

Mr Mick Dawson
Date: 14 December 2018
By email: mick.dawson@theharbourview.co.uk
Our Ref: GH/ Your Ref:

Dear Mr Dawson Your complaint about Councillor John Anglin.

1. I refer to your emails dated 19 September, 1, 12, 15, 22 (x2), and 26 October, 14, 20 and 22 November, and 11 December 2018 concerning your complaint about Councillor John Anglin.

I apologise for the delay in responding to you.

2. I have reviewed your email correspondence and records held by the Council in my capacity as Deputy Monitoring Officer to consider whether your complaint falls within the Members' Code of Conduct as adopted by the Council, and if it does, whether your complaint should be investigated further.

3. You complain that Councillor Anglin has:

- failed to "obtain clarity" concerning a planning application submitted by UK Docks relating to development on River Drive during a meeting at the Town Hall on 25 November 2013;
- misled or otherwise allowed the Local Government Ombudsman investigator to be misled as to the height and width of the development against the submitted plans and whether the differences in the height and width are "material" or "non-material" for the purpose of determining whether to commence enforcement proceedings.

4. It is helpful if I set out some of the background to your complaint. The subject of your complaint is the planning application and subsequent decisions of the Council not to commence enforcement proceedings against UK Docks. The planning application was granted in 1996 by the former Tyne & Wear Development Corporation and was subject to 5 conditions. Two of those conditions were "pre-commencement" conditions. The developer commenced works by building the foundations before May 2001 but did nothing further until 2013 when the developer re-commenced the building works. Residents complained to the Council.

5. The Council investigated the matter and found that the planning permission had been lawfully implemented. The Council later accepted that the measurements as taken in 2013 were incorrect and the width of the building was just less than 1 metre wider than permitted under the grant of planning permission. The Council decided not to take enforcement action against the developer and considered the degree of departure from the grant of planning permission was "non-material" given the overall scale of the building.

6. You disagreed and continue to disagree with the Council's decision. You pursued your complaint through the Council's complaints process and this culminated in a referral of your complaint to the Local Government Ombudsman, who decided to investigate the complaint.

7. The Local Government Ombudsman issued her decision in 2015, finding that there was no fault in the way in which the Council had determined that enforcement action (with regards to the width of the development) should not be commenced. The Ombudsman found no fault with the Council's decision that the difference in width of just less than one metre was "non-material". Furthermore, the Ombudsman disagreed with your assertions as to the height of the development and whether that was not in accordance with the plans. The Ombudsman found no fault in how the Council determined the permitted height of the landward end of the development was 12.5 metres plus 3 metres.

8. I have had the opportunity to consider your complaint and your subsequent correspondence in light of the Members' Code of Conduct and the Council's protocol for dealing with allegations of breaches of the Members' Code of Conduct. I have also had the benefit of reviewing the Local Government Ombudsman's decision.

9. You do not state in your complaint which part of the Code of Conduct you believe Councillor Anglin has breached. Taking your complaint as a whole, it could be argued that you are seeking to rely upon paragraphs 3 and 4 of the Code of Conduct that Elected Members:

"must not do anything which compromises or is likely to compromise the impartiality of anyone who works for or on behalf of the Council"; and,

"...must not conduct yourself in a manner which could reasonably be regarded as bringing the Council, or your office as a member of the Council, into disrepute."

10. The Members' Code of Conduct is clear that it only applies to an elected member of the Council when they (a) conduct the business of the Council (including the business of their office as an elected councillor or co-opted member) or (b) act, claim to act or give the impression they are acting as a representative of the Council. The site of the development is within Councillor Anglin's ward and he was contacted by his constituents to see if he could help them to progress their complaint and obtain the clarity you refer to in your email correspondence. I therefore find that Councillor Anglin was acting in his official capacity when he attended the meeting on 25 November 2013 and the Code of Conduct would apply.

11. In deciding whether to investigate your complaint, I must also consider a number of other factors, including but not limited to, whether the complaint has already been the subject of an investigation or other action, whether under the Code of Conduct or another regulatory authority; whether the complaint is about something that has happened so long ago that there would be little benefit in taking action now and whether the complaint appears to be malicious, politically motivated or "tit-for-tat".

12. The wider issues of your complaint concerning the substantive planning application and the decisions and conclusions reached by the Council has been subject to a thorough investigation by the Local Government Ombudsman in 2015. The meeting which you complain about took place in 2013. It is my view that you had the opportunity to raise during the Council's internal complaints process and the Ombudsman investigation any concern that you reasonably held that Councillor Anglin had acted in a way in which meant the Ombudsman's investigator had been misled during the investigation. You had the opportunity to comment upon the Ombudsman's draft report before it was finalised and you exercised that right to comment. The Ombudsman's investigator considered and discounted your comments.

13. A significant period of time has passed since Ombudsman concluded her investigation into your complaint and an even longer period of time has passed since the meeting actually took place. It would have been reasonable to expect you to have raised your Code of Conduct complaint at a much earlier stage than this. A delay of 5 years is significant, even if you had waited until the conclusion of the Ombudsman investigation, a further 3 years has passed since then. I understand that you have been subject to periodic contact restrictions as a result of your seeking to re-open the substantive complaint about the planning application and the decision of the Council not to commence enforcement proceedings. I have considered this in light of whether this has or would have prevented you from bringing your Code of Conduct complaint at an earlier date and I conclude that it would not. A Code of Conduct complaint could have been made in writing to the Monitoring Officer at any point in the last 5 years and such a complaint would have been considered separately to your complaint about the planning decisions of the Council.

14. You complain that Councillor Anglin failed to provide you with the clarity you sought at the meeting. An Elected Member may set out with an objective to support their constituent but ultimately may not achieve that goal, for a variety of reasons, not least that the constituent's position is simply wrong in law. This is not a conduct failure and does not fall within the remit of the Code of Conduct. I can find no evidence that Councillor Anglin misled or otherwise allowed the Ombudsman to be misled.

15. Further, it is my conclusion that you are seeking to use the Code of Conduct process to re- open a matter which has already been investigated and responded to by the Council; this is an abuse of the Code of Conduct process.

16. Consequently, I do not believe that there is any merit in investigating this complaint further and I have concluded that no further action should be taken in respect of your complaint.

17. If you are dissatisfied with my decision not to investigate your complaint further, then under the Council's protocol for dealing with allegations of breaches of the Members' Code of Conduct you may request the Monitoring Officer to reconsider this decision. You can request a review by emailing monitoring.officer@southtyneside.gov.uk or in writing to Mike Harding, Monitoring Officer, South Tyneside Council, Town Hall & Civic Offices, Westoe Road, South Shields, NE33 2RL.

Yours sincerely,
Gill Hayton
Deputy Monitoring Officer Legal Services
Business and Resources