

The Local Government Ombudsman
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Coventry
CV4 0EH

Monks Orchard Residents' Association
(MORA) Planning

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11th March 2020

Complaint Ref: KH/CAS-123091-Y3J7R2 London Borough of Croydon - Escalation to the Local Government Ombudsman.

Planning Application Ref: 19/01352/FUL; 56 Woodmere Avenue, Croydon CR0 7PD

Dear Sir / Madam

The enclosed is an escalation of our Complaint in accordance with the Local Government Act 1974 Section 26B (1), which has been the subject of Stage 1 and Stage 2 complaints procedure with the London Borough of Croydon Local Planning Authority (LPA) as a result of the approval of application Ref: 19/01352/FUL; 56 Woodmere Avenue, Croydon CR0 7PD.

The Monks Orchard Residents' Association (MORA) is a registered Residents' Association with the London Borough of Croydon LPA. We currently represent 3,879 residential households in the Shirley North Ward for which we do not charge a membership fee – we raise minimal operating costs, funded from advertisers and sponsorship on our website and magazine. Thus, we have inadequate funds for Judicial Review. See: <http://www.mo-ra.co/>

Resultant on previous complaints to the Local Government Ombudsman, which have failed to be investigated due to lack of local 'Resident Consent', we have ensured local resident support before escalating this complaint to the LGO and therefore enclose two Consent Forms in accordance with the Local Government Act 1974 Section 26A (1) (b).

See: <http://www.mo-ra.co/planning/planning-complaints/>

In summary, we believe our Complaint is worthy of an independent investigation as detailed in our enclosed letter and we would appreciate consideration by the **Local Government Ombudsman** to consider this evidence and adjudicate on the issues raised in accordance with the **Local Government Act 1974 Section 26 etc., as amended** and report accordingly.

Kind Regards

Derek C. Ritson



Email: planning@mo-ra.co
Derek C. Ritson I. Eng. M.I.E.T.
MORA Planning Committee Member

Sony Nair



Sony Nair
Chairman,
Monks Orchard Residents' Association.

Cc:

Sarah Jones MP Croydon Central
Cllr. Sue Bennett Shirley North Councillor
Cllr. Richard Chatterjee Shirley North Councillor
Cllr. Gareth Streeter Shirley North Councillor

Bcc:

MORA Executive Committee
Affected Local Residents

The Local Government Ombudsman
PO Box 4771
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Dear Sir / Madam

The Monks Orchard Residents' Association (MORA) is a registered Residents' Association with the London Borough of Croydon LPA. We currently represent over 3,800 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 and sponsorship in our website magazine.

Our Complaint CAS-123091-Y3J7R2 comprises the following issues:

- 1 Failure to apply the current adopted London Plan Policy 3.4 to Optimise Housing Potential or the consolidated emerging London Plan Policy D1A - Infrastructure requirements for sustainable densities, in accordance with the Policy on Residential and Housing Density appropriate for the available or forecast Public Transport Accessibility for the locality at a 'suburban' setting and at PTAL of 1a, as required by NPPF (2018/19) para 122 - Achieving Appropriate Densities.
- 2 Failure to consider the overbearing nature of the proposed development with regard to loss of amenity to the adjacent property at 54 Woodmere Avenue as defined by Policy SPD2 Figure 2.11c: Height of projection beyond the rear of neighbouring properties to be no greater than 45° degrees as measured vertically from the middle of the ground floor window of the closest habitable room on the rear elevation of the neighbouring property should NOT intersect the proposed development.
- 3 Failure to adequately consider the loss of natural light due to the overbearing nature of the proposed development on the living conditions of the occupiers of 54 Woodmere Avenue and failure to acknowledge and correct the errors in the applicant's daylight study report.
- 4 Overbearing massing of proposed development in relation to surrounding properties.
- 5 Infraction of Planning Policies on grounds that it is more imperative to meet housing targets than to countenance and implement adopted Planning Policies.

These issues affect **ALL** residents in the local vicinity of this proposed development, now approved and we (MORA) raise this complaint as the **Local Residents' Association** on behalf of **ALL residents** in **Woodmere Avenue, Shirley, Croydon** and the locality who are affected. However, the adjacent neighbours at **54 Woodmere Avenue, who personally support this escalation**, will be the most affected by this development. We appreciate that the LGO cannot overturn an approved application but it would be appreciated if the LGO pressurised the LPA to observe adopted and approved planning policies and **supported the affected neighbours at 54 Woodmere Avenue for the LPA errors in their assessment for its determination.** We only object to applications that fail to meet or comply with the adopted planning policies.

The following is our reply to the **stage 2 response from Ms Mustafa - Executive Director of 'Place', London Borough of Croydon (LBoC), Local Planning Authority (LPA)**. including our comments to substantiate the validity of our complaint and specifically identify areas which the LPA have either not adequately answered or have intentionally ignored.

The responses from **Ms. Shifa Mustafa - Executive Director of Place**, LPA London Borough of Croydon to our Stage 2 Complaint are highlighted in "*red italic text*".

Complaint #1

Failure to apply the current adopted **London Plan Policy 3.4 to Optimise Housing Potential** or the consolidated emerging **London Plan Policy D1A - Infrastructure requirements for sustainable densities**, in accordance with the Policy on **Residential and Housing Density** appropriate for the available or forecast **Public Transport Accessibility** for the locality at a 'suburban' setting and at **PTAL of 1a**, as required by **NPPF (2018/19) para 122 - Achieving Appropriate Densities**.

Ms Mustafa states:

"The London Plan, together with the Croydon Local Plan, identify appropriate use of land as a material consideration, to ensure that opportunities for development are recognised in order to optimise housing supply. Given that this site is within an established residential area, and currently comprises residential accommodation, the principle of proposing additional residential development on the site was therefore considered acceptable by adopted planning policies and guidance."

Our Response:

It is recognised that the site is currently developed and is in a residential developed "suburban" setting area which contains mainly detached or semi-detached dwellings with substantial gardens and is therefore considered a "brownfield" site and within the criteria for redevelopment.

Our complaint does not preclude redevelopment but is based upon the requirement to meet the established and adopted planning policies appropriate for in-fill and redevelopment. Any redevelopment approval should be compliant to the adopted and emerging Planning Policies to ensure any development is "**sustainable**", meets agreed **accommodation standards** and is in accordance with the Policies appropriate for **future occupants**.

We have identified the "**non-compliance**" to the established emerging and adopted Policies appropriate to this development in our original objection for this proposal, but our objections have been ignored.

Ms Mustafa states:

“In relation to density, Policy 3.4 of the London Plan indicates that, in suburban areas with Public Transport Accessibility Levels (PTALs) of 0-1, an appropriate density would equate to 150-200 habitable rooms per hectare (hr/ha). The density of this proposed development was 251hr/ha, which fell slightly above threshold. However, contained in the subtext of Policy 3.4 is the statement that, ‘whilst a rigorous appreciation of housing density is crucial to realising the optimum potential of sites, it is not appropriate to apply the density matrix mechanistically’. In contrast, Policy DM1.1 of the 2018 Croydon Local Plan advises that developments should generally be a minimum of 3 storeys and in Paragraph 2.1 of the Council’s SPD entitled “Suburban Residential Design”, it indicates that where surrounding buildings are predominantly single storey, new development should seek to accommodate a third storey within the roof space.”

Our Response:

“In relation to density, Policy 3.4 of the London Plan indicates that, in **suburban** areas with **Public Transport Accessibility Levels (PTALs) of 0-1**, an appropriate density should be in the range **150-200hr/ha**. The density of this proposed development **was stated by Ms. Mustafa at 251hr/ha**. However, we calculate the **Residential Density to be 29/0.095hr/ha = 305.263hr/ha (not 251hr/ha)**. The TfL PTAL Forecast up to 2031 is to remain at PTAL 1a. **Note:** The quoted difference in analysis of **Residential Density** between the LPA (251hr/ha) and that in our complaint (**305.26hr/ha**) is possibly due to the methodology of assessment of Habitable Rooms for this proposal. However, it is not clear how **Ms. Mustafa** arrived at the **Residential Density to be 251hr/ha** as this would require the number of habitable rooms to be **0.095 x 251 = 23.845hr (i.e. NOT an integer)**. This proposed development has “Open Plan” Kitchen/Lounge accommodation and we considered this to be **one** separate Lounge functional area (the kitchen is Not classed as a habitable room). **There is no known ruling on ‘Open Plan’ allocation of Habitable Rooms interpretation**. We have long recommended that the parameter for **Residential Density** should be **Bed-Spaces per hectare** (in this case **31/0.095 = 326.32 bed-spaces per hectare**) as it is persons that require infrastructure - NOT rooms.

The proposed development parameters:

Third Version Amended Drawings										
Site Area		950 sq.m.				Housing Density		94.74	u/ha	
hectares		0.095 ha				Residential Density		305.26	hr/ha	
	Floor	Habitable Rooms (*)	Bedrooms	Bed Spaces	(Approx) Storage Space (sq.m.)	Table 3.3 Storage (sq.m.)	GIA (sq.m.)	Table 3.3 GIA (sq.m.)	Amenity Space offered (sq.m.)	Private Amenity Required (sq.m.)
Unit 1	Ground	3	2	3	1.00	2	64.00	61.00	40	6
Unit 2		4	3	4	3.16	2.5	88.00	74.00	90	7
Unit 3		3	2	4	1.32	2	70.00	70.00	60	7
Unit 4	1st	3	2	3	0.80	2	70.00	61.00	10	6
Unit 5		4	3	5	0.63	2.5	93.00	86.00	6	8
Unit 6		3	2	3	0.70	2	65.00	61.00	10	6
Unit 7	Roof Space	3	2	3	0.60	2	75.00	70.00	8	7
Unit 8		3	2	3	0.88	2	63.00	61.00	6	6
Unit 9		3	2	3	0.84	2	70.00	61.00	6	6
Totals		29	20	31	9.93	19	658.00	605.00	236	59
Average		3.22		Red Text: Failure to meet adopted Planning Policies						

(*) Habitable Rooms: Open Plan kitchen/Lounge - classed as one Habitable functional area = 1 habitable room

The **Red** text indicates non-compliance to Policy requirements.

Table 3.2 Sustainable residential quality (SRQ) density matrix (habitable rooms and dwellings per hectare)			
Setting	Public Transport Accessibility Level	Public Transport Accessibility Level	Public Transport Accessibility Level
	0 to 1 (1a = 0.66)	2 to 3	4 to 6 (RD 5.40) (HD 5.33)
Suburban	150–200 hr/ha (183 hr/ha)	150–250 hr/ha	200–350 hr/ha (305.26 hr/ha)
3.8–4.6 hr/unit	35–55 u/ha	35–65 u/ha	45–90 u/ha
3.1–3.7 hr/unit (3.22 hr/unit)	40–65 u/ha (56.5 u/ha)	40–80 u/ha	55–115 u/ha (94.74 u/ha)
2.7–3.0 hr/unit	50–75 u/ha	50–95 u/ha	70–130 u/ha
Urban	150–250 hr/ha	200–450 hr/ha	200–700 hr/ha
3.8–4.6 hr/unit	35–65 u/ha	45–120 u/ha	45–185 u/ha
3.1–3.7 hr/unit	40–80 u/ha	55–145 u/ha	55–225 u/ha
2.7–3.0 hr/unit	50–95 u/ha	70–170 u/ha	70–260 u/ha

The current adopted **London Plan Policy 3.4** shows the actual applicable **Density Matrix Table 3.2** referenced. **The text in Blue** identifies the approximate **appropriate densities for a suburban setting at PTAL 1a**. **The Red text are the applicants' proposed densities**.

To consider the Densities of **305.26hr/ha** (or 251hr/ha), "**slightly**" above the threshold (**or range**) which would require a **PTAL** in the range **4 to 6** (or 3 for RS = 251hr/ha) from **lowest Accessibility of 0 to 1** (numerically **0.66**) to the **highest accessibility of (4 to 6) is totally unacceptable and completely ignores the objectives of the Policy and Table 3.2).**

Using the **TfL WebCAT** and the methodology of **Assessing Public Transport Connectivity**^[1] in London and Assuming the incremental ranges are **approximately linear** then they would follow the linear equation: **$y = mx + c$** , Where y = Density; m = Rate of change $\Delta y/\Delta x$ (or slope); x = PTAL and c = intersect when y = 0.

Then the required **PTAL** for the proposed **Densities** can be calculated as follows:

For a **Residential Density** of **305.26hr/ha**, the required **PTAL** is:

$$\text{Residential Density} = 305.26 = \left(\frac{350-200}{6-4}\right)x - 100 = 75x - 100 \quad \text{then } x = \text{PTAL} \approx 5.403$$

For a **Housing Density** of **94.74u/ha**, the required **PTAL** is:

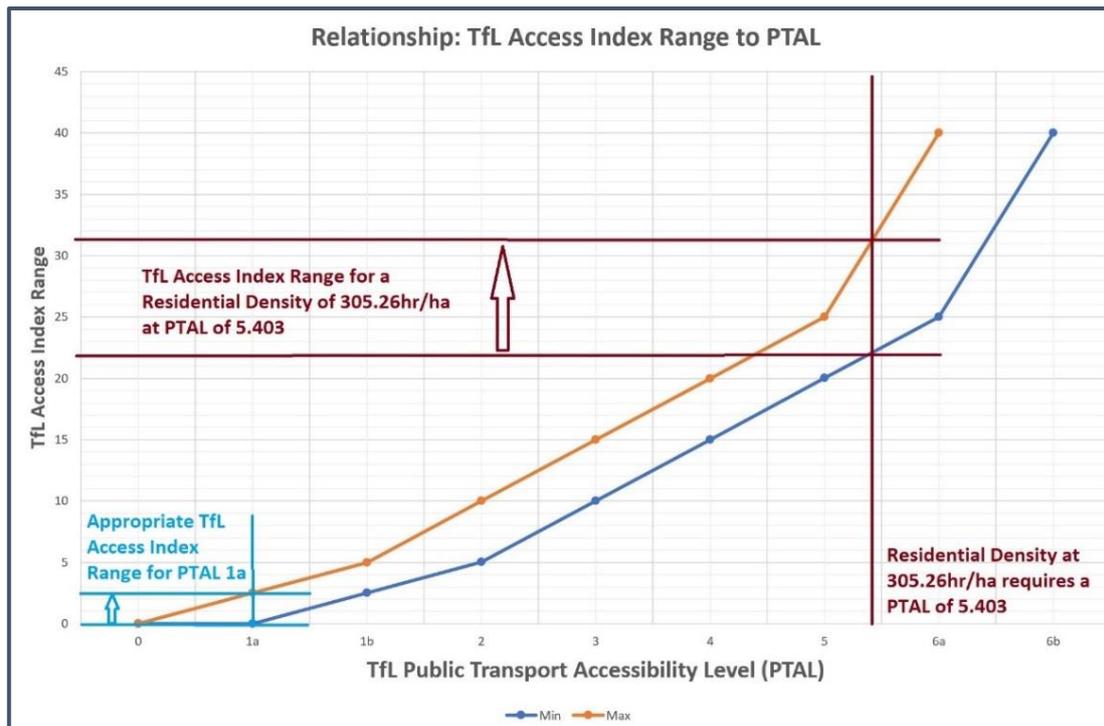
$$\text{Housing Density} = 94.74 = \left(\frac{115-55}{6-4}\right)x - 65 = 30x - 65 \quad \text{then } x = \text{PTAL} \approx 5.325$$

These results clearly show the required **PTAL** to be **significantly higher** than is available at the locality of **PTAL 1a (=0.66)**.

PTAL	Access Index range	Map colour
0 (worst)	0	
1a	0.01 – 2.50	
1b	2.51 – 5.0	
2	5.01 – 10.0	
3	10.01 – 15.0	
4	15.01 – 20.0	
5	20.01 – 25.0	
6a	25.01 – 40.0	
6b (best)	40.01+	

Table 2.2: Conversion of the Access Index to PTAL

This Table (above) shows the relationship between "PTAL" and the "Access Index Ranges" used by Transport for London. See: TfL WebCAT Conversion from Access Index to PTAL ^[1]



Graph of TfL Access Index related to Public Transport Accessibility Level (PTAL) [1] at both PTAL 1a (the site) and PTAL 5.403 (as required by the application)

The approximate **appropriate Densities at PTAL 1a** (Numerically equivalent to **0.66**) at a **suburban setting** can be found using the same formula $y = mx + c$ Where $y =$ Density; $m =$ Rate of change $\Delta y/\Delta x$ (or slope); $x =$ PTAL and $c =$ intersect when $y = 0$.

Residential Density $y \approx \left(\frac{200-150}{1-0}\right) 0.66 + 150$ Therefore $y \approx 183$ hr/ha

And,

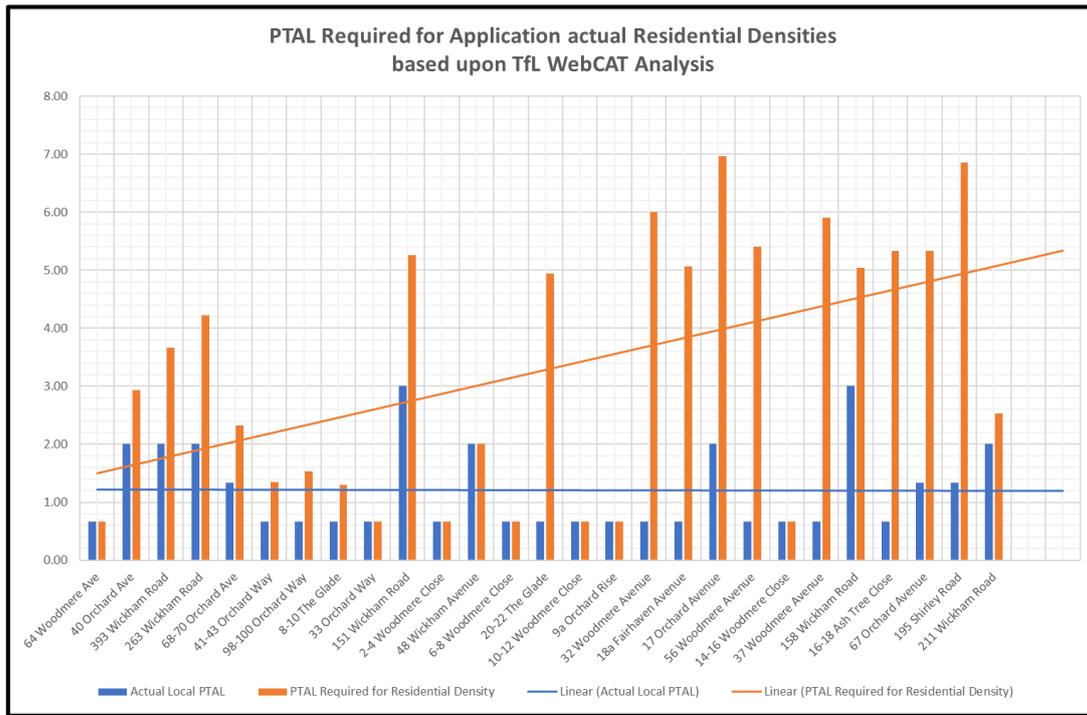
Housing Density $y \approx \left(\frac{65-40}{1-0}\right) 0.66 + 40$ Therefore $y \approx 56.5$ units/ha

These would be the appropriate approximations for **Residential** and **Housing Densities** at the proposed location with a **PTAL of 1a** and in a **suburban setting**.

From the foregoing, it is clear that for the **Residential Density of 305.26hr/ha** requires a **PTAL of 5.403** which in turn requires a **TfL Public Transport Access Index in the range ≈ 22 to ≈ 31.5** .

Although the Policy states that the ranges are **“broad”** to allow flexibility, Ms. Mustafa’s interpretation of the Policy assumes the ranges embrace the **‘WHOLE Table 3.2’** which is utterly ridiculous and at her level of responsibility is very concerning and questionable. From her interpretation of the current adopted London Plan **Policy 3.4 – Optimising Housing Potential**, with regard to ensuring **sustainability** with the provision of **Public Transport Infrastructure** might as well have **no difference** at all, **over the full PTAL range of 0 to 6 which totally obviates the significance of the Policy and Table 3.2.**

[1] <http://content.tfl.gov.uk/connectivity-assessment-guide.pdf>



Excessive PTAL Requirement above the Local available PTAL (Based upon TfL WebCAT) due to Increased Densities of Applications in the MORA Post Code Area showing the ongoing PTAL linear trend.

It is appropriate at this juncture to highlight the effect of recent in-fill and redevelopments in the MORA Post Code area as illustrated in the **above histogram**; a number of which have been the subject of **MORA complaints to the Croydon LPA and Complaints to the LGO**, but which the **LGO have declined to further investigate**:

See: <http://www.mo-ra.co/planning/planning-complaints/>

It is significant that Ms. Mustafa has **NOT** commented on the implementation of the emerging **New Draft London Plan Policy D1A - Infrastructure requirements for sustainable densities**; which requires **detailed analysis** of provision of **future planned levels of infrastructure** to ensure **'sustainable densities'**, whilst disregarding requirements of the current adopted **London Plan Policy 3.4 – Optimising Housing Potential**.

Policy D1A - Infrastructure requirements for sustainable densities:

A The density of development proposals should:

- 1) **consider, and be linked to, the provision of future planned levels of infrastructure** rather than existing levels,
- 2) **be proportionate** to the site's **connectivity and accessibility** by walking, cycling, and **public transport** to jobs and services (including both PTAL and access to local services ^{22A}).

B 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**.

C When a proposed development is acceptable in terms of use, scale and massing, **given the surrounding built form, uses and character, but it exceeds the capacity identified in a site allocation** or the site is not allocated, and the borough considers 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 the CIL contribution** that the development will make. **Where additional required infrastructure cannot be delivered, the scale of the development should be reconsidered to reflect the capacity of current or future planned supporting infrastructure.**

The draft London Plan:

The information on the Mayor of London website attempts to provide guidance on how much **“weight”** the draft London Plan should have in any **current planning decisions**.

states:

“The current 2016 Plan (The London Plan consolidated with alterations since 2011) is still the adopted Development Plan, but the Draft London Plan is a material consideration in planning decisions. The significance given to it is a matter for the decision maker, but it gains more weight as it moves through the process to adoption.”

The **Draft London Plan** underwent its external examination in Public (EiP) during the first half of **2019**. The Inspector’s Report published formal comments on the **Draft London Plan on Oct 8th 2019**.

See:

https://www.london.gov.uk/sites/default/files/inspectors_report_and_recommendations_2019_final.pdf

- Intend to Publish version of the Plan to Secretary of State – 9 December 2019
- London Assembly Plenary – 6 February 2020
- Anticipated response from the Secretary of State - 17 February 2020 (delayed)

See:

<https://www.london.gov.uk/what-we-do/planning/london-plan/new-london-plan/examination-public-draft-new-london-plan/examination-public-news>

https://www.london.gov.uk/sites/default/files/letter_to_the_mol_london_plan_expected_response_2_.pdf

- Publish final London Plan – Directly after approval by the Secretary of State.

Ms. Mustafa states:

“Further clarification for the justification of the acceptability of this density matrix ratio was sought at Planning Committee from Nicola Townsend, Team Leader by one of the Planning Committee members. In addition to this, the car parking provision was also raised for debate and Members accepted that the provision of 1 parking space per unit was considered acceptable for the density.”

Our Response:

Ms. Mustafa has quoted Planning Officer ‘Ms. Nicola Townsend - Planning Officer’ who during the Planning Committee debate, supposedly clarified the justification of the acceptability of the

Densities but Ms Mustafa has NOT quantified what this justification actually is or whether that justification is acceptable!

The LPA have taken no notice of the required guidance of either the London Plan Policy 3.4 Optimising housing potential; the emerging London Plan Policy D1A Infrastructure requirements for sustainable densities or Policy D1B Optimising site capacity through the design-led approach or The Nation Planning Policy Framework (NPPF) para 122 - Achieving appropriate Densities:

Inspectors Report – Draft London Plan (8th October 2019)

Consistency with national policy and guidance.^[2]

“54 The relevant legal requirement is to “have regard to” the need to ensure consistency with national policy⁴³, and that objective is one of the four tests of soundness. Thus, whilst there is no absolute requirement for all parts of the Plan to be entirely consistent with national policy, there needs to be clear, evidence-based justification for any divergence. Furthermore, we consider that the strength of the justification should be proportionate to the degree of divergence and the significance of the policy in question.”

Infrastructure requirements:

285. *“Subsequent policies relate to the site-specific context. Policy D1A seeks to ensure that density of development proposals respond to future infrastructure capacity and that it should be proportionate to a site’s accessibility and connectivity. Policy D1A part D introduces further suggested changes that set out explicitly that infrastructure capacity ultimately will limit the scale of development where it cannot be enhanced to mitigate the impact of development. This will ensure that the density of a development cannot exceed a sustainable level, even if it is acceptable in design terms. It will also help to ensure that development accords with Good Growth.”*

NPPF - Achieving Appropriate Densities

122. Planning policies and decisions should support development that makes efficient use of land, taking into account:

- a) the identified need for **different types of housing** and other forms of development, and the availability of land suitable for accommodating it;
- b) local market conditions and viability;
- c) the availability and capacity of infrastructure and services – both existing and proposed – as well as their potential for further improvement and the scope to promote **sustainable travel modes** that limit future car use;
- d) the desirability of maintaining an area’s prevailing character and setting (including residential gardens), or of promoting regeneration and change; and
- e) the importance of securing well-designed, attractive and healthy places.

We are NOT challenging or objecting to Car Parking provision so this comment is irrelevant to our complaint.

[2] https://www.london.gov.uk/sites/default/files/inspectors_report_and_recommendations_2019_final.pdf

In summary:

The LPA have miss-calculated the applicants proposed Residential Density at 251hr/ha which would mean there are 23.845 habitable rooms (which cannot physically be correct – NOT an integer) and have disregarded the implications of excessive Residential and Housing Density for this proposed application at this locality at this Public Transport Accessibility Level and have ignored the planning policy guidance to ensure the proposed development is sustainable with regard to the availability of current and planned future Public Transport Accessibility to limit future car usage.

No Infrastructure assessment has been undertaken as required by the Policy D1A by either the applicant or the Spatial Planning Departments to establish the appropriate Densities or Access Availability for Public Transport to ensure this proposal is considered Sustainable Development at this site with the offered Residential and Housing Densities of **305.26hr/ha** and **94.74units/ha** respectively.

This application significantly exceeds the Public Transport Accessibility capacity of PTAL 1a forecast up to 2031 and the planned infrastructure capacity will be significantly exceeded which means this proposal should have been refused on grounds of NOT meeting the requirements of the London Plan Policy 3.4 – Optimising Housing Potential for Sustainable Densities OR the New London Plan Policy D1A - Infrastructure Requirements for Sustainable Densities and NOT considering the requirement for limiting future car usage.

Complaint #2

Failure to consider the overbearing nature of the proposed development with regard to loss of amenity to the adjacent property at **54 Woodmere Avenue** as defined by **Policy SPD2 Figure 2.11c**: *“The Height of projection beyond the rear of neighbouring properties to be no greater than 45° degrees as measured vertically from the middle of the ground floor window of the closest habitable room on the rear elevation of the neighbouring property should NOT intersect the proposed development.”*

Ms Mustafa states:

*“As a result of the **45-degree guideline being compromised**, it was necessary for the developer to conduct a **light analysis survey**, which confirmed that the proposal met all BRE guidelines for sunlight. It was also noted at Planning Committee that, due to the direction of the proposed site in relation to the neighbouring property, the direct impact upon the lighting in the rear garden of 54 Woodmere Avenue would not have been greatly affected.”*

Our Response:

The initial statement from Ms. Mustafa is **WRONG** as the 45-Degree guideline for adjacent property amenity and the daylight requirements are NOT mutually exclusive.

This illustration (below) shows the failure to meet the 45-degree (verticle) Amenity Rule. There were no exceptional circumstances such as orientation, topography, landscaping and neighbouring land uses, which would allow scope for a depth beyond 45-degrees. The proposed development was to be sunk in an approximate 0.6m hole in the ground (ringed).

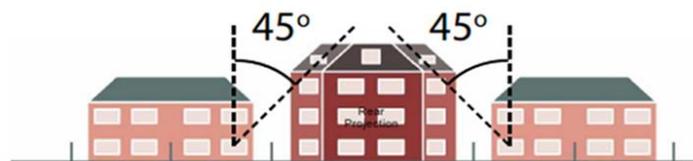


Figure 2.11c: Height of projection beyond the rear of neighbouring properties is no greater than 45 degrees as measured from the middle of the window of the closest ground floor habitable room on the rear wall of the main neighbouring property on both sides.

The Case Officers Report at para 4.3 states:

4.3 As the height of the building has been increased by **1.05m** the applicant has submitted a revised Daylight and Sunlight Study which assesses the impact upon **54 Woodmere Avenue**. The development does **“marginally”** break the vertical 45-degree line; however, the Daylight and Sunlight Study demonstrates that the effect of the proposal upon the side windows of this neighbour would be **“negligible”** and accords with BRE guidelines. A horizontal **45-degree** line without obstruction is maintained from the closest rear window of this neighbour to the rear of the proposed building.

Our Response:

The Daylight and Amenity issues of the **45-Degree Rule** are **‘mutually exclusive’** (as illustrated by the word **“also”** at **paras 2.11.2** below) and one (amenity) does **NOT** preclude the other (Daylight) from being observed. Also, the **45-Degree Rule** intersect does **NOT have a tolerance**.

The proposal **either meets the requirement or fails the requirement** i.e. it either intersects the adjacent property OR it doesn't intersect the adjacent property. It is not acceptable to **“marginally” not meet the requirement** as there is **NO** definition of **“HOW MARGINAL”** an **acceptable deviation** from policy is, and once a deviation is accepted, there is **no criteria to reject any future failure** to meet the policy. Thus, the Policy becomes **unenforceable and void**.

45 Degree Rule

The introduction to Supplementary Planning Document SPD2 Chapters 1 – Introduction, para 1.1 and Chapter 2 – Suburban Residential Development, para 2.1 states:

1.1 OVERVIEW OF THIS DESIGN GUIDE

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**.

2.1 SUBURBAN DEVELOPMENT

2.1.1 This section of the SPD is **relevant** to the **delivery of new homes** through conversion or **redevelopment of existing properties** or **new housing built in rear gardens and back lands**.

2.1.2 The Croydon Local Plan has identified that some existing residential areas have the capacity to accommodate **growth without significant change to its character**. In these locations, to accommodate the target for additional homes in the suburbs, new residential units may be created through the interventions described in **Figures 2.1a – 2.1e**.

2.1.3 These approaches to development are set out in Table 6.4 of the Croydon Local Plan and the supporting text. The guidance set out in this section responds to **Policies DM10.1 – DM10.10** of the Croydon Local Plan regarding design and **density**, including ensuring growth is accommodated **without significant change to the character of an area**.

It is **inappropriate** to have a **Design Guide** that is **NOT** used for “**design guidance**” and can be disregarded on the whim of a case officer. This is very dangerous as it means the “**Design Guidance**” is subject to varying degrees of **interpretation and can be ignored without justification or a defined criterion**.

A very subjective determination allows case officers to ascertain whether or not these “**guides**” are **enforced** or **overlooked** which in turn places Case Officers at pressure of collusion or at worst corruption when significant financial commitments are at stake.

There are TWO separate aspects to SDP2 section 2.11

2.11.1 Where a development projects beyond a rear building line, the height and footprint of the projection does not necessarily need to be lower or narrower, provided the guidance on relationship to boundaries (Refer to Section 2.16) and overlooking (Refer to Section 2.9) is followed. It should be demonstrated that there would be **no unreasonable impact on neighbouring amenity**. Where it is necessary to mitigate impact on **neighbouring amenity**, the projection beyond the rear building line may need to **step down in height and width**, to meet the guidance below:

- It follows the **45 degrees** rule demonstrated in **Figure 2.11b** and **2.11c**. In exceptional circumstances, where **orientation, topography, landscaping and neighbouring land uses allow**, there may be scope for a depth beyond 45 degrees.
- The flank wall is designed to minimise visual intrusion where visible from neighbouring properties.

2.11.2 Applicants should **also**^[3] refer to the guidance on **Daylight and Sunlight** (Refer to Section 2.9), where there would be **unreasonable impact on neighbouring access to natural light**, the **depth of a projection beyond the rear building line should be reduced**. The design of a flank wall visible from neighbouring properties should be carefully designed to minimise **visual intrusion**.

2.11.3 Where stepping the **height** and **width** of a building, care should be taken as a stepping form can dilute the massing and architectural merit of a proposal. This in itself may draw more attention to the proposal through complicating form. Where **stepping would overly complicate** the form and create more visual intrusion on neighbouring amenity as demonstrated in Proposal 3 on pages 44 - 45, **no stepping should be introduced** and an **overall smaller footprint that does not require stepping may need to be provided**.

In summary:

The LPA have disregarded the implications of the 45-Degree (vertical) Rule which is designed to ensure minimal overbearing and loss of amenity is afforded to adjacent properties from re-developments or in-fill developments either too close and/or too high to a boundary. **This case shows the footprint of the proposed development is excessive for the available site area.**

The Daylight and Amenity issues of the 45-Degree Rule are '**mutually exclusive**' and the 45-Degree (vertical) Rule intersect does NOT have a tolerance. The proposal either meets the requirement or fails the requirement i.e. it either intersects the adjacent property OR it doesn't intersect the adjacent property. This proposal **failed** to comply with the Policy and therefore should have been refused.

Complaint #3

Failure to adequately consider the loss of natural light due to the overbearing nature of the proposed development on the living conditions of the occupiers of 54 Woodmere Avenue and failure to acknowledge and correct the errors in the applicant's daylight study report.

Ms. Mustafa states:

"It was acknowledged that there would be some impact on the lighting in the garden area of the house adjacent to the proposed development, but it was also confirmed that the proposal did not result in neighbouring properties being directly overlooked at close range and that adjoining occupiers will not experience a significant loss of existing sunlight or daylight levels."

[³] Adverb "**Also**" in addition; too; besides; as well as; likewise; in the same manner.

Our Response:

No evidence was provided to support the claim that there is no threat to the loss of natural light to the garden vegetation of **54 Woodmere Avenue** as the focus was solely on buildings and not the environment. The rear garden of **54 Woodmere Avenue** is north facing and is **very dependent on light from the west and east**. BRE advertises a service to assess the impact on growth of plants arising from environmental change and this was pointed out at committee. However, neither the Local Planning Authority Case Officer or the Developer took any steps to secure such a review.

In the final summing up Councillor Paul Scott conceded there **“might be some loss of sunshine”**. However, he sought to downplay the significance by saying the direction of the sunlight was **“westerly”!** – As stated above sunshine from the west as well as the east are both important to the fostering of optimal growing conditions for plants.

Ms Mustafa states:

*“As a result of the 45-degree guideline **being compromised**, it was necessary for the developer to conduct a **light analysis survey**, which confirmed that the proposal met all BRE guidelines for sunlight. It was also noted at Planning Committee that, due to the direction of the proposed site in relation to the neighbouring property, the direct impact upon the lighting in the rear garden of 54 Woodmere Avenue would not have been greatly affected.”*

Our Response:

The **daylight factor (DF)** is a very common and easy to use measure for the subjective daylight quality in a room. It describes the ratio of **outside illuminance** over **inside illuminance**, expressed as a percentage. The higher the DF, the more natural light is available in the room. It is expressed as such: $DF = 100 * E_{in} / E_{ext}$

Where:

E_{in} = **inside illuminance** at a fixed point

E_{ext} = outside horizontal illuminance under an overcast (CIE sky) or uniform sky.

The E_{in} illuminance can be considered as the sum of three different illuminances:

- the direct illuminance if the sky is visible from the considered point (E_D)
- the illuminance due to the reflexions on the outside environment (E_{ER})
- the illuminance due to the reflexions on the **inside surfaces** (E_{IR})

Hence, the daylight factor can be expressed as the sum of the three components:

$$DF = DC + ERC + IRC \text{ where}$$

DC = direct component

ERC = externally reflected component

IRC = **internally reflected component**

The BRE formula is given by: $DF_{m, BRE} = (A_{window} \alpha M t) / (A_{total} (1 - \rho_m))$

Where:

A_{window} = Surface area of the window, excluding frame, bars and other obstructions [m²]

A_{floor} = **Floor area of the room** [m²]

A_{total} = Total **internal** surface area of the room [m²]

α = Angle of visible sky from the mid-point of the window [°]

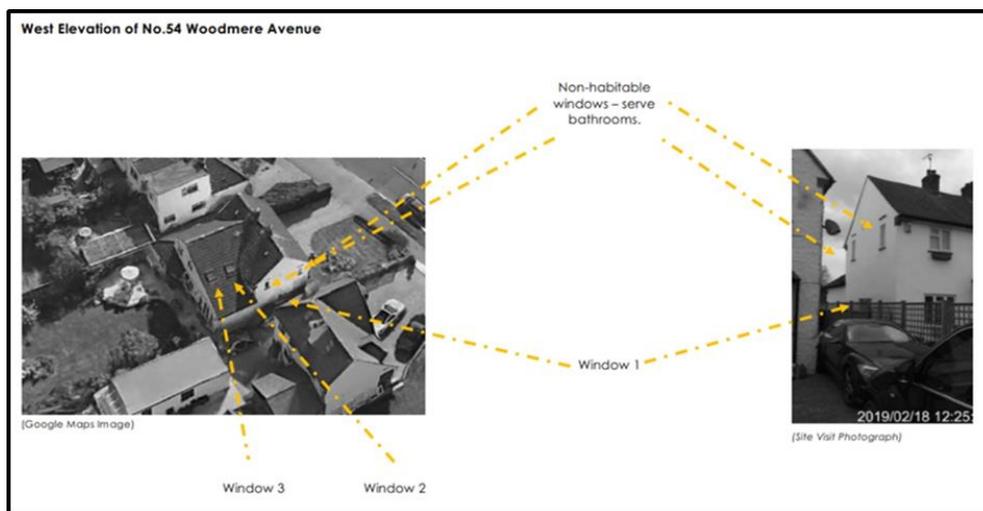
M = maintenance factor of the window

t = Transmission factor of the glazing

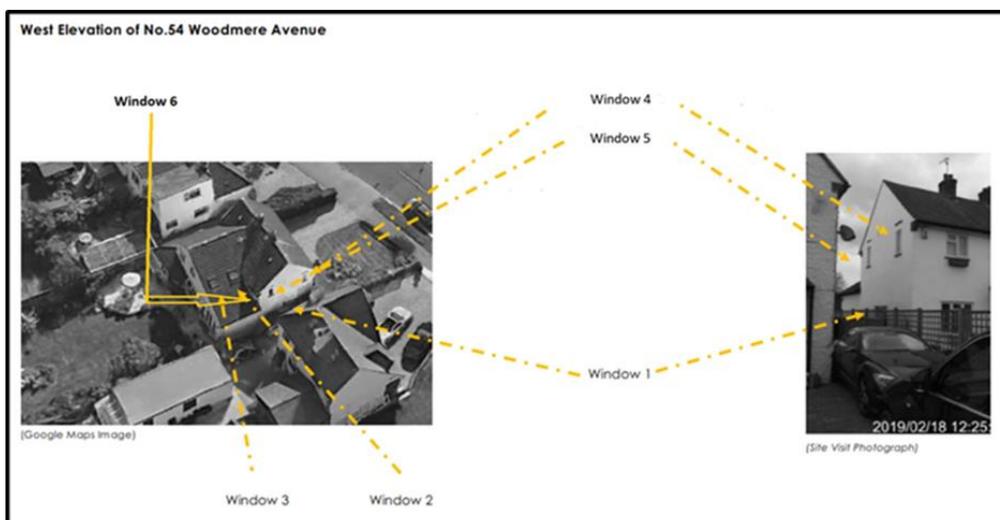
ρ_m = Average reflection factor of all internal surfaces

It is exceedingly strange how the “Base Energy” Company, Daylight Report for this proposal, evaluated the Daylight Factor (DF) and provided quantifiable parameters for this analysis when they never entered the property at 54 Woodmere Avenue or requested parameter quantities to quantify the internal features and room parameters of 54 Woodmere Avenue or required the aperture of each of the Habitable Room Windows for their analysis when those parameters are fundamental to the evaluation of the appropriate Daylight Factors (DF).

It seems to have escaped Ms. Mustafa’s response, to consider the Applicant’s assessment of Daily Sunlight effects on 54 Woodmere Avenue when they failed to consider all appropriate windows, their areas and internal room dimension. Also, no assessment was made of the impact of changes in the footprint and height in the front elevation of the proposed development on the light available to front windows on the western flank of 54 Woodmere Avenue.



Applicant’s Erroneous Assessment (See below & Table)



Actual Daylight Affected Windows of 54 Woodmere Avenue



Window Number	Floor	Dimensions	Window Area	Actual Room Served	Applicant's Analysis
Window 1	Ground	139cm x 52cm	0.73m ²	Lounge	Habitable
Window 2	Roof	59cm x 70 cm	0.413m ²	Bathroom	Habitable
Window 3	Roof	59cm x 70 cm	0.413m ²	Bathroom	Habitable
Window 4	First	33cm x 76cm	0.25m ²	Bedroom	Non-Habitable
Window 5	First	33cm x 76cm	0.25m ²	Bedroom/Study	Non-Habitable
Window 6	First	33cm x 76cm	0.25m ²	Bedroom	Habitable

Windows 1, 4, 5 & 6 all serve Habitable Rooms; Windows 2 & 3 are NOT Habitable Rooms.

Ms. Mustafa has NOT acknowledged that the Daylight Study evidence was flawed for four reasons:

- The applicant had mistakenly designated the windows served; and
- The Daylight Study failed to take account of the small window apertures which restrict natural light into the Habitable Rooms of 54 Woodmere Avenue.
- The Base Energy company failed to gain access to 54 Woodmere Avenue to evaluate all necessary internal room and window parameters to calculate the Daylight Factors (DF's)
- The Base Energy company failed to provide any calculations or evidence of how they arrived at their results.

The size of the affected windows at **54 Woodmere Avenue** are **significantly smaller in area** than **standard modern windows** due to the **period of build** and this has a significant reducing effect of the **illuminance** of natural light's **spectral distribution** within the visible range of natural light passing into those habitable rooms. The measured natural **illuminance** for residential rooms should be between **200 and 500 Lux**. (Lumens) ^[4] **This will NOT be the case once the proposal for 56 Woodmere Avenue has been built.**

^[4] The lux (symbol: lx) is the SI derived unit of illuminance and luminous emittance, measuring luminous flux per unit area. It is equal to one lumen per square metre. In photometry, this is used as a measure of the light intensity, as perceived by the human eye, of light that hits or passes through a surface.

The **Daylight requirements** of the Policy and the **Amenity aspects** of the policy are **NOT mutually exclusive** and as such the **Daylight analysis** does **NOT** preclude the requirement of **amenity** being complied.

From this perspective the applicants BRE Daylight Analysis is flawed.

In Summary:

The Daylight Study by the applicant was flawed on the grounds that the designations of the affected windows of 54 Woodmere Avenue were **incorrect** and therefore the full requirements to calculate the mistakenly designated the windows served was flawed. The Daylight Study did not include **any calculations** to prove the **evidence provided was substantiated**. The Daylight Study failed to take account of the small window apertures which restrict the natural light into the Habitable Rooms of 54 Woodmere Avenue.

The “Base Energy” report failed to include internal room parameters of rooms affected in 54 Woodmere Avenue to evaluate all necessary internal room and window parameters to calculate the correct internal illuminance effect on the Daylight Factors (DF’s). This should have been verified and corrected by the Case Officer in evaluating the proposal.

Complaint #4

Overbearing massing of proposed development in relation to surrounding properties.

Ms. Mustafa previously stated:

“The London Plan, together with the Croydon Local Plan, identify appropriate use of land as a material consideration, to ensure that opportunities for development are recognised in order to optimise housing supply. Given that this site is within an established residential area, and currently comprises residential accommodation, the principle of proposing additional residential development on the site was therefore considered acceptable by adopted planning policies and guidance.”

“In contrast, Policy DM1.1 of the 2018 Croydon Local Plan advises that developments should generally be a minimum of 3 storeys and in Paragraph 2.1 of the Council’s SPD entitled “Suburban Residential Design”, it indicates that where surrounding buildings are predominantly single storey, new development should seek to accommodate a third storey within the roof space.”

Our Response

The character of this part of Shirley had **NO** Flats until the recent **32 and 37 Woodmere Avenue** were considered for re-development and the local character prior to those proposals were detached and semi-detached houses and bungalows with substantial gardens as defined in the “Shirley Place”.

Ms. Mustafa and the **LPA** are “**satisfied**” that the decision was **sound** but the **Policies do NOT** support that “**satisfaction**” and she has NOT qualified or provided any **justification** for the Decision which has been provided other than a **subjective interpretation** of “**satisfaction**” which cannot be **justified** by interrogation of the current adopted Policies or the emerging Policies. The assessment of “**satisfaction**” is subjective! And not supported by the Policies.

Character Considerations:

*“The character of this part of Shirley is very varied indeed and the scale of development proposed (two storeys with accommodation in the roof) was considered to be totally in **character with the area**. Again, this was fully debated and discussed at Planning Committee and was fully explained and examined in the officer’s report.”*

Our Response:

Homes

11.200 An area of **sustainable growth of the suburbs** with **some opportunity** for **windfall sites** will see growth mainly confined to **infilling with dispersed integration of new homes respecting existing residential character and local distinctiveness.**

Green Grid and Open Space

11.204 Shirley will continue to be well served by **open space** with improved connections to the Green Grid, along with way finding, enabling increased walking and cycling. The Registered Historic and Local Historic Parks and **Gardens in the area will be retained** and new links provided where possible to incorporate them into the Green Grid network.

In Summary:

In-fill and redevelopment are accepted with the proviso that those developments meet the adopted and approved Planning Policies. This issue has been highlighted by Complaint #2 above in the failure to enforce the 45-Degree (vertical) Rule resulting in an overbearing and over-crowding approved development and the failure to recognise the prevailing character of the locality which are detached and semi-detached bungalows and houses with substantial gardens.

Complaint 5

Infraction of Planning Policies on grounds that it is more imperative to meet housing targets than to countenance and implement adopted Planning Policies.

Ms. Mustafa Continues:

“Whilst we are under pressure to deliver on our housing targets, I wish to assure you whilst delivering on our 5-year housing supply targets is critical we also need to ensure that a scheme is acceptable in other respects. We determine planning applications on their own merit in accordance with the development plan (taken as a whole), whilst taking into account all other material planning considerations.”

Our Response:

In response to the pressure to deliver on Croydon’s Housing Targets I refer you to the Planning Inspectors Report to the London Mayor of 8th October 2019:

Report to the Mayor of London

Roisin Barrett BSc (Hons) MSc Dip UD Dip Hist Cons MRTPI IHBC

William Fieldhouse BA (Hons) MRTPI and

David Smith BA (Hons) DMS MRTPI

Members of the Panel appointed by the Secretary of State

Date: **8 October 2019**

Non-Technical Summary (extract)

Our recommendations, which are set out in full throughout the report and listed in the attached Appendix, can be summarised as follows:

- “Reduce the ten-year small site housing targets for boroughs to give a total of 119,250 dwellings (rather than 245,730) and as a consequence reduce the overall housing targets for boroughs to give a total of 522,850 dwellings (rather than 649,350).”

Conclusion (extract):

178. “In summary, the presumption in favour of small housing developments of between 1 and 25 homes and the targets in Table 4.2 are **neither justified nor deliverable**. However, these deficiencies would be rectified by our recommendations so that the approach to small sites would be effective. Overall the recommended 10-year housing target of 52,285 per annum would be higher than the existing London Plan and above the 45,505 units completed in 2016/2017.

It is therefore right to say that boroughs should use **all the tools at their disposal** to ensure homes are actually built. **But we consider that as recommended, and with the support of the Mayor, it should be deliverable and that both the overall target and those for the individual boroughs and corporations are justified.**”

It is clear from the Inspector’s comments that whilst there are faults with the Windfall housing targets the plan will be approved. However, the Windfall housing targets will need to be reduced by 60% on average as the expectations for Windfall developments in the **outer London boroughs are far too high.**

Resultant on this Inspectors Report the Croydon Targets need to be reduced by approximate 60% as detailed at Appendix A & B of the report (extracted for Croydon below).

APPENDIX A

Extract **Table 4.1** Revised 10-year targets for net housing completions (2019/20 - 2028/29)

Planning Authority	10-year Housing Target		Annualised Average
Croydon ^[1]	20,790	29,490	2,949
All London Total	522,850	649,350	64,935

[1] Includes Windfall Sites

APPENDIX B

Extract **Table 4.2** Revised 10-year targets (2019/20 -2028/29) for net housing completions on small sites (below 0.25 hectares in size)

Planning Authority	10-year Housing Target		Annualised Average
Croydon	6,410	15,110	1,511
As percentage of total Completions	30.83% (unlikely)		
All London Total	119,250	245,730	24,573

Ms. Mustafa adds:

The Statement “We determine planning applications on their own merit in accordance with the development plan (taken as a whole), whilst taking into account all other material planning considerations.”

Does NOT provide justification to ignore adopted planning Policies or allow deviation from the principle of those policies just to meet housing targets. The term **“taken as a whole” does not mean ignore adopted policies.**

Thus, it is **Development Management’s** view that it is preferable to allow **inferior proposals**, which are **inappropriate** to an area and have **unacceptable accommodation standards** in order to **meet housing targets** rather than require applicants to **reassess** their proposals to meet adopted planning policies to provide the **much-needed** housing but of **more appropriate design** and **supported by the available or planned infrastructure**.

We recognise that more houses are needed and that redevelopment in residential areas may be required to meet that demand. Where we differ is that we believe that **Planning Policies** are defined – **“for a purpose”** – and that purpose is to **ensure**:

- That all new dwellings are **sustainable**;
- Have the appropriate **accommodation and amenity standards** for future and existing occupiers;
- That dwellings and their residents have appropriate **supporting infrastructure** – including Public Civic Services which include adequate GP Surgeries, schools etc. to support the additional incoming population increase for the area;
- Have appropriate **Public Transport Accessibility** for the additional residents; and,
- Maintain local **character** such that the area retains its character for the existing residential population who have invested their money and dreams to live in such a locality for their wellbeing and livelihood.

In Summary:

The evidence seems overwhelming that, when considering the number of approvals which have been objected and/or challenged on grounds of non-compliance to planning policies which have been approved against the number of refusals by Croydon LPA, there is a policy of ignoring planning policies in order to meet housing targets.

In Conclusion:

This proposed development failed the following adopted Planning Policies but was recommended approval by the Case Officer and Granted Approved by the Planning Committee:

1. Failure to meet the appropriate Residential and Housing Densities for a Suburban Setting at PTAL 1a as defined by the current London Plan Policy 3.4 – Optimising Housing Potential;
2. Failure to meet the appropriate Residential and Housing Densities for a Suburban Setting at PTAL 1a as defined by the emerging London Plan Policy D1A - Infrastructure requirements for sustainable densities;
3. Failure to meet the NPPF Guidance on Residential Densities as set out in NPPF Para 122 – Achieving Appropriate Densities;
4. Failure to meet the recommended guidance of Policy SPD2 Figure 2.11c as defined by

Policy SPD2 Figure 2.11c: "The Height of projection beyond the rear of neighbouring properties to be no greater than 45° degrees as measured vertically from the middle of the ground floor window of the closest habitable room on the rear elevation of the neighbouring property should NOT intersect the proposed development;

5. Failure to recognise the mistakenly designated windows served of 54 Woodmere Avenue and the effect of restricted daylight to those windows by the proposed development;
6. The Daylight Study failed to take account of the small window apertures which restricts natural light into the Habitable Rooms of 54 Woodmere Avenue;
7. The Base Energy company failed to gain access to 54 Woodmere Avenue to evaluate all necessary internal room and window parameters to calculate the Daylight Factors.
8. Failure to recognise the Mayor of London's reduction in dwelling Targets for Outer London Boroughs which reduces the pressure to meet housing targets;

In addition, Not detailed in our complaint above but also to be considered:

9. Failure to meet the minimum space standards as defined by London Plan Policy 3.5 Quality and design of housing developments with regard to Built-In Storage Space for normal living clutter;
10. Failure to meet fully the Amenity Policy DM10.4 c) to provide a minimum amount of private amenity space of 5m² per 1-2-person unit and an extra 1m² per extra occupant thereafter;
11. Only provided 41.05m² Play Space Area for children when the Policy require 10m² per child and there are bed-spaces for approximately 13 Children in this proposal requiring up to 130m² for Children's Play Spaces;
12. Very limited communal open amenity space for the future occupants of the development.

Yet this application was approved!

We therefore accept redevelopment within the **constraints imposed by the Policies**. Thus, when approvals disregard the policies as we have set out above, we believe proposals **should be refused** to allow applicants to modify their proposals to fully meet the **Planning Policies** and re-apply with modified application proposals and thus provide the much needed Housing – **but importantly** – those dwellings would then be **sustainable** and meet the policies and be **more appropriate** for the locality **and the future occupants**.

The record of the Planning Committee does NOT seem to be very Policy dependent as the record shows an uncanny number of politically motivated decisions. The Planning Committee voting record of **6:4** on numerous occasions shows a **biased response** and very infrequently varies from these politically appointed Councillors' results at **6:4 for approval**. Of the **28 Applications** for infill/redevelopment in the MORA Post Code Area since 2015, **22** have been approved and **6** are awaiting a decision.

The current rate of approval is **100%**. The Planning Committee members do not assess proposals on policy or locality or proper planning criteria. The only criteria seem to be whether the proposal provides more housing - whether this is the most suitable housing for the future occupants of the proposal or for the existing local residents or character of the locality is **NOT** considered of any significant importance. At a time of significant pressure to meet Housing Targets, it is imperative that the LPA retain the confidence of Local Residents in the Planning

Process. Our Local Residents have lost confidence in the Planning Process.

Can it not be appreciated that **each Policy** ignored or disregarded **without credible justification** sets a **precedent** which subsequent applicants can allude to for equal reason to disregard or breach the **Policy**, ultimately resulting in a **Local Plan** with **Policies** that **cannot be enforced**.

Resultant on the LPA deviating from implementing agreed adopted and emerging Planning Policies, the local residents are losing confidence in the Planning Process.

We (MORA) appreciate Ms. Mustafa's response, but it is very distressing that our concerns are not addressed or even considered as reasonable. As there is no Appeal procedure for Planning Approvals and we as a Residents' Association do not have funds to support a Judicial Review, we feel our only redress is the Local Government Ombudsman.

We are therefore compelled to escalate this complaint to The Local Government Ombudsman for an **"independent"** investigation of this assessment as these issues are **fundamental** to the concerns of **Shirley Residents**. In summary, we believe our Complaint is worthy of an **independent** investigation as detailed above and we would appreciate the Local Government Ombudsman consider this evidence and adjudicate on the issues raised in accordance with the **Local Government Act 1974 Section 26 etc, as amended**.

Kind Regards

Derek Ritson



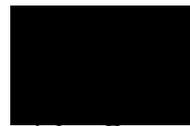
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MORA Planning
*Representing, supporting and working with
the local residents for a better community.*

Sony Nair



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Shirley North Ward Councillor
Shirley North Ward Councillor