

Chief Planning Officer
London Borough of Camden
Camden Town Hall Extension
Argyle Street
London
WC1H 8EQ

Our ref: PS/24079

Your ref:

Date: 11 February 2025

Dear Sir/Madam

PROPOSED DEVELOPMENT: 2024/5731/P

Demolition of existing dwellinghouse and erection of three storey replacement house, including excavation of basement. Associated works including replacement of front boundary wall and erection of cycle and waste storage.

We have been requested by the owners of Flat 5 and Flat 8, 34 Netherhall Gardens to consider the BRE Daylight and Sunlight Report, submitted as part of the planning application for this proposed development, in respect of its analysis of the daylight and sunlight effect upon neighbouring properties.

The purpose of this Daylight and Sunlight Report is to enable the planning officer to make correct and appropriate comments and recommendations to the planning committee, and then for the committee members to reach their conclusions based upon the correct information. Clearly, therefore, it is absolutely essential that this document, which considers and reports the loss of daylight and sunlight to neighbours, is correct and accurate.

We note the Council's Planning Policies to refer to the use of the BRE Site Layout Planning for Daylight and Sunlight in situations where there might be an unacceptable loss of daylight or sunlight to a neighbouring property.

For the purpose of this consideration of the BRE Daylight and Sunlight Report, we have divided our comments upon this into sub-headings for ease of reading:

VSC and Daylight Distribution

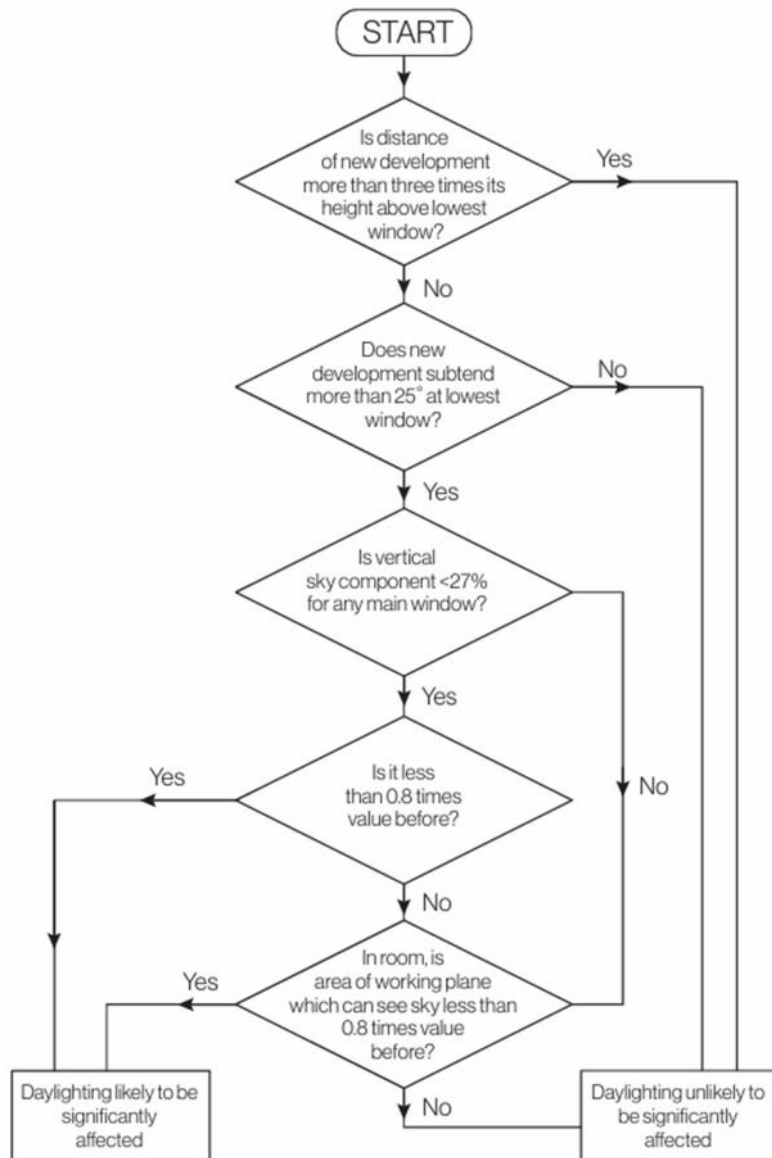
At paragraph 3.1.8 through to 3.1.11, the report presents the results for Daylight Distribution (DD). These results are presented as stand-alone results and conclude that 11 of the 14 rooms tested pass this DD test.

In relation to the DD test for rooms, the BRE guide states as follows to confirm that the loss of diffuse daylight may be adversely affected if either

“the VSC measured at the centre of an existing main window is less than 27%, and less than 0.8 times its former value; or

the area of the working plane (0.85m above floor level in residential properties) in a room which can receive direct skylight is reduced to less than 0.8 times its former value.”

The correct interpretation of this direction within the BRE guide is that, for a room to pass the target standard, it must first pass the VSC requirement and then pass the Distribution of Daylight analysis. If a window does not pass the VSC, the Distribution of Daylight test should not be carried out; the window/room fails the BRE guide standard and the guide states that, as a consequence, the daylight in the room is “likely to be significantly affected”. This is summarised at the sequential table which, below, has been copied from the BRE guide:



Within the BRE Daylight and Sunlight Report for the proposed development, the tests for VSC and DD (Daylight Distribution) have been assessed independently and reported separately, including numbers/percentages of passes and fails. This is misleading and incorrect according to the BRE guide as described above. Again, a room with a window which fails the VSC test has failed; it cannot then be regarded to have passed the DD analysis.

We consider that the representation of the DD results separately in this way is incorrect. As a consequence, we are concerned that this may be misleading to the planning officer and planning committee and we consider that clarification is required.

Setting Alternative Target Values

The BRE guide does include provision of alternative target values for daylight and sunlight, including the following:

- If daylight and/or sunlight to a neighbour's window is self-obstructed by a balcony or a projecting wing of the neighbouring building
- If a building sits close to the boundary and so can be considered to take more than its fair share of light
- If there is an extant planning permission for the site, this can be used to set new target values for daylight and sunlight to neighbours

With regards to a building which may be regarded as being close to its boundary and taking more than its fair share of light, this is assessed by means of a mirror image whereby the existing building is mirrored and this obstruction (a mirror of itself) is used to set new VSC target values for each window.

In this instance, we note that the BRE Daylight and Sunlight report makes reference to building heights and proximity to the boundary, there has not actually been a mirror image assessment. The report simply seems to draw conclusions without any supporting data evidence from a mirror image assessment which is required to set new target values.

At paragraphs 1.3.3 to 1.3.5, the report states as follows:

1.3.3. Two of the factors the BRE guide promotes are:

- The relative heights of the existing and proposed buildings; and
- The proximity of windows in the existing buildings in relation to the boundaries.

1.3.4. In relation to relative heights, the BRE guide suggests that a 'mirror image' can be used to define targets where the proposed building can be of similar height and scale of the buildings it is adjacent to.

1.3.5. It is noted that the proposal is smaller in height and volume than 32 Netherhall Road and substantially smaller than 34 Netherhall Road. Therefore we consider that the design does accord with the BRE targets when using the mirror image approach.

It is our opinion that any such conclusions without actually undertaking the exercise of a mirror image to set alternative target values is wholly incorrect and unjustified. Again, we are



concerned that this is very misleading for the planning officer and planning committee. We consider that these comments should be removed from the report or that a proper assessment should be carried out to set alternative mirror-image target values.

Furthermore, however, we note that, if this mirror image process were to be used to set alternative light level target values, as a hypothetical obstruction, our opinion is that this sets fixed VSC figures to which it is not appropriate to then apply the 0.8 times multiplier tolerance.

If the loss of light impact of a development cannot even pass a mirror image test of a neighbour which it is claimed is too close to the boundary and taking more than its fair share of the light, we consider that is not correct to apply the 0.8 times factor.

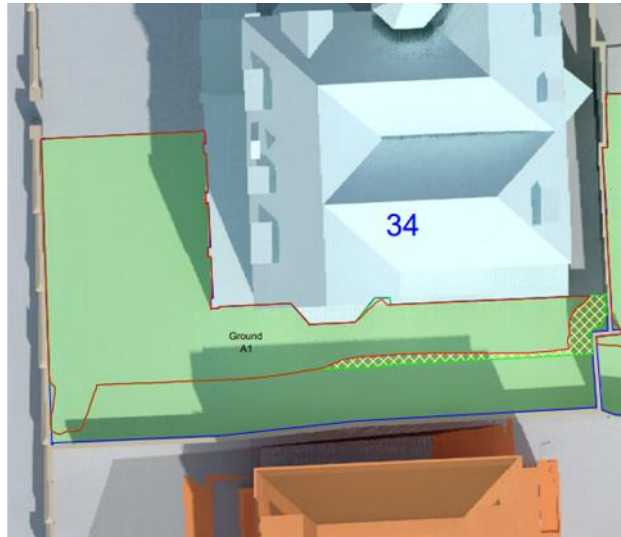
Presentation of results for entire building

We are aware that 34 Netherhall Gardens is a building which has been divided into a number of separate apartments, thus each constituting a separate dwelling. We note that the results for 34 Netherhall Gardens have been presented for the whole building, and so with percentage pass and fails figures for the whole building. We consider that this is incorrect and, again misleading. We are of the opinion that results should be presented separately for each apartment.

Overshadowing

The BRE guide states, at paragraph 3.3.3 that sunlight should be checked for all open spaces where it is required. With regards to residential buildings, the guide suggests that this will comprise “gardens, such as the main back garden of a house or communal gardens ...”

The BRE Daylight and Sunlight Study provided for the planning application assess the garden of number 34 as the entire garden to the south and, at the front, to the west of the building. This is as the image below:



In fact, the front garden of number 34 is not considered to be a usable garden, being at the front of the building but also because this garden area has very significant mature tree coverage, as visible at the image below:



We consider that only the side garden area of 34 Netherhall Gardens should be assessed for overshadowing and the inclusion of the additional front garden area incorrectly skews the results, which we consider is misleading.

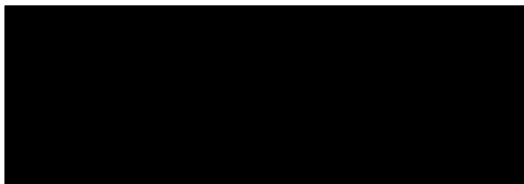
In addition, with regards to a consideration of overshadowing, we note that there is a balcony at number 34, which has not been assessed; we consider that an assessment of loss of sunlight to this should be included.

Conclusions

It is clear from the contents of this letter that we have some significant concerns regarding the BRE Daylight and Sunlight report provided as part of this planning application and we consider that it is sufficiently flawed that it would be incorrect and inappropriate for the council to progress to a decision in relation to this planning application using this report.

You will be aware, of course, of the Council's legal obligations in that, although it is at the discretion of the Council to grant planning permission despite a failure of a scheme to fully meet the targets within the BRE guide in relation to loss of daylight and sunlight, it has been held that it is beholden upon the Council to comply with their own standards in relation to the full and correct consideration of that effect. Where a Council has stated that the BRE guide will be used when there is a risk of a neighbour suffering significant loss of daylight and sunlight, there is a legal requirement for that course of action to be adhered to by the Council. There are a number of successful legal Judicial Review cases against Local Authorities for procedural failures of the Council to adhere to their own laid-out standards in relation to the correct consideration of the effect of a loss of daylight and sunlight.

Yours sincerely



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