

The Local Government Ombudsman
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Monks Orchard Residents' Association
(MORA) Planning

11th November 2019

Email:

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Complaint Ref: Complaint: CAS-73997-G6H8D7 London Borough of Croydon - Escalation to the Local Government Ombudsman, Planning Application Ref: 19/01761/FUL Pegasus 18a Fairhaven Avenue, Croydon CR0 7RX.

Dear Sir / Madam

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 now charge a membership fee – we raise minimal operating costs, funded from advertisers in our quarterly magazine.

Our original Stage 1 Complaint related to Planning Application approval for: 'Pegasus' 18a Fairhaven Avenue, Croydon CR0 7RX. Ref: 19/01761/FUL.

Our original complaint is threefold:

- 1 The failure of interpretation of the current adopted planning policies to ensure cumulative development proposals fully meet the requirements for the localities' existing and planned public transport infrastructure as define in the current adopted London Plan Policy 3.4 & the emerging London Plan Policy D1A - Infrastructure requirements for sustainable densities.
- 2 The failure to fully consider the implications of 'Access width' limitations which are non-compliant to SPD2 section 29 and the resulting local parking stress.
- 3 The lack of consideration of contribution to Flood Risk into the Chaffinch Brook or to obtain advice from the Chaffinch Brook "Flood Alleviation Study" (FAS) to verify whether the proposal would contribute to increased risk of local flooding and contribute to the Chaffinch Brook culvert and flood risk toward Bywood Avenue.

These issues affect **ALL** residents in the local area of this proposed development, now approved and we (MORA) raise this complaint as the **Local Residents' Association** on behalf of **ALL residents** in **Fairhaven Avenue** who are affected.

The following is our response to Ms. Shifa Mustafa Executive Director of Place London Borough of Croydon, to our Stage 2 escalation (The Red Text is the response by Ms. Shifa Mustafa, Blue Text are other sources of information).

Your Response states in your order as depicted:

SPD's (Supplementary Planning Documents)

“SPD's regularly influence and inform the decision-making process. SPD's, whilst deliberated as other material considerations, are not planning policy, and they are not a set of statutory rules; as the name suggests, they provide guidance to inform suitable design approaches, and are treated as material planning considerations. The Planning Team do take the guidance outlines in to SPD's into consideration.”

However, this understanding of **SPD2 level of 'weight'** and **'guidance'** is difficult to 'believe' as in correspondence from one of the **Croydon LPA Senior Planning Officers** relating *“Without Prejudice”* letter to an applicant regarding a **Pre-Application Meeting** dated 10th June 2019 and displayed in the document list for Pre-Application (and as such is now in the public domain) **Ref: 18/05747/PRE** at paragraph **“Policy”** on page 2 States under:

“Croydon Local Plan (Feb 2018):

*“The Council's Suburban Design Guide Supplementary Planning Document (SPD2) is now adopted and carries full weight. This document provides guidance for **suburban residential developments**, development in Areas of Focussed Intensification and extensions and alterations to existing homes across the borough. The document provides **technical design guidance** that seeks to both limit any negative impact on places, including the amenity of existing residents, and frame opportunities where increased densities can enhance places and bring benefits to communities. You should design any future scheme in line with this document, and refer to it in your Design and Access Statement. The above policy background represents the framework within which all applications are determined. Any submitted application must make specific reference to the above policies and how any proposed scheme would address these. Submitted documentation such as Planning Statements and Design and Access Statements need to accurately reflect the current policy position, in order to be considered up to date and relevant documentation. Failure to bring your application submissions in line with this policy will result in the invalidation of any future planning application...”*

The underlined statements provide clear evidence that require applicants to consider SPD2 as **“Policy which carries “FULL” weight for determination.”**

Complaint #1 The failure of interpretation of the current adopted planning policies to ensure cumulative development proposals fully meet the requirements for the localities' existing and planned public transport infrastructure as define in the current adopted London Plan Policy 3.4 & the emerging London Plan Policy D1A - Infrastructure requirements for sustainable densities.

You then continue:

Density

“The emerging London Plans seeks to deal with density in a more flexible manner. We are awaiting the outcome and report from its Public Examination. We have not ignored the density matrix and the Planning Officer report detailed the proposed density of the development and how the density matrix calculations were covered within the decision process. There is a current policy, which is informed as a starting point within the density matrix, to determine appropriate densities, which we followed in this case. However, the density matrix is not a determining factor in the decision-making process.”

“We assessed application 19/01761/FUL on its own merits, and felt that the density of the development was acceptable. The application and was fully discussed at the Planning committee meeting, prior to approval.”

Our response:

On what basis and grounds was it felt that the Density of the Development was acceptable? The policies do not provide for a vague or subjective analysis of Density.

The current adopted Policy for Residential Density appropriate for the locality (Setting) and Public Transport accessibility is given in the London Plan Policy 3.4 at Table 3.2 Density Matrix which gives ‘broad’ ranges of habitable Rooms per Hectare (hr/ha) and its relationship with Public Transport Accessibility (PTAL) for the setting (Suburban, Urban, Central) in this case Suburban.

The emerging new London Plan is not yet adopted. The current adopted London Plan Policy is Policy 3.4 Optimising Housing Potential which embodies the Density Matrix at Table 3.2.

The emerging Draft London Plan is currently the subject of Examination in Public (EiP) and until this draft revised London Plan is actually adopted the current adopted London Plan takes precedence.

The NPPF states at para 48:

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 emerging London Plan

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 services22A).
- 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.

At the time of this determination on 20th June 2019, the new Draft London Plan Examination in Public (EiP) was still in progress. The **Inspector's Report** was published on **8th October 2019** and at **Page 60 "Design Led Approach"** States:

"Design led approach

274. Further suggested changes have amalgamated policies **D1, D2 and D6**. Four policies now replace the previous three policies.

275. This suite of policies provides a **sequence of considerations** to assist in the delivery of well-designed development, **at an appropriate density**, that responds to **local character, form and infrastructure capacity**. They are aimed to put **design at the core of plan making** and decision taking. In short, they **require boroughs to determine a local plan's spatial strategy** to meet its growth requirements based on a **thorough understanding of the character of the plan area**. **Identified infrastructure deficiencies should be addressed and optimised site capacities established for ALL site allocations and other development proposals, through the exploration of design options.**

276. Requiring boroughs' plans to determine the capacity of allocated sites would provide an opportunity for **community involvement**. It would also provide more certainty to developers by providing **clear parameters for future schemes**. Ensuring a Plan's overall spatial strategy and individual site capacities are based on **adequate supporting infrastructure will assist in the delivery of sustainable development**. It would also assist in the identification of locations that may be suitable for tall buildings through the Plan making process.

277. **Concern was expressed that the requirement for an area assessment would be a lengthy process**, thereby **unreasonably delaying local plan production and development management decisions**. However, requiring boroughs to address these issues at the **start of the plan making process** will mean that at the development management stage there will be a solid evidence base in place on which to make decisions. This in turn should assist in quality and speed of decision-making. As over half of boroughs have already produced a **"characterisation study for their areas"**, we are not convinced that these requirements would impede the delivery of development. ..."

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.

We contend that as **Croydon LPA had NOT and still have NOT** produced an adequate **“Characterisation Study”** in preparation for the replacement London Plan Policy for our area, the **Draft London Plan Policy** requirement had not **progressed sufficiently** to carry **more weight** than the **current adopted policy** as the **Draft London Plan** has only recently completed the **Examination in Public (EiP)** and the Inspector’s report published on **8th October 2019**, subsequent to this determination at **para 277** indicates that **LPA local Plans need time to undertake** their local area’s **“Characterisation assessments”**.

In addition, the **SPG for guidance to implement the new London Plan Policy** will not be published (*in draft form*) until early **2020** as can be **confirmed** by the written answer to our question to the **Mayor** at the **17th September Mayor’s Question Time**.

(See: <https://www.london.gov.uk/questions/2019/19791>)

Therefore, the proposal was NOT determined on the current London Plan Policy and would NOT meet the objectives of the emerging London Plan Policy and is therefore NOT SUSTAINABLE and should be resisted.

The statement:

*“There is a current policy, which is informed as a starting point within the density matrix, to determine appropriate densities, which we followed in this case. **However, the density matrix is not a determining factor in the decision-making process.**”*

Is covered by the current policy 3.4 statement:

Policy 3.4 Optimising housing potential

Policy

Strategic, LDF preparation and planning decisions

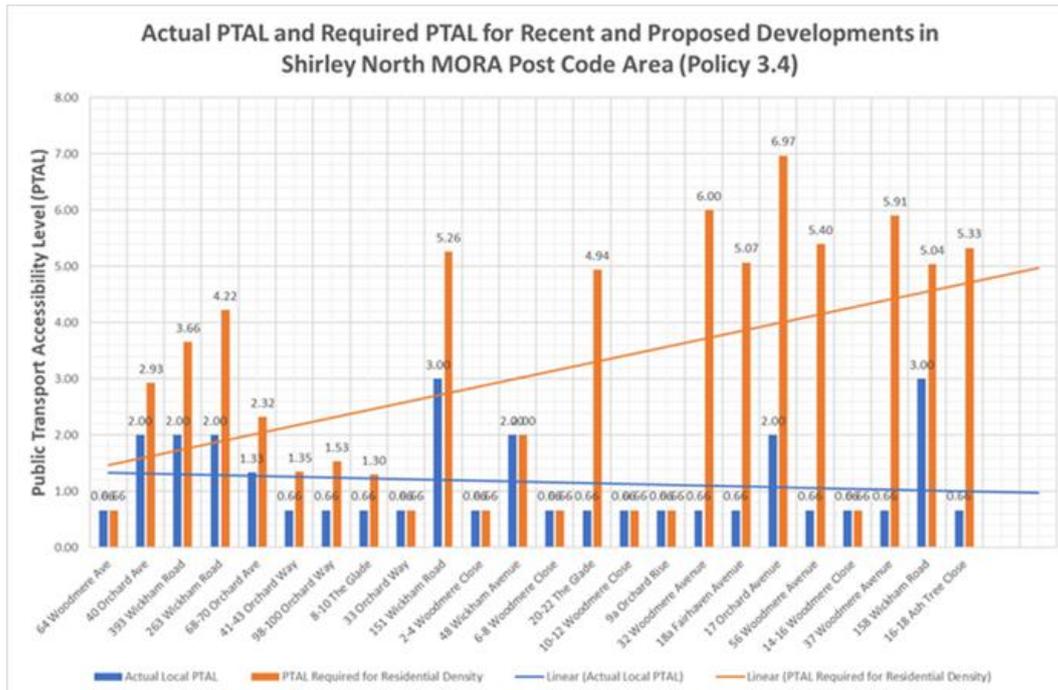
A Taking into account local context and character, the design principles in [Chapter 7](#) and public transport capacity, development should optimise housing output for different types of location within the relevant density range shown in **Table 3.2. Development proposals which compromise this policy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

Table 3.2 Sustainable residential quality (SRQ) density matrix (habitable rooms and dwellings per hectare)			
Setting	Public Transport Accessibility Level (PTAL)	Public Transport Accessibility Level (PTAL)	Public Transport Accessibility Level (PTAL)
	0 to 1 (1a=0.66)	2 to 3	4 to 6 (RD 5.07 HD 4.97)
Suburban	150–200 hr/ha (≈183hr/ha)	150–250 hr/ha	200–350 hr/ha (280.11 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 (3.33 hr/u)	40–65 u/ha (≈56.5u/ha)	40–80 u/ha	55–115 u/ha (84.03 u/ha)
2.7–3.0 hr/unit	50–75 u/ha	50–95 u/ha	70–130 u/ha

Table 3.2 for this development at 18a Fairhaven Ave.

Red actual proposal, **Blue** recommended values at PTAL 1a

The calculations to support these figures are contained in our submission dated 8th May 2019 (in the Document pack)



The above Histogram shows the cumulative increase in PTAL required, resultant on recent approved and proposed excessive Residential Densities, non-compliant to the London Plan Policy 3.4 (based on the proposed development Residential Density evaluation of required PTAL to support the Density in accordance with Table 3.2) and future Trends.

See page 6 of: <http://content.tfl.gov.uk/connectivity-assessment-guide.pdf>

However, there are considerations which **allow** increased densities and guidance which is given in the **SPG Housing (2016)** document at **para 1.3.50 to 1.3.55** but the case officer has **NOT** given any **identified justification** or any **defined reason** for **NOT** meeting the guidance of **Policy 3.4 Table 3.2** broad ranges for a **suburban** setting at **PTAL 1**.

There is no indication from 'Transport for London' that they are abandoning this **Public Transport Connectivity Assessment** provided by the **TfL WebCAT**.

<https://tfl.gov.uk/info-for/urban-planning-and-construction/planning-with-webcat/webcat>

We have not had an answer to our question:

What **"site specific factors which are so significant"** to have given sufficient weight for this proposal at the lowest **Public Transport Accessibility Level (PTAL) of 1a** at recommended **Residential Density** in the broad range of **150 to 200hr/ha** to allow a **Residential Density** of **280.11hr/ha** which requires a **PTAL of 5.07** – in the highest range possible, or a **Housing Density** at **PTAL 1a** with recommended range of **40 to 65u/ha** to be actually at **84.03u/ha** requiring a **PTAL of 4.97** – again in the highest range **4 to 6**?

The locations Public Transport Infrastructure could not support the proposed development's Residential Density as measured by habitable rooms per hectare (hr/ha) was too high for the available and forecast public transport accessibility for future occupants of the development in accordance with the Policy and by definition **should have been resisted**.

You continue:

Approval on the basis 16a and 18a "looked similar?"

"I agree that the two developments do differ in density, due to the proposed number of habitable rooms. However, having reviewed the applications, I agree that the scheme are similar in appearance, which is a consideration taken into account to ensure developments are in keeping with the local area."

We do **NOT** object to the fact that these two developments look similar – we object to the statement that the visual similarity has been a determining factor irrespective of other related parameters that are inappropriate for the locality.

16a Fairhaven Ave. Ref: 06/04589/P	Pegasus 18a Fairhaven Ave Ref: 19/01761/FUL
<ul style="list-style-type: none"> • 5 x 3 bed houses (5 dwellings) • Site area ≈0.12ha • Housing Density = 41.66 u/ha • Residential Density = 208.33 hr/ha • Occupants/ha = 208.33 bs/ha • Access Drive width = 3.72m • SPD2 Access req'd = 3.6m 	<ul style="list-style-type: none"> • 6 Flats and 3 Houses (9 Dwellings) • Site Area = 0.1071ha • Housing Density 84.03 u/ha • Residential Density = 280.11 hr/ha • Occupants/ha = 308 bs/ha • Access Drive width = 2.75m • SPD2 Access req'd = 3.6m

The actual parameters of **number of dwellings**, number of bed-spaces i.e. **occupants**, **Residential** and **Housing Density** for the **Site Area** and locality has **NOT** been considered as parameters for determining its acceptability within the context of the available and future **PTAL** and the local **setting** of the proposed development. To assess a development on the ground of visual acceptability only is inappropriate without consideration of other related factors.

Our Complaint #1 therefore still stands and we would appreciate the Local Government Ombudsman investigation and adjudication on this analysis.

You Continue:

Delivery of Housing

*"The delivery of new housing within Croydon is of primary importance, and is in-line with the London Plan. It is also important that we balance the delivery of housing with infrastructure. We use the Community Infrastructure Levy, which is applied to developments to help fund the necessary growth to the local infrastructure. I do not agree that we can compare Croydon's targets with those set for the London Borough of Bromley, as it is a different borough, facing its own planning targets and considerations. I am satisfied that we are working to meet our proposed targets regarding the delivery **of** new housing."*

We accept that more housing is of primary importance but that these dwellings should be of acceptable accommodation standards and appropriate Housing and Residential Density for the location and the current and planned Public Transport accessibility – which is the responsibility of the Local Planning Authority (LPA) i.e. **"Development Management"** to enforce in their determinations.

We have **NOT** seen any **improvement of Infrastructure** in our locality over the **preceding decade** as a result of collected **Community Infrastructure Levy (CIL)** from any local development spent locally (See Histogram above).

Complaint #2 The failure to fully consider the implications of 'Access width' limitations which are non-compliant to SPD2 section 29 and the resulting local parking stress.

You Continue:

Development fails to provide acceptable off-street parking

"The development has a car parking ratio of 1 to 1, which meets requirements and allows each property access to personal off-street parking space."

The Croydon Plan 2018 states at para 10.26 & Policy DM29:

10.26 Strategic Policy SP8 provides a strategic overview for **reducing congestion** and improving highway safety. This policy extends this approach to ensure that **individual developments** consider these matters.

Policy DM29: Promoting sustainable travel and reducing congestion

To promote sustainable growth in Croydon and reduce the impact of traffic congestion development should:

- a.** Promote measures to increase the use of public transport, cycling and walking;
- b.** Have a positive impact and **must not have a detrimental impact on highway safety for pedestrians, cyclists, public transport users and private vehicles;** and

Not result in a severe impact on the transport networks local to the site which would detract from the economic and environmental regeneration of the borough by making Croydon a less accessible and less attractive location in which to develop.

The proposal is a narrow Cul-de-sac off an existing Cul-de-sac with very limited on-street parking and an extremely limited turning head which would be reduced by the access to the proposed development. The allocation might meet the 1 to 1 requirement but there is no legal restriction on car or commercial vehicle ownership which has to be parked somewhere. This **"somewhere"** is **local on-street parking** if the on-site allocation is inadequate.

You Continue:

The development does not give adequate access to emergency vehicles

"I appreciate that the SPD's do refer to width for emergency vehicle access but, as explained above, SPDs are guidance. Emergency access was discussed at the planning committee meeting, partially regarding the width of the access to the development and, after the committee considered access, they approved the development."

SPD2 has full weight as detailed above and the **stated guidance** does **not include tolerances**. Therefore, an access width restriction of actual **physical measured** drive access at the boundary with the footway width of **2.83 metres** and at the gate posts further into the drive, the width is **3.0m width** (as measured by a local resident). The access drive widths as shown on the applicant's plans show exactly **3m width** (scaled off the applicant's plans when

magnified to 112% when 1cm = 1m) **which is slightly misleading as it does not reflect the 2.83m width restriction** at the footway boundary.

SPD2 Suburban Residential Development guidance:

New driveways and Hardstanding 2.29.5 states:

“New driveways should be designed in accordance with Figure 2.29e and 2.29f.”

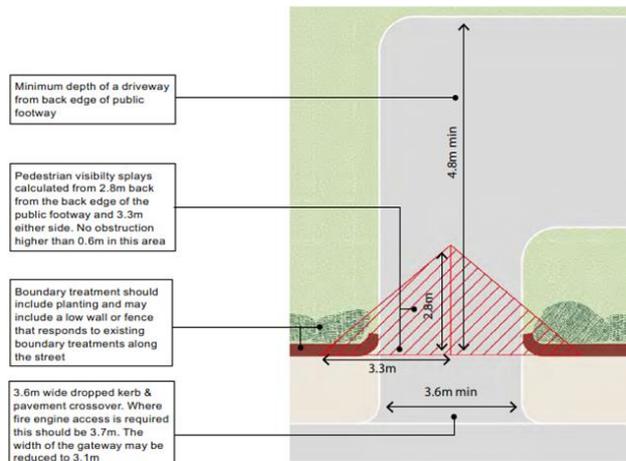


Figure 2.29e: Requirements for entrances and boundary treatments.

However, **this illustration** is for a **single dwelling drive** and for drive to a **hardstanding** – **NOT** an access drive for a small **backland estate development of 9 Timber Frame dwellings**. The issue relating to access is predicated by the need for ease of emergency vehicle(s) access from the Fire and Ambulance emergency services – especially when considering the likelihood of Timber Frame construction of the proposed development.

This existing width would be acceptable for a single family dwelling’s occasional entrance and exit but is **totally unacceptable** for access to a small **backland estate development** accommodating **33 occupants** and **9 cars** and to provide access for the various delivery vehicles to the **9 dwellings**, lorries for building construction and materials and removal Pantechnicons for furniture and white goods delivery when new occupants move in to the new dwellings. The Drive Access width as required by **SPD2 Section 2.29** is **3.6m minimum** with a **3.3m visibility splay** from the centre of the drive to either side for safety of pedestrians (See fig 29e). The adjacent wall RHS view toward the drive is greater than 0.6m. This proposal with drive width of **2.83m** does **NOT** meet this SPD2 requirement and **should therefore have been refused**.

In order to provide **access** for standard pump Fire Appliances a minimum unobstructed **road width** of **3.5 metres** is required to give **access**, to within **70 metres** of the allotment centroid and **90 metres** to the nearest fire hydrant.

<http://www.mfb.vic.gov.au/media/docs/GL-27%20v4a%2003.2011-3e42cd76-7c05-462b-bdf3-e127b68592d4-0.pdf>

No amount of discussion by the Planning Committee can change the physical constraints and limitations of the access width. Fire Tenders need to get as close as possible to the source of a potential fire.

A Block of Flats of Timber Frame construction at Worcester Park was totally destroyed on Monday 9th September 2019.

<https://www.theguardian.com/uk-news/2019/sep/09/worcester-park-fire-four-storey-block-of-flats-alight-in-south-west-london>



Worcester Park Block of Flats Fire (Timber Framed) – 9th September 2019

Our Complaint #2 therefore still stands and we would appreciate the Local Government Ombudsman investigate and adjudicate on this analysis.

Complaint #3 The lack of consideration of contribution to Flood Risk into the Chaffinch Brook or to obtain advice from the Chaffinch Brook “Flood Alleviation Study” (FAS) to verify whether the proposal would contribute to increased risk of local flooding and contribute to the Chaffinch Brook culvert and flood risk toward Bywood Avenue.

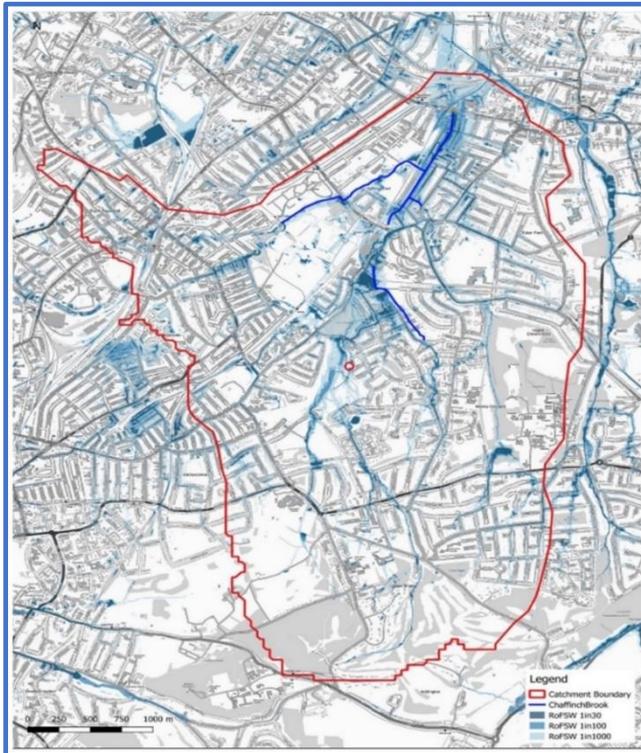
You continue:

Engagement with the Chaffinch Brook Flood Alleviation Study

“I am satisfied that we complied with all the statutory Consultation requirements for this development, and we were not required to engage with the Chaffinch Brook Flood Alleviation Study. Additionally, with Sustainable Urban Drainage (SuDS) being a requirement of the approval of this development, it is likely that surface water draining may improve following the completion of the development.”

The supposition that a SUDS system “*may improve*” surface water drainage in a location

predominantly of London Clay is simply not a good enough reason to have ignored the study. It may be that you are not required to engage with the Chaffinch Brook Alleviation Study but as the Council are part funding this study and it is very relevant to this proposal, it seems eminently sensible to have done so as the proposed development could contribute to potential additional surface water flooding in this locality.



The Chaffinch Brook tributaries.

The Chaffinch Brook Alleviation Study Catchment Area marked in Red.

The Site Location Circled Red.

The Chaffinch Brook catchment is a complex system of rivers and ordinary watercourses. While flooding cannot be completely prevented, in order to manage it better it is important to understand how and why it happens. AECOM, a consultancy is conducting a study on behalf of Croydon Council and Bromley Council that look into the causes and impact of flooding. By collecting data about flood risk from people who live/work/visit the study area, They endeavour to identify potentially affordable and viable solutions that could improve the management of the flood risk.

https://getinvolved.croydon.gov.uk/kms/dmart.aspx?strTab=ConsultationTimeline&PageType=item&filter_SurveyId=547

<https://www.croydon.gov.uk/sites/default/files/articles/downloads/Local%20flood%20risk%20management%20strategy%20summary.pdf>

Our Complaint #3 therefore still stands and we would appreciate the Local Government Ombudsman investigate and adjudicate on this analysis.

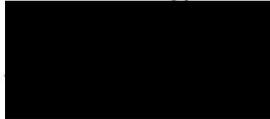
In summary, we believe our Complaint is worthy of investigation as detailed above and we would appreciate the Local Government Ombudsman consider this evidence and adjudicate on the issues raised. We are of the view that the Policies for sustainable development requires assessment of Residential Densities to be supported by the available and planned Public

Transport Infrastructure, for Access to Backland Developments to be safe and suitable for emergency vehicle access and for reasonable assessment of possible surface water flooding.

We request this investigation on behalf of ALL the local affected residents of Fairhaven Avenue, Croydon CR0 7RX represented by MORA, their local Residents' Association.

Kind Regards

Derek Ritson



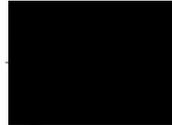
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Derek C. Ritson I. Eng. M.I.E.T.

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

Sony Nair



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Cc:

Cllr. Sue Bennett	Shirley North Ward Councillor
Cllr. Richard Chatterjee	Shirley North Ward Councillor
Cllr. Gareth Streeter	Shirley North Ward Councillor
MORA Executive Committee	
Affected Local Residents	