

SPSO decision report

Case: 201105280, Scottish Borders Council
Sector: local government
Subject: policy/administration
Outcome: not upheld, recommendations

Summary

In 2005 the council granted planning consent for a developer to build 45 houses in a field in Mr C's village. A condition of the consent required the developer to submit a proposal to provide children's play facilities, and for any approved proposal to be implemented by the time the tenth property was occupied. Mr C complained that, although the development was almost completely built, no new play facilities had been provided. Rather, the council had accepted a payment from the developer to help improve an existing play area. Mr C said this decision was contrary to the planning conditions. He also felt that the council failed to consult with the local community about the developer's proposals, and a change in council policy that allowed the use of such contribution payments.

We were satisfied that the wording of the planning condition did not specifically require a new play area to be provided, and allowed for the improvement of existing facilities. We also found that new supplementary planning guidance specifically encouraged the use of contribution payments to improve existing facilities, as this was considered to provide better value than building new ones. Matters had also been complicated by the developer going into administration. In the circumstances, we felt it was reasonable for the council to consider other options, such as contribution payments, to ensure that play facilities were provided. We were satisfied that the local community was consulted on the introduction of the supplementary planning guidance that led to the introduction of contribution payments as a means of improving existing facilities.

We noted, however, that the tenth house had become occupied a few years ago. The developer should have had their proposed new play area in place by that time and we considered that the council could have taken enforcement action to ensure it was built. We recognised that enforcement action is a discretionary matter and the end result may not have been different. However, we were critical of the council for failing to show any evidence of having considered taking enforcement action or of having recorded their decision making.

Recommendations

We recommended that the council:

- ensure they have a process in place to consider whether enforcement action is necessary and to record their consideration of this.