

Making it fit: applying development standards in London

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ACCEPTABLE DEVELOPMENT STANDARDS?



The nub of the issue



- “The ground and first floor flats would suffer greatest loss of light and there would be a greater sense of enclosure.. However there is a balance to be struck between new development and the effect on the neighbouring properties. Living in a densely developed part of central London, some interference with daylight, sunlight and outlook might be expected and it is clear that there are many other properties within the area where there is a similar relationship to the appeal scheme and the neighbouring buildings”

[Appeal decision at Bunhill Row, paragraph 26-27 – Inspector Christine Thorby – 11 May 2012]

The fundamental issue



- Potential conflict between maximization of use of a development site and the requirements of development standards.
- Conflict between issues of value and viability against minimum standards of amenity particularly with regard to residential uses.
- The NPPF appears to be more flexible.
- London Plan is more prescriptive.
- Often the UDPs are even more prescriptive.
- Unfortunately the decisions show a reasonably subjective approach to the tension between maximising the use of land and prescriptive development control standards.

The structure of the lecture



- What are “development standards”?
 - The policy approach at National and Local Level
 - Case law and planning appeals
 - Future trends
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What are “development standards”?



- Not generally material to the principle of development
 - Usually more relevant to a detailed application rather than an outline application.
 - Mostly applicable and focussed on residential development
 - Main examples include: residential amenity, minimum unit sizes, daylight and sunlight, privacy, enclosure, car parking...
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The policy approach: the NPPF (1)



- The overarching Government Policy position takes a broad and flexible approach
- Para 17 – a core planning principle to “seek high quality design and a good standard of amenity”
- Chapter 7 of the NPPF – “Requiring good design”
- In relation to plan-making:
 - LPAs **should not** adopt design policies which are too prescriptive or detailed
 - LPAs should concentrate on guiding scale, density, layout etc. more generally
 - Planning policies should not attempt to impose architectural styles or tastes

The policy approach: the NPPF (2)



- In relation to decision-taking:
 - Great weight should be given to outstanding or innovative designs
 - Permission should be refused for development of poor design
 - Development proposals which show that applicants have worked closely with those directly affected by their proposals will be looked on more favourably.
- Endorsement of the proposition of negotiation and discussion with those who live in close proximity.
- See also DCLG “Technical housing standards – nationally described space standards”

The policy approach – the London Plan (1)



- Part of the development plan for the London area
- Most recent version published in March 2016
- Contains a number of policies relevant to “development standards”
- Much more prescriptive than the NPPF.
- Not an endorsement of National Guidance but rather a different approach which sets down much stronger guidelines and policy relating to development standards.
- And probably more prescriptive than the rest of the UK?

The policy approach: the London Plan (2)



- Policy 3.5 – Quality and Design of Housing Developments
- “Housing developments should be of the highest quality internally, externally and in relation to their context and to the wider environment.”
- “New homes should have adequately sized rooms and convenient and efficient room layouts which are functional and fit for purpose.”
- “LDFs should incorporate requirements for accessibility and adaptability, minimum space standards, including those set out in Table 3.3...”

The policy approach: the London Plan (3)



Table 3.3 Minimum space standards for new dwellings⁵⁷

Number of bedrooms	Number of bed spaces	Minimum GIA (m2)			Built-in storage (m2)
		1 storey dwellings	2 storey dwellings	3 storey dwellings	
1b	1p	39 (37)*			1.0
	2p	50	58		1.5
2b	3p	61	70		2.0
	4p	70	79		
3b	4p	74	84	90	2.5
	5p	86	93	99	
	6p	95	102	108	
4b	5p	90	97	103	3.0
	6p	99	106	112	
	7p	108	115	121	
	8p	117	124	130	
5b	6p	103	110	116	3.5
	7p	112	119	125	
	8p	121	128	134	
6b	7p	116	123	129	4.0

Note to Table 3.3

The policy approach: the London Plan (4)



- Remarkably prescriptive requirements
- London Plan imposes minimum standards relating to both minimum gross internal areas and also the amount of storage space as well.
- BUT Policy 3.5 does contain some flexibility
- Developments which do not comply may be permitted if they are “demonstrably of exemplary design and contribute to achievement of other objectives of this Plan.”

The policy approach: the London Plan (5)



- Other relevant policies to be considered:
 - Policy 3.6 – development proposals that include housing should make provision for play and recreation
 - Policy 5.3 – development proposals should demonstrate sustainable design standards
 - Policy 7.1 – development should be designed so that the layout, tenure and uses improve people’s access to infrastructure
 - Policy 7.2 – design and access statements should explain how the needs of older and disabled people have been integrated into the development
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The policy approach: the London Plan (6)



- Policy 7.3 – development should be designed so as to reduce opportunities for criminal behaviour
 - Policy 7.4 – buildings, streets and open spaces should have a high quality design
 - Policy 7.5 – public spaces should be easy to understand
 - Policy 7.6 – buildings should not cause unacceptable harm to the amenity of surrounding land and buildings, particularly residential buildings, in relation to privacy, overshadowing, wind...
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The policy approach: the London Plan (7)



- The London Mayor has also produced Supplementary Planning Guidance on development standards
- The Housing SPG (March 2016) – Part 2 sets detailed development standards for housing developments, for example:
 - Standard 26 – a minimum of 5sqm of private outdoor space should be provided for 1-2 person dwellings
 - Standard 32 – all homes should provide for direct sunlight to enter at least one habitable room
- See also the Sustainable Design and Construction SPG (April 2014) and Shaping Neighbourhoods Accessible London SPG (October 2014)

The policy approach – Local Plans



- Each LPA will also set development standards in Local Plans and supplementary planning documents
- These may prescribe requirements above and beyond the London Plan and SPGs
- *Plumstead Common Working Men's Club, 71 Kirkham Street* (Appeal Ref: APP/ES330/W/16/3148787) (October 2016)
 - Greenwich Council's Local Plan required new build flats of three or more storeys to have lifts. This was not a requirement in the DCLG Housing SPG. The development scheme did not have a lift.
 - The Inspector decided that the Local Plan prevailed, and permission was refused.

Case Law (1)



- *R (Shasha) v Westminster City Council* [2016] EWHC 3283
 - Policy ENV13 of the Westminster Local Plan – normally refuse proposals which result in a material loss of daylight/sunlight and will refuse if the loss of daylight/sunlight is unacceptable
 - Policy ENV13 – development should not cause unacceptable overshadowing
 - High Court held that Policy ENV13 required a judgment to be reached on whether the loss of daylight/sunlight and increased overshadowing was “material” or “unacceptable”
 - The Council merely said there was “some impact” and that the impacts did not “justify refusal” – this was not sufficient

Case Law (2)



- *R (Watt) v London Borough of Hackney* [2016] EWHC 1978
 - The applicant’s expert light report incorrectly treated school fences as admitting light, when in fact the fences were solid
 - The Officer Report relied on this expert report and advised that the BRE Guidelines were “comfortably met”
 - High Court held that even though the BRE guidelines would be just met even with solid fences, they could not be described as “comfortably met”.
 - Thus, this was an error of fact which was material to the decision and it was quashed.

Case Law (3)



- *Forster v SSGLG* [2016] EWCA Civ 609
 - Proposal for a three storey building in London Borough of Tower Hamlets
 - Objector raised concern as to the effects of loss of light in the neighbouring building having regard to its use for film and photo shoots
 - The Inspector had regard to loss of light generally, but not this specific concern
 - Thus, the Inspector failed to deal with this material consideration and the decision should be quashed.
 - Important to consider this issue in the overall balancing exercise.

Planning appeals (1)



- Where development proposals fall significantly short of development standards, Inspectors are likely to refuse permission...
- *Live and Let Live, 264 Romford Road* (Appeal Ref: APP/G5750/W/16/3145498) (9 January 2017)
 - Proposal for a hotel in London Borough of Newham
 - Inspector emphasised the need for “high quality design” in London Plan Policy 7.4 and “accessible and inclusive design” in London Plan Policy 7.2
 - Found that the hotel rooms would be cramped, claustrophobic and result in loss of privacy
 - Found that also failed to comply with the accessibility development standards in the Shaping Neighbourhoods Accessible London SPG
 - Also, criticised the design and access statement for falling short of the minimum level of information required by the Accessible London SPG

Planning Appeals (2)



- 350 Caledonian Road, London (Appeal Ref: APP/V5570/C/16/3156305) (30 March 2017)
 - Appeal against an enforcement notice under ground (a) – related to a scheme of flats in London Borough of Islington
 - Inspector found that a number of the flats failed to meet the unit sizes in Table 3.3 of the London Plan by a “considerable margin”
 - Also found there would be “sub-standard living conditions” in one flat due to poor natural lighting
 - “significant and serious departure” from development standards.
 - No permission granted under Ground (a).

Planning Appeals (3)



- 228 Crystal Palace Road, London (Appeal Ref: APP/A5840/W/15/3002882) (17 June 2015)
 - Proposal for a two flats in Southwark
 - The two flats fell “significantly” short of the unit sizes in the London Plan and the amenity space requirements the Southwark Design Standards SPD
 - Inspector recognised that the Policy 3.5 of the London Plan allowed for some flexibility in situations where “exemplary design is achieved”
 - But the applicant failed to demonstrate any exemplary design
- See also 698 North Circular Road, Neasden (APP/T5150/C/15/3022276), where the Inspector emphasised the importance of an applicant showing “exemplary design” and “contribution to the achievement of other objectives” if they allege that the exception in Policy 3.5 of the London Plan is met

Planning Appeals (4)



- However, where the failure to comply with development standards is marginal, this is unlikely to be material...
 - *Bains v Hounslow LBC* [2016] PAD 33 (20 May 2016) – the internal floor area of some of the flats was fractionally short of the requirements in Table 3.3 of the London Plan. The Inspector found that such a slight difference was not material and permission should not be refused.
 - *Abdour Road, Ilford* (App/W5780/A/12/2187985) (17 June 2013) – the proposal fell marginally short of the unit size requirements in Table 3.3 – but the Inspector found that there would still be satisfactory living conditions and therefore allowed the appeal.

Planning Appeals (5)



- Even if there is a failure to comply with development standards, there is a balance to be struck...
- *Zeus Estates Ltd v London Borough of Islington* [2014] PAD 25 (26 February 2014)
 - Proposal for 16 flats in Islington
 - The flats did not meet unit size requirements
 - *“Whilst ideally all the council’s concerns throughout the block should be addressed it is clear that within the confines of an existing building there is a balance to be struck between making efficient use of the space available and achieving the highest living standards possible”*
 - The appropriate balance was not struck here – one of the flats in particular was very small and had little natural light
 - The Inspector also recognised that the policies in the London Plan on accessibility also allowed for compromise if the benefits of the scheme outweighed the shortcomings, but that was not demonstrated here.

Planning Appeals (6)



- *465 and 465a Caledonian Road, London (APP/v5570/A/10/2129052) (November 2010)*
 - Student accommodation in Islington for UCL.
 - Argued by developers that standards for students could be relaxed due to the nature of occupation.
 - The Inspector found that there were shortcomings in relation to development standards for daylight, outlook and privacy
 - *“Nevertheless, in taking an overall view of the amenity of the accommodation, it is reasonable to balance the positive aspects against the limitations of these units. I consider that the shortcomings are not so severe as to make the accommodation unacceptable for the proposed purpose. This outweighs the degree of conflict with the development plan on this matter...”*

Planning Appeals (7)



- *Alexandra House [APP/K5600/W/16/3162426] Inspector Terry Phillimore – decision 23 February 2017.*
- Proposal in Pont Street, Knightsbridge to turn 5 flats into 8.
- Main issue was whether the proposed units in the basement would have acceptable living conditions in the basement.
- CL5 seeks good living conditions for occupants including good standards of daylight and sunlight.
- Inspector concluded that the new units would not comply with CL5 by reason of not having adequate living conditions.
- It is necessary to apply the quoted standards to the circumstances of the case in a balanced common sense way.

Future Trends



- “Guiding Light: Unlocking London’s residential density” (May 2017)
- Report by business group London First in partnership with surveyors GIA
- Finds that in the absence of detailed guidance on the issue, a ‘one size fits all’ approach is taken by many councils, resulting in the same daylight/sunlight targets appropriate for a development in suburban locations being applied to developments in central London.
- This hinders London’s ability to deliver the volume of homes that its population needs.
- Recommends more specific guidance on daylight and sunlight should be prepared for London that supplements existing BRE guidelines and with an increasing flexibility.



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