

## SPSO decision report

**Case:** 201405112, The City of Edinburgh Council  
**Sector:** local government  
**Subject:** unauthorised developments: enforcement action/stop and discontinuation notices  
**Outcome:** upheld, recommendations

### Summary

Mr C complained about the council's handling of a planning site next to his home. In particular, he complained that the council had failed to provide the public with relevant information on a planning application for a new building; that they had failed to consider objections to the planning application (related to the excessive height at the rear of the development); and had failed to pursue enforcement action to have the building removed.

We took independent advice from a planning adviser. We noted the council accepted that they had failed to provide all the relevant information to the public. In particular, the level difference at the rear of the development should have been identified when the application was processed. The council had apologised and taken action. The council also accepted that this information would have helped Mr C to raise concerns about the development height during the application process, instead of raising the matter as an enforcement issue after the application was approved.

We found that the absence of approved external measurements made it impossible for the council to specify what height adjustments should be made for the building to comply with approved plans. However, we accepted that any variation in the height of the building from what was approved was likely to be too marginal to be enforceable. We also found that the ground levels on the application plan were entirely misleading, and should have been corrected by the council to note the likely dominant impact of the development on the garden behind. We found no evidence that the height difference at the rear of the development was fully considered during the application process. We considered that the assessment of the planning application was compromised by the lack of recognition of the extent of the change of ground level.

We accepted that the decision not to take direct enforcement action to remove the building was a discretionary decision for the council. However, we considered there had been a delay in taking enforcement action, which undermined public confidence.

### Recommendations

We recommended that the council:

- consider the adviser's comments on the need for an accurate survey plan showing the relationship to adjacent developments and ground levels, and report back to us on any action proposed regarding future planning applications;
- consider whether it would be appropriate in this case to pursue a section 71 discontinuation or alteration order; and
- consider this case and the adviser's comments to see if any further lessons can be learned, and report back to us on any action taken.