



Neutral citation: [2023] UKFTT 00607 (GRC)

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

Appeal Number: WA/2022/00028

**Considered on the papers
On 12 July 2023**

Decision given on: 12 July 2023

Before

JUDGE OF THE FIRST-TIER TRIBUNAL J K SWANEY

Between

**EMILIA BOCHENSKA
MARIUSZ MOCARSKI**

Appellants

and

KINGSTON UPON HULL CITY COUNCIL

Respondent

DECISION

1. The appeal is dismissed.
2. The decision to refuse to issue a licence 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 appellants' application for a renewal of their licence to breed dogs from their property in Hull.

The respondent's decision

4. In a letter dated 25 August 2022 the respondent gave the following reasons for refusing to renew the appellants' licence to breed dogs:
 - The appellants' kennels do not meet the minimum size requirements.
 - The appellants do not satisfy the requirements of paragraph 2 of schedule 6 to the 2018 Regulations to provide a suitable environment for dogs.

The appellants' case

5. The appellants note that they have been licenced previously under the 2018 Regulations and relevant statutory guidance. They contend that there have been no changes in the size requirements for kennels since they were previously licenced at which time no issue has been taken with the size of their kennels. They consider that in light of this, the decision under appeal is unfair.
6. They note that no issue is taken with the welfare of the dogs and highlight the arrangements in place to care for their dogs.

The law

7. The 2018 Regulations came into force on 1 October 2018 and govern the licensing of premises involving animal welfare standards including those engaging in dog breeding.
8. Regulation 4 of the 2018 Regulations sets out conditions for the grant or renewal of a licence. Regulation 14 provides that the local authority must have regard to such guidance as may be issued by the Secretary of State.
9. Schedule 2 to the 2018 Regulations provides the general licence conditions and Part 1 of Schedule 6 to the 2018 Regulations sets out the specific licence conditions for breeding dogs. Paragraph 2 of Schedule 6 sets out the suitable environment conditions where relevant as follows:
 - 2.— (1) Each dog must have access to a sleeping area which is free from draughts and an exercise area.
 - (2) Each dog must be provided with sufficient space to—
 - (a) stand on its hind legs,
 - (b) lie down fully stretched out,
 - (c) wag its tail,
 - (d) walk, and
 - (e) turn around,without touching another dog or the walls of the sleeping area.
 - (3) The exercise area must not be used as a sleeping area.
10. The Secretary of State for DEFRA has issued two guidance documents:

- (i) The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 Procedural guidance notes for local authorities, October 2018 (the procedural guidance).
- (ii) The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 Guidance notes for conditions for breeding dogs, April 2020 (the conditions guidance).

11. I note that the excerpt from the conditions guidance contained in the respondent’s bundle is from the previous version of the guidance issued in July 2018. It is not material because, as the appellants accept, the requirements are materially the same. I note that the conditions guidance was updated again on 1 June 2023 and the requirements for the size of kennels are unchanged.

12. The conditions guidance sets out the minimum kennel size requirements which is deemed to satisfy paragraph 2 of Schedule 6:

- The minimum kennel size must be as below. This must be increased in relation to size, and number of dogs. The minimum area is per non whelping adult dog with each additional dog requiring the additional space listed per animal:

	Min area	Additional area per additional dog
Dogs less than 5kg	4m ²	0.5m ²
Dogs between 5 to 10 kg	4m ²	1.0m ²
Dogs between 10 to 15kg	4m ²	1.5m ²
Dogs between 15 to 20kg	4m ²	2.0m ²
Dogs over 20kg	8m ²	4.0m ²
Dogs over 30kg	These sizes must be scaled up accordingly and must be proportionate	These sizes must be scaled up accordingly and must be proportionate

- Bitches with litters must be provided with double this space allowance.
- Puppies must be housed in litter groups but have the ability to move away from litter mates.

13. The appellants have a right of appeal against the respondent’s decision pursuant to regulation 24 of the 2018 Regulations.

Findings and reasons

14. The only issue in this appeal is whether the appellants’ kennels meet the standard required by paragraph 2 of schedule 6 to the 2018 Regulations.

15. While paragraph 2 of Schedule 6 does not provide specific measurements for kennels, it sets out minimum standards. How those minimum standards are met is set out in the conditions guidance (see above).
16. 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.
17. The primary submission made by the appellants is that they have been licenced in the past and have been found to be complying with licence conditions in respect of the size of their kennels. In particular, they provided evidence that they were issued a licence on 20 December 2019 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 appellants have been issued a licence in the past and they believe 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 Regulations and statutory guidance in force at the date of decision on their current application for a licence.
18. I had a copy of the appellants' application form which was received by the respondent on 15 August 2022. At section 3.1 of the form the appellants provide details of their kennels. They state that they have two types of kennel: thermo insulated kennels which are 1m by 1 m in size and cabins which are 1.2m by 0.65m in size. The kennels are therefore 1m² and the cabins are 0.78m². I was not provided with details of the weight of the dogs, but it is not material because both types of kennel fall well short of the minimum size required for dogs weighing less than 5kg, i.e. the smallest breeds of dog.
19. I find that the appellants' kennels do not meet the minimum size requirements required to satisfy the suitable environment condition in paragraph 2 of schedule 6 to the 2018 Regulations. Accordingly, the appeal cannot succeed.

Signed

Date 12 July 2023

Judge J K Swaney
Judge of the First-tier Tribunal