

Cllr Mark Williams  
Cabinet Member for Regeneration  
Southwark Council

**Re: Aylesbury estate redevelopment - S106 agreement concerns**

Dear Councillor Williams,

Thanks very much for agreeing to look at this issue for us. Local people are very concerned that the replacement social rented housing on the new Aylesbury will end up being 'affordable rent' - i.e. up to 80% market rent. We understand that Section 106 agreements are the only way of safeguarding social rented housing from conversion to affordable rent and that's why we believe it is so important that the Aylesbury S106 agreement be worded properly.

Our concerns are compounded by a spate of developments in other regeneration schemes, where **social rented** homes approved by Southwark's planning committee have ended up being delivered as **affordable rent**. This was the case with both the [Canada Water regeneration](#) and [Bermondsey Spa regeneration](#), where a number of supposedly **social rented** homes are currently being let by Notting Hill Housing at **affordable rents** of 63% market rent, and where we understand the council is currently in a legal dispute about whether the wording of the S106 agreement allows this.

Notting Hill's track record on **affordable rent** gives further grounds for concern: shortly after the introduction of the government's affordable rent in 2011, Notting Hill [announced](#) that it would be converting all of its existing **social rented** homes to **affordable rent** as tenancies expired. In March this year the Guardian [reported](#) that Notting Hill had converted 853 of its London homes from **social rent** to **affordable rent** in the past 3 years.

Notting Hill's predilection for **affordable rent** is grounded in the views of its CEO Kate Davies. Ms Davies was a [fellow of the Centre for Social Justice \(CSJ\)](#) - a conservative think tank chaired by Iain Duncan-Smith, which was responsible for shaping the government Housing Reforms that introduced **affordable rent**. In 2008 she chaired the CSJ's Housing and Dependency Working Group, and helped author a [report](#) in the foreword of which she claimed that council estates are '**ghettos of the poorest and neediest people**' that are '**subsidised by the taxpayer**' and provide '**low cost living for life funded from the public purse**'. She said that tenants '**often pay little or no rent, and get their home maintained in good order for free**' and concluded that '**social housing is not a desirable**

*destination'* and that '*private ownership is preferable to state provided solutions*'. The report concluded by proposing a change of the law to allow housing associations to let the social housing it manages on whatever terms they choose:

## TENURE REFORMS

**2.7** We propose that the law should be changed so that councils and housing associations are free to let social homes on whatever terms they judge most appropriate to meet the particular needs of incoming tenants.

The government's 2011 Social Housing Reforms introducing affordable rent were a direct result of the proposals recommended by the CSJ think tank. While many councils and housing associations objected to the government's reforms, Notting Hill was one of the few providers to submit formal representations in support of the reforms. In its [submission](#) to the formal consultation on the bill it wrote "**Notting Hill strongly welcomes the Government's social housing reforms. They will lead to a significant increase in the provision of new social housing, with the higher levels of income that associations will receive from affordable rent tenancies**".

When Mayor Boris Johnson came under fire for the affordable rent reforms as part of his new Housing Strategy in 2008, Kate Davies [wrote](#) to the Guardian in support of the reforms and said "**I for one am looking forward to putting his policy into practice.**"

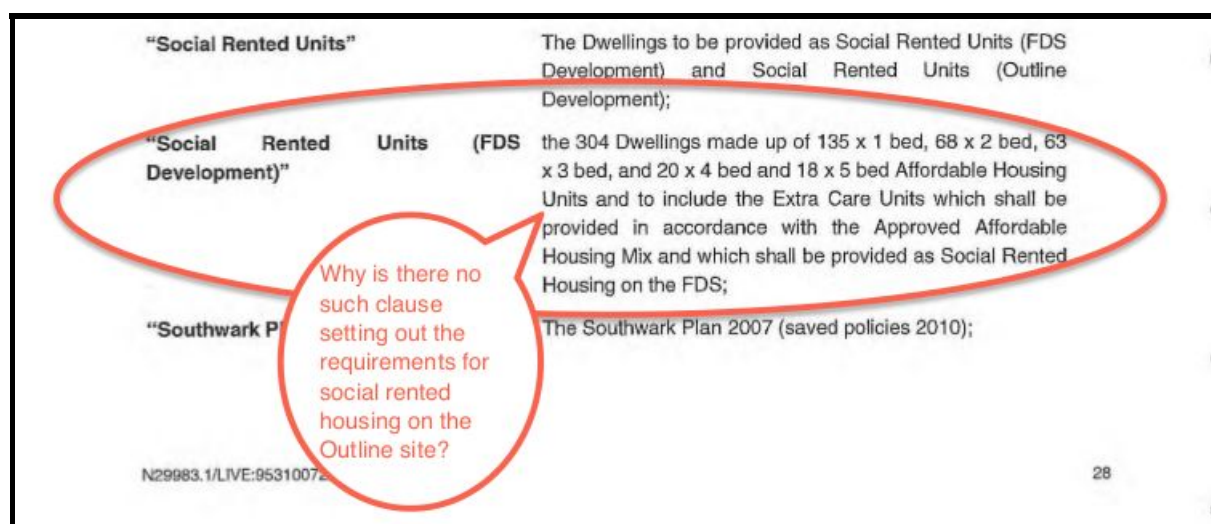
While many Housing Associations [shunned](#) the Mayor's new funding stream linked to the provision of affordable rent, Notting Hill applied for and was [allocated](#) £77.4m by the Greater London Authority for the 2015/18 Funding Round - the largest allocation in London, two and a half times more than the next highest recipient - to build 2,250 homes, many of which on the Aylesbury estate. During the [April 2015 Public Inquiry](#) for the Aylesbury estate Compulsory Purchase Order, Notting Hill's representative Rosemary Houseman confirmed that this GLA funding was linked to the provision of **affordable rented** homes on the Aylesbury, not **social rented** but that the 'target' for the **affordable rents** would be '**capped at near social rent levels**'.

In April this year we made [representations](#) to the council's planning committee, outlining our concerns that the Aylesbury estate regeneration would end up being delivered as **affordable rented** housing. We asked for tighter wording and for the S106 agreement to come back to the planning committee before being signed. Some of our suggested wording was agreed, but members accepted officers' recommendations that it wasn't necessary to bring the full terms back before the committee.

Three weeks ago the S106 agreement was made public and having read through it we are extremely concerned about the wording, which appears to leave sufficient ambiguity for the 'social' housing to be open to interpretation as **affordable rent**, particularly in relation to the *Aylesbury Outline Development Site* (the S106 agreement covers two sites: the *First Development Site (FDS)* and the *Outline Development Site*). We have highlighted the following extracts from the S106 agreement and annotated the relevant clauses with comments outlining our concerns and suggestions for amendments.

#### **PAGE 28 (Schedule of Definitions)**

Whilst on page 28 of the agreement there is a clause setting out the number of social rented units to be provided on the *First Development Site (FDS)*, there is no such clause setting out the required number or percentage of social rented units to be provided on the *Outline Development site*:



#### **Suggested amendment:**

While we note that a minimum percentage of social (though not social rented) units is specified in Table 2.1 Sch 8 we nonetheless suggest - for the sake of clarity and the avoidance of doubt - that a similar clause be inserted into the agreement setting out the required provision of social rented units to be provided on the Outline Development Site. We suggest the following clause be inserted:

***"Social Rented Units (Outline Development)" The 75% of all affordable housing units on the Outline Development site, which shall be provided in accordance with the Approved Affordable Housing Mix and which shall be provided in perpetuity as Social Rented Housing.***

**PAGE 42 (Affordable Housing Schedule [Schedule 3])**

The Affordable Housing schedule on page 42 of the agreement specifies that social rented housing should be provided on the *First Development Site (FDS)* - but does not specify that social rented housing should be provided on the *Outline Development Site*:

The image is a screenshot of a document titled "SCHEDULE 3 Affordable Housing". It contains a list of clauses. Clause 1.2.1 is circled in red. A red speech bubble points to the text "Social Rented Units" in clause 1.2.1, containing the text: "Why are social rented units referred to here only in relation to the FDS development? The outline development site only mentions shared ownership." Another red circle highlights the phrase "Approved Affordable Housing Mix" in the same clause.

**SCHEDULE 3**  
**Affordable Housing**

1. **Affordable Housing**

1.1 The provisions of this clause shall come into effect on the Implementation Date.

1.2 The Developer covenants with the Council:

1.2.1 to provide at least 4790 Habitable Rooms of Affordable Housing within the Outline Development or provide 50% of the total number of Habitable Rooms as Affordable Housing within the Development, whichever is the greater, pursuant to the Approved Affordable Housing Mix and to include the Social Rented Units, Shared Ownership Units (FDS Development) and Shared Ownership Units (Outline Development).

Why are social rented units referred to here only in relation to the FDS development? The outline development site only mentions shared ownership.

...date of submission of the first Reserved Matters Application to ... approval in writing the Housing Delivery Strategy and thereafter to ... Housing Delivery Strategy;

...date of submission of each subsequent Reserved Matters ... which includes Dwellings for its approval in writing an updated ... Strategy of the Development to date.

**Suggested amendment:**

We suggest that this wording is amended to include specific reference to social rented units to be delivered on the *Outline Development Site*.

SCHEDULE 8				
Approved Affordable Housing Mix				
1. APPROVED AFFORDABLE HOUSING MIX				
1.1 FDS Development:-				
Unit type	Social Rent	Shared Ownership	Private Market	Totals
One-bedroom	135	37	199	371
Two-bedroom	68	48	183	299
Three-bedroom	63	15	30	108
Four-bedroom	20	2	10	32
Five-bedroom	18	0	2	20
Total Units	304	102	424	830
Total Habitable Rooms	1069	326	1327	2721

Why is this term not used in the table below?

1.2 Outline Development				
Cumulative Delivery Milestones and Mix				
Milestones (total number of units completed including private and affordable)	Proportion of affordable housing to be provided by habitable room on completion of each cumulative milestone	Tenure mix to be provided within the total provision of affordable housing by habitable rooms on completion of each cumulative milestone		
Units		Social	Shared Ownership	
500	Min 50%	75%	25%	
1000	Min 50%	75%	25%	
1200	Min 50%	75%	25%	
1700	Min 50%	75%	25%	
2200	Min 50%	75%	25%	
On completion of last unit (may be up to 2745 units)*	Min 4790 habitable rooms	75%	25%	

Why is this column entitled 'Social' and not 'Social Rent' as per the FDS development? Could this leave the door open to interpretation as 'affordable rent'?

This crucial schedule sets out the tenure mix requirements for the affordable housing on both the FDS and *Outline Development Site*, for the entire development which spans 20 years. However, while the specific term '**Social Rent**' is specified in the table for the *FDS Development Site*, the table for the



*Outline Development Site* has omitted the word '**Rent**' and simply specifies '**Social**' as the required tenure product.

We are concerned that this is not a simple typo and given the fact that there is no definition elsewhere in the agreement for the tenure 'Social', we are worried that any legal dispute over the interpretation of the term 'Social' might fall back on the statutory definition, whereby **affordable rent** falls within the definition of 'social' housing under section 68 of the Housing and Regeneration Act 2008.

We are also concerned that any possible future legal dispute concerning what was meant by 'Social' tenure, may refer back to Notting Hill's planning application documents, where its [Affordable Housing Statement](#) refers to the social housing units as '**Target Rent/Affordable Rent**'.

2.8 Table 2.4 summarises the affordable housing provision and tenure split.

Tenure	FDS	Outline Application (assumes that 2,745 units are delivered)	Comprehensive Development
Private	424 (HR 1,327) (Units 51.1%) (HR 48.7%)	1,349 (HR 5,412) (Units 49.1%) (HR 50.8%)	1,773 (HR 6,739) (Units 49.6%) (HR 50.3%)
Affordable	406 (HR 1,396) (Units 48.9%) (HR 51.3%)	1,396 (HR 5,247) (Units 50.9%) (HR 49.2%)	1,802 (HR 6,643) (Units 50.4%) (HR 49.7%)
Affordable Tenure Split			
- Intermediate	102 units (25.1%)	377 units (27.0%)	479 units (26.6%)
- Target Rent / Affordable Rent	304 units (74.9%)	1,019 units (73.0%)	1,323 units (73.4%)

Table 2.4 Summary of affordable housing provision

(HR = Habitable Rooms)

**Suggested amendment:**

We suggest that table 1.2 of the **Approved Affordable Housing Mix** on page 65 of the S106 agreement is amended to read "**Social Rent**" in the place of "**Social**".

In summary, we do not understand why the wording in relation to the provision of **social rented** housing on the *First Development Site (FDS)* differs from that used for provision on the *Outline Development Site*. If it is indeed **social rented** housing that is intended to be provided on the latter, then why is this not explicit?

The Aylesbury estate is the largest council estate redevelopment scheme in London. Following the S106 agreement wording problems which enabled tenure switches at both the Bermondsey Spa and [Canada Water regeneration](#) schemes, local people are naturally concerned.

In light of this and with such a significant number of units at stake and such a significant difference between rent levels for **social rent** and **affordable rent**, we hope you will agree that it's important to get this S106 agreement right and agree to the three amendments we have suggested.

Council officers may argue that the S106 agreement is sufficiently worded and does not need to be amended; we would argue that the agreement should be amended - even if this serves only for the avoidance of doubt and to assuage public concerns. Indeed if both the council and Notting Hill are genuinely committed to the provision of **social rented** rather than **affordable rented** housing, then we see no reason why both parties would not agree to these amendments.

We look forward to hearing from you.

Kind regards,

Jerry Flynn  
[www.35percent.org](http://www.35percent.org)