

SPSO decision report

Case: 201605040, Perth and Kinross Council
Sector: local government
Subject: unauthorised developments: enforcement action/stop and discontinuation notices
Decision: not upheld, recommendations

Summary

Mr C raised concerns about the council's handling of a Section 75 Agreement contained in a planning approval for a residential agreement. A Section 75 Agreement of the Town and Country Planning (Scotland) Act 1997 enables land owners to enter into a legal agreement with the planning authority to restrict or regulate the development or use of land. In this case, the Section 75 Agreement related to a replacement football pitch. Mr C complained that the council had failed to take enforcement action in respect of the planning approval in relation to the condition of the replacement football pitch.

We took independent planning advice. The advice we received was that the council had failed to give adequate consideration to the policy provisions of the National Planning Policy Guideline 11: Sports, Physical Recreation and Open Space (NPPG 11), which was in place at the time of the application. The relevant guidance is now the Scottish Planning Policy 2014. We found that the council, as planning authority, had no capacity to take enforcement action in this case, as what had been built met the terms of the Section 75 Agreement. However, we found that the council had unreasonably failed to make provision through the Section 75 Agreement that a specification for the replacement pitch be agreed in writing before construction began to ensure that the replacement pitch met the full terms of the NPPG 11. As such, the replacement pitch was not suitable in terms of accessibility, amenity and community benefit. While we identified shortcomings in the handling of the planning application in relation to the report of handling, consultation and the adequacy of the Section 75 Agreement, given that the council had no capacity to take enforcement action we did not uphold Mr C's complaint about enforcement action.

Mr C also raised concerns about the handling of his complaint. We found that the council's handling of his complaint was reasonable, and we did not uphold the complaint.

Recommendations

What we asked the organisation to do in this case:

- Apologise to Mr C for failing to give full regard to the terms of the NPPG11, which has led to the construction of a football pitch which is not of a serviceable standard. The apology should comply with the SPSO guidelines on making an apology, available at <https://www.spsso.org.uk/leaflets-and-guidance>.

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

- Current practice should ensure that planning applications take explicit account of the requirements of the Scottish Planning Policy in terms of replacement playing fields and sports pitches.

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.