

Case: 201100641, East Ayrshire Council
Sector: local government
Subject: public health and civic government acts - nuisances/problems in/around buildings
Outcome: not upheld, action taken by body to remedy, no recommendations

Summary

Mr C has since 2002 owned a flat and teashop in a three storey building. There are takeaway premises on the ground floor. Mr C first complained to the council about smells from the takeaway premises in 2003. The council suspended taking formal action about this while Mr C pursued the takeaway owner for the cost of mutual repairs to the building. Mr C went back to the council in 2006, but formal action was again hampered by a dispute between the owner and occupant of the takeaway premises, errors by the council, and by Mr C in 2009 physically preventing the replacement of the existing external flue. Mr C complained to the council in 2009 and contacted our office two months later. The council carried out an investigation of Mr C's complaint, which in 2010 resulted in the issue of a lengthy report by a senior legal officer, who found evidence of shortcomings by council officers. Mr C did not approach us again until 2011.

We told Mr C that, in respect of more recent issues, he needed to complete the council's complaints procedure. He then did so and, when he came back to us, complained that the council failed to take appropriate action to deal with noxious fumes entering his property despite serving several notices on the owners and occupants of the takeaway premises. Given Mr C's contact with us in July 2009, we considered it appropriate to limit our investigation to what happened after April 2010. Mr C's complaint to us was made immediately after the council issued a fresh abatement notice (an order to put right the cause of nuisance) in November 2011 and the then current occupant had been evicted. The current owner carried out major internal refurbishment and installed a vapour barrier and an improved external flue. Senior council officials who visited in February 2012 confirmed that the owner had effectively complied with the abatement notice. Since the refurbished takeaway re-opened in late February 2012 there had been no complaints. We decided that the council had taken appropriate action since April 2010 and did not uphold Mr C's complaint.