

SPSO decision report

Case: 201302338, North Ayrshire Council
Sector: local government
Subject: handling of application (complaints by applicants)
Outcome: not upheld, recommendations

Summary

Mr C and Mr D own a listed country house hotel with substantial grounds. They had obtained conditional planning consent to build holiday cottages in the grounds. One condition said that the cottages should only be used for seasonal lets, but contained an ambiguous sentence. Mr C and Mr D interpreted this as implying that they could write and ask the planning authority to set aside that condition. When they then decided to sell one of the cottages, they engaged in an extensive pre-application discussion with the council. The council told them that they would require a planning application, which was submitted. Council officers prepared a report indicating that they would be prepared to recommend approval of the proposal, subject to completion of a section 75 agreement (a legal agreement that covers financial contributions to meet the services and infrastructure needs of the local community associated with the new development). A draft agreement was provided and agreed in principle by Mr C and Mr D. However, the council did not issue their decision within the required time period, and Mr C and Mr D submitted a notice of review to the local review body. The review body met, but while awaiting their decision Mr C and Mr D appealed to Scottish Ministers on grounds of non-determination of the original application. The local review board issued a notice of intention some days later, but this was negated by the appeal.

Mr C and Mr D complained to us about the council's handling of this, including how they described the application. They also complained that the council failed to assess the application against relevant planning policies, that they unreasonably required the section 75 agreement without considering other options and that the local review body did not follow due process. Mr C and Mr D also said that the council failed to provide a reasonable response to their complaints. In the light of independent advice from one of our planning advisers, we did not uphold the first four complaints as we did not find evidence of maladministration or service failure, although we did make one recommendation. In terms of the complaints handling, we found that although the council's response to their complaint was concise, it was not unreasonable. Our decision took into account that the issues had by that time been rehearsed with the planning officer, at the local review body and in the appeal to Scottish Ministers against non-determination by the local review body.

Recommendations

We recommended that the council:

- review their procedures for recording Section 75 agreements to ensure that the wording reflects Scottish Government advice.