

West Ken & Gibbs Green Community Homes Limited

Melbourne Barrett
Executive Director of Housing and Regeneration □
LB Hammersmith & Fulham Council □
Hammersmith Town Hall Extension
King Street, Hammersmith
London W6 9JU

26 June 2012

Dear Mr Barrett

Proposed disposal of West Kensington & Gibbs Green estates: Consultation analysis and inspection arrangements – serious concerns

1. Thank you for your letter, dated 21 June, which I received on 22 June, in response to the letters I wrote to you and to Mr Myers, dated 7 and 10 June 2012.
 2. You say you address “certain of the issues that are raised in those two letters”. This implies, and the content of your letter confirms, that you do not address all of the issues I raised. Why is that?
 3. You say that the Council delayed the Cabinet decision on whether or not to enter the CLSA from 23 July to 3 September 2012 because “negotiations ... have yet to be concluded”. Under the Freedom of Information Act, please provide me with the record of the decision to delay Cabinet’s next consideration of the CLSA. Please provide also the emails, correspondence, notes of meetings and other documents relevant to the CLSA negotiations, and which made it “clear that it will not now be possible to reach a decision on” 23 July.
 4. Thank you for extending the deadline to 16 July 2012 for us to make representations on the 23 April Cabinet report; for offering further time to inspect the (redacted) consultation responses; and for lifting the 45-minute restriction on individuals to undertake inspections.
 5. Thank you for attaching the “undeliverable” email receipt. I, too, cannot account for why this email was not delivered, as I am not aware of anyone else having had problems emailing this address at that time. Did the Head of Litigation take any steps to find my alternative email address, which is provided under ‘Contact’ on the ‘About’ page of the People’s Estates’ website <http://westkengibbsgreen.wordpress.com/about/>? If you have any difficulties in future, please send emails to ilnr49@gmail.com.
 6. On Friday 22 June at 5.02 pm, Celine Kuklowsky, our deputy Community Organiser, sent an email to Mr Dunleavy, and to the new email address you provided. She has received no response, and nor have I heard from Mr Dunleavy, or from any other Council officers pursuant to the Council’s commitments to provide us with unlimited access to carry on our inspection.
- As we advised in our email, Celine Kuklowsky shall attend Hammersmith Town Hall tomorrow, 27 June. Please arrange for an officer to meet her at 2 pm.
7. It is curious that the Head of Litigation received an ‘out of office’ reply in response to an email she sent to Mr Dunleavy, whereas we received no such reply in response to our emails. Under the Freedom of Information Act, please provide me with the email Ms Mullins sent to Mr Dunleavy, which provoked the ‘out of office’ reply.

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You were on leave, Mr Dunleavy was on leave, and you say that when Ms Mullins contacted officers in your department “to alert them to the potential difficulties that this might cause” for our inspection she discovered that “a number of officers involved in the Earl’s Court project were on leave”. Under the Freedom of Information Act, please provide me with the annual leave schedule for the Council Officers involved with the Earl’s Court project from Easter 2012 to date.

You say that you are “not able to explain why the voicemail message left by” us could not be retrieved, and you conclude: “I can only apologise for the inconvenience that you have been caused”.

I think you can do more than that. Do you think it is satisfactory for a caller engaged in important business with the Council to be given the run-around by automated messages; that everyone is on leave at the same time and does not know it; that emails don’t get delivered or don’t get resent promptly; that voicemail messages cannot be retrieved; and that out of office replies are inconsistent in content and transmission?

Will you undertake to use your influence with the administrative part of the Council to investigate how these errors occurred so that the Council can avoid any recurrence?

8. As I have reported in 6 above, immediately following receipt of your latest letter, our deputy Community Organiser emailed Mr Dunleavy at 5.02 pm on 22 June to arrange an appointment for Wednesday 27 June to continue with our inspection. She copied this email to the new email address you have provided. Still, we’ve heard nothing from Mr Dunleavy, or from anyone else.

9. I do not understand why you “do not propose to respond to each and every point made” in my letter to Mr Myers of 10 June 2012. As you say, Mr Myers: “makes the Council’s position plain on a number of the issues”. However, it does not address all the points I raised, and the evidence I supplied, in my response to his letter.

Given your role, I would have expected it to be your responsibility to respond to all of my points, rather than just to respond to “the points which [you] think [you] can usefully address”. If you cannot address all the points, then please let me know who will and when.

10. I accept your apology for Mr Myers’ erroneous claim that “in fact” your letter of 14 May 2012 stated the deadline was 28 May 2012. You accept that in fact your letter specified the deadline was 30 May 2012. Inexplicably, Mr Myers placed some weight on this, his opening point, in his letter to me. Under the Freedom of Information Act, please provide me with the relevant documents to account for how Mr Myers came to make this mistake. Who drafted his letter to me, who checked it, and what inquiries did Mr Myers make to ensure it was accurate?

11. Regarding the information I supplied to evidence our charge that the Council “concealed” the CLSA, you say: “Thank you for that clarification”. This was not a clarification: I merely quoted from what we had sent you on this matter three months previously.

It was obviously irrational for the Council to consult with residents (between January and March 2012) about whether it should sign a document that it did not allow them to see. I don’t understand how Mr Myers’ explanation that “the CLSA was not published at the time of the 23 April 2012 Cabinet meeting because it remained the subject of commercial negotiations yet to be concluded” has any bearing on the matter. Indeed, it suggests that even the Council itself did not know what it was consulting about at that time.

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Under the Freedom of Information Act, please tell me which Officers, Members, consultants, partners, legal advisors and others are involved in negotiating the CLSA, and inform me of the costs the Council has incurred to date. Please also provide a chronology showing how the negotiations have progressed.

12. You have not responded adequately to my letter of 7 of June, as paragraph 7 above refers.

13. With regard to our concerns about the Council's analysis of the consultation responses, you say: "that in fact the Information Commissioner has no jurisdiction over these matters". I would have thought the Council might have been more cautious about making claims of "fact", given your earlier apology for Mr Myers' strenuous, yet erroneous, claim of "fact". I shall continue to copy this correspondence to the Information Commissioner.

14. You say: "Paragraphs 7-12 of your letter complain of bias and error in the Council's analysis of the consultation responses". Paragraph 6 of my letter to Mr Myers states:

These are not complaints to the Council: rather, they are grounds for us to challenge in the Courts any decision that the Council may make on whether to enter into the CLSA with the developer, Capital and Counties PLC, or with one of its subsidiaries, which relies on a faulty or false analysis of the consultation responses; they are grounds, furthermore, for making a serious complaint to the Information Commissioner; and, we think, they are evidence of public scandal.

Your first bullet point does not address paragraph 11 of my letter to Mr Myers, which explained:

The point we made about the 18 'in favour' forms, which contained the same brief or similar content, and which appeared to be written by a single hand, was that none of them contained any signature or mark attesting authenticity. There is no parallel with forms in the 'against' file, because in the vast majority of these cases, forms not in the respondent's handwriting bear verifying statements and signatures, and are markedly different from each other in content.

In your second bullet point you say: "it is unfortunately the case that not all responses were date-stamped on receipt by the Council". If, as you claim in these cases, Officers' judgment has "not been biased in favour of a particular viewpoint", how do you account for our observation that these responses were categorized in favour of demolition?

In your third bullet point you say that because the forms were not recounted after they had been processed and made available for inspection: "it is therefore possible that there are minor discrepancies between the original responses that the Council has been using for its analysis and the redacted versions that have been made available for inspection". You seem to be suggesting there are two sets of files and that the discrepancies are between these two sets.

I hope that through our further inspection, and through your Officers checking what you call "minor discrepancies", we can determine whether the systematic bias we have described was resultant from miscategorisation of the responses, or from discrepancies that arose between the sets of responses.

15. We look forward to hearing back from Mr Dunleavy or another Officer as soon as possible so we can confirm the continuation of our inspection for this Wednesday, 27 June.

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16. I take it from what you say that you confirm the form we quoted from is indeed the one you discounted for being “potentially violent”. We found it in the ‘Not-counted’ file alongside the responses from the 40 or so children whose forms you discounted on the ground that they were less than 12 years of age.

You say: “the form in question contained foul language and a threat of violence”. That is your opinion. Equally, it could be suggested that the respondent was communicating in plain old Anglo Saxon, and deploying Cockney rhetoric to emphasise, as it turned out, his forlorn hope that you would take good note of his opposition to demolition.

You may think that the form: “is for that reason not helpful or constructive”. But this is not a rational ground for discounting it. In any event, if this is your ‘rule’, then the Council has applied it inconsistently. Other forms contain the same swearword, variations of it, and other swearwords. Many forms also contained a “threat”, if not of “violence”, most certainly of physical defiance.

Undoubtedly, this language is direct; and there is no question that it involves swearing. However, not all swearing is “foul”; and threats, however unwelcome, are subject to interpretation, are a question of degree, and, naturally, should be kept in context.

I look forward to receiving the answer to my Freedom of Information request for the Council’s policy for dealing with “potentially violent” responses. In the meantime, please confirm that the Council did not discount any other forms for this reason.

You say that my: “letter of 10 June 2012 will be put before Cabinet Members, so the quoted content from that form will, for what it is worth, be before Cabinet Members who are in any case already well aware of the strength of feeling of some objectors”.

The import of that form was that the respondent, very strongly, wanted you to read it. Instead, the Council discounted it; and now, you’ve belittled its worth.

Unlike any other consultation or vote, the Council failed to provide the totals or percentages for residents and households for and against. Now, you describe the many hundreds of residents who expressed strong feelings in their responses as “some objectors”, even though these formed the overwhelming majority of respondents, indeed, an absolute majority of households living on the estates.

17. To my mind, Mr Myers provided opinions and bureaucratic defences rather than any rational or legal grounds for not taking up my request for him to institute a formal Review under FoI. We shall continue to treat our inspection requests as Freedom of Information requests.

You say that you do not propose to revisit this issue, (a formal Review under FoI), albeit this was a decision taken by Mr Myers. Under the Freedom of Information Act, please provide me with any documentation relating to the decision not to institute a formal Review under FoI.

18. Thank you for your confirmation that my letter of 10 June 2012 will be put before Cabinet Members when they make their final decision on the CLSA. Please confirm that you will put all of my letters (with the same subject heading as above), along with the replies from you and Mr Myers, before Cabinet.

19. You say: “Contrary to the tenor of some colourful phrases used in your letters (e.g. “Kafkaesque”, “labyrinthine plot”) there is no sinister hidden agenda in this

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exercise". I agree that the agenda is not hidden. The Council has been open about its agenda, and has publicly promoted and supported demolition; and, we have exposed how this appears to have influenced its analysis of the consultation responses.

You say: "The Council is merely doing everything it can to ensure that the decision-making process is fair and lawful". There is a great deal of evidence, much of it now the subject of fresh Judicial Review proceedings, to suggest that this is not true.

You say: "We acknowledge that some communication difficulties and administrative errors in correspondence have occurred. This is regrettable and we have apologised where it has occurred". I have previously thanked you for this apology. However, since you do not seem to have investigated these difficulties and errors, you have little evidence to support your claim that your agenda is not, as you call it, "sinister".

20. You say: "The Council respects [our] democratic right to campaign in this way but does not accept that [our] detailed points add up to a case that the Council is behaving unreasonably or unlawfully".

We questioned every claim where we had evidence to support an opposite contention and where we doubted its veracity. We provided material evidence to support the detailed allegations we made about miscategorisation, yet Mr Myers provided nothing of any substance to support his claim that our allegations were "entirely baseless".

Nor have you. You declined to respond to all of my points; you devoted most of your letter to explaining and apologizing for administrative errors, albeit, aside from providing us with an alternative email address, you made no proposals for ensuring these errors do not recur; you side-stepped the point Mr Myers failed to address about the 18 forms with the same handwriting; and you claimed the discrepancies were between rather than within the sets of forms.

Neither you nor Mr Myers have addressed my detailed points on the substantive matter of systematic miscategorisation. So, how can the Council decide it "does not accept that [our] detailed points add up to a case that the Council is behaving unreasonably or unlawfully"?

21. I look forward to receiving the Council's responses to the FoI requests I have made in this letters, and in my previous letters of 7 and 10 June.

Yours sincerely

Jonathan Rosenberg
Community Organiser

West Ken & Gibbs Green Community Homes Ltd
West Kensington Estate Tenants & Residents Association
Gibbs Green & Dieppe Close Tenants & Residents Association

Cc: Derek Myers, Chief Executive LBHF; Andy Slaughter MP; The Information Commissioner; WKGCH Board Members.