

## SPSO decision report

**Case:** 201507793, Aberdeenshire Council  
**Sector:** local government  
**Subject:** unauthorised developments: enforcement action/stop and discontinuation notices  
**Decision:** some upheld, recommendations

### Summary

Mr C raised concerns about the way the council responded to his reports of noise nuisance from his neighbour's heating equipment. Part of this equipment was subject to a planning application, which was approved by the council's planning service following input from the council's environmental health department. This permission was subject to three conditions, two of which related to noise output and one of which related to the erection of a fence around the equipment. Mr C felt that the equipment was being operated in breach of all three conditions and that the noise from the equipment was a statutory nuisance. He was not satisfied with the way the council responded to these concerns and he complained to the council about this.

In response to Mr C's complaint, the council said that these matters were jointly investigated by the planning service and the environmental health department. We took independent advice from a planning adviser and an environmental health adviser. The planning adviser noted that enforcement action was a discretionary power, and was satisfied that the council's planning department took reasonable steps to investigate whether there had been a breach in planning permission. However, they noted that one of the planning conditions could have been specified more precisely, which would have reduced the scope for misinterpretation. Although they did not consider that the condition was unenforceable, they noted that this was a learning point for the council. Although we did not uphold this aspect of Mr C's complaint, we made a recommendation in relation to this.

During our investigation, we found an instance where a council officer made inappropriate comments about one party of the planning enforcement investigation. We did not consider that the officer had failed to act impartially, yet we felt the council should apologise to Mr C and take steps to remind officers of their responsibility to maintain appropriate communication. We also noted that the planning service had not provided a clear explanation to Mr C regarding the reasons for the outcome of the planning enforcement investigation. We asked the council to remind officers of the importance of this.

The environmental health adviser considered the actions of the environmental health department in relation to the monitoring of the planning conditions related to noise and the investigation of the statutory noise nuisance. They noted that the environmental health officers had sought appropriate technical information about the applicant's equipment and had undertaken visits to monitor the noise output. On the basis of these actions, the adviser considered that the environmental health department had taken appropriate steps to provide the planning service with information about whether conditions had been breached, and to investigate whether a statutory noise nuisance was present. We therefore did not uphold this aspect of Mr C's complaint. The adviser noted a number of learning points for the council, and referred to recommended methodologies for investigating low-frequency noise complaints. Although these measures were over and above the statutory requirements for investigation of noise nuisance, we made a recommendation in relation to this.

Mr C also complained that the council failed to reasonably respond to a letter he had sent to the building standards department. We were critical that the council did not respond to Mr C's initial letter until he sent a further letter five months later. However, we noted that the council had apologised to Mr C for this and had

eventually taken reasonable steps to address Mr C's letters. To the extent that there was a significant delay in providing this response, we considered that the council acted unreasonably and we upheld this aspect of Mr C's complaint.

### **Recommendations**

We recommended that the council:

- feed back the planning adviser's comments in relation to the wording of the planning condition to officers in the planning service;
- remind staff in the planning service to maintain appropriate communication with all parties to a planning application, and to ensure that complainants are clearly informed of the reasons for the outcome of an enforcement investigation;
- feed back the environmental health adviser's comments to officers in the environmental health department; and
- apologise to Mr C for inappropriate comments made. The apology should comply with SPSO guidance and should also set out what consideration the council has given to ensuring they have systems in place to prevent similar situations from arising in the future.