



NCN: [2022] UKFTT 500 (GRC)

Case Reference: WA/2021/0015

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

**Heard by: Cloud Video Platform Hearing
Heard on: 12 April 2022
Decision given on: 13 June 2022**

Before

TRIBUNAL JUDGE J FINDLAY

Between

YVONNE WALTHAM

Appellant

and

MEDWAY COUNCIL

Respondent

Representation:

For the Appellant: Ms Y Waltham, Appellant
Miss K Price, Manager of Benjamin Rabbit Nursery
Miss L-P Partis-Elsworth, Supervisor for the Appellant

For the Respondent: Mr V Krishnan, Counsel for the Respondent
Ms S Foster, Environmental Protection and Animal Licensing Manager
Ms R Roberts, Environment Protection Officer

DECISION

The appeal is dismissed. The Decision dated 1 November 2021 refusing the application for a licence to provide day care for dogs is confirmed. The granting of a licence would negatively affect the health and safety of the dogs in the care of the Appellant because the day care would operate from the same premises as the Benjamin Rabbit Day Nursery for children.

REASONS

1. This has been a remote hearing on the Cloud Video Platform (“CVP”) which has been consented to by the parties. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a CVP hearing. I have considered a bundle of 845 pages (electronic bundle of 473 pages), heard submissions from Ms Waltham, the Appellant, and Mr Krishnan and evidence from Ms Waltham, Miss Price, Miss Partis-Elsworth and Ms Roberts.

Background

2. Ms Waltham lodged an application for a licence to carry on the activity of providing day care for dogs trading as A Dog’s Life at 18 New Road Avenue, Chatham, ME4 6BA (“the premises”) on 7 July 2021. She originally indicated that the maximum number of dogs would be 16 but wishes to amend this to 12.
3. An inspection was undertaken by agreement on 15 September 2021 by Ms Roberts, an Environmental Protection Officer with the Respondent and Ms Le Core.
4. On 1 November 2021 the Respondent made a decision to refuse the Ms Waltham’s application for a licence to provide day care for dogs on the grounds that granting a licence will negatively affect the health and safety of the dogs in the care of the Ms Waltham. This is because the dog care facility would operate from the same property as the children’s nursery and the property is not suitable to operate both businesses.
5. Ms Waltham lodged a Notice of Appeal on 17 November 2021.

Notice of Appeal

6. Ms Waltham appealed on the grounds that the nursery business was totally separate from the dog care business even though they shared the same entrance.
7. A lot of work has been done to ensure that the dogs and the children are safe when arriving and leaving through the shared entrance.
8. She has prepared a multitude of assessments and policies to ensure the safety of dogs, staff, children and the public.
9. She submitted all her policies and risk assessments to show that all the dogs in her care would be safe and well catered for.
10. The staff are trained to level 5 which is the highest level and all have their own dogs or other animals and have the necessary higher level diplomas required to ensure the safety of the dogs and others both inside and outside the building.
11. She would not accept a dog into day care that was not fully insured, fully vaccinated, not on a worming and defleaing programme and not microchipped. The application form is more detailed, more safety conscious and at a higher level than others operating in this arena.
12. Although she originally wished to apply for 16 dogs she wishes to amend this to 12 medium and small dogs to ensure maximum space and controllability.

13. The size of the indoor space is over 2500 square feet. She would undertake a full behavioural analysis of any dogs under the settling in policy coupled with the comprehensive information in the application form prior to accepting a dog.
14. There would be sessions to introduce the dogs prior to acceptance to ensure compatibility and to control any excessive noise factors.
15. Every effort would be made to ensure the safety of the dogs.
16. The staff of the nursery and the A Dog's Life support the dog day care as would provide much needed support for them because many employees bought dogs during the furlough and there are parents who would also like to use the dog care service
17. The service will be small and selective with the safety of the dogs and children being paramount.

Grounds of Opposition

18. There is a small, slabbed frontage area which is part of the premises where the customers for the nursery and the customers for the dog day care would wait prior to entering. Ms Waltham stated that this area will be separated into business areas and it will be the responsibility of the parents and dog owners should an incident occur. The area provides no shelter from the weather. The premises do not allow for any separate entrance or waiting area.
19. The application was refused because it was felt that the granting of a licence would negatively affect the health and safety of the dogs in the care of the business.
20. Although Ms Waltham has supplied additional procedures there is an insufficient risk assessment for the area of land at the front of the premises. This would be the area of high risk particularly as parents arrive with both their children and dog(s) at the same time. There is no consideration for times of poor weather or where a parent may not be able to drop off or collect at the detailed time.

Conclusions

21. Ms Waltham has clearly put in a great deal of work, effort and careful thought about how the proposed dog care business will operate at the premises. I found her to be a credible witness who struck me as doing her best to give an accurate account of the proposals for the A Dog's Life business. She was clearly intelligent and understands the difficulties in running the two businesses from the same premises and has worked very hard to produce thoughtful and comprehensive policies and procedures to deal with the issues that arise from juxtaposition of two quite different businesses and the risks which could arise.
22. Ms Waltham has objected to Ms Roberts speaking to someone at Ofsted without her permission and sharing the risk assessment. Any complaints about any employee of the Respondent is a matter for Ms Waltham to take up with the Respondent.
23. Ms J-S Gillingham, an employee of Ms Waltham, completed the Risk Assessment relating to child-dog interactions dated 15 September 2021. She indicated that the nursery opens at 7.30 am and A Dog's Life opened at 8.30 am. The nursery children would arrive at any time from 7.30 am to 8.30 am. The nursery parents would be aware that dogs would be entering the building and be asked to stay to the right of the front door and the owners of dogs would be asked to stay

to the left of the front door. Once the time of individual drop off times for the dogs was known it was intended that specific timetables could be set out for both the nursery children and the dog owners. It was intended thereby to establish different entry times which would reduce likelihood of child-dog interactions and reduce the associated risks. Children arriving at 7.30 a.m. would be directed to the parent room before going to their own rooms at 8.30 am. The door of the parent room would be kept shut. It is intended that children would be taken downstairs at a separate time from which owners would be bringing their dogs. No children would be allowed in the hallway at 8.30 am but in the event of a late departure the dogs would not be allowed in the building until the children had gone downstairs. Overall the nursery children and the dogs should not cross paths due to separate timetables. The children would be spoken to and told not to go near any dogs and would be told how to behave appropriately around dogs. While in day care the dogs would be exposed to loud noises and unfamiliar situations in desensitisation training to help them to become accustomed to the nursery/dog day-care environment.

24. A member of staff would always be present and check the hallway for dogs entering. Nursery staff would ensure that all nursery children had been directed downstairs and a check made before leaving the area that no children had been left behind or had gone back upstairs alone. Children from the nursery would never be left unattended in the hallway. Dogs should never be left unattended in the hallway. Children and dogs should never be left unattended in the hallway. The staff would be trained and aware of their responsibilities to clean up any mess with suitable cleaners.
25. Ms Waltham indicated in the claim form that all the dogs would go out for exercise a minimum of 3 times daily if staying all day. I found that the premises are situated on a busy section of the A2 and there are double yellow lines on the road in front of the premises. There is a small, slabbed frontage area in front of the premises. The area has no shelter from the weather. The premises do not allow for any separate entrance or waiting area.
26. I found that Ms Waltham proposes to operate the dog care business on the first floor. The dogs would be taken through the shared corridor, up the stairs and through a double entrance door. There are several activity rooms and a quiet room. There is no outside area available to the dogs on the premises and it is intended that the dogs would be taken on regular walks. The ground floor of the premises is used by the Benjamin Rabbit Day Nursery which is owned by Ms Waltham and the dog care business would be a separate business. The front door has key code access.
27. I found that Ms Waltham proposal is to employ 3 members of qualified staff initially and the dogs would be walked a minimum of 3 times daily if remaining all day to the local park and local area. Ms Waltham hopes to have volunteers to assist with the dogs. Ms Waltham stated that she had access to two fields which were a car ride away and walking in these fields would be put into operation once the day care business was established. The plan was to provide a van pick-up and drop off service and grooming service at a later date.
28. It is proposed that A Dog's Life would offer a full day care and sessional am and pm day care and separate sessions for puppies.
29. If the dogs were taken out 4 at a time, as Ms Waltham proposes, it would involve going out through the shared entrance 9 times during the day and coming back in through the shared entrance 9 times during the day if 12 dogs were accommodated. Each dog would, in addition, enter and leave the premises every day which would mean dogs would be in the shared hallway a minimum of 42 times. Ms Waltham told me that each dog would be escorted on its own into

the day care centre by a member of staff who would meet the dog at the door. Ms Waltham intends to take puppies and Ms Waltham told me that puppies would be taken up and down the stairs individually and exercised on their own rather than in a group of 4 dogs. It is likely that the dogs would need on occasion to exit the premises for toileting more frequently than 3 times a day and, accordingly, the estimate of 42 times is a conservative estimate.

30. I found there is a 2000 sq. ft bright airy space with windows and natural ventilation.
31. I found that initially the proposed pricing strategy would be for a full day session or a morning session (8.00am to 12.00pm) or an afternoon session (1.00pm to 5.00pm). There was provision for late collection charges of £3.00 for every fifteen minutes over the expected collection time. Arrangements would be made to kennel the dogs at the owner's expense in the event of the dog not being collected by 6.00pm. The proposed plan recognised that on occasions owners are unable to adhere to previously agreed timings.
32. I found that Ms Waltham's proposal was for the children attending the nursery to be received between 7.30 am and 8.30 am and the dogs to be received from 8.30 am onwards. Ms Waltham told me that she intended to be strict about the timings and this would ensure that the dogs and children would be apart when arriving. I find this was unrealistic because there will always be occasions when dogs will be delivered early and children will be delivered late. It is unrealistic to think that the arrival of dogs and children will not overlap whatever plans have been made. Ms Waltham told me that 3 or 4 members of staff would be bringing their dogs for day care and would get advantageous rates. For example Miss Partis-Elsworth would arrive with her dog at 8.15 am. The members of staff work shifts and the arrival times will vary. In my view this would increase the risk of children and dogs coming into contact.
33. I found that the staff of A Dog's Life and Benjamin Nursery had been made fully aware that the children and the dogs must not come into contact but the reality of people's behaviour will mean contact is unavoidable. She said that the staff would use walkie talkies to communicate and ensure there were no children in the corridor when the dogs were brought down for their walks. She did not accept that the dogs and children would come into contact. I found that the risk of contact between the children and the dogs cannot be eliminated.
34. Ms Waltham told me that the dog owners and parents would stay in different parts of the courtyard which would be fenced off appropriately. I found that this plan did not take account of the size of the courtyard and the inclement weather. The courtyard has no shelter and it is unrealistic to expect people to wait with children or dogs in wet and cold weather. Ms Waltham told me that those bringing children and dogs were responsible for the children and dogs in the area from the pavement to the door. Although Ms Waltham told me that the courtyard would be cleaned at the end of each day, I found that there would be an increased risk of dog excrement being in the courtyard because, under the proposals, owners of dogs would be waiting outside for periods of time. Although the staff would clean up any dog faeces in the courtyard every day there is an increased risk of faeces being on the ground in the courtyard with a risk of slippage and harm to health.
35. I found that the proposals did not take account of the fact that some people, for convenience, will wish to use the nursery facilities for their child and the dog care facilities for their dog. They will wish to drop their child and dog off at the same time and it is wholly unrealistic to expect them to either make the delivery at different times or wait outside, particularly if the weather is inclement. I found it unrealistic to expect dog owners to go away and come back if they arrived earlier than expected.

36. Ms Waltham told me that she would not accept dogs with behavioural problems. Ms Waltham stated that the Terms and Conditions showed that aggressive behaviour would not be tolerated. She stated that she had everything in place to ensure that there would be no dogs with aggressive traits.
37. I found that however carefully Ms Waltham vets and assesses the dogs in relation to their behaviour prior to agreeing for them to attend the day care there is a risk to the dogs reacting negatively when coming into contact with unfamiliar young children who may themselves be fearful or excited. It is not possible to predict how every dog, however placid, will react to every situation and an owner may not be aware of how their dog will react in every situation until that situation is encountered. Whatever information children are given they will wish to touch and get near to the dogs. Ms Waltham admitted that children could be unpredictable but not unruly. Some children are afraid of dogs and some dogs even if not aggressive can become disturbed if near children. I found that any contact had the potential to create a risk of harm for the children and the dogs.
38. Page 385 sets out the questions that would be asked of owners prior to them being accepted about the dog's behaviour and Ms Waltham stated she expected people to answer honestly but she would rely on her observations of the dogs and she would stop a dog coming if there were behavioural problems. I found that until Ms Waltham and her staff had observed a dog and assessed it they could not be sure about its nature. Taking into account my findings in relation to contact my view is that there is a real risk of harm being caused however thorough are the procedures and policies. It is impossible to accurately predict how every dog will react to a situation until that dog has been put in that situation. I find that there is a real risk of a child being injured, frightened or harmed while those wishing to use the facilities are congregating outside.
39. Ms Waltham said that in the event of an emergency evacuation both the dogs and children were the priority but the babies would leave the premises first. In the event of an emergency evacuation the children go out to the playground and the babies would be brought out of the front door in emergency cots. The dogs would be taken down the stairs and this would be done in 2 minutes. Miss Prince told me that she did not think there was any delay in evacuating the dogs when a fire drill and practice emergency evacuation was undertaken. She told me that by the time the babies were by the door the dogs had their leads on and were ready to go. I do not accept that in the event of an emergency evacuation the children and the dogs take equal priority. This is unrealistic. Inevitably, and quite rightly, the children will take priority in the event of an evacuation. The babies would be evacuated in emergency cots through the front door and the dogs would need to wait until this was done. I found that this would negatively affect the health and safety of the dogs.
40. Ms Waltham told me that she had not contacted Ofsted at the time of the application because there was no need to do so before a licence was granted. I accept this but it does not assist Ms Waltham.
41. I have considered the Risk Assessment very carefully and Ms Waltham's evidence confirming the proposals. Ms Waltham submitted that the risk of the children and dogs coming into contact had been eliminated. I do not accept this. The risk of contact cannot be eliminated. I found that there was a risk of children and dogs coming into contact either in the shared hallway or at the door or in the courtyard whatever procedures are put in place.

42. Ms Waltham told me that the children attending the nursery are aged from 3 months to 5 years and there could be up to 72 children a day over half term which was up to full capacity. Normally there would be 60 children. It is unrealistic to think that 60 children will all arrive within the designated time before 8.30 am. I find it is unrealistic to imagine that any timetable for drop off times for children and dogs will be adhered to at all times.
43. It is to be expected that some parents will wish to deliver their child or children and their dog at the same time. It is likely that children will be delivered late and dogs will be delivered early. It is wholly unrealistic to expect dog owners or parents to wait outside until they can be escorted in when there is no covered waiting area.
44. Ms Waltham told me that there is space for private parking at the back of the premises and 2 nearby public car parks. If someone wanted to drop of a child and a dog, although system was not yet set up, she envisaged them coming at different times. I found this wholly unrealistic taking into account the restricted parking in the immediate vicinity of the premises.
45. She told me that the primary concern was to make sure the children were safe. And if there were any concerns she would stop the business. I found it would not be appropriate to grant a licence on the understanding that the business would cease if there was a problem.
46. I found that in inclement weather it was likely that the dogs would return to the premises muddy and wet after exercise and would be likely to shake themselves upon entry to premises. Ms Waltham told me that the dogs would be dried off and cleaned upstairs. This means that they would walk through the shared hallway with wet and muddy paws on at least 42 occasions on a wet day. I found that it was unrealistic to think that the mess could be immediately cleared up on every occasion. Water and mud on the floor would create a risk for the staff and the children.
47. I found that there was a risk of contact between the children and dogs in the courtyard. Ms Waltham told me that it was the responsibility of parents to keep the children and dogs apart, that parents and dog owners were responsible for what happened from the pavement to the door and they would be made aware of this. If parents and children are gathering and waiting outside and owners of dogs are waiting outside they will inevitably talk to one another and there is a risk of contact which could be dangerous for the dogs and the children. It is unrealistic to think that parents and dog owners will wait separately in line and not mix.
48. The day care centre intends to take puppies of 12 weeks and use a grass toilet which would be put in plastic bags and carried through the hallway to bins outside. I found that this is a potential risk to the health of the children who would be using the same hallway.
49. In summary, I found that the premises are not suitable to accommodate a nursery and a dog care business due to the shared entrance.
50. I found the risk of harm to the children cannot be eliminated.
51. I found that the granting of a licence would negatively affect the health and safety of the dogs.
52. I confirm the decision to refuse the licence.

Signed: J Findlay

Date: 12 April 2022

