

Mr M Burge  
Greens Place  
South Shields  
Tyne and Wear  
NE332AQ

Date:29th April 2014  
Our Ref:GM/LB  
Your Ref:

Dear Mr Burge

**STAGE 2 COMPLAINT - Development at UK Docks, River Drive, South Shields**

Thank you for your letter dated 27th March 2014. I am dealing with this matter under Stage 2 of the Council's corporate complaints procedure. I am sorry for the delay in replying, but this has been a complex case and I wanted to ensure all the points you make were investigated.

I have set out my response using the same headings as in your letter.

The Development Permitted in 1996

The approved dimensions of the steelwork, taken from drawing number 8396/1A show:

- The proposed height as 15.5m at the River Drive end. The gradient of the slipway is 2.66m over the length of the shelter. This would mean the height at the riverside end would be 18.16m above the slipway.
- The length is shown as 22m.
- The width is shown as 12.2m.

I believe that the dimensions you quote under the heading 'Grant of planning permission, 1996' are taken from an unnumbered A4 drawing which was on the Tyne and Wear Development Corporation file. This is not an approved drawing and the dimensions quoted on it do not accord with those of the approved drawings.

The measurements which the Council took on 11h September 2014 are: length 22.254m, width 13.1, height at the River Drive end 15.5m and at the riverside end 18m.

Apart from the width, these dimensions are either entirely in accordance with the approved plan or subject to such minor deviation that they are properly categorised as de minimis or non-material changes. It was only after Mr Dawson raised queries in mid-January that that the plans were re-examined. We discovered that the overall width of the steelwork at ground level was shown on plan 8296/1A as 12.2m. I believe this error arose because the captioned dimension of the uprights (2x350mm from centre to edge) had been incorrectly added to the overall width of the structure when it was first measured in September 2013. The Council's legal advisors had no part in confirming whether or not the structure was in accordance with the approved plans. As you point out, Mr Atkinson wrote to Mr Dawson in February 2014 advising that the structure was not built in accordance with the approved plans, and that any deviation from the approved plans would need to be considered on a case by case basis. It was not, and never could have been, the case that any deviation would automatically lead to enforcement action by the Council. Mr Atkinson also pointed out to Mr Dawson that any action the Council may take should be proportionate to any suspected breach of planning control.

Regardless of what the developer subsequently went on to build, the foundation work that was carried out in early 2001 was a material operation to begin the development approved in 1996.

The Approved Drawings

A search of our records last September revealed three drawings: 8296/1A, 8296/2 and 8296/4. With the exception of the unnumbered A4 drawing referred to above, these are the only drawings that we have in relation to the planning application. You will appreciate that the permission for the shelter was granted in 1996 and this Council was not the Local Planning Authority at that time for the area which included the development site. While

there may be some doubt as to what drawings the Tyne and Wear Development Corporation did approve, 8296/1A was submitted with the application and 8296/4 is stamped 'Approved by Tyne and Wear Development Corporation'. In-making any judgements as to whether or not the development as built is in accordance with the submitted plans, this must be on the basis of a comparison with these drawings. When Mr Atkinson wrote to you on 18th September 2013 it was on the understanding that the company was implementing the scheme that had been granted planning permission in 1996. The company had provided the Council with copies of drawing numbers 8296/1B (which is the same as 8296/1 A apart from amendments to the foundations, the dimensions of the steelwork did not change) and 8296/2 from its own sources on 6th September, before the Council was able to retrieve the drawings quoted above. I note your comment that the developers misrepresented to the Council the plans of the structures they were by then building, but that is not relevant to the assessment of the situation.

#### Conditions of the Planning Permission

It is clear that the development has not been built in accordance with the approved drawings. This means that the conditions attached to the permission are unenforceable against the building which was constructed. In such a situation the only option available to the Council (should it wish to pursue formal enforcement action) is secure the removal of the unauthorised structure. I deal with this point below under the heading of the alleged breach of planning control.

Specifically with regards to condition 5, with regards to the hours of use of the shelter, a planning permission for operational development where there is an existing lawful use could not impose conditions which seeks to limit or restrict that lawful use. Therefore a condition which seeks to limit the hours of operation is unlawful.

#### Designated Purpose of Land

What Mr Atkinson said to you in his letter of 18th September 2013 on this topic is correct. We have subsequently been able to establish that the slipway dates from a planning permission granted in 1976, for 'new slipway for maintenance/repair of fishing vessels'. The yard was extended in the late 1980's, from the original boundary downstream for approximately 40m. This was an area that was formerly part of the Velva Liquids site.

#### The Alleged Breach of Planning Control

I am assured that Mr Atkinson said to you on 18th September 2013 was given in good faith based on the Council's understanding of the situation at that time. While it was recognised that the steelwork did not taper in width towards the top, this was not considered to be a material difference from the approved drawings. It subsequently became apparent that the dimensions of the steelwork that had been erected by 17th September 2013 differed from those shown and described on the approved drawings in that the width was 13.1 metres, not 12.2 metres as shown on drawing 8296/1A.

I do agree that there was an oversight by the Council on this point, and please accept my sincere apologies for that. The delay caused by this oversight could not ultimately have had any impact on the outcome of the case. I have explained that the Council does not have any planning power to intervene in activities which are involved in carrying out purposes which are lawful. Having established that there was a breach of planning control (carrying out development without the required planning permission) any action that the Council could take would only be against the shelter as erected, and not against any activities at the site. The Council may only take enforcement action where it is expedient to do so, having regards to the development plan and to any other material considerations. The existence of the 1996 permission, and the evidence of the lawful beginning of that development, is a material consideration in this case. The principle of the shelter on this site, of the dimensions approved in 1996, was established by that permission. In terms of the development plan, Mr Atkinson explained that the site is allocated in the South Shields Town Centre and Waterfront Area Action Plan for a mix of uses, including general industry. Other policies deal with design and residential amenity and no material harm is caused by the differences between the approved scheme and the shelter as built.

In several instances in your letter you say that the Council is not fulfilling its mandatory statutory obligation to enforce planning law. Enforcement action is at the discretion of the Council as Local Planning Authority. The Council must act proportionately in responding to suspected breaches of planning control. I want to stress that the Council does not condone the carrying out of development without first obtaining the necessary planning permission. However, for the reasons I have explained, regarding the established lawful use and existence of the 1996 permission and the provisions of the development plan, I have concluded that the development as constructed is acceptable on its planning merits. It would not therefore be expedient for the Council to take enforcement action.

#### Other Questions Raised

Apart from informal approaches by UK Docks to the Council since the summer of last year with regards to further development at the River Drive site, planning officers have had no contact with the company about their intentions for their River Drive site. The Council was aware of the Port of Tyne's intentions at Tyne Dock, but the impact of the circumstances under which its tenants operate at Tyne Dock is a matter entirely for the Port and its tenants. The Council has not given any assurances to the company with regards to the further development of the River Drive site. I have explained above the Council's position with regards to enforcement concerning the developments already carried out.

I have endeavoured to investigate and respond to all the points you have made. I can assure you that this has been a thorough investigation and I trust that you will understand that from the length and the level of detail in this reply. I will shortly be writing to all households in Harbour View, and to those households in Greens Place between Baring Street and Lawe Road to explain the outcome of this case

If you are dissatisfied with my response, you may wish to move to Stage 3 of the Council's Corporate Complaints Procedure by writing to the Chief Executive, South Tyneside Council, Town hall, Westoe Road, South Shields, NE33 2RL.

Yours sincerely  
George Mansbridge  
Head of Development Services