

SPSO decision report

Case: 202109957, Clackmannanshire Council
Sector: Local Government
Subject: Handling of application (complaints by opponents)
Decision: not upheld, no recommendations

Summary

C complained about the way that the council handled the planning process and the building warrant process for a self-build project within an existing development of houses. Planning permission had been granted, and three years later only limited progress had been made and an application was made by the developer to place a static caravan on site, where they would live whilst completing the project. There were several applications relating to the caravan, and some years later an enforcement notice was served by the council. This was appealed by the developer. Two years later, the council served a completion notice on the site, and the case was appealed to the Planning & Environmental Appeals Division (DPEA) by the developer.

C complained to the council. The Scottish Government reporter concluded planning permission had lapsed, because development had not lawfully commenced. The council took legal advice, which suggested that they reluctantly accept the reporter's findings. The advice noted that should further evidence be submitted, then the council could take this into account if it supported a contrary position on the implementation of the initial planning permission.

C continued to correspond with the council, and brought a number of complaints to the SPSO. We took independent planning advice and we found that the council had the discretion to decide what enforcement action to pursue, if any. The council had followed the legal advice that they had received, serving a notice requiring submission of a new planning application. The developer had chosen to pursue an alternative course of action, by applying for a Certificate of Lawful Proposed Use or Development (CLPUD). This was not the same as being granted planning permission, but was an acceptable course of action by the developer. The decision of the Scottish Government reporter was only directly applicable to the completion notice, which could not be served. The council were entitled to determine whether they were satisfied the development had lawfully commenced. The advice stated that on balance, the council had acted reasonably. We found that whilst the council's actions were not without criticism, they had exercised their lawful powers when reaching decisions on both planning and building standards matters. We did not uphold the complaint.