

## **APPEALS PANEL 2**

**WEDNESDAY 21 OCTOBER 2020 AT 2.00PM**

**PRESENT:** Councillors Allison, Mrs Bowman and McNulty.

**ALSO**

**PRESENT:** Complainant

**OFFICERS:** Corporate Director of Economic Development  
Development Manager  
Principal Health and Housing Officer  
Planning Officer  
Assistant Solicitor  
Legal Executive

### **AP2.12/20 APPOINTMENT OF CHAIR**

It was proposed and seconded that Councillor McNulty be appointed Chair of Appeals Panel 2 for the 2020/21 Municipal Year.

**RESOLVED:** That Councillor McNulty be appointed Chair of Appeals Panel 2 for the 2020/21 Municipal Year.

Councillor McNulty thereupon took the Chair.

### **AP2.13/20 APOLOGIES FOR ABSENCE**

No apologies for absence was submitted.

### **AP2.14/20 DECLARATIONS OF INTEREST**

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

### **AP2.15/20 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.

### **AP2.16/20 COMPLAINT AGAINST DEVELOPMENT MANAGEMENT**

The Chair introduced the Panel and the Officers present in the meeting, he invited the Complainant to summarise her complaint.

The Complainant set out in some detail the reason for the complaint which related to the installation of an external extraction flue at the property, adjacent to her dwelling, which was a catering establishment.

The adjacent property had formerly operated as a retail establishment, the Complainant stated that when the planning application for the Change of Use was consulted on she had not received a copy of the letter, as although she then owned her current dwelling she was not residing in it at that time.

The first business owner who operated a catering business from the adjacent property had installed an external extractor flue in the premises which discharged into the lane between the two properties: the flue projected approximately 2 feet into the lane and was around 4 feet above floor level. The owner did not have the legal right to install the flue over that footpath which was owned by the Complainant, following correspondence and legal action from the Complainant, the owner agreed to remove the flue from the lane and to re-site it at the rear of the property over its associated yard.

The Complainant took up residence in her dwelling in November 2015 and was advised by the then business owner that the flue would be relocated in January 2016. The flue was removed but was replaced with a plastic vent in the same place over the lane, that had carried fumes into the Complainant's property. Furthermore, the vent emitted grease which had covered the vent and surrounding wall. Ownership of the catering business then changed, with the new operation commencing in May 2016 which continued to use the vent over the lane as the means of extraction. The Complainant did not consider the vent an appropriate means of extraction and questioned what kind of inspection of the facility had taken place.

The Complainant raised the matter with the new business owner, but after many months without the issue being resolved she lodged a complaint with the Council's Environmental Health team in June 2017. She had anticipated that the matter would receive immediate action but felt that the Council had been slow in its response.

It was the Complainant's view that the discharge of odours and grease from the vent amounted to a Statutory Nuisance, she had submitted pictures of the grease on the vent and walls to the Council's Environmental Health team, this had prompted visits by Officers. However, the Complainant considered that the visits had occurred randomly and at insufficient frequency. Moreover, the Complainant felt that the Council had been very lenient towards the catering business which she attributed to the initial owner of the business having a family connection to an Elected Member at the Council.

Planning Permission for the installation of a new flue had been granted in July 2019, the permission included a condition requiring the installation to be completed within two months of the consent being given. However, the installation was not completed until November 2019.

Within the report, reference was made to a further complaint submitted in respect of the catering business, the Complainant was of the view that the matter ought not to have been referred to and had been included in the report, in an attempt to discredit her by creating the impression she was a serial complainer.

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

- The complaint had initially been submitted to the Council's Environmental Health team
- The flue at the catering premises was now installed, and no odours were now entering her property;
- The catering business had a right of way over the lane between the two properties, but this was for a private family, not for business use.

The Chair thanked the Complainant for her submission and summed up the main points from the complaint as follows: the Council had taken too long to deal with the complaint relating to the flue installed at the catering premises; the complainant questioned the effectiveness of the testing carried out by the Council's Environmental Health team in relation to the complaint

The Complainant agreed the summary and stated that as an outcome of the meeting she sought an apology from the Council over the time taken to address the issue, along with financial compensation for the stress and anxiety the complaint had caused her due to the loss

of her home and garden. She further requested the Planning Permission granting the change of use from retail to catering use be revoked.

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 Complainant left the meeting at 2:30pm.

Consideration was given by the Panel as to which Officers they wished to speak to in order to clarify any issues relating to the complaint.

*The Panel adjourned from 2:37pm to 2:51pm.*

The Corporate Director of Economic Development, the Development Manager, the Principal Health and Housing Officer, and the Planning Officer were invited to attend the meeting. The Chair outlined the complaint and invited the Officer to respond.

The Development Manager acknowledged the time taken to address the issue of the complaint had taken two years from receipt of the initial planning application to the installation of the flue. In terms of planning enforcement activity he noted, the second owner of the catering establishment had worked with the Council to find and implement an appropriate solution following the installation of vent in the wall of the property. On that basis enforcement action was not deemed expedient.

When taking enforcement action in relation to planning consent, local authorities had to allow reasonable time for any stipulated works to be completed. Moreover, any person subject to planning enforcement had a right of appeal with the Planning Inspectorate, as was also the case with planning permission and individual conditions contained therein. In terms of time scale, there was a six month period from the issuing of Planning Consent or an Enforcement Notice for an appeal to be lodged, after which it was likely to be another matter of months before the case was heard. Given the change of ownership of the catering premises and the willingness of the second business owner to work with the council to achieve a solution, enforcement action had not been deemed expedient.

The Corporate Director added, that in relation to complaints regarding enforcement action, the Council often came under pressure to take legal action. She explained were legal action to be taken, a court would consider whether the due processes of the planning system had been undertaken, including allowing reasonable time for works required by an Enforcement Notice to be carried out. Were those steps not taken, the case would be thrown out and referred back to the Council. Such an approach was not an effective use of public money and therefore was used as a last resort only.

The Principal Health and Housing Officer confirmed that, following notification from the Complainant regarding odour, a number of visits were undertaken to assess the situation. The fan unit was in operation at the time of the visits and the business was operating. The Officer did not believe the odour being emitted from the premises at the time of the visits amounted to a Statutory Nuisance. When assessing whether a Statutory Nuisance has taken place, Officers consider three factors: frequency, duration and severity. In relation to the complaint regarding the discharge of grease from the vent and rodent activity, an Officer from the Environmental Health Team carried out a visit to assess the conditions and spoke to the business owner regarding the issue. Evidence of grease was noted to the area around the terminating point of the fan. No evidence of rodent activity was noted. A follow-up inspection by the Officer confirmed that the build-up of grease had been removed.

Were a Statutory Nuisance to have been confirmed, the reinstatement of the flue in the original position would have been sufficient to abate any identifiable odour nuisance. However, this would not have been satisfactory to the complainant. Therefore, the planning process for the installation of a new flue was pursued, as such it was not expedient for further action to be taken under the Council's powers relating to Environmental Health.

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

- The initial complaint was received in June 2017, the relocated flue was installed in November 2019;
- The extraction vent was operational and whilst not adequate for the task was not sufficient reason to close the catering business;
- Officers had discussed with the business owner the possibility of closing the business, when the new flue had not been installed within the time frame stipulated in the Planning Permission;
- Officers in Development Management had liaised with the contractor installing the re-sited flue to ascertain details on when it would be in place as communication from the catering business owner was not forthcoming.

The Officers left the meeting at 3:20pm.

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

RESOLVED – 1) That the complaint against Development Management Services not be upheld.

The Panel considered although the issue of the complaint had taken some time to address, Officers had acted appropriately. Enforcement action had not been appropriate in this case and would not have resulted in a quicker resolution of the matter.

(The meeting closed at 3:35pm)