



To:
Ms Rebecca Hunt - Investigator
Local Government & Social Care
Ombudsman

Monks Orchard Residents' Association
Planning

16th June 2020

Complaint reference:
19 020 965

Complaint against:
London Borough of Croydon

Dear Ms Hunt

Thank you for your 'Draft' Response to our Complaint on behalf of [REDACTED] of [REDACTED] in relation to the Planning Approval Reference 19/01352/FUL at 56 Woodmere Avenue your Reference 19 020 965 on 12 June 2020.

We are extremely disappointed in your assessment as detailed in your response and offer the following comments for your consideration:

[REDACTED] have offered the following statement:

- 1 Regarding the Impact assessment on light to my garden - none has been undertaken. The light survey relates only to windows and rooms not outdoor spaces. At Planning Committee, the officer said there would be no impact even though no evidence was offered in support of the statement. The BRE offers analyses of the impact of new buildings on transient shadowing in gardens. So I think the officer was relying on his own guesswork which I do not believe is acceptable and I think the ombudsman is in error to think that the light survey is relevant to the loss of amenity question. At a later meeting Councillor Scott conceded there might be some impact.
- 2 Access to light in my home. The light surveys have been dogged by problems. Initially the wrong windows were analysed because of reliance by the consultant on inaccurate information provided by my ex neighbours about non habitable internal space. The local authority never responded to my request for assessments to be produced for other windows which could be affected by the change in footprint at 56 Woodmere Avenue or because they were wrongly excluded from the original assessment because the drone didn't take a comprehensive set of photographs. All of these points were raised with the local planning authority but were ignored as were points made about the smallness of windows in my own home.
- 3 We have always maintained that the development is overbearing and the local authority accepted in the end that it broke the 45-degree rule. The concerns about light and the accuracy and scope of the assessments made heighten the sensitivity of this issue which again has not been acknowledged by the local authority and which we think calls into question the soundness of the planning decision.



In addition to these comments from the affected local residents, MORA would add the following comments on your assessment so far:

You state in your paragraph 4 What you found:

"It is for the decision maker to decide the weight to be given to any material considerations in determining a planning application."

This is a very general observation but if true there could NEVER be any doubt or question of the validity of a subjective determination by a **Decision Maker**, if, as you state, it is for the "decision maker" to arbitrarily decide the 'weight' given to any material consideration in determining a planning application without '**peer review**' or '**stated justification**', as it would mean the fallibility of a decision maker could **never** be challenged or would be considered 100% valid in every conceivable situation. I have never in my professional life known of an infallible professional individual.

However, in your assessment you state:

At Paragraph 8. *"The Ombudsman does not act as an appeal body for planning decisions, instead we consider if there was fault with how a decision was made. We cannot question whether a decision was right or wrong or the Council's professional judgement unless there is evidence to show it was flawed."*

Our response is:

There is no legal opportunity to 'appeal' an approved decision to the Planning Inspectorate and we do not have funds to lodge a Judicial Review. The LPA advised that we should escalate our complaint to the Local Government Ombudsman if we were not satisfied with their Stage 2 Response, which we have done. We have provided detailed evidence for the Local Government Ombudsman to independently assess the complaint in which we identify the significant reasons for Public Loss of Confidence in the Planning Process.

We supplied clear evidence in detail which identified why the decision was flawed.

If the Local Government Ombudsman will NOT investigate valid complaints against a Local Planning Authority – please inform us who should?

At paragraph 9 of your Assessment you state:

"The report says the development has been designed to resemble a large detached house and is in character with the other properties in the area and there will not be an unacceptable loss of privacy to Mr Y and Ms Z's home."

We were NOT objecting to "loss of privacy" so this is not relevant to our complaint.

You state:

"The roof design was changed during the planning process and the changes meant the roof slightly breached the 45-degree guidelines."

You also state that: *"The Case Officer Also addressed concerns about loss of light"*

But our submission details failures in the assessment of loss of light – which you have not assessed and is referenced in the statement from [REDACTED] above at Item 2.



You continue indicating that: *The roof design was changed during the planning process and the changes meant the roof slightly breached the 45-degree guidelines.*

In actual fact the original application failed the 45° Degree Rule but the revised version was 1.05m Higher so this increased height has exacerbated the failure to meet the 45° Degree Vertical Rule (even though the proposal was to be sunk in the ground by approximately 0.6 metres). It should be noted that there are no tolerances specified in the Supplementary Planning Policy and once a marginal indeterminate tolerance is allowed, the policy becomes void as a precedence has been set to which other applicants can allude to a concession.

In addition, it should be noted that the 45°-degree rule is independent of the BRE daylight requirements.

You Continue in paragraph 9 to state:

“However, the developer submitted a further light report and the case officer decided the impact on Mr Y and Ms Z’s home would be negligible. I understand Mr X does not agree, but the case officer was entitled to use their professional judgement and the Ombudsman cannot question this unless there is evidence to show it was flawed.

We have shown in full detail within our submission exactly why the Daylight Report is flawed, on pages 12, 13 & 14 of our submission of 11th March 2020.

This is a subjective comment however, a professional judgment does NOT allow ignoring Policies and we have provided ample detailed evidence to support our complaint.

At Paragraph 10 you state:

“The London Plan was a material planning consideration. However, failing to comply with all aspects of the London Plan was not necessarily fault and the Council needed to weigh up the issues against other material considerations to decide if the proposal was acceptable. The case officer accepts the development’s density levels are higher than the levels detailed in the London Plan. But the Plan says it does not need to be automatically applied and the officer’s report details why the proposed density levels are acceptable.”

The Case Officer’s Report at Para 8.5 States:

*“8.5 In respect to the density of the scheme, representations have raised concern over the intensification of the site and overdevelopment. The site is a suburban setting with a **PTAL** rating of **1a** and as such, the London Plan indicates that the density levels ranges of **150-200 habitable rooms per hectare (hr/ha)**. The residential density of the development would be **305 hr/ha**. However, the London Plan further indicates that it is not appropriate to apply these ranges mechanistically, as the density ranges are **suitably broad** to enable account to be taken of **other factors relevant to optimising potential** – such as **local context, design and transport capacity**. These considerations have been satisfactorily addressed and the London Plan provides sufficient flexibility for such higher density schemes to be supported.”*

The London Plan Policy 3.4 Optimising Housing Potential at para 3.30 states:

- 3.30 Where transport assessments other than PTALs can reasonably demonstrate that a site has either good existing or planned public transport connectivity and capacity, and subject to the wider concerns of this policy, the density of a scheme may be at the higher end of the appropriate density range. **Where connectivity and capacity are limited, density should be at the lower end of the appropriate range.** The

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Housing SPG provides further guidance on implementation of this policy in different circumstances including mixed use development, taking into account plot ratio and vertical and horizontal mixes of use.

The appropriate range being that defined for the equivalent PTAL as Stated in Table 3.2. of the Policy.

The locality of this application was at the very low Public Transport Accessibility Level of 1a. on a scale of 0 to 6.

So, for what reason of “**local context**” – “**Design**” and “**Transport Capacity**” does the case officer justify this excessive density to be allowed? The Case Officer has **NOT** identified any **justification** by which these **parameters** can allow an increased density to be justified.

- a) What justification can the “Local Context” allow an increased Density?
- b) What justification can the “Design” allow an increased Density?
- c) The Transport Capacity at TfL **PTAL 1a** does NOT give reason to increase Density as we have shown in our representation.

In fact, that is the fundamental reason for our objecting to the increased Density! The proposal has **unsustainable Public Transport Accessibility**.

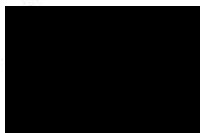
Where have these considerations been satisfactorily addressed?

Resultant on the foregoing and our very detailed submission of 11th March 2020, we respectfully request that you reconsider your decision with regard all the evidence provided and fully investigate our complaints in order to the regain confidence in the planning process.

Kind regards



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



Sony Nair – Chairman, Monks Orchard Residents’ Association.
On behalf of the Executive Committee, MORA members and local residents.

Cc:
Sarah Jones MP Croydon Central