

Dear Nicola,

An Aversion to Retrospective Planning

I have been involved in three cases with the Planning Department of South Tyneside Council where the developer built what he wished to build rather than what was permitted i.e. that which had been approved by the relevant planning authority. All cases are examples of the lack of building control and involved the same building inspector and all should have been considered retrospectively but were not.

The first two cases are the development of Nos 71 and 72 Greens Place which first appeared as a joint development by the Agent, J Martin, Architect. Both developments were promoted by the owner of 72, Mr Watson who worked for the owner of 71, Mr Haig. Mr Watson had bragged at a Planning Committee how much money was going to be spent on the proposals and laboured the point that there was only one person complaining about the development and particularly that of No 71.

The loss of amenity by 73 was negligible compared to that of No 70, my retirement home, and as well as that, I had never seen the neighbour at 73 in the 12 years I had been living in South Shields, and decided it was best not to bother her.

The complaint against 72 was that the two dormer windows were so large they they should have more properly be considered as one and they were built as one. I pointed this out to the building inspector, Mr Telford but he said it was a non-material consideration and could be ignored but it turned out that it may have been a material consideration after and it was not his place to make the decision because that way lies corruption.

As I had accepted Mr Telford's word about No 72 and his immediate neighbours, No 73 had not made any complaints, there was little I could about it, a case of two against one, and as I have since found by bitter experience, I would be promptly be accused of making allegations. No 72 will just have remain as an example of how easy it is to corrupt a planning authority if one gets building control on-side.

It was also Mr Telford's decision to turn a blind eye to the partition wall between 71 and 70 but that was somewhat different in that it affects the long-term stability of 70 Greens Place and damp etc. My neighbour's wall was built leaving a six to eight-inch gap for much of its length to avoid some of the conditions of the party wall agreement and it was built higher than permitted for some of its length.

The dormer/roof top balcony, front and rear of No 71 is a more noticeable example of how the planning rules are waived aside for favoured customers but it was my complaint about disregard of the planning guidelines SDP9 and the fact that the extension occupied 100% of his back yard that I took to the Local Government Ombudsman (Ombudsman) and discovered that they were also too willing to ignore irregularities in planning control. They were misinformed of course and said I would have to take any complaint about the absence of the building control to Council first.

I was being sent round in circles and have discovered since that it is impossible to reverse the Ombudsman's decision because they say any complaint about an Ombudsman being misinformed remains that of them being misinformed.

These irregularities would have come to light had the retrospective planning application ST/0749/13/FUL not been overwritten by ../HFUL. The former dealt with the partition wall at the both lower and upper roof level patios but the second only dealt with the upper patio. The original application just vanished and appears to have been deleted, not only to hide the building inspector's shortcomings but the planning officers as well.

Those were that she had not followed the planning guidelines regarding the size of extensions etc, as outlined in the Supplementary Planning Document SDP9 and other instructions. These would have come to light if the application ST/0749/13/FUL had been considered properly but it never was.

I got notice that it had been killed off completely when ../HFUL was approved on 05-Dec-13. I had by circumstance, become one the leaders the complaint against the Council and UK Docks and I decided that No 71 will have to join No 72 as another example of how easy it is to corrupt any planning authority if one gets building control on-side. The complaint against the Haig's got watered down so much through each stage that the Ombudsman rang me up, to ask me what I was complaining about and the same happened with the complaint about the 'boatshed' on the Tyne Slipway off River Drive though in the latter case I wrote to them after the first draft and said they really ought to consider the height otherwise there was no point in making the complaint – her first draft and the Council's Stage 3 response both failed to mention the height altogether.

The story of the 'boatshed' on the Tyne Slipway off River Drive is not much different from No 71 in that they built what they had wanted to build rather than what had been granted. The difference between 71 and UK Docks was that the argument had changed from the Council not following their own guidelines (for additions to private dwellings) to that of a small ship repair company not following the approved plans and *drawings* for their slipway enclosure (shed). The emphasis on drawings is important, as you will see by the number of references made to them.

Permission had been given for an enclosure with a base of 22m x 12.2m in 1996 but by 2001, it had become clear that a shed that size would not have been economically viable so Tyne Slipway laid foundations for a longer and wider one (27.5m x 13.1m) than that which had been approved. Though there was a good deal of protest at the time there is no record that six pairs of footings laid instead of five, nothing happened.

It is not clear when Tyne Slipway became UK Docks but it took place about the time their business was were forced to move from Tyne Dock and they chose to move to the family-owned business on River Drive known as Tyne Slipway and Engineering.

By 2013, they needed to change the section of shed so that they could fit their travelling crane in preparation for the move and they asked their Agents Maughan Reynolds Partnership Ltd to produce some drawings in August 2013 to give more width overhead. The drawings were a requirement for the discharge of condition 4 and that along with condition 3 as ST/1146/13/COND was given approval in October 2013 by the Planning Manager of South Tyneside Council. The Approval Notice, along with one of the drawings, was published in December 2013.

Shortly after the frames began to go up in September 2013, the 5th I believe, the complaints started rattling in. I was copied into an exchange by one of the neighbours who asked the Principal Planning Officer, Mr Cunningham: *"Could you please confirm what height the structure is being constructed to? It seems that one had approval (12mtrs), and the other didn't (15.5mtrs).*

Melanie who asked the question on behalf of many of us, also asked him how to make a complaint, which I thought at the time was a mistake. He duly sent her a reference to a guide on how do it but *he did not answer her question about whether it was built to the approved height* and it has not been answered to this day and that is why the shed is still there and if anyone from the Council still wishes to argue the point may I remind you that approved height is 12.7m (see 8296/2, authorised 1996 rather than 12m quoted by Melanie) but the height built is 15.5m.

He did not reply and when the question was repeated a few days later, 9th September as part of formal a complaint and still not answered, I took an interest because I was aware that in the first few days, Mr Cunningham had always responded within a few hours and in one his responses, he said that building control was not his responsibility but that the Building Inspector, Mr M Telford.

To sum up, UK Docks were given permission for an enclosure 22m x 15.2m x 12.2m but that was not economically viable so they took the decision to build a shed of 22m x 18.2m x 13.1m, get a completion notice and put in a request lengthen it a few days later.

They managed this with the help of Messrs Cunningham and Telford in June 2014 when the completion certificate was signed. In an email to Melanie, 4-Sep-2014, Mr Cunningham wrote:

Hello – my colleague from the Building Control Team has confirmed that they sent the completion certificate out on June 17th. The final Building Control inspection was on 13th June.

Before that could happen, they needed to bury the fact that the structure was wider than planned as all the drawings, approved or not, gave the planned width as 12.2m and that was successful until I noticed that it could be quite easily measured from without the site. More importantly they needed to hide the fact that the shed was nearly 3m taller than planned and they knew from experience that Mr Cunningham was their man. He had already taken Readheads Landing off the People and given it to the Port of Tyne.

Neither Messrs Telford, Cunningham, nor the representative from UK Docks, realised that we could calculate the approved height from any side elevation of any scale drawing of the structure. The main drawings used in the fraud that the shed was the approved height was 8296/1B partnered with the cropped 8296/2. Later it was replaced by 8296/1A but it reappeared in the Council's response to my complaint to the Ombudsman. When I pointed this out to the second inspector all he could say was I was too late in telling then that they had been misinformed!

Both 1A and 1B showed a height of 15.5m at each end of the shed and one must be wrong because the shed does not have the same slope as the slipway. *Both ends cannot have the same height because there is a gradient of 2.7m between them.*

Although we were not told till mid-January, the approved drawings from 1996, recovered shortly after we started raising questions about the height showed the landward end as 12.7m and therefore, the river end as one of 15.5m. That confirmed that we were right about the height of the shed and our request that planning consider enforcement of the 2nd condition totally reasonable. It also entitled us to ask why the 2nd condition was missing from ST/1146/13/COND.

Apparently, the Council did as well: *a stop or an enforcement notice was issued* because work on the structure stopped completely and it did not resume for two months and it looks like, towards the end, they were waiting on the outcome of the meeting of the 25th November 2013. All the meeting did, was to prove that the structure had not been approved because if there were any plans to back Mr Cunningham's view that the shed been approved, then we would have walked away from the meeting with them *but we did not because there were none.*

After the meeting, I measured the width of shed for myself, advised the attendees about it being a meter wider than planned and then became a little concerned that Cllr Anglin had tarred me with the same brush as the Chairman and Treasurer of the Tyne Gateway Assn (TGA):

For your record I am sure all would agree: The Exec representatives of the Group accepted that the construction had been made legally as per drawings seen.

As you know I have never been happy with Cllr Anglin doing that, the two Executives being Messrs Watson and Haig, so I pushed the matter further and got from him 20-Dec-14:- *Michael Please see below the reply from Peter*

"Hello – I confirmed at our meeting with Mr Dawson and others on 25th Nov 2013 that I had measured the width and length of the ground floor external footprint and height of the structure and that these dimensions were all in accordance with the attached approved drawing and planning permission...I copied these two documents to Mr Dawson after the meeting as per his request.

All the meeting proved, beside plans that showed the shed had approval, did not exist, was that Cllr Anglin and Cllr McMillan were no longer representing the people who elected them but people with an interest vested in UK Docks. It seems that while the TGA was dormant for a few years, the Vice Chair assumed control and it was not being run in the interest of the residents but more in the interests of his pals in the local Masonic lodge and other concerns such as UK Docks.

When UK Docks restarted work in earnest in the New Year it was clear that the stop notice had been removed and as the only person at that meeting who still represented the views of the local residents, it fell to me to put in a formal complaint which was done on the 10th January 2014.

Since Melanie met the 'blank wall' in mid-September we had established that neither the Council nor UK Docks had any plans giving approval for 15.5m at the landward end of the shed at that meeting, over the same period ST/1146/13/COND was being progressed and given approval by mid-October and the drawing attached to it was stamped as being received on the 30-Sep-13.

That gave approval to 15.5m at the river end and why I asked in January 2014: "*As the applicant has not discharged condition 2 why is there no retrospective planning application?*"

It looks like the meeting had been arranged by the Principal Planning Manager without the knowledge of the Planning Manger and why it was not minuted:

*Date: Sun, 1 Dec 2013 18:37:40 Subject: RE: TGA - Town Hall Meeting 25 Nov
Michael, I took no minutes as is customary at these informal meetings.*

All that will be recorded was 6 people held a meeting in a room at the Town Hall so you now understand why I was so determined to get you to agree to the fact that UK Docks had never been given approval for their shed, retrospectively or not, and I thank you for agreeing. However in the same email, 19-Dec-19, you said:

I can confirm that the Council as Local Planning Authority has not received a retrospective planning application from UK Docks. It is entirely a matter for UK Docks to decide whether or not to submit such an application and the Council has no influence in that matter.

Both UK Docks and the Council knew that the frames for their shed were nearly 3m taller than that which had been approved otherwise the *stop notice would not have been issued and obeyed*. They would not have willingly shut the yard for two months, laid off their steel erectors and sent the cranes home. Meanwhile they let their Agent continue to submit plans, just for the 3rd and 4th conditions knowing that they had broken the 2nd as soon as the first frame went up, ignoring:

2. The development to which this permission relates shall be carried out in complete accordance with the approved plans and specifications.

The stop notice was not issued and obeyed for two months without good grounds and must have been issued at a very senior level of management and by someone who was aware of the legal consequences and it likely to have been that person's decision to hide the fact that the second condition had been broken and allowed the charade of the meeting of the 25th November to go ahead:

Mr Dawson – once again – I have measured this on site and have copied the 1996 plans across to you twice already (attached again for your use) and I have explained during our meeting that the base and height of the structure are compliant...this is the end of the matter as far as I am concerned. Please do not email me again – PC, 20-Dec-13.

I had based the complaint of 10th January on the Agent's drawing 8296/14 made in August 2013 because it shows the approved height of the river end of the shed and not only was the complaint not registered, the first response from Mr Cunningham, 13-Jan-14, was: *The queries that you raise are not new, indeed I have been repeating my response to them for some time now, and you will recall that I explained the planning aspect of the Council's position to you regarding this development during our meeting.*

Then Mr Atkinson chose 8296/1A to contradict it and if you look at 1A you will see it also shows the river end to have a height of 15.5m as well and only one end can have that height because the shed does not slope down towards the river. The overhead crane relies on a level track to work at all. He said, 15-Jan-14:

The dimensions of the steelwork have been checked on site and they are in accordance with the measurements shown on the approved drawings. The variation in the angle of the pillars is not considered to be material.

Approved Drawings. *The following are details of the relevant drawings in the Council's possession. The drawing that was submitted on 11th April 1996 with the application is numbered 8296/1A. That shows the overall height of the structure as 15.5m above the foundation level at the landward end.*

Drawing number 8296/1A was not approved by the Tyne and Wear Development Corporation but 8296/2 was and it shows a height of 12.7m and he goes on to say:

The dimensions of the steelwork have been checked on site and they are in accordance with the measurements shown on the approved drawings. The variation in the angle of the pillars is not considered to be material.

To put it bluntly, he was not being truthful about the drawings and like Mr Telford brushing aside the issue of Mr Watson's dormer windows, he had brushed aside consideration of the angle of the pillars.

Far worse, he did not reinstate the original complaint which was removed by Mr Cunningham, he overwrote it as: *see email to planning 14/1/14. Mr Dawson asking various questions relating to the ongoing development at the slipway, River Drive, South Shields.*

This conveniently killed off the original complaint which remained unanswered as does my letter about it to Mr Harding of the 9th April 2019 and I have attached a copy so you will get a view of the amount of misinformation that must have been given to the Council Solicitor, Gill Hayton.

Mr Atkinson eventually conceded the shed was taller than planned but he penned his response, 13-Feb-14, such a way that it could be taken out of context to show that it had been approved. It was and still is, a masterpiece in evasion, and one needed to show both it and my email to him ten days earlier see that he had in fact agreed that it was taller than planned.

To cover for this 'anomaly' I wrote and thanked him for his concession about the height after the Residents had held a meeting in the Littlehaven Yacht Club, on the 3rd of March, and told him that it was our wish to see the shed removed but we would be happy to talk with the Council, 4-Mar-14:

With this e-mail I have agreed to act as spokesperson for the local Riverside Residents. A meeting was held with members of the local community and I can now answer your question as to 'what kind of action we would like the Council to take'. Thank you also for confirming that the Slipway Shed is not built to the approved 1996 plans. The immediate response from residents was to request the slipway construction be removed. However the universally agreed request of Council, is that there is immediate cessation of work on

the Slipway Shed until such time as appropriate community consultation with the relevant council departments can be arranged.

They had not stopped work, so I wrote again to Mr Atkinson and got the response, 21-Mar-14:

Dear Mr Dawson

Thank you for your email. Before the Council makes any decisions on the planning aspects of this case, we need to have a full understanding of the history of the site, and analyse all the facts. This is a complex matter and will take some time. Regards, Gordon Atkinson.

It was not complex, please note that I had thanked him for agreeing that the shed had not been built to the approved plans. All it would have taken was a phone call to tell them to halt work on their shed and they would have stopped and cleared the yard as they had done six months before. Nothing had happened since between the time they were forced to stop in September apart from the meeting in November and the publication of the approved drawing and both of them proved that whoever had the authority to stop them in September had authority to do so again.

The shed was never an issue between the protestors and the Council, it was between the Council and UK Docks and has been since the approved drawings were recovered from the archive. They show without doubt that that shed is three meters taller than planned and the complaints procedure had become even more irrelevant than when Melanie first asked the question about the height.

When I made the observation that the second condition had not been observed I was just taking Melanie's complaint to another stage but by then they must have been telling everyone, that the differences but they were not material. The Planning Managers' eventual concession about the height brought that to an end. So how did it get as far as the Ombudsman so that Council could then deflect any enquirer by repeating and I quote from a letter to the MP for Berwick from the Council's Corporate Lead, 25-Jun-15?

The matters and allegations raised by your constituent are well documented and have been subject to a number of enquiries from Mr Dawson and other local residents over a lengthy period of time. The matter was ultimately referred by way of complaint to the Local Government Ombudsman, the outcome of which was delivered on 14 April 2015.

The Planning Manager's duplicity.

While he was agreeing with us about the height, he was telling his boss something different and if you check the drawings you see that they are not allegations at all and Mrs Johnson was falsely accusing us of making them and a check of the correspondence will also show that shortly after my exchange with the Planning Manager, I informed Mr Mansbridge about:

1. a misleading leading article in the local press, 1-Apr-14;
2. abuse of the complaints system, 2-May-14;
3. his response to our Petition with the repetition of Mr Atkinson's misrepresentation of the plans, 9-May-14;

He did not respond to any of the issues raised in those emails but got up a new 'complaint' 253539 to overwrite 248789 which had died a natural death and that is how the Ombudsman became involved. The new complaint said:

Planning enforcement of Tyne Slipway boat shed -Letter to GM following previous letter dated 4th April. Not happy with G. Atkinson's response at Stage 1. Letter to be dealt with at Stage 2.

As you can see, it was nothing like the original complaint or mine which was a bit more detailed: *The structure (shed) was 3m taller and nearly a meter wider than planned, according to the drawing approved by the Planning Manager in October 2013, and therefore the applicant has not discharged condition 2, so why is there no retrospective planning application?*

It seems that as one passes up the Management Chain the corruption of the complaints procedure becomes more blatant. Not only had Mr Mansbridge ignored my emails about the amount of misinformation flying about he was happy to repeat the worst of it, distilling it in the process. By the time we get to the Chief Executive we are back straightforward denials, à la Principal Planning Officer, Mr Cunningham.

I had quite justifiably criticized his replacement, Mr Simmonette for side stepping the height issue, 8-Jul-16: *"If you disagree with the proposition that the cover has been built 3 meters higher than planned, please give your reasons to me and I will ensure that they are circulated widely."*

I asked the Chief Executive:

I ask you to look again at this because there is a clear contradiction between what the Council were telling the LGO and what is known. Why your staff should misrepresent the facts to the LGO is for you to determine. That they have misinformed the LGO should be admitted and corrected and that is what this letter is about.

The response was a straightforward contradiction by the Corporate Lead, 1-Aug-16: *There is no evidence to suggest that there has been deliberate misinformation provided by Council officers to the Local Government Ombudsman.*

Mrs Johnson also threatened me with the misapplication of a Section F of some disciplinary code: *I enclose a copy of our policy on dealing with unreasonable and persistent complainants. In my view, your behaviour is a disproportionate use of resources and unreasonable.*

She added that she considered the matter closed so I questioned her authority to section me and let her know that I had, on September 2nd 2016 consulted a solicitor about the matter:

I consulted a solicitor about Ms Hoy's letter because I felt that she was being used by Mr Simmonette to avoid answering the question of the planned height of the shed. The Solicitor's view, off the record, was that UK Docks, in saying they were building the shed to approved plans when they were not, was probably criminal fraud but the police were unlikely to act on a planning issue. He also suggested a civil court may not be the best way forward but he did say that in his view we needed to raise a new complaint.

Alison Hoy said in the same email, 9-Dec-15 (not a letter as reported to Mrs Johnson, sorry), that:

We have also responded to a further enquiry made to the Council via your then local MP Anne-Marie Trevelyan, dated 1 June 2015, which claimed you had not been able to locate any details from the Council on why the shed had been approved despite the breach in planning conditions, even though at that time you had received complaint responses from both the Council and the Ombudsman.

This was the first evidence, confirming my suspicions that the Council was giving misinformation to the Ombudsman to get decisions overturned, and then using the outcome so that third parties could be easily misinformed. The spokesperson for the Council had to resolve the conflict by accusing the second party, such as Melanie or I, of making allegations which is yet another lie.

I took her email to Peter Dunn and Co in Sunderland because they dealt with Planning Matters and related the tale much as I have related in these pages starting with the fiction in the Gazette of the 9th September 2013: *"We have been through all the controls with the planners, and the work meets all the necessary legal requirements. All we are doing is going ahead with the previous planning permission."* and Mr Cunningham not answering Melanie's question about the planned height.

When I raised the issue with the Chief Executive about his staff giving misinformation and or misrepresentation to the Ombudsman, 8-Jul-16, I said:

I have been advised you may well say that all this relates to an old complaint and so I will ask you for a "new" complaint based on this letter and if you will not deal with it then the Local Government Ombudsman can deal with it. The Council's "Complaint's Procedure" is not appropriate, it has failed. It has failed not only me but all the local residents and Petitioners as well.

Mrs Johnson did not raise a new incident and that is the telltale flag that she had no intention of responding to the complaint, much like Mr Cunningham's response 13th January 2014, and she seems to have kept it quiet, that I had sought a solicitor's advice, as Alison Hoy later suggested that I sought legal advice.

No matter, what is important and that is that *there was only one* complaint to the Chief Executive about his staff leading the Ombudsman up the garden path and it was *entirely reasonable*, as examination of the drawings would have shown. Alison should be able to provide you copies of my letter to the CEO, 1-Aug-16 and of all the correspondence that led to me being *unreasonably Sectioned* on 1-Oct-2016.

If nothing else you should take a look at the copy sent on the 3rd September 2016, for the attention of the Legal Section but passed back to Mrs Johnson, shades of Mr Cunningham passing the original complaint about the lack of enforcement back to the Chairman of the Tyne Gateway Assn in January 2014.

As you can see the people have changed since we first asked about the height of the shed but the method of cheating the system had not – replying to a complaint with a contradiction but not registering it and by that allowing the contradiction be repeated ad nauseam, and before I get falsely accused of making repetitive allegations again by just describing what happened over a couple of years, I'll close.

But before I go, I would like to point out that UK Docks anticipated that the outcome of the Decision Notice, ST/1146/13/COND, 14th October 2013, would be favourable by starting work on their slipway enclosure 5 weeks before it was approved. They were in fact in breach of the 2nd condition as soon as the first frame was erected and they knew that so they sent plans and drawings to make a false claim that what they were building had been approved.

I believe that to have been a fraudulent misrepresentation and a criminal act and only goes to show that the correct interpretation of what a drawing says is important. It is always best to take notice of that, rather than opinions of those who have been deliberately misinformed by those who misinterpret them.

Yours sincerely
Michael Dawson