

## SPSO decision report

**Case:** 201602276, Aberdeenshire Council  
**Sector:** local government  
**Subject:** handling of application (complaints by opponents)  
**Outcome:** upheld, recommendations

### Summary

Mr C complained about the council's handling of a planning application submitted by his neighbours. The council had granted planning permission, with an attached condition which stipulated that the recommendations in a tree report that had been produced for the neighbours were complied with. Some of the recommendations in the tree report related to trees that were on Mr C's property. As Mr C had refused his neighbours access to his trees, the planning condition could not be met. When Mr C's neighbours wrote to the council explaining this, the council stated that they considered the condition to have been fulfilled nevertheless.

We took independent planning advice. We found that it was unreasonable for the council to attach a planning condition that was unachievable to the planning application. We also found that rather than considering the condition to be fulfilled when they discovered it to be unachievable, the council should have asked the applicants to formally apply, under section 42 of the Town and Country Planning (Scotland) Act 1997, for the condition to be varied or for the development to proceed without complying with the terms of the condition.

We noted that prior to our investigation the council had implemented new training and guidelines to reduce the possibility of a similar failing occurring again, and that they had accepted that the condition should not have been attached in the form that it was. We therefore upheld Mr C's complaint.

### Recommendations

We recommended that the council:

- apologise for the failings identified by this investigation; and
- draw the comments of the adviser regarding section 42 of the Act to the attention of relevant staff.