



Neutral citation number: [2023] UKFTT 00599 (GRC)

Case Reference: WA/2023/0001/ALI

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

Heard by CVP

**Heard on: 9 June 2023
Decision given on: 12 July 2023**

Before

TRIBUNAL JUDGE WILSON

Between

**(1) MICHELLE STEER
(2) TONY STEER**

Appellant

and

MID-SUSSEX DISTRICT COUNCIL

Respondent(s)

Representation:

For the Appellant: Mr K Berlevy (Counsel)
For the Respondent: Mr J Cave (Counsel)

Decision:

1. The appeal is dismissed.
2. The decision to vary the licence dated 17 December 2020 so as to remove the licensable activity of providing boarding for 30 dogs in kennels pursuant to the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 (The 2018 Regulations) is confirmed.

REASONS

The Respondent's Decision

3. This appeal concerns the decision made on 5 December 2022 by the Respondent to vary the Appellant's licence dated 17 December 2020 (the licence) to operate Wolstonbury Kennels at Homewood House, Cowfold Road, Bolney, Haywards Heath, West Sussex, RH17 58E (the premises)
4. The licence, as originally granted, permitted the breeding of 5 identified and named breeding bitches and permitted boarding for 30 dogs in kennels. The decision dated 5 December 2022 varied the licence so as to remove the licensable activity of providing boarding for 30 dogs in kennels.

Background

5. There is a long and involved history between the Appellant and the Respondent. So far as is relevant to this appeal the background can be summarised as follows.
6. The Appellants have managed and operated kennels at the premises for a significant period. In 2004 the Appellants were granted a licence to board 60 dogs overnight at the premises pursuant to the Animal Boarding Establishments Act 1963.
7. On 10 January 2019, following a site inspection, the Respondent sent a warning letter to the Appellants. The letter expressed concern that the Appellant's were in breach of licence conditions; dogs from different households were being housed together; stray dogs were being kept in the same block as boarded dogs and that the Appellants had failed to adequately record instances of accidents at the premises in breach of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013. The Respondent indicated that that no further action would be taken.
8. On 21 August 2019 the Respondent undertook an unannounced inspection. The Respondent recorded that in breach of licence conditions dogs from different households were boarded together; dogs were boarded in kennels normally used for stray dogs and dogs other than those authorised by the licence were being kept for breeding. On 21 August 2019, the Appellants were invited for interview under caution, they did not attend and on 24 September 2019 a letter was sent to the first Appellant with PACE questions.
9. On 4 November 2019, following an investigation, the Respondent sent a notice of intention to vary licence conditions. This was followed by a letter dated 15 November 2019 summarising breaches of licence conditions. On 21 November 2019 the licence was varied to reduce the number of dogs that could be boarded in kennels from 60 to 30.
10. On 1 January 2021 a renewed licence was issued authorising, amongst other things, boarding for 30 Dogs in kennels.
11. On 9th August 2022, the premises were visited by the Respondent who recorded 65 boarded dogs; dogs of different households sharing kennel units and that records for 14 of those dogs were missing or incomplete in breach of licence conditions.

12. On 15th September 2022 the Respondent again inspected the premises and recorded that , in breach of licence conditions, 57 dogs were housed in kennels together with three in a pen, dogs of different households were sharing the same kennel unit and records for 17 dogs were unavailable or incomplete.
13. On 21 September 2022 the Appellants were interviewed under caution by the Respondent in relation to inspections conducted on 9 August 2022 and 15 September 2022. Following the interviews, the Respondent laid 7 informations against each Appellant at the Magistrates Court setting out offences contrary to regulation 20(1)(a) of the 2018 Regulations. The Appellants pleaded guilty to these offences on 28 March 2023.
14. On 5 December 2022 by the Respondent varied the Appellant’s licence so as to remove the licensable activity of providing boarding for 30 dogs in kennels. The Appellant appealed on 3 January 2023 and it is that appeal which is the subject of this decision and reasons.

The law

15. 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 dogs.
16. Regulation 15 of the 2018 Regulations provides:

A local authority may, without any requirement for the licence holder’s consent, decide to suspend, vary or revoke a licence at any time on 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.
17. Regulation 14 provides that the local authority must have regard to such guidance as may be issued by the Secretary of State.
18. The Secretary of State for DEFRA has issued two relevant guidance documents:
 - (i) Animal activity licensing process: statutory guidance for local authorities
 - (ii) Dog kennel boarding licensing: statutory guidance for local authorities
19. The Appellant has a right of appeal against the Respondent’s decision pursuant to regulation 24 of the 2018 Regulations.

Hearing

Relief from Sanctions

20. At the outset of the hearing, the Appellants’ representative referred to the directions of Judge Neville dated 25 May 2023. The directions required the Respondent to provide by 2 June 2023 a hearing bundle including, amongst other things, all documents upon which the

Respondent intended to rely. The directions provided that should the Respondent fail to comply it would stand as automatically barred from any further part in the proceedings.

21. The Appellant's representative asserted that the Respondent had not complied with directions and should be barred from producing the evidence contained within the bundle together with the position statement produced by the Respondent's representative on the morning of hearing. The Respondent's representative made a relief from sanctions application.
22. I granted relief from the sanctions set out in Judge Neville's directions. My reasons for granting relief from the sanctions was that the breach was not significant. The bundle had been uploaded and thereby provided to the Tribunal by 6 June 2023. The breach was therefore only two working days. In addition, at least part of the delay could be attributed to the Appellant as the Appellants' solicitor accepted that they had been a day late in serving the first Appellant's witness statement. It was accepted by the Appellant's representative that a significant proportion of the evidence contained within the bundle had been already provided to the Appellant or the Appellant would be aware of such documents because the documents were statements produced in relation to the prosecution of the Appellants, transcripts of the Appellants' interviews together with correspondence passing between the Appellants and Respondent in relation to the licence. On this basis, it was accepted by the Appellant's representative that the Appellants would not be prejudiced by the production of the evidence. Having reviewed the evidence, I found that it was highly pertinent to the issues for determination before the tribunal and would assist the Tribunal in the fair disposal of proceedings. Having reviewed the position statement produced by the Respondent I found that the document would assist the Tribunal in focusing on relevant evidence and issues and accordingly would assist in the efficient administration of justice. Applying the overriding objective and in particular rules 2(1) and 2(2)(b) & (c) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (the Procedure Rules) I found dealing with this appeal fairly and justly required that the full bundle was entered into evidence; the position statement be considered by the Tribunal and the Respondent should not be barred from participating in the proceedings.

Scope of the Appeal

23. Within the Respondent's position statement and during preliminaries at the hearing the Respondent's representative noted that the 2018 Regulations did not specify whether the appeal was limited to a review of the Respondent's decision or whether the appeal was "a complete rehearing with a fresh decision". I set out the Tribunal's position that the appeal was a full merits appeal and accordingly adopting the language of the Respondent's representative "a complete rehearing with a fresh decision". The Appellant's representative confirmed that he agreed.

The Appellants

24. At the hearing I noted that the appeal bundle was marked Wolstonbury Kennels & Cattery Limited. However, the licensees as per the licence [Hearing bundle A40] are the Appellants. The Appellants representative confirmed that Mr and Mrs Steers are the licence holders and the Appellants in this appeal. The Appellant's representative confirmed that he represented the Appellants. The second Appellant did not attend the hearing to give evidence.

Witnesses, Submissions and Documents

25. In light of the Appellants' guilty plea and conviction, the Appellants' representative confirmed that the evidence of John Bryant, Fiona Spears and Michael Bateman was undisputed and there was no need to call them for cross-examination.
26. I heard oral evidence from the Appellant and Ms Keighley-Louise Stagg. I heard oral submissions from both representatives. The oral evidence and submissions are fully set out in the record of proceedings and have been considered.
27. I took care and time to ensure that all relevant documents were before the Tribunal. I informed the representatives of the documents that were held on the Tribunal file including the 232 page appeal bundle, position statement prepared upon behalf the Respondent together with the decision of Judge Swaney dated 19 May 2023 . Having done so the representatives confirmed that all relevant documents were before the Tribunal. The representatives confirmed that they had received and had the opportunity to review each other's documents.
28. I have considered all the documentary evidence together with the written submissions prepared on behalf of the parties contained within the bundle and the position statement prepared on behalf of the Respondent. However, I do not rehearse all the documentary evidence in detail but include in this decision and reasons such evidence as was relevant to my decision.

The Appellants' Case

29. The Appellants' case as set out within the grounds of appeal; witness statement and oral submissions can be summarised as follows:
 - a. The Appellants have operated kennels for a significant period, around two decades.
 - b. The premises are staffed by five fully trained full-time staff and one fully trained part-time member of staff. The premises comprise 42 kennels all of which are double sized and 16 or which are family sized and could house up to 6 dogs from the same family. In the circumstances it is/was wholly unreasonable to restrict the Appellant's licence to 30 dogs.
 - c. The variation to 30 dogs was in part due to a poor relationship with a new licensing officer appointed in 2018 and whom the Appellants believe treated them unfairly.
 - d. The Appellant accepts that there have been breaches of the licence but believes these breaches to be minor [grounds of appeal paragraph 26]; the breaches are exceptional; there are justifiable reasons for such breaches and that there will be no breaches in the future.
 - e. The breaches are not related to the welfare of animals..
 - f. The Appellants have taken all reasonable steps to resolve issues identified by the Respondent including digitalisation of their systems; training staff in the use of such systems; cancelling contracts to receive stray dogs so as to ensure that the Appellants can control the number of dogs that they receive and offering to pay privately for unannounced visits from the local authority to assist with compliance.

- g. The Appellants pleaded guilty to the criminal charges in the magistrates.
- h. The Appellants' customers have expressed support for the Appellants.
- i. The Respondent has failed to properly engage with the Appellants in relation to the variation of their licence, inspections investigation and enforcement action.
- j. The assurances from the Appellants that they will comply with licence conditions together with the increased capacity of 42 kennels is such that the Tribunal should overturn the decision and reinstate the licence on terms the Tribunal sees fit.

The Respondent's Case

30. The Respondent's case as set out within the response to appeal, position statement and oral submissions can be summarised as follows:
- a. The breaches of the 2018 Regulations and licence conditions discovered during the inspections in 2022 are significant and substantial.
 - b. The breaches give rise to serious risks to animal welfare.
 - c. The Appellants' attitude as expressed in interview and in the statement of the first Appellant is dismissive and makes clear that the boarding of numbers significantly in excess of that permitted under their licence was deliberate.
 - d. There is a failure to properly explain how the Appellants intend to comply with the licence conditions.
 - e. On the issue of permissible numbers, the Appellant's make clear that compliance is a commercial impossibility.
 - f. The Appellant's reliance on management of a kennel business for a significant period is largely irrelevant given that the requirements under the former regime were significantly different to the requirements under the 2018 Regulations and the new requirements are much more onerous.
 - g. The Appellants failed to bring themselves into compliance following warnings.
 - h. The evidence from Ms Stagg suggests that, even whilst this appeal has been ongoing, the Appellants have been unable to comply with their regulatory responsibilities.
 - i. The breaches of licence are not "minor breaches of the terms of the licence" and their persistence, together with first Appellants' response to questions in interview under caution on 21 September 2022 confirm that the breaches were deliberate.
 - j. Accordingly, at least 3 of the 4 grounds under regulation 15 are fulfilled namely the licence conditions are not being complied with; there has been a breach of the 2018 Regulations or it is necessary to protect the welfare of an animal. As such, the Respondent was entitled vary the licence in the manner it did.

Evidence and Findings of Fact

The 2019 Variation

31. As set out above, in 2019 the licence was varied so that the number of dogs that may be boarded in kennels was reduced from 60 to 30 dogs. The Appellants assert that this variation was arbitrary and unreasonable.
32. The variation was in response to breaches of licence conditions detailed below. The Respondent set out its rationale for the variation within a letter dated 15 November 2019, within which the Respondent states:

The number of dogs allowed by the licence as varied has been calculated by reference to the number of kennels at your premises allowing for the stray block to be kept free to house stray dogs.

The variation to the licence is to ensure that the housing of dogs from different families together, or the housing of dogs and strays together - in contravention of your licence - ceases as we do not have confidence in your operational practices to prevent this recurring in future.

33. On the evidence before the Tribunal, I do not agree that the 2019 variation was arbitrary or unreasonable. The reduction from 60 to 30 dogs was significant. However, there had been a number of significant breaches all relating to operational practices. The Respondent was aware that the Appellants' kennel capacity at the premises would hold significantly in excess of 30 dogs. However, the Appellants claimed operational capacity is in part based on sharing and given the operational issue identified, including housing dogs of different families together and owned dogs and strays together, the Respondent was in my judgment correct to reduce the number of licensed dogs in the manner it did.
34. The first Appellant states that she had a poor relationship with the licensing officer who was appointed in around 2018. The first Appellant stated she felt that this licence officer engaged in bullying and harassment. The implication being that the 2019 variation was in some way the result of a personal grudge between the Appellants and the relevant licensing officer. I was not directed to any significant evidence before me, other than the first Appellant's assertion, to support this proposition, such as supporting witness statements from employees. The absence of such evidence where it could reasonably be expected and without reasonable explanation weighs against this element of the Appellants' account. The Appellant asserts that she always had a good relationship with licensing officers until in around 2018. However, I note that this is the time the current regulatory regime came into place replacing the old regulatory regime. I find that it is more likely than not and that what the first Appellant perceived to be bullying and hectoring behaviour was no more than a licensing officer monitoring and implementing a regulatory regime which is more onerous than the Appellant was accustomed to.
35. As I understand it the Appellant asserts that the amendment in 2019 was arbitrary and unreasonable; based upon a personal grudge such that compliance with those revised conditions was a commercial impossibility and as such the weight that should be attached to breaches should be reduced. I have found against these claims. However, it is important to note that the Appellant has had numerous opportunities to revisit the licence conditions. It was open to the Appellants to challenge the 2019 variation decision by appeal. They did not do so. The first Appellant says that she is not legally minded and could not afford a solicitor. I find that this is inconsistent with her ability to pursue and be represented in the current proceedings and I do not accept this explanation. The licence was subsequently renewed on existing terms authorising the boarding of 30 dogs. It was open to the Appellant and at the time of the renewal application to seek to increase the number of dogs or if she did so and the number of dogs was still retained at 30, to challenge that decision via appeal. It has been open to the licensee to apply to vary the licence once renewed to increase the number of dogs at the property. There is no evidence before me that the Appellants have done so. There is evidence in the bundle to suggest that this may have been due to first Appellant's health being adversely affected as a result of the stress that she found herself.

However, there is no medical evidence to support this assertion. Accordingly, arguments in relation to the appropriateness or otherwise of the reduction in the number of dogs due to the 2019 variation are in large part irrelevant. The licence condition has been imposed and has not been successfully challenged. The licence condition is extant and has applied since November 2019. The Appellants are required to comply with the licence condition to board no more than 30 dogs.

History of Non Compliance

36. The Appellants' representative confirmed that none of the licence breaches identified in the Respondent's correspondence included in the bundle were disputed.
37. The Appellant's history of non-compliance/licence breaches can be summarised as follows:
- a. Respondent's Letter January 2019 - following investigation the Respondent identified that dogs from different households had been boarded together in the same kennel in contravention of condition 7.1.2 which required that each dog must be provided with a separate kennel except dogs from the same household family which may share a kennel of adequate size with the written consent of the dog owner. In addition, stray dogs were placed in kennel blocks alongside boarded dogs in contravention of condition 7.1.5 which required that where stray dogs are accepted by the kennels they must be kept in a separate area away from the boarded dogs. The Appellants received a warning for these breaches of licence condition.
 - b. Respondents letter 23 September 2019- following an investigation on 21 August 2019 two dogs from different households were boarded together in the same kennel in contravention of licence conditions relating to suitable environment and 7 dogs were housed in the stray block in contravention of conditions for the protection from pain, suffering, injury and disease.
 - c. Respondents letter dated 23 November 2022 - following inspections on 9 August 2022 and 15 September 2022 dogs from different households were found to be sharing a kennel unit in contravention of condition 7(8) of the licence. The number of dogs boarded on 9 August 2023 was 65 and on 9 September 2022 was 60 dogs. This is in breach limitation of 30 imposed by the licence. In addition, 2 stray dogs were kept in the same kennel block as boarded dogs contrary to condition 7(8) of the licence. The Appellants failed to have records available for inspection on 9 August 2022 and 15 September 2022 in breach of condition 2(1) of the Licence. On the 9 August 2022 this related to 14 dogs. Subsequently the Appellants emailed records for 11 of these 14 dogs to the Respondent. On 9 August 2022 visit, records for 15 of the dogs were missing – 6 registration records and 11 vaccination records and a further 5 dog's vaccination records were out of date.
 - d. The breaches set out at paragraph c above formed the basis of 7 informations laid at the Magistrates Court relating to offences contrary to s.20(1)(a) of the 2018 Regulations. The Appellants pleaded guilty to these offences on 28 March 2023.
38. In her witness statement and in oral evidence Keighley-Louise Stagg indicated that she had paid the Appellants to kennel her dogs on 13 May 2023. In oral evidence the first Appellant accepted that at the time that she was approached her licence had been varied and so she was not allowed to enter into commercial arrangements for the boarding of dogs. The Appellant stated that she felt sorry for Ms Stagg who had found herself in a difficult situation and

acted out of kindness. This was not accepted by Ms Stagg. The Appellant accepted that she took £650 from Ms Stagg to board dogs and this was a commercial arrangement albeit the the money was subsequently returned.

39. On the basis of the evidence before me, I find that there is a long history of non-compliance. Indeed, even after the licence was varied so boarding of dogs was no longer permitted, the first Appellant accepts that she entered into a commercial arrangement to board dogs where there was no licence to do so. I find that this history of non-compliance is indicative that the Appellants will not comply with licence conditions in the future. I find that the conditions that have been breached are specifically designed to ensure the welfare of the dogs. The issue of record keeping in particular in relation to vaccinations is to prevent the spread of disease as is the requirement to keep stray and housed dogs separate. The requirement to kennel dogs separately other than those from the same household with the written consent of the owner in part is to avoid distress. Accordingly, I find that there is a long history of breaches of the licence conditions designed to ensure animal welfare. Against this background, I find that the Appellants are unlikely to comply with similar conditions designed to protect and promote animal welfare should the licence activity of boarding dogs be reinstated.

Appellant's Approach to the Rules

40. I find that the first Appellants approach to the breach of licence conditions is to seek to minimise the effect of the breach and to provide justification. Overall, I find that the first Appellant's approach is not to treat the licence conditions as mandatory but rather as suggestions or guidance which she can choose to ignore where she feels she can justify a departure from those licence conditions. By way of example only :
- a. In relation to the inspection in 2022 the Appellant seeks to minimise two dogs from different families been kept in the same kennel because they were awaiting collection and it was a temporary measure.
 - b. At paragraph 9 of her witness statement the first Appellant admits that there was a stray dog in the same block as boarded dogs but states the kennel was isolated.
 - c. At paragraph 19 of her witness statement the first Appellant states that one of the breaches of the licence related to 3 dogs from different households. She states that she bred the dogs and the owners walk them regularly. In addition, the Appellant states that if there was a day care licence there would not have been breach. The Appellant's have not applied for a day care licence.
 - d. In oral evidence, the first Appellant blames historic breaches on the chaos at Gatwick resulting in dogs staying longer than anticipated.
41. Within the bundle there is evidence to indicate that the commercial kennelling operation is unsustainable if boarding dogs. In her witness statement the first Appellant states she needs to pay staff and her commercial mortgage. In oral evidence the first Appellant accepted that the business was unviable at the number of dogs authorised. The breaches in 2022 show the number of animals significantly over that which was authorised. I find that this was deliberate and that the motivation was financial to meet their overheads. I find that the Appellants will breach the licence conditions where it suits their financial needs to do so. I find this is further evidenced by the first Appellant's willingness to enter into a commercial arrangement to board a dog following a variation whereby this activity was no longer licensed.

42. In addition, the evidence suggests an environment where the Appellants do not take responsibility for compliance with the terms of the licence. When cross-examined on the issue of breaches of record keeping licence conditions, the first Appellant stated that this was due to staff failings, seemingly not understanding that as the licensee she was responsible for her staff. Similarly, in relation to the three dogs that were housed together (paragraph 40 (c) above) the first Appellant seeks to blame the Respondent for not informing her that this licence was available. The first Appellant is seemingly unaware that as the business owner it is her responsibility to ensure regulatory compliance and to secure necessary licences.
43. I find that the Appellants' approach to licence conditions, their prioritisation of their financial income over compliance and inability to accept responsibility for regulatory compliance is indicative that they will not comply with licence conditions should the licence be re-instated to allow for the boarding of dogs.

Application of the Law to my Findings

44. On the basis of my findings above I find that the conditions set out in regulation 15(a),(b) and (d) are satisfied. Licence conditions have not been complied with, there has been a breach of the 2018 Regulations as evidenced by the conviction for the offences pursuant to section 20(1)(a) of the 2018 Regulations and I have found that the breaches relate to conditions which are specifically designed to protect animal welfare. It follows that I have found that the Appellants are unlikely to comply with similar conditions for the protection of animal welfare in the future. It follows that I confirm the Respondent's decision to vary the licence dated 17 December 2020 so as to remove the licensable activity of providing boarding for 30 dogs in kennels and the appeal is dismissed.

Signed

Judge Wilson

Date: 6 July 2023

Judge of the First-tier Tribunal