

## SPSO decision report

**Case:** 201707656, Glasgow City Council  
**Sector:** local government  
**Subject:** building standards  
**Decision:** some upheld, recommendations

### Summary

Mr C complained about a cafe premises near his property. The complaint included issues relating to the operation of a kitchen in the basement of the cafe and the placing of seating and tables outside the front of the cafe.

In relation to the operation of a basement kitchen, Mr C stated that the council failed to enforce building standards within a reasonable period of time after becoming aware of the fact that the cafe was operating a kitchen in the basement. We found that the council had made efforts over a period of time to get the cafe owner to comply and remove the basement kitchen, however, the cafe owner did not comply. Given the period of time that had passed it was clear that negotiations were not successful. We noted that the council have discretion regarding whether or not they will take enforcement action. However, we considered that the council should have taken a proactive approach and confirmed if the current situation was acceptable to them and why, or take suitable enforcement action within a reasonable period of time. Therefore, we upheld this aspect of Mr C's complaint.

Mr C also complained about a failure on the part of the council to address health and safety breaches in relation to the café's kitchen. We considered that the council are required to make their decision regarding the existence of the basement kitchen clear before it could be determined if the council required to seek further compliance with the health and safety matters raised. Therefore, we did not uphold this aspect of Mr C's complaint.

In relation to the seating and tables, Mr C complained that the cafe had not applied for planning permission for outdoor seating and the council had failed to address this within a reasonable period of time. We found that the cafe owner had signed The Street Cafe Annual Agreement that stated that planning permission must be obtained. We noted that the council were aware of the fact that this had not been obtained. We considered that the council should have confirmed that they were content to accept the current position and explain why they did not consider planning permission was required or what steps would be taken to ensure compliance. Therefore, we upheld this aspect of Mr C's complaint.

Mr C also considered that the cafe had breached the Street Cafe Annual Agreement in relation to several other areas. The council stated that the breaches were minor and they accepted them. We found that it was not reasonable for the council to make a determination on these matters until they had decided whether or not they accepted the seating outside the cafe without planning permission being obtained. We upheld this aspect of Mr C's complaint.

### Recommendations

What we asked the organisation to do in this case:

- Apologise to Mr C for failing to clarify whether or not they intend to take enforcement action or exercise discretion in relation to a breach of the Street Café Annual Agreement and in relation to the creation and operation of a basement kitchen. The council should also apologise for taking a view on breaches of the Street Café Annual Agreement when it was not reasonable to do so until they had clarified their position

on another breach relating to a lack of planning permission. The apology should meet the standards set out in the SPSO guidelines on apology available at [www.spsso.org.uk/leaflets-and-guidance](http://www.spsso.org.uk/leaflets-and-guidance).

- The council should clarify whether or not (i) they intend to take enforcement action in relation to a breach of clause eighth of the Street Café Annual Agreement or (ii) exercise discretion and accept the current position without planning permission, and provide reasons for doing so. The council should clarify (i) whether or not they intend to take enforcement action in relation to the creation and operation of a basement kitchen or (ii) exercise their discretion and accept the current position without building regulation requirements and explain their reason for doing so.

What we said should change to put things right in future:

- Where the council have been unsuccessful in asking a customer to comply with planning or building regulation requirements they should establish on a case by case basis a timescale in which they should reach a decision on whether or not they intend to take enforcement action or exercise their discretion in accepting the current position and provide reasons for doing so.
- Ensure there is a reporting mechanism within Development and Regeneration Services so that information can be shared about complaints received and breaches identified that impact on the decisions made by other departments.