

SPSO decision report

Case: 201809286, Midlothian Council
Sector: Local Government
Subject: handling of application (complaints by opponents)
Decision: some upheld, recommendations

Summary

Mr C complained that the council failed to carry out an appropriate assessment of a planning application submitted by a recreational club that shares a boundary with his property. Mr C also complained that the decision notice, granting planning permission for the application, unreasonably failed to accurately implement the decision of the planning committee. The council concluded that they had carried out an appropriate assessment of the planning application and the planning permission reflected the decision of the committee.

We took independent advice from a planning adviser. We found that the council had carried out an appropriate assessment of the planning application. Therefore, we did not uphold this complaint.

In relation to Mr C's second complaint, we found that the council had unreasonably failed to accurately implement the decision of the planning committee. We found that the wording of the planning condition was ambiguous and open to different interpretation. We concluded that, by not making the condition explicitly clear, the decision notice did not reflect the intention of the planning committee members accurately. Therefore, we upheld this complaint.

Mr C also complained that the council unreasonably failed to take action to ensure the club abided by what was outlined in their planning application and supporting documentation. The council considered that the actions taken by the club were in line with the planning permission granted and, as such, it was not appropriate for them to take any further action.

We found that the council had unreasonably failed to take action to ensure that the club abided by what was outlined in their planning application and supporting documentation. By including a condition that was open to interpretation, the council failed to provide a clear and unambiguous decision. As such, this enabled the club to carry out actions contrary to their stated intentions when the planning application was determined. We recognised that it may not have been possible for the council to take formal enforcement action. However, given the circumstances of this case, we concluded it was reasonable to expect the council to give further consideration to what informal steps they could take to resolve the situation. Therefore, we upheld this aspect of the complaint.

Recommendations

What we asked the organisation to do in this case:

- Apologise to Mr C for failing to accurately implement the decision of the planning committee as a result of including a condition that was unreasonably ambiguous and open to interpretation and for failing to take reasonable measures to ensure the club abided by what was the stated intention of their planning application at the time it was determined. The apology should meet the standards set out in the SPSO guidelines on apology available at www.spsso.org.uk/information-leaflets.
- Consider what actions can reasonably be taken to ensure the club abides by what was outlined in the proposal detailed in the Report to Committee and supporting documentation, bearing in mind that planning permission has been granted and the conditions discharged. Update Mr C with details of what actions, if

any, have been carried out and provide an explanation for the decision taken. If it is concluded that further involvement would be counterproductive or may have a negative impact on existing agreements between the different parties, an explanation for this should be provided to Mr C and this office.

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

- Planning decision notices should clearly and accurately reflect the planning proposal and the contents of the Report to Committee/Report of Handling. Planning decision notices, when decided by the planning committee, should clearly and accurately reflect the intentions of the committee members.

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.