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**Monks Orchard Residents' Association
Planning**

29th January 2021
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Local Planning Authority Complaints Procedure - Maladministration by Officers.

Dear Sarah

We have raised this issue in past correspondence with you but we now have stronger evidence to support our concerns. Our options for challenging an approval are a Judicial Review – much too expensive – or a formal Complaint. Following a number of recent complaints,^[1] concerning planning decisions, raised by MORA to the Croydon Local Planning Authority (LPA) and subsequently to the Local Government Ombudsman (LGO), it is now apparent that there is no adequate procedure in place to ensure the LPA is held accountable for its decisions.

The current procedure includes Stage 1 and Stage 2 complaints directly to the Council and, if still dissatisfied with those responses, escalation to the LGO. It has now become quite clear that the complaints have to be based entirely on perceived maladministration and/or service failure in making the decision, not on the decision itself. In addition, the LGO will only consider complaints from individuals who perceive they have been materially affected by the decision.

This totally prevents any Residents' Association escalating a perceived valid complaint to the LGO where the complaint includes issues on behalf of all residents in the locality. The LGO even appears to be confused, stating: *"The focus of my investigation has been, entirely appropriately, on the claimed personal injustice caused [REDACTED] [2] by the Council's actions in this matter, in line with the Ombudsman's jurisdiction and our guidance on the investigation of complaints. Where a wider community campaign is concerned, an appropriate route to pursue this might be via local councillors".*

The only way Local Councillors are able to represent our views on planning decisions is at the planning committee meetings where a limited number of representatives are given just 3 minutes each to present their points, mainly objections. 'Scrutiny' cannot consider complaints but may consider any policies, practices or procedures that are giving cause for concern. Scrutiny^[3] does not consider matters within the remit of the Planning and Licensing Committees and rarely considers issues that affect just one locality in the borough.

All of MORA's objections to planning applications are presented during the consultation period, prior to the LPA making their decision. These include detailed references in the application to non-compliance with adopted planning guidelines and regulations. As well as points specific to the proposed design of the structure, including accommodation standards, many of these refer to points such as over-intensification, progressive intensification, lack of infrastructure and/or facilities to support the proposal, all of which affect the wider area, not specifically the immediate residents. However, all residents in the wider area are *'materially'* affected by these issues.

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

[2] Redacted for privacy/confidentially until the report is published by the LGO and is in the public domain.

[3] See: <https://www.croydon.gov.uk/democracy/dande/scrutiny/getinvolved>



If the LPA refuse a planning application, the applicant has the right to appeal. This appeal process does not question maladministration or service failure, but the appellant's "grounds of appeal" can question the actual decision itself. In other words, the applicant is allowed to question or appeal the decision.

However, if the LPA approves a planning application, there is no equal and opposite right of appeal by objectors. A challenge can be made by Judicial Review but this is extremely costly and limited to maladministration, not the decision itself.

Therefore, the questions MORA poses to you and wants you to escalate to Government and the Local Authority, are as follows:

- 1) For the Government:
Can you advise who is responsible for ensuring the LPA abides by its Constitution and adopted Planning Policies and Planning Law if a Planning Officer recommends an application which is then granted based upon suspect guidance or non-compliance to adopted Planning Policies, as we have evidence that the cycle of Stage 1, Stage 2 Complaints and escalation referral to the LGO is limited and inadequate ^[4]?
- 2) For the Ministry of Housing, Communities and Local Government:
Can the law/policy be amended to allow objectors' appeals to the Planning Inspectorate if an approval is given based on suspected or proven non-compliance to adopted Planning Policies or false guidance to the Planning Committee?
- 3) For the Ministry of Housing, Communities and Local Government:
Can you request an amendment to the Local Government Act 1974 Section 26A ^[5] Legislation to allow the LGO to investigate complaints from bodies such as Residents' Associations, when a complaint affects the wider locality, not just a 'materially' affected neighbour, on grounds of the "Communities Right to Challenge" ^[6] Statutory Guidance?

The 1974 Act requires that a complainant must have 'sustained' injustice in consequence of maladministration in connection with the action taken by or on behalf of an authority. ("Maladministration" is not defined in the legislation).

And if none of the above are possible, can you inform us who actually holds a Local Planning Authority to account?
- 4) For the LPA:
Can the Planning Constitution be clarified to indicate that recourse to the LGO is limited ONLY to those residents materially affected by the approval of a development?

Kind Regards



Derek Ritson I. Eng. M.I.E.T.
Monks Orchard Residents' Association
Executive Committee – Planning



Sony Nair
Chairman
Monks Orchard Residents Association

^[4] See: <https://www.legislation.gov.uk/ukpga/1974/7/section/26>

^[5] See: <https://www.legislation.gov.uk/ukpga/1974/7/section/26A>

^[6] See: <https://www.gov.uk/government/publications/community-right-to-challenge-statutory-guidance>



The Appendices to this letter have been provided for your information and clarification of the evidence supporting the letter.

Appendix A - Details of Ash Tree Close, limited to the stages of complaint and outcome.

All the supporting documents can be viewed on our website under: <http://www.mo-ra.co/planning/planning-complaints/> but the following is a brief *résumé*.

For brevity and explanation, I have provided below an outline of recent Complaint history of a Stage 1, Stage 2 and escalation to the Local Government Ombudsman which highlights our concerns.

- 1) We raised an objection to Planning Reference 19/04705/FUL for 16-18 Ash Tree Close on 20th October 2019. ^[7]
- 2) The Case Officer's Report recommending approval was published on the on-line public register prior to the Planning Committee. ^[8]
- 3) Representations were made at the committee meeting but the application was approved.
- 4) We were concerned about inaccuracies in the case officer's report and raised a Stage 1 Complaint on 6th April 2020. ^[9]
- 5) We received a response to our Stage 1 Complaint on 30th April 2020 but not satisfied that it adequately answered our complaint we raised a Stage 2 Complaint ^[10] on 18th May 2020.
- 6) The Response to our Stage 2 Complaint received on 15th June ^[11] was equally unsatisfactory and included actual inaccurate statements from Ms Mustafa – Director of Planning.

At this stage, I refer you to the **London Borough of Croydon Planning Constitution Section 4k at para 1.2 as follows:**

1.2 The determination of planning applications is a formal statutory administrative process involving the application of national, regional and local planning policies that takes place within a legislative framework. Planning decisions can be appealed by unsuccessful applicants and challenged by way of judicial review by aggrieved parties. Complaints about maladministration and injustice can also be made to the Local Government Ombudsman.

- 7) It was our understanding that for a Residents' Association to register a complaint with the LGO we needed support from an affected resident and we therefore obtained written consent from both residents adjacent to the approved development at 16-18 Ash Tree Close (i.e., 14 & 20 Ash Tree Close).
- 8) In accordance with Para 1.2 of the Planning Constitution we escalated our complaint to the Local Government Ombudsman on 13th August, including the Consent forms

[7] See: http://www.mo-ra.co/wp-content/uploads/2019/10/MORA_Comment_1904705FUL_16_18_Ash_Tree_Close.pdf

[8] See: https://publicaccess3.croydon.gov.uk/online-applications/files/C2C2FBC04A33B3B0EEBA6C4FCC4CA1C9/pdf/19_04705_FUL-ITEM_6.6_16-18_ASH_TREE_CLOSE_CROYDON-2795180.pdf

[9] See: http://www.mo-ra.co/wp-content/uploads/2020/04/Complaint_Stage_1_1904705FUL_16_18_Ash_Tree_Close.pdf

[10] See: http://www.mo-ra.co/wp-content/uploads/2020/05/16_18_Ash_Tree_Way_CAS163554_Stage_2_Complaint.pdf

[11] See: http://www.mo-ra.co/wp-content/uploads/2020/06/19_04705_FUL_16_18_Ash_Tree_Close_Stage_2_response.pdf



of both residents who fully supported our complaint and the basis of our representations. ^[12]

- 9) The Ombudsman issued Case Id's of 20 003 522 & 20 008 119 which we should have appreciated were only for the two residents (and NO Case Id for the original MORA complaint) ^[13].

It should be noted from this point onward, the MORA complaint and substance of the original complaint was completely disregarded by the ombudsman.

Requests were made from the ombudsman via myself to both supporting residents that they provide their assessment of their perceived injustices resultant on the approved development, which they provided and which I passed on to the ombudsman.

- 10) On receipt of the statements from the affected residents, the ombudsman investigator compiled her draft report for assessment by both residents and myself. ^[14] The ombudsman's draft reports ^{[15] [16]} only assessed the perceived injustices by the affected residents against each complaint reference Id and completely disregarded the substance of the original MORA complaint (Stages 1 & 2 to the LPA and its escalation to the LGO) which was pointed out in my response to the investigator ^{[17] [18]}.

Although the Planning Constitution para 2.1 includes 'maladministration', the LGO are not required to investigate any complaint unless the decision materially affects the complainant.

The LGO investigator's Report states: *Complaints made on behalf of members of the public may be made by a wide range of people or organisations, but only with their (a materially affected residents) consent. ... The focus of my investigation has been, entirely appropriately, on the claimed personal injustice caused [REDACTED] by the Council's actions in this matter, in line with the Ombudsman's jurisdiction ^[19] and our guidance on the investigation of complaints. Where a wider community campaign is concerned, an appropriate route to pursue this might be via local councillors.*

^[12] See: http://www.mo-ra.co/wp-content/uploads/2020/08/19_04705_FUL_16_18_Ash_Tree_Close_Escalation_to_LGO.pdf

^[13] See: http://www.mo-ra.co/wp-content/uploads/2021/01/16_18_Ash_Tree_Close_LGO_Final_Decision_Ref_20_003_522.pdf

^[14] See: http://www.mo-ra.co/wp-content/uploads/2020/11/16-18_Ash_Tree_Close_Ombudsman_Letter_11_11_20.pdf

^[15] See: http://www.mo-ra.co/wp-content/uploads/2021/01/16_18_Ash_Tree_Close_LGO_Final_Decision_Ref_20_003_522.pdf

^[16] See: http://www.mo-ra.co/wp-content/uploads/2021/01/16_18_Ash_Tree_Close_LGO_Final_Decision_Ref_20_008_119.pdf

^[17] see: http://www.mo-ra.co/wp-content/uploads/2021/01/MORA_Letter_LGO_Ref_20_008_119_20_003_522_Ash_Tree_Close.pdf

^[18] See: http://www.mo-ra.co/wp-content/uploads/2021/01/16_18_Ash_Tree_Close_LGO_Final_Decision_Ref_20_008_119.pdf

^[19] See: <https://www.legislation.gov.uk/ukpga/1974/7/section/26>



Appendix B - Details of 20-22 The Glade, limited to the stages of complaint and outcome.

All the supporting documents can be viewed on our website under: <http://www.mo-ra.co/planning/planning-complaints/> but the following is a brief *résumé*.

- 1) MORA raised an objection to Planning Reference 18/05928/FUL for 20-22 The Glade on 4th January 2019 ^[20].
- 2) The Case Officer's Report recommending approval was published on the 1st February 2019 on the on-line public register for the Delegate Business Meeting. ^[21]
- 3) The Delegate Business Meeting approved the application on the 1st February 2019.
- 4) MORA was concerned about inaccuracies in the case officer's report and raised a Stage 1 Complaint ^[22] on 14th February citing non-compliance to Policy DM10.4e – Back Garden Development.
- 5) MORA received a response to the Stage 1 Complaint on 5th March 2019, ^[23] but was dissatisfied with the response and raised a Stage 2 Complaint on the grounds that:

“The only garden to be partitioned is the rear garden and the policy states “after the subdivision of ‘the’ garden” which by definition is referring to the subdivision of “the ‘rear’ garden. (as this is the garden being subdivided). “The front garden is not being partitioned so from a policy viewpoint is really irrelevant to this consideration. When scaling off the supplied plans the retained partitioned garden area is ≈120m² which is significantly deficient by approximately ≈80m² and fails to meet the Policy DM10.4 e) requirement of 200m² after partitioning.”

- 6) MORA received the following response to the Stage 2 Complaint on 9th April:
“You are correct that the scheme exceeds the density matrix (150-200) as set out within the London Plan at 270 habitable rooms per hectare, however given the suburban setting combined with the similar footprint, form and spacing of the proposed dwellings in comparison to the surrounding properties and the acute need for new homes, it is considered an appropriate density for this site.”

And was equally dissatisfied with the response, which is a misinterpretation of the Policy as explained in the London Plan Supplementary Planning Guidance.

And:

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

The reason being that both occupants of 20 & 22 The Glade were renters who were very apprehensive of formally complaining about their Landlord's Planning Application. We raised a formal complaint to the Local Government Ombudsman ^[24] on 14th April 2019, highlighting the reasons we were dissatisfied with the Stage 2 Response from Ms Shifa Mustafa – Executive Director of Planning.

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

[21] See: https://publicaccess3.croydon.gov.uk/online-applications/files/6DFAFA92A3E25F76200E7E35C1BB1C3D/pdf/18_05928_FUL-OFFICER_REPORT_WEB_FINAL-2477565.pdf

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

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

[24] See: http://www.mo-ra.co/wp-content/uploads/2019/04/20_22_The_Glade_Escalation_to_LGO.pdf



- 7) The LGO allocated a Case Id 19 000 971 and responded on 24th May ^[25] that they could not investigate a complaint from MORA as the Residents' Association was not 'materially' affected by the decision.

The LGO Case Officer stated:

"We cannot question whether a council's decision is right or wrong simply because someone disagrees with it. We must consider whether there was fault in the way the decision was reached that is likely to have affected the outcome.

I note you are complaining on behalf of MORA which you say represents 3,879 households in the ward. We do accept complaints from representative organisations but we need to be very clear that we have the consent of those involved."

(This implied that we would need the consent of 3,879 members to sign consent forms that they were "materially" affected by the proposal).

"You are complaining about a planning application for a relatively minor development. I consider any fault there may have been would only affect those in the immediate area, presumably the residents of The Glade or Glade Gardens close to the site. Any injustice may vary and would likely depend on how close someone was to the development."

(The Complaint was relating to non-compliance to agreed and adopted planning policies (which were approved by the Planning Inspectorate) and applies to all Croydon LPA planning applications so affected, irrespective of the type of development. The adopted policies are not subject to the whim of a case officer or the ombudsman – otherwise why bother with any policies?)

"I have enclosed a copy of our consent form. If you can provide a completed copy of this for all those who wish you to act on their behalf, we will consider the matter further. I will take no further action at present."

- 8) As the residents of both 20 & 22 The Glade Host Dwelling to this rear garden development were 'Tenants' renting the properties, they were apprehensive about being identified as Complainants' to the development proposal put forward by their Landlord.
- 9) We responded to the Case Officer on 2nd June ^[26] pointing out that the application was non-compliant to planning policies but the Case Officer replied: ^[27]

"Thank you for your letter. I really do not have anything to add to what I have already explained. If we had consent to consider a complaint from someone who may have been affected by a faulty planning decision, we may decide to investigate it. But as that is not the case, we will not take any further action. I regret our resources do not allow us to engage in correspondence on matters we are not considering."

Thus, proving that a Residents' Association cannot hold an LPA to account for non-compliance to adopted planning policies and cannot represent its members on Planning Approvals which are suspect or have been decided on questionable grounds or worse, any case of maladministration.

^[25] See: http://www.mo-ra.co/wp-content/uploads/2019/05/20_22_The_Glade_LGO_Response.pdf

^[26] See: http://www.mo-ra.co/wp-content/uploads/2019/06/MORA_response_to_LGO_ID_19000971.pdf

^[27] See: http://www.mo-ra.co/wp-content/uploads/2019/06/Ref19000971_LGO_Response.pdf

Appendix C - Supporting information for implementation of an Appeal process of Approvals.

We all agree that we need more homes built but those homes need to comply with the adopted National, Local and Neighbourhood Plans and the adopted Planning Policies within the 'targets' set, to ensure acceptable accommodation Standards for future occupants and that supporting sustainable public transport and service infrastructure capacity is appropriate to support the existing and future residents of a development.

The Planning Policies are defined ostensibly to mitigate against excessive inappropriate, over-developments by aggressive developers, and to ensure that the quality of housing is not compromised by the need to make the most efficient use of land, i.e., squeezing as many dwellings, with high occupancy, into a confined space as possible, inappropriate for the locality, with inadequate amenity space or play spaces for children and the available public transport infrastructure capacity and other infrastructure support services as (*supposedly*) regulated by those planning policies to support the increased occupancy.

If local residents or communities have good grounds for an appeal against a Local Planning Authorities (LPA) "approved" application, which is in contravention of the National or Local adopted Planning Policies, or is a misinterpretation of a vaguely defined policy, it surely should be 'natural justice' that the community, residents or their Residents' Association, have an opportunity to appeal against such 'flawed' approvals, as do applicants, for what they consider to be flawed "refusals".

If the option were available for Local Residents' to appeal to the Planning Inspectorate against an LPA approval which was clearly in breach of the adopted planning policies or a misinterpretation of a vaguely defined planning policy (within "say" 8 weeks of an approval), the LPA Planning Officers and the Planning Committees (Chair and members) would be much more 'professional' in their determinations rather than the current extremely lax approach. It would also require the Local Plans to be more specific in their definitions rather than the vague and subjective statements which allow various interpretations. These vague and subjective policies do not help developers define their proposals or planning officers make their decisions and does NOT provide an effective and efficient methodology for the decision-making processes.

There need be minimal delay to a development waiting notification of an appeal against an approval decision if the window for instigating an appeal were to be limited to within (say) 8 weeks after an approval (i.e., after issue of a notification to the applicant - Decision Note), as developers do not start site works within 8 weeks of a decision due to preparation of site-specific detailed drawings, production of logistics plans for order and delivery of building materials, arranging appropriate mechanical aids and other detailed preparations of drainage drawings which were not undertaken prior to the planning application.

Also, applicants may be required to submit further design details requested in a number of 'conditions of approval' which all take time to prepare or for any additional required surveys to be undertaken and reports to be compiled and provided for assessment.

You might think these issues do not affect you, until a developer purchases the house next door, proposes to demolish it and replace it with a block of flats and your options become very limited.

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