



Appeal number: WA/2022/0010
Neutral Citation Number: [2023] UKFTT 00392 (GRC)

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
ANIMAL WELFARE**

Denise Mickle

Appellant

- and -

Wyre Forest District council

Respondent

TRIBUNAL: JUDGE FORD

Sitting by CVP on 05 October 2022 and 20 April 2023

The Appellant was in person
The Respondent was represented by Ms N. O' Hare solicitor

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DECISION

1. The appeal is dismissed. The Respondent's decision is confirmed.
2. This appeal is against a decision of Wyre forest District Council dated 22 March 2022 to refuse the appellant's application for a license to provide home boarding for dogs. The licence application was considered under the Animal welfare (licensing of activities involving animals) (England) regulations 2018.
3. In her appeal notice the appellant acknowledged that improvements were needed to ensure compliance with the regulatory regime, but stated that she had been encountering personal difficulties in her life and had remedied the defects observed in the original council inspection of her home premises.
4. At the first hearing of this appeal, the Respondent and the Tribunal clarified in considerable detail with the Appellant what needed to be done by her in order to show compliance, and it was agreed that a further inspection should take place at the end of October. The parties agreed that should the respondent still have concerns after the 2nd inspection, the hearing should be relisted on the first available date.
5. The second inspection took place as arranged on 31 October. But unfortunately, the respondent still had significant concerns about compliance and consequently about the welfare of animals within the appellant's home. Those concerns are set out in the report of Ms Singleton at page 315 to 345 of the appeal bundle
6. For various reasons, were extended delays in the relisting of this hearing and the appeal finally came up for hearing on 20 April 2023.

REASONS

A: Background to Appeal

7. The appellant wishes to use her property, based in a semi-rural location, to provide home boarding for dogs. The appellant clarified at the second appeal hearing, that she runs a dog grooming business from the same premises, albeit in a different building.
8. The animal welfare issues are set out clearly and comprehensively in the two witness statements of Miss P Singleton, Senior dog Warden dated. She conducted the two inspections of the Appellant's premises, and her reports of those inspections are included in the documents before me.
9. Having acknowledged the improvements carried out by the Appellant between the two inspections, the conditions that Ms Singleton still considered not met as at the date of the second inspection are set out clearly at paragraph 21 of her witness statement dated 01 December 2022 at page 382. Among the remaining concerns following the second inspection on 01 December were that,-

- there was no staff training policy, no annual appraisal, no planned continued professional development and no recognition of any knowledge gaps for J, the appellant's son, who was the member of staff in charge of the premises when the appellant was not present on site
- boundary fencing did not meet minimum standards required
- the appellant only had a feeding monitoring form and no monitoring form for water intake
- there were still hazards in the garden and outdoor area which were not considered secure and safe
- the appellant was recording behavioural concerns on an incident form and did not have a behaviour/feeding/water form for use during the dogs' stay
- nothing was being documented for young puppies up to 12 months
- the appellant did not have a box with isolation equipment such as personal protective equipment, bowls, bedding, disinfectant etc.
- external gates should be lockable but the front gate to the property had no padlock
- there was no written procedure for medication, only a medication for
- a couple of things were missing in respect of a procedure for the death of or escape of an animal
- the appellant said she had a veterinary letter but could not find it during the visit

B: The Law

10. The Appellant's application for a license to provide home boarding for dogs was considered under the Animal welfare (licensing of activities involving animals) (England) regulations 2018.

11. Under the procedural guidance issued to local authorities dated October 2018, consideration must be given to the inspector's report (in this case the reports of Ms. P Singleton Senior dog Warden) and any comments or conduct made by the applicant when a licensing authority is deciding whether or not to approve a new license application.

12. The licensing authority must refuse to grant a license if it thinks that the applicant is not capable of meeting their license conditions or thinks that granting a license might negatively affect the welfare, health or safety of the animals involved in the activity.

13. A license may be refused if the accommodation, staffing or management are inadequate for the animals' well-being or for the activity or establishment to be run properly.

The relevant guidance documents for the activity explains in detail the requirements and conditions that must be met, and every applicant is advised to have regard to these documents. An applicant can also be refused a license if they have been disqualified from holding a license under schedule 8 of the regulations.

14. The licensing authority is not obliged to accede to all requests for re-inspections. The guidance states that if the case made by the business is not substantiated or insufficient evidence is provided, the local authority can refuse to undertake a re-inspection on that basis. It must explain why the request is being refused at that stage.

15. This is an appeal under Regulation 24 of The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018. Under that section;-

“24.—(1) Any operator who is aggrieved by a decision by a local authority—

(a) to refuse to grant or renew a licence, or

(b) to revoke or vary a licence,

may appeal to the First-tier Tribunal.

(2) The period within which an operator may bring such an appeal is 28 days beginning with the day following the date of the decision.

(3) The First-tier Tribunal may on application and until the appeal is determined or withdrawn—

(a) in the case of a decision to refuse to renew a licence, permit a licence holder to continue to carry on a licensable activity or any part of it subject to the licence conditions, or

(b) suspend a revocation or variation under regulation 15.

(4) On appeal, the First-tier Tribunal may overturn or confirm the local authority’s decision, with or without modification”.

C: Evidence

16. On the Monday before the adjourned hearing, i.e., Monday 17 April, the appellant contacted the GRC indicating that she had further evidence she wanted the Tribunal to consider. She ultimately provided that further evidence to the respondent on the morning of the hearing. It was provided to the Tribunal on the day before the hearing.

17. At the hearing on 20 April, I explained to the appellant that she did not have permission to file further evidence and I referred her to the directions made by the Tribunal that no further evidence could be filed without the Tribunal’s permission beyond 10 January 2023. I asked the representative for the respondent if there was

any objection to the further evidence being admitted, given that it appeared to be relevant. I was told that there was no objection, but that the respondent wanted the Tribunal to take into consideration that it had not been given adequate time to fully consider the evidence. The additional evidence included a lot of photographs that the appellant said showed further improvements to the site and the area where she is now proposing to keep dogs. The improvements had not been completed by the time of the second inspection and the local authority officers involved in this case had not had the opportunity to consider or inspect those improvements.

18. I was conscious that there had been considerable delay in listing this matter for final hearing and being anxious to avoid further delay, I decided the hearing should go ahead. But I allowed 45 minutes to the respondent's representative to go through the further documents and photographs served by the appellant on the morning of the hearing with her witnesses before giving her the opportunity to cross-examine the appellant.

19. Ms Singleton(senior dog warden) and Ms May(senior licensing officer) for the local authority expressed frustration at being asked to make an assessment of the further improvements carried out by the appellant since the second inspection on the basis of photographs and video clips. Ms. Singleton nonetheless gave clear evidence as to the concerns that still remained in her mind despite the additional evidence. I have recorded those remaining concerns in the record of proceedings taken during the hearing on 20 April 2023.

20. In her evidence, Ms Singleton genuinely struggled to identify the exact locations shown in the various photographs and video clips had been taken by the Appellant. I was surprised that despite the considerable time and assistance afforded to the Appellant at the hearing in October in clarifying with her what needed to be done, she had not completed her plan of further works on the site until just days before the hearing. She had not invited the Council officers to come back and see those further works and make their own assessment. She did not serve the photographs and video clips on the Respondent until the day of the hearing thus denying them the opportunity to further visit the site if they wished to do so. I cannot be satisfied on the basis of the Appellant's evidence including those photographs and video clips that the improvements made, now mean that the welfare needs of the dogs boarding at the Appellant's premises will be met.

21. The Appellant told me in evidence that she has been running a grooming business in the stables at her home premises for some time, and that she hoped to offer a grooming service to those who decided to board their dogs with her in the future. But when it was put to her that the stables were at some distance from the area where the dogs would be kept when boarding with her, and she was asked how she could be expected to adequately monitor the dogs boarding with her while simultaneously looking after the dogs that were in for grooming, she immediately stated that if it was a concern then she would not do the dog grooming any longer. While the Appellant no doubt meant this to indicate her willingness to listen and take advice from the Respondent's officers. I did not feel that the issue was resolved. This was a real issue , because the stables are some distance away from the area where the

dogs would be kept, and she could not visually monitor the dogs in both locations. She said that she would give up her dog grooming business if that was a concern, but she had already stated that she was intending to offer a combined boarding and grooming package to dog owners. I found her evidence to be inconsistent and unclear on this matter.

22. The Appellant said that when the Respondent expressed ongoing concerns about the physical spaces where she proposed to keep the dogs after the second inspection, she decided to alter her approach. She decided to fence off an area in the garden 34 metres long by 16 metres wide and to fence it off completely, so as to ensure that the dogs were not exposed to any hazards. She did not mention this to the Respondent prior to the hearing. She said she had also fenced off the door to and from the isolation room to make sure that the dogs did not mix and thereby given the dogs in the isolation area a separate fenced off run. While this may have been a good idea in principle, in the absence of any inspection to check that the arrangements keep the dogs in both areas separate and safe, I cannot be satisfied that the arrangements will achieve the desired effect.

23. The Appellant was asked about the gaps shown at the top of fencing at her property which looked considerable in the photographs. She said that the gaps were no more than 8 cm as was shown by the tape measure in the photographs and the gap was no less than 5 feet off the ground so that no dog could get through it.

24. The Appellant was asked why she had not been in a position to produce the necessary vet's letter concerning preventative healthcare procedures at the time of the second inspection. She acknowledged that this letter had been mislaid and she could not find it, so she went back to her vet and asked for a replacement letter and has now included this in the bundle. Why she had asked for a new letter rather than a copy of the letter already issued was unclear. The new letter is included in the additional papers served on the Respondent on the day of the hearing. It is dated 17/11/2022.

25. The Appellant told me that the main gate has a padlock, although it was difficult to see this in the photographs provided at the hearing as more than one gate was shown in those photographs. The Appellant was simultaneously stating that the dogs would not have access to this gate as they would be within the enclosed fenced area. The Appellant also said that the dogs could not get access to the bins given that they will be in a fenced off enclosure. Ms Singleton had not had the opportunity to see these new arrangements.

26. In relation to the concern that procedures were not observed to be in place to monitor the behaviours of young dogs and puppies under 12 months, the Appellant said that she had included written procedures to cover this in the documents provided on the day of the hearing. She said that she had also added to the policy documents in place to cover sickness and escape to meet the Respondent's concerns.

27. It was conceded that the Appellant had supplied the necessary First Aid certificates for her son J with her initial documents. The Appellant told me that she was a third of the way through completing her OFQUAL level 2, but she

acknowledged that she had not provided evidence of this to the Respondent. What she had not provided at the time of inspection was a staff training and development policy for J.

28. The Appellant was asked why she had included only procedures to monitor the drinking of dogs in isolation and not their food intake and behaviours. She said she was monitoring drinking and behaviour with tick boxes and said that she had provided written procedures as well as the forms she was intending to use.

29. When asked why the Appellant had placed plant pots on the internal boundary of the fenced off area, the Appellant said that she had put them there to meet the concern expressed about inadequate enrichment. When it was put to her that they might pose a danger to the dogs in that they might use them as a launching pad to try to jump over the fence she said that she would remove them.

30. The Appellant was asked about the employee training and development policy provided to the Respondent on the day of the hearing. She was asked how it related to the proposed home boarding business. She said that she took it from a company she used to manage in the past and that she intends to use it in the future as it is comprehensive. The Respondent expressed concern that it was not specific to the activity for which a licence is being sought. I share the concern of the Respondent that this training and development policy is not suited to the business proposed by the Appellant.

31. If one looks at the history of the Appellant's application for a licence and her interaction with the licensing authority, it becomes apparent that she has found it increasingly difficult to deal with the supervision and monitoring of her activities by the Respondent. It was quite an extreme reaction to the second inspection to make the extensive changes she made on site without any further discussions with the Respondent, and without requesting any further inspection. The Respondent is not obliged to accede to any request for a further inspection but did agree to the second inspection. Unfortunately, the improvements made by the Appellant were far from adequate to ensure the welfare of the dogs on site.

32. Have the concerns of Ms Singleton recorded at the time of the second inspection now been met? They were that,

- there was no staff training policy, no annual appraisal, no planned continued professional development and no recognition of any knowledge gaps for J, the appellant's son, who was the member of staff in charge of the premises when the appellant was not present on site. *While the Appellant has produced a staff training policy, I accept the Respondent's concern that it is not suitable for the business proposed*
- boundary fencing did not meet minimum standards required. *The Appellant has now constructed a site within a site. She produced photographs and footage of the newly fenced off area. But on the basis of this evidence, it is not possible to be satisfied that the dogs will be*

safe, and their welfare adequately protected while they are being home boarded with the Appellant. I concluded that the Respondent was correct in it's conclusion that the way forward for the Appellant now is to make another application. It is not possible to bypass the regulatory supervision and monitoring by the Respondent in the way she now seeks to do. I was concerned at the hearing that the Appellant was not giving considered responses after a time and was changing her position in a way that was not persuasive. A prime example of this was that the Appellant stated at the hearing that she is running a dog grooming business on the same site in the stable buildings. She said that she proposed to continue this business in tandem with the boarding business. But when it was put to her that it would be very difficult to supervise dogs present in the two different parts of the site at the same time, she immediately said that she would give up her grooming business. The Appellant is a single mother with two dependent children and one young adult working with her in the business. If she is dependent on the income from the grooming business, then it was difficult to see how she could immediately afford to give it up. I did not find it credible that she would do so, particularly as she stated that she was hoping to offer a combined boarding and grooming service to dog owners. She has also referred in the evidence to expanding the home boarding business and taking in more dogs. Currently she proposes 5 plus her own two dogs.

- *the appellant only had a feeding monitoring form and no monitoring form for water intake. I accept that this has now been rectified*
- *there were still hazards in the garden and outdoor area which were not considered secure and safe. I cannot be satisfied that this valid concern has been adequately addressed because there has been no further inspection since the changes were made by the Appellant. The Appellant has now produced photographs of the new fenced off area she has now organised on site, and she has clearly put a lot of thought and work into arranging this. But it was impossible to see from photographs and video clips whether the new arrangements meet the remaining valid concerns expressed after the second inspection.*
- *the appellant was recording behavioural concerns on an incident form and did not have a behaviour/feeding/water form for use during the dogs' stay. This is a valid concern as the Appellant needs to follow the standard procedures of recording the behavioural concerns on a separate form for sufficiently clear record keeping and not to mix things up by recording behavioural concerns on an incident form*
- *nothing was being documented for young puppies up to 12 months. I can see that the Appellant has now included a policy for young dogs under 18 months, but this has not been agreed with the Respondent and was produced too late for the Respondent's witnesses to give it proper consideration at the appeal hearing.*

- the appellant did not have a box with isolation equipment including personal protective equipment, bowls, bedding, disinfectant etc. *As at 20 April 2023 the Appellant did have a box with isolation equipment, but it was still incomplete, as some important items were not included in the box shown in the photos although the Appellant said she had them on site*
- external gates should be lockable but the front gate to the property had no padlock. *The Appellant has sought to address this and the concerns about the boundary fencing by creating a new internal area on site. But in doing so she has not allowed the licensing authority the opportunity to inspect this new arrangement and this Tribunal cannot substitute its own opinion on the basis of photographs and video clips. It was impossible to see how the dogs arriving at the Appellant's home could be taken to the new fenced off area without going through the gate that was of concern to Ms Singleton. Ms Singleton did her best to try to identify where the photos were taken on site as she has visited the site more than once but was genuinely unable to identify the locations where the photographs were taken.*
- there was no written procedure for medication, only a medication form *I accept that the Appellant can easily rectify this and intends to do so*
- a couple of things were missing in respect of a procedure for the death of or escape of an animal. *I am not satisfied on the evidence that this has been adequately addressed*
- the appellant said she had a veterinary letter at the time of the inspection on 01 December 2022 but could not find it during the visit. *She has now produced a veterinary letter dated 17/11/2022, but this goes no further than to state that she has registered her business with a local veterinary practice. It does not refer to any preventative healthcare plan being discussed with the vet*

33. As at 20 April 2023 I find that I cannot be satisfied that the Appellant has shown that the following conditions for the welfare of animals boarding at her premises are met i.e., that;-

- a. all gates accessing the areas where the owners enter the Appellant's property and adjoining public areas are in good repair and have a padlock
- b. the fencing is complete, secure and is sufficiently high along its entire length so as to prevent dogs from escaping
- c. the dogs cannot access any loose wiring on which they could injure themselves
- d. dogs no longer have access to the area where a stack of slate tiles was placed beside a fence that could have been used by dogs to jump/climb over the fence

- e. dogs can no longer access the area where there is a blind drop of 6 to 8 feet
- f. dogs can no longer access the dangerous broken steps on the property with loose uneven broken slabs.
- g. dogs can no longer get to the bins
- h. appropriate procedures are now in place to provide suitable enrichment for young dogs/puppies
- i. the isolation box on site now includes all of the necessary isolation equipment and written procedures are in place for animals in isolation to ensure that their welfare needs, and the welfare needs of the other dogs on site are not compromised
- j. procedures are in place to ensure the necessary pre-stay arrangements for dogs new to the business including the required overnight trial for one dog at a time in such home boarding situations
- k. a preventative healthcare plan agreed with the vet is in place. While the Appellant told Ms Singleton that she had such a plan at the time of the second inspection, she was unable to produce it. At the hearing she explained that she could not find it at that time and went back to the vet and asked them to provide her with another letter which she has included with the papers provided to the Respondent on the day of the hearing. That letter was dated 17/11/2022. I do not know why the letter was not sent to the Respondent between the date when it was provided to the Appellant and the day of the hearing. The letter is short and goes no further than stating that the branch manager of the veterinary practice confirms that the Appellant's business is registered with the veterinary practice and the practice is prepared to provide veterinary services subject to its usual conditions. I do not accept that the document provided amounts to an adequate preventative healthcare plan
- l. a suitable ongoing staff development and training program is in place
- m. that there are two secure physical barriers between the dogs and public areas

34. The Appellant should be given credit for the major improvements she made after the first inspection. A lot of progress was made. The Respondent is the licensing authority, and it is not targeting the Appellant when it seeks to maintain the same standards for her business as it imposes on all home boarding businesses. The Appellant must work with the licensing authority to achieve all of the necessary safety and welfare standards for dogs in her care. These are standards set nationally and they have been carefully considered.

35. The Appellant is referred to the revised (as at 06.04.2023) DEFRA guidance on Home boarding for dogs licensing: statutory guidance for local authorities as well as the Animal Welfare (Licensing of activities involving animals)(England) 2018. This is where she will find the minimum standards as well as the higher standards that will lead to a higher star rating together for a Home boarding business together with the general and the specific conditions applicable to all home boarding for dogs' businesses.

36. I find that the actions and approach of the Respondent to the Appellant's application for a license to board dogs in her home in this appeal are in accordance with the proper exercise of their statutory functions as the relevant licensing authority. The Appellant made a lot of progress between the two inspections, but she has not yet shown that she is fully compliant with the welfare regime in place in England for home boarding for dogs. She will need to make another application to the Respondent for a license for Home boarding dogs at her home.

37. The appeal is dismissed. The Respondent's decision of 22 March 2022 to refuse the Appellant's license application for the Home boarding of Dogs is confirmed.



Tribunal Judge Ford

DATE: 25/04/2023

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