 requires any interference with human rights to be ***"made in accordance with the law".***

CONSULTATION

3.02 In 2001, the entire Aylesbury estate was balloted and residents were allowed to vote on the future of their homes. There was a high turnout and the vast majority of residents voted against the demolition and redevelopment of their estate by a Housing Association[11]. As a result, the Acquiring Authority subsequently adopted a programme of refurbishment in which the district heating system was upgraded and a significant part of the estate was brought up to Decent Homes Standard with double glazing.


demonstrated that this approach offered the best value for money. A ballot of all residents was held in 2001 resulting in a comprehensive vote of 73% against the stock transfer option on a 73% turnout.

2.4 In 2002 the council decided to develop future plans for the estate based on stock retention and refurbishment and a modified programme of environmental improvement and community support was developed.

Illustration 4: Sep 2007 Council Executive Committee report

11 See paragraphs 2.3 and 2.4 of this September 2005 Executive Committee report for results of ballot: http://moderngov.southwark.gov.uk/Data/Executive/20050927/Agenda/Item%2007%20-%20The%20AylesburyEstate%20Revised%20Strategy%20-%20Report.pdf

3.03 It is particularly worth noting that in paragraph 6.1 of the Sep 2005 Executive report, the Acquiring Authority claims that one of the reasons for residents' overwhelming rejection of its redevelopment plans was that ***"some residents didn't believe the new Housing Association would be able to keep its commitments on rents and service charges"***.

3.04 However, without any further ballot or consultation, the Acquiring Authority changed its plans in September 2005 and decided instead to pursue a programme of demolition and redevelopment[12]. This is a breach of section 105 of the Housing Act 1985, which requires landlord authorities to consult residents who are ***"likely to be substantially affected by a matter of housing management .. and the authority shall, before making any decision on the matter, consider any representations made to it"***. The Acquiring Authority's failure to consider the ballot result in its decision to demolish the estate, is a breach of the Housing Act 1985 and also the statutory and common law duties specified in this recent Supreme Court decision[13]. The Acquiring Authority's interferference is therefore failing to be made ***"in accordance with the law"*** as requried by Article 8 of the Human Rights Act 1998.

3.05 In the Foreword on page 3 of the AAAP, Councillor Noblet claims that ***"82% of residents expressed support for the plans"*** - but what he doesn't mention is that this was 82% of just 83 people. (See [OCD12])

3.06 The Objectors propose in the event of confirmation, that the scope of the Order be modified to make confirmation of the Order subject to a renewed ballot of residents and the successful outcome thereof.

EQUALITIES

3.07 The scheme underlying the Order is also in breach of section 149 of the Equalities Act 2010, which requires authorities to consider the impacts of its decisions on a list of 8 protected minority groups. Whilst its Sep 2005 Executive decision did state the need for an Equalities Impact Assessment (EqIA) to be commissioned [OCD22, pg 3] it seemingly failed to conduct such an EqIA.

3.08 The Acquiring Authority's Statement of Case confirms that it conducted a partial EqIA in conjunction with the AAAP in 2009. This acknowledges that 67% of the estate's residents belong to a minority ethnic group, but it did not differentiate between tenants and leaseholders. It also acknowledges that its 2009 EqIA ***"did not assess all of the groups with protected characteristics identified under the 2010 Equalities Act."***

3.09 The 2009 AAAP partial EqIA claims that there will be no disproportionate impact on protected BME groups, because all negative impact will be mitigated by the fact that existing residents will be rehoused in the new development. However, this fails to take into account the impact of the change from social rent to affordable rent since the AAAP was approved and the likelihood of existing tenants being unable to afford the resulting increase in rent levels. It also fails to take account of the specific impact on leaseholders disadvantaged by the scheme. As a result of the Acquiring Authority's failure to offer market value compensation, these will be forced into private rented accommodation or shared ownership if they wish to remain in the area.

12 See the above Executive Committee report.

13 See Moseley v London Borough of Haringey https://www.supremecourt.uk/decided-cases/docs/UKSC_2013_0116_Judgment.pdf

3.10 The planning application for the scheme underlying the Order (ref:15/AP/3844) also fails to have conducted a detailed EqIA covering all groups with protected characteristics required by the 2010 Equalities Act.

3.11 The Objectors understand the Acquiring Authority has a standardised EqIA assessment form[14], but to our knowledge this has not been used in conjunction with the scheme underlying the Order.

3.12 The Aylesbury New Deal for Communities (ANDC – later renamed 'Creation Trust') is a council-funded unincorporated association set up to support the aims of the scheme underlying the Order. The Chair of the board of Trustees is the Acquiring Authority's Cabinet member for Regeneration. The ANDC itself acknowledges that ***"whilst it is not a legal entity constituted under an Act of Parliament and therefore exempt from the Public Sector Equalities Duty (PSED), it has a contract with the Acquiring Authority under which it carries out certain functions that may otherwise have been carried out by the Acquiring Authority."*** [OCD16, pg. 8(4.2)].

3.13 A 2003 ANDC report acknowledged that ***"There are specific BME communities who are not represented and whom ANDC have little contact with. These are the Turkish, Somali, SE Asian, Bangladeshi and Latin communities, all of whom have a significant presence within the ANDC area. There is currently little being done to address the needs of these specific communities."***[OCD15, pg. (8.3)]. It also acknowledged that ***"the focus on race equality has detracted from the development of initiatives to address the needs of other disadvantaged and excluded groups. There are no specific projects that address the needs of people with disabilities and only one project adressing the needs of elders. The needs of asylum seekers have also not been addressed in their totality."***

3.14 The report went on to explain that its ***"delivery plan did not include a focus on equalities"***, that ***"emphasis was on Black and Minority Ethnic (BME) communities and there is little mention of other disadvantaged or excluded groups e.g. people with disabilities, refugees and young people etc. This fact coupled with the intensity of debate and activity concerning the physical environment resulted in formal consideration of equalities issues slipping down, if not off the agenda."*** [OCD16, pg. 7(3.1)]

3.15 In response to the acknowledged shortcomings, the ANDC had decided to set up a committee dedicated to promoting BME group participation in the regeneration plans (**Aylesbury Black and Minority Ethnic Group (ABMEG))**.

3.16 In early 2003, ABMEG sent a letter to the Government Office for London (GOL) complaining about the management of the ANDC. ABMEG accused the ANDC management of conflicts of interest and issues concerning the lack of ***"BME representation at board level and in wider consultative procedures."*** [OCD17].

3.17 The ANDC's response to ABMEG's letter was to suspend all ABMEG board members. An independent scoping study investigation was commissioned by the GOL, which claimed that ABMEG members felt their subsequent suspension was ***"an attempt to silence ABMEG"***.[OCD18]

3.18 Just 3 months after the Council Executive agreed its redevelopment plans for the estate in September 2005, the Mayor called for an investigation into the Acquiring Authority's failure to involve

14 See Objectors' Core Documents [OCD9] – Elmington Estate CPO appendix 3: Council's standardised EIA form

black and minority groups in its regeneration projects. Mayor Ken Livingstone said: ***"Southwark council has failed to address the very real concerns of the African and Caribbean communities who have consistently alleged that they experience racism within the local authority-led regeneration process."*** His comments came after a damning report in May 2005 by Lord Ouseley, the former chairman of the Commission for Racial Equality, who warned that black traders were being driven out by the borough's regeneration plans.

3.19 In summary, the evidence above showing the disproportionate impact of the scheme on protected minority groups, demonstrates that the Acquiring Authority has failed to discharge its PSED under section 149 of the Equalities Act 2010. The Acquiring Authority's interferference is therefore failing to be made ***"in accordance with the law"*** as requried by Article 8 of the Human Rights Act 1998.

4. INSUFFICIENT PROSPECT THAT THE SCHEME WILL PROCEED

4.01 Contrary to the requirements of paragraphs 20 and 21 of ODPM Circular 06/2004, insufficient information is given in the Statement of Reasons for making the CPO detailing the cost of the scheme or how it will be funded. Indeed, the AAAP itself identified a funding gap for the scheme amounting to £82.63m and this was before the scheme had £180m of government funding withdrawn by the HCA[15].

Public sector funding requirement	Total funding shortfall £m
Land value deficit	62.98
Infrastructure costs (shortfall after developer contributions)	3.44
Leaseholder acquisitions	65.73
CPO enquiry costs	1.50
Re-housing tenants	15.39
Demolition	11.28
Land disposal and programme management	9
Total	**169.32**
Funding Income	**86.69**
Funding Gap	**82.63**

Table A7.2: Public Sector Funding Requirement

4.02 The September 2011 board meeting minutes of the Aylesbury New Deal for Communities (by now renamed Creation Trust), confirmed that ***"at the time of writing the AAAP each [affordable housing] unit was supported with £125k of funding, this has now been reduced to £25,000"***[OCD24, para 2.4].

4.03 The Acquiring Authority has rejected repeated requests by the Objectors to supply information concerning funding and the viability of the scheme. All financial information has been redacted from the Development Partnership Agreement included in the core bundle. The Objectors understand that the Inspector does have the power to require the production of any documents by summons ***"which relate to any matter in question at the inquiry"***[16]. The Objectors therefore request that an unredacted copy of the DPA, business plan, viability assessment and GLA AHP funding allocation documents are supplied to the inquiry, in order for it to be able to establish that the funding gap identified has been closed.

15 See Objectors' Core Documents [OCD4] - Dash24 Housing News article 25th Nov 2010.

16 See section 5(2) of the Acquisition of Land Act 1981, and section 250(2) of the Local Government Act 1972

4.04 Paragraph 16 (iii) of Appendix A of the 06/2004 Circular states that funding commitments are required to be shown in order to demonstrate ***"a reasonable prospect that the scheme will proceed."*** Paragraph 19 of the ODPM 06/04 Circular states that ***"If an Acquiring Authority cannot show that all the necessary resources are likely to be available to achieve that end within a reasonable time-scale, it will be difficult to show conclusively that the compulsory acquisition of the land included in the order is justified in the public interest."*** Therefore, in the absence of the production of any such substantive details of funding or resource implications, the CPO ought not to be confirmed.

4.05 Paragraph 22 of the ODPM Circular 06/04 states that ***"in demonstrating that there is a reasonable prospect of the scheme going ahead, the acquiring authority will also need to be able to show that it is unlikely to be blocked by any impediments to implementation. In addition to potential financial impediments, physical and legal factors need to be taken into account."***

4.06 In addition to the financial impediment of the funding gap identified, the Objectors note that no agreement has been reached with neither the Ministry of Justice for surrender of Ellision, or the London Borough of Bromley (LBB) for the surrender of covenants protecting the adjacent public open space within the Order land.

4.07 A further likely impediment results from the failure of the Order to have been made under section 13C of the Acquisition of Land Act 1981. Section 13C provides a general power for an Order to be made which encompasses the entire area required for the underlying scheme, but which provides the facility for the Order to be confirmed in stages.

4.08 The Objectors note that the Acquiring Authority's risk assessment log confirms that there is no binding agreement in place for the development partner to implement the scheme underlying the Order[17]. The development agreement is entirely dependent upon viability conditions allowing the development partner to terminate without penalty should viability issues arise. [OCD30, risk 1]

4.09 Given this viability break clause; and given that the relocation of the LBB green space covenant to a later phase is dependent on a separate Order for that phase being issued and confirmed; given that later phases will have a weaker case for compulsory purchase because they have been brought up to Decent Homes Standard; and given that the continued easement rights of leaseholders residing on later phases will not be extinguished for the Order land **even if this Order is confirmed**, the Acquring Authority's failure to use powers under section 13C of the ALA 1981, means that the Order fails to cover a sufficient area to ensure that the underlying scheme is likely to be implemented without impediment.

4.10 Council briefing papers[18] also show that Notting Hill's redevelopment of the Order land will not be completed within a reasonable time-scale: they confirm it will take ***"6 years from start on site".***

4.11 In summary, the Order fails to secure all the land required for the underlying scheme. The uncertainty of challenges to future Orders combined with the legal and financial impediments mentioned above, serve only to weaken the Acquiring Authority's ability to ***"demonstrate a reasonable prospect of the scheme going ahead within a reasonable time-scale"*** as required by ODPM Circular 06/04.

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17 The implementation of future phases is dependent upon individual viability of each phase - see para 10.1.2 of [OCD29]

18 See appendix 2 of Contract Approval Award decision – April 2014 http://moderngov.southwark.gov.uk/documents/s45757/Appendix%202.pdf

5. THE EXISTING USE OF THE LAND IS MORE IMPORTANT THAN THE PURPOSE FOR WHICH IT IS PROPOSED TO BE ACQUIRED

5.01 The Objectors note that the Compulsory Purchase Order has been made under section 226(1)(a) of the TPA 1990 (improvement for planning purposes) rather than under the Housing Act 1985 or Housing and Urban Development Act 1993 which provide for the compulsory purchase of vacant, sub-standard, derelict or defective housing.

5.02 The Acquiring Authority has inferred that the estate suffers from high levels of crime and that this is one of the reasons why it needs to be redeveloped. However, studies show that crime rates on the estate are actually well below the borough average[19].

5.03 A recent Cabinet report shows that the Acquiring Authority is estimated to be spending a total of £150m emptying and demolishing the Aylesbury estate. **[OCD23, para 142]**

> 142. Land assembly is estimated to take 15 years and includes the re-housing of tenants, the buy-back of all non-council owned interests including residential leaseholders and the demolition of the existing blocks. The estimated cost of the land assembly for the whole estate is approximately £150m spread over 15 years. These costs are front loaded to some extent within this period as many of the larger blocks are in the early phases and the council wishes to buy back as many leasehold interests as possible by agreement at an early stage in the regeneration.

5.04 In contrast, the Council Executive committee report upon which the redevelopment decision was taken, estimated that the Acquiring Authority's total land receipts from disposal of the Aylesbury estate will amount to just £3.38m**[OCD21]**.

5.05 The same Council Executive report estimated that the cost of refurbishing the estate would amount to a total of **£93.3m** comprising **£18.3m** for structural strengthening, **£13m** for replacement heating mains and **£62m** to bring homes up to Decent Homes Standard **[OCD19]**.

5.06 Despite several requests, the Acquiring Authority has failed to provide a detailed breakdown of these headline refurbishment cost figures. The Objectors understand that some cost/benefit appraisal figures are included in Core Document 25 of the Acquiring Authority's bundle. However, the figures in this document are illegible. The Objectors have requested a legible version of the document to which the Acquiring Authority has responded that it does not hold a legible copy.

5.07 The Objectors understand that since the 2005 headline refurbishment cost estimate, the heating mains have been replaced and significant expenditure has been made on bringing a large number of homes on the estate up to Decent Homes Standard. It is not know how much has been spent in total on external works to the estate between 2005 – 2011 and this figure has been requested, but it is known that at Sep 2011 a total of at least £15m had been committed to future external refurbishment works on the estate.[OCD24, para:3.1]

5.08 This is separate from the allocated expenditure under the WARM, DRY and SAFE (WDS) Decent Homes Standard programme for the estate [OCD25]. The Objectors have also requested and are also still awaiting information relating to the total expenditure on the estate to date under the WDS programme.

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19 See this NDC national evaluation study: http://extra.shu.ac.uk/ndc/ndc_data.htm

5.09 The Objectors question the £18.3m supposedly required for strengthening works to the estate's 5 storey blocks. In 2005, the Acquiring Authority commissioned a report by structural engineer Alan Conisbee, alluding to issues concerning 5-storey blocks on the estate and whether they conformed to structural requirements for current building regulations.

5.10 The Conisbee report found that the 5 storey dwellings on the estate had fallen foul of the change in BRE regulations between 1968 and 1987; the 1968 revised structural requirements following the Ronan Point disaster, applied only to 6 storeys and above; whereas the 1987 regulations were lowered to include buildings 5 storeys and above. As a result the Conisbee report recommended the removal of mains gas supply as a minimum requirement and minor strengthening works to the 5 storey blocks as a further optional recommendation. The Conisbee report does NOT recommend demolition and does not infer that major structural works are necessary.

5.11 It is understood that mains gas was removed from the 5 storey blocks by the Acquiring Authority shortly after the findings of the report were published and that these measures were deemed sufficient for the Acquiring Authority to continue using the buildings for its housing requirements. The Objectors note that the Housing Act requires local authorities to evacuate dwellings which have been designated structurally unsound. There has been no such designation or evacuation of any dwellings on the Aylesbury estate.

5.12 The building regulations current at the time of the Conisbee report were the 1987 and 2004 BRE guidance on Long Panel Systems (LPS). However, in 2012 the BRE produced updated guidance on Long Panel Systems and disproportionate collapse, which showed that LPS buildings were more robust than had previously been thought and comprehensively reassessed the criteria for compliance.[OCD27]

5.13 The updated 2012 BRE guidance states that previous guidance had ***"become outdated by subsequent technical developments in structural assessment procedures"***[OCD27, para 1.2]. It claims that ***"overall, the historic structural performance of LPS dwelling blocks has been satisfactory, with most of the blocks which still exist having been in service for over 40 years. In instances where internal (non-piped) gas explosions have occurred in LPS dwelling blocks, structural damage has been limited in extent, and no occupied UK LPS dwelling blocks have experienced progressive collapse or a disproportionate degree of damage in-service as a result of a gaseous explosion or a vehicle impact since the partial collapse of Ronan Point in 1968."*** [OCD27 para 1.1]

5.14 The Executive Summary goes on to explain in its reasons for producing the updated guidance that ***"viable communities within LPS dwelling blocks were inadvertently destroyed when the decision was made to demolish a block because of the cost of the remedial and related works that were being recommended. Such outcomes, whilst following the guidance available at the time, were judged to offer not only poor value for money but were resulting in what deemed to be unjustified outcomes. Thus there was a need to better-establish the actual performance of LPS dwelling blocks under accidental loads, as well as improving and updating the guidance for the structural assessment of this particular class of buildings."[OCD27, xxix]***

5.15 The Objectors understand that there has been no updated survey of the estate's buildings based on the requirements of the revised BRE 2012 LPS regulations. In the absence of any such updated survey or review of the 2005 Conisbee findings, the Objectors question the validity of Acquiring Authority's assertion that £18.3m strengthening works would still be required.

5.16 In addition, the decision to demolish the entire estate on the simple grounds of its 'system built' typology, fails to have taken into account the fact that there are over 300 traditional red brick construction dwellings covering nearly half the site area of the estate [OCD31].

5.17 A total of 29 non-traditional construction types are classed as defective under Part XVI of the Housing Act 1985. This list is largely the result of investigations following the 1968 Ronan Point disaster. The Objectors point out that the Aylesbury estate was completed (1977) well after the revised building regulations requirements resulting from Ronan Point and note that Jespersen 12M is not one of the types listed as defective.

5.18 In summary, the Objectors would like to point out the complete lack of any detailed cost/benefit appraisal figures underlying the Acquiring Authority's assertion that redevelopment is more economically viable than refurbishment. In the event the Order is confirmed the Objectors propose that a condition is attached to the Order requiring the Acquring Authority to commission a full independent cost/benefit analysis, which includes not only an economic but also environmental and social analysis of the benefits of demolition versus refurbishment. This should include both embodied carbon analyses and studies detailing the social return on investment SROI as per Cabinet Office guidance[20].

5.19 As a result of the severe shortage of council homes in the borough, the Acquiring Authority has recently embarked on programme to build 1500 new council homes over the next 3 years costing an estimated total of £335m.

5.20 The Acquiring Authority has acknowledged that the main difficulty in delivering this new council home building programme, lies in the shortage of available land within the borough. It is even proposing to purchase land from developers to deliver the new council homes[21].

5.21 The Objectors question the Acquiring Authority's decision to dispose (at a loss) of the 2,759 council homes on the 60 acre Aylesbury estate, at a time when it is spending £335m procuring land from private developers in order to build 1500 new council homes. The Objectors assert that the cost of refurbishing council homes on the Aylesbury estate (already committed in part), would be significantly more cost effective than procuring land from the private sector in order to build new council homes (at a cost of £223,000 per unit). In addition, it is questioned whether these new 'council' homes will enjoy the same security of tenure and security of rent level determination as the existing council homes on the estate[22].

5.22 Other London boroughs have taken a more balanced approach to managing their housing stock. Wandsworth council has refurbished its Doddington estate in Battersea, which was built with the same Jespersen system as the Aylsebury; Islington council has refurbished its Six Acres Jespersen estate in Finsbury Park, where it also redeveloped its 5 storey blocks on the estate to increase density[OCD28]. The Objectors question why the Acquiring Authority has failed to consider a similar approach.

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20 See Cabinet Office guidance on SROI: http://www.bond.org.uk/data/files/Cabinet_office_A_guide_to_Social_Return_on_Investment.pdf

21 See para. 60 of this Dec 2014 Cabinet report: http://moderngov.southwark.gov.uk/documents/s50476/Report%20Pipeline%20for%20the%20Delivery%20of%201500%20New%20Council%20Homes.pdf

22 See http://35percent.org/blog/2014/12/06/11000-new-private-and-social-council-homes-on-target/

Illustration 6: Six Acres estate before refurbisment

Illustration 5: Six Acres estate - after

CONCLUSION

6.1 The Objectors assert that the scheme underlying the Order is in essence a private residential development. Whilst the scheme is ostensibly a 'partnership' agreement between the Acquiring Authority and Notting Hill, the Development Partnership Agreement describes what is primarily a land sale. Whilst NHHT are expected to make a 20% margin on the private units, 15% margin on the shared ownership and 30% margin on the rented housing[23], a confidential Cabinet report confirms that Barratt (which is building the new homes) is not only guaranteed a 21% profit margin from the development but will also retain half of the private sales gross development value.

Item No.	Classification: **Closed**	Date: **April 2014**	Meeting Name: **Chief Executive**
Report Name:		**Gateway 2 Contract Award Approval Development Partner for Aylesbury estate**	
Ward(s) or groups affected:		**Faraday**	
Report Author:		**Jane Seymour**	

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19. Barratt will agree to pay NHHT at practical completion half of the private sale gross development value (based on £451 per square foot) less 21% which they retain as profit.

6.2 The Objectors requested an unredacted copy of the Development Partnership Agreement in order to be able to scrutinise the viability and public benefits of the scheme[24]. The Acquiring Authority rejected the Objectors' request on the grounds that the public interest in disclosure was outweighed by ***"Notting Hill's commercial interests that the financial information remains confidential"***. This serves only to reinforce the Objectors' assertion that the scheme underlying the Order is private, not public in nature.

6.3 The development scheme underlying the Order is a private scheme that will see significant increase in housing density, a change from council housing to private sector housing that is unaffordable to existing residents; it will see a significant loss of green space on the estate, with the little replacement green space that is proposed set to be privately managed.

23 See typical housing association margins in [OCD32].

24 See (FOI/EIR request – Acquiring Authority's ref: 502731)

6.4 In summary, the Acquiring Authority is seeking authorisation of Compulsory Purchase powers to enable a land sale for private residential development. It has failed to seek to aquire the Objectors' homes using the valuation methodology that had been agreed and has instead presumptuously relied upon its ability to seek statutory Compulsory Purchase powers.

6.5 However, the Acquiring Authority has failed to comply with the requirements of paragraph 17 of ODPM Circular 06/2004 Compulsory Purchase and the Crichel Down Rules. This Circular requires that the Acquiring Authority must ***"be sure that the purposes for which it is making a CPO sufficiently justify interfering with the human rights of those with an interest in the land affected."*** In relation to the Objectors' homes, the Statement of Reasons for making the CPO recites but does not address the provisions of Art. 1 (protection of property) of the First Protocol to the European Convention on Human Rights, or of Art. 8 of the Convention (right to respect for private and family life).

6.6 Although the Acquiring Authority claims it has carefully considered the balance to be struck between individual rights and the wider public interest, in light of the numerous issues raised by Objectors, it is difficult to see how the balancing exercise was performed in relation to the Objectors' property in the absence of any evidence base to support the Acquiring Authority's claims made in relation to the purported economic, social and environmental benefits of the scheme, or the weight which was given to each of the competing factors.

6.7 Further, it would appear that no such balancing exercise was undertaken when the Acquiring Authority's decision to implement the scheme was passed by its elected members in September 2005. . In the absence of any or sufficient information addressing these issues or any submissions as to proportionality, the inadequacy of its case casts doubt on the Acquiring Authority's case for making the CPO and fails to establish a ***'compelling case in the public interest'*** for making the CPO, as required by paragraph 17 of ODPM Circular 06/2004.

6.8 In conclusion, the Acquiring Authority's action in making the CPO is oppressive and is a misuse of the statutory powers conferred by the Town and Country Planning Act 1990 to compulsorily acquire the Objectors' homes. The Acquiring Authority has also failed to comply with several requirements identified in the ODPM Circular 06/2004. If, contrary to the above, the CPO is confirmed, it is clearly vulnerable to further challenge in the High Court under s.23 of the Acquisition of Land Act 1981, which could result in the CPO being quashed. The CPO should therefore be withdrawn forthwith to avoid any further wasted costs.

Signed, on behalf of the Aylesbury Leaseholders Group

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