

SPSO decision report

Case: 201303912, Argyll and Bute Council
Sector: local government
Subject: maintenance and repair of roads
Outcome: upheld, recommendations

Summary

Mr C complained that the council had installed a new culvert (a tunnel carrying a stream or open drain) under the road above his property. The culvert drained directly onto his land, and he said that it had eroded his driveway and caused problems with water run-off around his house. Mr C said that he was there when workmen constructed the culvert, and there had been no management presence on site. He had contacted the council at the first available opportunity, but was told that although the location of the culvert was detrimental to his property, the council had no option but to locate it there. Mr C said he was also told that the culvert replaced an existing culvert which had collapsed, and as it was not considered a new culvert, the council had no obligation to tell him about it.

Mr C complained and was told that the council's primary obligation was to ensure the road was safe by preventing surface water collecting on it. The council said that the Roads (Scotland) Act 1984 gave them the necessary authority for their actions. They recognised that the culvert had a detrimental impact on Mr C's property and offered to pay half the cost of additional drainage to reduce its impact.

We upheld Mr C's complaints. We found that the logical conclusion of the council's position was that they were entitled to install drainage, regardless of the impact this had on an individual's property. Although it was reasonable for them to take action to provide drainage, our investigation found that they could not provide evidence to prove that a culvert had previously been there. We also found no evidence that they tried to identify or contact Mr C, even though it was apparent his house would be directly impacted. Because of this, we found that the council had acted unreasonably, as they had not given him the opportunity to discuss this before putting the culvert in place.

Recommendations

We recommended that the council:

- meet the cost in full of providing adequate drainage from the culvert to the burn at the edge of the property affected;
- review their roads drainage policy, to ensure that affected owners and occupiers are identified and appropriately consulted before works commence;
- provide evidence that they are compiling an asset register of all culverts; and
- apologise for the failings identified by our investigation.