

SPSO decision report

Case: 201500091, Fife Council
Sector: local government
Subject: handling of application (complaints by opponents)
Outcome: upheld, recommendations

Summary

Ms C complained that the council had unreasonably failed to require her neighbour to submit a planning application to install roof lights (velux windows). She said that they had allowed her neighbour to install the roof lights on the basis that planning and listed building consents for this work had been granted in 1996 and were 'kept alive' because the building had been painted and works to the internal stairwell were carried out within five years of the consent being granted. The council took the view that as the consented works had started, the permissions should not lapse. Ms C was of the view that these permissions should have lapsed after five years and new applications submitted for any further works. She was also concerned that without the requirement to submit a new application, she had lost the right to make representations to the council.

We considered the background to the case and sought independent advice from our planning adviser. We found that there was no evidence to support the council's view that the building had been painted since 1996, and that this work did not form part of the original planning consent. We also found that the internal stairwell, where works appear to have taken place, also did not form part of the original planning permission. The only work which required planning permission, and which was granted in 1996, was the installation of the roof lights. However, as these roof lights were not installed until 2014, the original planning and listed building consents should have lapsed in 2001, five years after the original permission was granted.

We noted that the council had based their decision solely on information provided by the neighbour and failed to take any steps to verify what works had been carried out under the original permissions. We also noted that even when it should have become apparent that the original permissions had lapsed, they did not take steps to consider any form of enforcement action to have the roof lights approved. Furthermore, we noted that the council had failed to provide reasonable, or accurate, responses to Ms C's complaint. As we were satisfied that the original permissions had lapsed, in line with the time limits applied by planning law at the time, and as the council's subsequent justification for their decision making was very poor, we upheld Ms C's complaint.

Recommendations

We recommended that the council:

- carry out a full review of the facts and circumstances surrounding this case and give careful consideration to what action would now be appropriate in order to obtain the necessary consents for this development (both planning and listed building) within the terms of the relevant legislation;
- introduce appropriate procedures to ensure any similar cases, relating to historic applications, are assessed against the correct legal framework and provide training to staff to ensure they are familiar with this process;
- review how their planning department responds to stage 2 complaints in order to ensure that the factual basis of any decision is checked before the decision letter is issued; and
- apologise to Ms C in writing for providing her with inaccurate information in their response to her complaint and for failing to give proper consideration to the question of whether or not the installation of the windows

required submission of a new planning application.