

SPSO decision report

Case: 201104874, Scottish Borders Council
Sector: local government
Subject: handling of application (complaints by opponents)
Outcome: some upheld, action taken by body to remedy, no recommendations

Summary

Mr C lives close to a church building which had fallen out of use. It had been the subject of unsuccessful planning applications for conversion and change of use to flats. In late 2009 a successful application was made to convert the building to a crematorium. Mr C and his wife did not live close enough to the building to be notified about this application. In the autumn of 2011, however, Mr C became aware of the provisions of the Cremation Act 1902 (the Act), which stipulate that no new crematorium should be built closer than 200 yards from the nearest house or 50 yards from a public road, without the permission of owners and occupiers. Mr C complained to the council, saying that they had failed to have proper regard for the Act in granting planning consent for the conversion and failed to protect Mr C's residential amenity; unreasonably delayed in dealing with his complaint, and unreasonably failed to answer his questions about their response to a Scottish Government consultation on the Act.

After seeking independent advice from our planning adviser, we found that the council, with qualification, were entitled to decide that the distance stipulations were not relevant to the granting of planning consent as they formed part of a different regulatory framework. There was also no evidence that the amenity of residents was disregarded when determining the application, and we did not uphold these complaints. We found that there had indeed been a delay in dealing with Mr C's complaint (but the council had apologised) and that they had neglected to answer his query about the council's consultation response. That issue was resolved by a senior officer explaining an apparent inconsistency. We, therefore, upheld both of those complaints, but made no recommendations.