

SPSO decision report

Case: 201602007, Fife Council
Sector: local government
Subject: policy/administration
Decision: some upheld, recommendations

Summary

Mr C made a number of complaints to us about the council's handling of planning conditions for a quarry near his home. He complained that planning officers had discharged conditions without referring them to the council's planning committee. We took independent planning advice on Mr C's complaints. We found that, although the council's scheme of delegation had not been entirely clear, it had been appropriate for the officers to deal with the matter and that it did not need to be referred to the planning committee. That said, Mr C also stated that the information provided by the developer regarding the discharge of the relevant conditions amounted to a substantial change and should have been treated as a variation to the planning consent. We found that the council should have obtained further information before the conditions were discharged. We found that they needed to establish what material was to be extracted from the site to in order to consider whether the original consent had been breached. They also needed to consider whether their decision to discharge the relevant conditions was safe and investigate the possible mechanisms available to them to rescind that decision, should they consider this necessary. In view of this, we upheld this aspect of Mr C's complaint.

Mr C also complained that the council had failed to take appropriate steps to ensure the protection of the nearby high pressure gas pipeline. We found that it had been reasonable for the council to rely on the alternative controls and measures available to the organisation that manages the gas network in Scotland, rather than pursue the issue through the planning process and the application of planning conditions. We did not uphold this aspect of Mr C's complaint.

Mr C also complained about the council's actions in relation to assessing the flood risk of a proposed loch at the quarry. The council considered that they had all the information they needed in relation to this to discharge the conditions, and were closing the matter. This was a planning decision that the council were entitled to take as the planning authority. However, we found that there was no documentary evidence in the information we received from the council that set out how they had arrived at their decision. We considered that there should be some form of technical explanation in the records of the council's decision. In view of this, we upheld this aspect of Mr C's complaint.

Mr C also complained that the council failed to properly assess the risk of drowning at the site. We found that the loch would be subject to a number of statutory health and safety requirements outwith the planning process. The planning process should not be used to duplicate or form an alternative to using other more appropriate statutory controls and we did not uphold this aspect of the complaint.

Finally, Mr C complained that the council had failed to investigate the relevance of the Reservoirs Act in assessing the impact of the proposed loch. We found that the council had given adequate consideration to this matter and had received advice from their legal adviser confirming that the legislation was not applicable to the loch. We did not, therefore, uphold this aspect of the complaint.

Recommendations

What we said should change to put things right in future:

- The scheme of delegation should be clear on what is meant by the term, 'approval required by a condition'.
- The council should be clear about, and able to explain, the volume and constituent make-up of the material to be extracted from the site to enable a satisfactory assessment to be made as to whether the terms of the original consent have indeed been breached. They should consider whether their premature decision to discharge the relevant conditions on the basis of the details contained in the submitted plans is safe and investigate the possible mechanisms available to them to rescind that decision, should they consider this necessary.
- An adequate technical explanation of how they reached their decision on the risk of flooding at the site should be recorded in the records.

We have asked the organisation to provide us with evidence that they have implemented the recommendations we have made on this case by the deadline we set.