

Case: 201001709, Perth and Kinross Council
Sector: local government
Subject: parks; outdoor centres and facilities
Outcome: upheld, recommendations

Summary

Mr and Mrs C complained about the games area in a new community campus beside their home. They were unhappy about light spillage from the floodlighting for the games area into their garden. In particular, they complained about the council's failure to take enforcement action on a planning condition about light spillage from the community campus. The planning condition for the campus said that there should be no light spillage beyond the boundaries of the site to the satisfaction of the planning authority.

We were satisfied from the evidence we saw that light spillage from the games area had occurred. Planning authorities have a general discretion to take enforcement action against any breach of planning control if they consider such action appropriate. We did not consider that the council had taken satisfactory steps to mitigate the effects of the floodlighting and to address Mr and Mrs C's complaints about this matter. Although the light levels in Mr and Mrs C's garden had been measured, this was done by staff from the facilities management group contracted by the council to manage and run the facility, and not by council staff.

Our planning adviser commented that the use of terms such as 'to the satisfaction of the planning authority' had been discouraged in the Scottish Government Planning Circular 4/1998 – 'The Use of Conditions in Planning Permissions'.

Mr and Mrs C were also unhappy that the council had failed to take action in response to their complaints about antisocial behaviour by users of the games area. The Centre Manager confirmed that Mr C had contacted him about this eight to ten times during two months in 2010. We found that the council had taken action to try to prevent balls going into their garden and had put up signs asking customers to mind their language.

However, the Centre Manager also stated that he did not have a record of each time Mr and Mrs C made a complaint. It was clear that management staff at the campus did not adequately record their complaints about noise/swearing and the balls coming into the garden. There was no evidence that the council established the facts and determined whether the behaviour complained of constituted antisocial behaviour. There was also no evidence that consideration was given to referring the matter to the council's Antisocial Investigations Team.

When Mr and Mrs C made a written complaint to the council about this, they were told that they needed to notify the council of incidents at the time so that management staff at the campus could investigate and deal with the matter. The council also delayed in responding to their written complaints about the matter. In view of all of these failings, we upheld the complaints.

Recommendations

We recommended that the council:

- remind staff that, in line with Scottish Government planning circular 4/1998, they should not use phrases such as 'to the satisfaction of the planning authority' in planning conditions for matters such as floodlighting. in such cases, specific and detailed plans should be sought from developers, and subsequent planning conditions should be worded to ensure compliance with these plans;
- take all reasonable action to enforce the planning condition;
- review their guidance on obtaining statistical evidence relating to a condition of planning consent from staff employed by the operators of the site to which the condition applies;
- remind the relevant staff involved in the case that complaints of this nature should be clearly recorded and investigated where appropriate;
- give consideration to taking further action to try to resolve the matter and/or referring the matter to the council's antisocial investigations team; and
- apologise to Mr and Mrs C for the failings identified.