

Report to the Council

Committee: Cabinet

Date: 18 December 2012

Portfolio Holder: Councillor W Breare-Hall
(Environment)

HEALTH AND SAFETY AT WORK ETC ACT 1974 – PROSECUTION OF CASTERBRIDGE NURSERIES

Recommending:

That a supplementary District Development Fund estimate for 2012/13 of £40,000 be approved to cover the remaining estimated costs of the prosecutions of Casterbridge Nurseries and its employees.

-
1. Following the death on 7 November 2007 of a girl aged two and a half years, whilst attending the Eton Manor Nursery in Roding Road, Chigwell, the incident was initially considered by the Crown Prosecution Service (CPS) in respect of a potential offence of Corporate Manslaughter. The CPS eventually decided not to pursue this course of action. A subsequent Judicial Review of that decision by the family of the child was not successful. The family of the child also embarked upon a private action against the Nursery.
 2. An Inquest recorded a Narrative verdict.
 3. Following the decision of the CPS, it fell to this Council to investigate the incident as the Health and Safety Enforcing Authority. All of the other actions had to be concluded before the Council could proceed, although investigations continued throughout.
 4. 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, following consultation with the Solicitor to the Council, concluded that both these tests were satisfied and that a prosecution should be pursued.
 5. The Council's 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 by two of its employees, as individuals.
 6. A court case is scheduled for January 2013 and is listed for a four week period.
 7. In view of the complexity of the action, it has been necessary 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 conclusion of the court hearing.
 8. The costs to date have been allocated to the District Development Fund in earlier years' accounts. However, as the investigation and prosecution approaches its conclusion, we have discussed the full legal costs over the duration of the investigation and considered how to make provision for the estimated remaining costs in the current financial year.

9. We ask members to note that the costs referred to in this report are those associated with engaging Counsel and do not include the Council officers' costs, which are considerable. These costs are being collated and will be included in any claim for costs made by the Council. However, in this case the two individuals are in receipt of legal aid and, therefore, even if successful, we do not believe the Council will be able to recover its full costs. Given previous experience in respect of the award of costs, we are of the opinion that, at best, the Council will recover less than half of the costs associated with the case.

9. Accordingly we are requesting that financial provision be made in the 2012/13 financial year as set out at the commencement of this report.

10. In considering this matter we urge members to exercise caution when making comments or remarks to ensure that they do not prejudice the outcome of the court hearing.