

SPSO decision report

Case: 201507720, Glasgow City Council
Sector: local government
Subject: unauthorised developments: enforcement action/stop and discontinuation notices
Decision: some upheld, recommendations

Summary

Mr C began to experience an increase in cooking smells from the cafe above which he lived. Mr C contacted the council's Land and Environment Services (LES) department to report a nuisance. Two months later, he wrote to the council's Development and Regeneration Services (DRS) department to report that the cafe had breached the planning permission granted. Mr C was not satisfied with the way that either department responded to his correspondence, and he submitted a complaint to the council. He was also not satisfied with the way his complaints to LES and DRS had been handled by the council.

We noted that throughout Mr C's correspondence with LES, he had raised concerns that the cafe did not have an extraction system and was not meeting ventilation requirements. In response to our enquiries regarding ventilation, the council informed us that in a previous planning consultation response, LES had recommended to DRS that a high-level flue was required for the cafe. The council advised that this was not considered by DRS at the initial stage of the planning process, or by the Local Review Committee at the review stage of the planning process.

We took independent planning advice. The adviser noted that the council was not obliged to attach a planning condition regarding a flue as the Local Review Committee had discretion in deciding which planning conditions, if any, to attach to any planning permission.

Overall we found that the council had taken appropriate steps to investigate the first reported nuisance. However, we noted that the council's records were not clear regarding the reason for a delay in the investigation. The council acknowledged that they had not updated Mr C appropriately about the progress of the investigation. We also found that Mr C's report of nuisance had not been acknowledged and that he had not been advised of the outcome of the nuisance investigation in writing. We also found that the council had not acted appropriately in response to a nuisance subsequently reported by Mr C. For these reasons, we upheld this aspect of Mr C's complaint and made recommendations.

In relation to Mr C's concerns about the service he received from DRS, we noted that the department had also failed to acknowledge Mr C's initial letter. Although this was a requirement of DRS's service standards, we were satisfied that an appropriate planning enforcement investigation was carried out in response to Mr C's letter, and on balance we were satisfied that the investigation was broadly carried out in accordance with the council's service standards. Although Mr C felt that the cafe had breached the planning permission granted, we were advised that the decision on whether there is a requirement for enforcement action rests with the council as the planning authority. Although we did not uphold this aspect of Mr C's complaint, we made a recommendation in relation to it.

We also considered how the council had handled Mr C's complaints. We found that on one occasion LES had failed to respond to Mr C's query about to whom he should make a complaint, and we found an instance where DRS did not consider one of Mr C's complaints under the council's complaints procedure. Furthermore, we noted

a number of occasions where Mr C's complaints were not acknowledged in accordance with the procedure, and we found that the council's final response contained inaccuracies. Although we found instances of good practice in complaints handling, on balance we upheld Mr C's complaint in this regard.

Recommendations

We recommended that the council:

- feed back the importance of keeping clear and accurate records to officers in the Environmental Health Department;
- feed back the adviser's comments on this case to planning officers in the Planning Department;
- take steps to ensure that the Environmental Health Department has a system in place to ensure that nuisance complaints are acknowledged and the outcomes of investigations are communicated in writing;
- undertake further monitoring of the reported odour nuisance, and consider whether any further action would be appropriate;
- remind staff in the Planning Department of the importance of ensuring that planning enforcement complaints are acknowledged in accordance with the service standards, and that clear and informative outcome notification letters are sent to complainants;
- apologise to Mr C for the failings identified during this investigation;
- take steps to ensure that complaints are acknowledged in writing within three working days of receipt; and
- feed back the findings of this investigation to staff involved in handling Mr C's complaints to ensure that complaints are recognised and handled in accordance with the council's complaints procedure.