

SPSO decision report

Case: 201104671, West Lothian Council
Sector: local government
Subject: noise pollution
Outcome: some upheld, recommendations

Summary

Mrs C and her neighbour live at opposite ends of a row of four cottages. The two middle properties are owned by a third party (Mr M) who operated one of the properties as a shop. Mr M applied for and was granted planning permission to extend the shop into the second of his properties. Mrs C and her neighbour then complained to the council about an ongoing issue with noise from internal and external air cooling units connected to the shop. Mrs C considered that planning consent should have been sought and required for the units.

We found that Mr M did not include details of the cooling units in his planning application and that the council could not, therefore, take a view that planning permission was required before consent for the shop development was granted. Following Mrs C's complaint, the council decided that planning permission was required for one of the units. However, they took no enforcement action to regularise the situation, as environmental services were still investigating complaints about the noise. We found it reasonable for the council to delay taking enforcement action on the planning merits of the units pending the outcome of the noise investigation, as this could have resulted in the units being changed or moved. We were also satisfied with the council's consideration of complaints about soundproofing between the cottages, but we were critical of a lack of record-keeping showing the reasoning behind their decisions.

Although we acknowledged that the process took some time, we found that there was clear evidence of continuous activity by the council in relation to Mrs C's complaints about noise over a period of one and a half years. We also found that they adhered to their own policies by taking a preventative approach and by supporting Mr M in trying to resolve the issue. We found that due to the nature of the work required, this process can, and often does, take a considerable period of time. Mrs C complained that the council did not act on its findings and progress to legal action but we found that the council acted on its findings throughout and moved to take legal action at an appropriate stage. Had they taken legal action sooner, they would have been in breach of their own policies and of government guidance in relation to the preferred preventative approach to resolving such issues.

We upheld Mrs C's final complaint that the council did not provide updates to her when they had agreed to do so. Although we did not consider it realistic for the council to report back on every single event, we found that when they agreed to provide an update and did not, this was not in keeping with their customer service strategy. The strategy says that they will keep their commitments to customers when providing services and tell them about the progress of the service requested.

Recommendations

We recommended that the council:

- consider, when dealing with a complex service request, allocating a single point of contact to the complainant and agreeing at an early stage how and when updates and communications will be provided; and
- consider issuing a memo to all relevant staff to ensure they are aware that an abatement notice will

become time barred from proceeding to legal action within six months of the date of first issue.

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