



NCN: [2023] UKFTT 00393 (GRC)
Appeal number: WA/2022/0014

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
ENVIRONMENT/FOOD/ANIMAL WELFARE**

Emily Sutcliffe

Appellant

- and -

Lancaster City Council

Respondent

TRIBUNAL: JUDGE FORD

Sitting by CVP on 11/04/2023

The Appellant was in person
The Respondent was represented by Mr D Glover Counsel

DECISION

1. The appeal is dismissed.
2. This appeal is against the decision of the Respondent Lancaster City Council to revoke the dog breeder licence issued to the Appellant on 20.08.2021 valid until 19.08.2023.
3. The decision is dated 13 June 2022. It was taken under section 15 of the Animal welfare (Licensing of activities involving animals) (England) Regulations 2018. The notice indicates that the Local authority has taken action with immediate effect to revoke the Appellant's license under its powers to do so where poor welfare conditions are discovered and it would otherwise benefit the welfare of the animals involved to be removed from the licensable activity.
4. The Director for Communities and the Environment in consultation with the Vice chair of the licensing committee had considered the revocation notice report presented to them by the Council. They were advised that the Appellant was a licensed breeder but that in connection with the licensable activity she had failed to meet the needs of the dogs and puppies involved in the activity of breeding, thereby also breaching the licence conditions.
5. The notice states that there was an apparent disregard for the animals' welfare and there were reasonable grounds to believe that the appellant was out of the country for 6 days. From the observations outlined in the revocation report, it is said to be "clear she did not make sufficient and reliable provisions for the care and welfare of the dogs in his [sic] possession". The advice to the Council was that the revocation should take immediate effect to ensure that the appellant did not have time to restart the business immediately using the remaining dogs or buying more.
6. . The circumstances leading up to this revocation decision were as follows. At 19.45 on 7.06.2022 Ms Sarah Jones (Dog warden and Animal licensing officer with the Council's protection unit) attended at the Appellant's address with Sarah Hayland (Animal licensing officer/Dog warden) and Gareth Walmsley (Environmental Enforcement Officer). Ms Jones records in her witness statement that they got no response when they knocked on the door. They had attended the address following concerns at another dog breeder's address and the purpose of their visit was to try and locate that other dog breeder who was believed to be in the company of the Appellant.
7. The Appellant was understood to be involved in the same pet shop/dog breeding business in Morecambe as that other individual whose family members had reported him as missing.
8. Calling cards were left bearing the contact details for the council officers and they then left the premises. Further attempts to contact the Appellant and the missing person proved unsuccessful. Dogs were heard barking in sheds at the bottom of the garden, but no further investigations were undertaken of those sheds on this first visit.

9. At 21.55 the same evening after all attempts at telephone contact had failed and there was no response to the calling cards, Ms Hayland returned to the property with Gareth Walmsley and a police officer, P.C. Tomlinson. Due to concerns that no one had given any care to the dogs on the premises since the earlier visit, they entered the premises using their statutory powers of entry.

10. In the first stable block Ms Jones records that they found 15 dogs of various breeds with no light, no water, no food, and heavily soiled bedding.

11. In the second stable block they found 3 pens. Pen one had two puppies with no mother, no water, no food, and heavily soiled bedding. Pen two had a mother with 5 puppies, no water, no food, and heavily soiled bedding. Pen three had 2 older puppies with no mother, no water, no food, and heavily soiled bedding.

12. The general conditions not being met were recorded as follows;-

- (1) provision of suitable environment
- (2) provision of a clean and comfortable environment (soiled bedding close parenthesis
- (3) left unattended for longer than 4 hours
- (4) constant access to clean water (all pens were without water)
- (5) opportunities to exercise (it was concluded that such opportunities had not been afforded because it was apparent that none of the dogs had been attended to between the 2 visits)
- (6) daily opportunity to interact with people
- (7) monitoring at least once per day

13. the specific conditions recorded as not being met included the;-

- (1) the minimum size requirements for one of the kennels
- (2) provision of a clean and comfortable sleeping area (bedding was heavily soiled)
- (3) the opportunity to exercise at least twice per day
- (4) health and safety checks at the start and the end of the day (the observations strongly suggested that there had not been any such checks)
- (5) exceeding the number of breeding bitches permitted under the license. The license stated that the Appellant was licensed to breed 5 breeding bitches. 16 dogs were found on site at the time of the visit.

REASONS

A: Background to Appeal

14. The Appellant is alleged to have breached both general and specific conditions of her dog breeder licence. Her breeder's license was revoked with immediate effect

given the nature and level of concern for the animals found at her premises on 07 June 2022. I have set the alleged breaches out in more detail below.

B: The Law

S15 of the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 states the **Grounds for suspension, variation without consent or revocation of a licence** as follows;-

“15. 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

15. On appeal the Tribunal may suspend a revocation or variation under Regulation 15 of overturn or confirm the local authority’s decision, with or without modification

C: Evidence

16. I heard evidence from the Appellant and from Ms Karen Gill for the Appellant.

17. For the Respondent, I heard evidence from Sarah Jones Dog warden and Animal licensing officer at Lancaster City Council, Gareth Walmsley Lead environmental officer for Lancaster City Council and PC Tomlinson Police officer.

18. I considered the documents in the Appellant’s bundle including social media exchanges between the Appellant and Ms Gill, the Respondent’s bundle and additional documents from the Local authority that I admitted late in evidence due to their relevance, including a further witness statement from Sarah Hayland.

D: Findings

19. I find on the evidence that the Appellant went abroad on a short break on 05 June 2022 and returned on the 09 June 2022. She returned a couple of days earlier than she had planned as she had learned from Ms Karen Gill, that her dogs had been removed by the Respondent from her home premises. She had asked Karen Gill to care for her dogs and her two children in her absence which Ms Gill had agreed to do for a cash payment of £300.

20. Ms Gill had attended at Ms Sutcliffe’s home prior to her departure on holiday in order to go through the daily routine for the care of the dogs. The routine was already set out in some detail in a typed plan that was drawn up at the time of the application

for a dog breeding licence. Ms Sutcliffe said she provided some additional handwritten notes on the routine that she provided to Ms Gill, and I have no reason to doubt this. I am not satisfied however that she supplied the health and safety plan. The Appellant acknowledged that this was not available to her.

21. Under the terms of her license the Appellant was authorised to breed 5 bitches. I find that on 06 June 2022 she actually had 15 dogs at the kennels that she maintained behind her home. I did not find her credible in her evidence that she was just keeping extra bitches at her property to socialise and monitor their suitability for breeding before she made an application to the Council to add them to her breeding licence.

22. I am satisfied that the agreement between Ms Gill and Ms Sutcliffe was that Ms Gill would stay at Ms Sutcliffe's home for the duration of Ms Sutcliffe's absence, she would take the children (her own child and the two children of Ms Sutcliffe) to and from school as well as care for the dogs at the Appellant's home address.

23. There were issues with the boiler at the Appellant's home and there was no hot water. Ms Gill decided that she could not stay there with the children without hot water. She took them to her own home leaving Ms Sutcliffe's home unattended and leaving the door keys in the door at the side of the property. PC Tomlinson used these keys to gain access to the property when he was looking for the individual who had been reported missing by his sister. That was on the evening of 07.06.2022.

24. I find that there was no answer to the Council officers when they knocked at the Appellant's door at 19.45 on 07.06.2022 and again at 21.55 on 07.06.2022. I find that this was because there was nobody at the property. I further find that nobody stayed at that property overnight and it was not until between 8 and 8.30 a.m. the next morning, 08 June, that Ms Gill returned to the property and found that the dogs were not there. She then rang the Appellant to tell her that the dogs were missing.

25. I find that Ms Sutcliffe then suggested to Ms Gill that the dogs had been taken by the Council. This had apparently not occurred to Ms Gill even though the dog warden cards had been left at the property. She rang the Respondent who informed her that they could only speak to the Appellant about the situation as she was the licence holder. The Appellant then spoke to the Council.

26. There was some confusion about the date of the two visits by Council officers. At the hearing this issue was resolved and the occasion when somebody knocked at the door and Ms Gill did not answer was the 6th June and not the 7th June as she was not at the Appellant's property from 4pm onwards on the 7th June.

27. I find that the visits to the Appellant's home by Council officers and P.C. Tomlinson on the 7th were initially prompted by concerns for welfare of an individual who had been reported as a missing person by his sister. The Police and the Respondent attended his property and found no one there and they removed dogs that were being kept at that property due to concerns for their welfare. Enquiries by PC Tomlinson revealed that the Appellant and that individual had travelled to Portugal

together on 5th June 2022. The Council then visited the Appellant's premises on 7th June.

28. Ms Sutcliffe was adamant in her evidence that the conditions in which the dogs were being kept on 07 June 2022 at her property were not as described by Council officers. While those conditions might not have been as they would have been had she been at home and caring for the dogs, I find that the description given by Council officers of those conditions was accurate. Ms Sutcliffe was not present at the time they entered the dog pens at the bottom of her garden on 07 June 2022, and nor was Ms Gill, as she had left the dogs overnight in order to take the children to her home address.

29. I find that;-

(1) On the afternoon and evening of 07 June 2022 the dogs on the Appellant's premises did not have access to fresh clean water. Ms Sutcliffe gave evidence about her practices in providing water to the dogs and how the puppies in particular knocked over bowls of water. But she could not speak to what had happened in her absence. Ms Gill said that she had filled several extra water bowls for the dogs before she went to her own home in the afternoon. She may have done so but she then left them from 4pm on the afternoon of the 7th of June until 8am the next morning and nobody did any further checks on them during that time. I find that by 21.55 hours the dogs had no water. According to Met office records the temperature in Morecambe reached 19 degrees Celsius on 07 June and the temperatures in the sheds would have been much higher. I accept the Council officers' evidence that the dogs had no water available to them at 21.55 hours when they attended the premises. It is not controversial that in hot weather it is essential to ensure that animals have a constant supply of fresh water. On 07 June the dogs were left unattended for a lot more than 4 hours. Had the Respondent's officers not visited, then the dogs would have been left overnight without access to clean water. On a later visit to the Appellant's premises by the RSPCA sawdust was found in the dog's water bowls. The Appellant blamed the puppies for this, and I can see how they might have caused the sawdust to get into the bowls. But no evidence was adduced of measures being adopted to try and avoid this, by for example having a raised drinking station. The Appellant asserted that because the dogs were fed a fresh food diet there could be no concerns about there being clean bowls with no food in their pens. There may be some merit in this evidence. But it is questionable that the dogs nursing puppies should have had no food between the hours of 4pm and 8 am the following morning.

(2) the dogs did not have the opportunity to exercise for 16 hours between 4pm on the 7th of June and 8am on 8th June. They had been in their pens throughout that time

(3) Between 05 June and 09 June when the Appellant returned home, the dogs were not being monitored at least once a day as required. I make this finding because the conditions observed by the Council officers were not consistent with such monitoring.

(4) one of the pens did not meet the size requirements under the license. Ms Sutcliffe questioned why this was not picked up at the time of the license being granted. I do not know the answer to this, but I accept the observation that on 07 June 2022 the size of one of the pens did not meet the specified requirements under the terms of the licence

(5) the dogs at the Appellant's premises did not have a clean and comfortable place to rest. Their bedding was observed by Council officers to be heavily soiled

(6) Ms Gill did not have access to the health and safety checks list that should have been provided to her by Ms Sutcliffe

(7) Ms Sutcliffe was keeping more breeding bitches at her premises than was allowed under the terms of her licence. The number of dogs permitted was exceeded by 10 dogs (5 permitted and 15 found). While not all of these dogs were breeding bitches, more than 5 were present. I do not accept her explanation that she was seeking to acclimatise the dogs before deciding whether to apply to the Council for an increase in the number of breeding bitches she was allowed to have under the terms of her license. I could see no reason why she should be trying out so many to see if they were suitable for breeding. The cost of purchasing and maintaining those dogs if she was not actually breeding them and anticipating deriving some financial return from them was prohibitive and I had no evidence of her having any other source of income. The numbers she was permitted to keep under the terms of her licence were carefully calculated according to the space and facilities available and 5 breeding dogs was the maximum permitted. I find as a fact that she was keeping a greater number of breeding dogs at her premises than was allowed under the terms of her license.

(8) The Appellant questioned why the Council officers had not produced any photographic evidence of the poor conditions they found at the Appellant's premises and in future they would be well advised to take such photographs. But it does not follow that they are fabricating their evidence. The Appellant said that she had a photograph showing the good conditions she found when she returned home on 09 June, but she failed to produce this photo in her evidence. She also stated that Karen Gill had sent her photos on the morning that the dogs were taken showing bowls of water in the pens and clean beds in their pens. But she was not able to produce these, saying that the photos were sent to her by Messenger, and they were mistakenly deleted. I did not find it credible that they were mistakenly deleted given the importance of those photos.

30. After the 07 June 2022, Respondent had continuing concerns about the dog breeding operation being run by the Appellant. Despite this, a number of the dogs were actually returned to her by the Respondent on 22 June 2022 once she had signed over responsibility to the Council for the remaining dogs , but her licence had been revoked and she was no longer permitted to breed dogs while that revocation was in place.

31. The Respondent adduced some late evidence suggesting that the Appellant was continuing to breed dogs after her licence was revoked through third parties including

Karen Gill. But I do not find this to be established on the evidence. Karen Gill was asked about this in evidence and gave a credible explanation for the misunderstanding.

32. One of the Appellant's dogs was later found loose and wandering and it was returned to her care. On its own this does not establish anything, but it is an indication of a lack of close supervision of the dogs.

33. In this appeal the Appellant has consistently taken the view that she was not present on 07 June and if anything untoward was found, then she cannot and should not be found responsible. The Appellant was the licence holder for the premises and ultimately bears the responsibility for what happens or does not happen to the dogs kept on her premises. The Appellant failed to ensure that adequate arrangements were in place for the care of the dogs and in particular should Ms Gill find herself unable to look after the dogs at the Appellant's property as arranged. When the boiler broke down and Ms Gill found herself unable to stay at the property, the Appellant was too far away to get back quickly and take over and had not made arrangements with anyone else for cover. She knew of the difficulties that Ms Gill was having but did not seek to arrange any alternative cover to ensure the dogs welfare should Ms Gill be forced to leave the premises which, as it turned out, she was forced to do.

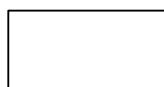
34. For all the above reasons, I have concluded that the Respondent has established that due to serious concerns about the welfare of the dogs found at the Appellant's premises on 07 June 2022 and the various breaches of the Appellant's licence that I have found above, the immediate revocation of her dog breeder licence was justified and was a necessary and proportionate response to the welfare concerns for the dogs for which the Appellant was responsible.

Conclusion

35. The appeal is dismissed. The Respondent's decision to revoke the Appellant's breeder's license is confirmed.

36. On the issue of costs, the Appellant was entirely unprepared to proceed with her appeal on 30/01/2023 and I have made a wasted costs order in favour of the Respondent in respect of that hearing.

37. In summarily assessing the amount of those costs, I have (as I am obliged to do under Rule 10 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, considered the Appellant's ability as an individual to pay. I have considered the schedule of costs provided by the Respondent in the total amount of £4,082. 85. I find that the Appellant is a person of limited means who has children to support. I have summarily assessed the wasted costs of the Respondent for that hearing which took less than two hours at £500, to be paid by the Appellant within 6 weeks of the date of this decision. Ms Sutcliffe told me that she did not wish to claim any wasted costs for the hearing that had to be adjourned on 08.03.2023 due to the Respondent's oversight in diarising the date. She said that she had not incurred costs from that adjournment.



Orders for costs

2009 No. 1976 The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009

10.

—(1) Subject to paragraph (1A) the Tribunal may make an order in respect of costs (or, in Scotland, expenses) only— (a) under section 29(4) of the 2007 Act (wasted costs) and costs incurred in applying for such costs; (b) if the Tribunal considers that a party has acted unreasonably in bringing, defending or conducting the proceedings; or (c) where the Charity Commission the Gambling Commission or the Information Commissioner is the respondent and a decision, direction or order of the Commission or the Commissioner is the subject of the proceedings, if the Tribunal considers that the decision, direction or order was unreasonable. (1A) If the Tribunal allows an appeal against a decision of the Gambling Commission, the Tribunal must, unless it considers that there is a good reason not to do so, order the Commission to pay to the appellant an amount equal to any fee paid by the appellant under the First-tier Tribunal (Gambling) Fees Order 2010 that has neither been included in an order made under paragraph (1) nor refunded. (2) The Tribunal may make an order under paragraph (1) on an application or on its own initiative. (3) A person making an application for an order under this rule must— (a) send or deliver a written application to the Tribunal and to the person against whom it is proposed that the order be made; and (b) send or deliver a schedule of the costs or expenses claimed with the application. (4) An application for an order under paragraph (1) may be made at any time during the proceedings but may not be made later than 14 days after the date on which the Tribunal sends— (a) a decision notice recording the decision which finally disposes of all issues in the proceedings; (b) notice under rule 17(5) that a withdrawal which ends the proceedings has taken effect; or (c) notice under rule 17(8) that the proceedings have been treated as withdrawn. (5) The Tribunal may not make an order under paragraph (1) or (1A) against a person (“the paying person”) without first— (a) giving that person an opportunity to make representations; and (b) if the paying person is an individual, considering that person's financial means. (6) The amount of costs or expenses to be paid under an order under paragraph (1) may be ascertained by— (a) summary assessment by the Tribunal; (b) agreement of a specified sum by the paying person and the person entitled to receive the costs or expenses (“the receiving person”); or (c) assessment of the whole or a specified part

of the costs or expenses, including the costs or expenses of the assessment, incurred by the receiving person, if not agreed. (7) Following an order under paragraph (6)(c) a party may apply— (a) in England and Wales, to the county court for a detailed assessment of costs in accordance with the Civil Procedure Rules 1998 on the standard basis or, if specified in the order, on the indemnity basis; (b) in Scotland, to the Auditor of the Court of Session for the taxation of the expenses according to the fees payable in the Court of Session; or (c) in Northern Ireland, to the county court for the costs to be taxed. (8) Upon making an order for the assessment of costs, the Tribunal may order an amount to be paid on account before the costs or expenses are assessed.