

## SPSO decision report

**Case:** 202008929, Fife Council  
**Sector:** Local Government  
**Subject:** Rights of way and public footpaths  
**Decision:** some upheld, recommendations

### Summary

C complained to the council about a local access route that was closed off by the landowner. C said that the route had historically been asserted as a right of way (RoW) and a planning condition imposed to protect it. In response, the council declined to take action to re-open the route. They explained that, notwithstanding the route being referred to a RoW in the planning process, the route had not been asserted and had no legal status. They explained that the planning condition (to provide an upgraded alternative route through the site) had also been removed on appeal. However, in a further response, the council stated that the condition remained valid but was found to be ultra vires and unenforceable as the alternative route was not in the landowner's ownership. They declined to take any further action on the basis a suitable alternative route, in their ownership, had been provided and remained open.

C complained that the council had failed to take reasonable action to keep open the claimed RoW. C said that the council had been very clear in the planning process that the claimed route had been established as a RoW, and Scotways had also considered the route had met the criteria to be a RoW. They said that the council had also failed to take reasonable enforcement action in respect of the planning condition and had provided contradictory responses to their complaints about these matters.

We took independent advice from a planning adviser. We found that the council had provided a reasonable explanation regarding the status of the route but highlighted that it would be for the courts to determine the status of a disputed RoW if C disagreed with the council's position. We also found that the decision not to take any further action to keep the claimed route open was a discretionary matter which the council were entitled to take. For these reasons, we did not uphold this aspect of C's complaint.

However, we provided feedback to the council in respect of the original planning application. Specifically, we noted that the council had appeared to determine the application as including the diversion of a claimed RoW without confirming the status of that route. We reminded the council that, when dealing with planning applications which make reference to a RoW, to firstly confirm the actual status of such route and where required, to amend the application description if it is deemed that the route is not a RoW prior to making any determination.

Notwithstanding the unenforceability of the planning condition itself, we found that there had not been any failure by the council in respect of enforcement matters. We found that the council's position that the planning condition had now been complied with as a suitable alternative route through the site had been provided, to be acceptable. For these reasons, we did not uphold this aspect of C's complaint.

We also found that the council failed to provide a clear and consist explanation in their response to C's complaints and had incorrectly applied terminology and/or language. We upheld this aspect of C's complaint. We also reminded the council to ensure that where responses cannot be provided within the timescales set out in their Complaint Handling Procedure, they should write to a complainant to explain the reasons for the delay and provide a revised timescale for response, and that where they are unable to respond to a request for information

from our office within the timescale specified, they should contact us as soon as possible and without delay.

### **Recommendations**

What we asked the organisation to do in this case:

- Apologise to C for the failings identified. The apology should meet the standards set out in the SPSO guidelines on apology available at [www.spsso.org.uk/information-leaflets](http://www.spsso.org.uk/information-leaflets).

In relation to complaints handling, we recommended:

- Ensure that all relevant staff are reminded of the need to use the correct terminology when referring to matters in which the terminology has a particular meaning.

We have asked the organisation to provide us with evidence that they have implemented the recommendations we have made on this case by the deadline we set.