

SPSO decision report

Case: 201301819, Fife Council
Sector: local government
Subject: zoning of local authorities, planning blight, flood prevention
Outcome: upheld, recommendations

Summary

Mrs C complained about how the council handled work that would possibly reroute sewerage infrastructure through her garden. The work was to be done as part of the council's flood defence programme, which was originally the subject of public consultation.

The original plans had a minimal effect on Mrs C, but in 2010 the main contractor showed her a copy of a revised plan, which indicated that a new sewer was to be laid under her and her neighbour's gardens. This was the first Mrs C or her neighbour knew of the change. She was concerned that the new sewer would have significant consequences for her property and complained to the council. The council maintained that the flood prevention scheme was empowered by the Flood Prevention (Scotland) Act, which they said gave them the power to amend or deviate from (within a certain tolerance) the original plans without further consultation or provision of information to those affected. Considerable correspondence and meetings between the council, Mrs C, her neighbour, the design engineers, and the constructors ensued, ending in a meeting in March 2011. Mrs C and her neighbour considered that negotiations were ongoing at this stage as there were several action points from the meeting about further consultation or information to be provided to them. The next communication Mrs C received from the council was a formal 'Notice to Proceed' with the revised plans three weeks later.

At this point Mrs C felt that she had no option but to seek legal advice. After correspondence between her solicitor, the council and Scottish Water (who did not agree with the council's view) a compromise was reached that the new sewer would not be routed through the gardens. Mrs C then asked the council to reimburse her legal fees, but they refused.

Our investigation, which included taking independent advice from one of our planning advisers, focused only on consultation with and provision of information to those affected by the scheme, rather than the legal views of the various parties. We considered that it would have been reasonable for the council to have consulted with, or at least told, Mrs C at the point when the plans changed so radically. We were also disappointed that the council were giving mixed messages when they were corresponding and meeting with Mrs C and her neighbour in March 2011, but then without further warning issued the Notice to Proceed.

On this basis we considered that it was reasonable for Mrs C to feel that she had no option but to take legal advice, and that the direct intervention of her solicitor led to the compromise finally agreed. For this reason we took the unusual step of recommending financial redress for the reimbursement of Mrs C's legal fees.

Recommendations

We recommended that the council:

- issue a written apology for the failings identified; and
- reimburse Mrs C's legal fees, following production to the council of confirmation of the fees directly incurred in relation to the maladministration and service failure identified during our investigation.