

SPSO decision report

Case: 201604177, Scottish Borders Council
Sector: local government
Subject: unauthorised developments: enforcement action/stop and discontinuation notices
Decision: upheld, recommendations

Summary

Mr C raised concerns that the council had failed to investigate and act on alleged breaches of a planning condition. The planning condition had been imposed by the council to offset the impact of traffic to build and service a new development. The council accepted there were shortcomings in how the planning condition was framed, which later made it difficult for them to enforce it.

We took independent advice from a planning adviser, who agreed that the planning condition was not sufficiently precise. The planning adviser considered the council had taken reasonable steps to investigate and act on alleged breaches of the planning condition, however the shortcomings in the framing of the planning condition limited the action they could take. The planning adviser considered that safeguarding residential amenity should have been a cited reason for imposing the planning condition, as well as road safety.

In light of the failings identified in the drafting of the planning condition, we upheld Mr C's complaint.

Recommendations

What we asked the organisation to do in this case:

- Apologise to Mr C for the failings in its framing of the condition. The apology should meet the standards set out in the SPSO guidelines on apology available at www.spsso.org.uk/leaflets-and-guidance.
- The planning team, in conjunction with the roads and infrastructure team, should monitor vehicles' usage of the new development and the road it sits on to assess whether it is a road safety concern. There should be two periods of monitoring (an immediate three-month period and a further three-month period to assess usage over the winter months). If road safety concerns are noted, the council should take appropriate action to resolve this with the company.

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.