

SPSO decision report

Case: 201403550, The Moray Council
Sector: local government
Subject: handling of application (complaints by opponents)
Outcome: not upheld, recommendations

Summary

Mr C said the council did not properly consider the local plan, or his objections, when approving a planning application for a nearby development. He also considered that the development did not comply with conditions on the planning approval, and was concerned that the council was not taking formal enforcement action.

The council said the planning officer's report showed they had considered Mr C's objections and the local plan in determining the application. While the council agreed that parts of the development did not fully comply with the approved plans, they said they were taking action to address this. This action included works to improve road safety, as well as requesting a new planning application for parts of the development which had not been built according to the plan. However, the council said they would not consider formal enforcement action until the development was complete (including the approved amendments). The development was completed during our investigation, and the council then issued a formal enforcement notice.

After taking independent advice from a planning adviser, we did not uphold Mr C's complaints. We found that the council had considered all of Mr C's objections and the local plan in determining the application. In relation to enforcement, the adviser said it was reasonable for the council to wait until the development was fully completed before considering formal action. The adviser also explained that the council has a broad discretion in deciding what (if any) enforcement action to take and, therefore, we found the council did not unreasonably fail to enforce the planning conditions. However, we found that on one occasion the council delayed unreasonably in following up action they told Mr C they would take. We also found that one of the planning conditions was unclearly written, and the council acted inconsistently in deciding that the condition was met, although the actual works it specified had not been carried out.

Recommendations

We recommended that the council:

- apologise to Mr C for the unreasonable delay in following through the actions they told him they would take;
- remind relevant staff of the Scottish Government's guidance on planning conditions relating to precision and enforceability; and
- ensure our findings about the inconsistent approach to condition three are fed back to both planning and transportation staff for learning and improvement.