Aylesbury Leaseholders Action Group

Deputation to Cabinet - 18th Nov 2014

We made detailed representations to the Overview & Scrutiny Committee on 10th March this year, in which we outlined our issues in full. We don't wish to repeat these here, but do urge members to read our submissions, in order to gain a full grasp of the issues currently facing leaseholders as a result of the Aylesbury estate regeneration:

http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=308&MId=4596&Ver=4

Having since been served with Compulsory Purchase Orders, we are now pleading members to help resolve outstanding issues before officers start instructing barristers and bailiffs. We have summarised our issues below and suggested how they can best be resolved. But first, we would like the Cabinet to be aware of the devastating impact the mismanagement of the regeneration is having on leaseholders. We feel this is best done by way of anecdotal evidence concerning the plight of a leaseholder on the previous redevelopment phase (site 7):

19 March 2012: With the help of his son, 82 yr old leaseholder Mr Hilmi wrote a letter of complaint to the Royal Institute of Chartered Surveyors (RICS). The letter complained about the valuation methodologies used by the council officers who had been sent to value his home (Paul Warner and Olubunmi Olafare) and the low valuation they had offered him (£67,000).

28 March 2012: RICS responded to Mr Hilmi’s complaint (appendix 1) saying that they were unable to deal with it because neither of the council officers who had valued his flat were RICS registered or qualified. Whilst some councils are RICS registered, the letter went further to explain that Southwark was not RICS registered and that RICS can only investigate complaints made against organisations that are registered by RICS.

5 April 2012: Officer Paul Warner wrote to Mr Hilmi (appendix 2) saying that he has now “changed roles within the Council” and that he is “no longer involved in the valuation aspect of buying back the lease” for Mr Hilmi’s flat.
31 January 2013: One of just two residents left in his entire block (which had been experiencing problems with the heating since the adjacent flats were sealed up), Mr Hilmi passed away on a cold January night – just weeks before he and other leaseholders in that phase were due to appear at a Compulsory Purchase Order hearing that would sanction their eviction.

Summary of issues and resolutions sought

1. Surveyors fees
   Under Compulsory Purchase law the council is obliged to pay the fees of independent surveyors instructed by leaseholders to help negotiate valuations. In March we complained to the Overview & Scrutiny Committee that the council had imposed a fee cap on leaseholders’ surveyors fees, which appeared to have no basis in law. The council's principal surveyor submitted evidence (appendix 4) to the Overview & Scrutiny Committee saying that a fee cap was necessary because if surveyors were allowed to work on an hourly rate basis then this “incentives them to maximise meetings, communications and to drag matters out as much as possible because the more time that is spent on matters the more money the surveyor in question will earn.” However, instead of showing that his policy of capping fees and rejecting hourly rates is grounded in law or RICS guidance, we were astonished to read the council's principal surveyor evidencing his claim with reference to a memorial speech.

   We have since sought professional advice and found evidence to reinforce our claim that the council's fee cap and rejection of hourly rates is unlawful and in breach of guidance:

   Paragraph 5.26 of the Land Compensation Manual states clearly that surveyors “be reimbursed on a time cost basis for work undertaken in relation to compulsory purchase claims where possible.” Furthermore, we have appended a copy of the official RICS guidance on the calculation of surveyors fees (appendix 5), which states on page 3 that is perfectly acceptable to accept billing “on time spent multiplied by an hourly rate basis.”

   **Suggested resolution:** Lift the unlawful fee caps and accept surveyors billing on an hourly cost basis. Better still, instruct the District Valuer Service to conduct valuations on the council’s behalf (see below). This will in many cases, avoid the need for leaseholders to instruct surveyors of their own, as the District Valuer will provide a reliable third-party independent valuation.

2. Internal vs external and independent valuers
   The unlawful fee caps are but a minor example of how officers dealing with leaseholder acquisitions have insufficient expertise and are failing to abide by basic Compulsory Purchase
regulations and guidelines. One leaseholder has taken the council to court because her independent surveyor valued her home at nearly twice as much as the council's valuation. Another example involved a Tribunal case in which the officer had mistakenly valued a 1-bed flat as 4-bed flat, not realising that it had been illegally converted.

**Suggested resolution:**
The council should stop using council officers to conduct valuations and negotiations of leaseholder interests - many of whom are neither RICS registered nor even RICS qualified. We have separately checked RICS membership records and found that neither Paul Warner (appendix 3) or Olubunmi Olafare are or have ever been RICS registered or qualified. This is unprofessional, a breach of RICS guidance on conflicts of interests and is damaging to the council's reputation and integrity. We have made enquiries and have not been able to find a single other London borough that uses internal officers to value leaseholder interests during compulsory purchase schemes.

The council should instead appoint the District Valuer Service to undertake valuations on its behalf. This will provide truly independent and reliable valuations, avoiding the need for Compulsory Purchase Orders, bailiffs, or leaseholders being forced into litigation in order to obtain market value for their homes. One example of other council's adopting this approach is Barking & Dagenham, which ensures that “all valuations are obtained via the District Valuer” for its borough-wide estate renewal programmes: [http://moderngov.barking-dagenham.gov.uk/mgDecisionDetails.aspx?IId=32532&Opt=1](http://moderngov.barking-dagenham.gov.uk/mgDecisionDetails.aspx?IId=32532&Opt=1)

3. **Shared ownership re-housing strategy is failing**
The council's offer of shared ownership/equity for rehousing leaseholders is failing. The reasons for this are fourfold:

   a) Restrictive covenants/small print in terms & conditions (i.e. lack of succession rights & equity uplift, restrictive sub-letting clauses)

   b) Unaffordable service charges (service charges in the expensive new-build developments tend to be significantly higher)

   c) The new-build shared ownership homes are not independently valued (leaseholders are forced to accept the RSL or Council's word on how much the new property is worth)
d) Leaseholders are subjected to an intrusive financial assessment and forced to put any savings into the shared ownership property. This can include pension savings, which also leaves the leaseholder with no resources should they wish to refer the valuation to the Lands Tribunal (this can cost up to £40k).

These shortcomings have resulted in very few leaseholders considering shared ownership/equity as a realistic rehousing option. It comes as no surprise then, that of the 188 leaseholders 'decanted' from the Aylesbury estate to date, just 2 have so far taken up the shared ownership/equity option within the completed replacement housing in the completed phase of the Aylesbury scheme. Most have been forced, either into protracted (& costly) litigation battles to obtain market value via the Upper Tribunal, or to accept the pitiful compensation on offer and relocate to outer boroughs.

In March 2014 we made a deputation to the Overview and Scrutiny Committee complaining that leaseholder rehousing options and means testing processes were unclear. We pointed out that there were restrictive covenants in the small print of shared ownership/equity options and lack of clarity over the means testing process and eligibility for the different rehousing options. The Committee upheld our complaint and resolved to produce a policy document explaining the means testing process in detail and each of the different rehousing options including details of terms and conditions relating to each option. 8 months have now passed since the committee resolution and despite numerous reminders, this has still not been forthcoming. This is unacceptable.

Suggested resolution: We request that this policy document is provided without further delay and suggest that for future schemes a borough-wide policy for leaseholder rehousing is produced (in consultation with leaseholders).

4. Openness & Transparency

The council should be open and transparent in negotiations: Full valuation reports and schedule of agreed settlements should be made available to leaseholders and their representatives at all times. This is also a leaseholder's statutory right under the council’s duty of candour.

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1 see paragraph 5.10 recommendation 1 of the printed minutes - "making sure that options such as shared ownership and shared equity are presented to leaseholders in as accessible and easy to understand a way as possible, so that information is clear and is delivered in an open fashion"
5. Safety & Security during decant

Besides problems experienced with the heating as blocks are closed off, Aylesbury leaseholders (many of whom have young children or are elderly) are being left isolated in decanted blocks and are becoming increasingly concerned for their safety. Disrepair of lighting and lifts has exacerbated the problem by creating dark areas in stairwells and alleyways, which are being used for all kinds of illicit activity. We request that all blocks are fitted with temporary security gates and 24hr security is provided during the decant (as was the case on the Heygate AFTER the rape incidents). We note the council's appalling safety track record on estate decants:

a) The North Peckham estate regeneration where Damilola Taylor was stabbed to death in the stairwell of a near-empty block during the decant.

b) The Heygate estate regeneration where according to council papers from 2011 there were "two rapes(one on broad daylight), 3 indecent assaults and a series of robberies and various drug offences in which the alleyway had been used by perpetrators." Later, in 2013 there was a further rape incident when a woman was dragged into a stairwell from a neighbouring street.

c) The Wooddene estate regeneration, where a woman was shot and fatally wounded during the decant process in 2005. Council papers relating to the Wooddene regeneration admit that "The Council assembly notes the poor handling of the Wooddene decant process". It is interesting to note that the report concludes by making the following resolution: "Council assembly requests the executive to instruct officers to produce a report and action plan to review the current rules which result in leaseholders who lose their homes in regeneration schemes being paid insufficient compensation to allow them to buy equivalent homes in the same area"

Conclusion: The council's regeneration policies are failing leaseholders.

We urge the council to act now to deliver on its regeneration promises and ensure that its failures on the Wooddene and Heygate schemes are not repeated on the Aylesbury. It is not too late for Southwark to learn from its mistakes and adopt a more progressive approach to estate renewal.

Beverley Robinson
Chair – Aylesbury Leaseholders Action Group

http://halag.wordpress.com
Our ref: CS-SN/58443
PLEASE QUOTE OUR REFERENCE ON ALL CORRESPONDENCE

28 March 2012

PRIVATE & CONFIDENTIAL
Mr Hilmi

Dear Mr Hilmi

Southwark Council

Thank you for your email dated 19 March 2012. I am sorry to learn of the difficulties you have experienced with Southwark Council. I feel it may be beneficial for me to outline the role and powers of RICS regulation.

We can investigate allegations of breaches of the RICS Rules of Conduct, which deal in the main with matters of ethics and conduct, not with technical or contractual matters between our members and their clients.

This means that RICS is not empowered to investigate or interfere in our Members’ professional judgement, opinions and standard of services, unless – and until - there are clear indications that the Rules or specific, mandatory professional regulations, issued by RICS, have been breached.

Therefore, in the circumstances, RICS will not be able to comment on Mr Paul Warner’s measurements. A survey report is carried out using a surveyor’s professional judgment; the adequacy of that judgment or possible negligence is something which must be determined by a judicial body. This is something that you may wish to seek legal advice on.

In addition, from your correspondence I understand that Ms Olubunmi Olafare and Paul Warner acted on behalf of Southwark Council. I have checked the RICS membership database and I have to advise you that Southwark Council is not regulated by RICS. RICS can only investigate complaints made against firms that are regulated by RICS.

In order to further your complaint I would recommend that you write a formal letter of complaint to Southwark Council. You may also wish to seek a legal advice to establish what form of redress is available to you. If this results in independent judicial criticism of our Members, please let us have this as this is something we may be able to investigate.

Please note that the reference number for your complaint is CS/58443 and you should include this number on any future correspondence.
I am sorry that we cannot help you further.

Yours sincerely

Silvia Naterova (Miss)
Regulation Senior Administrator, Customer Services
RICS Regulation
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Subject: 36 Wolverton
Date: 5 April 2012 10:35:33 BST
From: "Warner, Paul" <Paul.Warner@southwark.gov.uk>
To: <hilmi@talktalk.net>
Cc: "Hill, Melanie" <Melanie.Hill@southwark.gov.uk>

Dear Mr Hilmi,

I understand that you came to office yesterday and mentioned that you were hoping to find something suitable for your father on the Fleet estate in Dartford. I have took the liberty of looking at properties available in the area and there appears to be a wide selection, over 60 in fact. I have attached them in this email below.

Just to clarify with you that I have changed roles within the Council and I am no longer involved in the valuation aspect of buying back the lease of 36 Wolverton. My role is now project based and to assist where I can to help smooth out any problems. Let me know your thoughts in regards to these properties. I used to live in Dartford so know the area very well.

Kind regards
Paul Warner
Development Project Officer - Aylesbury Regeneration
Southwark Council
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SE1P 5LX
tell: 020 7525 4814
mob: 07508 041 707
email: paul.warner@southwark.gov.uk
For visitors, we are at 160 Tooley Street, SE1 2QH
Keep up to date with the latest Aylesbury regeneration news at
www.southwark.gov.uk/aylesbury
Dear Ms Robinson

105 CHILTERN, AYLESBURY ESTATE

Thank you for returning your notice of intent. I have noted that you do not agree to sell on the terms in the letter 18 November 2010.

In response to your comments, The Council appreciates that the offers presented to leaseholders make it difficult to find alternative accommodation and this is why there is assistance available through the Home Ownership Unit. Have you been in contact with them? If not they can be reached on 020 7525 4342.

It is impossible to notify you of the how much the disturbance claim actually is until the claims arise. This section of compensation is to compensate for any direct costs related to your move. For example post redirection. So until your move has actually happened these amounts will be unknown.

You have stated that you have received a market valuation for the property. I can only assume this is from a qualified surveyor as estate agents can only offer market appraisals. I think the next step is to instruct your surveyor to act for you in negotiating the sale of your leaseholder interest. Would you please instruct the company and ask that they call me to agree reasonable fees before any work is undertaken.

If you need to discuss anything in the letter please call me on the number at the top of this letter.

Yours sincerely

Paul Warner
Graduate Surveyor.
OVERVIEW AND SCRUTINY COMMITTEE 10 MARCH 2014

SURVEYOR’S FEES

Prior to the confirmation of a Compulsory Purchase Order the Council has not liability to reimburse the fees incurred by a leaseholder in being represented by a surveyor. However to enable negotiations and to proceed and agreed purchases to be made prior to a compulsory purchase order even being made the Council undertakes to reimburse to leaseholders reasonable costs incurred in being represented by a surveyor. In order to mitigate this liability and to discourage unnecessarily protracted discussions a cap on the level of fee that is reimbursed is applied. This is applied to all regeneration schemes. In special circumstances where there is justification the cap will be increased by agreement and following consultation.

Many surveyors do not have a problem with this approach; a minority however seek to have their fees reimbursed on a hourly basis. Such a basis incentives them to maximise meetings, communications and to drag matters out as much as possible because the more time that is spent on matters the more money the surveyor in question will earn. This is contrary to the interests of the public purse. Indeed, The President of the Supreme Court, Lord Neuberger said at the Tom Sargant Memorial Lecture on 15 October 2013 in relation to legal fees and the costs of justice “where the service is legal advice or representation, there is a public interest in keeping the charge as low as possible. In this connection, the centrality of the hourly rate appears to me to be malign.” He continued “it encourages inefficiency or worse: if a lawyer is short of work, it can be surprising how much time a particular task takes. And paying by reference to the hourly rate rewards the slow and the ignorant lawyer at the expense of the speedy and knowledgeable lawyer.” It is contended this rationale should also apply to surveyors fees in land compensation matters that ultimately are met from the public purse.
The calculation of fees relating to the exercise of statutory powers in connection with land and property

RICS guidance note
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This is a guidance note. It provides advice to RICS members on aspects of their practice. Where procedures are recommended for specific professional tasks, these are intended to embody ‘best practice’, i.e. procedures which in the opinion of RICS meet a high standard of professional competence.

Members are not required to follow the advice and recommendations contained in the note. They should, however, note the following points.

When an allegation of professional negligence is made against a surveyor, the court is likely to take account of the contents of any relevant guidance notes published by RICS in deciding whether or not the surveyor had acted with reasonable competence.

In the opinion of RICS, a member conforming to the practices recommended in this note should have at least a partial defence to an allegation of negligence by virtue of having followed those practices. However, members have the responsibility of deciding when it is appropriate to follow the guidance.

On the other hand, it does not follow that members will be adjudged negligent if they have not followed the practices recommended in this note. It is for each surveyor to decide on the appropriate procedure to follow in any professional task. However, where members depart from the practice recommended in this note, they should do so only for a good reason. In the event of litigation, the court may require them to explain why they decided not to adopt the recommended practice. Also, if you have not followed this guidance, and your actions are called into question in an RICS disciplinary case, you will be asked to justify the steps you did take and this may be taken into account.

In addition, guidance notes are relevant to professional competence in that each surveyor should be up-to-date and should have informed him- or herself of guidance notes within a reasonable time of their promulgation.
Fee guidance

This note offers guidance on the choice and agreement of an appropriate basis of charge to be reimbursed by an acquiring authority as part of the compensation to be paid to a claimant.

Where a basis for calculating fees is proposed, the initiative will usually come from the claimant’s surveyor who must demonstrate that the fees to be claimed have been properly incurred, and are reasonable and proportionate to the compensation at stake and the complexity of the claim. It should be borne in mind that experienced practitioners advising in relation to compulsory purchase require a detailed understanding of a complex area of law as well as knowledge of valuation and an understanding of the use and basis of occupation of the property to be acquired. As a consequence, it would be reasonable to have regard to the following:

- the fee should in all cases be proportionate to the size and complexity of the claim, and be commensurate with the time, effort, and expertise required to deal with the case; and

- if travelling costs (including the time spent) of a surveyor travelling long distances to undertake the case are claimed, it will be necessary to demonstrate that reimbursement is appropriate.

Surveyors advising claimants must ensure that in all cases the basis upon which they propose to charge fees, the arrangements for payment, and any subsequent changes are agreed not only with the client but also set out and submitted to the acquiring authority from whom in due course reimbursement will be sought. In particular, surveyors are urged to avoid disputes at a later date by ensuring that these steps are taken as soon as possible.

As in all cases regarding instructions between surveyor and client, the basis of remuneration must be set out in writing. Agreement to the basis of fees should also be confirmed in writing, by the client and, if possible, by the acquiring authority.
Bases for calculating fees

For the majority of claims it is expected that a scale will no longer be used as a means of calculating fees. A variety of bases are likely to be utilised, subject in all cases to agreement between the parties involved. Such bases may include but are not limited to:

- a predetermined 'fixed fee' arrangement where the scope of work can be clearly defined;
- a percentage of the compensation received (provided that the matter is settled by negotiation and is not determined through legal proceedings where the surveyor involved is acting as an expert witness and where the requirements set out in Surveyors Acting as Expert Witnesses: practice statement (second edition) must be complied with); and
- on a time spent multiplied by an hourly rate basis.

Not all of the above methods will be suitable or appropriate for every type of claim and therefore it is of the utmost importance that the basis for calculating fees is agreed in advance and, where appropriate, on a case by case basis.
Recording time

It will be necessary for members to take care in every case to accurately record the time spent and the nature of the work carried out in relation to a compulsory purchase claim. In many cases, the time spent working on a claim is likely to form a significant factor in the assessment of the fee. It may also be necessary for surveyors to be required to verify and justify the time spent working on a claim (for example for the Lands Tribunal). The extent to which the record is accurate and comprehensive may be a significant factor when an assessment is made of the ‘reasonableness’ of the claim for the Lands Tribunal or the Acquiring Authority.
Disputes

Surveyor’s fees are an item which can be included in a compensation claim and for that reason the law provides that if the parties are unable to reach agreement, having exhausted all other avenues, the dispute should properly be referred to the Lands Tribunal.

Surveyors may well be reluctant to advise clients to adopt this means of dispute resolution if the only item over which there is disagreement is the amount of the surveyor’s fee which the acquiring authority should reimburse. Members are advised to consider using an alternate dispute resolution procedure as a method of resolving any dispute. RICS is willing, through its Dispute Resolution Service, to offer the option of mediation.