

SPSO decision report



Case: 202100071, Dumfries and Galloway Council
Sector: Local Government
Subject: Handling of application (complaints by opponents)
Decision: some upheld, recommendations

Summary

C, a representative of an organisation that provides support to planning application objectors, complained on behalf of an objecting neighbour (A). C raised a number of concerns about the council's handling of a retrospective planning application. An unauthorised development had been reported to the council's planning enforcement team. The retrospective planning application was approved, subject to conditions. C complained that the council failed to reasonably assess the risk of flooding at the site, that they failed to follow correct procedure for the scale of the development and failed to take into account an objection submitted by the Scottish Environment Protection Agency (SEPA).

We reviewed the relevant planning documents and sought independent advice from a planning adviser. We found that there was a failure to seek a flood risk assessment, particularly in light of the concerns raised by SEPA, the fact the development was on a listed flood plain and the Planning Officer had identified a risk of flooding as a reason for recommending refusal of the application. As such, we upheld complaint C's complaint about the failure to request a flood risk assessment.

In respect of C's concerns about the council's consideration of SEPA's consultation response, we found that the content of SEPA's response was accurately summarised in the Planning Officer's report to the Planning Committee. We did not uphold this aspect of C's complaint.

Our final consideration was whether the council failed to refer the planning application to Scottish Ministers. We concluded that the council should have treated SEPA's response as an objection to the planning application and that this should have led to the application being referred to Scottish Ministers. We upheld the complaint.

Recommendations

What we asked the organisation to do in this case:

- Apologise to A for the issues highlighted in this decision. The apology should meet the standards set out in the SPSO guidelines on apology available at www.spsso.org.uk/information-leaflets.
- That the council offer to meet with A to discuss ways of establishing to what extent the development may have contributed to an increase in flooding on their property and what action the council can take to mitigate this.

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

- The council should review their standard working practice of not requiring technical assessments in cases where they anticipate refusing an application due to the cost that would be incurred by the applicant.

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.