



NCN: [2024] UKFTT 00527 (GRC)

Case Reference: WA/2024/0005/ALI

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

Heard by: GRC Remote Hearing Rooms

Heard on: 22 April 2024

Decision given on: 24 June 2024

Before

TRIBUNAL JUDGE CHRIS HUGHES OBE

Between

KENNETH LODGE

Appellant

and

ROYAL BOROUGH OF GREENWICH

Respondent

Representation:

For the Appellant: in person

For the Respondent: Asitha Ranatunga (instructed by Chirs Riley, legal department Royal Borough of Greenwich)

Decision: The appeal is Dismissed

Case:

**Hope and Glory Public House Ltd, R v City of Westminster Magistrates Court & Ors
[2011] EWCA Civ 31**

REASONS

1. Since 1 October 2018 the activities of pet shops have been regulated by the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018.
2. The Appellant in these proceedings has run a pet shop for over 20 years in Eltham in Greenwich. Since the coming into effect of those regulations he has had some difficulty in his relations with the licensing authority, the Royal Borough of Greenwich, which refused to renew his application for a renewal of his licence on 26 May 2021. The Appellant appealed and this tribunal upheld his appeal allowing him a licence for another 12 months from 6 September 2021. In the judgement the tribunal. In that decision the tribunal discussed the various concerns of the local authority (LA) including the improvement notice it had served, the breaches of various conditions of licence it had identified, the small scale of the business, its lack of staff and the formal records required by the conditions of the licence. The judge found:

“24. Mr Lodge clearly feels aggrieved and refers to other pet shops being treated differently. I have no evidence of this before me. Mr Lodge complains that the inspectors were too confrontational but fails to recognise the statutory role of the inspectors and the Local authority in ensuring that there is compliance with the requirements of the 2018 regulations. I understand that Mr Lodge has been provided with copies of the regulations and the guidance on several occasions. He has been in business for 18 years and believes that his experience and the fact that he has not previously encountered any animal welfare issues or concerns with the authorities should weigh strongly in his favour.

25. Having looked at the history of this matter, I can see that the appellant was alerted very soon after the 2018 regulations came into force that the business was not compliant with the new regime and were it not for the Covid situation I would probably find that he had been given sufficient time to put his house in order. But the Covid pandemic must be factored into this appeal because it impacted on the inability of the Council to give reliable dates for inspections and thus reliable timescales for compliance.”.

3. In his concluding remarks the judge commented that the inspectors were concerned with the failure of Mr Lodge to engage with them and to take appropriate action to comply with the regulations but concluded:

(12) The inspectors have recommended refusal but there is no evidence that alternatives such as a variation or a measure short of outright refusal such as a grant subject to conditions were considered Reference is made to refusals to accept advice and it may be that Mr Lodge feels that given his experience he does not need to be told how to run his business. But he must appreciate that the LA and the inspectors are carrying out their statutory duties and it would be better for all concerned if he worked with them in meeting the requirements of the Regulations rather than deny the extent of the changes brought in by the Regulations and the need to change his own business practices

33. For the above reasons, I have concluded that given the nature and the extent of the remaining concerns of the inspectors as at the final inspection of April 2021, the refusal of the renewal was a disproportionate response to the concerns and went further than was necessary to ensure that the requirements under the Regulations were being met and will continue to be met in the Appellant business. Consequently,

the appeal is allowed and the licence should be renewed subject to the conditions set out in the first paragraph of this decision.

4. The Judge's decision that decision enabled Mr Lodge to continue trading despite his failure to comply with the terms of his licence was explicitly made on the basis that

"were it not for the Covid situation I would probably find that he had been given sufficient time to put his house in order".

5. In the subsequent period the licensing authority carried out inspections including on 19 September 2023 it then, by a letter from the relevant Greenwich officer Ruta Svagzdiene of 20 December 2023 notified Mr Lodge of its decisions not to grant a renewal of the licence:

"I am writing to inform you of the outcome of the licence renewal inspection, which took place on 19 September 2023. The purpose of this inspection was to assess compliance with the statutory conditions for Selling Animals as Pets under the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018.

The Royal Borough of Greenwich has taken the decision to refuse the renewal of the Animal Welfare Licence for Pet Lodge. The rationale for reaching this decision is explained briefly below and in detail in the enclosed City of London's Animal Health inspectors' report and its recommendations following the inspection of the above premises on 19 September 2023.

Having had received the report, we considered the stepped approach by removing some species of animals from the licence only. However, since the minimum standards under the above Regulations had not been met for any animals, we were not in a position to do that."

6. The inspection report is extensive. The brief explanation in the letter detailed shortcomings in the conditions in which many groups of animals were kept, non-compliance with not simply with licence conditions but with the pet shop's own procedures. The letter referred to a previous visit which found serious deficiencies

"Additionally, complaints relating to non-compliances and welfare issues have been received and investigated by the Official Veterinarian, Animal Health Inspector (AHI) and I on 31/08/2023 as above. At the time of this visit in addition to non-compliances, serious animal welfare issues were found and a Section 10 Notice was served."

7. Mr Lodge appealed against the decision. He criticised the inspectors claiming that they had been rude and failed to treat him with respect as a business owner. He had a good reputation and cared for the animals and he had been brought down by the malicious and criminal actions of a former employee who had opened a pet shop nearly just after he had lost his licence. He claimed one of the inspectors had said that she wanted to close him down, that they had failed to accept his expertise, had been unable to use instruments properly, that he always managed feeding and cleaning water bowls properly but could not attend to it when engaging with inspectors for prolonged periods,

“I want to make it abundantly clear that I am extremely confident in my knowledge and care for animals. This appeal has been nothing short of a biased attack, fueled by false information and aimed at character assassination.”

8. The evidence on behalf of the Respondent related to the full licensing history under the 2018 legislation. The evidence of Jack Theobald (a City of London Animal health and Welfare officer) from 2021 dealt with advice and support given to Mr Lodge to enable him to comply with the new law, the opportunities for compliance and events during a visit in April 2021:

“Mr Lodge was also reminded that he had been given extensive advice already, but this had extended to offers of checking anything he put together, but he had failed to make use of this. He offered no excuses at the time of inspection for the continued non-compliances although he did sarcastically question the relevance of conditions, he was found to not be compliant with”

9. This evidence was unchallenged by Mr Lodge. Kate Ford, also of that service, gave evidence which confirmed Mr Theobald's. Mr Lodge was dismissive and claimed that it had “never been clear exactly what was wanted, I don't feel I had support, they should have been clearer. “ He stated that he had spoken to other owners in the borough who agreed with him.
10. Extensive written and oral evidence of inspections in 2023 was given by Jennifer Newitt (a veterinary inspector employed by the City of London) Ms Sarah Moran and Ms Ruta Svagzdiene who had inspected the licensed premises on 31 August (a welfare visit) as well as the inspection visit of 19 September.
11. The first visit arose out of a customer complaint about an unwell gecko. In breach of licence conditions Mr Lodge could provide no details of the acquisition or other welfare information. Further welfare issues related to a gecko which had been unwell for two months where two breaches of the licence were identified and a bird with an undiagnosed problem with its wing, which had not received treatment again a breach of licence conditions, further breaches were identified with respect to the provision of water and environmental enrichment for several species. On the second visit there was some improvement, however Ms Newitt concluded:

“From these two visits, I have concerns around the license holder's ability to identify and suitably manage animal welfare issues in relation to poor health and injury. This seemed to particularly apply to amphibia and reptiles from my observations, with the additional disregard to meeting the husbandry needs of these animals.”

12. Ms Moran in her statement identified multiple breaches of licensing conditions including:

“Mr LODGE said the Leopard Gecko was a relinquished pet that was put up for sale. When asked to see specific records for the Leopard Gecko, that included dates of arrival and any notes on the condition of the animal, but none were produced. A monitoring form was produced for the time period that the Leopard Gecko was on the premises, and identified only by vivarium number where the animal was housed and

not the individual animal, it was housed with one other Leopard Gecko. Ticks on the monitoring form indicated that the animals had been fed, not that it had eaten, watered and health check completed. No notes were made on the poor health of the animal in question. No veterinary treatment had been sought for the Leopard Gecko throughout its stay. Mr LODGE and Ms LABRAM said that the Leopard Geckos were fed every two days but were not aware if the animal in question was eating and they both were aware that the animal was underweight”

13. She confirmed that no adequate staff training had been carried out and staff lacked the necessary knowledge of animal welfare issues. She stated:

“At the conclusion of the inspection, I went through with Mr LODGE, the issues we found at this and previous inspections. I advised that he was failing to meet minimum standards, and the welfare issues we found at the previous inspections were serious and I would present my report and recommendations to the Royal Borough of Greenwich following review and completion of my report. I left Mr LODGE with an inspection record”

14. She concluded:

“Reviewing my reports over the last year, I came to the recommendation to refuse the renewal licence of The Pet Lodge. My inspection report and recommendation was sent to Royal Borough of Greenwich on the 12th of October 2023, email is Exhibited as SMPL21. I believe that Mr LODGE has shown repeated failings and a disregard for The Licensing of Activities Involving Animals (England) 2018 Regulations and Statutory Guidance, animal welfare has been put at risk as evidenced in my inspection report of 31st of August 2023 and I had no option but to recommend refusal of the licence.”

Consideration

15. The case put forward for Mr Lodge is that he has put his heart and soul into the business and he has been sabotaged by a former friend/employee. A lot of things were out of his control but there was no welfare issue. He feels that he has worked hard, that he has sometimes made mistakes, it is his life, and he would do nothing to harm animals. He presented a letter of support from one of his customers and reference was made to a petition in support of him. In an email of 23 February 2024 he claimed that he was open to accepting assistance.
16. The evidence from the Royal Borough of Greenwich and their colleagues in the City of London is clear, comprehensive, detailed and clearly demonstrates the profound problems. It is clear from Mr Lodge’s approach that he does not accept the legitimacy of the regulatory framework designed to secure the welfare of animals which he sells. Despite considerable support over many years there is a consistent pattern of non-compliance with obligations as to record keeping, conditions in which animals are kept, seeking veterinary assistance for sick animals and ensuring appropriate skills in those engaged with the animals. Mr Lodge has shown little interest in improving the conditions for animals he has responsibility for and little regard for his obligations.
17. In the leading case on appeals against local authority licensing decisions *Hope and Glory*, Lord Justice Toulson said:

“It is right in all cases that the magistrates' court should pay careful attention to the reasons given by the licensing authority for arriving at the decision under appeal, bearing in mind that Parliament has chosen to place responsibility for making such decisions on local authorities ...The weight which the magistrates should ultimately attach to those reasons must be a matter for their judgment in all the circumstances, taking into account the fullness and clarity of the reasons, the nature of the issues and the evidence given on the appeal.”

18. I am satisfied that the Greenwich have fully discharged the evidential burden upon them and made the correct decision. The evidence of persistent failure to comply with obligations as to the welfare of a wide range of animals is such as to require me to dismiss this appeal.

Signed: Hughes

Date: 6 May 2024

Promulgated on: 24 June 2024