
ECONOMIC DEVELOPMENT, ENVIRONMENT AND INFRASTRUCTURE SCRUTINY PANEL

A meeting of the Economic Development, Environment and Infrastructure Scrutiny Panel was held on Wednesday 15 February 2023.

PRESENT: Councillors M Saunders (Vice-Chair), D Branson, S Dean (as Substitute for Councillor Hellaoui), C Dodds, T Furness and T Mawston

OFFICERS: S Lightwing, P Clarke and A Glossop

APOLOGIES FOR ABSENCE: were submitted on behalf of Councillors R Arundale, A Hellaoui, B Hubbard and J Thompson

22/58 **WELCOME AND EVACUATION PROCEDURE**

The Chair read out the Building Evacuation Procedure and welcomed all present to the meeting.

22/59 **DECLARATIONS OF INTEREST**

There were no declarations of interest received at this point in the meeting.

22/60 **MINUTES - ECONOMIC DEVELOPMENT, ENVIRONMENT AND INFRASTRUCTURE SCRUTINY PANEL - 18 JANUARY 2023**

The minutes of the meeting of the Economic Development, Environment and Infrastructure Scrutiny Panel held on 18 January 2023 were taken as read and approved.

22/61 **ENFORCEMENT OF PLANNING CONDITIONS**

The Head of Planning and the Development Control Manager were in attendance to provide information in relation to Enforcement of Planning Conditions.

National Planning Policy Framework (NPPF) paragraph 55 stated that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions. Middlesbrough Council, as the local planning authority, tried to issue decisions with as few conditions as possible. There were usually a minimum of two conditions which were: a standard time limit for commencing a development; and that it should be built in accordance with the plans.

NPPF paragraph 56 also specified six tests to ensure that planning conditions should be kept to a minimum and only imposed where they were:

1. necessary;
2. relevant to planning;
3. relevant to the development to be permitted;
4. enforceable;
5. precise; and
6. reasonable in all other respects.

Achieving this was not easy and one of the reasons why efforts were made to minimise the number of conditions.

Types of planning condition included:

- Standard time limit condition for commencement of development.
- Details and drawings subject to which the planning permission was granted.
- Pre-commencement conditions.
- Pre-occupancy or other stage conditions.
- Conditions relating to post occupancy monitoring and management.

Pre-commencement conditions could include details of the materials to be used, landscaping

and operation. The local planning authority would try to negotiate these with the Developer so that the plans submitted were approved as soon as possible. Post occupancy could include a noise condition or the replacement of any landscaping if plants died off within so many years.

Conditions could not be used to:

- Unreasonably impact on the deliverability of a development.
- Reserve outline application details.
- Require development to be carried out in its entirety.
- Require compliance with other regulatory requirements.
- Require land to be given up.
- Require payment of money or other considerations.

With regard to enforcement, it was emphasised that this was discretionary. The local planning authority could decide whether to take action or not.

A breach of planning control was defined in section 171A of the Town and Country Planning Act 1990 as:

- The carrying out of development without the required planning permission; or
- Failing to comply with any condition or limitation subject to which planning permission has been granted.

The Council had to decide whether it was in the public interest and proportionate to take action, particularly if there was a breach of something that planning permission would have been granted for anyway. For example, issuing a Section 125 notice for untidy land – the Council could not ask for the reparation to be of a higher standard than the other properties in the surrounding area – it had to be equivalent to the rest of the area.

However, effective enforcement was important to:

- Tackle breaches of planning control which would otherwise have an unacceptable impact on the amenity of the area.
- Maintain the integrity of the decision-making process.
- Help ensure that public acceptance of the decision making-process was maintained.

In most cases, development became immune from enforcement if no action was taken:

- Within 4 years of substantial completion for a breach of planning control consisting of operational development.
- Within 4 years for an unauthorised change of use to a single dwelling house.
- Within 10 years for any other breach of planning control (essentially other changes of use).

The 4 year time limit did not apply if enforcement action had already been taken and there was another breach. Further action could be taken. Also where somebody deliberately hid what they had done and the planning authority was not aware of it. The Government changed the ruling so that the time limit for enforcement was 4 years from the breach.

Enforcement action that could be taken included:

- No formal action.
- Retrospective planning application.
- Planning contravention notice.
- Enforcement notice.
- Planning enforcement order.
- Stop notice.
- Temporary stop notice.
- Breach of condition notice.
- Injunction.

There were currently approximately 380 open enforcement cases in Middlesbrough but only 19 were for breach of condition. During 2022 there had been approximately 220 new cases

which equated to 15 to 20 cases per month. At the present time there were more cases coming in than the Authority could deal with. There was one Enforcement Officer in post and a second post was vacant. The Council prioritised the cases in line with time limits and also where they were having a significant impact on residents' amenity.

The process for taking enforcement action was to identify the breach. The Council would usually be notified by members of the public or Councillors. The breach would then be investigated. If there was photographic evidence and clearly no breach, then the case could be closed straightaway. If there was a breach, the details were logged on the system and prioritised.

The Council would determine what action was required. So if a developer built a house in the wrong place, that breach would be enforced and the building would have to be demolished and rebuilt. However, for more minor infringements – such as a window being slightly in the wrong position – enforcement would probably not be taken. The Council would always try to negotiate to resolve the problem. This could take a number of months and the Council had to allow a reasonable length of time for the person who had made the breach to respond.

If resolution was not found, formal action would commence with the issuing of a Section 33 notice or a Planning Contravention Notice (PCN). It was highlighted that enforcement action could only be taken against the landowner, not the applicant or the developer. If the notice was not complied with, court action could be taken. Once a notice was served it could be appealed and whilst an appeal was live any work on site that was taking place could continue. If the appeal was upheld, there would be a notice period for the landowner to comply. If the landowner failed to comply the final recourse was to go to the Court for an injunction.

The enforcement process could take a couple of years and potentially there was a cost to the Council. Where there was a breach of a planning condition, there was no right of appeal, and in that circumstance the Council could move more quickly.

It was queried whether applicants with a poor track record on previous developments could be identified at Planning Committee if a subsequent planning application was submitted. The Officer commented that this might be considered in the Government's new Levelling-Up and Regeneration Bill.

With regard to planning enforcements in conservation areas, it was highlighted that these areas were regularly surveyed. If Members had concerns about particular properties, they were invited to contact the planning department to check whether enforcement action was being taken.

It was clarified that a new Local Plan would not be approved until after the Elections in May 2023 but there was no impact the timeframe for the Plan to be adopted by the end of 2024.

Members raised several examples of developments that had started but not been completed and the sites had been left to deteriorate and become unsightly. One option was to issue a Completion Notice, so that if the development was not completed then the planning permission was extinguished. However, this could potentially reduce the value of the site and did not always achieve the aim of improving it. The Council could also consider tidying up a site itself and then putting the charge for the work back on the developer.

The issue of nutrient neutrality was raised which was slowing down the planning process. The local planning authority was bound to assess the impact that developments had on the river tees and ensure that mitigation was in place to enable work to go ahead.

AGREED that the information was received and noted.

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DATE OF NEXT MEETING - 22 MARCH 2023

The date of the next meeting was confirmed as 22 March 2023. The venue for the meeting had been changed to the Mandela Room. A guest speaker from Leeds City Council would be attending virtually to provide information in relation to the Panel's current scrutiny topic of Business Rates Pooling.

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CRUSTACEAN DEATHS WORKING GROUP

Councillor Branson provided a verbal update on the Crustacean Deaths Working Group. The last meeting had taken place on 3 February 2023 and the latest independent report on the cause of the mass morbidity had been discussed.

Further research was being undertaken as there were several theories as to the cause. The Government's initial findings were that the deaths were caused by algal bloom but a more recent report suggested that it could be a pathogen. A study undertaken by a Marine Biologist at Newcastle University stated that the cause was pyridine, which was potentially linked to dredging taking place in the River Tees.

Two representatives from the local fishing community had attended the Working Group and explained that the situation was causing them real financial hardship and several employees had had to be laid off. Currently the Government was not providing any financial compensation to the fishing community.

The next meeting of the Working Group was scheduled for 3 March 2023.

The Chair thanked Councillor Branson for the update.

AGREED that the information was received and noted.

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ANY OTHER URGENT ITEMS WHICH IN THE OPINION OF THE CHAIR, MAY BE CONSIDERED

None.