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Ask For: Fergus Murray
Our Ref: 7915 /210422-000487
Your Ref: -
Date: 11th May 2021

Dear Mr Sumsion

Stage 2 Complaint – 210422-000487
Scapa Fest event, Ardkinglas.

I refer to the stage 2 complaint you submitted regarding your dissatisfaction at the decision taken by the Council not to permit the Scapa Fest event being held in May 2021.

The email correspondence between you and Mr Morrison, Regulatory Services Manager on the 27th April 2021, agreed that the specific areas investigations would focus on were:

- That Environmental Health are acting far outwith their powers in this case.
- That Environmental Health “could and should have taken the view that the right thing to do was to accept EventScotland’s view and not intervene.”
- The lack of explanation by environmental health.

You will appreciate that the detailed discussions have been between the organiser, Clemence Cocquet, Director of Scapa Fest Limited, and the Councils environmental health team, and I am unable to disclose any specific details of these investigations directly with you, as they are between both parties. However, investigations into the concerns you have raised have been investigated and I can advise you as follows:

- The Council’s environmental health service is authorised by the Council to carry out the statutory duties placed on local authorities by the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020. This requires them to enforce the statutory restrictions and guidance issued by the Scottish Government relating to COVID restrictions. Our enforcement policy aims to work with businesses to secure compliance and is based on 4 Es - engage, education, encourage and enforce. Formal enforcement is the last resort and may include the issue of direction or the service of a Prohibition Notice. Environmental health were acting within their statutory powers in dealing with Scapa Fest. In reviewing the proposals against the Scottish Governments route map for easing COVID restrictions, current guidance indicated that outdoor events are not permitted until restrictions moved to level 2. At the time of writing, this is expected to be the 17th May 2021 and not the proposed dates for the event of 1st, 2nd and 3rd May.

- In issuing the advice to Scapa Fest, environmental health had regard to the national legislation, Scottish Government guidance, the level of restrictions and Events Scotland's own guidance. It was acknowledged that some group activities could meet the outdoor sport guidelines, when viewed as separate entities. However, we considered that the greater 'activity' being held was "an event" encouraging numbers of people to travel and congregate at a venue where it will be impossible to keep persons to bubbles of 6 adults from 3 households. The proposals were discussed with NHS Highland, the National Expert Group and Police Scotland (who enforced gatherings and travel restrictions) to ensure that our opinion was appropriate. All supported this view that the event could not take place, as planned. The Council did not ignore Event Scotland's guidance.
- An explanation of the Council's position was discussed with the organiser, Clemence Cocquet, verbally and in writing. The organiser was contacted on the 12th April 2021, advising that they were required to cancel this event, scheduled for the 1st, 2nd and 3rd May 2021 as it will contravene the provisions of the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020, Schedule 4 (para.11) or Schedule 5 (para. 12). She did not agree with this decision and was to provide specific questions to the environment health service to respond to. A further email dated 13th May from Mr MacAuley, Environmental Health Officer to her, requested these specific questions. To date, these have still not been made or received.

In conclusion, based on the findings above, I do not uphold your complaint. Given the ever changing position with Covid restrictions and guidance, it is recognised that this does create some difficulties for businesses and regulators. However, throughout the pandemic, the Council have sought to work with businesses and communities to secure compliance with COVID restrictions in the interests of public health. An indication of this, is that of the 4,655 enforcement interactions which have been carried out by the Council, business compliance levels have been high with only 19 warning notices and 4 Prohibition Notice's served.

I hope that by addressing the specific aspects of your complaint, that this provides some detail into the Council's decision.

The Scottish Public Services Ombudsman (SPSO) is the final stage for complaints about public services in Scotland. This includes complaints about the Council. The SPSO is an independent organisation that investigates complaints. It is not an advocacy or support service (but there are other organisations who can help you with advocacy or support).

If you remain dissatisfied when you have had a final response from the Council, you can ask the SPSO to look at your complaint. You can ask the SPSO to look at your complaint if:

- you have gone all the way through the Council's Complaints Handling Procedure
- it is less than 12 months after you became aware of the matter you want to complain about, and
- the matter has not been (and is not being) considered in court.

The SPSO will ask you to complete a complaint form and provide a copy of this letter (our final response to your complaint). You can do this online at

<https://www.spsso.org.uk/complain/form/start/> or call them on Freephone 0800 377 7330.



You may wish to get independent support or advocacy to help you progress your complaint. Organisations who may be able to assist you are:

- Citizens Advice Bureau
- Scottish Independent Advocacy Alliance

The SPSO's contact details are:

SPSO

Bridgeside House

99 McDonald Road

Edinburgh

EH7 4NS

(if you would like to visit in person, you must make an appointment first)

Their freepost address is:

FREEPOST SPSO

Freephone: 0800 377 7330

Online contact www.spsso.org.uk/contact-us

Website: www.spsso.org.uk

Yours sincerely



Fergus Murray
Head of Development and Economic Growth