

SPSO decision report

Case: 201202598, Aberdeenshire Council
Sector: local government
Subject: zoning of local authorities, planning blight, flood prevention
Outcome: not upheld, no recommendations

Summary

The council gave planning approval to Mrs C's neighbour to demolish a building and build a garage and boundary walls. Mrs C then complained that the council failed to protect her access to her property and a general right of way, and failed to take full consideration of the flood risk and consult with the Scottish Environment Protection Agency (SEPA). She also complained that they had earlier failed to take action when her neighbour had demolished the building (which Mrs C claimed to own) without planning permission.

After taking independent advice from one of our planning advisers, we found that the council had acted reasonably. Mrs C had claimed that the walls effectively left her property land-locked. She also complained that they blocked a right of way used by pedestrians to access the foreshore. The council had approved the development based on the fact that there were many other lanes in the area with access to the foreshore, including one on the opposite side of Mrs C's property. They also said there was no recorded right of way on the lane, and they did not consider that it would be reasonable to establish one. Our view was that this was reasonable and proportionate.

The council accepted that there is some sea flooding of the foreshore and nearby streets and lanes each year. However, the properties involved in the application had not been flooded and were outside the flood-risk area on SEPA's maps. The council considered whether the development would cause a material increase in properties at risk of flooding - this is the trigger for mandatory consultation with SEPA on a planning application. They asked their own flood prevention unit for advice, who said that as the development did not cause a material increase, consultation with SEPA was not required. This was confirmed by SEPA's senior planning adviser. After some adjustments to the plans to allow sea water to escape in the event of flooding, the application was approved. Our adviser considered this was reasonable and that consultation with SEPA was not required.

The demolished building was on the neighbour's land. We were unable to establish ownership but, as the council had treated Mrs C as the owner, we continued our investigation on that basis. We found that the building was demolished without planning permission but that retrospective permission had been granted. The neighbour had submitted a certificate stating that he owned the land, and the council said that the onus was then on him to ensure there were no legal or other barriers to prevent the works starting once planning permission was granted. Our adviser agreed, and said that this was a private legal matter between Mrs C and her neighbour and there was no requirement under planning legislation for the council to take action.