

SPSO decision report

Case: 202106700, Clackmannanshire Council
Sector: Local Government
Subject: Policy / administration
Decision: upheld, recommendations

Summary

C complained about the council's planning department with respect to a section 75 agreement (a contract that is entered into between a landowner and a planning authority). In particular, C complained that the council had failed to adhere to a clause of the section 75 agreement requiring them to adopt open space and woodland areas within, and bordering the housing development on which C lives. C noted that some of the land in question had now been sold to a property developer. C believed that the council's inaction could result in development adversely affecting C and other residents' properties and a failure to maintain the playpark and communal spaces. Additionally, C was dissatisfied with the council's response to their complaint due to missed timescales, and the response having been issued by an officer closely involved in the matters complained about.

We took independent advice from a planning adviser. We found that many of the significant events related to this complaint were now historic. In particular, the fifth clause of the section 75 agreement required prior action be taken, adoption of the land by the council, before occupation of a number of homes in a phased development. However, a number of years previously the council had failed to monitor and discharge this condition allowing occupation. While in theory enforcement action remained a possibility at the council's discretion, due to the passage of time the owner of the land likely now had deemed planning permission. On this basis, we upheld C's complaints about these matters. We also upheld C's complaint that the complaint had not been handled in line with the council's complaints handling procedure.

Recommendations

What we asked the organisation to do in this case:

- Apologise to C for failing in their duty to ensure that all the conditions and schedules of the decision notice and the Section 75 Agreement were discharged. Apologise for failings in relation to enforcement action which due to the passage of time and failings outlined appeared to no longer be a reasonable option available to the council. Additionally, apologise for the failings in complaint handling. The apology should meet the standards set out in the SPSO guidelines on apology available at www.spsso.org.uk/information/leaflets.

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

- Where as a condition of planning permission being granted, the council and the developer have entered into a Section 75 Agreement, the said Agreement and the conditions attached there too require to be monitored by the council to ensure that they are complied with and discharged. The council should therefore ensure that they have a systematic and robust system of monitoring in place.

In relation to complaints handling, we recommended:

- The council should ensure that they comply with the process and time limits set out in the complaint

handling procedure. Where the council are unable to meet their time limits for responding to a complainant they should notify the complainant and explain the reasons why. The council should also ensure that their final response to a complaint signposts to this office in line with their complaints handling procedure.

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.