



Neutral citation number: [2023] UKFTT 01039 (GRC)

Case Reference: WA.2023.0012

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

Heard by Remote CVP Hearing

**Heard on: 7 September 2023
Decision given on: 19 December 2023**

Before

TRIBUNAL JUDGE J FINDLAY

Between

CHRISTOPHER RICHARDSON

Appellant

and

OLDHAM COUNCIL

Respondent

Appearances:

Christopher Richardson, the Appellant

For the Respondent:

Mr S Rawat Solicitor

Mr A Evans Group Solicitor

Ms K Crowther, Principal Trading Standards Officer

Mr D Moore, Senior Trading Standards Officer and witness

Decision

The appeal is refused. The Notice of Refusal of a Licence for Selling Animals as Pets dated 5 April 2023 is confirmed.

Procedure and Hearing

1. I conducted a hearing by CVP and considered an open bundle of 578 pages. I have considered the relevant versions of the Animal Activity Licensing Process: Statutory Guidance for Local Authorities and the Selling Animals as Pets Licensing: Statutory Guidance for Local Authorities (“the Guidance”). I heard a submission from Mr Rawat and a submission and evidence from Mr Richardson. I heard evidence from Mr Moore.

Background

2. On 24 September 2021 Mr Richardson, as operator of Living World Pets, Manchester Chambers, West Street, Oldham (“the Premises”) submitted an application form to the Respondent for a licence under the Animal Welfare (Licencing of Activities Involving Animals)(England) Regulations 2018 (“the Regulations”).
3. There was subsequent communication between the Mr Richardson and the Respondent. The Respondent requested comment and offered advice to ensure that the required documentation was provided to enable the application to be considered.
4. In November 2021 Mr Richardson submitted the necessary documentation to enable his application to progress but due to a backlog of other inspections and a lack of availability the Respondent was unable to progress the application.
5. On 19 July 2022 Mr Moore, Senior Trading Standards Officer, carried out an inspection at the Premises and on inspection it was decided that Mr Richardson needed to take certain actions in order to ensure the licence conditions and statutory guidance were met.
6. An inspection report was produced and in the following months the Respondent worked with Mr Richardson with a view to assisting him to comply with the licence conditions and statutory guidance.
7. On 5 April 2023 the Respondent issued a Notice of Refusal (A1 to A3) on the grounds that the Respondent was not satisfied that the licence conditions would be met as required by regulation 4 of the Regulations.
8. Mr Richardson lodged a Notice of Appeal dated 13 April 2023. He applied for a ‘stay’ of the appeal by email dated 17 May 2023 (A63). This application was treated as an application for an order under regulation 24(3) of the Regulations permitting him to continue to carry on a licensable activity. Judge Neville issued a decision on 19 July 2023 that Mr Richardson could continue to carry on a licensable activity subject to the existing licence conditions until the appeal was determined or withdrawn (B1 to B3).

The statutory framework

9. The appeal is brought pursuant to regulation 24 of the Regulations which provides as follows:

Regulations 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.

10. Schedule 2 of the Regulations relating to General Conditions appears at pages D12 to D15 of the bundle. Schedule 3 relating to Specific Conditions: selling animals as pets appears at pages D16 to D18 of the bundle.

11. Selling Animals as Pets Licensing: Statutory Guidance for Local Authorities appears at pages D19 to D47 of the bundle.

Grounds of Appeal

12. Mr Richardson submits the following grounds of appeal:

13. The Respondent is not working within the Government's Guidance and there have been grave failings in processing his application.

14. He does not agree with the Respondent's interpretation of the Guidance. The animal to enclosure ratio is far from reality.

15. He has dyslexia and has asked the Respondent to provide reasonable adjustments to assist him and this has not happened.

16. The Respondent offered a licence but it was an incorrect licence. This was due to the lack of understanding of the industry and a lack of understanding in the Guidance.

17. He has a 5 star business and the paperwork he has submitted demonstrates serious failings with the licencing department.

18. The Respondent only wants the paperwork to look good and the Respondent has shown no concern for animal welfare.

19. He asks that he be granted a licence.

Grounds of Opposition

20. Due to the Mr Richardson's additional commentary the Respondent was not satisfied that the requirement of condition 9 and the statutory guidance was met. To assist Mr Richardson in meeting the requirements a document was created by the Respondent that contained the text that was required to be removed from the written procedures,

with the reasoning why it was required to be removed. Mr Richardson was not willing for this text to be removed.

21. A key purpose of the written procedures is to ensure that anyone in addition to Mr Richardson tasked with the care of animals will meet the needs of the animals in accordance with the licence condition requirements. Whilst there are no formally employed staff at Living World Pets, there will be times where Mr Richardson will be reliant on other parties to provide care for the animals in a manner that meets the licence conditions. Therefore, it is necessary for the Respondent to be satisfied that the procedures demonstrate how the licence conditions will be met should Mr Richardson not be on site for any period. As there is contrary information within the procedures the Respondent cannot be satisfied that the licence conditions would be met. Given the criticism and information contrary to the licence conditions and Guidance, without the suggested amendments to the procedures the Respondent was not confident that Mr Richardson will meet the licence conditions.
22. On 17 January 2023 Mr Richardson confirmed via e-mail that he was not willing to rely on the amended version of the procedures.
23. The documentation supplied by Mr Richardson as part of his appeal does not indicate that there is a willingness to make the suggested amendments to the procedures and the Respondent cannot be satisfied that condition 9 of the General Conditions will be complied with.
24. Part K of the Guidance contains statutory guidance on the minimum enclosure sizes for reptiles and amphibians. A sample of enclosures was measured in the course of the visit to the Premises on 19 July 2022 and two did not meet the minimum enclosure sizes.
25. Mr Richardson has not confirmed that all animals will be kept in enclosure sizes in line with the Guidance requirements. This has led the Respondent to the view that Mr Richardson will not meet the licence conditions.
26. Mr Richardson's view is that there are no agreed sizes of enclosure requirements during the short-term transitional period (i.e. during the first 3 months an animal is on site from the date of arrival).
27. Mr Richardson does not agree with the Respondent's interpretation of the minimum enclosure sizes for the higher standards or the maximum stocking density requirements for animals on site for longer than the 3-month period.
28. Without confirmation that the minimum enclosure sizes outlined in the Guidance during the short-term transitional period and the minimum enclosure sizes for the higher standards at the end of this period (including maximum stocking densities) will be met, the Respondent cannot be confident that Mr Richardson will meet the licence conditions.
29. There are other general matters that need to be acknowledged and an indication given that they will be actioned by Mr Richardson, the Respondent is willing to work with Mr Richardson on addressing these matters.

30. A licence was offered to Mr Richardson, but this would have required an acknowledgement and willingness to adhere to the licence conditions and Guidance. The Respondent can only issue Mr Richardson with a licence if it is satisfied that the licence conditions will be met. There has been no acknowledgement and willingness by Mr Richardson to adhere to the licence conditions and Guidance.
31. The Respondent received a Freedom of Information (“FOI”) request from Mr Richardson asking for complaints received in the last 5 years which relate to licensed premises. Any information which results from the FOI request is irrelevant to this appeal.
32. In communication with the Respondent, Mr Richardson has referred to an extract of the Guidance in respect of ‘granting or renewing a licence: risk-based approach’ which does include a reference to compliance history. However, this Guidance relates to the decision in respect of the star rating system, not a decision to grant or refuse a licence. In this instance the decision to refuse the licence by the Respondent was due to agreement with the inspector’s assessment that the Respondent could not be satisfied that conditions had been met nor that they would be met going forward based on the findings in the report. Therefore any assessment relating to risk and star rating is not relevant.
33. The Respondent seeks a dismissal of the appeal.

Conclusions

34. In reaching my decision I have taken account of all the evidence before me whether or not specifically referred to in this Decision. I have applied the relevant legislation.
35. Under section 13 of the Animal Welfare Act 2006 (the “ACT”) and regulation 2 and Schedule 1 of the Regulations, selling animals as pets is a licensable activity. Under regulation 3 of the Regulations the Respondent is the licensing authority for any licensable activity on at premises in its area.
36. Any licence issued by the Respondent for selling animals as pets must be issued subject to the General Conditions specified in Schedule 2 of the Regulations and relevant Specific Conditions specified in Schedule 3 of the Regulations.
37. Under regulation 4 of the Regulations where a local authority receives an application from an operator for a licence to sell animals as pets it must inspect the premises on which the licensable activity is being carried on and following the inspection, grant a licence to the operator if it is satisfied that the licence conditions will be met. In considering whether the licence conditions will be met, the local authority must take account of the applicant’s conduct as the operator of the licensable activity, whether the applicant is a fit and proper person to be the operator of that activity and any other relevant circumstances. Under regulation 14 of the Regulations, a local authority must have regard in the carrying out of its functions under the Regulations to such guidance as may be issued by the Secretary of State.

38. I find that Mr Richardson submitted an application for a licence to sell animals as pets (D48 to D52) on 24 September 2021.
39. I find that Mr Moore, Senior Trading Officer with the Respondent, attended the Premises to carry out an inspection on 19 July 2022 and his report of the same date appears at pages D89 to D249.
40. Mr Moore corresponded with the Respondent in the months after the report was completed. A Notice of Refusal was issued on 5 April 2023.
41. The failures in the report forming the grounds for the refusal of the licence are as follows:
- a) Some written procedures were provided but included commentary within the documentation from Mr Richardson that was at odds with or disagreed with the requirements of the Guidance. The Guidance requires that the procedures demonstrate how the conditions outlined in the Guidance are met. The additional commentary indicated that this requirement was not met.
 - b) A person who is responsible for the care of animals must be fully aware of the procedures. This is to ensure that anyone in addition to the licence holder required to care for the animals will continue to meet their needs in accordance with the statutory conditions. On the basis of the commentary in the documentation the Respondent was not of the view that the licence conditions would be met.
 - c) Mr Richardson did not accept the feedback from Mr Moore on minimum enclosure sizes. Mr Richardson does not accept the sizes and dimensions which had led the Respondent to form the view that the condition requirements will not be met going forward.
 - d) Animals are deemed to be in a transition period during the first 3 months and during this period enclosure sizes are to meet the minimum sizes and dimensions within the conditions. Animals on site for longer than this must have enclosures that meet the higher standards requirements as a minimum.
 - e) Mr Richardson does not accept that the transitional period applies and does not accept the enclosure requirements for the first 3 months and beyond, therefore, the Respondent formed the view that the condition requirements would not be met going forward.
 - f) There were other minor failings set out in the inspection comments section of the report which would need to be addressed for the relevant condition requirements to be satisfied.
42. I find that there were grounds for the Respondent to refuse the application for a licence and the decision was correctly made.
43. I accept that Mr Richardson has extensive and wide experience of caring for animals and is a professional in his field of expertise. Mr Richardson has submitted eBooks on 'Boa Constrictors', 'Corn Snakes' and 'Genetics', to demonstrate his knowledge and

expertise in relation to reptiles. However, his knowledge cannot override the legislative requirements. His expertise and experience does not mean that the licence conditions and the Guidance will be met and adhered to.

44. Mr Richardson told me that it was his concern for the welfare of the animals in his care that drives him and that his care of the animals through his knowledge and understanding is better than that set out in the Guidance. I have no doubt that Mr Richardson is concerned for the welfare of the animals in his care. I accept that Mr Richardson's care of his animals is of a high standard and that his concerns for their welfare are paramount. However, this is not enough to be granted a licence.
45. I do not accept that the Respondent has wrongly interpreted the Guidance and procedures.
46. I find that Mr Richardson has made a decision not to comply with the Guidance and accordingly, going forward, it is unlikely he will comply with the licence conditions.
47. Mr Richardson explained to me in detail why, on the basis of his extensive experience, the Respondent does not understand how to interpret the Guidance in relation to enclosure sizes and shapes and the minimum and higher standards.
48. I find that the Guidance conditions are prescriptive in the case of Part K, and the requirements for reptiles and amphibians, are not area based requirements but are length and width requirements. (C125 to C132). There is no option to Mr Richardson not to comply with the legislation if he wishes to satisfy the conditions to be granted a licence.
49. Mr Richardson submitted that a business must meet all of the minimum standards and that the higher standards are optional and that if an individual would like to qualify at the higher standards the business must meet 100% of the higher standards classified as required and 50% (or more) of the higher standards classified as optional (C42).
50. Mr Richardson told me that all of his employees would follow his instructions in relation to the care of the animals on the basis of the information in his books and leaflets. He did not understand the necessity of complying with the Guidance because he did not agree with the Guidance.
51. I find that Mr Richardson's commentary within the documentation was at odds with or disagreed with the requirements of the Guidance. I find that the Guidance requires that the procedures demonstrate how the conditions outlined in the Guidance are met. The additional commentary indicated that this requirement was not met.
52. Mr Richardson in his written and oral evidence has made clear that he does not acknowledge the importance of adhering to the licence conditions and Guidance and he has made clear that he is not willing to adhere to the licence conditions and Guidance.
53. Schedule 2, 5.2 of the Regulations, Part A General Conditions, provides as follows:

“Enclosures must be appropriate to the size of the species. They must adjust in size as the animal grows. Animals kept communally may need to be separated or need larger enclosure if there is any change in group dynamics.

Whilst animals are offered for sale, the business is considered a short-term transitional holding facility. Because of this, it may be acceptable to have enclosures of smaller sizes than those intended for long term care. These sizes are outlined for each taxonomic group within the individual schedules and take into account specific stocking density.

The transitional period is to be no more than 3 months from the date of arrival. If an animal is kept for longer or permanently, the animal must be moved to an enclosure of a size that is of best practice for the individual species. The enclosure must be comparable with what you would expect the final purchase to use. At a minimum this must be equivalent, or preferably larger, to those described in the higher standard minimum enclosure size for each species.”

54. Mr Richardson has asserted in writing and in oral evidence that when interpreting the above provisions of 5.2 above although a business must meet all of the minimum standards the higher standards referred to are optional. In making this assertion he seeks to rely on the higher standards requirements set out in the Assessment of Welfare Standards set out on page D21, namely that:

“If an individual would like to qualify at the higher standards, the business must meet:

- 100% of the higher standards classified as required
- 50% (or more) of the higher standards classified as optional.”

55. I find that Mr Richardson’s interpretation of the Guidance is incorrect. The Guidance in relation to the higher standards set out on page D21 relate to the requirements to be achieved by a business seeking to get a 4 or 5 star rating in the animals activity star rating system. It is only in relation to getting a 4 or 5 star that the higher standards are optional.

56. I find that the reference to the appropriate housing and enclosures under 5.2, Suitable Environment, the reference to the higher standards is not optional but is mandatory. This is because the Guidance uses the word “must.” The Regulations, as set out in paragraph 53 above, makes clear that if an animal is kept for longer than 3 months the enclosure as a minimum must be the equivalent or preferably larger than those described in the higher standard minimum.

57. I find that the Environment Conditions must be followed. Mr Richardson told me that after 3 months he did move animals to enclosures of sizes that were of best practice. However, he does not accept that the reference to best practice is qualified in the Regulations as being as a minimum the equivalent or larger to the size of enclosure described in the higher standard minimum enclosure size for each species.

58. I find that a sample of enclosures were measured by Mr Moore during the visit to the Premises on 19 July 2022 and two did not meet the minimum enclosure sizes.

However, I find that this alone would not have been sufficient grounds for refusing the licence.

59. Without confirmation that the minimum enclosure sizes contained within the Guidance will be met, I cannot be satisfied that Mr Richardson will meet the licence conditions.
60. I find that Mr Richardson's reluctance to accept the obligations set out in the Guidance indicates that he would not comply with the licence conditions or the Regulations.
61. A person who is responsible for the care of animals must be fully aware of the procedures. This is to ensure that anyone in addition to the licence holder required to care for the animals will continue to meet their needs in accordance with the statutory conditions.
62. I find that although written procedures were provided by Mr Richardson he included commentary that was at odds with or disagreed with the requirements. Mr Richardson insists that this is appropriate because he does not agree with the statutory guidance. The statutory guidance requires that the procedures demonstrate how the conditions outlined are met. The additional commentary indicated that this requirement would not be met.
63. Written Procedure 7 Condition 9 of the General Conditions requires written procedures to be in place and implemented covering feeding and cleaning regimes, transportation, the prevention of and control of the spread of disease, monitoring and ensuring the health and welfare of all the animals, the death or escape of an animal and the care of the animals following the suspension or revocation of the licence and all persons responsible for the care of the animals must be made fully aware of these procedures. This is to ensure that anyone in addition to Mr Richardson who is required to care for the animals will continue to meet their needs in accordance with the statutory conditions. On the basis of the commentary in the documentation I am not satisfied that the conditions would be met.
64. Mr Richardson stated that he had a number of friends who would assist if he was unable to attend the premises. No keyholders have signed the declaration (D260).
65. In relation to the training of employees Mr Richardson stated that: '...There are multiple errors in the government guides that are impractical, wrong and dangerous. I Christopher Richardson is responsible for the care of the animals. Any future employees/staff will be trained to my standards and will be made aware of the procedures. A copy of procedures will be on site for employees to reference. All employees will follow my instruction. Any/all future employees will study and learn from myself and from my books, pamphlets and these written procedures...'
66. In written and oral evidence Mr Richardson confirmed that he does not agree with the Respondent's interpretation of the minimum enclosure sizes during the short-term transitional period, the minimum enclosure sizes for the higher standards or the maximum stocking density requirements for animals on site for longer than the 3month period.

67. I find that in the Guidance the term 'maximum stocking density' means the maximum number of animals permitted in an enclosure. As example, the maximum number of lizards that can be kept in one enclosure is 4 (C132). The reference to 'space per additional animal' means that there will be an increase as described in the table for each additional animal above 1 up to the stated maximum. For lizards there will be an increase in the enclosure size by one third for each additional lizard above 1 up to a maximum of 4 lizards. I find that the Guidance is clear and has been correctly interpreted and applied by the Respondent.

68. I find on the basis of Mr Richardson's written and oral evidence that he would not comply with the conditions of a licence going forward.

69. I find that Mr Richardson has never received a complaint and has a strong history of caring for his animals but this does not assist Mr Richardson in his appeal.

70. Mr Richardson has made a request under the Freedom of Information Act 2000 asking for complaints received in the last five years relating to licensed premises. This request and any information received is of no relevance to Mr Richardson's application for a licence and this appeal.

71. Mr Richardson does not agree with the current statutory licence conditions and has made it clear that he will not adhere to those conditions, however, if he wishes to obtain a licence he must adhere to those conditions.

72. Accordingly, the appeal is dismissed.

Signed: Judge J Findlay

Date: 12 December 2023