

THE LONDON BOROUGH OF SOUTHWARK

**TOWN AND COUNTRY PLANNING ACT 1990
AND ACQUISITION OF LAND ACT 1981**

Revised Inquiry into

**THE LONDON BOROUGH OF SOUTHWARK
(AYLESBURY ESTATE SITES 1B-1C)**

COMPULSORY PURCHASE ORDER 2014

PINS REFERENCE: NPCU/CPO/A5840/74092

**Proof of Evidence of
Sally Causer
For the Aylesbury Leaseholders Group**

27th November 2017

Introduction

- 1 I am employed as a Director at Southwark Law Centre. I have held this position since 2015. Prior to this I worked for Citizens Advice, initially at Wandsworth where I worked from 1983 to 2002. I was CEO of Citizens Advice Wandsworth from 1995 to 2002. Subsequently I worked for Citizens Advice nationally and then locally where I was Director of Partnership and Development at Citizens Advice Southwark.
- 2 As part of this role I helped set up the forum for Equalities and Human Rights in Southwark, providing training and support for local agencies and Tenant Residents Associations around equalities issues, including tackling hate crime.
- 3 In my current role, I am a member of Southwark Health and Well Being Board and Chair of Southwark Homeless Forum.
- 4 In 2010 The council commissioned a community organisation, *Forum for Equality and Human Rights in Southwark (FEHRS)* to act as a 'critical friend'; to challenge the council and help to ensure that their policies are as fair as possible. Citizens Advice Southwark (CAS) were contracted to coordinate FEHRS which replaced an earlier Equality and Diversity Panel which had been largely defunct. As Development manager for CAS I set up and coordinated the forum. The EIA or any issues regarding the Aylesbury estate were not at any point referred to this group, or advice sought on consultation.
- 5 My evidence speaks to the following issues:
 - Whether the Acquiring Authority has had due regard to the Public Sector Equality Duty (PSED)
 - Whether the purposes of the Order justify interfering with the human rights of those with an interest in the land

6 My evidence is contained in this main proof and a separate volume of appendices comprising the following documents in the Objector's Core Bundle:

- SC1; AAAP Equalities Impact Assessment
- SC2; 2006 Leaseholder Rehousing Policy
- SC3; 2009 Leaseholders Handbook
- SC4; Consultation Report for the Aylesbury Area Action Plan (Jan 2009)
- SC5; Report FDS 23 April 2015 (See **CD63**)
- SC6; Report authorising use of CPO powers Phase 1a/1b (see **CD10**)
- SC7; Southwark's approach to equality
- SC8; Extract from FDS Design & Access Statement 14/AP/3843
- SC9; Forum for Equality and Human Rights in Southwark (southwark.gov.uk)

Whether the Acquiring Authority has had due regard to the Public Sector Equality Duty (PSED)

7 The public sector equality duty "PSED" arising from section 149 imposes a procedural requirement on the decision maker to address various specified equality issues when taking their decisions:

"A public authority must, in the exercise of its functions, have due regard to the need to .. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it."

"Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a)remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(b)take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

- 8 It specifies eight groups with protected characteristics to which the duty applies:
- age;
 - disability;
 - gender reassignment;
 - pregnancy and maternity;
 - race;
 - religion or belief;
 - sex;
 - sexual orientation.
- 9 Paragraph 4.1.6 of the January 2009 Consultation Report for the Aylesbury Area Action Plan (**SC4**) confirmed that:
- “Many of the Equalities Target Groups, including disabled people, sexuality and faith groups, have not been monitored. However, local organisations representing each of these groups have been contacted during the consultation process in order to encourage them to participate.”*
- 10 The Equalities Impact Assessment (EqIA) (**SC1**) conducted by the Acquiring Authority in association with the AAAP in January 2009 only referenced one of these groups – race (67% BAME) and partially age (21% elderly – not children or other age groups). Neither did it specify equalities information for different types of tenure i.e the protected characteristics of tenants vs those of leaseholders. This is important, given that the scheme will have a different impact on each group.
- 11 Given that the Equality Act was published in bill form at the time of the AAAP and enacted just several months after it was adopted, I find it difficult to understand why the EqIA did not take regard of it. Especially so, given that the MP for the Aylesbury estate, Harriet Harman was head of the government’s equality office at the time and the main driving force behind the Equality Act¹.

¹<http://www.harrietharman.org/the-equality-act>

- 12 In terms of the one group with protected characteristics assessed by the EqIA, it said this about the potential risks and proposed mitigation strategies:

“The need to improve land values for the area, particularly towards the end of vthe scheme, may result in certain groups being unable to afford the new vhomes and choosing to move to areas with more affordable housing. This may have significant negative impact on lone parents, disabled people, the BME community, young people, Mental health service users and the elderly who may have spent generations in the area.” (SC1;pg 8)

“An effective housing management strategy and plan will be put in place to ensure that the negative impacts of the redevelopment are minimised. In the long term the plan should help to improve relations between different groups and should not discriminate against any particular individuals.” (SC1;pg 22)

“It is the key opportunity to identify priority groups amongst the residents most immediately affected by demolition and new house building. Referencing should allow the council to assess how priority groups take up its rehousing proposals, and to assess whether decisions are being taken differentially. The process will directly influence decisions upon mix and unit types of replacement housing and therefore provides an immediate opportunity to respond to the identification of unanticipated adverse impacts on population retention levels. In order to provide opportunities and choice for residents, the options for rehousing will be provided through 4 routes: by introducing a package of other measures including compensation for leaseholders to offer the widest possible choice of re-housing opportunities.” (SC1;pg 6)

- 13 The ‘package of measures’...that would ‘offer the widest possible choice of re-housing for leaseholders’, are contained in the *“re-housing policy framework for leaseholders and tenants in November 2006” (SC2)* referred to on pg 5 of the EqIA.
- 14 This rehousing policy included the ‘Comparative value transaction’ (para 45,49,52), an option confirmed in the 2009 Council’s Handbook for Leaseholders (SC3) as

‘Comparative value transaction – the property swap option’ as one of six available rehousing options. This ‘like for like’ policy was discontinued by Southwark Council in December 2010 [**CD14**].

- 15 In my opinion the EqIA was not conducted in accordance with the PSED because it failed to assess the impact of the AAAP against all eight of the groups with protected characteristics. Notwithstanding this, and even if Southwark were deemed to have satisfied PSED requirements, the subsequent withdrawal of the ‘like for like’ property swap rehousing option compromised PSED compliance because it was one of the mitigating measures against which the PSED was assessed.
- 16 Indeed, it was arguably one of the only rehousing options that would have enabled leaseholders to remain 100% homeowners in the area, without suffering all of the disadvantages of the restrictions associated with shared ownership. These are outlined in Ms Robinson’s and Ms Kabuto’s evidence.
- 17 The Acquiring Authority’s December 2010 (CD14) decision to remove the ‘like for like’ rehousing option did not have due regard to the PSED. Indeed para 25 of the Cabinet report (**CD14**), titled ‘Community impact statement’, simply says *“There are no particular groups which have been identified as being disadvantaged by the change in policy.”*
- 18 Case law known as the ‘Brown Principles’² sets out a broad indication of what public sector organisations need to do to in respect of equality duties. (The Brown case pre-dates the Equality Act, but the principles remain unchanged)

Brown principles:

- In order to have due regard, those in a body subject to the duty who have to take decisions that do or might affect people with different protected characteristics must be made aware of their duty to have ‘due regard’ to the aims of the duty.

²See R (Brown) v Secretary of State for Work and Pensions [2008] EWHC 3158

- Due regard is fulfilled before and at the time a particular policy that will or might affect people with protected characteristics is under consideration as well as at the time a decision is taken. Due regard involves a conscious approach and state of mind.
- A body subject to the duty cannot satisfy the duty by justifying a decision after it has been taken. Attempts to justify a decision as being consistent with the exercise of the duty when it was not, in fact, considered before the decision are not enough to discharge the duty.
- The duty must be exercised in substance, with rigour and with an open mind in such a way that it influences the final decision. The duty has to be integrated within the discharge of the public functions of the body subject to the duty. It is not a question of 'ticking boxes'. However, the fact that a body subject to the duty has not specifically mentioned [s.149] 3 in carrying out the particular function where it is to have 'due regard' is not determinative of whether the duty has been performed. But it is good practice for the policy or decision maker to make reference to [s.149] and any Code or other non-statutory guidance in all cases where [s.149] is in play. 'In that way the decision maker is more likely to ensure that the relevant factors are taken into account and the scope for argument as to whether the duty has been performed will be reduced'.
- The duty is a non-delegable one. The duty will always remain the responsibility of the body subject to the duty. In practice another body may actually carry out the practical steps to fulfil a policy stated by a body subject to the duty. In those circumstances the duty to have 'due regard' to the needs identified will only be fulfilled by the body subject to the duty if (1) it appoints a third party that is capable of fulfilling the 'due regard' duty and is willing to do so (2) the body subject to the duty maintains a proper supervision over the third party to ensure it carries out its 'due regard' duty.
- The duty is a continuing one.

- It is good practice for those exercising public functions to keep an accurate record showing that they had actually considered [the general equality duty] and pondered relevant questions. Proper record keeping encourages transparency and will discipline those carrying out the relevant function to undertake the duty conscientiously. If records are not kept, it may make it more difficult, evidentially, for a public authority to persuade a court that it has fulfilled the duty imposed by [s.149].

19 In addition to the Brown principles courts have also said that:

- Due regard to the PSED duty must be an “essential preliminary” to any important policy decision, not a “rearguard action following a concluded decision”³.
- Because the performance of the PSED duty is a matter of substance, to be judged according to the facts of the case in hand, there must be sufficient information to enable a necessary balancing exercise to be carried out, and that information must be before the decision maker ⁴.

20 There is nothing in the Acquiring Authority’s December 2010 decision (**CD14**) to remove the ‘like for like’ option, that indicates that the decision maker had any information before him regarding the potential protected characteristics of the leaseholders affected by his decision.

21 Further, I have not been able to find evidence in any of the Acquiring Authority’s later decisions relating to the scheme, which indicates that the decision maker had sufficient information before them on the protected characteristics of those affected by those decisions.

22 The one and only referencing operation appears to have been undertaken by the EqIA in 2009 which only assessed one protected group (race). I have looked at the later reports including the reports dealing with the planning application for the FDS (SC5) and the report resolving to use compulsory purchase powers (SC6) and I can

³See R (BAPIO Action Ltd) v SSHD [2007] EWCA Civ 1139

⁴See Child Poverty Action Group v. Secretary of State for Work and Pensions [2011] EWHC 2616 at para 70-76

find no evidence of up to date referencing.

- 23 This is particularly concerning given that in 2010 Southwark Council published it's Equality Approach (SC7). This states that:
"central to our approach to equality is to understand our service users. When analysing the effects of our decisions we will use robust information to understand who uses our services and what effect potential changes are likely to have on them." (pg 8)
- 24 I am aware that a referencing operation is currently underway by Council-commissioned consultants Mott MacDonald and I have assisted two of the leaseholders on the order land with filling in the referencing forms sent to them. Both are women of BAME origin, one with significant health issues and the other with a disabled member of the household. They explained to me how they and their families will be severely adversely affected by the CPO.
- 25 They have both lived in the areas for many years and are concerned about social isolation if they are not able to stay in the area. Both women are active in their local communities. They have told me that they use food shops, health services and hairdressers in the area. The food shops provide culturally appropriate food and the hairdressers provides services for the BAME community
- 26 As single older BAME women they will feel isolated and vulnerable if forced to move to another area where they do not have support networks.
- 27 In my opinion the Mott MacDonald referencing comes 13 years too late. The Brown principles and other case law referenced above make it clear that due regard must be had to the PSED throughout the decision making process and cannot be a 'rearguard action'. The referencing and first equality impact assessment should therefore have been carried out prior to the Council's September 2005 decision to demolish the estate and then updated and refreshed in conjunction with any subsequent decisions impacting residents on the estate.

- 28 In my contact with members of the Aylesbury Leaseholders Group, it is clear that the vast majority share protected characteristics across a broad range of the groups listed in section 149. Many are women of BAME origin, some are elderly and some are disabled, or have disabled family members who regularly visit.
- 29 Higher service charges, ground rent, Council Tax and restrictions in Notting Hill Housing group's shared equity option on new homes in the scheme (i.e. succession/assignment rights), mean that most leaseholders are left with little option but to move out of the area to lower value areas with the low levels of compensation paid.
- 30 Not only does Notting Hill's shared equity option come with restrictions but it is closed to leaseholders with special housing needs like special care housing or wheelchair requirements.
- 30 I understand that the section 106 agreement for the FDS planning consent fails to secure a minimum number of wheelchair accessible units (see Mr Lee's evidence).
- 31 The wheelchair accommodation schedule submitted for the FDS scheme (**SC8**) shows that in any case, while there are 7 wheelchair '*adaptable*' shared ownership units proposed for the FDS, these are all 1-bedroom properties and there are no wheelchair **accessible** shared ownership homes proposed at all.
- 32 Further, the full accommodation schedule (**RN20**) shows that there won't be any 3-bed (or larger) shared equity units on the redeveloped FDS. The only shared ownership units proposed are 1-bed and 2-bed flats.
- 33 In her evidence, Ms Kabuto has shown that she applied to Notting Hill Trust wanting to take up its shared equity option, but was told by Notting Hill that it didn't have any wheelchair accessible units available under the scheme (Ms Kabuto's mother is disabled).
- 34 Disability is one of the groups with protected characteristics listed in section 149 of the Equality Act. I cannot find any details of the referencing of this group in the

EqlA or any other assessment relating to the scheme. The ability to easily access public transport and to have car parking facilities is essential for the residents with mobility issues. Because of these mobility issues properties with stairs are also not appropriate. These issues do not seem to have been taken into consideration.

35 If properties do not have disabled access, members of the resident's families will be unable to visit them, further adding to social isolation.

36 It follows then that the Acquiring Authority has failed to have due regard to the impact of the scheme on this group, and, given Ms Kabuto's predicament it follows that she and her disabled mother will be disadvantaged if the order is confirmed.

END