

Report to the Cabinet

Report reference: C-039-2012/13
Date of meeting: 3 December 2012



Portfolio: Environment

Subject: Prosecution of Casterbridge Nurseries and Others for offences under the Health and Safety at Work etc Act 1974

Responsible Officer: Jim Nolan (01992 564083)

Democratic Services Officer: Gary Woodhall (01992 564470).

Recommendations/Decisions Required:

(1) That a supplementary District Development Fund estimate for 2012/13 of £40,000 be approved to cover the remaining estimated costs of the prosecutions relating to the above legal action.

Executive Summary:

Following the death of a child at a local nursery on 7 November 2007, and subsequent consideration of action by the Crown Prosecution Service, the Council instituted proceedings under the Health and Safety at Work etc Act 1974 against the Nursery and two individual employees. The subsequent investigation has been long and protracted and, despite the Council seeking to recover costs where it can, the duration of the investigation and subsequent legal action will result in substantial legal costs being incurred.

Reasons for Proposed Decision:

To make a proper budgetary provision for the costs associated with bringing the case to Court.

Other Options for Action:

Since the costs incurred by us will have to be paid, there is no other available course of action

Report:

1. Members may recall the tragic death of a girl aged two and a half years, on 7 November 2007. She was attending the Eton Manor Nursery in Roding Road, Chigwell, Essex.
2. The incident was initially considered by the Crown Prosecution Service (CPS) in respect of a potential offence of Corporate Manslaughter, but the CPS eventually decided not to pursue this course of action. A subsequent Judicial review of that decision by the family was not successful. The Council had also to be legally represented at the Inquest, which recorded a Narrative verdict. The family also embarked upon a private action against the Nursery. All of these other actions had to be permitted to conclude before the Council could

commence its prosecution, although investigations continued throughout.

3. Following the decision of the CPS, it fell to this Council to investigate the incident as the Health and Safety Enforcing Authority. The investigation has been very lengthy and thorough, and has led to the conclusion that offences under health and safety legislation have been committed by the Nursery, as a corporate body, and two of its employees as individuals.

4. The Court case is scheduled for January 2013 and is listed for a 4 week period.

Resource Implications:

In view of the complexity of the action, Council has been required to appoint specialist Counsel (a QC and Junior), and to date approximately £60,000 of costs have been incurred. It is anticipated that a further £40,000 of costs will arise between now and the Court hearing which is scheduled to commence in January, and is listed for a 4 week period. The costs referred to above have been allocated to the District Development Fund in earlier years' accounts. However, as the investigation and prosecution approaches its conclusion, it was thought appropriate that Cabinet should be aware of the full legal costs over the duration of the investigation and to make provision for the remaining costs for the 2012/13 financial year.

It should be noted that the costs referred to in this report refer to those associated with Counsel and do not include the Council officers' costs, which are considerable. Whilst these costs will be included in any claim for costs made by the Council, in this case the two individuals are in receipt of legal aid, and therefore even if successful, the Council will not be able to recover its costs. Given previous experience in respect of the award of costs, it is likely that at best, the Council will recover less than half of the costs associated with the case and therefore financial provision should be made in the 2012/13 financial year.

Legal and Governance Implications:

The Council has a legal duty to investigate cases of this nature. When considering whether or not a case should be prosecuted two tests must be passed, the evidential test and the public interest test. After careful deliberation, the Director of Environment and Street Scene (and following consultation with the Solicitor to the Council) has concluded that both these tests were satisfied and that a prosecution should be pursued.

Safer, Cleaner and Greener Implications:

See Legal and Governance Implications.

Consultation Undertaken:

The parents of the young girl have been kept fully informed throughout this investigation and are aware of the action proposed by the Council.

Background Papers:

None.

Impact Assessments:

Risk Management

Not to make adequate provision for this could open the Council to criticism from its auditors.

The Council is under a statutory duty to investigate accidents etc in certain premises.

There is likely to be considerable (national) press and media interest once the case is underway. Care will be needed to ensure that any comments or remarks made do not prejudice the outcome of the Court hearing.

Equality and Diversity

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications? No

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken? No

What equality implications were identified through the Equality Impact Assessment process?
None.

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?

N/A.