

Appeals Panel 2

Date: Tuesday, 09 November 2021

Time: 10:00

Venue: Eden Room

Present: Councillor Mrs Marilyn Bowman
Councillor Ruth Alcroft (for Councillor Peter Sunter)

Also Present: Complainants x 4

Officers: Corporate Director of Governance and Regulatory Services
Regulatory Services Manager
Environmental Health Officer
Assistant Solicitor

AP2.06/21 APPOINTMENT OF CHAIR FOR THE MEETING

RESOLVED - That Councillor Mrs Bowman be appointed Chair for the meeting.

AP2.07/21 APOLOGIES FOR ABSENCE

Apologies for absence were submitted on behalf of Councillors Betton and Sunter.

AP2.08/21 DECLARATIONS OF INTEREST

No declarations of interest were submitted.

AP2.09/21 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.

AP2.10/21 CORPORATE COMPLAINT APPEAL - ENVIRONMENTAL HEALTH

(Public and Press excluded by virtue of paragraph 1)

The Chair introduced the Panel and set out the process for the meeting, she invited the Complainants to summarise their complaint.

The complaint related to the Environmental Health Officer's investigation of an incident that had occurred at private hire swimming pool which had resulted in the Complainant's children

requiring medical treatment.

The Complainants set out the following issues in relation to the handling of the complaint: Lack of information given throughout the process; Officers had not offered a face to face or online meeting with the Complainants; several occurrences of miscommunication during the complaints process; the Environmental Health Officer has responded to some of the Complainants' email correspondence by telephone calls, therefore no written record of those communications were available to be provided to the Panel.

The Complainants described the event at the swimming pool which had led to investigation by the Environmental Health Officer. A number of children and their parents had attended to pool for the children to have a swimming lesson, during which the owner of the facility had primed the pump for the pool. During the visit some of the children had become unwell experiencing breathing difficulties and sickness, a proportion of the children were admitted to hospital for treatment.

The Complainants gave an overview of the Environmental Health Officer's investigation of the incident and indicated that they had not been satisfied with the following aspects: the timeliness of the Officers collection of witness statements; the view that the pool plant was operating properly; the acknowledgement that the pool pump had been primed previously indicating there was an issue; the timescale in which the pool was permitted to return to operation; the findings of the investigation; the pool facility owner not being prosecuted for the incident; and, the time taken to commission an independent pool expert.

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

- Some communications from the Officer during the investigation had been via telephone rather than written;
- The hospital had been aware from its commencement of treatment that the children had inhaled chemicals.

The Chair thanked the Complainant for their submission and summed up the complaint as follows: there was a lack of communication and information from Officers during the investigation and no offer of a face to face meeting with the complainants; the tone of some of the correspondence from Officers was aggressive.

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 meeting at 11:15.

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 Corporate Director of Governance and Regulatory Services, the Regulatory Services Manager and the Environmental Health Officer were invited to attend the meeting at 11:49. The Chair outlined the complaint and invited Officers to respond.

The Officers acknowledged that the incident which had occurred at the pool had caused the complainants distress. The Panel was given an overview of the local and national policies

which gave local authorities their regulatory powers and a summary of the actions taken during the investigation of the incident was provided.

In response to questions from Members Officers advised:

- The fault at the pool was identified by the pool expert at their second site inspection, the nature of the fault was such that it could not have been identified by the owner;
- As a local authority when carrying out an investigation under its regulatory powers, the burden of proof required to take action in relation to an incident was 'beyond reasonable doubt' as opposed to a civil case where the level required was 'on the balance of probabilities';
- The pool was allowed to reopen when it was as there was no evidence to support its continued closure, as such Officers were not able to justify the pool remaining closed;
- The findings of the initial investigation had not met the threshold to impose a Prohibition Notice, nor was there sufficient evidence to warrant prosecution of the pool owner;
- The initial investigation had not revealed a definitive cause for the incident, therefore the Environmental Health Officer continued to investigate the matter with a view to identifying the cause;
- The Council had been advised of the incident via a RIDDOR notification. Following receipt of the notification, the Environmental Health Officer attended the pool site and began the investigation process;
- The Fire Brigade had attended the incident, their test had not indicated the presence of a noxious gas at the pool. It had deemed the facility to be safe and had then permitted the Environmental Health Officer to carry out his investigation;
- The hospital were aware that the children admitted had been exposed to a substance, but prior to treatment the substance was not known;
- The priority following the notification of the incident was to assess and inspect the site so that relevant evidence could be gathered in a timely way, the collection of witness statements commenced following the Officer's initial visit to the site;
- Witness statements were secondary sources that supported the primary evidence collected from the site, there was some variation in the witness statements collated as part of the investigation;
- The pool owner had complied with all actions set out in the improvement notice;
- Communication to the Complainants from the Environmental Health Officer had been on a near daily basis and had been both written and via telephone;
- Any liability relating to the incident resided with the pool owner, not the Council, it's job was to investigate and take relevant and proportionate action within the scope of its regulatory powers.

The Chair noted that the Complainants had raised concerns regarding the tone of some of the Officer's communications, and particularly in relation to the presentation of the report submitted to the Panel.

In terms of the report presentation, the Regulatory Services Manager explained it had been formatted in such a way to aid understanding, as there was a number of aspects which contained a number of contributors.

The Officers left the meeting at 13:00.

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

RESOLVED - 1) That, in investigation the incident Officers had acted within the remit of their regulatory powers, therefore the complaint was not upheld.

2) That Officers consider the tone of their communications with complainants.

AP2.11/21 STANDING ORDERS

During consideration of the above item, it was moved, seconded and RESOLVED that Council Procedure Rule 9, in relation to the duration of meetings be suspended in order that the meeting could continue over the time limit of 3 hours.

The Meeting ended at: 13:41