



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

**NCN: [2023] UKFTT 437 (GRC)  
Appeal Number: WA/2022/0023**

**Heard by video  
On 16 May 2023**

**Decision issued  
On 23 May 2023**

**Before**

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

**Between**

**JOHN BENNET**

Appellant

**and**

**CENTRAL BEDFORDSHIRE COUNCIL**

Respondent

**Representation:**

For the Appellant: In person  
For the Respondent: Mr J Payne, solicitor

**DECISION**

1. The appeal is dismissed.
2. The decision to refuse to renew a licence to operate a dog boarding kennel pursuant to the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 (the Licensing Regulations) is confirmed.

**REASONS**

**Background**

3. This appeal concerns the decision made on 26 October 2022 by Central Bedfordshire Council to refuse to renew the appellant's licence to operate the Tynehill Boarding Kennels at Shillington Road, Nr Henlow, Bedfordshire SG16 6JX (the premises). Detailed reasons for the decision were given in a letter dated 12 October 2022.

4. The appellant has operated the premises for more than 20 years. His most recent licence to operate a dog boarding kennel was due to expire on 29 September 2022. In advance of that date the respondent wrote to the appellant by email to alert him to the need to apply to renew his licence.
5. There was then further communication between the appellant and the respondent by telephone and email. The respondent provided the appellant with the application form, copies of the dog boarding kennel licensing conditions and cat boarding licensing conditions, and instructions on how to pay the fee online.
6. On 23 August 2022 the appellant submitted his application, supporting documents, and payment of the relevant fee by post.
7. There was then further contact between the appellant and the respondent to arrange an inspection visit. This was confirmed for 20 September 2022 at 12:30 pm. The appellant was asked to provide all relevant documents in advance of the inspection, but it is asserted that he declined to do so, instead stating that they could be inspected during the visit.
8. The inspection on 20 September 2022 was carried out by Charlotte Delaney-Day, enforcement officer and Richard Johns, environmental health officer. Both are employed by the respondent.
9. On 30 September 2022 the respondent emailed the appellant to advise that due to 'multiple breaches of licence conditions/statutory guidance' a boarding kennel licence would not be issued. The appellant was advised to cease operating the boarding kennel by no later than 1 November 2022. The respondent stated that they would write to the appellant 'in due course'.
10. On 12 October 2022 the respondent wrote to the appellant setting out the contraventions of licence conditions that had been observed during the inspection on 20 September 2022. The respondent also identified a further issue *separate to* the refusal to issue a licence. That was an issue of animal welfare pursuant to the Animal Welfare Act. No further action was taken by the respondent in respect of the issues raised under the Animal Welfare Act. The letter again advised the appellant that he must cease operating the boarding kennel, but agreed that the date by which he must cease operation had been revised to 6 November 2022, on the condition that the remaining dogs have increased enrichment and care provisions. It was also stated that the extension of time was subject to an unannounced visit taking place.
11. The respondent issued a formal notice of refusal of an animal boarding licence on 26 October 2022. This is the decision under appeal.
12. The appellant lodged an appeal against the decision on 4 November 2022. On the same day the respondent conducted an unannounced inspection to ensure that the appellant had complied with the agreed timescale and conditions relating to the closure of the boarding kennels. This visit was conducted by Charlotte Delaney-Day and Ella Cope.

13. Having reviewed the notice of appeal, the respondent reviewed the inspection notes from the site visit on 20 September 2022 and provided an updated list of the contraventions of licence conditions observed in a letter dated 5 January 2023.

### **The law**

14. 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.
15. Regulation 4 of the 2018 Regulations sets out conditions for the grant or renewal of a licence. It provides where relevant:
  - (1) This regulation applies where –
    - (a) a local authority has received from an operator an application in writing for the grant or renewal of a licence to carry on a licensable activity on premises in the local authority's area, and
    - (b) the application gives such information as the local authority has required.
  - (2) The local authority must –
    - (a) appoint one or more suitably qualified inspectors to inspect any premises on which the licensable activity or any part of it is being or is to be carried on, and
    - (b) following that inspection, grant a licence to the operator, or renew the operator's licence, in accordance with the application if it is satisfied that –
      - (i) the licence conditions will be met,
      - (ii) any appropriate fee has been paid in accordance with regulation 13, and
      - (iii) the grant or renewal is appropriate having taken into account the report submitted to it in accordance with regulation 10.
  - (3) A local authority must attach to each licence granted or renewed –
    - (a) the general conditions, and
    - (b) the relevant specific conditions.
  - (7) In considering whether the licence conditions will be met, a local authority must take account of the applicant's conduct as the

operator of the licensable activity to which the application for the grant or renewal relates, whether the applicant is a fit and proper person to be the operator of that activity and any other relevant circumstances.

- (8) A local authority must not grant a licence to an operator, or renew an operator's licence, in any circumstances other than those described in these Regulations.
- (9) All licences granted or renewed in relation to any of the licensable activities are subject to the licence conditions.

16. Regulation 14 provides that the local authority must have regard to such guidance as may be issued by the Secretary of State.
17. Schedule 2 to the 2018 Regulations provides the general licence conditions and Part 2 of Schedule 4 to the 2018 Regulations sets out the specific licence conditions for providing boarding for dogs.
18. The Secretary of State for DEFRA has issued two relevant guidance documents:
  - (i) Animal activity licensing process: statutory guidance for local authorities <https://www.gov.uk/government/publications/animal-activities-licensing-guidance-for-local-authorities/animal-activity-licensing-process-statutory-guidance-for-local-authorities>.
  - (ii) Dog kennel boarding licensing: statutory guidance for local authorities <https://www.gov.uk/government/publications/animal-activities-licensing-guidance-for-local-authorities/dog-kennel-boarding-licensing-statutory-guidance-for-local-authorities#part-a--general-conditions-schedule-2-of-the-regulations>.
19. The respondent's guidance contained in the appeal bundle reproduces Parts A and B of the dog kennel boarding and cat boarding guidance. This is to be read in conjunction with the 2018 Regulations.
20. The appellant has a right of appeal against the respondent's decision pursuant to regulation 24 of the 2018 Regulations.

### **The respondent's decision**

21. The respondent's decision is contained in the letter dated 26 October 2022. The reasons for that decision are set out in letters dated 12 October 2022 and 5 January 2023.
22. The respondent was not satisfied that the appellant could demonstrate that he is able to meet licensing conditions. In the letters dated 12 October 2022 and 5 January 2023 the respondent set out the specific breaches of the licensing conditions on which her decision was based.

### **The appellant's case**

23. The appellant essentially argues that some of the requirements are in fact met, or could now be met and that others are irrelevant to whether he should be able to board dogs.

### **The appeal hearing**

24. Both the respondent and the appellant had made applications in advance of the hearing.
25. The appellant sought an adjournment to allow him to obtain legal representation and the respondent made an application for some of the appellant's evidence to be excluded.
26. The appellant confirmed that he did not wish to renew his application for an adjournment and that he was content to proceed.
27. Mr Payne for the respondent sought to exclude evidence provided very shortly before the hearing. That included witness statements, an email containing links to other documents which could not be accessed, an expert report and accompanying video that the tribunal had not directed,
28. Mr Payne's objection was that because the evidence had been provided not in accordance with directions and very close to the hearing, the respondent had not had a proper opportunity to consider the evidence or take steps to address it.
29. The appellant clarified that most of the witness statements had been provided previously and that as the respondent had taken issue about many of them being unsigned, they had taken steps to have them signed and resubmitted them. There were additional statements that they had not received until recently. I asked Mr Payne to confirm which of the statements he had already seen and admitted those into evidence. The witness statements that I did not admit are those from Anthony Burrows, Rodney Cheesemore, Paul Feltham, and Lynda Wiles. I did not consider that there was any prejudice to the appellant in excluding this evidence because the statements were similar in nature to those which were admitted.
30. The makers of the statements were not called to give evidence and I therefore indicated that it would be a matter for me as to the weight to attach to them, which could be addressed in submissions.
31. I determined that I would admit the report from Dr Mugford, noting that it was not necessary for the tribunal to have made a direction that an expert report be obtained. I observed that the report was not so much an expert report, as an opinion by someone with experience in dog behaviour and again, it would be a question of weight which could be addressed in submissions. I asked Mr Payne what the specific prejudice was to the respondent in light of my view, and he confirmed that he was content for the evidence to be admitted. I advised that I had viewed the video that accompanied Dr

Mugford's report, but that I would not take it into consideration in determining the appeal given that Mr Payne had not seen it.

32. I declined to admit two inspection reports from 2020 relied on by the appellant. This was in part because neither the respondent nor I had been able to access them via the link in an email and because it appeared that they were of limited relevance. This is because this appeal is concerned with the appellant's application to renew his licence made in 2022 and whether or not the conditions in force at the time are satisfied.
33. Applying the overriding objective and in particular rule 2(2)(b) and (c) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (the Procedure Rules) I advised that I considered it would be of assistance for the Mr Payne to present the respondent's case first. This is because the appellant was a litigant in person unfamiliar with tribunal procedure, and because he appeared to have an imperfect understanding of the decision under appeal or the reasons for it and how they relate to the regulatory regime. I considered that to enable him to participate effectively in the appeal, it would assist him to understand the respondent's position. I considered that there was no prejudice to the respondent in taking this approach.
34. Three witnesses gave evidence on behalf of the respondent: Charlotte Delaney-Day, enforcement officer; Ella Cope, regulatory compliance officer apprentice; and Richard Johns, environmental health officer. Charlotte Delaney-Day and Richard Johns are both authorised under the provisions of the Animal Welfare Act 2006 and the 2018 Regulations.
35. The appellant and his daughter who supported him during the hearing had an opportunity to cross-examine the witnesses.
36. The appellant gave evidence and was cross-examined by Mr Payne. I indicated that once I had heard evidence from the appellant that I did not need to hear from Dr Mugford and Mr Payne agreed that he did not wish to cross-examine him and could deal with the report in his submissions.
37. I considered the oral evidence and submissions, together with the following documents in reaching my decision:
  - (i) the appeal bundle;
  - (ii) report of Dr Mugford;
  - (iii) additional witness statements relied on by the appellant;
  - (iv) additional documents relied on by the appellant save for those which I did not admit (as set out above); and
  - (v) R (Hope and Glory Public House Ltd) v City of Westminster Magistrates Court [2011] EWCA Civ 31.

### **Findings and reasons**

38. Regulation 4 provides that the respondent must renew a licence if it is satisfied that the licence conditions will be met; any appropriate fee has been paid and the renewal

is appropriate having taken into account the report submitted to it. The first and third of those requirements are in issue in this appeal.

39. One of the submissions made by the appellant was that he has been licenced in the past and has been found to be complying with his licence conditions. In particular, he noted that he was issued a licence in 2020 and that nothing had changed since then. While past compliance with licence conditions may be a relevant factor, it is not determinative. In other words, just because the appellant has been issued a licence in the past and he believes that nothing has changed since then, it does not mean that a licence will inevitably be issued in the future. This is because the licence conditions are subject to amendment and because the guidance on how those conditions are to be satisfied is subject to change. What is relevant is whether the appellant is able to comply with the guidance in force at the date of decision on his current application for a licence.
40. In the letters dated 12 October 2022 and 5 January 2023 the respondent identified a significant number of breaches of licence conditions. I do not consider that it is necessary to go through each and every one, as many of the concerns raised by the respondent relate to the failure to document relevant policies and procedures and to keep adequate records. I have dealt several breaches which are a sufficient basis on which to reach my decision as to whether the appellant is able to satisfy the licence conditions.
41. In his evidence the appellant referred to his operating procedures on more than one occasion. He stated that many of the relevant policies and procedures were contained in this document. The appellant did not provide a copy of the operating procedures and they were not in evidence before me. It is for the appellant to show that he can satisfy the conditions of his licence and notwithstanding that he was representing himself, if he wanted the tribunal to consider a particular document, it should have been provided in accordance with the directions. The appellant was able to adduce other evidence and it is unclear why he did not consider it was relevant to provide a copy of the operating procedures given that so many of the failings related to a lack of procedures and/or the adequacy of procedures.
42. In considering whether the appellant is able to meet the licence conditions, I have considered the report of Dr Roger Mugford. Dr Mugford sets out some information about his experience, but not his qualifications, in the introduction to his report. I accept that he has experience in dog behaviour. I place no weight on Dr Mugford's report, as it simply provides his opinion as to the validity/applicability of the general and specific licence conditions set out in Schedules 2 and 4 to the 2018 Regulations. While his opinion may be derived from years of experience, it is irrelevant in the context of whether or not the appellant does or will be able to comply with the licence conditions. There is no discretion; regulations 4(8) and 14 are clear in that licence *must not* be granted in any circumstances other than those described in the 2018 Regulations and a local authority *must* have regard to guidance issued by the Secretary of State.

*General licence conditions (Schedule 2 of the 2018 Regulations)*

43. The appellant does not dispute that he failed to display his name as the licence holder together with the number of his licence on the premises' website. This is a breach of paragraph 1(2) of Schedule 2.
44. I find that the appellant failed to ensure that all records he is required to keep as a condition of his licence were available for inspection by an inspector in a visible and legible form, and that he failed to keep such records for at least three years beginning with the date on which the record was created. This is a breach of paragraph 2 of Schedule 2 of the 2018 Regulations.
45. Some examples of the records that I find were not properly kept and available for inspection are:
  - Paragraph 6(2) of Schedule 2 – records of any problems with feed and water intake.
  - Paragraph 7(3) of Schedule 2 – records of any change of behaviour.
  - Paragraph 9(14) of Schedule 2 – records of any signs of pain, suffering, injury, disease or abnormal behaviour
46. I note the appellant's evidence that he has a whiteboard in the kennels which records relevant details in respect of each dog including any issue with feed and behaviour. While the appellant and his staff may well record such information while the dog is boarding with them, there was no evidence that those records are retained for three years in a format that is available for inspection. The appellant accepted that the information was erased from the whiteboard and did not state that it was recorded in any other format before being erased. Indeed, he stated that it was not realistic to record such information in a more permanent form.
47. The importance of record keeping is so that on inspection, it can be determined as to whether a licence holder is complying with the underlying condition, i.e. as set out above, monitoring an animal's food and water intake, changes in behaviour, and monitoring their physical welfare and behaviour.
48. I find that the appellant does not have a written training policy for all staff. This is a breach of paragraph 4(3) of Schedule 2.
49. The appellant stated that the training policy is that staff are all required to read the operating procedures and sign a record to show that this has been done. He also stated that staff receive on the job training because some things can only be learned by being shown and completing the tasks for themselves.
50. This may well be the case, but this is not evidence of a written training policy. A written policy might set out for example what training was required, which might include a requirement for the staff member to be familiar with the operating procedures; how training is provided, i.e. in-house or by external providers; timescales within which it must be completed; how often training needs are reviewed; what steps are taken if



training is not completed, etc. This is not a prescriptive list of what a training policy must contain, it is examples of what it *might* contain. It is for the appellant to provide and ensure the implementation of a written training policy for all staff.

51. The respondent asserts that no health checks are carried out unless paid for and that this is inadequate and in breach of paragraph 5(3) of Schedule 2. I do not consider that paragraph 5(3) relates specifically to the health of the animal. It relates to its general state of cleanliness and condition which includes health regimes. I take this to mean things such as administering medication if required. Paragraph 9 of Schedule 2 provides for monitoring and ensuring the health of animals.
52. Point (7) of the terms in the boarding contract states 'No grooming, bathing or physical inspection of your dog is included in the price'. The statutory guidance provides that:

Dogs should benefit from adequate routine grooming and other health regimes as needed and agreed with the owner. For example, eye cleaning or preventing long fur from matting. This must include attention to coat, teeth, ears and nails and inspection for parasites.
53. The appellant stated that he does not provide a grooming service, but that if a dog was seen to require attention to its coat, for example because it needed washing, the dog would be washed. I find that the terms of the booking form are inadequate to make this clear. While it may be reasonable for the appellant to charge for grooming and other health regimes, for example administering medication, there is no place on the booking form to record what has been agreed with the owner and no procedure or policy was provided to explain how this condition is met. I find that this is a breach of paragraph 5(3).
54. Paragraph 9(1) of Schedule 2 requires that a written procedure must be in place and implemented which covers among other things monitoring and ensuring the health and welfare of all the animals. The respondent asserted that a health check is only carried out if paid for. The appellant disputed this and stated that point (7) of the terms of the boarding contract relates only to grooming and not health checks. I accept his evidence in this regard.
55. The appellant stated that a health check is carried out at the point at which the boarding contract is completed. He acknowledged that this was not in fact a check of the animal by kennel staff, but was information provided by the owner. I accept that there is space in the boarding contract to record 'medical history we should be aware of', but find that it is not adequate to satisfy the requirement to have a written procedure as to how monitoring and ensuring the health of animals is carried out. A written procedure would specify for example how often monitoring is carried out, how and where observations are recorded, what steps are taken where a health need is identified etc. I find that the failure to demonstrate that a written procedure is in place and implemented is a breach of paragraph 9(1) of Schedule 2.

*Specific licence conditions (Schedule 4 of the 2018 Regulations)*

56. The appellant has eight kennels which do not have access to an outside run. The respondent asserts that this is a breach of paragraph 7(2) of the specific conditions. In fact, paragraph 7(2) merely specifies the minimum area of a kennel and the guidance does not require access to a run. Paragraph 7(6) relates to exercise runs and the guidance specifies that a dog should have constant access to an exercise run during the daytime. Where this is not possible, a dog must be removed from its kennel unit at least 4 times per day for exercise and toileting.
57. When asked, the appellant stated that dogs housed in kennels with a run are taken out four times a day in accordance with the guidance. He stated that it is not realistic to expect records of this to be kept for eight dogs every day. I accept that the appellant is aware of what the guidance requires and that he in fact complies with the guidance.
58. Paragraph 8(2) of Schedule 4 provides that All dogs must be provided with toys or feeding enrichment (or both), unless advice from a vet suggests otherwise. The respondent asserts that the appellant failed to comply with this requirement because dogs were observed in kennels without any toys or other enrichment. The appellant's evidence on this appears to be inconsistent. Charlotte Delaney-Day states in her witness statement that when asked, the appellant stated that owners can bring their own toys and treats for dogs and that these are kept in a bag in each kennel so that staff may give them to the dog. When asked what dogs do all day, she recorded his response as 'the dogs have each other' and when asked if that meant they bark at each other, she recorded his response as 'no, they talk to each other'. She then records that dogs in the exercise runs or the paddock appear to lack enrichment, he said 'staff do not have time, they may put the dog in and throw a ball once but they have other things to do'. On observing three dogs in one of the exercise runs, Ms Delaney-Day records that all three dogs were sitting waiting by the gate and had no toys or enrichment available.
59. In his grounds of appeal the appellant asserted that the kennels were designed so that dogs can see each other and the surrounding environment; that dogs are treated with loving interaction by the staff who give 'social enrichment, sensory enrichment and cognitive enrichment'. No examples were given of precisely what this entails. The appellant states that most owners will provide toys, but if they do not, the premises has a selection available. The appellant goes on to state that each dog goes into one of the off-lead exercise areas for at least 20 minutes, twice a day where he states that they have opportunities for sniffing between the kennels and exercise areas. The appellant states that biscuits and treats are available all day and are used for feeding enrichment.
60. In his oral evidence the appellant stated that feeding (referring to regular feeding rather than treats) is enrichment. He stated that in some of the photographs relied on there is evidence of enrichment. When this was clarified, it was stated that this was on the premises' Facebook page. I advised that I would not take that into account because it had not been provided in accordance with directions, and because it was not possible

to verify when or where the photographs had been taken. The appellant also stated that his staff work for him because they love interacting with the dogs.

61. The photographs in the appeal bundle show several dogs in kennel runs without any toys or enrichment. I acknowledge that it is not possible to see from those photographs whether there were any toys in the sleeping area.
62. I note that it was a condition of the extension to the appellant's licence that the remaining dogs must have increased enrichment and care provisions. The statements of Ella Cope and Charlotte Delaney-Day both refer to the unannounced visit on 4 November 2022 which took place to ensure that this condition was being complied with. Both record once again that there was a lack of enrichment. Ms Cope states that she observed that there was no enrichment in the kennels. She also states that when this was raised with the appellant, he responded by questioning the purpose of enrichment and stating that the dogs aren't bothered about toys. Ms Cope states that she explained the importance of enrichment and human interaction and records her impression that the appellant did not appear to appreciate the necessity of it.
63. Ms Delaney-Day's evidence is consistent with that of Ms Cope in that she observed dogs in their kennels without any enrichment and records that the appellant stated that the dogs were happy without any additional enrichment.
64. I find that there was a breach of the condition attached to the extension of the appellant's licence in that he failed to provide additional enrichment as required.
65. I also find that there was a breach of paragraph 8(2) of Schedule 4. It *requires* that all dogs *must* be provided with toys or feeding enrichment (or both) unless advice from a veterinarian suggests otherwise. This is not a discretionary requirement, it is a mandatory one. The appellant stated that ordinary feeding is enrichment. I do not accept that this is the case. The guidance states that food provision can be used to *enhance enrichment*. For example, through the use of devices increasing the time and effort taken to access food. This includes puzzle feeders, activity balls and stuffed rubber toys. The appellant stated in his grounds of appeal that if specific enrichment toys are necessary, they can be purchased and put into use immediately. This is an indication that either no such enrichment toys were available or if they were, that they were not routinely being used.

## **Conclusions**

66. I have found that the appellant was in breach of both general and specific conditions of his licence. I have not made findings in relation to each and every one of the alleged breaches identified by the respondent because it is not necessary to do so.
67. I have considered whether, notwithstanding the breaches, the appellant will be able to comply with the conditions of his licence if he were granted one. I find that on the basis of the evidence before me, he will not. This is because I did not have evidence of his operating procedures; nor did I have evidence of any changes that had been made to his operating procedures since the refusal decision; I did not have any evidence that

he had written new policies where it had been identified that no policies were in effect and I was not satisfied that he understood or was sufficiently familiar with the licence conditions such that he would be able to comply with them in the future.

68. I note that the appellant has operated a boarding kennel for many years. It is likely that the premises were operating under the Animal Boarding Establishments Act 1963 (the 1963 Act) until the coming into force of the 2018 Regulations. The requirements under the 1963 Act are *significantly* different to the requirements under the 2018 Regulations. As Mr Johns said in his oral evidence, the 1963 Act requirements were much simpler and the new requirements are much more onerous. It is for this reason that procedures and practices that may previously have been acceptable for the granting of a licence are no longer acceptable.
69. The appellant may reapply for a licence as soon as he considers that he is in a position to satisfy the licence conditions. It has been suggested that the appellant may wish to consider completing a level 3 OFQUAL or equivalent qualification in kennels and cattery management. While I do not comment on whether the appellant should complete such a qualification or not, I note that it will contain a specific unit of study on relevant animal welfare legislation. This may well enhance the appellant's understanding of the statutory and regulatory regime which is currently in force and with which he must comply in order to obtain a licence.
70. When making any new application the appellant would be well-advised to ensure that all documentation is provided with the application, so that it can be assessed and guidance given during the application process. Had the appellant done this in his renewal application rather than insist it could be viewed at an inspection, he may have been able to rectify the deficiencies. He should also complete the application form *in full* and not write 'see previous' for any sections. Regulation 4(1)(b) of the 2018 Regulations requires that the application gives such information as the local authority has required.
71. For all these reasons, I confirm the decision of the respondent.

Signed *J K Swaney*

Date 19 May 2023

Judge J K Swaney  
Judge of the First-tier Tribunal