

To: Richard Bruce - IT/Performance/Information
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From: Monks Orchard
Residents' Association
(Planning)

1st May 2019

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Complaint: CASE 4939913 - Escalation to Stage 2.

Dear Mr Smith, Mr Bruce & Complaints Resolution Team

Thank you for your response of 24th April to our Stage 1 CASE 4939913 complaint in relation to the Planning Committee procedure to determine application Ref:18/06070/FUL for 9a Orchard Rise, Shirley granting planning permission for the redevelopment of this back-land site; involving the demolition of the existing house and ancillary office and erection of a two-storey block of 4 flats and 5 three bedroom houses.

We appreciate your acknowledgement of our complaint but we have concerns that the substance of our complaint has NOT been fully addressed. We are concerned that the debate in relation to the suitability of the access driveway for the proposed development in accordance with logical analysis and the emerging SPD2 was prematurely blocked by the Chair and that the reason for so doing was inappropriate. Your response does not give an adequate substantive explanation for doing so when this issue was a major contentious health and safety concern which needed the fullest attention of all the planning committee members and a full and comprehensive debate.

However, taking your response in detail you state at your first bullet point that:

- *"The Planning Committee failed to make proper consideration of the Suburban Design Guide which at the time was due to be adopted by the Cabinet and Full Council on 25th March and 1st April 2019 respectively. You refer to the NPPF which provides advice as to the weight to be afforded to an emerging plan; with greater weight afforded (arguably) where an emerging plan is at an advanced stage."*

We refer to NPPF (July 2018) para 48 which states:

48. 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);
 - b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
 - c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)²².

The Supplementary Planning Guidance SPD2 stage of preparation was complete as it was due to be put to Cabinet one working day from the actual Planning Committee and to the Full Council for adoption just six days from the Planning Committee determining this planning application. Therefore, the guidance was beyond the stage of **'preparation'** and was at the stage of **'adoption'**. We do not appreciate that this is **'arguable'**, **as it is a statement of absolute fact!**

It is notable that the London Plan Density Matrix appears to have already been disregarded under the **'assumption'** that it is being removed from the current adopted London Plan when in fact it is currently subject to Examination in Public and will unlikely be adopted until early 2020, and even then, may be significantly modified by the Planning Inspectorate before publication and adoption. It seems, therefore, that a policy which is so advanced, prepared and at the stage of adoption was not afforded **'any weight'** in the decision making process, and yet a policy which is a year away from being officially adopted and is still at examination stage is being used as a definitive tool for decision making.^[1] There appears to be a conflict of interpretations for **'weight'** being afforded to the SPD2 and that for the emerging London Plan. It would be helpful if you could enlighten us on the reasoning behind this inconsistency?

You further state at the second paragraph of your findings:

*"Whilst your letter refers to paragraph 48 of the NPPF, it is clear (in the context of paragraph 48) that the Suburban Design Guide (at the time of Planning Committee consideration of the above planning application) **was not emerging policy and even following adoption, is not treated as planning policy. As the document suggests, it merely provides guidance in support of development plan policy and does not enjoy the weight of S38(6) of the 1990 which explicitly requires planning applications to be determined in accordance with the development plan unless other material considerations indicate otherwise.**"*

I therefore refer you to Paragraph 1.1.1 of the Introduction to Chapter 1 of SPD2 which states:

*"1.1.1 This design guide provides **guidance for suburban residential developments and extensions and alterations to existing homes across the borough. It is a Supplementary Planning Document (SPD) which should be used by residents, developers, builders and agents including architects and planning consultants in shaping development proposals, and will assist in making decisions on planning applications and inform the Council's pre-planning application service. Beyond providing technical design guidance, this guide sets out how residential development, including extensions and alterations, in neighbourhoods across the borough is part of a holistic strategy being driven by the Council to deliver tangible public benefits to suburban communities.**"*

It appears that your response implies that as the SPD2 is to be used as only guidance, then it should not be afforded any **'weight'** in decision making, which seems to make its purpose redundant. As paragraph 1.1.1 states, the SPD2 should be used to **"assist and inform"** the council's **pre-planning application service**. That is clearly its purpose. Therefore, the guidance should have been considered at the **pre-planning stage** of the development of 9a Orchard Rise.

The blatant disregarding of these important guidance policies and policy documents greatly impairs public confidence in the Council's competency in the planning process.

You then proceed to state:

[1] See Stage 1 Complaint Ref: CASE4893951 [now escalated to Local Government Ombudsman (LGO) at Case ID – 19000971]

*“Whilst I appreciate that the Suburban Design Guide was at an **advanced stage** of preparation when Planning Committee considered the application for 9A Orchard Way, I feel that was appropriate to remind Members of the Planning Committee as to its status (as a material planning consideration). I do not subscribe to your view that the Suburban Design Guide should have been afforded any greater weight.”*

Its status was **‘imminent adoption’** and as the access to the proposed development was a highly contentious issue it would have been a relevant document to have been considered irrespective of whether it carried any weight at all. It was very pertinent to the debate. The debate was terminated prematurely in our view as the substance of the SPD2 with regard to access and health and safety was of significant importance to the debate and had significant implications for any future occupiers of the proposed development.

You continue to state:

“In any case and advised above, as the name suggests the now adopted Suburban Design Guide is treated as guidance (rather than planning policy). Paragraphs 1.2.6 – 1.2.7 of the Suburban Design Guide further clarifies the relationship between the development plan (including the local plan) and the Suburban Design Guide.”

I refer you to paragraphs 1.2.1. to 1.2.3 of the Introduction to SPD2:

1.2.1 This guide is intended for the use of **any person involved in proposing or assessing development proposals** as previously outlined. **It provides guidance for residents, home owners, community groups, developers and associated agents in designing their proposals.** It does not negate the need for a planning application.

1.2.2 While development in the borough is managed by the policies set out in the Croydon Local Plan and the London Plan2, **it is recommended that regard should be given to this supplementary guidance when preparing designs and planning applications**, including those which are Permitted Development. **It will assist Local Planning Authority officers in making decisions on planning applications and is a material consideration in assessing planning applications.** In line with National, London and borough policies, poor design can be a reason for refusal, therefore **the use of this guidance is important.** Use of this guidance **should lead to better quality developments** that contribute positively to Croydon, benefit the people of Croydon and should add value for those who develop too.

1.2.3 This document not only establishes guidance on how to achieve an acceptable design, **but aims to encourage the highest quality of design by promoting a well thought-through design process**, balanced with the need to protect neighbouring amenity, so that the places we live in are both attractive and liveable and contribute to Croydon’s future success.

It categorically states “... ***It will assist Local Planning Authority officers in making decisions on planning applications and is a material consideration in assessing planning applications ...***” and “... ***to encourage the highest quality of design by promoting a well thought-through design process ...***”

These statements totally undermine your manifest emphasis that SPD2 does NOT carry significant ‘weight’.

You then proclaim:

*“What was significant however (in the case of 9A Orchard Way) was that the proposed development intended to utilise an **existing access onto the site** (rather than provide a new access). Whilst I appreciate that the existing access is less than 3.7 metres wide, **officers were satisfied (from a town planning perspective) that the access width was adequate**. I draw your attention to paragraph 2.29.7 of the Suburban Design Guide which states that entrances should generally be of a width that meets the criteria set out in Figure 2.29e). It goes onto say that where an existing access is narrower, the acceptability of this **will be judged on a case by case basis** and where necessary, development applications **will need to demonstrate that a modern vehicle can safely and easily access and exit from the site.**”*

The existing access was for a single domestic household access and some lightweight vans to deliver printed matter and consumables. The SPD2 paragraph 2.29.7 and Fig 29 e) is not intended to represent a design for any sort of access road, it simply represents an access drive to a single dwelling's hard standing off-street parking facility. To try to represent it as anything else is either ignorance or a blatant desire to ignore reality. It is not an appropriate driveway to provide continued access to a development of **41 occupants** and at least **12 cars**, nor access for large vehicles such as removal **Pantechnicons** for 9 dwelling etc. Neither was the existing access designed for the size of the vehicles which will be required in the removal of large amounts of soil from the development site, or for large lorries delivering building materials.

We are curious as to what makes this specific access judged as satisfactory from a **“town planning perspective”** that the access width was ‘adequate’ and obviates or is NOT covered by Planning Policies or overrides the Policies in the Croydon Local Plan, the London Plan or the SPD2?

Planning Officers were challenged by councillors who took a different view.

We are challenging this criterion constructively as the paragraph 2.29.7 did not consider the practical requirements for the lifetime of the development proposal – requirements which should include the need to cope with pedestrian safety, wheelchair access vulnerability, emergency vehicle access and removal lorries and for **all future eventualities**.

You state that *“development applications will need to demonstrate that a modern vehicle can safely and easily access and exit from the site.”* But that was **NOT** provided. The swept path access diagrams from the very narrow Orchard Rise was not provided for the likely vehicles needing to gain access over the life of the proposed development, including all emergency vehicles, delivery vehicles and Pantechnicons removal vehicles etc.

You further state that:

“Officers were satisfied that cars would be able to enter and leave the site in forward gear and whilst larger vehicles (supermarket delivery vans for example) might have greater difficulty, we did not feel that this would have represented a sustainable reason for refusal. The refuse storage was approved close to the entrance to the site with waste management colleagues having been engaged as part of the planning application process. A planning condition was imposed requiring further details of waste capacity as well as further details of waste storage and presentation.”

This is only a small sample of the types of vehicles requiring access over the lifetime of the development. The refuse location near the entrance was for the Flats as it would be insufficient capacity for the houses. If for the Houses, the distance from the storage for the furthest house would be over the 30metre distance from the dwelling for the householders to use and therefore inappropriate.

And you further state:

*"I think it is fair to say (on reflection) that whilst a fire tender could physically enter the site (a fire appliance is generally 2.5 metres wide) it is unlikely that a fire appliance would choose to carry out this manoeuvre – preferring instead to fight a fire off **Orchard Way**. In such circumstances, the Building Regulations look to introduce a sprinkler system in each of the houses/flats, which would allow for a 75 or 90 metres extended hose distance from the appliance to the furthest room measured as the hose would be laid. The 3.7 metres as detailed in the Suburban Design Guide is the ideal width, although it does not necessarily preclude narrower widths where this has been properly considered and modelled. In the full knowledge that the proposal would be expected to demonstrate an acceptable level of fire service access under building regulations and that the access width may not be acceptable by default, it is assumed that this matter has been so considered by the designer."*

So, the fire tender would fight the fire from "**Orchard Way**" which is approximately **200m** hose distance from **9a Orchard Rise** via the access drive and the length of **Orchard Rise** to reach the furthest distant proposed dwelling, unless hoses were routed through the gardens of **Orchard Way** Properties – Alternatively you may have meant **Orchard "Rise"** which is a very narrow-classed Road. Any Fire Tender parked in Orchard Rise would block the Road to other emergency vehicles in the event of a fire at 9a Orchard Rise, especially ambulances which could possibly be necessary to deal with any injuries or patients suffering smoke inhalation. Limiting access to ALL emergency personnel would place future occupants in possible danger and could result in loss of life. These issues should not be dismissed lightly.

Ultimately, all of these issues should have been debated comprehensively in full by all committee members who have a responsibility for the safety of future householders, with discussion about access to the site given a suitable level of priority, using guidance from the emerging SPD2 during the assessment at committee. That, in our view, is the function of the Planning Committee. That the SPD2 was not afforded any weight in discussions, and that the Chair dismissed any discussion is, in our view, gross mismanagement of the committee's function and that these important health and safety issues were not considered at committee using policy guidance is the basis of our Stage 1 complaint.

We understand that Health and Safety amendments were introduced into the final SPD2 document at:

Amendment to include additional paragraph 2.29.1:

'2.29.1 Driveways, entrances and new routes should be designed to prioritise pedestrian flow and safety. This will generally mean limiting the number of vehicular access points to control vehicle flow and prioritising pedestrian and cyclist focussed designs.

Amendment to Paragraph 2.29.7:

'Entrances should generally be of a width that meet the criteria set out in Figure 2.29e... Where an existing entrance is narrower, the acceptability of this will be judged on a case by case basis and, where necessary, development applications will need to demonstrate that a modern vehicle can safely and easily access and exit from the site.

Amendment to include additional Paragraph 2.29.1:

'Driveways, entrances and new routes should be designed to prioritise pedestrian flow and safety. This will generally mean limiting the number of vehicular access points to control vehicle flow and prioritising pedestrian and cyclist focussed designs.' Amendment to Paragraph 2.29.13: 'to create pedestrian connections through suburban blocks... and will be secured through planning agreements.

These suggested changes are all 'Health and Safety' related issues and were also relevant to the debate and likewise should have been considered.

Footpath requirements are for the safety of pedestrians. Amended para 2.29.1 of SPD2 above would be the appropriate paragraph to sensibly specify the maximum allowed length of driveway without the need for a footpath or any requirement for maximum length of driveway without kerbing as any excessive length of driveway without a kerbed footway would pose a danger to pedestrians, children or elderly and possibly disabled or frail pedestrians whilst trying to quickly remove themselves from a long drive bounded with high fencing either side and no means of escape, in the event of a vehicle entering or leaving the driveway.

In addition, there is NO limit to the distance "removal" operatives have to transport furniture or white goods in order to deliver or collect to/from the dwellings if the removal vans cannot access the driveway to be nearer the dwelling address to deliver/collect goods.

These issues were all extremely relevant to the debate for access to 9a Orchard Rise proposed development and to prevent cogent further debate on these 'health and Safety' Issues by the Chair or members of the committee was totally inappropriate and possibly maladministration.

This response has been agreed and authorised by the Full MORA Executive Committee.

Kind Regards



Derek

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

MORA Planning

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



Cc:

Sarah Jones MP

Mr Pete Smith

Cllr. Sue Bennett

Cllr. Richard Chatterjee

Cllr. Gareth Streeter

Croydon Central

Head of Development Management

Shirley North Councillor

Shirley North Councillor

Shirley North Councillor

Bcc:

MORA Executive Committee

Trevor Ashby

Interested Parties

Chair - Shirley Planning Forum (SPF)