ESTATE WATCH – Handout 5 for leaseholders

Five guarantees leaseholders should seek

Leaseholders and freeholders have a legal right to be rehoused on their redeveloped estate at no additional cost. Section 233(paras 5 & 7) of the Town and Country Planning Act 1990, says that persons compulsorily removed from their homes for planning purposes must be offered '*suitable accommodation*' on the redeveloped land '*on terms settled with due regard to the price at which any such land has been acquired from him*'.

The government's Compulsory Purchase Code goes further to set out a general '*principle of equivalence*':

> ### General principle
>
> 2.1 Compensation following a compulsory acquisition of land is based on the principle of equivalence. This means that you should be no worse off in financial terms after the acquisition than you were before. Likewise you should not be any better off.

This is why most estate regenerations generally offer leaseholders the right to one of the new homes being built on what is known as a 'shared equity' or 'equity loan' scheme.

In theory, these schemes enable leaseholders to buy a share in one of the new (higher value) replacement homes, using the market value compensation for their existing (lower value) homes - without having to pay rent on the share retained by the Council or its development partner.

In practice, Council's and their development partners have often sought to attach small print clauses to such schemes, which result in leaseholders being financially disadvantaged or not placed in an equivalent position.

For example, some schemes require leaseholders to sink their personal savings into the purchase of a shared equity home, or take out a mortgage (on top of any existing mortgage), or in some cases schemes require a minimum share of say 50% or 70% (which has the same effect).

Some schemes also deny succession for their shared-equity schemes, meaning that any descendants living with leaseholders would have to sell and move out of their homes when the named leaseholder passes away.

Some schemes require leaseholders to pay rent on the equity share they don't own (see Greenwich).

Some schemes are effectively 'gatekept' behind a financial assessment, whereby the Council assesses the leaseholders' finances and only offers the shared equity if it deems the leaseholder able to afford shared ownership (ie. paying rent on the unowned share).

Such small print clauses were deemed unlawful at by the Secretary of State at the 2015 Aylesbury estate CPO inquiry, which required Southwark to amend its shared equity policy.

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The key amendments to Southwark's policy were as follows:

1. The minimum equity share requirement was reduced from 50% to 25% - because of the high value of new-build replacement homes, many leaseholders were having to invest savings and take out mortgages to reach the 50% minimum requirement.

2. The inheritance clause was amended enabling a leaseholder to allow the shared equity deal to be inherited by a spouse or descendant. Previously the clause required the house to be sold upon the death of the named leaseholder.

3. Major works charges were apportioned according to the percentage of the share owned by the leaseholder.

4. If agreement can't be reached about the value of the leaseholder's existing home, the Council agreed to make an initial payment of 90% of the Council's valuation pending referral to the Tribunal - with the balance payable following determination. Previously leaseholders were forced to forgo their right to challenge the Council's valuation if they wanted to take up the shared equity offer.

Some estate regenerations offer more generous deals for leaseholders like the Clarion schemes in Merton, or the Poplar HARCA schemes in Tower Hamlets – which allow proportions of the shared equity loan to be written off after a number of years.

These should be used as examples in leaseholders' negotiations with Landlords in estate regenerations, as well as the government's Estate Regeneration Guidance which encourages such loan write-offs after 7 years.

In the meantime, leaseholders should ensure that the shared equity scheme provides the following 7 guarantees and ensure that these are included in detail in any formal Landlord Offer before voting in favour of regeneration.

1. The required minimum equity share is not higher than 25%.

2. The equity share agreement can be inherited by a spouse or descendant.

3. Any future Major Works charges are apportioned to the percentage share owned.

4. Any disagreement about the valuations of the existing homes or the new-builds is referred to the District Valuer (at the Council/Landlord's cost).

Finally, there must be a fall-back for those leaseholders in severe financial hardship who cannot afford the minimum 25% equity share.

This is a minimum statutory requirement – ie. that nobody is made homeless by Compulsory Purchase (see section 39 of the Land Compensation Act 1973).

However, several Councils seek to reduce the amount of compensation to those leaseholders rehoused. For example, the small print in Camden's policy means leaseholders get just 25% of the market value of their homes if they seek rehousing.

This is a clear breach of the government's Compulsory Purchase Code:

> 2.75 If you are re-housed this will not affect the amount of compensation which the acquiring authority pays and an authority must not seek to make a reduction to reflect re-housing.

Leaseholders should scan the Council's policy and any Landlord offer thoroughly for such clauses before voting in any ballot on the regeneration of their homes.