

35% Campaign
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c/o *****ce
 B1*****
 London
 SE1* ***

Dear Sir/Madam,

Corporate Complaint – failure of the Council to properly monitor Section 106 requirements for social rented housing

We wish to complain that Southwark Council is failing in its duty to ensure that new housing developments comply with the terms and conditions of their Section 106 agreements.

Our complaint is:

- that affordable rented housing is being provided by developers instead of social rented housing, contrary to the permissions approved by the planning committee;
- that the Council has acquiesced in this and taken no effective action to remedy the situation when an instance of this bad practice had been brought to its attention;
- that the Council has made little or no effort to ensure that the social rented housing was provided in these and in all other similar cases;
- that the Council has not put into place any adequate monitoring arrangements to prevent this bad practice in the future;
- that the Council's wilful inaction is encouraging this bad practice to continue;
- that the Council's failure deprives Southwark residents of much needed social rented housing, replacing it with a tenure that is more expensive to rent;
- that the Council is wilfully ignoring a practice that substitutes for social rented housing a housing tenure that is not allowed by the saved Southwark Plan policies, the Core Policy or the draft New Southwark Plan, where it is specifically rejected on the grounds that it does not meet Southwark residents' housing needs (New Southwark Plan Oct 2015 DM2).

We append the relevant definitions of social rented and affordable rent to our complaint.

We are moved to make this complaint for the following reasons:

- 1 an instance of social rented housing being replaced by affordable rent at a major development delivered under the Bermondsey Spa regeneration;
- 2 the Council's acknowledgement that it has not monitored the delivery of social rented housing as required by the S106 agreements on two large regeneration sites, Bermondsey Spa and Canada Water;
- 3 the failure of housing associations providing housing in the borough to reply to requests for information on the amount of social rented housing that there is in new developments;
- 4 evidence in the GLA Housing Dataset¹ that developments approved as social rent in Southwark have been provided as affordable rent.

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

We expand on these reasons below;

1 **10/AP/3010** BERMONDSEY SPA SITE C5 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. This substitution was confirmed by both the Council and Notting Hill Housing Trust (NHHT) during the course of the public inquiry into the Aylesbury Compulsory Purchase Order (May 2015).

(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).

2 On 16th October 2015 we emailed Mr Jack Ricketts, Southwark's S106 Monitoring & Compliance officer asking when the Bermondsey Spa and Canada Water regeneration schemes were last monitored for compliance with S106 conditions. After receiving no substantive answer we made two FOI requests to the Council (ref 576121, 576182) asking when it last monitored these schemes, to which it replied in each case *"Please not this has not been monitored"*.²

3 We have also made a number of unanswered FOI requests to several housing associations, asking if they were providing social rented units as required by the S106 agreements on specified new development. We list these, with the number of social rented units for each development here;

- **09/AP/1870** Canada Water regeneration sites A&B Affinity Sutton - 123 social rented homes
- **11/AP/0139** Silwood estate regeneration Notting Hill Housing - 22 social rented homes
- **04/AP/0102** Bermondsey Spa regeneration Hyde Housing - 202 social rented homes -
- **12/AP/0164** Bermondsey Spa regeneration Hyde Housing - 7 social rented homes
- **05/AP/2617** Bermondsey Spa regeneration Hyde Housing - 38 social rented homes
- **11/AP/0138 & 11/AP/4338** Neo Bankside off-site social housing provision agreement Family Mosaic - 22 social rented homes
- **10/AP/2429** Neo Bankside off-site social housing provision agreement Affinity Sutton - 9 social rented homes
- **10/AP/0663** Neo Bankside off-site social housing provision agreement Affinity Sutton - 4 social rented homes
- **10/AP/1860** Neo Bankside off-site social housing provision agreement Affinity Sutton - 23 social rented homes
- **10/AP/2725** Neo Bankside off-site social housing provision agreement Affinity Sutton - 17 social rented homes
- **09/AP/2388** Royal Rd Heygate replacement housing site Affinity Sutton - 76

² https://www.whatdotheyknow.com/request/current_tenure_mix_bermondsey_sp#incoming-741212
https://www.whatdotheyknow.com/request/canada_water_regeneration_sectio#incoming-741207

- social rented homes
- **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

4. The [GLA dataset](#) for its Affordable Housing Programme outturn (AHP 2011-15), lists a number of developments that it confirms have been delivered as affordable rent, but which have been approved as social rent by Southwark in their respective planning consents:

- a) **Family Mosaic - 32 Crosby Row SE1 3PT (scheme ID: 569133)**
Southwark's permission (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.
- b) **Family Mosaic - 430 Old Kent rd SE1 5AG (scheme ID: 569135)**
Southwark's permission (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.
- c) **Leicester Housing Association - Bermondsey Spa regen (scheme ID:570653)**
Southwark's permission (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%.
- d) **London & Quadrant Group - 149 Rye Lane SE15 4ST (scheme ID: 570976)**
Southwark's permission (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.
- e) **Leicester Housing Association - Crown St Depot (scheme ID: 606076)**
Southwark's permission (13/AP/0561) approved 7 social rented units, but the GLA dataset shows that these have been delivered at affordable rents of 40% market rent.
- f) **A2Dominion Housing Association - 45-48 Lancaster St (scheme ID: 623651)**
Southwark's permission (12/AP/1066) approved 19 social rented habitable rooms, but the GLA dataset shows that these have been delivered as affordable rent of between 30% and 59% market rent.

In light of the above we are given good reason to believe that the social rented housing levels approved by the planning committee has not have been provided on the above developments, contrary to both the intention of the Council as the local planning authority, as expressed through its planning committee decisions and the S106 agreements for these developments.

We also believe that this fault may extend to other similar developments, where approved social rented units have not been delivered. Further, while the Council would appear to have no formal mechanism for checking such delivery we do not believe it would be unaware of any such practice, given the close working relationships between the Council and approved housing associations, needed to

provide affordable housing in the borough.

We ask the Council to take the following steps to remedy this situation:

- a borough-wide audit of all schemes where social rented housing has been secured at planning committee, to ensure compliance with S106 tenure conditions;
- through such an audit an examination of the actual cash rents being charged as a means to ensure that when a provider claims it is providing social rent, it is truly social rent. This is needed because of the growing tendency of providers and the Council to conflate the terms social rent, affordable rent and target rent;
- that the developer/housing association is required to restore social rented housing to any development where it has not been delivered, contrary to the planning consent and that the Council take all available and necessary means to achieve this;
- that any housing associations that is found to have failed to deliver social rented housing, or substituted it with affordable rent, contrary to the Council's express policy and any S106 agreement is removed from the Council's list of approved housing associations;
- that a condition of remaining on the Council's list of approved housing associations is that associations are fully transparent about the tenures, rents and service charges that they charge and that they respond to public enquiries according to the requirements of the Freedom of Information Act and Environmental Information Regulations.

We believe that this complaint addresses a serious matter that could have an extensive impact on many people in the borough, not least those in desperate need of a truly affordable, decent home. It may also have ramifications for the way in which the Council manages its own resources, including public land, and the use of accurate information in the development of future policy. We therefore look forward to a full reply within the timescales of the Council's complaints policy.

Yours sincerely

Jerry Flynn

(on behalf of the Elephant Amenity Network/35percent campaign)

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APPENDIX

Fact box: Affordable and private housing

Private (or market) housing is available to either buy or rent privately on the open market.

The National Planning Policy Framework sets out that there are three types of affordable housing:

1. Social Rented Housing is housing that is available to rent either from the council, a housing association (known as Registered Providers) or other affordable housing providers for which guideline target rents are determined at a national level.
2. Affordable rented housing is similar to social rented housing but affordable rent is subject to rent controls that require a rent of up to 80% of the local market rent.
3. Intermediate affordable housing is housing at prices and rents above those of social/affordable rented but below private housing prices or rents. It can include part buy/part rent, key worker housing and intermediate rent housing.

Source: New Southwark Plan, Options Version, Draft Policies and Area Visions, Oct 2014
