

Case: 201004909, Scottish Borders Council
Sector: local government
Subject: planning, permission, enforcement
Outcome: some upheld, recommendations

Summary

Since 2007 Mr C has run a concrete business from a yard owned by his brother. In 2006 his brother objected to a planning application for four houses on a site adjoining the yard. The application was refused but was granted conditional consent on appeal and the housing development was begun. In 2008 Mr C placed a cement silo in the yard. The occupant of the house nearest to the yard told the council about this. The council inspected the site and asked Mr C to apply for planning consent, which he did. However, it was refused. The council then served an enforcement notice on Mr C telling him to remove the silo, but neglected to serve the notice on Mr C's brother.

Mr C appealed against the refusal of planning consent and the enforcement notice, but his appeals were dismissed. Mr C then instructed a planning consultant, who pointed out that the enforcement notice had not been served on Mr C's brother, and was successful in having the decision notice quashed in the Court of Session. A possibility remained that the council could re-serve the enforcement notice. However, after eighteen months of correspondence with Mr C's consultant on whether planning consent for the silo was actually needed, the council said that they did not consider that pursuit of enforcement action was in the public interest.

Mr C complained that the council handled the planning application for the houses inadequately and that it was inappropriate for them to have taken enforcement action. We did not uphold the complaint in respect of the residential application. We did, however, uphold the second complaint. While we did not find it inappropriate for the council to exercise their discretion, firstly to take enforcement action and then, more than two years later, to decide not to, we found that the processing of the application was flawed as the council did not follow a robust and correct process.

Recommendations

We recommended that the council:

- apologise to Mr C for the failure to ensure that the enforcement notice was properly served; and
- expedite any claim that Mr C decides to submit in the light of this decision.