

The Local Government Ombudsman PO Box 4771 Coventry CV4 0EH	Monks Orchard Residents' Association (MORA) Planning
	14 th April 2019 Email: Planning@mo-ra.co hello@mo-ra.co chairman@mo-ra.co

Complaint Ref: KH/CASE4893951 London Borough of Croydon

Dear Sir / Madam

The Monks Orchard Residents' Association (MORA) is a registered Residents' Association with the London Borough of Croydon LPA. We represent 3,879 residential households in the Shirley North Ward for which we do NOT now charge a membership fee – we raise minimal operating costs, funded from advertisers in our quarterly magazine. We have raised this complaint with the London Borough of Croydon as Case Reference 4893951 through their Stage 1 and Stage 2 Complaints procedure and we are not satisfied with their Stage 1 or Stage 2 responses.

It is our understanding that the Croydon LPA's responsibility for assessing Planning Proposals are with their Department namely "Development Management" and the clue of their responsibilities is in the name of the department vis "*Management*" of developments.

The responsibilities of this department are threefold:

- i. To ensure development proposals put before them are considered against requirements for appropriate standards of accommodation for potential new residents;
- ii. To ensure development proposals put before them are considered against planning policies to mitigate against any degradation of local character for existing residents and their neighbourhoods, and;
- iii. To provide availability of new homes for the many who need them.

It is understood that in order to discharge these responsibilities in a fair and equitable way, Planning Policies are defined to give appropriate guidance on what is acceptable and what is not acceptable and that these Planning Policies are evaluated, agreed and adopted by the Planning Inspectorate.

It is also understood that 'refused' applications can be challenged by an applicant by an appeal to the Planning Inspectorate but that 'approvals' do not have an equivalent challenge procedure other than by an expensive Judicial Review, which as a local Residents' Association we cannot afford. Our only redress against inappropriate approval decisions is via the council's complaints procedure and the Local Government Ombudsman if the LGO consider it would be unreasonable to expect our association to go to court (Local Government Act 1974, section 26(6)(c), as amended). For this reason, we are of the view that it is of significant importance that due process and consideration of planning policies are evaluated in a professional manner by planning case officers and planning committees. The pressure to meet housing targets should not be at the expense of disregarding the agreed and adopted planning policies.

Our complaint relates to the disregard of agreed adopted planning policies as defined in the Current adopted London Plan and the current adopted Croydon Local Plan as it affected application Ref: 18/05928/FUL at 20 to 22 The Glade, Shirley, Croydon CR0 7QD.

We fully appreciate that the LGO does not have the authority to overturn a planning decision but we would be satisfied with an acknowledgement from the LGO that the Croydon LPA have not discharged its responsibility in a professional manner with regard to this application and to request Croydon Council to ensure that **all** future applications are decided on the agreed current adopted planning policies or if on emerging policies, the full emerging policies, not just selected portions of those policies but the complete emerging or replacement policies.

We contend that the **Application Ref: 18/05928/FUL** did not meet the London Plan Policy 3.4 Optimising Housing Potential with regard to the Residential Density for this location at PTAL 1a or meet the Croydon Local Plan Policy DM10.4 e) with regard to back garden developments. See:
<http://www.mo-ra.co/wp-content/uploads/2019/03/Objection-20-22-The-Glade.pdf>

Any further information you require for assessment of this complaint can be provided on request or obtained from Croydon Council Planning Department. Also, for Stage 1, Stage 2 Complaints See our website at www.mo-ra.co and/or links to:

<http://www.mo-ra.co/wp-content/uploads/2019/03/Stage-1-Complaint.pdf>

<http://www.mo-ra.co/wp-content/uploads/2019/03/Stage-1-Response.pdf>

<http://www.mo-ra.co/wp-content/uploads/2019/03/Stage-2-Complaint.pdf>

http://www.mo-ra.co/wp-content/uploads/2019/04/20_22The-Glade_Stage2_Response.pdf

The structure of our escalation to the LGO is initially an analysis of the Council's response to the Stage 2 of our complaint and then we provide a brief assessment on the fundamentals of our complaint as the Council has NOT adequately addressed these fundamental questions in their Stage 1 or Stage 2 responses.

Our assessment of the Council's response to the Stage 2 of this complaint is set out below detailing why we are NOT satisfied with this response:

Issue 1 - Policy 3.4 Optimising housing potential:

The stage 2 response from Ms Shifa Mustafa; Executive Director of Place, states:
At Paragraph 3:

"You are correct that the scheme exceeds the density matrix (150-200) as set out within the London Plan at 270 habitable rooms per hectare, however given the suburban setting combined with the similar footprint, form and spacing of the proposed dwellings in comparison to the surrounding properties and the acute need for new homes, it is considered an appropriate density for this site."

In this statement Ms Mustafa is confusing **Residential Density** with **Housing Density**. The footprint, form and spacing relationship with surrounding properties is a function of **Housing Density** as measured in **Units per hectare**. The partitioned rear garden of 20-22 The Glade is approximately **0.037ha** and the proposal is to house two dwellings which equates to a **Housing Density** of $2/0.037 = 54/05u/ha$. We have **not** disputed this parameter at **54.05u/ha** as it is **acceptable** at **PTAL 1a** and of average of **5 hr/ha**. (see Table 3.2 below).

Our concern is that the **Residential Density** of the proposal is **unacceptably high** at this **suburban setting** location of **PTAL 1a** and is therefore **inappropriate**. The **Residential Density** is calculated as habitable rooms per hectare = $10/0.037 = 270.27hr/ha$. The guidance in the London Plan for this suburban setting at PTAL1a should be in the range **150 to 200 hr/ha** when in fact the proposal is for a **Residential Density** of **270.27 hr/ha** which is in the range **200 to 350 hr/ha** and requires a **PTAL** in the range between **4 to 6** when the locality is served at **PTAL1a**. This relates to the accessibility to public transport infrastructure for the proposed future occupants at this location at this **suburban** setting.

The guidance at London Plan Policy 3.4 for **Residential Density** should be in the lowest range at this **PTAL** but is actually in the highest range possible at **PTAL 4 to 6** indicating an **unacceptably high Residential Density** for the locality and its available public transport infrastructure.

Our complaint is nothing to do with **Housing Density** and it is extremely disturbing that Ms Mustafa at her level of responsibility was not aware of this understanding of the significant difference between **Housing Density** and **Residential Density**.

We do not therefore consider that the “**Residential Density**” is appropriate for this location irrespective of the need for additional housing, as the future occupants would not have the appropriate accessibility to **Public Transport Infrastructure** and there is no planned increase in Public Transport Infrastructure (PTAL) by TfL between now and 2031 as can be established from the TfL WebCAT. This is supported by the **London Plan Policy 3.4 – Optimising Housing Potential** and is illustrated by the figures at Table 3.2 “**Density Matrix**” shown below (extracted for a suburban setting to avoid confusion).

Table 3.2 Sustainable residential quality (SRQ) density

Setting	Public Transport Accessibility Level (PTAL)	Public Transport Accessibility Level (PTAL)	Public Transport Accessibility Level (PTAL)
	0 to 1 (1a)	2 to 3	4 (4.94) to 6
Suburban	150–200 hr/ha	150–250 hr/ha	200–350 hr/ha (270.27 hr/ha)
3.8–4.6 hr/unit (5 hr/unit)	35–55 u/ha (54.05 u/ha)	35–65 u/ha	45–90 u/ha
3.1–3.7 hr/unit	40–65 u/ha	40–80 u/ha	55–115 u/ha
2.7–3.0 hr/unit	50–75 u/ha	50–95 u/ha	70–130 u/ha

Note: The figures in **Blue** are the appropriate ranges for this location. The figures in **Red** are the figures for this proposed development.

The current adopted London Plan Policy 3.4 Optimising housing potential states:

“A Taking into account local context and character, the design principles in Chapter 7 and public transport capacity, development should optimise housing output for different types of location within the relevant density range shown in **Table 3.2. Development proposals which compromise this policy should be resisted.**”

There is further supporting information but this statement is the basis of the policy.

See:

<https://www.london.gov.uk/what-we-do/planning/london-plan/current-london-plan/london-plan-chapter-3/policy-34-optimising>

This proposal clearly does NOT meet the guidance of the Policy 3.4 and therefore compromises the policy and should therefore be resisted, which by definition means the proposal should have been refused unless sufficient justification for NOT doing so were provided. There was no justification provided for not meeting the policy.

The calculation of PTAL required at equivalent numerical value of **4.94** is given in our original Objection Letter to Council in our representation to the case officer for this planning application and was available to the case officer to assist him in his determination and also at our website at:

<http://www.mo-ra.co/wp-content/uploads/2019/03/Objection-20-22-The-Glade.pdf>

The second paragraph from Ms Mustafa's response states:

"As well as the above considerations the case officer also took into account that each of the proposed properties offer one parking space per residence, do not have windows on the first floor that overlook into the neighbour's garden and they create no overshadowing of sunlight to the neighbouring properties. They are also well landscaped with greenery surrounding both sides with appropriate garden provision to the rear, and suitable side access and storage for refuse."

With respect, these parameters have nothing to do with our complaint and are irrelevant to the dispute. These parameters are covered by other planning policies on overlooking, privacy, landscaping and other aspects and these issues are not relevant to our complaint. We do not appreciate how these issues influence the **Residential Density** objectives.

What was **NOT** answered however, was our request for reasons why the case officer assumed that the emerging London Plan would be removing the Density Matrix and therefore he could ignore the current adopted London Plan Policy 3.4 - Optimising Housing Potential and the ranges in the Density Matrix Table 3.2 as in para 5.5 of the case officer's report as he stated:

"5.5 The proposed dwellings With regards to the London Plan density matrix, the London Plan is currently being revised and the density figures are intended to be removed from the plan. As such, there would be insufficient grounds for refusal based on this particular matter."

However, the case officer totally failed to consider any of the emerging replacement London Plan Policy D6 – Optimising Density and the supporting guidance in the emerging **Policy D2** and **Policy D1**. See: <https://www.london.gov.uk/what-we-do/planning/london-plan/new-london-plan/draft-new-london-plan/chapter-3-design/policy-d6-optimising-housing-density>

For information, the basis of **Policy D6** is outlined below:

Policy D6 includes:

A Development ... Particular consideration should be given to the following evaluation criteria to determine optimal development density:

- 1) the site context, including surrounding built form, uses and character;
- 2) the site's connectivity and accessibility by walking, cycling, and existing and planned public transport to jobs and services (including both PTAL and access to local services^{28A});
- 3) the capacity of surrounding infrastructure (see Part B)

B In preparing ... the approach set out in part A to determine the capacity of allocated sites. The capacity of existing and planned physical, environmental and social infrastructure to support new development proposed by Development Plans should be assessed and, where necessary, improvements to infrastructure capacity should be planned in infrastructure delivery plans or programmes to support growth.

- 1) The density of development proposals should be based on, and linked to, the provision of future planned levels of infrastructure rather than existing levels.
- 2) The ability to support higher densities through encouraging increased levels of active travel should be taken into account.
- 3) Where there is currently insufficient capacity of existing infrastructure to support proposed densities (including the impact of cumulative development), boroughs should work with applicants and infrastructure providers to ensure that sufficient capacity will exist at the appropriate time. This may mean, that if the development is contingent on the provision of new infrastructure, including public transport services, it will be appropriate that the development is phased accordingly.
- 3A) When a proposed development exceeds the capacity identified in a local site allocation or the site is not allocated, and the planned infrastructure capacity will be exceeded, additional infrastructure proportionate to the development should be delivered through the development. This will be identified

through an infrastructure assessment during the planning application process, which will have regard to the local infrastructure delivery plan or programme, and CIL contribution that the development will make. Plus, supporting information contained at **Policy D2 and D1** etc...

None of these requirements were considered by the case officer in the determination of this application proposal. Ms Mustafa and Mr Pete Smith has completely ignored this aspect of our complaint both in their Stage 1 and Stage 2 responses.

NPPF para 48 allows consideration of emerging plans.

"Local planning authorities may give weight to relevant policies in emerging plans according to:

a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given); ..."

It should be noted that the New London Plan is currently the subject of Examination in Public (EiP) and is possibly likely to ultimately change from that currently provided at their website.

We have had suspicions that the Density Policies were being ignored for some time and have been collating evidence of planning approvals within the MORA Post Code Area as detailed below:

Location	Reference	Date of approval	Existing Dwellings	Approx Existing Occupants	New Proposed Dwellings	Habitable Rooms (hr)	New Bed Spaces or Occupants	Additional Occupants	Site Area (ha)	New Housing Density (u/ha)	Residential Density (hr/ha)	PTAL Required for Residential Density	Residential Density (bs/ha)*	Car Parking	Car Parking per Occupant	Actual PTAL
40 Orchard Ave	15/03885/P	10/11/15	1	2	8	30	24	22	0.1236	64.75	242.82	2.93	194.25	9	0.3750	2
68-70 Orchard Ave	16/01838/P	07/09/16	2	4	9	68	64	60	0.3128	28.77	217.39	2.32	204.60	18	0.2813	1b = 1.33
41-43 Orchard Way	16/04935/FUL	20/01/17	2	4	9	32	32	28	0.1470	61.22	217.69	1.35	217.69	9	0.2813	1a = 0.66
393 Wickham Road	16/00274/P	04/08/16	1	5	7	24	22	17	0.0758	92.35	316.62	3.66	290.24	7	0.3182	2
98-100 Orchard Way	16/03808/P	27/02/17	2	4	9	31	34	30	0.1370	65.69	226.28	1.53	248.18	9	0.2647	1a = 0.66
263 Wickham Road	15/04417/P	16/08/16	1	5	8	24	24	19	0.0646	123.88	371.63	4.22	371.63	9	0.3750	2
8-10 The Glade	17/00262/FUL	27/04/17	2	4	9	30	30	26	0.1396	64.47	214.90	1.30	214.90	9	0.3000	1a = 0.66
64 Woodmere Ave	15/01907/P	10/07/15	1	4	5	30	26	22	0.2900	17.24	103.45	0.66	89.66	14	0.5385	1a = 0.66
33 Orchard Way	17/03323/FUL	17/01/18	0	0	1	5	5	5	0.0601	16.64	83.19	0.66	83.19	2	0.4000	1a = 0.66
151 Wickham Road	17/06391/FUL	23/02/18	0	0	1	3	4	4	0.0200	50.00	150.00	3.00	200.00	0	0.0000	3
2-4 Woodmere Close	18/02746/FUL	09/08/18	0	2	1	6	5	3	0.0367	27.25	163.49	0.66	136.24	10	2.0000	1a = 0.66
6-8 Woodmere Close	18/03917/OUT	26/10/18	0	0	1	6	6	6	0.0400	25.00	150.00	0.66	150.00	4	0.6667	1a = 0.66
10-12 Woodmere Close	19/00051/FUL	27/02/19	0	0	1	6	6	6	0.0378	26.46	158.73	0.66	158.73	4	0.6667	1a = 0.66
48 Wickham Avenue	18/02734/FUL	21/09/18	0	0	1	6	5	5	0.0764	13.09	78.53	2.00	65.45	1	0.2000	2
20-22 The Glade	18/05928/FUL	01/02/19	0	0	2	10	12	12	0.0370	54.05	270.27	4.94	324.32	4	0.3333	1a = 0.66
9a Orchard Rise	18/06070/FUL	21/03/19	1	0	9	32	41	41	0.2011	44.75	159.12	0.66	203.88	12	0.2927	1a = 0.66
32 Woodmere Avenue	19/00783/FUL		1	5	7	21	22	17	0.0600	116.67	350.00	6.00	366.67	5	0.2273	1a = 0.66
17 Orchard Avenue	19/00131/FUL		1	Not Known	9	15	18	Not Known	0.0710	126.76	211.27	2.00	253.52	4	0.2222	2
56 Woodmere Avenue	19/01352/FUL		1	Not Known	9	28	29	Not Known	0.0950	94.74	294.74	5.26	305.26	6	0.2069	1a = 0.66
										0.00						
Total			16	39	106	407	409	323	2.0254	1113.78	3980.12	44.46	4078.41	136	7.9496	
Average									0.1066	58.62	209.48	2.34	214.65	7.16	0.4184	

Recent in-fill and redevelopments in the Monks Orchard Residents' Association Post Codes Area. (All the **RED** figures exceed the guidance of the Density Matrix without any justification, which requires a commensurate increase in PTAL also in **RED**).

We believe therefore that the rejection of analysis of the current London Plan Policy 3.4 - Optimising Housing Potential on grounds that it is likely to be removed in the new emerging London Plan without even considering the emerging replacement policies for **Optimising Housing Potential at emerging Policy D6** was clearly maladministration.

Issue 2 – Rear Garden Development:

The second area of concern was the Case Officer's complete disregard of the Croydon Local Plan Policy DM10.4 e) relating to developments in rear gardens. The NPPF and the London Plan have policies to RESIST rear garden developments and suggest that LPAs provide policies to RESIST garden developments.

In order to meet this guidance, the Croydon Local Plan devised a policy **DM10.4 e)** in their currently adopted Local Plan which states:

**Representing, supporting and working with the local residents
for a better community**

DM10.4 All proposals for new residential development will need to provide private amenity space that: **DM10.4 e).** In the case of development in the **grounds of an existing building** which is retained, a **minimum length of 10m and no less than half or 200m²** (whichever is the smaller) of the **existing garden area is retained for the host property, after the subdivision of the garden.**

The “*Harm*” inferred at NPPF para 53 and new NPPF para 70 is therefore any application in the London Borough of Croydon which is non-compliant to Croydon Plan Policy DM10.4 e).

The third paragraph of Ms Mustafa’s response states:

“As mentioned in the stage 1 response by Mr Smith the area of the garden provision for number 22 is reduced due to the occupiers having chosen to erect a conservatory to the rear. There remains an appropriate garden amenity, which could arguably include the provision of the conservatory, as well as both side and front garden space.”

This statement is subject to interpretation and after significant research is cause for concern. Our interpretation of this assessment is that the established rear garden length prior to partitioning for this proposed development, is that which is open to the elements. We interpret the rear garden under discussion i.e. “after subdivision of the garden” specifically refers to the “rear garden” in this case as that is the garden being subdivided. i.e. partitioned! The front and side gardens being irrelevant to this complaint or the Policy.

Also, the logical assumption is based on the reasoning that if the owner had built an extension to the existing property equal to the footprint of the conservatory to the rear, it would have reduced the garden length by this equal amount and be recognised as such. In addition, if an estate agent had advertised the property for sale and had inferred that garden length included the depth of the conservatory, they would have been liable for misrepresentation as the available garden does NOT include the conservatory. The conservatory would be listed as a totally separate additional benefit of the property.

This reasoning establishes that the retained garden length for the host property should be at least 10m minimum in length after subdivision for partitioning the garden between the host and new dwelling. We can accept that the boundary fence with 22 The Glade is 10m in length but the garden could not be physically 10m as the rear boundary is tapered toward the host property by a significant degree and the further away from the boundary with the adjacent property at 22 The Glade the less the distance is from the house at 20 The Glade and the less the distance would be the length of the retained partitioned garden. So theoretically, the ‘garden’ could never be 10m or greater in length.

In addition, the retained garden area should be no less that 200m² after partitioning.

Using the scale as shown on the proposed plans as detailed in our representation, it is estimated that the Area “A” is approximately 65.625m² and Area “B” is approximately 55m² which gives a total retained rear garden area of approximately 120.625m². This is deficient in area by 79.375m² and therefore does NOT meet the DM10.4 e) required minimum retained garden area of 200m² and should therefore have been refused.

The Front and side gardens were not partitioned so are not relevant to this policy!

The subsequent comment by Ms Mustafa states:

“With regards to your concerns regarding back garden development, and the back-garden amenity of number 22 The Glade being below 10m, it is worth noting that no objection to the development was made by the occupier of number 22.”

This statement is outrageous – the Planning Policies are to be considered against all proposed applications whether local residents make representations or otherwise. Just because no objections had been received from the occupiers, does not mean Planning Policies can be ignored! There was a total of 11 other objectors to this proposal.

Also, the properties (20 & 22 the Glade) may be “let” to tenants and if so, the tenants might be apprehensive of making an objection against their landlord (owner) as the owner is making substantial profit from the sale of the rear gardens of both 20 & 22 The Glade to a developer. This is a significant possibility as both dwellings of 20 and 22 The Glade gardens are being sold and therefore it is possible that both are rented properties and it is fully appreciated that the tenants would be extremely apprehensive to have made any objections.

Ms Mustafa at her level of responsibility as “Executive Director of Place” is allowing her staff and subordinates to determine applications on the acceptability of ignoring Planning Policies if there are no representations made. This is completely against the NPPF Policy of retaining public confidence in the planning process and, we consider, is a dereliction of her duty to all tax paying residents.

We believe that allowing this development in breach of planning Policy to retain the appropriate rear garden amenity for the retained host dwelling occupants, when partitioning the rear garden, was maladministration.

The last statement by Ms Mustafa states:

“You highlight particular standards and policies within the Mayor’s London Housing Plan SPG, The London Plan and the Croydon Local Plan which you feel the Council has breached, these plans are not a set of statutory rules, rather they provide examples of good practice for Local Planning Authorities and Planning Committees to consider. Planning applications should comply with the development plan “as a whole”, and the Local Authority have to take an overall view on the merits of such applications before putting them to committee; therefore I do not agree that the standards and policies highlighted in your letter are evidence of breaches or maladministration by the Planning Team.”

It is our understanding that adopted Planning Policies have significant weight in the determination of planning applications and are the guidance agreed by the planning Inspectorate to be of significance when determining proposals put before Planning Officers. The SPG’s are Supplementary Planning Guidance to clarify any interpretations of the formal planning policies. It is our view that **if those policies are ignored, it totally undermines public confidence in the planning process, as well as showing a degree of contempt for the Inspectorate’s judgement.**

We are convinced that these two reasons were adequate for the determination to be a ‘refusal’ of this planning application and its ‘approval’ was maladministration and dereliction of duty.

In Summary our complaint is twofold:

- 1 That the Case Officer ignored the MORA objection letter containing reasons for refusal based upon the current adopted London Plan Policy 3.4 Optimising Housing Potential, Table 3.2 Sustainable **Residential** Quality (SRQ) Density Matrix for excessive **Residential Density** for the reason that the emerging new London Plan Policy is proposing to delete the Density Matrix, but **failed** to determine the proposal on the emerging replacement new **London Plan Policy D6**, relating to **Residential Density** which if adopted will replace the current adopted London Plan Policy on Optimising Housing Potential, which was maladministration.
- 2 That the Case Officer ignored the Croydon Local Plan Policy on rear garden development which requires RESISTING back garden development under guidance of NPPF (July 2018) para 70. Which states:

- a. Where an allowance ... Plans should consider the case for setting out policies to **resist** inappropriate development of residential gardens, for example where development would cause harm to the local area.

The Croydon Local Plan has devised a policy to meet this requirement at Policy DM10.4 e) which states:

“In the case of development in the grounds of an existing building which is retained, a minimum length of 10m and no less than half or 200m² (whichever is the smaller) of the existing garden area is retained for the host property, after the subdivision of the garden.”

In doing so, the occupants of 20 The Glade had their rear garden curtailed to less than the policy defined and had their private amenity space reduced accordingly.

The case officer clearly failed to consider the breach of this policy, that the retained garden after partitioning should not be less than 10m in length and that the area after partition should not be less than 200m² for this application at this location and that a determination of “approval” of this application was **maladministration and a dereliction of duty to local residents.**

We take the view that Planning Policies are defined for a purpose and that ignoring them to meet housing targets is totally inappropriate.

We have supplied our case and our reasoning for our concerns and would respectfully request that you consider our case with due diligence and make your findings known to the Croydon Council and to us at Monks Orchard Residents’ Association in due course at: planning@mo-ra.co

All details of this complaint can be found by accessing our website at: www.mo-ra.co and scrolling to [Planning – Planning Report – March 2019 - & - April 2019](#).

This submission to the LGO has been approved and authorised by the Full MORA Executive Committee at their Committee Meeting of 10th April 2019.

Kind Regards

Derek Ritson



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Derek C. Ritson I. Eng. M.I.E.T.

MORA Planning

Representing, supporting and working with the local residents for a better community.