

SPSO decision report

Case: 201301965, Scottish Environment Protection Agency
Sector: Scottish Government and devolved administration
Subject: policy/administration
Outcome: some upheld, no recommendations

Summary

In 2013 Mr C was an objector to a planning application. As part of his objections he asked the council to consult with the Scottish Environment Protection Agency (SEPA) about flood risk at the development site. During the planning process, Mr C discovered that SEPA employees were the agents for the planning application. SEPA had provided advice on the flood risk assessment (FRA) during a previous planning application in 2011. This application had been withdrawn and a later application in 2012 had been rejected. The council approved the 2013 application, subject to conditions, and Mr C was unhappy with SEPA's involvement, and their response to the council's consultation.

Mr C complained that staff failed to declare an interest before they provided advice in 2011. Mr C said that SEPA had unreasonably removed an allowance for climate change from the FRA and had not referred to Scottish planning policy in their advice to the council, despite both of these being a requirement in SEPA's guidelines. He also complained that SEPA should have required an updated FRA because the position of the site access road had changed.

Our investigation found that SEPA's assessment of the conflict of interest was a matter excluded by our governing legislation, and was a discretionary decision on their part. Our investigation was restricted to considering whether they had followed their procedures and if these were appropriate. SEPA had investigated and found that there was a perceived conflict of interest, but no evidence of an actual conflict. We found that their investigation had been thorough, and that the decision they reached was supported by the evidence they gathered and in line with their employee code of conduct.

We also found that SEPA had conducted a thorough investigation of the advice given, with separate reviews of both the planning advice and the flood risk and hydrology advice they had provided. However, we found that SEPA's published guidance said that an allowance for climate change in calculations of flood risk was a requirement, it didn't mention that SEPA might exercise discretion on this. We, therefore, upheld Mr C's complaint about the removal of the allowance. However, because SEPA had already recognised the confusion the guidance had caused, and said they would develop consolidated operational guidance, we did not find it necessary to make a recommendation.

We took the view that the new route of the access road was a matter for the council. SEPA had explained that the question of safe access/egress referred to pedestrian access/egress in the event of a flood, rather than to the road in isolation. We found that the council had considered this and had sought advice from the flood prevention officer. We also took the view that it was for SEPA to decide whether to refer to Scottish planning policy.