

Item No.	Classification: Open	Date: 3 February 2014	Meeting: Overview and Scrutiny Committee
Report title:		Impact of Regeneration on Leaseholders	
Ward or groups affected:		All	
Cabinet Member:		Councillor F. Colley	

REQUEST

1. At its meeting on 11 November 2013 the Committee requested a report that having regard to the Heygate Estate and looking to the Aylesbury Estate and others what are the impacts on leaseholders specifically in respect of:
 - a) lessons learned from experience on Heygate
 - b) whether level of compensation effectively forces leaseholders out of the borough
 - c) clarity on option to revert to being a secure tenant
 - d) valuation of properties, how they are set, rights of appeal etc
 - e) extent of carpet bagging (in terms of people exercising right-to-buy on estates due for regeneration)
 - f) legal requirement on council when displacing leaseholders and range of options available
 - g) point at which leaseholders' statutory rights can be suspended

CONTEXT

2. Typically estates that are subject to regeneration were built after the second world war to address a severe housing shortage. The level of demand combined with material shortages meant successive governments encouraged housing authorities to use non-traditional construction techniques and materials. It was recognised such estates had a shorter life expectancy than those built of traditional materials. Allied to this, such estates have higher than average turnover of tenants, maintenance costs and experience anti-social problems. Such estates are prime candidates for regeneration i.e. the Heygate and Aylesbury Estates.
3. Estate regeneration is a difficult, emotional, expensive and risky undertaking and is not something that is taken on lightly. The catalyst for regeneration inevitably comes from the community and then only proceeds where other options have been fully considered.
4. A number of post-war non-traditional estates have low levels of owner-occupation and anti-social problems as well as structural problems arising from the form of construction used. Regeneration of those estates is often the most sustainable solution to the issues.
5. Regeneration can only work financially without substantial subsidies, by replacing low value housing with higher value housing. The value released being used to provide replacement affordable housing on the regenerated estate

6. In property valuation terms properties on Estates cannot be compared with new equivalent properties on the regenerated estate because they are like chalk and cheese however this is a typical comparison made by leaseholders.

LESSONS LEARNED FROM EXPERIENCE ON HEYGATE (LEASEHOLDERS)

7. The Heygate was designated for regeneration in June 2007 and negotiations commenced to purchase leaseholder properties immediately thereafter. Vacant possession following a Compulsory Order, a contested Public Inquiry and the making of a General Vesting Declaration was achieved in November 2013 almost six and a half years after designation. There were one hundred and seventy-nine leasehold interests on the Estate. This took much longer than was anticipated in 2007 but a significant part of the delay was caused by issues around completing the Regeneration Agreement that in turn arose from the financial crisis following the demise of Lehman Brothers Bank. This delay significantly delayed the preparation of the regeneration planning masterplan which was a necessity to be in place ahead of the making of the compulsory purchase order. The specific lessons learned were:

- (i) Whilst the aspiration is to acquire all leaseholder properties by agreement the reality is some will for their own reasons wait until they are forced to yield up their property. Therefore the making of a compulsory purchase order should be made as soon as possible but this needs planning and finance to be in place to deliver the regeneration. Planning was only confirmed at the start of 2013.
- (ii) If leaseholders object to a compulsory purchase order there will be a Public Inquiry, the Inspector at the inquiry is likely to allow anyone that attends the opportunity to present their case. In the case of the Heygate this resulted in old decisions being raised and scrutinised. Whilst these matters were aired at inquiry the Inspector in her decision adhered to the matters concerning compulsory purchase principles.
- (iii) Some leaseholders expect their compensation to be based on the cost of purchasing a similar sized property in the locality rather than the market value of the property being sold. A minority thought they could extract a ransom value for their properties.
- (iv) Some leaseholders who wanted to remain in the area did not have the financial wherewithal to achieve this aspiration and were only able to do so as a result of the Council's assistance scheme.
- (v) The Council's leaseholder assistance scheme was a vital tool in helping qualifying leaseholders to achieve their aspirations and in achieving vacant possession.
- (vi) Shared equity whereby a purchaser buys a share in a property and pays then purchases subsequent shares at market value was not generally provided for Heygate leaseholders. This solution is currently being investigated for future regeneration schemes. This differs from shared ownership insofar as the purchaser does not pay rent in respect of the share of the property outstanding so is appealing to buyers but the loss of rent makes it more costly to providers than shared ownership.

- (vii) A planning agreement in respect of the Strata development at the Elephant and Castle reserved a number of units for Heygate leaseholders to purchase under shared equity. This proved to be both a helpful and popular solution but it was only available to leaseholders left at the latter part of the relocation process. It would have been helpful if shared equity were available throughout the project see 7 (vi) above.
- (viii) With a mind to these lessons, partner assistance proposals at the Aylesbury were considered by Cabinet last month
- (ix) The lengthy time between designation and demolition of the Estate has resulted in significant security costs necessarily incurred to mitigate against unauthorised occupation (squatting) and to protect the residents that remained to the end of the process.

DOES THE LEVEL OF COMPENSATION EFFECTIVELY FORCE LEASEHOLDERS OUT OF THE BOROUGH?

- 8. Appendix One contains an analysis of where occupying leaseholders relocated to, where this is known (the Council does not have the right to be advised where leaseholders move to and some decline requests to provide this information). This shows 38% were relocated within Southwark a further 27% in Greater London and 35% elsewhere. Since there is no control source (information in respect of another Southwark estate to where leaseholders move away from) it is impossible to discern if this level of relocation out of Southwark is above, below or normal.
- 9. In deciding where to move to, people take into account very many factors including personal aspirations, affordability, travel to employment, family networks, health provision accessibility, education provisions to name but a few. Therefore people on the Heygate that moved out of the Borough may have done so for reasons other than the compensation paid to them.
- 10. Right to Buy purchasers are by their very nature first time buyers and they have an expectation that the next property they purchase will be at 'better' than the initial purchase. To satisfy this expectation, it is the case that some Heygate leaseholders did purchase replacement properties in lower value areas than Southwark.

CLARITY ON OPTION TO REVERT TO BEING A SECURE TENANT

- 11. On 17 June 2007 the Executive approved a leaseholder rehousing policy. This led to the production of the Leaseholder Toolkit that contained policy and informed leaseholders. This provides *where a leaseholder is assessed as not being able to afford to purchase an alternative home that meets their reasonable housing needs, they will be offered the chance of become a council or RSL tenant*. This form of assistance is only available to leaseholders that live at the regeneration property as their principal or only residence and follows a financial assessment. The outcome of such an assessment may be that the applicant can afford to purchase a replacement home without Council assistance, the applicant can afford to participate in shared ownership or for the least wealthy, an introductory tenancy is granted which will usually result in a secure tenancy being granted later. Once they become a secure tenant they

will in the future be able to exercise the right to buy again but any past discount received is set off against the discount they receive for the new application.

VALUATION OF PROPERTIES, HOW THEY ARE SET, RIGHTS OF APPEAL ETC

12. Rule 2 of section 5 of the Land Compensation Act 1961 provides that compensation shall be based on the market value of the property concerned on the assumption that the acquiring authority's scheme is not taking place (the no scheme world).
13. Market value is defined as "*The estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.*"
14. Therefore in the case of the Heygate it had to imagined the demolition and regeneration was not taking place. In such imaginary circumstances, the Council would have carried out *Warm, Safe and Dry* works to the property for which the leaseholders would have faced very large capital service charge demands. The Estate would however still have suffered the social problems that contributed to the decision to regenerate it. Also and importantly, the form of construction of the Estate means that properties thereon would not have secured mortgage finance from mainstream lenders effectively limiting potential purchasers to those that are cash buyers. These factors served to depress the value of the properties concerned and this was recognized by the Executive in 2007 when it introduced the previously described leaseholder re-housing policy.
15. Leaseholders are encouraged to appoint a professional surveyor to negotiate terms for the Council's purchase on their behalf. The Council will meet that surveyor's reasonable fee.
16. In the event that agreement cannot be reached between the leaseholder (who may be advised by a surveyor) and the Council either party may refer the determination of compensation to the Upper Tribunal (Lands Chamber) which will hear the evidence and case for each party and apply the relevant laws to determine compensation.
17. In the case of the Heygate, 176 (98%) acquisitions have been made without recourse to the Upper Tribunal. There are three outstanding sets of negotiations to be completed but no references have been to the Tribunal.

EXTENT OF CARPET BAGGING

18. The Council does not know the motives for persons exercising the right to buy. Where regeneration is approved the Council will serve an Initial Demolition Notice on affected properties. This does not stop tenants applying for the right to buy but it does mean their application is suspended for up to seven years. By then, the Council will either withdraw the Notice or serve a Final Demolition Notice where the demolition date is known which enables the Council to refuse all outstanding and new right to buy applications. These notices are however only valid for two years. The deficiency with the Demolition Notice procedure is that where a project such as the Aylesbury Estate has a duration of more than nine years it does not prevent persons in the latter stages of the scheme exercising the right to buy.

20. The Demolition Notice procedure was however effective in respect of the Heygate because the period between designation for regeneration and the relocation of the last secure tenant was well within the nine year period advised in the above paragraph.
21. In the case of the Aylesbury Estate, since 2007 when regeneration was designated, thirteen properties in the latter phases have been sold. There are four suspended applications and there are currently sixteen outstanding applications. If mortgage finance could be obtained there would undoubtedly have been more sales and applications. The increased maximum discount of up to £100,000 has generally incentivised secure tenants in the Borough to purchase their homes.
22. Secure tenants on an Estate to be regenerated know that if they purchase the Council will in the future purchase the property for market value plus 10% Home Loss if they reside in it and pay other costs such as legal sale fees. Also discount received on the initial purchase is not repayable. It is therefore an attractive proposition for them in financial terms particularly if they can fund the purchase without a mortgage.

LEGAL REQUIREMENT ON COUNCIL WHEN DISPLACING LEASEHOLDERS AND RANGE OF OPTIONS AVAILABLE

23. When acquiring leasehold properties the Council is obliged to compensate them for the following heads of claim:
 - (i) Market value of their property
 - (ii) Home Loss of 10% of market value in the case of owner/occupiers and 7½% for other owners
 - (iii) Disturbance/Incidental costs that cover leaseholders reasonable relocation expenses
 - (iv) Reimbursement of reasonable legal fees
 - (v) Reimbursement of reasonable surveyor fees
24. Under section 39 of the Land Compensation Act 1973 the Council has a duty to re-house leaseholders where *suitable alternative residential accommodation on reasonable terms is not otherwise available*. In this connection, suitable doesn't mean of the same tenure so where a leaseholder receives market value s/he may use some of that payment to rent alternative accommodation privately. Therefore this provision has limited impact on the Council.
25. The Council's leaseholder re-housing policy goes well beyond its statutory obligation in this connection.

POINT AT WHICH LEASEHOLDERS' STATUTORY RIGHTS CAN BE SUSPENDED

26. The Council can never suspend individual's statutory rights.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
17 June 2007 Executive Report	http://moderngov.southwark.gov.uk/Data/Executive/20070619/Agenda/Item%2016%20-%20Heygate%20ActionPlan.pdf	Patrick McGreal 0207 5255626
Heygate Leaseholder toolkit	http://www.southwark.gov.uk/download/1837/leaseholder_toolkit	
Minute 10.1 of Overview and Scrutiny meeting on 11 November 2013	http://moderngov.southwark.gov.uk/mgAi.aspx?ID=31164	

APPENDICES

No.	Title
Appendix One	Relocated Heygate leaseholders

AUDIT TRAIL

Cabinet Member	Cllr Fiona Colley - Cabinet Member for Regeneration & Corporate Strategy	
Lead Officer	Eleanor Kelly – Chief Executive	
Report Author	Patrick McGreal - Property Services	
Version	Final	
Dated	22 January 2014	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Communities, Law & Governance	No	No
Finance Director	No	No
Head of Specialist Housing Services	Yes	Yes
Cabinet Member		
Date final report sent to Constitutional/Community Council/Scrutiny Team		