

SPSO decision report

Case: 201402157, Aberdeenshire Council
Sector: local government
Subject: unauthorised developments: calls for enforcement action/stop and discontinuation notices
Outcome: upheld, recommendations

Summary

Mrs C complained about an unauthorised development immediately adjacent to her home. She said that in June 2013 work began in the field next to her house and it quickly became apparent that this was to develop a caravan site. A planning application was submitted for part of the site. In September 2013, the council issued a temporary stop notice with regard to the works and also obtained an interim interdict from the sheriff (a temporary court order stopping a particular course of action). Court proceedings began after the interdict was breached and a planning enforcement notice was issued. Thereafter, another planning application was made for the remainder of the site (for which no application had been made).

No appeal was made against the council's enforcement notice which, therefore, took effect in December 2013. The compliance date expired in January 2014 without any action being taken against the developer. Then, in April 2014, both planning applications were withdrawn. Court proceedings against the alleged operator were dismissed in August 2014 and, the following month, two new planning applications were made for the site which were subsequently deemed to be invalid.

Mrs C complained that although the opportunity existed for the council to take action and clear the site, they failed unreasonably to do so. As a consequence of the unauthorised works that have taken place, she said that her house and business have been detrimentally affected and her home is at risk from flooding.

The council said that they took such breaches of planning control very seriously but that the situation next to her home was not straightforward; once the notice had expired which allowed time to appeal or comply, the only action remaining to the council was to remove the caravans and associated buildings by direct action. The council said they were considering this and developing a formal strategy to address the unauthorised development which they hoped would be in place by June 2014.

We took independent advice from one of our planning advisers and we found that there was uncertainty of timing of action regarding ongoing court action and the planning applications. There was also uncertainty over the need to obtain powers over the entire site before taking direct action which required professional judgement on the part of planning officers. Up until spring 2014, all of the measures taken by the council to remedy the breach were reasonable and part of the suite of statutory planning enforcement instruments available under planning legislation. Similarly, it was reasonable for the council to await outcomes of planning applications and court action at the same time as formulating a strategy of action. However, although the council had spoken about a plan of action, they had, in fact, made very little meaningful progress towards it and towards an effective remedy for the breach of planning control. Little was done to expedite action and there was little assessment of the available options. Throughout this time, Mrs C was left with a large and unauthorised development next to her house, so we upheld her complaint.

Recommendations

We recommended that the council:

- make a full apology for the delay in pursuing a plan to deal with the unauthorised development and for the distress and inconvenience suffered; and
- ensure that relevant planning officers review the circumstances of this complaint to see where opportunities were lost to progress matters and to develop an action plan to avoid them in the future. They should inform us of the plan they agree.