

## **APPEALS PANEL 2**

**THURSDAY 12 MARCH 2020 AT 10.00AM**

**PRESENT:** Councillors Allison, McNulty and Morton.

**OFFICERS:** Assistant Solicitor  
Corporate Director of Governance and Regulatory Services  
Health and Housing Officer.

**ALSO**

**PRESENT:** Complainants x2

### **AP2.07/20 APPOINTMENT OF CHAIR FOR THE MEETING**

It was proposed and seconded that Councillor Morton be appointed Chair for the meeting.

**RESOLVED:** That Councillor Morton be appointed Chair for the meeting.

Councillor Morton thereupon took the Chair.

### **AP2.08/20 APOLOGIES FOR ABSENCE**

An apology for absence was submitted on behalf of Councillor Mrs Bowman.

### **AP2.09/20 DECLARATIONS OF INTEREST**

There were no declarations of interest in respect of the complaint.

### **AP2.10/20 PUBLIC AND PRESS**

**RESOLVED** - That in accordance with Section 100A(4) of the Local Government Act 1972, the Public and Press were excluded from the meeting during consideration of the following item of business on the grounds that it involved the likely disclosure of exempt information, as defined in Paragraph Number 1 of Part 1 of Schedule 12A of the 1972 Local Government Act.

### **AP2.11/20 COMPLAINT AGAINST REGULATORY SERVICES**

The Chair introduced the Panel and confirmed that all those present had seen and read the relevant documentation, copies of which had been circulated.

The Chair invited the Complainants to summarise their complaint.

The Complainants set out in some detail the reason for the complaint and gave the Panel a copy of their submission. They gave the background to the complaint which began in 2017 when new neighbours installed a wood burning stove. Initially there had been no real issue with the smoke and smell, however the matter escalated in 2018 when the frequency of the problem increased and the burner was being used every day. The Complainants stated that they were unable to tend to their garden, hang washing out, open windows or sit outside due to the acrid smell and smoke problem.

The matter became so unbearable that the Complainants had considered moving to a new house and then the Complainants contacted the Council as their way of life and health was deteriorating.

The Health and Housing Officer had confirmed via a telephone conversation that another complaint had been made about the smoke and as a result she would visit the property. The Health and Housing Officer visited in early January 2019. The Complainants reiterated that the complaint was not about the use of a wood burning stove but about the burning of green and wet scavenged timber which had not be stored and rotated in accordance with departmental advice.

The Complainants were surprised that the Health and Housing Officer informed them that it was not illegal to forage for wood and that she did so for her wood burning stove. The Officer had also said that everyone complained when a neighbour installed a wood burning stove. During the visit the Officer went to the back door to view next door's chimney which was smoking heavily.

Following the visit, the Complainants received a letter from the Officer which contained a diary to be completed for two weeks before being returned. The Complainants took a copy of the diary to another neighbour who had previously complained online about the smoke issue and had not received any response. The neighbour stated he had also suffered health issues due to the smoke and smell and he was also unable to open his windows. Both the Complainants and the neighbour completed the diaries and returned them to the Council.

The Complainants continued to keep the Council updated with emails and photographs and the Health and Housing Officer and a colleague made an unannounced visit to the Complainants on 11 March 2019. Both Officers had sat in a car further down the road to view the smoke. The Health and Housing Officer's colleague had said that they had witnessed the smoke emitting from the chimney and it was his opinion that the design of the cowl with the cap on it was forcing the smoke downwards and suggested a taller cowl may help the issue. The Officers then went to the neighbour's house to give them advice regarding the cowl and to reiterate the responsible use of timber. The Health and Housing Officer had stated that the majority of people complied with Council requirements.

The following day the neighbour had approached the Complainants to discuss the complaint and they had the opportunity to discuss the impact of the smoke and a possible resolution.

The Complainants stated that the fire was on everyday and evening all year and twelve months had passed and the cowl had not been changed and the problem continued. The Complainants felt strongly that the Health and Housing Officer had not shown any understanding or compassion and had trivialised the complaint from the outset.

The Complainants reported that the other neighbour who had complained had found the situation so detrimental to his health that he had moved out of his property.

The Complainants questioned how the complaint could be closed when a resolution had not been reached to the satisfaction of all parties. The Complainants were increasingly suspicious that every date that there had been a visit there had been no visible evidence of a statutory nuisance yet there were numerous photographs showing there was. The Complainants felt that the two officers from Environmental Health were not unbiased adjudicators in the issue as they both had wood burners.

The Complainants summed up by highlighting the term 'statutory nuisance' as set out in the paperwork and informed the Panel that it had been 12months and 1 day since the Health and Housing Officer and her colleague had visited their property and they had not yet received a response which they felt was unacceptable, unprofessional and undermining.

In response to questions from the Panel, the Complainants confirmed:

- There were many photographs taken over the course of the year, sometimes the wind took the smoke away but often the cowl caused the smoke to come downwards into the garden;
- They had to wear masks to cut the grass and had stopped taking anything more than basic care of their garden;
- They were unable to hang washing out or sit in the garden;
- The Health and Housing Officer had stated that she had visited the rear of the properties and walked along the boundary line, this was not possible as the properties could not be accessed from the playing field due to mature trees and undergrowth. In addition, the chimney was not close to the playing field;
- There were other wood burning stoves in the surrounding area, however, those did not cause any issues;
- The smoke and smell affected the health of both Complainants, and they had not been able to sit outside for two years;
- There was some concern that the particulates and toxins in the smoke was causing the negative impact on their health, but this had not been tested by Environmental Health;
- They had thought that the number of visits from the City Council would prejudice a private nuisance case and they would not win it.

The Assistant Solicitor advised the Complainants that a private nuisance case had different criteria to a statutory nuisance, and she advised the Complainants to seek legal advice on the matter.

The Chair thanked the Complainants for their submission and summed up the main points from the complaint as follows:

- The Health and Housing Officer had not shown any understanding or compassion, she had trivialised the complaint from the outset and had treated both Complainants with contempt;
- The Complainants questioned how a complaint could be closed when it had not been resolved to the satisfaction of all parties;
- The two officers from Environmental Health were not unbiased adjudicators in the issue as they both had wood burners
- The Complainants had not received a response from the Health and Housing Officer following her visit on 11 March 2019.

The Complainants agreed the summary.

The Chair thanked the Complainants for their input and advised that they would be informed by letter within 20 working days of the Panel's decision.

The Complainants left the hearing at 10.43am

Consideration was given by the Panel as to which officers they needed to speak to in order to clarify any issues which needed to be addressed.

The Health and Housing Officer was invited to attend the meeting. The Chair outlined the complaint and invited the Officer to respond.

The Health and Housing Officer reported that she had made seven visits to the area to assess the situation. She explained that there were a number of criteria which had to be met for a matter to be classed as a statutory nuisance and following her visits and based on the evidence she did not consider the matter to be a statutory nuisance. She took the Panel through the numerous visits she had made to the area and the discussions she had with the Complainants and the neighbour. The wood burning stove had been installed by an accredited installer and it received regular services. In addition, the neighbour had appropriate storage and drying

facilities for fuel. For the issue to be considered as a statutory nuisance a number of criteria would have to be met including frequency and colour of the smoke. For the smoke to be classed as dark it would have to be assessed against the Ringlemann Smoke Chart. From all of the visits the smoke had not been dark enough to test against the Chart and there were no circumstances which led to it being classed a statutory nuisance. Had the matter been classed as a statutory nuisance the Council would have had a duty to serve notice to cease on the person causing the issue.

The Health and Housing Officer explained that the authority would usually only carry out three visits to investigate an issue, however, the Complainants had felt really affected by the situation and felt it was negatively affecting their health and as a result she had visited the area more to investigate the issue in more detail. She had also taken her colleague with for a second opinion for the same reasons.

Referring to the Complainants statement that they had not received a response from the Health and Housing Officer in twelve months, she drew the Panel's attention to the letter dated 14 November 2019 which gave details of all of the visits and provided information on how the Complainants could take the matter forward. She acknowledged that the letter had not been sent in as a timely a manner as it should have been, and the Complainants had received an apology for the delay. The matter had been closed as there was not sufficient evidence for a statutory nuisance and therefore the only option left for the Complainants was to make an application to the Magistrates Court.

In response to questions from the Panel, the Health and Housing Officer confirmed:

- that damp wood burned less efficiently and would cause white smoke as it had a higher moisture content and created more steam;
- that she had seen smoke, but she had not witnessed dark smoke on any of the visits;
- the neighbour used smokeless fuel in the stove, and this could have a chemical smell when burned;
- the Council did not own handheld devices which could measure particulates or toxins in the smoke;
- it was possible that extending the flue to the stove would help dissipate the smoke away from the properties;
- the judgement on the matter was not solely based on the visits, the photographs and the diaries were also taken into consideration;
- the other complaint against the property had been investigated;
- that the discussion with the Complainants regarding her wood stove had conversational and been taken out of context and was incorrect, she had clarified the conversation with the Complainants.

The Health and Housing Officer left the meeting at 11.25am.

The Corporate Director of Governance and Regulatory Services was invited to attend the meeting. The Chair outlined the complaint and invited the Officer to respond.

The Corporate Director of Governance and Regulatory Services clarified the definition statutory nuisance. He was satisfied the officers had carried out a thorough investigation and had provided a professional judgement on the matter. He reiterated the Assistant Solicitor's advice that the Complainants should seek their own legal advice on making an application to the Magistrates Court.

In responding to a Member's question, the Corporate Director could not comment on the issue of particulates or toxins in smoke from wood burners and reminded the Panel that wood burning stoves were used across the Country.

The Corporate Director of Governance and Regulatory Services left the meeting at 11.45am

The Panel then considered all the evidence presented to them prior to and during the hearing and:

RESOLVED – 1) That the complaint against Regulatory Services (GD.12/20) not be upheld,

The Panel considered the alleged failure by officers to respond to the complainants, the Panel found that a response had been received and although it was later than it should have been, an apology was given and the matter did not make any material difference to the Panel's considered outcome.

2) That the Panel recommends to the Environmental Health Team that they investigate the possible purchase of a hand held monitoring device which would allow them to measure particulates when dealing with such cases.

(The meeting closed at 11.51am)