

## SPSO decision report

**Case:** 201405656, Aberdeenshire Council  
**Sector:** local government  
**Subject:** handling of application (complaints by opponents)  
**Outcome:** upheld, recommendations

### Summary

Mr C's garden bordered a field. The council granted planning permission for a residential development on the field. To achieve the desired ground levels for the new site, it was necessary for the developer to dig down some three metres. This resulted in a steep banking being created, running the length of Mr C's western boundary, partly in the garden of one of the new properties and the remainder within an amenity space (an area designed to enhance enjoyment of the surroundings) at the development. Mr C found that his garden ground was being eroded with earth slipping down the banking into the new development. He complained to the council about the lack of retaining wall but was advised that this was not something that would normally be considered under the remit of a planning application. They maintained that this would normally be included by the applicant as part of their proposal, rather than at the insistence of the council. The council also advised Mr C that it was not a building control matter and that he should seek legal advice if he felt the actions of others had had a negative impact on his property.

After taking independent advice from a planning adviser, we upheld Mr C's complaint. We found that the council had consistently maintained that no specific consideration was given to stability as this was considered to fall outwith the remit of the planning service. The adviser did not agree with this approach and considered that, given the significant change in ground level from Mr C's property to the new development, this should have been a material consideration in the council's planning report. We also found that there had been issues with a condition that was attached to the new development's planning permission and that this had caused confusion for local residents such as Mr C.

### Recommendations

We recommended that the council:

- issue Mr C with an apology for the errors surrounding the condition in question within the planning application;
- provide evidence of the new processes that are in place to prevent a recurrence of such an issue with planning conditions in future;
- issue Mr C with an apology for the failure to take all material considerations into account when determining the planning application; and
- consider how they can assist Mr C to stabilise his entire western boundary at no cost to himself, or otherwise facilitate this outcome. If following consideration, this is not possible, appropriate financial redress should be offered to Mr C.