

SPSO decision report

Case: 201607551, Falkirk Council
Sector: local government
Subject: handling of application (complaints by opponents)
Decision: upheld, recommendations

Summary

Mr C complained about reinstatement works at the site of a former opencast mine. Mr C accesses his home via a road that runs adjacent to the site and he complained that the council unreasonably considered a development to be permitted when it did not satisfy the correct requirements. When Mr C first raised his concerns, the council maintained their position about the planning status of the land, until the council reversed their view two years later. Mr C also complained that they failed to consider the risk of flooding when granting the works permitted development status. He said that access to his home was sometimes impossible as flood water remained on his access road and did not drain away as previously. Finally, Mr C felt that the council's handling of his complaint was unreasonable.

We took independent advice from a chartered town planner. We found that the council had been presented with sufficient information around the time of Mr C's initial concerns to determine that planning consent was required. Instead they determined that the proposed works constituted permitted development. It was only two years later after protracted correspondence that they accepted there had been an error. Therefore, a number of processes and consultations, which should have occurred, did not. We considered the fact that, had the works been properly assessed, the council should have explicitly considered the use of their powers in relation to flooding. We also found that Mr C had been given incorrect information regarding the role of the Scottish Environment Protection Agency (SEPA).

In dealing with Mr C's complaint we found that there was very extensive correspondence; however, there had been some delays in the council responding and Mr C and he was not always kept updated. For these reasons, we upheld all of Mr C's complaints.

Recommendations

What we asked the organisation to do in this case:

- Apologise to Mr C for failing to correctly assess the development; providing incorrect advice regarding SEPA's role; and failing to explicitly consider the use of their powers in relation to flooding. The apology should meet the standards set out in the SPSO guidelines on apology available at www.spsso.org.uk/leaflets-and-guidance.

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

- Proposed development should be assessed in line with applicable planning legislation, guidance, circulars and policy.
- Potential flood issues should be properly assessed.

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.