

**REMAINING LEASEHOLDERS –  
THE AFFORDABILITY GAP  
AFTER AYLESBURY ESTATE**

**Neil King QC**

## THE PROBLEM

- Acquiring authorities and Sec of State need to show compliance with duties under HRA and Equalities Act
- Resident leaseholders in estates earmarked for regeneration cannot acquire new home in scheme because of vast difference in market value of existing and new properties
- Therefore developers devise shared ownership/shared equity products that aim to plug the gap

## THE SOLUTION

- Key elements (typically) are:
  - contribution by leaseholder of part or whole of compensation payment viz (no-scheme world) market value of existing property plus home loss payment
  - minimum equity contribution (e.g. 50%)
  - developer contributes rest with or without interest/rental charge
  - when property is sold proceeds are divided between leaseholder and developer according to shares
  - restrictions on inheritance e.g. only to relations living with leaseholder

# AYLESBURY ESTATE CPO DECISION (16/09/16)



- CPO made to facilitate regeneration of 1960s/70s housing estate in accordance with Aylesbury AAP (LB Southwark)
- DL20: “in practice the options for most leaseholders are either to leave the area, or to invest the majority of their savings in a new property”
- DL21: likely that many leaseholders “will have to move away from the area”
- DL22: disproportionate interference with Art 1 First Protocol rights (peaceful enjoyment of property)
- DL30: disproportionate impact on elderly and BME residents

## WHAT HAPPENED NEXT

- Decision quashed by consent
- Basis for this was that SoS hadn't explained why a post-inquiry (but pre-decision) change in the AA's policy relating to the contribution out of their savings that residents had to make towards a shared equity property didn't address his concerns
- Fresh PI to be held in January 2018

## WEST HENDON CPO1 DECISION (12/11/15)



- CPO to facilitate regeneration of another late 1960s estate in accordance with adopted policy (LB Barnet)
- DL17: SoS “notes leaseholders would all be able to secure properties in shared equity homes based on the offer before them ... the shared equity scheme ... is such that the wellbeing of the residents is being considered”
- DL24: interference with Art 1 First Protocol rights justified by wider public interest

- DL26: confirmation “may have a detrimental effect or a disproportionate impact on persons who share a relevant protected characteristic”
- But taking account of scheme benefits, “Overall, and having regard to the PSED, the SoS considers that his decision to confirm the CPO is proportionate and justified in the circumstances”

## WHY THE DIFFERENT OUTCOMES?



- At W Hendon, developer's offer meant that all leaseholders would be able (if they chose) to participate in shared equity scheme and acquire a new home in the development
- At Aylesbury, this wasn't so – many were likely to have to move away from the area, with serious adverse consequences for their family and community ties
- Real issue at Aylesbury was requirement to invest existing savings into new property
- Not required at W Hendon – only compensation payments
- In both cases the lack of information provided to leaseholders (at least pre-PI) was criticised



## NEW MAYORAL POLICY

- Draft London Housing Strategy (Sept 2017)
- Policy 4.3D: “The Mayor will act to ensure any affordable homes that are demolished are replaced like for like”, including affordable homes demolished as part of estate regeneration projects
- Affordable homes defined as “homes for households whose needs are not met by the market”; also cross-refers to NPPF definition, which includes shared equity/shared ownership housing

- Appears that new policy would apply to homes on regeneration estates occupied by resident leaseholders since their need for a new home, caused by their existing one being compulsorily acquired, could not be met on the open market
- Shared equity product differs from existing leasehold in that it's a part share in a modern home rather than outright ownership of an outdated one
- Is this “like for like” ...?

# CONCLUSIONS



- Decision in Aylesbury Estate case may have been justified on the facts (although consistency with previous decisions is another question)
- Clear issues concerning ability of resident leaseholders to afford shared equity product
- Outcome of 2<sup>nd</sup> PI unknown but SoS made clear in DL36 that he expected Southwark to “work positively with remaining leaseholders to alleviate the negative aspects ...”
- Objective for promoters should be to offer product that leaseholders can afford on basis of likely compensation payments

- Amount of compensation not a matter for SoS but reasonableness of offers made is relevant because these go to affordability of shared equity product
- Make terms/components of offer clear at an early stage and try to avoid too many reactive changes