

**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**

## **SUMMARY**

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

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**27<sup>th</sup> November 2017**

## **Introduction**

- 1 I have been a Director at Southwark Law Centre since 2015. I helped set up the forum for Equalities and Human Rights in Southwark. I am a member of Southwark Health and Well Being Board and Chair of Southwark Homeless Forum.
- 2 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
- 3 My evidence is contained in my main proof and a separate volume of appendices comprising in the Objector's Bundle.
- 4 The public sector equality duty "PSED" imposes a procedural requirement on decision makers to address various specified equality issues when taking their decisions.
- 5 The PSED specifies eight groups with protected characteristics to which the duty applies.
- 6 The Acquiring Authority's (AA) Equalities Impact Assessment (EqIA) (**SC1**) for the AAAP of January 2009 only referred to one of these groups – race (67% BAME) and made partial reference to another, age (21% elderly – not children or other age groups).
- 7 The EqIA also did not differentiate between equalities information for different tenures eg the protected characteristics of tenants vs those of leaseholders.

- 8 The Acquiring Authority proposed that *“An effective housing management strategy and plan...(would)...ensure that the negative impacts of the redevelopment are minimized”* (**SC1** pg 22).
- 9 The process of identifying housing need, known as ‘referencing’, would *“allow the council to assess how priority groups take up its rehousing proposals, and to assess whether decisions are being taken differentially”*. Referencing would *“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”*.
- 10 The AA would *“provide opportunities and choice for residents”* (pg 6) and a *“package of measures”... would “offer the widest possible choice of re-housing for leaseholders”*. These are contained in the *“re-housing policy framework for leaseholders and tenants in November 2006”* (**SC2**) and referred to on pg 5 of the EqlA.
- 11 This rehousing policy included the ‘Comparative value transaction’ (**SC2** paras 45,49, 52), an option confirmed in the 2009 Council’s Handbook for Leaseholders (**SC3**) as ‘Comparative value transaction – the property swap option’ and one of six available rehousing options. This ‘like for like’ policy was discontinued by Southwark Council in December 2010 [**CD14**].
- 12 The EqlA was not therefore 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.
- 13 Tthe AA’s ‘like for like’ property swap rehousing option compromised PSED compliance, because it was one of the mitigating measures against which the PSED was assessed.
- 14 ‘Like for like’ was arguably one of the only rehousing options that would have enabled leaseholders to remain 100% homeowners in the area.

- 15 The AA's December 2010 decision to remove the 'like for like' rehousing option did not have due regard to its PSED. The Cabinet report neglected the PSED, saying *"There are no particular groups which have been identified as being disadvantaged by the change in policy."* [CD14 para 25]
- 16 Case law known as the 'Brown Principles'<sup>1</sup> gives a broad indication of how the PSED should be fulfilled:
- Due regard; those who exercise the PSED must be made aware of their duty and its aims.
  - Due regard is fulfilled before, at the time, and when a particular policy is decided, with a conscious approach and state of mind.
  - The PSED cannot be satisfied by justifying a decision after it has been taken.
  - The PSED must be exercised in substance, with rigour, an open mind and in a way that it influences the final decision. The duty has to be integrated within the discharge of public functions.
  - The PSED is a non-delegable, even though another body may actually carry out the practical steps.
  - The duty is a continuing one.
  - It is good practice to keep an accurate record showing that the PSED was considered.

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

- 17 In addition to the Brown principles courts have also said that:
- Due regard to the PSED duty must be an “essential preliminary” to the policy decision, not a “rearguard action”<sup>2</sup>.
  - The performance of the PSED duty is a matter of substance, to be judged according to the facts of the case, with sufficient information to the decision maker’s hand to enable a necessary balancing exercise<sup>3</sup>.
- 18 There is nothing in the Aquiring Authority’s December 2010 decision (**CD14**) to remove the ‘like for like’ option, that indicates that the decision maker had such information before them.
- 19 Further, I have found no evidence in any of the Aquiring Authority’s later decisions, to indicate that Southwark had sufficient information before them on the protected characteristics of those affected by those decisions.
- 20 The only referencing operation that appears to have been undertaken by the EqIA was in 2009 and only assessed one protected group (race). Later reports, the planning application for the FDS (**SC5**) and for the use compulsory of purchase powers (**SC6**) - show no evidence of up to date referencing.
- 21 In 2010 Southwark Council published it’s Equality Approach (**SC7**) , which 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)
- 22 The Aquiring Authority is currently conducting a referencing operation (by Mott MacDonald). I have assisted two of the leaseholders on the order land with this. Both are of BAME origin, one with significant health issues and the other with a

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

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

disabled member of the household. They and their families will be severely adversely affected by the CPO.

- 23 Both lived in the area for many years and fear social isolation if they have to leave. Both are active in their local communities and use local food shops, health services and hairdressers. The food shops provide culturally appropriate food and the hairdressers provides services for the BAME community
- 24 The Mott MacDonald referencing is 13 years too late. The Brown principles and case law 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 have been carried out before the AA’s September 2005 decision to demolish the estate and then updated with every subsequent decision impacting residents.
- 25 The majority of the Aylesbury Leaseholders Group share protected characteristics. Many are women of BAME origin, some are elderly, some are disabled, or have disabled family members who regularly visit.
- 26 Higher service charges, ground rent, Council Tax and restrictions in Notting Hill Housing group’s shared equity option, mean that most leaseholders would little choice but to move to lower value areas, given the low levels of compensation paid.
- 27 Notting Hill’s shared equity option is also closed to leaseholders with special housing needs or wheelchair requirements (see Ms Kabuto’s evidence).
- 28 The FDS planning application falls short of minimum planning policy requirements for wheelchair accessible dwellings (see paras 76-79 of Mr Lee’s evidence) and fails to provide any wheelchair **accessible** shared equity units (**SC8**).
- 29 Leaseholder Ms Kabuto applied to NHHT for a shared equity option, but was told that there were no wheelchair accessible units available under the NHHT shared equity scheme (Ms Kabuto's mother is disabled).

- 30 Disability is a protected characteristic under s149 of the Equality Act. The easy access to public transport and car parking facilities is essential for the residents with mobility issues. Properties with stairs are also not appropriate.
- 31 If properties do not have disabled access, members of the resident's families will be unable to visit them, further adding to social isolation.
- 32 The Acquiring Authority has failed to have due regard to the impact of the scheme on this group, and Ms Kabuto and her disabled mother will be disadvantaged if the order is confirmed.

END