

Cllr Martin Seaton  
Southwark Council  
Chair - Planning Committee

**By email only**

30 April 2020

Dear Cllr Seaton

**Mortgagee in possession S106 clause- Malt Street redevelopment**

We write ahead of the virtual planning committee on 4 May 2020 and in particular item 6 which contains a recommendation that the director of planning be given the authority to agree a Mortgagee in Possession (MIP) clause within the joint s106 agreement for the Malt St and Nyes Wharf development.

We are very concerned about the recommendation set out in the Officer's report for the following reasons:

1. Firstly, there is no policy in the local plan or in the form of a supplementary planning document (notably the Affordable Housing and Viability SPD) to support the use of the mortgage in possession clause. The GLA note does not represent a GLA/London Plan policy;
2. The planning committee are being requested to approve a clause which may mean that the agreed affordable housing on this development will be lost and/or not provided in perpetuity, which is contrary to Affordable Housing and Viability SPG, which is at least a material planning consideration. There is no precedent or policy position for this to be allowed in a Southwark planning committee approved development;
3. The report states that the clause will increase the value of Peabody's capital assets, but it does not increase the delivery of affordable housing *in this development*. In actual fact, the committee are being asked to approve something which goes against a material planning consideration for no additional benefit to the existing planning permission grant, and consequently for people living in Southwark. Likely benefit to a planning application or planning permission for people living in Southwark should be the main concern of the planning committee members. This request provides no such benefit.

4. There is no mention of whether Southwark Council or another registered provider would actually be able to purchase the affordable housing units or interest were the named registered provider to default on the mortgage and/or go into administration, therefore this option does not appear to be a realistic one justified by evidence. There is no evidence or suggested mechanism of how this might work within the Officer's Report. Our understanding is that it will be greater than the 'market' affordable housing price i.e. the cost of any loan that used the a/h as security would also have to be met. There is also no mention of the tenure mix, and that the 25% social rented units would have to remain should the council or another registered provider be able to buy out the affordable units.
5. This is a significant change to the original planning permission grant, and therefore should be consulted on and should go through the same proper decision-making process as the original application which obtained the planning permission grant.
6. We are very concerned about a precedent being set and the assurances set out in the Officers Report do not allay these concerns. There is no reason why registered providers of affordable housing would not insist on the use of this clause in the future developments to increase the value in their capital assets if it is approved in this development.
7. No substantial reasons have been given as to why Peabody are saying this clause is non-negotiable, besides the fact that the value of their capital assets will increase and they may be able to deliver more affordable housing in the future. While this would obviously be a desirable outcome if it were to happen, we do not think it should be provided in return for a possible loss of affordable housing in this development. In addition, we are not sure why, and it has not be explained why, Berkley Homes would not be able to sell to another registered provider or indeed Southwark Council if this clause were not agreed and Peabody pulled out as the registered provider for this development.

In light of the serious issues raised, we request that this matter be deferred to allow proper consideration, and the consultation on the revised Affordable Housing and Viability SPD to take place.

If the matter is not deferred, please note that we request the right to speak in respect of this agenda item and it would be much appreciated if a representative of Peabody could answer some concerns.

Yours sincerely

Planning Voice  
**Southwark Law Centre**