



Neutral citation number: [2024] UKFTT 1055 (GRC)

Case Reference: FT/WA/2024/0010

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

**Heard on GRC - CVP on 15 October 2024.
Decision given on: 26 November 2024**

Before

Judge Brian Kennedy KC

Between

ALPHAS CANINE CARE LIMITED

Appellant

and

LONDON BOROUGH OF EALING

Respondent

Representation:

For the Appellant: Michael Rhimes of Counsel.

For the Respondent: John Fitzsimons of Counsel.

Decision: The appeal is Allowed.

Substituted Decision Notice: The Respondent should consider the Application afresh and on its merits.

REASONS

1. The Appellant appeals under Regulation 24 of the Animals Welfare (Licensing of Activities Involving Animals (England) Regulations 2018 against the decision by the London Borough of ("the Respondent") to refuse an application for a dog care licence on 23 April 2024 ("the Decision").

2. The Appellant offers dog-related services from Long Lea House, St. Leonard's Road, West Ealing W13 8BF ("the Premises"). The Respondent understands the Appellant's CEO (Shubendra "Ben" Naidoo) lives at the Premises.
3. By a licence issued to the Respondent dated 1 May 2023 the Appellant was given permission "to provide or arrange for the provision of boarding for dogs kennels" of up to 6 dogs at the Premises (Ref: 23LIC020105DOGHB) ("the Licence").
4. By application form dated 12 March 2024, the Appellant applied for a new licence for the Premises, this time to provide day care as opposed to boarding, for up to 46 dogs ("the Application").
5. The Respondent refused the application by letter dated 23 April 2024 and stated in the Decision;

"Following the receipt of your application, the Local Authority has sought legal advice. The Local Authority is of the view that, as previously advised, a dog day care licence cannot be granted for a residential dwelling/home.

This decision is in accordance with statutory guidance that all licensing authorities must adhere to, specifically 'Home Boarding for Dogs Licensing Statutory Guidance for Local Authorities' and 'Dog Day Care Licensing Statutory Guidance for Local Authorities'

Therefore, the Local Authority has decided to refuse your application."

6. The Appellant issued its appeal on 21 May 2024 and the Tribunal provided the parties all relevant appeal documents, template response form, initial case management directions and a template case management questionnaire on 5 June 2024. In essence the Grounds of appeal were as follows:

Ground 1 raises a question of Law. The issue is whether the Respondent was wrong to refuse the Application on the basis that the Animal Welfare Act 2006, the 2018 Regulations, and/or guidance issued by the Secretary of State under the same, preclude the provision of day care for dogs in a residential building.

and

Ground 2: is raised in the alternative. At issue here is whether the Premises are a "residential dwelling/home" within the meaning of the 2018 Regulations, Schedule 4, part 3 and whether Ealing was wrong to conclude that the Premises were such.

7. The Appellant's position is that because there was no other reason for refusal given, if either Ground 1 or Ground 2 is successful, the Tribunal should grant the application for a licence (2018 Regulations, 24 (4))
8. The Respondent does not agree and argues that the application was refused on the basis that a dog licence cannot be granted for a residential dwelling home.

Legal Framework:

9. The Animal Welfare Act 2006 (“the 2006 Act”) section 13 and Schedule 1 provides for the “*licensing or registration of activities involving animals.*” Schedule 1, para. 4 of the 2018 Regulations defines the licensable activities as:

“4. Providing or arranging for the provision of accommodation for other people’s cats or dogs in the course of a business on any premises where the provision of that accommodation is a purpose of the business by –

(a) Providing boarding for cats;

(b) Providing boarding in kennels for dogs’

(c) Providing home boarding for dogs; or

(d) Providing day care for dogs.”

10. Schedule 4, Parts 3 and 4 of the 2018 Regulations govern respectively, the provision of home boarding for dogs and the provision of day care for dogs. In the context of home boarding, “*home*” means a domestic dwelling on which the licensable activity of providing home boarding for dogs is a=carried on. Dogs must be accommodated within the home (i.e. within the domestic dwelling). In relation to the provision of day care for dogs, “*premises*” is defined as “*the premises on which the licensable activity of providing day care for dogs is carried on.*”

11. By Regulation 4, in circumstances where (a) a local authority has received from an operator an application in writing for the grant or renewal of a licence to carry on a licensable activity on premises in the local authority/s area; and (b) the application gives such information as the local authority has required, the local authority must:

(a) Appoint one or more suitably qualified inspectors to inspect any premises on which the licensable activity or any part of it is to be carried on, and

(b) Following that inspection, grant a licence to the operator, or renew the operator’s licence, in accordance with the application if it is satisfied that-

i The Licence conditions will be met;

ii Any appropriate fee has been paid in accordance with regulation 13, and

iii The grant or renewal is appropriate having taken into account the report submitted to it in accordance with regulation 10.

12. By Regulation 14, a local authority must also have regard in the carrying out of its functions under the 2018 Regulations to such guidance as may be issued by the Secretary of State.

13. The Secretary of State has issued two guidance documents relevant to this matter.
- a The Home Boarding for dogs licensing: statutory guide for local authorities (“the Home Boarding Guidance”) and
 - b Dog Day care licensing statutory guidance for local authorities (“the day Care Guidance”)
14. The Home Boarding Guidance states, where relevant, as follows;
- a. To decide if any activity is covered by the regulations and needs a licence to operate, you should consider all of the following guidance;
 - b. All dog home boarding activities need a licence if they’re carried out as a commercial business.
 - c. To be in scope [of being a commercial business], they must provide housing for other people’s dogs for day and overnight stays (home boarding). This must be inside a domestic home which is not the usual home where the animals are kept or in outdoor kennels.
 - d. Activities that fulfil one or more of the following criteria do not require a licence:
 . . . Businesses that provide day care for dogs outside a home environment (see licence of providing day care for dogs).
15. The Day Care Guidance states, where relevant, as follows:
- a. To decide if any activity is covered by the regulations and needs a licence to operate, you should consider all of the following guidance.
 - b. All dog day care activities need a licence if they’re carried out as a commercial business.
 - c. To be in scope [of being a commercial business], they must; . . . Provide daytime housing for other people’s dogs, as part of, or as the only activity of, the business.
 - d. Activities that fulfil one or more of the following criteria do not require a licence a Business that looks after dogs in a business owner’s own home – these companies are licensed under home boarding.
 - e. Specific conditions: providing day care for dogs (schedule 4, part 4 of the regulations): 20.0 No overnight stays . . . 20.1 Keeping dogs overnight is not permitted.

The Appellants Submissions:

16. The Appellant argues it is common ground that the sole reason for refusal in this case is that a dog day care licence cannot be granted for a residential dwelling. This gives

rise to the two GOA. Ground 1 - is a legal ground and it's essentially one of interpretation. The Appellant's position is that there is no restriction on granting a day care licence in respect of a residential dwelling and that this in principal bar is not supported by the parent Act, which is the 2006 Animal Welfare Act, the 2018 Regulations or the guidance made thereunder. Ground 2 is a factual ground, and it's raised in the alternative. In the alternative, if there is that in principal bar, then the Council was wrong to conclude on the facts that the Appellant was operating as a residential dwelling home.

17. The Appellant indicates in essence, that both parties agree as far as home boarding is concerned that this can only take place in a domestic dwelling. That is clear, they say from the 2018 Regulations. The issue in this case is not home boarding but day care. As far as the Appellant understands it, the Respondent contends that day care cannot as a matter of law be provided in a domestic dwelling. The Appellant's position is that the regulations and the guidance are essentially agnostic on where daycare is provided. Subject to meeting the relevant general and specific conditions, daycare can be provided on any premises whether it is commercial or residential.

18. The Animal Welfare Act of 2006. Section 13 provides for licensing or registration of activities involving animals. It's the licensing with which we are presently concerned. It can be seen from Section 13 there's a relatively broad-brush framework that Parliament instituted. In section 13(1) it says: -

"No person shall carry on an activity to which this subsection applies except under the authority of a licence..."

So, there is a requirement to have obtained a licence, but the activities to which that licence applies was not defined in the 2006 Act. So, one reads from Section 13(2)(b) it refers to an activity which: -

"-- is specified for the purposes of the subsection by regulations made by the appropriate national authority."

19. Essentially therefore the activity to which it applies are to be specified in regulations subsequently and the provision for regulations is also made in Section 13(7). It is the 2018 Regulations which contain most of the detail of the regulatory regime.

20. From Section 13(7): - *"the appropriate national authority shall consult such persons appearing to the authority to represent any interests concerned as the authority considers appropriate"*.

21. The 2018 Regulations needed to be consulted upon before they were adopted. There is also an affirmative resolution procedure for the 2018 Regulations, so they needed to be approved in both parts of Parliament. The Appellant argues the 2018 Regulations are of particular importance given the way that they were consulted upon and adopted. Schedule 1 sets some of the parameters for the regulations (see page 149 onwards).

22. Neither party contends that there is anything in the 2006 Act restricting where daycare can be provided. Looking at the 2018 Regulations, these are on page 156 onwards. Definitions in interpretation, are found on page 157. Regulation 2 defines the licensable activities to which the Regulations apply. It says: - *"licensable activity" means an activity described in paragraph 2, 4, 6, 8 or 10 of Schedule 1...*
23. Paragraph 4 sets out the provision for dogs. The licence conditions, which is the definition just above, means: -
- (a) *the general conditions, and*
- (b) *the relevant specific conditions...*
24. As far as the relevant specific conditions are concerned, in (b) there are relevant specific conditions for both day care and home boarding.
25. Regulation 4 governs the grant of the licence.
26. On page 161, it is accepted as by Regulation 14: -
- "A local authority must have regard in the carrying out of its functions under these Regulations to such guidance as may be issued by the Secretary of State."*
27. It is accepted that a regard must be had to the guidance, but the Appellants position is that the guidance does not provide a restriction on where daycare can be provided.
28. Under Regulation 20: -
- "It is an offence for a person, without lawful authority or excuse –*
- (a)*to breach a licence condition; ..."*
- And that pertains to the general and relevant specific licencing conditions
29. Schedule 1 of the 2018 Regulations is on page 167. Schedule 1 defines the licensable activities. Under Part 1 there is a business test, which essentially means if one is not providing commercial services then they don't fall within the scope. There seems no issue that what the Appellant is providing is commercial in nature.
30. Part 3, in particular in paragraph 4, defines the relevant activities with which the Tribunal is concerned here. It reads: -
- "Providing or arranging for the provision of accommodation for other people's cats or dogs in the course of a business on any premises where the provision of that accommodation is a purpose of the business..."*
31. We have the distinction between home boarding and daycare in paras c and d. there are general conditions and specific conditions.

32. The general conditions are on page 169. They include the requirement to display a licence, of records, on the use, number and type of animal. Those apply to all of those activities from a-d in paragraph 4.
33. On page 179, are specific conditions for providing home boarding for dogs. The Appellant draws out the distinctions between home boarding and day care by reference to those specific conditions. Starting with home boarding, paragraph 11, see in this Part: - "*designated room*" means a room within the home allocated to a dog; "*home*" means a domestic dwelling on which the licensable activity of providing home boarding for dogs is carried on.
34. On the basis of paragraph 11, it is clear that home boarding must be provided in a domestic dwelling. In addition, you will see from Regulation 13(2), it says: "*Each dog must be provided with its own designated room where it can, if necessary, be kept separate from other dogs.*"
35. Likewise, in paragraph 14 it says: - "*Each dog must be fed separately in its designated room...*" So, in order to operate home boarding, if you have i.e. six dogs, you need to have six rooms. That is a result of the specific conditions.
36. Turning to day care. The specific conditions are set out on page 181. So on interpretation, it says: - "*In this Part, "premises" means the premises on which the licensable activity of providing day care for dogs is carried on*".
- (a) So, the Appellant argues, unlike for home boarding, there is no restriction on the kind of premises. It doesn't say it needs to be provided in a home, or it needs to be provided in a home. Daycare provides that no dog may be kept in the premises overnight – this is clear from Regulation 20. That is in contrast to home boarding where plainly no such restriction exists. In addition, under suitable environment, the parallel for home boarding under Regulation 13. Unlike Regulation 13 for daycare, there is no requirement that the dogs need to be kept in a designated room. Rather: *Each dog must be provided with – (a) a clean, comfortable and warm area...*
37. And likewise for suitable diet, in contrast to home boarding, there is no requirement that the dogs for day care be capable of being fed in a separate room. There is no provision in the specific conditions that refer to designated rooms.
38. The Appellant argues, home boarding provides more stringent requirements including individual rooms because of overnight stays. By contrast, daycare is provided during the day and not overnight and has a different set of specific conditions. Significantly, while home boarding is confined to domestic dwellings, there is no restriction for day care in the 2018 Regulations.

The Appellant on Guidance:

39. There is overall guidance and then there is guidance for each of the four elements that were referred to in paragraph 4(a)-(d). There is an additional section of the guidance that sets out the scope of the licensable activity, there is then commentary

on the general conditions and then a commentary on the specific conditions. Each of the headings in the guidance cross-refers back to the specific condition in the 2018 Regulations that it's referring to.

40. Starting with home boarding, from page 224. On page 226, it says: - *"To be in scope, they must provide housing for other people's dogs at home for day and overnight stays..."*
41. Which, the Appellant argues again, reflects the scope of home boarding. On page 249, which refers back to paragraph 13 of the 2018 Regulations, the requirement that there be an individual room for each dog and the same is said at paragraph 252. In terms of the daycare guidance, that's at page 196 of the bundle - see from page 198 which defines the scope.
42. The Appellant argues, again, there is no suggestion in terms of the scope that daytime cannot be provided on a residential dwelling or that it's restricted to commercial premises.
43. In terms of the 2006 Act neither party is saying that there's anything that says you cannot provide daycare in a residential dwelling. As far as the Appellant understands the Respondent, it is not their case that there is any such restriction in the 2018 Regulations.

The Respondents Submissions:

44. The Respondent argues that it follows from the Day Care Guidance, as the public authority concerned when considering whether to grant or refuse a licence (Reg.4), that business they must take into account that businesses that look after dogs in a business owner's home are licenced under home boarding. This they argue makes even more sense when read alongside the Home Board Guidance which requires the local authority to direct businesses that provide day care for dogs outside a home environment to apply for a dog day care licence. The guidance documents together the Respondents maintain clearly point towards an intention that a licence holder should not hold both a home boarding licence and day care licence at the same premises. This, the Respondent says, is demonstrated by the fact that the former permits overnight stays whereas for the latter, overnight stays are prohibited.
45. While the Appellant suggests that there is nothing in the guidance precluding the provision of day care in residential dwellings (see the Grounds of Appeal Paras. 17 & 18], and the Respondent accepts it is correct there is nothing explicitly excluding where dog day care can be provided, the Respondent note both Guidance documents, which are built into the statutory scheme, are plainly directing those in domestic dwellings to have day care ones. The implication of the guidance documents is clear when they are read as a whole. Were the Respondent to ignore the direction given by the guidance documents it would risk erring in law by departing from Regulation 14 in the 2018 Regulations as tis requires that the local authority must have regard to the statutory guidance.

46. The Respondent does not consider either Guidance document trumps the 2008 Regulations or is *"authorising or approving unlawful conduct by a local authority"* as argued by the Appellant in their Grounds of Appeal at paragraph 19. The Respondent argues, they both merely add flesh to the bones of what the Secretary of State envisages as being required under the Regulations.
47. The Respondent argues if they are wrong about that, it is within the Appellant's gift to challenge either guidance document.
48. The Respondent argues that while they must grant a licence under the circumstances set out in Regulation 4 of the 2018 Regulations; in doing so it must also have regard to the statutory guidance, as the granting of a licence is one of their functions under the 2018 Regulations. That statutory guidance makes it clear that businesses looking after dogs in the business owner's home require home boarding licences rather than day care licences. The Respondent is not persuaded that there any reasons for them to depart from the statutory guidance and argue that it is right and important for them to interpret the Guidance in every sense to provide consistency in the administration of their decision-making procedures.

The Appellants Reply:

Ground 1.

49. The Appellant refers to the Respondents arguments indicating that all substantive and significant arguments make reference only to the statutory guidance. The Appellant is not contending that the Guidance is unlawful but on the contrary, the Appellant relies upon the Guidance because properly understood, they argue it does not preclude the provision of daycare in residential dwellings.
50. The Appellant argues Guidance is to serve as a practical guide to decision making. If there was a fundamental in principle restriction on where daycare can be provided, one would reasonably expect that provision would be clear.
51. Furthermore, the Appellant argues that the 2018 Regulations were consulted upon and approved by both houses of parliament where the Regulations where the intention was to restrict an activity such as home boarding where expressly intended to do so. The Regulations do not identify any such delineated restriction.
52. The Appellant invites the Tribunal (and in effect the public authority) to consider the Guidance as a whole, as a package, which governs animal regulation as it were with a holistic lens. The argument commences with day care guidance which is at tab 34 page 198. To draw out the scope of daycare, it says: - *"To be in scope, they must: scope, they provide daytime housing for other people's dogs, as part of, or as the only provide daytime housing people's dogs, part of, only activity of, the business..."!*
53. The Appellants say that this is the statutory guidance for home boarding. It would be strange if in order for a local authority to find out the scope of day care, you would

need to pick up the home boarding guidance to understand the scope of a different activity. It is also inconsistent with the kennels guidance.

54. There is no suggestion that is confined to residential dwellings. It is the case that the final bullet on page 198 says: - *“A business that looks after dogs in a business owner’s own home – these companies are licensed under home boarding...”*
55. In the Appellants submission, what this is designed to do is to refer to a reader of the dog daycare guidance, saying that there is other guidance for home boarding. It’s flagging that different guidance. Plainly, where home boarding is being provided, namely where there are overnight stays, it is absolutely correct that would be licensed under home boarding and so you would need to pick up the home boarding guidance. But it does not say that the only place that you can provide daycare is outside a residential dwelling, and that is what one would expect the guidance to say if it was the case. The Appellant submits that this particular passage needs to be read with a degree of benevolence, because if you read it literally it would say a business that looks after dogs in a business owner’s own home and that would suggest i.e. that if the business owner were to keep the dogs in someone else’s home then that wouldn’t fall under home boarding. The Appellant submits that when you read this as a whole, you’ve clearly got the scope which is identified and the scope which is halfway down the page doesn’t say daycare can’t be provided in a residential dwelling. The last bullet on that page needs to be read with a degree of benevolence, it’s saying yes if there are overnight stays, and you are providing home boarding refer to the home boarding guidance. But, the Appellant argues, it does not have the effect for which the Respondent contends.
56. The Appellant directs us to the discussion of the specific conditions. On page 219, these specific conditions: - provide paragraph by paragraph commentary on the specific conditions and it is paragraph 19 of the 2018 Regulations that define where daycare can be provided: - Tellingly, the Appellant argues, there is no paragraph 19 in this guidance. If it was the case that the premises on which daycare can be provided could not be homes, one would have expected that to be made clear and that is not there. When it refers to no overnight stays, which is paragraph 20 and therefore contained here, in paragraph 20, - keeping dogs overnight is not permitted and then it just says that the premises must be in a fixed location. Again, there is no suggestion that it cannot be provided in a home, and in the commentary under suitable environment there is no suggestion... this is a guidance that is supposed to guide local authorities when they take these decisions. If there was such an in principal restriction one would expect it to have been made clear. The Appellant argues it is not there.
57. The Appellant argues further on the question of discretion and that’s not they argue how the Respondent approached its decision. It said that there was an in-principle bar and that that was a legal bar and that therefore the application has been refused. See Regulation 4 which is on page 158, in 4(2) it says: -

- (2) The local authority must—
- (a) appoint one or more suitably qualified inspectors to inspect any premises on which the licensable activity or any part of it is being or is to be carried on, and
 - (b) following that inspection, grant a licence to the operator, or renew the operator's licence, in accordance with the application if it is satisfied that—
 - (i) the licence conditions will be met,
 - (ii) any appropriate fee has been paid in accordance with regulation 13, and
 - (iii) the grant or renewal is appropriate having taken into account the report submitted to it in accordance with regulation 10.

58. The Appellant asserts that plainly there is a degree of interpretation in terms of how the authority wants to approach that report but there is no discretion afforded to the local authority.
59. On Home boarding guidance the Appellant refers to p.226 where it says:- *"To be in scope, they must provide housing for other people's dogs at home for day and overnight stays (home boarding)"* and they continue to p.227 where it says:- *"businesses that provide day care for dogs and do not keep them overnight- these are under the scope of dog care facilities"*
60. The Appellant argues this must be read with care as it is the statutory guidance for home boarding, and it would be strange if in order for a local authority to find out the scope of day care, one would need to pick up the home boarding guidance to understand the scope of a different activity. It is also, the Appellant argues inconsistent with the kennels guidance, as that guidance positively states that: - *"businesses that provide day care for dogs and do not keep them overnight- these are under the scope of dog care facilities"*
61. The Appellant argues that once the guidance is read as a whole, bearing in mind there is no such restriction in the daycare guidance, the kennels guidance is very clear on this point...in their submission this is inelegant drafting. It finds no support in the 2018 Regulations and when one reads the guidance as a whole it is submitted that there is nothing in the guidance that says you can't provide daycare on a residential dwelling
62. If the Respondent's argument is that any looking after a dog in a residential dwelling and must be regulated under home boarding, then the Appellant's submission is that it does not agree, and it raises three points. 1) It is inconsistent with the guidance. It would be contrary to the kennels guidance. 2) It would also not be supported in home boarding. It would have been very easy in the home boarding guidance for it to have said wherever you provide licensable activities on a home, that will be regulated under home boarding but that is not what the guidance says and 3) It would be contrary to the 2018 Regulations, page 167 paragraph 4. This defines the licensable activities:

PART 3

Providing or arranging for the provision of boarding for cats or dogs

4. Providing or arranging for the provision of accommodation for other people's cats or dogs in the course of a business on any premises where the provision of that accommodation is a purpose of the business by—

- (a) providing boarding for cats;
- (b) providing boarding in kennels for dogs;
- (c) providing home boarding for dogs; or
- (d) providing day care for dogs.

63. In the Appellants submission, 'on any premises' refers to all of a, b, c and d. The natural reading of the licensable activities is that any of these can be provided on any premises unless otherwise stated i.e. home boarding can only be provided on a residential dwelling. d) is one which can be provided on any premises. If it was the case that wherever you provide services in a home that is home boarding, that could have easily been reflected in the drafting of the 2018 Regulations and it isn't.

64. If one goes to paragraph 11, pertaining to home boarding, on page 179 it says: -

"home" means a domestic dwelling on which the licensable activity of providing home boarding for dogs is carried on.

65. The Appellant asserts that it only refers to the provision of home boarding for dogs. If it was the case that whatever you provide on a home is a licensable activity that falls within the scope of home boarding, that could have been said but it is not, the Appellant submits, reflected in the 2018 Regulations.

66. The Respondent's approach seems to imply a sort of tree diagram in what is and isn't in the licensable activities in that if you provide anything in the home that's home boarding, but the Respondents submit, that's not reflected in the 2018 Regulations. It would also not be consistent with the grain of the 2018 Regulations because paragraph 4 provides for different regulation based on the kind of activity provided. It would turn that scheme into a different scheme because the critical distinction is where that would be provided.

67. Question on 'home' on p.179 being broad - the Appellant argues if you are providing home boarding then yes that must be provided on a domestic dwelling, but the key point they say is it's only where you provide home boarding for dogs that you fall within this. If you are providing day care, that doesn't fall within this because by definition that's a different licensable activity.

68. In the Appellants submission there would be a lack of policy justification for the Respondent's approach. One might question what policy justification there is for treating a home so differently to other premises. If one had a garden centre, an office, an industrial estate, as a matter of principle they could all provide day care. A hotel or a hostel could provide daycare but not a home. One might ask oneself why the distinction would be applied because it would drastically curtail the possibility of

providing services to dogs in a home because all activities in a home would be governed by home boarding. As a result, each dog would require its own room even if it wasn't staying overnight and the licensee couldn't take advantage of the different scheme of regulation for daycare. There would be stringent conditions with which the licensee would have to comply. In terms of the general restrictions on day care it would be restricted to the numbers on the licence, so again the local authority could say yes you can have a day care, yes, it is a home, but you're only allowed 10 dogs for example. There would also be a requirement of adequate staff as well, and that is clear from the general conditions in paragraph 4. In terms of the specific conditions, there would also need to be a suitable environment as defined in the 2018 Regulations, a suitable diet, and records would need to be kept of the dogs as well. The Appellants submit the 2018 Regulations do not preclude, nor does the guidance preclude the provision of daycare in a residential dwelling. There would have been clear opportunities in the 2018 Regulations to do so and it is conspicuously absent from the text and the guidance, when read as a whole, and in particular the kennels guidance, does not impose such a limit.

69. The Appellant then refers the Tribunal to the kennels guidance document, which is on page 330. Again, there is a section that sets out the scope at page 332 it says: "*- - businesses that provide day care for dogs and do not keep them overnight - these are under the scope of day care facilities*". And at p.226, it says: "*To be in scope, they must provide housing for other people's dogs at home for a day and overnight stays (home boarding)*". The Appellant argues this clearly reiterates the point that this needs to be provided in a domestic home.
70. The Appellant argues that the guidance is clearly saying that if you don't keep the dogs overnight that is daycare and as daycare there is no restriction on where that daycare can be provided. If the Respondent were correct in its interpretation, one would expect the guidance to say businesses other than in homes that provide daycare for dogs and do not keep them overnight, these are under the scope of dog daycare facilities, but that is not what it says. The Appellant argues this coheres with the text of the 2018 Regulations and it also provides context to the daycare guidance with which it must be read.

Conclusion:

71. At this stage the Tribunal having considered the above submissions accept and adopt those submissions made by the Appellant and is persuaded that the Appellant is correct in those submissions made under Ground 1 that the Respondent was wrong and erred in law when finding a dog day care licence cannot be granted for a residential dwelling/home without expressing adequate reasoning or that decision.
72. The Tribunal is of the view that the Appeal on the most fundamental basis should succeed in that the reasons given in the refusal are inadequate. The reasons provided to support the refusal were that the decision is in accordance with statutory guidance that all licensing authorities must adhere to, specifically 'Home Boarding for Dogs Licensing Statutory Guidance for Local Authorities' and 'Dog Day Care Licensing

Statutory Guidance for Local Authorities - Therefore, the Local Authority has decided to refuse your application. At no point has the Respondent authority clearly explained on what basis it has reached the view that as a matter of its discretion the premises is a residential dwelling.

73. The Appellant has demonstrated that the bland assertion that a dog day care licence cannot be granted for a residential dwelling/home simply cannot be said to be justified by relying on their generic interpretation of the guidance under which they must consider any application as explained above.
74. That is not to say there are no other grounds for considering in any further applications from the Appellant or any applicant (and the Respondents have properly raised such situations which may pertain e.g. to holding two licences on the same premises, the number of dogs kept etc,) and further in the Respondent or any like authority specifying the particular grounds for refusal in each case rather than a generic reliance on the guidance. This would provide consistency and thereby demonstrate fairness in their regulation of all applications coming before them.
75. The Appellant has invited the Tribunal to grant the application but that would not be appropriate either. The Respondent clearly has issues to decide on a number of fronts such as the domestic use of, and nature of the premises, the conduct of the applicant and the granting of more than one licence to premises etc.- all reasons that may have played a part in a lawful refusal but in this instance did not on the face of the reasons provided in this case, as so comprehensively demonstrated by Mr Rhimes on behalf of the Appellant in his submissions in this appeal. The Tribunal find that the for the good administration and consistency in decision making, not just within Ealing, but across all licensing authorities in this area of regulation which the Respondent properly aspire to present to the public they need to provide more specific and pertinent reasoning in any refusal.
76. Mr Fitzsimons on behalf of the Respondent Council very properly and fairly indicated to the Tribunal that if this Appeal is allowed, the Respondent will look at all the facts and he has recognised the right decision on remedy would be to send it back to the Respondent Council to look at the full decision on the facts were the Appellants application to be considered afresh.
77. This would be in congress, with a view to the suggestion made by the Tribunal that the parties carefully consider the matter further in the light of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009

Overriding objective and parties' obligation to co-operate with the tribunal

- 2.— (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.
- (2) Dealing with a case fairly and justly includes— (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
- (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
- (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
- (d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it— (a) exercises any power under these Rules; or

(b) interprets any rule or practice direction.

(4) Parties must— (a) help the Tribunal to further the overriding objective; and

(b) co-operate with the Tribunal generally.

Brian Kennedy KC

22 November 2024.