



Neutral citation number: [2024] UKFTT 00099 (GRC)

Case Reference: WA/2023/0017/ALI

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

Decided without a hearing

Decision given on: 01 February 2024

Before

JUDGE LIZ ORD

Between

PETER CLACK

Appellant

and

THANET DISTRICT COUNCIL

Respondent

Decision: The appeal is dismissed

REASONS

The Appeal

1. The Appellant appeals against a Notice of Licence Variation, reference number LN/20230032 (“the Notice”) dated 6 June 2023.

Evidence

2. In determining this appeal I have had regard to an appeal bundle of 104 pages and two video recordings of meetings at Manston Boarding Kennels.

The Law and guidance

Law

3. The law is contained in The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 (“the Regulations”). The relevant provisions are:

4. **Regulation 15 – Grounds for suspension, variation without consent or revocation of a licence:**

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.

5. **Schedule 2 – General conditions.**

4 – Staffing

(3) The license holder must provide and ensure the implementation of a written training policy for all staff.

5 – Suitable environment

(2) Animals must be kept at all times in an environment suitable to their species and condition (including health status and age) with respect to –

- (a) their behavioural needs,
- (b) its situation, space, air quality, cleanliness and temperature,
- (c) the water quality (where relevant),
- (d) noise levels,
- (e) light levels,
- (f) ventilation.

(4) Where appropriate for the species, a toileting area and opportunities for toileting must be provided.

(8) All resources must be provided in a way (for example as regards frequency, location and access points) that minimises competitive behaviour or the dominance of individual animals.

6 - Suitable diet

(2) Feed and (where appropriate) water intake must be monitored, and any problems recorded and addressed.

(5) Constant access to fresh, clean drinking water must be provided in a suitable receptacle for the species that requires it.

7 – Monitoring of behaviour and training of animals

- (1) Active and effective environmental enrichment must be provided to the animals in inside and any outside environments.
- (2) For species whose welfare depends partly on exercise, opportunities to exercise which benefit the animals' physical and mental health must be provided, unless advice from a veterinarian suggests otherwise.

9 - Protection from pain, suffering, injury and disease

- (4) All reasonable precautions must be taken to prevent and control the spread among the animals and people of infectious diseases, pathogens and parasites.

6. Schedule 4 Specific conditions; Part 2 Providing boarding in kennels for dogs

6- Interpretation

In this part –

“exercise run” means an enclosed area forming part of a kennel unit attached to and with direct access to the sleeping area,

“kennel unit” means the physical structure and area that consists of a sleeping area and an exercise run.

7 – Suitable environment

- (2) In each kennel unit, the sleeping area must –
 - (a) Be free from draughts,
 - (b) Provide the dog with sufficient space to:
 - (i) sit and stand at full height,
 - (ii) lie down fully stretched out,
 - (iii) wag its tail,
 - (iv) walk, and
 - (v) turn around,without touching another dog or the walls.
- (3) Each kennel unit must be clearly numbered and there must be a system in place which ensures that information about the dog or dogs in each kennel unit is available to all staff and any inspector.

- (4) Each dog must have constant access to its sleeping area.
- (6) Each exercise run must have a single, safe, secure, waterproof roof over a minimum of half its total area.

8 – Monitoring of behaviour and training

- (2) All dogs must be provided with toys or feeding enrichment (or both) unless advice from a veterinarian suggests otherwise,
- (6) There must be an area within each kennel unit in which a dog can avoid seeing people and other dogs outside the kennel unit if it so chooses.

9 – Records

- (1) A register must be kept of all the dogs on the premises which must include:
 - (a) the dates of each dog's arrival and departure,
 - (b) each dog's name, age, sex, neuter status, microchip number and a description of it or its breed,
 - (c) the number of any dogs from the same household,
 - (d) a record of which dogs (if any) are from the same household,
 - (e) the name, postal address, telephone number (if any) and email address (if any) of the owner of each dog and emergency contact details,
 - (f) in relation to each dog, the name, postal address, telephone number and email address of a local contact in an emergency,
 - (g) the name and contact details of the dog's normal veterinarian and details of any insurance relating to the dog,
 - (h) details of each dog's relevant medical and behavioural history, including details of any treatment administered against parasites and restrictions on exercise,
 - (i) details of the dog's diet and related requirements,
 - (j) any required consent forms,
 - (k) a record of the date or dates of each dog's most recent vaccination, worming and flea treatments,
 - (l) details of any medical treatment each dog is receiving.

10 – Protection from pain, suffering, injury and disease

- (3) A holding kennel unit must only be used in an emergency and must not be used for longer than is necessary and in any event for no longer than a total of 12 hours in any 24 hours period.

- (4) In sub-paragraph (3), “holding kennel unit“ means a kennel unit, separate from any other kennel unit, in which a dog may be housed temporarily.

Guidance

7. Relevant statutory guidance is contained within the:
- 7.1. Animal activity licensing process: statutory guidance for local authorities. Amongst other things, this sets out the star rating system, and advises on minimum standards, and higher standards for a 4 or 5 star rating.
- 7.2. Dog kennel boarding licensing: guidance for local authorities. This provides advice on the matters to take into account when assessing whether license conditions have been met, and provides guidance on each of the Regulation conditions.
- 7.2.1. With respect to general condition 5.4 (“Where appropriate for the species, a toileting area and opportunities for toileting must be provided”), it says:
- “Dogs must have regular opportunities during the day for toileting, taking into account individual needs. There must be direct and continuous access to a run for toileting or the dog must be removed from the kennel unit to toilet away from its bed at least 4 times a day.”
- 7.2.2. With respect to specific condition 7.6 for dog boarding kennels (each exercise run must have a single, safe, secure, waterproof roof over a minimum of half its total area), it says:
- “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. The roofing material must be of a material (ideally translucent) capable of filtering UV light and providing shade. A run must not be used as the primary sleeping area.”

The Licence Variation Notice

8. The Notice was issued further to an inspection of the Manston Boarding Kennels on 24 May 2023, on the basis of non-compliance with the Regulations, identifying
- 8.1. “17 breaches of the statutory guidance attached to the Animal Activities Licence”;
- 8.2. “Animal welfare concerns”.
9. In effect, this gave notice of a breach of license conditions, which reflected statutory guidance, and schedules 2 and 4 of the Regulations (as set out above in the “Law” section). For each relevant condition, the alleged breach was set out.
10. As a result, the local authority found three changes to be necessary to comply with the Regulations and meet the requirements of the 2 star, 1 year licence, namely:
- 10.1. Reducing the number of boarding dogs licensed from 41 to 20, only using the “Green block”.

- 10.2. Employing a competent manager whose role is to ensure compliance with all paperwork relating to the Kennel and Cattery.
- 10.3. Ensuring all staff are competent in all aspects of animal welfare for dogs and cats, to include recognising poor welfare, animal handling, animal behaviour, cleanliness and hygiene, feeding and food preparation, disease prevention and control, and first aid treatment of sick or injured animals. Evidence of this training to be recorded.

Issues

- 10.4. Whether the license conditions identified in the Notice have been breached, and
- 10.5. Whether the variations set out in the Notice are necessary to protect the welfare of the dogs boarding at the kennels.

The Facts

11. The Appellant and his wife, Linda Clack, have operated the Manston Kennels for many years. After the Regulations came into force, they applied for a new licence in March 2019 to board cats and dogs. A temporary licence was granted and this was renewed on several occasions thereafter, at times with a 1 star rating and at other times with 2 or 3 star ratings. The current licence, issued in January 2023 is a 2 star rating.
12. In September 2019, there was a complaint about the poor condition of 2 cats and the poor state of the premises. An inspection found the welfare of the cats to be suffering, issues with the state of the premises, and inadequate paperwork. On a pre-arranged inspection in October 2020, improvements were found to have been made.
13. Following another complaint, further site inspections took place in September and November 2022, and the license was reduced to 1 star. Issues relating to paperwork were discovered and the Appellant was given advice and statutory guidance was left with him.
14. Thereafter, following a pre-arranged visit and improvements being made, Mr and Mrs Clack were granted a 2 star licence in January 2023, permitting a maximum of 41 dogs. This was subject to conditions based on the Regulations and statutory guidance. It was also subject to the conditions in the Regulations themselves.
15. On 24 May 2023 the Local Authority made an unannounced visit and noted a number of concerns as set out in their Licensing Inspection Record. These included a strong smell of urine, shredded bedding, no bedding in some units, overcrowding, boards not marked up, dogs without adequate shelter, insufficient water bowls, dogs in holding runs, no runs except in the green block, no enrichment, and substantially incomplete paperwork.
16. At the time there were 37 dogs and 3 cats boarding. There were no exercise runs within the kennel units in the Vinyl Block, the Tiled Block and the wire framed holding units, which altogether housed 28 dogs. Only Mr and Mrs Clack were working in the kennels that day and there were no other staff present.
17. As a result of these findings the Local Authority ascertained that there were breaches of the license conditions, as set out in the Notice issued on 6 June 2023.

18. The Appellant replied to the Notice on 11 June, raising two procedural matters. The first was that he requested reasonable adjustments due to two medical conditions, namely dyslexia and heart problems. The second was a contention that the Notice had been unfairly applied and therefore was invalid.
19. He also said he did not agree with all 17 of the breaches, and specifically challenged the need for exercise runs. He also set out some ideas for how he could address the Notice requirements.
20. The Local Authority responded on 20 June confirming the Notice and explaining its findings in more detail.
21. With respect to the procedural matters raised, the Local Authority addressed the first by arranging an additional meeting to further describe the actions required to deal with the breaches. As for the second, they pointed out the problems with the Appellant's paperwork since 2022. They reminded him of the assistance he had been given to improve, and that the Notice had been issued in accordance with legislation.
22. As regards the exercise runs the Local Authority explained the legal requirements. They noted that, with only two people working, there was insufficient time to exercise the dogs who did not have runs, thereby not meeting minimum standards.
23. At the request of the Appellant, another site visit took place on 29 June with the Appellant's granddaughter and his solicitor. The Appellant did not attend, and the Officers were told he had suffered a heart attack. The solicitor explained that the claimant would be purchasing new purpose built kennels and would follow a "moving forward plan". He asked for time to comply, but if this were not possible, the Appellant would apply to the First Tier Tribunal to bid time.

The Appellant's pleaded case

24. The Appellant submitted that the Local Authority's communications were confusing, and due to his disability, he had been treated in an unfair way. He suggested that many of the breaches related to the same issue, making it look worse than it was.
25. The kennels had been inspected and passed only 6 months ago in the previous January, and no concerns were raised then. Nothing had changed. The Appellant had not been made aware of the kennels and runs having to be attached, and an insufficient time frame was given for compliance.
26. With respect to employing a competent manager, the kennel manager is dyslexic, although he is able to ensure staff maintain records and paperwork.
27. With respect to training, all staff were completing online training relating to all aspects of animal care.
28. Everything asked for had been complied with, except for the runs attached to the kennels. The Appellant was investing in new kennel blocks and had created a "moving forward plan" showing the steps intended to be taken and the time frame.

The Local Authority's response

29. Previous site visits had noted issues with paperwork and on the 24 May inspection the Local Authority again found that paperwork was deficient. This was the basis for requiring the Appellant to employ a competent manager to run the administration part of the business.
30. During the site visits the Appellant never made his disabilities known to Licensing Officers. After the Notice was served his disabilities were brought to Officers' attention and a meeting was arranged for him so as to explain the required changes. Despite his disabilities, the two licensees remain responsible for meeting the licence conditions.
31. No evidence of staff training or enrolment on courses had been provided to the Local Authority.
32. The 17 identified breaches were quoted directly from the statutory guidance, and they were also conditions attached to the Licence for Dog Kennel Boarding. The license was granted subject to conditions in the Regulations.
33. As for not addressing the kennel units previously, Officers were satisfied during previous inspections that alternative arrangements were being made to exercise the dogs. However, on the 24 May inspection it was noted that the kennels were unable to meet these alternative requirements. Therefore, they stipulated that there must be a separate exercise run and sleeping area within the kennel units.

Discussion and conclusions

34. The site inspection on 24 May 2023 revealed breaches of the license conditions, as set out in the Notice. The Appellant did not dispute this, except for the conditions requiring either an exercise run attached to the kennel or toileting away from the kennel at least 4 times a day. Whilst it was clear that there was no exercise run in many of the units, he claimed that the dogs were taken out 4 times a day.
35. On the day of the inspection visit there were 28 dogs in units without runs and only Mr and Mrs Clack were working at the kennels. It would have been impossible for them to take all of these dogs out for toileting 4 times a day, and attend to the other general tasks needing to be done. Consequently, I find that these dogs were not toileted as required by the conditions on the license.
36. As for the other conditions, I accept the evidence provided by the Local Authority in terms of witness statements and the site inspection report. There is no robust evidence before me to dispute it.
37. With respect to Mr Clack's disabilities, I note that the Local Authority have provided additional assistance in trying to explain the breaches, and have given feedback on his proposed improvements. Disability is not a defence to breaching the Regulations.
38. With respect to the manner in which the Appellant was treated by the Local Authority, on the information before me, I find no issue. There is nothing I have been presented with, which would lead me to invalidate the Notice or final decision.

39. In conclusion, the Appellant has breached the conditions of the January 2023 licence and the steps required by the Notice are necessary to protect the welfare of the dogs that board at the kennels. Therefore, the decision to vary the licence is upheld.

Signed: Judge Liz Ord

Date: 1 February 2024