

Section 106 planning conditions - breaches identified in tenure provision

The following is a list of developments that the 35% Campaign has identified as having breached planning conditions, primarily by the substitution of social rent for affordable rent (i.e. up to 80% market rent). The list has been compiled as a result of cross checking planning committee reports, section 106 agreements, Land Registry information and the GLA affordable housing outturn dataset¹ (1/4/2011 – 31/3/2014).

It is widely acknowledged that the Mayor, the government and many housing associations now favour the provision of affordable over social rent - there is more funding for it and it creates greater revenue streams for providers. Southwark has consistently opposed the provision of affordable rent on the basis that it is not affordable for the majority of the borough's residents and its planning policy is unambiguous in its requirement for social rather than affordable rent.

However, the following list of identified breaches in tenure provision causes concern that the Council is opposed to affordable rent only in appearance - not in practice. The list is by no means exhaustive and we are calling for a full audit in order to establish the full scale, of what we believe to be a systemic monitoring and compliance failure on behalf of the local planning authority.

1. **Family Mosaic – 32 Crosby Row SE1 3PT (scheme ID: 569133)**
Southwark's planning committee report (11/AP/0140) approved 5 social rented units, but the GLA dataset shows that these have been delivered as affordable rent at between 40% and 57% of market rent.
2. **Family Mosaic – 430 Old Kent rd SE1 5AG (scheme ID: 569135)**
Southwark's planning committee report (11/AP/0138) approved 22 social rented units, but the GLA dataset shows that these have been delivered at affordable rents of between 34% and 49% market rent.
3. **Leicester Housing Association – Bermondsey Spa regen (scheme ID:570653)**
Southwark's planning committee report (11/AP/3251) approved 8 social rented units, but the GLA dataset shows that these have been delivered at affordable rents of between 39% and 52%.
4. **London & Quadrant Group – 149 Rye Lane SE15 4ST (scheme ID: 570976)**
Southwark's planning committee report (06/AP/0995) approved 7 social rented units, but the GLA dataset shows that these have been delivered as affordable rents of between 74% and 78% market rent.
5. **Leicester Housing Association – Crown St Depot (scheme ID: 606076)**
Southwark's [planning committee report](#) promised that 7 of these 69 new homes would be social rented, but the GLA affordable housing outturn data shows these as affordable rent at 40% market rent. Paragraph 74 of the planning committee report also asserted that the developer would refurbish and extend the neighbouring council-owned Bethwyn Road Playgroup Centre. However, these refurbishment and extension works have not been undertaken.
6. **A2Dominion Housing Association – 45-48 Lancaster St (scheme ID: 623651)**
Southwark's planning committee report (12/AP/1066) approved 19 social rented habitable rooms, but the GLA dataset shows that these have been delivered as affordable rent of

¹<http://data.london.gov.uk/dataset/gla-affordable-housing-programme-outturn/resource/0c87e5dc-f1e9-4edf-b246-bef6b40a9ba3>

between 30% and 59% market rent.

7. **Guinness Trust - Stead St early housing development (12/AP/1455)**
This was supposed to be a replacement housing development for decanted residents of the Heygate estate. The officers report describes a policy compliant application with the requisite quota of social rented units (84). However, the [section 106 agreement](#) describes these as 'affordable rent' and these are also listed in the GLA outturn data as affordable rent.
8. **Aylesbury estate regeneration Site 7 (12/AP/2332)**
The planning committee report said that this application for 147 new homes was policy compliant and would provide a policy-compliant number of social rented homes (49). However, the section 106 agreement defines social rent in affordable rented terms.
9. **34-42 Grange Road (11/AP/3251) - 8 social rented homes**
Again the planning committee report says social rented and the definition of 'social rented' in the section 106 agreement is worded in terms of affordable rent.
10. **6 Pages Walk, SE1 4SB (12/AP/2702)**
The planning committee report said that 12 of these 82 new homes consented would be social rented. However, again the definition of 'social rented' in the section 106 agreement is worded in affordable rent terms.
11. **27-29 Blue Anchor Lane Bermondsey (12/AP/4049)**
The planning committee report said that of the new homes, 6 would be social rented. However, again the definition of 'social rented' in the section 106 agreement enables affordable rent.
12. **BERMONDSEY SPA SITE C5 (10/AP/3010)**
This application was made by Notting Hill Housing Trust, for the redevelopment of part of the Neckinger estate, as part of the Bermondsey Spa regeneration and was approved by planning committee On 21st December 2010. Permission allowed for the demolition of a number of Council homes and construction of 205 new homes, some commercial and community premises and associated works. Permission was granted on the basis that the new homes would provide 44 social rented units. This is confirmed by both the officer's report and the GLA planning report for the application. These units were not delivered and instead 44 affordable rent units were substituted for them, which had rents that were appreciably higher than social rent, at up to 63% of market rent. (NB We note that the Council considers the matter resolved, partly through having secured a number of social rented units from Notting Hill Housing Trust at its Manor Place depot development (Council Assembly answer 7, Nov 25 2015; application (ref 15/AP/1062). However, these units were required to meet the affordable housing quota for that site and therefore cannot be used to offset the shortfall at the Bermondsey Spa redevelopment; a net loss of social rented housing remains across the two sites).
13. **Canada Water regeneration sites A&B (09/AP/1870) - Affinity Sutton**
The [planning committee report](#) for the planning application behind this development, said that it would provide 123 **social rented** homes. However again the [section 106 legal agreement](#) describes these in terms of '**affordable rent**' (i.e. up to 80% market rent).
14. **Canada Water Site C (12/AP/4126)**
Notting Hill Housing Association was [granted planning permission](#) for 1,046 units of which just 34 would be social rented. Despite the planning committee report clearly stating 'social rented', when it came to drafting the s106 agreement Notting Hill omitted the 'social' from 'social rented', consequently leaving the door open to interpretation as affordable rented. Indeed, in its [press release](#) and [web page](#) for the scheme, Notting Hill describes all rented

units as 'affordable rent'.

15. **Canada Water Site E - Mulberry Business Park (13/AP/1429)**

The [planning committee report](#) confirms that developer Galliard homes submitted a financial viability assessment claiming that it couldn't provide the required 35% affordable housing and could only afford to provide 23 social rented units in total. However, again the [section 106 agreement](#) signed in relation to the planning permission says that rent levels for the 23 social rented units are to be determined by the Homes and Communities Agency's formula for 'affordable rent' (i.e. up to 80% market rent).

16. **Neo Bankside development (06/AP/1481)**

According to the planning officer's [report](#) for the planning application, this would provide off-site affordable housing comprising 130 homes of which 94 would be social rented. However planning documents show that just 62 social rented homes have been provided. Furthermore, the officer's report and section 106 agreement asserted that the off-site social rented units were to be fully funded by Neo Bankside without the need for any supplemental grant funding. However, GLA records show that the following Neo Bankside off-site provision sites did indeed receive grant funding (and for affordable rent - not social rent):

17. **10/AP/2429**

Neo Bankside off-site social housing provision agreement Affinity Sutton - 9 social rented homes

18. **10/AP/0663**

Neo Bankside off-site social housing provision agreement Affinity Sutton - 4 social rented homes

19. **10/AP/1860**

Neo Bankside off-site social housing provision agreement Affinity Sutton - 23 social rented homes

20. **10/AP/2725**

Neo Bankside off-site social housing provision agreement Affinity Sutton - 17 social rented homes

21. **11/AP/0138 & 11/AP/4338**

Neo Bankside off-site social housing provision agreement Family Mosaic - 22 social rented homes

22. **Silwood estate regeneration Site 4B (11/AP/0139)**

Notting Hill Housing - 22 social rented homes. The the definition of social rented in the section 106 agreement is worded as affordable rent and these are showing up in GLA funding records as having been provided as affordable rent.

23. **Bermondsey Spa Regeneration (04/AP/0102)**

Hyde Housing was granted outline planning for 605 homes in 2005, 202 of which should have been social rented. The outline planning consent was for a number of sites (E-U) that would come forward in reserved matters in a period spanning nearly 10 years. Several of the latter phases are showing up in the GLA data as affordable rent rather than social rent. Hyde Housing has also been advertising² units on this site to rent at £1800 per month (intermediate rather than social rent).

24. **166-178 Camberwell road, SE5. (14/AP/0175)**

84 units of which planning committee report said 10 would be social rented. These are listed by the Housing Association (A2Dominion) in its [press release](#) as affordable rent.

25. **20-30 Wilds Rents SE1 (11/AP/0217)**
The [planning committee report](#) confirms that six of the 37 new residential units in this development were to be social rent (5 x 3-beds, 1 x 2-bed). However, the [section 106 agreement](#) defines social rent using the affordable rent definition.
26. **434-452 Old Kent Road (11/AP/1180)**
The [planning committee report](#) for this application said that 8 of the 85 new residential units in this development would be social rented. Indeed it made special reference to the preference of social rent over affordable rent in its negotiations with developer L&Q. However, the [section 106 agreement](#) defines social rent using the affordable rent definition.
27. **90-92 Blackfriars Road (12/AP/3558)**
The [planning committee report](#) for this application said that of the 53 residential units consented, 8 would be social rented. However, the [section 106 agreement](#) defines social rent using the definition for affordable rent.
28. **(126 Spa road) 12/AP/0164**
Bermondsey Spa regeneration Hyde Housing - 7 social rented homes
The [officer's report](#) approves 46 units of which 38 private, 7 social rent and 1 affordable rent capped at 65% market rent. However, in the [section 106 agreement](#) for this application, the social rented units are described as 'affordable rent' - enabling rents of up to 80% market rent. In Jan 2016, Hyde [advertised](#) a 3-bed 'affordable' unit in this development for rent at £1,849 per month.
29. **Bermondsey Spa regeneration Hyde Housing - 38 social rented homes. (05/AP/2617)**
[Planning application documents](#) show that 138 homes were approved here, of which 38 should have been social rent. However, the [s106 agreement](#) provides an accommodation schedule of which units should be social rent, but fails to provide any definition of social rent whatsoever.
30. **Royal Rd Heygate replacement housing site Affinity Sutton (09/AP/2388)**
The 76 social rented homes consented are being advertised by Affinity Sutton as affordable rent and are also described in the GLA outturn data as affordable rent.
31. **Heygate replacement housing sites**
We also understand that the following L&Q developments comprising the other Heygate 'early housing sites' have clauses in the section 106 agreements enabling affordable rent to be provided instead of social rent:

08/AP/2406
Albert Barnes House Heygate replacement housing site London & Quadrant - 18 social rented homes

08/AP/2409
Prospect House Heygate replacement housing site London & Quadrant - 15 social rented homes

08/AP/2411
Townsend Street Heygate replacement housing site London & Quadrant - 37 social rented homes

08/AP/2427
Library Street Heygate replacement housing site London & Quadrant - 21 social rented homes

08/AP/2440

Brandon Street Heygate replacement housing site London & Quadrant
- 18 social rented homes

32. **Bermondsey Spa Site C (Larnaca Works) 06-AP-2272**

Paragraph 61 of the [planning report](#) for the Larnaca site planning application confirms that the Larnaca development was to provide 90 residential units with 35% affordable housing, comprising 87 affordable habitable rooms of which 61 habitable rooms would be social rented (17 units). However, the [section 106 agreement](#) describes these 17 units as 'affordable rent'. The GLA Affordable Housing outturn data shows Hexagon Housing Association as the the Larnaca Works site's registered provider. The 17 units are listed in the GLA outturn data as affordable rent.

33. **Bermondsey Spa Site C (Grange Yard) 14/AP/2102**

The [planning committee report](#) for the planning application confirms that this site was to provide 167 residential units, of which 34 were to be social rent. The section 106 agreement for this development is not available on the planning portal so it is not known whether this says social or affordable rent, but the Mayor's GLA dataset lists this scheme (under Leicester Housing association) with rents at affordable rents well above social rents at 52% market rent, which equated to £154 per week (excl. service charges) for a 1-bed in March 2014.

34. **Quebec Quarter (Canada Water) 11/AP/2565**

L&Q was granted permission in 2011 for the construction of 7 blocks comprising 366 residential units of which 25% must be affordable . The [officer's report](#) for the planning application says the development will be built "*with social rented units providing 61% of the affordable units*". However, the [section 106 agreement](#) signed in relation to the planning consent says that rents for the social rented units should be determined according to the [HCA's formula](#) for affordable rents (i.e. up to 80% market rent). Furthermore, L&Q's website now [describes](#) the social housing at Quebec Quarter as 'affordable rent'. The officer's report also promised that there would be a review mechanism inserted into the section 106 agreement to capture any uplift in the property market between consent and implementation. However, according to the Council's planning portal there has been no such viability review, despite the significant increase in property prices since the scheme was consented in 2011.

35. **Camberwell Road/Medlar Street (12/AP/2444)**

In November 2012, Peabody was [granted planning permission](#) to build 66 homes on this two-part site of which 14 would be social rent and 6 affordable rent (up to 80% market rent). However, in April 2015 Peabody [wrote](#) to the Council explaining that despite GLA funding and a £2m expected windfall due to the property market upturn, it would need to reduce the number of social rented units because it had incurred £997,000 in unforeseen costs of asbestos removal during site remediation. As a result, 6 of the 4-beds and 3 of the social rented 3-beds that were originally consented will instead be sold as private housing, leaving just 5 social rented homes in the development. The application for a variation of the agreed affordable housing quota was not accompanied by a viability assessment, as required by the legislation governing section 106B applications for variations.

36. **185 Park Street (Delancey) - 14/AP/3842**

The [planning committee report](#) for this application confirms that the developer would be fulfilling the affordable housing requirements off-site. Namely by rebuilding a care home on Southwark Park road. We understand that instead the Care Home site is being sold (freehold) by the Council to the developer and that the care home units will not be policy-compliant affordable housing secured by a section 106 agreement. Instead the site will be leased to a charity (United St Saviours) for a period of 50 years, after which time all of the accommodation will revert to the ownership of Delancey and will then be entirely unencumbered by any contractual obligation to remain affordable housing. This is a breach of policy which requires a minimum period of 125 years for the securing of affordable

housing tenure.

37. **122-144 SOUTHWARK BRIDGE ROAD (05/AP/0495)**

The [section 106 agreement](#) for this application says that of the 164 new homes, 26 should be social rent and 36 shared ownership. However, Land Registry documents indicate that no agreement has been signed with a registered provider for the provision of these.

38. **Redevelopment of Wyndham Garage, Wyndham Road SE5 0UB (05-AP-1957)**

The [planning committee report](#) says that it was supposed to provide 9 social rented units, but units in this development have been advertised online at affordable rents.

39. **Redevelopment of Hartleys Jam Factory, Bermondsey (ref:99-AP-1361)**

In September 2000, Southwark granted planning permission for the redevelopment of Hartley's Jam Factory in Bermondsey to provide 154 residential units (ref:99-AP-1361), a number of which were to be provided as affordable housing including social rented in the 5th phase of the scheme (Block E). It is understood that Block E was infact never built and that all 154 units have been sold as private residential dwellings.

40. **Signal Tower, Elephant & Castle (09/AP/1940)**

The planning committee report for this 22 storey tower on Newington Causeway said that the development would provide 11 affordable homes at intermediate affordable rent. Land Registry information shows that no agreement has been signed with a registered provider accredited by the Tenant Services Authority and that these 11 units have been sold on the open market. The developer in this case is the same developer of the Jam Factory development (Galliard).

41. **201-205 LONG LANE LONDON SE1 (01/AP/0714)**

Demolition of existing building and redevelopment of site by construction of buildings comprising of 212 flats, 22 live/work and B1 use with associated car parking (Revised application). This is yet another development by Galliard Homes, which doesn't appear to have fulfilled its affordable housing obligations. Consent was given for 22 live/work units, office space (B1) and 212 new homes of which 55 affordable (30 shared ownership/25 social rent). We understand that the 22 live/work units and B1 office space have been delivered as private residential and Land Registry information shows that no agreement has been entered into with a registered provider for the provision of the 55 affordable units.

42. **118 Southwark Park Road (03/AP/0878)**

From the same developer Galliards, this is the building on Southwark Park Road which was in the national news about its 'homeless spikes'. The [section 106 agreement](#) secured 13 units for social rent and 12 shared ownership. However, Land Registry documents show that 13 shared ownership units have been provided and 12 for rent. It is unknown whether these are being provided as social rent or affordable rent.

Adding the numbers from each of the developments together, gives a total of 1139 social rented homes approved at committee that we think have been provided as affordable rent. Until such time as there has been a borough-wide s106 audit, enforcement action taken and procedures put in place for ongoing monitoring of compliance, then the Council's commitment to social rented housing remains in question.