

SPSO decision report

Case: 201003813, Argyll and Bute Council
Sector: local government
Subject: handling of application (complaints by opponents)
Outcome: not upheld, no recommendations

Summary

Mr C complained to us that the council failed to take appropriate action about unauthorised works in a harbour near his home. He maintained that the council had passively watched these works over a period of time, knowing that as responsible planning authority they were legally required to take enforcement action to stop them; that they pretended for several months that they were unaware of their legal rights and their duty to take enforcement action; and that they had jeopardised the outcome of any future application for planning consent for these works by demonstrating disregard for the rights, views and wishes of the people in the town.

When we first received the complaint, a decision about the development was still going through the planning process. Because of this, we told Mr C that it would not be appropriate to investigate at that time. After the council confirmed to us that an application for retrospective planning consent had been granted, we investigated Mr C's complaints but did not uphold them.

We obtained independent advice from one of our planning advisers. He noted that the planning background was complex in that parts of the harbour were listed; the harbour was in a conservation area; the harbour authority were a statutory undertaker (ie that they had legal rights to carry out certain developments and works) and claimed that the development was permitted; some of the works were below the high water mark; and claims had been made that because of works undertaken in the past it was not possible to take successful enforcement action. He also pointed out that the council's enforcement powers were discretionary rather than mandatory. We found that the council had opened an enforcement file before Mr C had contacted them. They had also properly liaised with the developer and his agents and had reported to the appropriate committee on four occasions, explaining that they had asked the developer to submit an application for retrospective planning consent. This was later validated. Mr C's complaint also related to deficiencies in the local availability of plans for inspection but we found that the council had taken swift action to remedy the problem.