

SPSO decision report



Case: 202002975, East Dunbartonshire Council
Sector: Local Government
Subject: Policy / administration
Decision: upheld, recommendations

Summary

C complained about the way in which the council discharged a planning condition. C told us that planning permission for a development of new properties located next to a busy road, included a condition which required the installation of a close boarded fence and/or earth bund at least 1.5 metres tall and enhanced glazing for rooms facing the busy road to mitigate noise. The developer was required to provide detailed plans in advance which would be subject to written approval. C also complained that the council failed to refer the issue to their Enforcement Team, which C believed to be contrary to the enforcement charter.

We took independent advice from a planning adviser. We found that the process to discharge a condition should be transparent, properly recorded, and easily accessible as part of the public record. There had been failings in the way in which the decision was reached as the council failed to keep adequate records. We concluded that whilst the council appear to have considered the location and height of the fence when discharging the condition, they do not appear to have considered the quality. When new information came to light (about the quality of the fence and questioning whether the height of the fence was adequate) the council should have reviewed the evidence and reconsidered the adequacy of the information that they used to discharge the condition.

In light of the evidence, we found that there was maladministration in the way in which the council made the decision to discharge the planning condition, which was unreasonable. We also found that the council unreasonably failed to investigate C's concerns about the quality of the fencing. As such, we upheld C's complaints.

Recommendations

What we asked the organisation to do in this case:

- Apologise to C for the way in which the decision was made to discharge planning condition 9, and particularly that the decision was not transparent or easily accessible to the public. Apologise to C for failing to reasonably investigate their concerns about the quality of the fencing and apologise to C for failing to ensure the developer carried out the agreed remedial works. The apology should meet the standards set out in the SPSO guidelines on apology available at www.spsso.org.uk/information-leaflets.

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

- Complaints of suspected planning breaches should be investigated in line with the planning enforcement charter and all new evidence should be given reasonable consideration. Enforcement action should be considered if and when appropriate.
- Decisions to discharge planning conditions should be transparent, properly recorded and easily accessible as part of the public record.
- Agreed actions should be monitored with sufficient follow-up to ensure compliance.

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.