

SPSO decision report

Case: 201301250, Scottish Borders Council
Sector: local government
Subject: rights of way and public footpaths
Outcome: not upheld, no recommendations

Summary

Mr C complained that the council failed to preserve his free and safe access to a public right of way by refusing to require that the operator of a wind farm remove a number of turbines. He also complained that they failed to ensure that there was an appropriate separation distance between the turbines and the right of way.

The council said that they had relocated the pathway to enable it to make use of a surfaced route previously used by the developer during construction of the turbines. They explained that the planning department had consulted the council's access officer who was happy with the position of the path in relation to the turbines. The original path was not a physically defined route and, despite the development of the new path, there was nothing to stop walkers accessing the original route. In addition, they advised that they were unaware of any minimum distance criteria between paths and turbines.

Having reviewed the background correspondence, we found that the council's actions were designed to improve public access. We noted their view that the original route could still be accessed and we found no evidence of minimum separation distance criteria between path and turbine. We also noted that the only way to determine whether the council have failed in their legal responsibilities to maintain a public right of way is to make an application to a sheriff. As we found no evidence to suggest that the council acted inappropriately in respect of this pathway and the separation distances between path and turbine, we did not uphold Mr C's complaints.