

SPSO decision report

Case: 201004350, Fife Council
Sector: local government
Subject: policy/administration
Outcome: not upheld, recommendations

Summary

Mr C complained about what he considered to be a lack of action by the council with regard to the operation of a local quarry. Planning permission was granted subject to a Section 75 agreement in 2009 for an expansion of the quarry operation. A Section 75 agreement is a legal agreement about financial contributions to meet the services and infrastructure needs of the local community associated with a new development. Mr C complained that the quarry company carried out works required as a condition of the 2009 planning consent before that consent was in place. He considered that the council failed to take action in relation to this work.

The work in question concerned the expansion and improvement of a local road, used by lorries visiting the quarry. The upgraded road surface meant that lorries could travel at higher speeds. This caused particular concern, as the road ran adjacent to a children's playground. As planning permission and Roads Construction Consent were not yet in place, the council could not oversee the improvement works. We found that the quarry company had a responsibility to maintain the road and that it would be inappropriate for the council to take action until such time as the works strayed into the realm of 'upgrading' rather than maintenance.

The council demonstrated that they passed on residents' concerns to the quarry company and when the work did become 'upgrading,' they reached a conscious decision not to take the enforcement action that was available to them. We were satisfied that, in reaching this decision, the council considered all of the relevant information. While we did not find that the council delayed taking action, we considered that the situation may have been different had the council not told the quarry company up-front that their planning application had been granted. We highlighted that it is good practice to adopt the 'minded to grant' style of decision where Section 75 agreements are required.

Mr C also complained that the council failed to take enforcement action following reports that the quarry company breached conditions relating to an earlier planning consent. We did not uphold this complaint, as the council were able to demonstrate that they had considered relevant information when exercising their discretion not to take enforcement action.

Recommendations

We recommended that the council:

- review their procedures in relation to the processing and determination of planning applications requiring Section 75 agreement to adopt the 'minded to grant' style of decision; and
- clarify their interpretation of what constitutes 'operations' at the quarry.