

SPSO decision report

Case: 201003039, Scottish Borders Council
Sector: local government
Subject: unauthorised developments: calls for enforcement action/stop and discontinuation notices
Outcome: not upheld, recommendations

Summary

Mr C complained about the existence or otherwise of planning consent in respect of aggregate recycling activities (AR) adjacent to a housing development. This complaint was originally made against the council on behalf of a residents association. The council said that recycling activities did not require planning consent and this was the reason there was no planning consent in place.

In 2008 the council had said that planning approval was not required as the necessary consent was contained in planning consent granted in 1985. However, Mr C refuted this and said AR was being carried out on land that under previous planning consents should be maintained as agricultural land for animal grazing purposes. He said that the AR was a commercial activity, unrelated to household materials and composting activities, and that planning consent should have been sought. He acknowledged that efforts had been (and continued to be) made to minimise the disturbance and nuisance caused by AR, but he said these did not address the key complaint and he wished the AR activity moved. Mr C also complained that the council delayed in responding to his complaint and had not established the facts or dealt with it appropriately under their complaints procedure.

This matter was complex and during our investigation we made several enquiries of the council. The complaint was also considered by one of our planning advisers.

We did not uphold Mr C's complaints. The passage of time from 1985 to 2011 combined with the loss of part of a file made it difficult to evidence Mr C's view that AR activities (by the definition and degree as outlined in this case to be classed as ancillary) required planning consent that does not exist.

We found evidence that the council had addressed Mr C's concerns about AR – although we acknowledge, not to his satisfaction. We considered that the council exercised professional judgement in this matter and relied on the 1985 consent as being applicable to current AR activities. There is no documented evidence that the AR activities required planning consent and/or that the council overlooked or ignored this issue. Subsequently, there is no evidence that the council failed to ensure that the AR activities had planning consent. We did, however, make one recommendation because of the issues raised by Mr C's complaint.

We considered that the council appropriately addressed the complaints handling issue Mr C raised . We also consider that although Mr C remained dissatisfied with the response, they adequately answered the points he raised.

Recommendation

We recommended that the council:

- consider regularising permission for the landfill site and ensure it covers all ancillary activity with appropriate planning conditions.