



Appeal Number: WA/2022/0020  
Neutral Citation number: [2023] UKFTT 00413 (GRC)

**First-tier Tribunal  
(General Regulatory Chamber)  
Welfare of Animals**

**Considered on the papers  
On 5 May 2023**

**Before**

**JUDGE OF THE FIRST-TIER TRIBUNAL J K SWANEY**

**Between**

**DAVID YATES  
KAREN YATES**

Appellants

**and**

**BOLTON COUNCIL**

Respondent

**DECISION**

1. The appeal is allowed.
2. The decision to revoke the appellants' licence pursuant to the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 (the Licensing Regulations) is overturned and the decision letter dated 22 September 2022 is modified as follows:

The licence for boarding cats at Earls Farm Cattery is suspended on the grounds that the licence conditions are not being complied with and that it is necessary to protect the welfare of animals.

**REASONS**

**Background**

3. This appeal concerns the decision made on 22 September 2022 by North Northamptonshire Council to refuse to revoke the appellants' licence to operate the Earls Farm Cattery at Earls Farm, Stitch-Mi-Lane, BL2 4HU (the premises).
4. The appellants have operated a cattery for a number of years and were most recently granted a licence to provide boarding for cats from 1 July 2021 until 30 June 2023. They were licenced to board 84 cats and were awarded a three star rating. It is the revocation of this licence which is the subject of this appeal.
5. The respondent became aware of a social media post referring to the fact that two cats had gone missing from the premises on 14 September 2022. On 15 September 2022 the respondent received a complaint from the owner of two cats who had been boarded at the premises. He stated that one of his cats (Disco) had been lost. On 16 September 2022 the respondent received a further complaint from a second cat owner who stated that their cat (Chia) had gone missing while boarding at the premises. Chia was subsequently found and reunited with its owner. Disco has never been found.
6. These complaints prompted the respondent to carry out an inspection of the premises on 16 September 2022. A detailed inspection report is contained in the appeal bundle, but the areas of concern can be summarised as follows:
  - A hole in the roof of unit 15 where Disco had been housed.
  - A hole in the wall of unit 14 where Chia had been housed.
  - Mesh attached to the outside of chalets rather than the inside as required.
  - Used litter not clearly identified and stored inappropriately.
  - Poor maintenance and cleaning generally.
  - Lack of regard to safety and the requirement to provide a suitable environment.
  - Failure to clean and empty food bowls after a feed.
  - Failure to display a copy of the licence.
  - Inadequate record keeping in relation to specific information about cats and about their welfare during boarding.
  - A lack of documented policies and procedures.
  - A lack of staff records.
7. As a result of the inspection, the appellants were advised verbally on 23 September 2022 that their licence was being revoked with immediate effect, that they must not accept any future bookings from 24 September 2022, and that they must repatriate all cats being boarded.

## **The law**

8. The 2018 Regulations came into force on 1 October 2018 and govern the licensing of premises involving animal welfare standards including those providing boarding for cats.
9. Regulation 4 of the 2018 Regulations sets out conditions for the grant or renewal of a licence. Regulation 14 provides that the local authority must have regard to such guidance as may be issued by the Secretary of State.
10. Regulation 15 provides that a licence may be revoked at any time on the local authority being satisfied that (a) the licence conditions are not being complied with, (b) there has been a breach of these Regulations, (c) information supplied by the licence holder is false or misleading, or (d) it is necessary to protect the welfare of an animal.
11. Schedule 2 to the 2018 Regulations provides the general licence conditions and Part 1 of Schedule 4 to the 2018 Regulations sets out the specific licence conditions for providing boarding for cats. Paragraph 2 sets out 14 requirements relating to suitable conditions; paragraph 4 sets out 13 requirements in relation to record keeping.
12. The Secretary of State for DEFRA has issued two guidance documents:
  - (i) The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 Procedural guidance notes for local authorities, October 2018 (the procedural guidance).
  - (ii) The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 Guidance notes for conditions for providing boarding for cats, November 2018 (the conditions guidance).
13. The appellants have a right of appeal against the respondent's decision pursuant to regulation 24 of the 2018 Regulations.

## **The respondent's decision**

14. The respondent's decision and the reasons for it are set out in a letter dated 22 September 2022. The respondent's decision is based on breaches of both the general and specific conditions of the licence.
15. In respect of the general conditions (Schedule 2), the respondent identified the following breaches:
  - (1) Failure to display licence.
  - (4) Inadequate staffing for the licenced number of cats, lack of staff training records, and lack of staff training policy.
  - (5) Units 14 and 15 did not meet the standards required pursuant to subparagraphs 5 (1), (2), (3), (5), (6), and (9).
  - (6) Failure to comply with subparagraphs 6 (1), (2), and (3).

- (7) Failure to document enrichment properly and an absence of a policy in relation to immature animals.
  - (8) Absence of policy and procedure or training on proper handling of animals, lack of consent for animals from the same household to share the same unit, lack of policy and procedure relating to human interaction, lack of detail in record of behavioural observations.
  - (9) Lack of/inadequate policies and procedures and records for matters specified in subparagraphs 9 (1)(a) and (b), (4), (5), (6), (7), (8), (11), and (13).
  - (10) Lack of/inadequate policies and procedures and safety equipment pursuant to subparagraphs 10 (1) and (4).
16. In respect of the specific conditions (Schedule 4), the respondent identified the following breaches:
- (2) Lack of a secure waterproof roof over the entire cat unit.
  - (3) Lack of policy, procedure, or records in relation to checks on toys and other enrichments.
  - (4) Inadequate information recorded in the register of cats, specifically with reference to 4 (c), (g), (h), (k) and (l).
  - (5) Lack of a policy and procedure for cleaning and disinfection routines and a lack of a preventive healthcare plan agreed with a veterinarian.

### **The appellants' case**

17. The appellants lodged an appeal on 17 October 2022. The set out detailed reasons for disagreeing with the respondent's decision in their notice of appeal. They can be summarised as follows:
- Following the inspection it was stated that the officer was broadly happy with everything including the structure and that she would not recommend revocation or suspension of the licence.
  - It is not correct that the premises were unmanned all day. Someone is present between 8:45 am and 12:00 pm and again between 4:00 pm and 6:00 pm and more often if required.
  - There have been no escapes or complaints in 24 years of boarding cats.
  - Disco escaped by making a crack in the roof of unit 15. The crack in the roof was repaired as soon as it was identified.
  - Disco was seen at 6:00 pm and was found to be missing at 9:00 am the following day. Disco was not missing for three days before his absence was noticed.
  - Unit 14 was intact before Chia went in. Chia escaped by making a hole through the skirting board and three membranes of unit 14. Chia's owner made the hole larger by kicking it.
  - Chia was fed in the morning and was discovered missing in the afternoon.

- Cats are fed with the food specified by their owners. Chia was fed from the premises' own stock of the same food provided by his owners.
- A copy of the licence was not received, which is why it was not displayed.
- There were no training record to produce as the appellants were the only staff working at the time. Previous staff had training, including animal first aid training.
- A lack of policies was because only the appellants were working at the premises at the time. Where a deficiency was identified, new policies were written and implemented immediately.
- The booking form has been amended to capture additional information.
- Mesh being on the outside of units was found to be acceptable during a previous inspection.
- All cats are monitored regularly and observations noted in a book.
- One book was being used to record observations and cleaning records. Since the inspection separate books have been reinstated.
- Cleaning standards are high and the officer noted that it was the first cattery she had visited that did not smell.
- Food bowls are usually removed after each feed but were not on the day of the inspection because of a medical appointment.
- Used cat litter is not stored in the food preparation area, the litter observed was unused.
- All cats have enrichment and human interaction. Interactions were all recorded in one book but individual records are now kept.

### **Issues for resolution in the appeal**

18. There are two issues in this appeal:

- (i) Did the appellants fail to comply with the conditions of their licence?
- (ii) Was revocation of the licence necessary to protect the welfare of animals?

### **Findings and reasons**

19. The parties agreed that this appeal was suitable for determination on the papers.

*Did the appellants fail to comply with the conditions of their licence?*

20. I find that the appellants breached the general conditions of their licence in the following respects:

- (i) They did not display a copy of the licence at the premises (paragraph 1 of Schedule 2). This was accepted by the appellants. They stated that it was because they did not receive a copy of the licence. If the appellants did not receive a copy of the licence, they ought reasonably to have contact the respondent to request one. This breach of itself is not sufficient to warrant the revocation of the licence.
- (ii) There was a failure to ensure a written training policy for all staff (paragraph 4 of Schedule 2). Notwithstanding that the appellants state it was only they who were working at the premises, it is a condition of their licence that they must have and implement a written training policy. The staffing level may change given that the premises is licenced for 84 cats and the policy must be in place to ensure proper training of all staff whether they are licence holders or not.
- (iii) Units 14 and 15 were not of a standard that complies with paragraph 5(1) of Schedule 2 of the 2018 Regulations in that both had holes in the structure that allowed two cats to escape. I do not accept that the cats caused or created the holes that allowed them to escape and find that they were due to a lack of adequate maintenance and a failure to carry out regular inspections. No evidence was adduced to demonstrate that the holes in the structure were not present before the respective cats were placed in the units and no records of inspection or maintenance were provided. This is a serious breach of the licence conditions, as it resulted in the escape of two cats, one of which has never been recovered.

I note that it was accepted that except for units 14 and 15 and the roof, the vast majority of the units and the blocks as a whole were adequate in repair and construction.

The conditions guidance states: “All wire/mesh fencing must be strong and rigid and kept in good repair to provide an escape proof structure.” This is mandatory. The guidance goes on to state: “Where cats have access to mesh, the diameter of the wire must not be less than 1.6 mm (16 gauge welded mesh). Mesh size must not exceed 25 mm in one direction and should be positioned on the inside of the framework of runs to prevent damage of uprights by cats scratching any woodwork.” The second part of the guidance is not expressed in mandatory terms. There is no evidence relied on by the respondent which shows or suggests that the mesh did not meet the mandatory standard and it was not relevant to the escape of either cat. Moreover, the respondent adduced no evidence to suggest that cats have in fact damaged to uprights by scratching as a result of the mesh being on the outside of the units.

- (iv) There was a failure to provide evidence that animals are provided with at least daily opportunities for interaction with people (paragraph 8(3) of Schedule 2). The records provided were incomplete and were not sufficiently detailed to demonstrate that this requirement is met.
- (v) There was a failure to provide written policies and procedures relating to feeding regimes, cleaning regimes, transportation, prevention and control of the spread of

disease, monitoring and ensuring the health and welfare of animals, the death or escape of animals (including storage of any carcasses), and steps that would be taken in the event of a suspension or revocation of licence or in an emergency (paragraph 9 of Schedule 2).

21. I find that the appellants breached the specific conditions of their licence in the following respects:
- (i) There was a failure to ensure that there is a safe, secure and waterproof roof over the entire unit (paragraph 2 of Schedule 4). Although I accept that the roof has been patched in several places, this does not of itself mean that the roof is not waterproof. I note the photograph of the bucket and floor in part of the premises, but it is impossible to establish how long this had been there or whether there was an ongoing leak. The breach in this case relates to the security of the roof given that a crack/hole allowed a cat to escape. I accept that this was immediately fixed once it was discovered.
  - (ii) There was a failure to keep adequate records and/or to produce a register of all cats which includes the information required (paragraph 4 of Schedule 4).

*Was revocation of the licence necessary to protect the welfare of animals?*

22. The breach of conditions in respect of the condition of units 14 and 15 was serious and led to the escape of two cats. The fact that two cats were able to escape from two different units demonstrates a significant failing to ensure that the units were safe and secure. I balance that with the following.
23. I am satisfied that Disco was not missing for three days before his absence was discovered. I accept that he went missing between 6:00 pm and 9:00 am the following day. I find that it was three days before Disco's owners were told about his disappearance because of the decision to wait until they returned rather than contact them while they were away. I am satisfied that as soon as the crack/hole in the roof was discovered, immediate steps were taken to relocate the second cat to another unit and to repair the roof. The officer notes in her report that the roof had been repaired on her visit.
24. In respect of unit 14, I find on the balance of probabilities that a full inspection was not carried out before the cat was placed in the unit. I am satisfied that had it been carried out, the cat would not have been placed in that unit and appropriate repairs would have been carried out.
25. The rest of the premises were in an adequate state of repair that complies with the conditions guidance. I find that the issues with units 14 and 15 were not characteristic of the premises as a whole and there is no evidence to show that any other cats were at risk.
26. I have found that there was a failure to have established and written policies and procedures in various respects and that there was a failure to keep adequate records to show that relevant standards were being complied with. The appellants state that they have since put in place relevant policies where the respondent identified deficiencies and have also made other changes to their record keeping procedures and the information that they collect from owners about cats being boarded at the premises.

27. Having considered the nature of the breaches, the steps that the appellants state they have taken to rectify them and when, I find that revocation of the appellants' licence was not necessary to protect the welfare of animals. I find that suspension of the licence would have been more appropriate to provide the appellants with an opportunity to demonstrate that they had remedied the issues with the physical environment and that they had created and implemented appropriate policies and procedures and established proper record keeping.
28. The purpose of the suspension of the licence is to enable the appellants to provide evidence that the breaches above have been rectified. Regulation 16 provides that once a licence has been suspended for 28 days, the local authority must reinstate it without varying it; vary and reinstate it as varied; or revoke it.
29. To ensure that the appellants have the opportunity to rectify the breaches of the conditions of their licence, the 28 day period provided for in regulation 16 will begin on the date on which this decision is notified to the parties.

Signed J K Swaney

Date 10 May 2023

Judge J K Swaney  
Judge of the First-tier Tribunal