



South Tyneside Council

Mr M Dawson
70 Greens Place
South Shields
Tyne and Wear
NE33 2AQ

Date: 25 September 2014
Our Ref: CX/MH/253539
Your Ref:

Dear Mr Dawson

Stage 3 Response

I write further to your request on 7 July 2014 for your complaint to be investigated at Stage 3 (the final stage) of South Tyneside Council's complaints procedure. You subsequently emailed me on 12 August 2014 confirming the points you wished to be incorporated into the Stage 3 investigation with specific reference to George Mansbridge's Stage 2 letter of response dated 2 June 2014 and again on 29 August and 5 September 2014 with further concerns about the development.

I wish to apologise that the Stage 3 investigation has taken longer than usual to complete and thank you for your patience in allowing me to complete my investigations. I am now in a position to respond to the points you have raised and for ease of reference, I will do so using the same headings contained in your email dated 12 August 2014.

"Misuse of the formal complaints system"

George Mansbridge's Stage 2 response explained the reasons why the Council has decided to respond to you under its complaints procedure. Where a resident is clearly dissatisfied with the Council's actions it is appropriate to investigate matters formally through our complaints process as this provides an eventual route of redress to the Local Government Ombudsman should the resident remain dissatisfied. We would be criticised by the Local Government Ombudsman if we did not operate a complaints procedure and simply corresponded informally with dissatisfied residents rather than investigating concerns through a proper process.

There must also be reasonable limits placed on the amount of officer time spent answering queries and providing information on a given subject, particularly once a final decision has been made about something. The complaints procedure is a fair and reasonable method of providing complainants with a means of redress that also seeks to make best use of the Council's limited resources. I am satisfied that once the Council decided not to take planning enforcement action, it was reasonable to treat your continued correspondence from that point onwards as a formal complaint.

"The misinterpretation of the plans submitted by UK Docks"

South Tyneside Council was not the Local Planning Authority in 1996 and our Planning Team has therefore had to examine the historic documents on file and decide in light of the evidence available which drawings accurately define the approved development. Having reviewed this information, I agree with the Planning Team's assessment that, on balance, drawings 8296/1 A, 8296/2 and 8296/4 can be reasonably considered to show the approved development.

With respect to your comments regarding drawing 8296/14, this drawing was submitted by the developer last year in discharge of condition 4 relating to the fixing details of the end panels. Mr Mansbridge stated in his Stage 2 response that the engineer chose to include a gable elevation of the structure on the same drawing but told you this was not drawn to scale. You have disputed this. I have not considered this point further because it is clear that drawing 8296/14 was submitted in 2013 for a wholly different purpose (i.e. for the purposes of discharging a planning condition) and as such, could never supersede the previously approved plans in terms of defining the dimensions of the approved development.

With respect to your comments about the deviation in the measurements of the shelter 'as built' compared to the approved scheme, I am satisfied that when George Mansbridge made the decision on behalf of the Council that it was not expedient to take planning enforcement action, he was fully aware of the discrepancies noted in your email with regards to the width of the structure and the variation in pillar angle.

Mr Mansbridge considered photographs and measurements of the shelter taken at site visits alongside drawings 8296/1 A, 8296/2 and 8296/4 attached to the 1996 planning permission. His conclusion was that no material harm was caused by the differences between the approved scheme and the shelter as built. I appreciate that you may not agree with this but I have seen nothing to suggest his decision was not properly taken. The Government's Planning Practice Guidance explains the situations in which it is not appropriate for Local Planning Authorities to take formal enforcement action. This guidance forms part of the National Planning Policy Framework which is a material consideration in all planning decisions. From examining the documentation relating to this case, it is evident that Mr Mansbridge had regard to these factors when deciding whether or not it was expedient to take enforcement action. The decision about whether or not to take planning enforcement action is at the discretion of the Council as Local Planning Authority but any such decision would, of course, always be made with regard to all material planning considerations.

The Council's Planning Team remains satisfied that operations on the slipway are consistent with its 'class B2 general industrial use' classification. Having considered the definition of this as set out in UK Statutory Instrument 1987 No. 764, The Town and Country Planning (Use Classes) Order 1987 and spoken to the Council's Solicitor, I agree with the Team's assessment on this point. It is clear that the nature of operations you have described at the site (such as the fact a crane is apparently now being housed in the shelter) would not require any form of retrospective planning consent.

The 1996 permission was the grant of permission for operational development, being the erection of a shelter for boat repairs. The conditions attached to that permission necessarily

related to the shelter as approved. It is, of course, not in dispute that the shelter that has been built is not the shelter for which planning permission was granted. The shelter as built does not have the benefit of planning permission and it is in this context that the Council has assessed whether it is expedient to take enforcement action using the powers that are available to it.

I cannot agree with your statement that "*the Planning Department. ...continue to say it has been built (to) approved plans*" as this is simply not the case.

"The continued dismissal of all concerns"

You are concerned that it is 'not legal' for UK Docks to use the shed at the moment. The basis for this statement is unclear but it is perhaps worth noting that the 1996 planning permission that was granted was for operational development and not for any material change of use of the land. The lawful use of the land was, and continues to be, 'class B2 general industrial' use and as such, the operations that are taking place in the shelter could lawfully take place in the open air in the event the structure was removed. Any planning condition imposed must fairly and reasonably relate to the development for which permission is granted. As the authorised use of the land is 'class B2 general industrial' use it would not, in the Council's opinion, have been reasonable in the context of the application for the shelter to impose any conditions which sought to limit or restrict those lawful use rights. In our view therefore, condition 5 which is attached to the 1996 permission is almost certainly unlawful and accordingly unenforceable.

Mr Mansbridge was undoubtedly aware that a decision not to take planning enforcement action would be unpopular with local residents. I appreciate it must be difficult to understand why in light of this, the Council still opted not to take any action. The Government's National Planning Practice Guidance makes it clear that formal enforcement action is not appropriate where development is acceptable on its planning merits (which in Mr Mansbridge's judgement it was, as explained above) and where the purpose of formal enforcement action would solely be to regularise the development. The guidance further advises that it may be appropriate to require the developer to submit a planning application to regularise the situation where, for example, there is a need to impose planning conditions on the development. The Council's view in this case, however, was that it would not be reasonable to impose conditions on the development for the reasons explained above.

Mr Mansbridge was confident in this case that the service of an enforcement notice was not appropriate based on his assessment of the case and his substantial experience, knowledge and expertise of planning matters. Mr Mansbridge discussed the case with the Council's Solicitor and with the Chair of the Planning Committee. I appreciate residents' dissatisfaction over this matter but hope you can understand the difficult situation the Council was faced with and the balanced judgements that have had to be made.

I am unable to comment on the question of whether an alternative site should have been accepted by UK Docks as this is not something that concerns the Council as Local Planning Authority.

With reference to the final question in your initial email, 'planning rules' apply to development on land and not to individuals directly. It does not matter who owns or leases the land in question and it is of no consequence whether a developer owns freehold or leasehold interest in the land, or in fact, whether they own the land at all.

Regarding your query on 5 September 2014 as to whether it is customary for the Council's Building Control Team to 'sign off' a development that is not built to plan, I can confirm that Building Control are only able to consider whether the constructional aspects of a development meet with building regulations. Their role is not to consider whether a development has been built in accordance with any grant of planning permission that may exist. Whether or not a structure has planning permission has no bearing on whether it accords with building regulations.

I have tried to provide a thorough response to your outstanding queries and I trust this response has been helpful. If you wish to pursue your complaint further you should now approach the independent Local Government Ombudsman. I enclose a leaflet explaining more about the Ombudsman's role.

Yours sincerely
Michaela Hamilton
Performance and Information Officer
Strategy and Performance