Legal geographies of resistance to gentrification and displacement: lessons from the Aylesbury Estate in London

Loretta Lees and Phil Hubbard

Abstract:

Council estates in London are under threat like never before from state-led gentrification which is displacing residents from their homes and communities. Council estates are the last vestige of truly affordable housing in London and it is no surprise that residents and their supporters are fighting back. In this chapter we look at the fight to stay put through the legal system, focusing on two public inquiries into the CPO of leaseholders on the Aylesbury Estate in Southwark. We outline, amongst others, the precedent setting win from the first Aylesbury CPO public inquiry and in so doing show how legal geographies work can have real impacts on policy and practice. Such work also serves to educate the public more widely about the injustices of the displacements caused by state-led gentrification.

Keywords: gentrification, displacement, legal geographies, resistance

Bios
Loretta Lees (FAcSS, FRSA, FHEA) is Professor of Human Geography at the University of Leicester. She is an urban geographer and scholar-activist who is internationally known for her research on gentrification/urban regeneration, global urbanism, urban policy, urban public space, architecture and urban social theory.

Phil Hubbard is Professor of Urban Studies at King's College London. He has written widely cited work on urban sociology, urban geography, and social geographies. He is also a leading figure in the study of sexuality and space and retail gentrification.

> 'What are CPO inquiries useful for? Delaying development, raising public awareness, bolstering local campaigns, bringing people together on an estate, wresting information from the council or developers, stopping a scheme and saving an estate (possibly!)'[1]

Introduction

Council estates in London have been called the 'final gentrification frontier' (Lees, 2014a), with the last vestiges of truly affordable housing (state-subsidised council estates) being slowly destroyed. This is a process that involves the local state effectively handing estates over to private developers, who demolish the existing housing and replace it with a more dense mix of 'affordable' housing which is cross-subsidised by the market rate homes which make up the majority of properties. For this to happen, the state has to first orchestrate a

[1] http://bailey.persona-pi.com/Public-Inquiries/aylesbury-estate/Presented%20Council%20docs/app_0_12.pdf

process euphemistically termed ‘decanting’: tenants bid for properties elsewhere in the borough, or are moved against their will; private renters in leasehold properties are evicted, whilst leaseholders are bought out, often at unfavourable rates. The displacements this process sets in motion are then both direct and indirect (see Marcuse, 1985), and entail phenomenological (Davidson and Lees, 2010), as well as physical, dislocation (see Elliot-Cooper et al 2019).

The literature on gentrification-induced displacement has undergone a renaissance more recently with the importance of the state in fuelling these displacements coming to the fore (see Lees et al 2016; Zhang and He, 2018). Like displacement, resistance has long been a recurrent theme in gentrification studies, and research on resistance has also undergone a renaissance in recent years (see Annunziata and Rivas-Alonso, 2018; plus the special issues in *City*, 2016 and *Cities*, 2016). However, detailed exploration of the ‘fight to stay put’ in the face of displacement remains limited. Critical urban scholars and the media, certainly in London, have tended to prefer the stories of those who have taken to the streets (see, for example, the publicity given to the E15 mothers protest, Russell Brand’s interventions on the New Era Estate, and the ‘Cereal Killer Café’ anti-gentrification riots on Brick Lane). This overshadows the other important legal battles being fought by ordinary people and their supporters: these rarely get a mention even when there have been significant wins (Hubbard and Lees, 2018). Given Chester Hartman’s (1974,1984; see also Hartman, et al., 1982) now-infamous writings on how a community organized itself through the courts to resist gentrification - effectively exercising their ‘right to stay put’ - this is a significant omission in the gentrification literature.

While many legal challenges have been largely unsuccessful, costly and time-consuming, there have been some glimmers of hope in recent legal adjudications, especially in London. Here, there are emerging signs that the law might be able to align state and institutional power with what Delaney (2016: 269) terms ‘vectors of justice’, and offer a means by which displacement might be legally resisted (see also Bryant and McGee 1983). In this chapter we zoom in on the legal challenges brought over the gentrification-induced displacements wrought on the Aylesbury Estate in Southwark, London: two public inquiries which were held in 2015 and 2018, both of which had wins for those fighting displacement. In so doing we emphasise the importance of law in resisting displacement and we evaluate the wider implications of the outcomes of both inquiries for fighting gentrification and displacement.

The legal tool of displacement: compulsory purchase orders

Compulsory purchase (eminent domain) is the power held by the state to acquire title to property without the consent of an owner, it is a key driver of urban change in European cities (Gray and Porter, 2015: 380). It was, ironically, the lynchpin of the British modernist council housing programme which followed in the wake of the Town and Country Planning Act of 1947 (Christophers, 2010: 869). Compulsory Purchase Orders (CPOs) were used in post-war slum clearances to make way for new council estates, and they are being used again for C21st ‘new’ urban renewal on those same estates to pave the way to private development. The UK has seen numerous well-known CPOs in relation to urban regeneration, e.g. London Docklands (Batley, 1989); Cardiff’s docklands (Imrie and Thomas, 1997); the Housing Market Renewal Pathfinder schemes in northern cities (Allen 2008); the London 2012 Olympics (Davis and Thornley, 2010); the Glasgow 2014 Commonwealth Games (Gray and Porter, 2015); but in recent years council estate renewal in London seems to have made up a

significant proportion of all CPOs served in England and Wales (Lees and Ferreri, 2016; Hubbard and Lees, 2018).

Council estate renewal can be seen as part of a process of 'accumulation by dispossession' (Harvey 2003), given it involves the release of common and state-assets to the market that requires the direct displacement of some, or all, of those who dwell on affected estates. Irrespective that redeveloped estates might retain significant amounts of social (but rarely council) housing, the redevelopment itself involves displacement so that existing housing can be demolished, refurbished or densified, with the payoff for the developers being (profit) the opportunity to develop speculative private housing aimed at upper middle class consumers (see Lees et al, 2008; Watt, 2009; Lees, 2014b, on this as state-led gentrification). For some this signifies not just the dismantling of low income or working class communities, but the end of council estates as we know them. Here, the CPO plays a key role in that it allows local councils to "purchase back" from leaseholders the very properties they originally sold them (Rendell, 2018). As Layard (2018) says, these different legal devices of ownership – freehold and leasehold – provide extraordinary security for one landowner (the freeholder) and possible vulnerability for another (the leaseholder).

Ironically, despite this vulnerability, the greatest potential for resistance lies with leaseholders on council estates who have either exercised their right to buy their property or have bought them from a previous council tenant who exercised their right to buy. For these residents, human rights (notably Article 8, the right to family life and Article 1, Protocol 1 of the 1950 European Convention of Human Rights) can be invoked to demand either procedural or substantive changes by landowners. CPOs were famously used on the Heygate Estate (see Lees, 2014a; Lees et al, 2013; London Tenants Federation et al, 2014), adjacent to the Aylesbury Estate in London, to remove leaseholders pre-demolition:

> 'The Executive is advised that the Council has a power to compulsorily acquire land and property interests under Section 226(1)(a) of the *Town and Country Planning Act 1990* (as amended by Section 99 of the *Planning and Compulsory Purchase Act 2004*) ("the 1990 Act"). 22. Section 226(1)(a) gives the Council power to acquire compulsorily any land in their area if the Council think that the acquisition will "facilitate the carrying out of development/re-development, or improvement on, or in relation to, the land"….In exercising this power the Council must have regard to Section 226(1)(b) of the 1990 Act and must not exercise the power unless it thinks that the development, re-development or improvement is likely to contribute to…the promotion of improvement of the economic well-being of the area; the promotion or improvement of the social well-being of the area; the promotion or improvement of the environmental well-being of the area'[2]

A public inquiry was triggered when remaining leaseholders on the Heygate Estate objected to the Order which would see them dispossessed of their homes. The objectors were led by the Heygate Leaseholders Group, supported by expert witnesses, including academics. The CPO-ed leaseholders got compensation offers of, on average, £95,480 for a 1-bedroom flat, £107,230 for a 2 bedroom flat, £156,833 for a 3 bedroom maisonette, and £177,421 for a 4 bedroom maisonette (Freedom of Information data collected by campaign groups, see

[2] http://moderngov.southwark.gov.uk/documents/s7807/Heygate%20Estate-%20Compulsory%20Purchase%20orders%20report.pdf

http://heygatewashome.org/displacement.html). A studio flat on the redeveloped Heygate Estate, now re-named Elephant Park, started at £330,000.

The Heygate Estate public inquiry - although not resulting in the refusal of the CPO - did act as a legal learning curve for those involved (see Lees and Ferreri, 2016), and critically it brought the gentrification debates surrounding council estates out into the open (Layard, 2018). Indeed, the outing of the expulsion of 3,000 plus residents from the Heygate Estate marked it in history as an infamous example of state-led gentrification. A number of those involved in the Heygate Estate public inquiry were subsequently involved in the Aylesbury Estate CPO public inquiries, to which we now turn.

The first Aylesbury Estate Public Inquiry

The Aylesbury Estate in Southwark is one of the largest public housing estates in Britain, built between 1967 to 1977, the 2,700 dwellings were designed to house a population of roughly 10,000 residents. In 1997 the Aylesbury was given 'New Deal for Communities' (NDC) status and studies began on how the stigmatised (as crime ridden) estate could be regenerated. The NDC was given £56.2m over ten years in order to lever in a further £400m as part of the estate's proposed stock transfer from council to housing association tenure. But the residents voted against the stock transfer of the Aylesbury from Southwark Council in 2001, 73% voting to keep the whole estate in council ownership (with 76% of the estate turning out to vote). Nevertheless, in 2005 the Liberal Democrat-led Southwark Council stated that the estate was too expensive to refurbish and that demolition was the most cost-effective solution. The estate was to be redeveloped as a new, 'mixed community' (see Lees, 2014b). The physical regeneration of the estate was to displace approximately 20% of the existing households, including the existing leaseholders who had bought under 'right to buy'. It was intended that those that got to move back onto the original footprint of the estate would have to fit themselves into a new community almost twice the current density and in which the majority of the inhabitants would be middle class residents renting at market rates or owning their own home. On seeing what had happened on the Heygate Estate next door, Aylesbury residents were understandably worried, and a number of leaseholders came together, not simply to get better compensation but to fight to stay put.

The first Aylesbury Public Inquiry was prompted by the Aylesbury Leaseholder's Action Group (ALAG), 11 leaseholders in eight properties earmarked for demolition across different blocks on the estate[3]. The Planning Inspector, Lesley Coffey, oversaw the inquiry which took place on various dates between April-October 2015. The inquiry was located in 'Arry's Bar (see Figure 1) at the Millwall football ground in south east London (see Rendell, 2017). This unusual location was chosen due to fear of protestors after the occupation of the Aylesbury some time earlier (see Lees and Ferreri, 2016), the bar was located inside the football ground gates and the inquiry could be locked down if it was felt necessary. Qualifying objections and one non-qualifying objection to the CPO were received prior to the commencement of the inquiry, with several additional objections made at the inquiry. Although planning permission had already been granted for the demolition and redevelopment of the Aylesbury in 2015, for it to go ahead the CPO had to be confirmed by the government. As stated earlier in relation to the Heygate CPO, Southwark had to satisfy

[3] ALAG was supported by a handful of academics (the geographer Loretta Lees, architectural historians Ben Campkin and Jane Rendell, and engineering scientist Kate Crawford all at UCL), housing activists (including the 35% Campaign group), an ex-Conservative Southwark councilor Toby Eckersley, and eventually, on the last day, a pro bono lawyer, Chris Jacobs from Landmark Chambers.

the following tests under section 226(1A) of the *Town and Country Planning Act 1990*, with the regeneration for the CPO land having to fulfil one or more of the following: (i) the promotion or improvement of the economic well-being of the area; (ii) the promotion or improvement of the social well-being of the area; (iii) the promotion or improvement of the environmental well-being of the area.

Figure 1: 'Arry's bar: site of first Aylesbury estate public inquiry with heavy security (photo courtesy 35% campaign)

The main grounds of ALAG's objection related to: the failure of the scheme to ensure that social rented housing would be provided on the new development; the viability and deliverability of the scheme; the option of refurbishment not properly being considered; the scheme not promoting the social well-being of the area; the failure of the Acquiring Authority to carry out an Equality Impact Assessment in relation to the leaseholders; and the suggestion that the CPO breaches the human rights of the leaseholders[4].

The arguments made by the objectors that the planning inspector and the Secretary of State took on board are summarised here:

> '1) The CPO is a breach of human rights: the rights of the Objectors under European Convention on Human Rights (ECHR) in respect of Articles 1 (right to quiet enjoyment of property) and 8 (right to respect for private and family life). 2) The Council has not taken reasonable steps to acquire land interests by agreement. 3) Council valuations are too low (sometimes as low as 40% of market price) and council is not allowing independent valuations, only those done in-house. 4) The CPO's confirmation would deprive leaseholders of their homes, their savings and displace them from the area. 5) Various parts of the scheme don't comply with council's sunlight and daylight standards, the principles of the AAP and section 7 of the NPPF. 6) The proposed development will have considerable economic and social dis-benefits in terms of consequences for those leaseholders remaining on the Order Land. The council didn't undertake an equalities impact assessment as per their public sector equality duty as required by Equalities Act 2010. The leaseholders are mainly BME. Depriving a BME homeowner of his/her home requires an assessment of whether that homeowner would be more adversely affected than one from a non-

[4] In relation to the latter, the Court accepted that a CPO should not be confirmed unless the case in the public interest fairly reflects the necessary element of balance required in the application of article 8 and Article 1 of the First Protocol to the ECHR (*London Borough of Bexley and Sainsbury's v SoSE* [2001] EWHC Admin 323, paragraphs 33-48 and *Pascoe* [2006] EWHC paragraph 66).

> predominantly BME estate. Leaseholders from the BME community on the Estate derive cultural advantages from living in the area. They face forced separation from their communities, which in many cases may result in difficulty in retaining contact with a particular culture'[5].

As discussed in Hubbard and Lees (2018), following the inquiry, the inspector recommended that the CPO should not be confirmed because overall there would be too many negative impacts meaning that 'a compelling case in the public interest [*had*] not been proved'[6]. The Secretary of State for Communities and Local Government's 2016 (initial) decision (withdrawn in 2017) to confirm this recommendation hence represented a significant and surprising victory for the leaseholders and others involved:

> 'The decision raises some real issues for the CPO industry. It paints an uncomfortable picture of CPO being a tool of gentrification, driving residents and small businesses out of their communities on account of rising land values and rents; the polar opposite of what a CPO is intended to achieve, which should be to improve and restore vitality to a local area' (Vas, 2017: np).

The key reasons given by the Secretary of State for his decision were that there had been insufficient negotiation with remaining leaseholders; that Southwark Council had not taken reasonable steps to acquire land interests by agreement; that there would be considerable economic, social and environmental disbenefits for the leaseholders who would remain on the land; that interference with the human rights of those with an interest in the relevant land was not sufficiently justified; and overall, that the test for a 'compelling case in the public interest' had not been met (as required by CPO policy guidance). This decision stressed the importance of addressing human rights when individuals are affected by a CPO (i.e. Article 8 of the ECHR right to respect 'private and family life') and also highlights the increasing importance of the Public Sector Equality Duty given the ruling that children, the elderly and black and ethnic minority residents would be 'disproportionately affected' by the CPO, and that it would have a negative impact on their ability to retain their cultural ties[7]. Issues such as the 'dislocation from family life' and the potential to harm the education of affected children were identified in the decision letter, indicating a much wider approach to assessing the impacts of a CPO than had been the case previously. In the Secretary of State's summation:

> 'The options for most leaseholders are either to leave the area, or to invest the majority of their savings in a new property. Article 8(1) …is therefore clearly engaged. In relation to Article 8(2) (which permits interference which is proportionate when balanced against the protection of the rights and freedoms of others), the

---

[5] http://bailey.persona-pi.com/Public-Inquiries/aylesbury-estate/Presented%20Council%20docs/app_0_12.pdf

[6] CPO Report to the Secretary of State for Communities and Local Government 29 January 2016 by Leslie Coffey on Application for the Confirmation of the London Borough of Southwark (Aylesbury Estate Site 1B-1C) Compulsory Purchase Order 2014 NPCU/CPO/A5840/74092.

[7] This was also a decisive factor in *R (Harris) v London Borough of Haringey* (Court of Appeal, 5 May 2010) where the court held that the council, when granting planning permission, failed to discharge its duties under section 71(1) of the *Race Relations Act 1976* (now replaced by the *Equality Act 2020 Public Sector Equality Duty)* in terms of considering the potential effects of the scheme on Latin American traders or loss of housing by ethnic minorities. In this instance, permission was quashed on the basis that due regard was not given to the loss of housing by ethnic minority groups (see Ricketts, 2016). http://localgovernmentlawyer.co.uk/index.php?option=com_content&view=article&id=28504%3Aregeneration-x-failed-cpos&catid=60%3Ahousing-articles&Itemid=28

> Secretary of State finds that the interference with residents' (in particular leaseholders') Article 8 rights is not demonstrably necessary or proportionate, taking into account the likelihood that if the scheme is approved, it will probably force many of those concerned to move from this area… The likelihood that leaseholders will have to move away from the area will result in consequential impacts to family life and, for example, the dislocation from local family, the education of affected children and, potentially, dislocation from their cultural heritage for some residents'[8].

The letter went on to note 'the lack of clear evidence regarding the ethnic and/or age make-up of those who now remain resident at the Estate and who are therefore actually affected by any decision to reject or confirm the Order' but argued that given that '67% of the population living on the Estate were of BME origin' it would be highly likely that there would be a disproportionate impact of the CPO on the elderly and children from these groups. Hence, it was adjudged that it would be those from ethnic minorities who would be most likely to dominate the profile of those remaining on the Estate and it is this population who would have to move out of the area if the Order was confirmed. In noting this, the Secretary of State stated that 'white British culture is more widely-established across the UK, including at housing sites to which residents may be moved, whereas minority cultural centres are often less widespread, which is likely to make cultural integration harder for those of BME origin who are forced to move than those of a white British origin'. Its implications will clearly be a significant factor in future CPO decisions in London, not least where estate renewal threatens communities where BME residents are present in significant numbers (White and Morton, 2016). Indeed, Leary-Owhin (2018) has proclaimed: 'That decision set some precedents which threatened seriously the future of estate regeneration in England'!

Indeed, the initial ruling of the first Aylesbury public inquiry boosted the confidence of others seeking to object to redevelopment proposals on the grounds of failure by an authority to properly comply with its Equality Duty. For example, it was raised in objections to proposals by the London Borough of Haringey to promote estate regeneration through the Haringey Development Vehicle (HDV)[9]. Indeed, the Secretary of State's ruling on the Aylesbury Estate re. Equality Duty and human rights under the ECHR 'was a game-changer, for now many authorities in the early stages of preparing CPOs are making greater demands of developers in terms of their proposed relocation and re-housing strategies to avoid similar criticisms of their own schemes' (Thomas, 2017). Yet, the importance of robust evidence must not be underestimated, for the 2018 High Court ruling that the Haringey Development Vehicle was lawful, charged that the Claimant's complaints re. public sector equality duty under s149 of the *Equality Act 2010* were entirely speculative, with the Judge cautioning *'*how remote from reality equalities arguments can become forensically'[10].

The revised Aylesbury Estate Public Inquiry

[8] Letter to Karen Jones, Southwark Council, from Dave Jones, Senior Planner, on behalf of the Secretary of State for Communities and Local Government, 16 September 2016, Ref: NPCU/CPO/A5840/74092

[9] https://www.minutes.haringey.gov.uk/documents/s94484/2e%20Evidence%20from%20Loretta%20Lees.pdf).

[10] https://cornerstonebarristers.com/news/haringey-hdv-ruled-lawful/

Perhaps unsurprisingly, Southwark Council challenged the 2015 Aylesbury CPO public inquiry decision in the High Court:

> 'The Secretary of State for Communities and Local Government … notified Southwark Council that he would consent to judgment and ask the court to quash his decision not to confirm the Compulsory Purchase Order for the remaining properties in Phase 1 of the regeneration of the Aylesbury Estate. A Consent Order has been agreed with DCLG and has been sent to the Interested Parties for their agreement. If the Court decides to quash the decision, then in accordance with the terms of the Order the Secretary of State will arrange a new public inquiry to decide the merits of the Compulsory Purchase Order, to beheld as soon as practicable' (Pereira and Murphy, 2017).

The decision made at the first Aylesbury public inquiry was then overturned on a technicality: the Secretary of State's decision not to confirm the CPO was quashed as a result of his failure to adequately explain why a change to Southwark Council's £16,000 policy did not alter his decision not to confirm the CPO (given between the close of the CPO public inquiry and the publication of the Secretary of State's decision, Southwark had scrapped the requirement for affected leaseholders to commit all but £16,000 of their savings towards the purchase of new homes).

The second, revised public inquiry sat at various dates in January and April 2018: 'this mixed-communities-led estate regeneration CPO public inquiry (was) probably the biggest and one of the most important ever in the UK' (Leary-Owhin, 2018: 3). This inquiry was held at Southwark Council's offices in Tooley Street, with a new planning inspector, Martin Whitehead. Like in the first inquiry there was also heightened security, with security guards on the doors and in the room. Of the four remaining leasehold interests on the order land, two of these were fighting as ALAG, and one represented herself. ALAG (Beverley Robinson and Agnes Kabuto) and its supporters this time had proper legal representation from Chris Jacobs, the same barrister from Landmark Chambers who summed up in the first inquiry (he was paid through fund raising undertaken by ALAG and its supporters). Southwark called nine witnesses, ALAG called 27 witnesses[11], and Judi Bos, a leaseholder representing herself, called three witnesses.

Understandably concerned by the first hand (ALAG) and academic evidence that was given to the first inquiry on displacement and community impacts, Southwark Council this time hired their own academic to produce a report on the likely impacts of the 'regeneration'. Southwark used this report to counter the previous and any new evidence on displacement. This spoke to a number of points: first, it was clear that Southwark and their barrister were concerned about the fact that the academic research on displacement had been significant in the first win, as such they set out to counter it with other academic research that would tell a different story (in the inquiry the intent was clear when Southwark's hired academic said: 'Lees has not presented credible evidence of why people have moved' and that 'only credible, statistically valid data can prove displacement' (verbatim from the taped inquiry); second, this was consultancy set up as unbiased research and the objectors' research perceived as biased and political (Southwark's barrister tried to make out that Lees was a political activist and had come to the inquiry with a 'posse' of like-minded academic

[11] Including a number of academics: those who were cross-examined (the others were not as ALAG settled) included Loretta Lees, Richard Baxter and Ben Campkin (but their evidence was subsequently withdrawn due to the settlement).

comrades). When Southwark's hired academic stated that displaced Aylesbury residents could stay in touch via social media, that 'social relations can operate over great distances', those Aylesbury residents in the audience erupted and had to be quietened by the Inspector. He also stated that folk should give up their home for 'the greater public benefit', that the objectors had misused the term 'community' and that 'it's not gentrification, we need a different name for it' (verbatim from the taped inquiry).

But ultimately, the two Aylesbury leaseholders fighting as ALAG reached a confidential agreement with Southwark Council in the middle of the inquiry, after it published a new rehousing policy – a rehousing assistance scheme for homeowners affected by regeneration - that would go beyond their statutory rehousing duty under the 1973 Land Compensation Act (amended). That the council made this change in policy[12] is in no small part due to the first and the revised Aylesbury public inquiries.

The new rehousing assistance scheme is discretionary and assists homeowners to find a suitable housing route to avoid having to CPO them. Southwark did this in recognition of 'the trauma and inconvenience caused to displaced homeowners affected by regeneration' (note to ALAG objectors from Southwark 2018). The result was a significant policy change: leaseholders now benefit from improved terms, including a new equity loan scheme to help them buy a replacement home that their families can now inherit. Where Southwark had initially offered displaced leaseholders the opportunity to buy a new council built home with a minimum 50% equity share, this was brought down to 25%. Homeowners no-longer have to invest their home loss payment into the acquisition of a replacement home. Inheritance clauses in the shared equity and equity loan leases were amended to allow inheritance, to be able to pass the property on to a partner or children. Pre-emption clauses (if a leaseholder wanted to sell they had to offer the property to the council first before putting it on the open market) were removed from shared equity or equity loan schemes. Southwark also committed to covering any additional stamp duty costs due to them opting for the new equity loan model. As she settled, Beverley Robinson resigned as chair of ALAG, but ALAG vowed to support the remaining objector, Judi Bos.

The outcome for the remaining objectors was announced late in 2018: they lost their case. The decision letter laid out the basis on which this was determined. Firstly it stated that:

> 'In terms of environmental wellbeing…the Inspector considers that circumstances have changed since the CPO was considered previously by the Secretary of State in 2016, so that most of the buildings on the site are now vacant, in the process of being demolished or have been demolished, and most of the open space is inaccessible to the public due to it being used as part of the demolition site…The Inspector says comparisons with the scheme as proposed through the granted planning application are therefore difficult. However, he concluded that based on the evidence the scheme would contribute to the improvement of the environmental well-being of the area'[13]

Secondly, the judgement proceeded to consider the social dis-benefits of the CPO, and stated that these would be 'limited to just one household' and would have 'a very limited impact on the social well-being of the area'. It went on to argue 'the Order would enable the construction of a new development of housing and community facilities' and 'it would

[12] See http://moderngov.southwark.gov.uk/ieDecisionDetails.aspx?ID=6501

[13] http://bailey.persona-pi.com/Public-Inquiries/aylesbury-estate/general/decision_letter_14-11-18.pdf

represent a good contribution to the social wellbeing of the area'. Thirdly, the Inspector found the direct and indirect economic benefits to be 'far greater than any economic dis-benefit that would occur as a result of the Order'[14].

On this basis, and having considered 'the Inspector's separate analysis of the environmental, social and economic aspects of wellbeing', the Secretary of State was satisfied that the public would clearly benefit from the confirmation of the CPO and completion of this phase of the Estate's regeneration. This time, in the ruling, the emphasis put on human rights was back-peddled:

> 'The Inspector accepted that there would be an interference with the human rights of the remaining objectors. He was, however, also satisfied (IR211) that any interference with their rights under Article 1 of the First Protocol and Article 8 of the ECHR is in accordance with the law, pursuant of a legitimate aim, and proportionate given the scale of the public benefits'[15].

On public sector equality duty (PSED), whilst recognising that BME and older residents were disproportionately affected, he said:

> 'On balance the mitigation measures have demonstrated that the PSED negative impacts have been adequately addressed, where possible, and would amount to reasonable steps to meet protected groups' needs and mitigate residual disadvantage suffered, advancing equality of opportunity and minimising discriminatory impact'[16].

This was a significant rollback from the ruling after the first inquiry, suggesting that as the community was dispersed and decanted, the strength of the opposition case lost critical mass.

Nevertheless, whilst the CPO has been confirmed, there have been significant gains: an increase in social rented housing in the phase of development in question (albeit with no overall gain across the scheme) and a beneficial change for leaseholders in regeneration estates across the borough, giving them a better chance of remaining in the area they have chosen to live in. Notting Hill Housing Trust, the housing association redeveloping the estate, also applied for a variation to the S106[17], which would entail a new shared equity loan scheme option for leaseholders, similar to that introduced by Southwark as part of the ALAG settlement, and this might open the door to resident leaseholders (not yet CPO-ed) remaining on the footprint of the Aylesbury Estate, noting that these two public inquiries only related to the 'First Development Site', a small part of the 60-acre Aylesbury Estate. There are still hundreds of residents on the rest of the Aylesbury Estate whose homes remain under threat. The evidence withdrawn due to ALAG's settlement can be used again.

Conclusion

One purpose of legal work in gentrification studies is to investigate whether there are soft spots where we can challenge the developers and state institutions that push gentrification into new neighbourhoods (Layard, 2018). This is exactly what those involved in the

[14] http://bailey.persona-pi.com/Public-Inquiries/aylesbury-estate/general/decision_letter_14-11-18.pdf
[15] http://bailey.persona-pi.com/Public-Inquiries/aylesbury-estate/general/decision_letter_14-11-18.pdf
[16]http://bailey.persona-pi.com/Public-Inquiries/aylesbury-estate/general/decision_letter_14-11-18.pdf
[17] On S106 see https://www.local.gov.uk/pas/pas-topics/infrastructure/s106-obligations-overview

Aylesbury public inquiries did, yet it is no easy task[18]' But such minor victories in the court room help shift the policy debate in decisive ways. Notably, recent UK policy missives now acknowledge the need to engage with, and protect, existing council estate residents, responding in part to concerns about the impact of estate redevelopment on existing communities. For example, the Department of Communities and Local Government's (2016) *Estate Regeneration National Strategy Resident Engagement and Protection* demands 'more than legal' protections for council estate residents:

> 'It is a legal requirement for leaseholders to be compensated if their home is demolished. However, we expect that schemes will go further and offer leaseholders a package that enables them to stay on the estate or close by. We also expect leaseholders to be offered the option of an independent valuation of their property' (DCLG 2016:5).

The GLA (2016) has also published its *Draft Good Practice Guide to Estate Regeneration,* which notes the potentially disruptive effects of regeneration on existing communities and neighbourhoods, setting forth principles for resident-led regeneration:

> 'The Mayor believes that for estate regeneration to be a success, there must be resident support for proposals, based on full and transparent consultation. These proposals should offer full rights to return for displaced tenants and a fair deal for leaseholders, and demolition should only be followed where it does not result in a loss of social housing, or where all other options have been exhausted' (GLA 2016: 4).

This shifting ground is testimony to the hard-work of those who have fought gentrification through legal process and in so doing highlighted the injustices of displacement. In this chapter we have given this resistance the attention it deserves. In London the fight to stay put in the face of state-led gentrification and displacement through the legal system is at an all-time high and it is having real impact on policy and practice, and also in educating the public more widely about the injustices these displacements enact.

References

Allen, C. (2008) *Housing Market Renewal and Social Class,* London: Routledge.

Annunziata,S. and Rivas-Alonso,C. (2018) Resisting gentrification, in Lees,L. with Phillips,M. (eds) *Handbook of gentrification studies,* Edward Elgar, pp.393-412.

Batley, R. (1989) London Docklands: An analysis of power relations between UDCs and local government, *Public Administration* 67(2):167–187

Bryant Jr, D.C., & McGee Jr, H.W. (1983). 'Gentrification and the Law: Combatting Urban Displacement'. *Wash. UJ Urb. & Contemp. L.*, *25*, 43.

[18] See the advice here: http://bailey.persona-pi.com/Public-Inquiries/aylesbury-estate/Presented%20Council%20docs/app_0_12.pdf)

Christophers, B. (2010) Geographical knowledges and neoliberal tensions: compulsory land purchase in the context of contemporary urban redevelopment, *Environment and Planning A* 42(4):856–873.

City (2016) special issue, London's housing crisis and it's activisms, 20:2.

Cities (2016) special issue, Resistance to social housing transformation, 57:1-62.

Davis, J. and Thornley, A. (2010) Urban regeneration for the London 2010 Olympics: Issues of land acquisition and legacy, *City, Culture and Society* 1(2):89–98.

Davidson,M. and Lees,L. (2010) New-Build Gentrification: its histories, trajectories, and critical geographies, *Population, Space and Place*, 16:395-411.

Davis, J., & Thornley, A. (2010). Urban regeneration for the London 2012 Olympics: Issues of land acquisition and legacy. *City, Culture and Society*, *1*(2), 89-98.

DCLG (2016) *Estate Regeneration National Strategy Resident Engagement and Protection* (*https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/575578/Estate_Regeneration_National_Strategy_-_Resident_Engagement_and_Protection.pdf)*

Delaney, D. (2016). 'Legal geography II: Discerning injustice'. *Progress in Human Geography*, *40*(2), 267-274.

Elliot-Cooper,A., Hubbard,P. and Lees,L. (in press) Moving beyond Marcuse: gentrification, displacement, and the violence of un-homing, *Progress in Human Geography*.

GLA (2016) *Draft Good Practice Guide to Estate Regeneration* https://www.london.gov.uk/sites/default/files/09.draftgoodpracticeestateregenerationguidedec16.pdf

Gray, N., & Porter, L. (2015). 'By any means necessary: Urban regeneration and the 'state of exception' in Glasgow's Commonwealth Games 2014'. *Antipode*, *47*(2), 380-400.

Hartman, C. (1984) 'The right to stay put' in C. Geisler and F. Popper (eds) *Land Reform, American Style* (Totowa, NJ: Rowman and Allanheld) pp.302-318.

Hartman, C. (1974) *Yerba Buena: Land Grab and Community Resistance in San Francisco*, Glide Publications.

Hartman, C., D. Keating and R. LeGates (1982) *Displacement: How to Fight It* (Washington DC: National Housing Law Project).

Harvey, D. (2003) *The New Imperialism*, New York, NY: Oxford University Press.

Hubbard, P. and Lees, L. (2018) The right to community: legal geographies of resistance on London's final gentrification frontier, *City*, 22:1, 8-25.

Imrie, R. and Thomas, H. (1997) Law, legal struggles, and urban regeneration: Rethinking the relationships, *Urban Studies* 34(8):1401–1418.

Layard,A. (2018) Property and planning law in England: facilitating and countering gentrification, in Lees,L. with Phillips,M. (eds) *Handbook of gentrification studies*, Edward Elgar, pp.444-466.

Leary-Owhin,M. (2018) *Public Spaces of Hope: Reflections on the Gentrification Glass Ceiling*, unpublished paper presented to AESOP 2018 Annual Congress (http://www.academia.edu/36723125/Public_Spaces_of_Hope_Reflections_on_the_Gentrification_Glass_Ceiling)

Lees,L. (2014a) 'The death of sustainable communities in London?', in Imrie, R. and Lees, L. (eds) *Sustainable London? The future of a global city*, Policy Press: Bristol,149-172.

Lees,L. (2014b) 'The urban injustices of New Labour's 'new urban renewal': the case of the Aylesbury Estate in London', *Antipode*, 46: 921-947.

Lees, L. and Ferreri, M. (2016) 'Resisting gentrification on its final frontiers: lessons from the Heygate Estate in London (1974-2013)' *Cities*, 57:14-24.

Lees, L., Just Space, The London Tenants Federation and Southwark Notes Archive Group (SNAG) (2013) 'Challenging 'the New Urban Renewal': the social cleansing of council estates in London', in Campkin, B., Roberts, D. and Ross, R. (eds) *Urban Pamphleteer #2 'London: Regeneration Realities*', London: Urban Lab, UCL, pp.6-10.

Lees,L., Shin,H. and Lopez-Morales,E. (2016) *Planetary Gentrification* Polity Press: Cambridge.

Lees ,L., Slater, T. and Wyly, E. (2008) *Gentrification*. Routledge: New York.

Marcuse, P. (1985) Gentrification, abandonment, and displacement: connections, causes, and policy responses in New York City, *Urban Law Annual: Journal of Urban and Contemporary Law* 28, 195–240.

The London Tenants Federation, Lees,L, Just Space and SNAG (2014) *Staying Put: An Anti-Gentrification Handbook for Council Estates in London* (https://southwarknotes.files.wordpress.com/2014/06/staying-put-web-version-low.pdf)

Pereira, J. and Murphy, M. (2017) *Aylesbury Estate CPO Decision: the Secretary of State Consents to Judgment* ftbchambers.co.uk/news/aylesbury-estate-cpo-decision-secretary-state-consents-judgment

Rendell. J. (2018) Figuring speech: before and after writing, in Charley, J. (ed) *The Routledge Companion on Architecture, Literature and The City*, Routledge.

Rendell, J. (2017) 'Arry's Bar: condensing and displacing on the Aylesbury Estate, *The Journal of Architecture*, 22:3: 532-554.

Ricketts, S. (2016) *Regeneration X: Failed CPOs, Local Government Lawyer*. Thursday 29 September. http://www.localgovernmentlawyer.co.uk/index.php?option=com_content&view=article&id=28502%3Aregeneration-x-failed-cpos&catid=62%3Aprojects-articles&Itemid=30.

Thomas, L. (2017) Compulsory purchase: life after Aylesbury, *Journal of Planning and Environment Law*, 17 November (https://www.ashurst.com/en/news-and-insights/legal-updates/compulsory-purchase-life-after-aylesbury/)

Thomas, H., & Imrie, R. (1989). 'Urban redevelopment, compulsory purchase, and the regeneration of local economies: the case of Cardiff Docklands' *Planning Practice and Research*, *4*(3), 18-27.

Turner, G. (2016) What the Aylesbury estate ruling means for the future of regeneration, *The Guardian*, 20 September.

Vas, M. (2017) CPO – gentrification or regeneration? *UK Planning Law Blog* (http://www.planninglawblog.com/cpo-gentrification-or-regeneration).

Watt, P. (2009). 'Housing stock transfers, regeneration and state-led gentrification in London'. *Urban Policy and Research*, *27*(3), 229-242.

White, M. and Morton, H. (2016) *A new 'right to a community'? Decision by the Secretary of State not to confirm the CPO for Aylesbury Estate* http://hsfnotes.com/realestatedevelopment/2016/09/28/a-new-right-to-a-community-decision-by-the-secretary-of-state-not-to-confirm-the-cpo-for-aylesbury-estate/#page=1

Zhang,Z. and He, S. (2018) Gentrification-induced displacement, in Lees,L. with Phillips,M. (eds) *Handbook of gentrification studies*, Edward Elgar, pp.134-154.