



Neutral Citation Number: [2025] UKUT 248 (AAC)
Appeal No. UA-2024-000518-GOR

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

Christopher Richardson

Appellant

- v -

Oldham Council

Respondent

**Before: Upper Tribunal Judge L. Joanne Smith
Decided on consideration of the papers**

Representation:

Appellant: Litigant in Person

Respondent: In-house representation

On appeal from:

Tribunal: First-tier Tribunal (General Regulatory Chamber)

Tribunal Case No: WA.2023.0012

Tribunal Venue: Remote Hearing

Decision Date: 12 December 2023

SUMMARY OF DECISION

The Appellant's application to renew his licence to sell animals as pets, under the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018, was refused by the Respondent as it was not satisfied that the Appellant would adhere to the licence conditions. The First-tier Tribunal dismissed the appeal and upheld the decision of the Respondent. Permission to appeal was granted by the First-tier Tribunal on the question of whether the Respondent should have prepared policy documents to interpret the statutory guidance on licensing, the contents of which was disputed by the Appellant and gave rise to the decision to refuse his licence application. Appeal dismissed – no material error of law in the First-tier Tribunal decision. No obligation on local authority to produce guidance to interpret Statutory Guidance.

KEYWORDS: General Regulatory (98); animal welfare; licensing; statutory guidance

Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the judge follow.

DECISION

The decision of the Upper Tribunal is to DISMISS the appeal.

REASONS FOR DECISION

Introduction

1. This is an appeal brought by Mr Christopher Richardson (“the Appellant”) against a decision of the First-tier Tribunal (“FtT”) sitting remotely on 7 September 2023. By a decision dated 12 December 2023, the FtT dismissed the Appellant’s appeal against the decision of Oldham Council, dated 5 April 2023, to refuse his application for a licence under the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 (“LAIA Regulations”).

Factual background

2. The Appellant is the operator of Living World Pets, Oldham. He had been operating under a licence to sell animals as pets and which was due to expire on 16 November 2021. On 17 September 2021, the Appellant applied to the Respondent to renew the licence. After several emails back and forth between the parties to complete the necessary paperwork, on 19 July 2022, a Senior Trading Standards Officer (“STSO”) carried out an inspection of the premises. The STSO determined that the Appellant needed to undertake certain actions to ensure the licence conditions and statutory guidance would be met before renewing the licence. An inspection report was produced and the STSO worked with the Appellant over the following number of months to assist him to make changes to demonstrate compliance.
3. In particular, the Respondent asked the Appellant to amend the wording on some of his business policy documents which, in the opinion of the Respondent, contradicted the statutory guidance and the general licence conditions, as set out in Schedule 2 to the LAIA Regulations. The Appellant was not willing to remove or amend this text as he disagreed with it. On 5 April 2023, the Respondent issued a Notice of Refusal on the grounds that it was not satisfied that the licence conditions would be met. It is a requirement for the grant of a

licence under Regulation 4(2)(b)(i) of the LAIA Regulations, that the licence conditions will be met.

4. On 13 April 2023, the Appellant lodged a notice of appeal and on 17 May 2023, he applied for a stay of the decision pending appeal. The latter was treated as an application for an order under Regulation 24(3) of the LAIA Regulations to allow him to carry on a licensable activity pending appeal. This request was granted by the FtT on 19 July 2023.
5. The Appellant raised several matters before the FtT, including his disagreement with the Respondent's interpretation of the statutory guidance and especially the animal enclosure ratio which he felt was "far from reality". He also felt that his paperwork demonstrated a five-star business and the Council's offer of a three-star licence, made prior to the refusal decision, demonstrated a lack of understanding of the industry and of the statutory guidance.

The First-tier Tribunal's decision

6. The FtT prepared a detailed decision, dated 12 December 2023, to explain its dismissal of the appeal. From reading the decision, the FtT found six reasons why the refusal decision of the Council should stand (see paragraph 41 of the decision), including the fact that some of the written procedures provided by the Appellant included commentary which the STSO found at odds with the standard licence conditions and the statutory guidance. The FtT found that the Council was correct to determine that the Appellant's policy documents contradicted the statutory guidance (paragraph 51 of the decision). While the FtT accepted that the Appellant had extensive experience in caring for animals, including writing books, it found that the Appellant had not accepted the feedback from the STSO, and by refusing to amend the wording in his policy documents as advised, had made a conscious decision not to comply with the licence conditions and the statutory guidance (paragraph 46 of the decision). Furthermore, the FtT found that "Mr Richardson in his written and oral evidence has made clear... that he is not willing to adhere to the licence conditions and Guidance" (paragraph 52 of the decision).
7. The FtT found that it was unlikely that the Appellant would comply with the licence conditions (paragraph 46 of the decision) which therefore provided grounds for the Respondent to refuse the application for a licence. The FtT concluded that "the decision [of the Respondent] was correctly made" (paragraph 42 of the decision), stating that "Mr Richardson does not agree with the current statutory licence conditions... however, if he wishes to obtain a licence he must adhere to those conditions" (paragraph 71 of the decision).

The grounds of appeal

8. On 6 January 2024, Mr Richardson applied to the FtT for permission to appeal its decision to the Upper Tribunal, on the following grounds:
 - a. His appeal has never been about him following procedures
 - b. There is an obligation on the Respondent to provide written policies and these were not before the Tribunal when determining the appeal
 - c. Without written policies operators have no way of knowing if the Respondent has abused its position
 - d. He followed the Guidance to the best of his ability
 - e. There are options when interpreting the Guidance and without written policies the Respondent must accept all interpretation
 - f. Without written policies there may be abuse by the Respondent in future
 - g. The Respondent should put something in place to assist those with disabilities
9. Permission to appeal was granted by the FtT, on 26 January 2024, on the following sole ground of appeal:

“5. The point raised by Mr Richardson regarding the obligation on the Respondent to produce written policies has wide implications for all local authorities as the licensing authorities for licensable activity under The Animal Welfare (Licensing of Activities Involving Animals)(England) Regulations 2018 and the direction of the Upper Tribunal is required on this point.”

Based upon the grant of permission to appeal, the Upper Tribunal has confined itself to addressing points b, c, e, and f of the above grounds of appeal.

Legal framework

10. The Animal Welfare Act 2006 (“the Act”) makes provision about the welfare of animals. Under s.13 of the Act and Regulation 2 and Schedule 1 of the Animal Welfare (Licensing of Activities Involving Animals)(England) Regulations 2018 (the “LAIA Regulations”), selling animals as pets is a licensable activity. Part 2 of the LAIA Regulations, which were created by the Secretary of State for the Department for Environment, Food and Rural Affairs (“DEFRA”) under s.13(7) of the Act, makes provision for the grant, renewal and variation of a licence, as well as the process involved in an application.

11. The Local Authority (Council) with governance over the area within which the licensable activity is proposed to take place, is responsible for dealing with licence applications (Regulation 3(2) of the LAIA Regulations). It must have regard to any guidance issued by the Secretary of State in carrying out its functions under the LAIA Regulations, including the determination of an application for the grant, renewal, or variation of a licence (Regulation 14 of the LAIA Regulations). All licences granted or renewed are subject to the licence conditions (Regulation 4(9)) which includes the General Conditions set out in Schedule 2 of the LAIA Regulations, and any relevant Specific Conditions, dependent upon the activity being licenced, as set out in Schedules 3-7.
12. Upon receipt of a complete application for the grant or renewal of a licence, the Local Authority must appoint a suitably qualified inspector to carry out an inspection of the premises on which the licensable activity is being or will be carried out (Regulations 4(1) and (2)(a)). Where such an inspection has been arranged, the inspector must prepare a report which contains information about the operator, the premises, relevant records, the condition of any animals, and any other relevant matter. The report must state whether the inspector considers the licence conditions will be met (Regulation 10 of the LAIA Regulations). The Local Authority must grant or renew a licence if it is satisfied that: (i) the licence conditions will be met; (ii) any appropriate fee has been paid; and (iii) it is “appropriate” to grant (or renew) a licence, having taken into account the report submitted to it after the inspection (Regulation 4(2)(b)). When determining whether the conditions are likely to be met, “the Local Authority must take account of the applicant’s conduct as the operator of the licensable activity to which the application for the grant or renewal relates, whether the applicant is a fit and proper person to be the operator of that activity and any other relevant circumstances” (Regulation 4(7) of the LAIA Regulations).
13. Regulation 24(1) and (2) of the LAIA Regulations provides that an operator who is aggrieved by a decision of a local authority either to refuse to grant or to renew a licence, or to revoke or vary a licence, may appeal to the First-tier Tribunal within 28 days from the date of decision. On appeal, the First-tier Tribunal may overturn or confirm the local authority’s decision, with or without modification (Regulation 24(4)).
14. Section 14(1) of the Act empowers the Secretary of State for DEFRA (the “appropriate national authority” for England), to issue and revise “codes of practice for the purpose of providing practical guidance” in respect of any provision made by or under the Act. Section 15 of the Act sets out the detailed procedure to be followed where it is proposed that a code of practice under s.14(1) will be issued (or revised). This includes the preparation of a draft code of practice, consultation on the draft and taking account of representations,

before laying an amended draft before Parliament for approval within a set timeframe.

15. Pursuant to s.14 of the Act, the Secretary of State has issued four codes of practice in relation to animals that are not kept for production purposes: the Welfare of Dogs (2013, last updated 2018); the Welfare of Cats (2013, last updated 2018); the Welfare of Horses, Ponies, Donkeys and Hybrids (2013, last updated 2018); and the Welfare of Privately Kept Non-Human Primates (2009). The Secretary of State has also issued various codes for the care of certain farm-kept animals namely laying hens, broiler chickens, ducks, turkeys, cattle, pigs, sheep, goats, deer, rabbits and gamebirds reared for sport. The codes generally contain practical advice for owners and keepers, as individuals, on how to maintain the welfare of these animals.
16. Regulation 14 of the LAIA Regulations provides that 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”. There is no statutory requirement for a particular process to be followed to create the guidance. It is updated periodically, by the Secretary of State, to consider developments in the sector, and feedback from local authorities or stakeholders. While minor amendments, such as typographical errors, can be done without any stakeholder engagement, substantive changes to the guidance will be done after consultation with the appropriate stakeholders. Statutory guidance is used to assist local authorities when exercising their licencing functions and sets out their roles and responsibilities under the LAIA Regulations. Guidance does not therefore inform the behaviour of individuals, unlike the codes of practice. All published guidance is posted on the gov.uk webpages.
17. The overarching guidance for animal licensing is the “Animal activity licencing process: statutory guidance for local authorities” (latest version 1 June 2024). Of relevance to this appeal, is the guidance entitled “Selling animals as pets licensing: statutory guidance for local authorities” (latest version 1 June 2024) (“selling animals as pets guidance”). Other guidance covers day care for dogs, dog breeding, home boarding for dogs, boarding kennels for dogs, boarding for cats and hiring out horses, all of which was first published in 2018, shortly after the LAIA Regulations came into force.

The role of the Upper Tribunal

18. By virtue of section 11(1) of the Tribunals, Courts and Enforcement Act 2007, an appeal to the Upper Tribunal lies “on any point of law arising from a decision made by the First-tier Tribunal.” The role of the Upper Tribunal is therefore to review the decision of the FtT to establish whether it was made in error of law.

19. Common errors of law include misinterpreting or wrongly applying the relevant legislation, failing to consider relevant legislation or case law, reaching irrational conclusions for example by ignoring relevant evidence or making findings unsupported by the evidence, or permitting a procedural or other irregularity during proceedings. Errors of law which would have made no difference to the outcome of the case do not matter (Brooke, LJ in *R (Iran) v Secretary of State for the Home Department* [2005] EWCA Civ 982 [9 – 10]). Dispute over matters of judgement relating to facts or procedure, over which it is permissible for a tribunal to differ, do not constitute an error of law.

Why I find that the FtT did not materially err in law

20. The Appellant has prepared a significant number of documents by way of submissions in this appeal to the Upper Tribunal, amounting to some 157 pages in total (including documentary exhibits). I am grateful for the time that the Appellant has taken to prepare his case so thoroughly. The majority of this material amounts to a re-litigation of the points raised by the Appellant before the FtT, for example evidence of his expertise, of his workplace documentation (care sheets, cleaning schedule, feeding charts etc) and a repeat of the matters which he disputes within the decision of Oldham Council to refuse his application for a licence.
21. Equally, the Respondent, Oldham Council, focusses a large portion of its submissions on the accuracy of its decision to refuse to grant a licence to the Appellant. It submits, as it did before the FtT, that the decision to refuse the Appellant's application for a licence was due to the Appellant's refusal to amend his written procedures. The wording that the Respondent took issue with, included comments that the government guides were wrong, that the Appellant did not agree with disinfecting water and feed bowls in line with the current statutory guidance, and that the guidance on enclosure sizes was not realistic. In the absence of confirmation that the Appellant would adhere to these requirements, the Respondent could not be satisfied that the licence conditions would be met.
22. The FtT in this case, was required to consider whether the decision made by Oldham Council on 5 April 2023, to refuse the Appellant's application for a licence to sell animals as pets, was legally and factually correct. Having reviewed the full extent of the papers in this case, I find that the FtT correctly identified and applied the relevant legislative framework. The FtT found that the correct procedure had been followed in the licencing renewal process, but Oldham Council ultimately concluded that it was not satisfied that the Appellant would comply with the licencing conditions. The FtT considered the Appellant's

evidence when making its decision and gave adequate reasons for its evaluation of that evidence. The FtT adequately reasoned why it found the Respondent's conclusion to be robust, particularly given the Appellant's evidence to the tribunal that indicated a disagreement with the interpretation of the statutory guidance. There was no procedural impropriety in the FtT proceedings.

23. The Appellant disagrees with the FtT's decision to dismiss his appeal, raising several factual matters with which he takes issue. The Respondent defends the factual basis upon which it based its decision. It is not within the jurisdiction of the Upper Tribunal to interfere with the FtT's findings of fact unless those findings are irrational. Having read and considered the papers in this case, I consider the FtT's findings of fact to sit squarely within the remit of reasonable responses available, based on the evidence it had before it. I find there to be no material error of law in the decision of the FtT to dismiss this appeal.

Consideration of the grant of permission to appeal

24. The FtT granted permission to appeal on the question of whether the local authority has an obligation to produce written policies to assist with the interpretation of the statutory guidance. As there is no written policy produced by the Respondent in relation to the licensing process, there is no error of law in the FtT's decision as a result of it failing to take account of such non-existent material. The FtT however, sought the direction of the Upper Tribunal on the point, as it may have a wide implication for all local authorities dealing with licensing matters.
25. The Appellant's submissions make several points which are relevant to the grant of permission to appeal. He firstly submits that he is aware that the statutory guidance must be followed to obtain a licence to sell animals as pets, and he is aware that the relevant guidance for the renewal of his licence, is the selling animals as pets statutory guidance, which must be read alongside the LAIA Regulations. The FtT found that, the Appellant's oral and written evidence to the tribunal indicated a reluctance to accept the obligations set out in the guidance, which in turn caused it to confirm the Respondent's determination that he would not comply with the licence conditions or with the Regulations (paragraphs 60 and 68 of the SOR). Given the evidence before the tribunal, this was an adequately reasoned, rational conclusion to reach, and one that I am therefore not able to interfere with.

Interpretation of the guidance

26. The Appellant continues that the statutory guidance is prepared for the use of local authority inspectors. As, there is no equivalent guidance prepared for the use of operators, an operator is dependent upon the Local Authority's interpretation of the guidance. The Appellant submits that each local authority is entitled to interpret the guidance differently, which he considers to create an opportunity for the Local Authority to abuse its power to grant licences, and sets the operator up to fail in the licensing process.
27. The Respondent, in its submissions, acknowledges its duty to have regard to any guidance issued by the Secretary of State in carrying out its licensing (and other) functions, in accordance with Regulation 14 of the LAIA Regulations. It does not accept that there are options to interpret the guidance variably and refers to the decision of the FtT which indicated that it had interpreted the guidance in this matter correctly (paragraphs 45 and 46 of the FtT decision).
28. I sought submissions from the Secretary of State for DEFRA, given his statutory involvement in the creation of codes of practice under the Act, and the creation of guidance under the Regulations. Very helpful written representations were submitted with an accompanying bundle of documents (dated 21 October 2024). The Secretary of State did not wish to be listed as second Respondent in this matter and in view of the issues to be determined, I did not do so.
29. The Secretary of State submits that the Appellant is incorrect in his suggestion that there are numerous interpretations of the statutory guidance. He submits that the wording within the guidance has a single meaning which, in the event of dispute, can be adjudicated by a court or tribunal. He cites the case of *R (oao Britwell Parish Council) v Slough Borough Council* [2019] EWHC 998 (Admin) in support of this contention. This case involved a challenge by way of judicial review against the decision of Slough Borough Council to wind up two parish councils under the Slough Borough Council (Reorganisation of Community Governance) Order 2019. The two Parish Council claimants argued that Slough Borough Council, in making the winding up order, failed to have regard to guidance that required there to be, amongst other things, clear and sustained local support for the abolition of a parish council. The Court of Appeal allowed the claim for judicial review. In relation to how the guidance should be interpreted, the Court of Appeal stated, at paragraph 34 of its decision (my underlining):

"The starting point is to consider the relevant parts of the Guidance to determine its meaning. The Guidance should be read fairly, and as a whole, and in context. The Guidance is not to be construed as if it were

a statute or a contract but its provisions are nevertheless intended to, and do, have legal meaning and are intended to guide the decision-maker as to how to exercise its statutory powers: see, by analogy, the role a development plan in the field of planning law, Tesco Stores Ltd. v Dundee City Council [2012] UKSC 13 at paras. 17 and 19.”

30. I note that in the present case, the FtT dealt with a dispute between the parties in relation to the enclosure size for reptiles and amphibians when being offered for sale, which under the selling animals as pets guidance (Schedule 2 (General Conditions), Part A, 5.2), is considered to be a short-term transitional holding facility for no more than three months from the date of arrival. It states that after the three-month period, “[t]he enclosure must be comparable with what you would expect the final purchaser to use. At a minimum this must be equivalent, or preferably larger, to those described in the higher standard minimum enclosure size for each species.” The Appellant submitted to the FtT that it was optional to increase to the larger enclosure, if an animal is kept for longer than three months, in order to meet the higher standards for the operation. The FtT, having read the guidance in a manner which I find to be fair, as a whole and in context, determined that the word “must” indicates that the use of enclosures to the higher standards is mandatory upon reaching the three-month timeframe and not optional (paragraph 57 of the decision). The FtT thereafter went on to resolve similar disputes in relation to the interpretation of the guidance in respect of stock density, training of employees and written procedures, again having read the guidance in a fair manner, as a whole and in context. I find no material error of law in the manner that the FtT reached these interpretative conclusions within its decision.

31. I agree with the Secretary of State, that the statutory guidance is not open to wider interpretation. I find it to be written in a clear and comprehensible manner. I also agree that it is for a tribunal to adjudicate in the event that there is a disagreement in the interpretation of any aspect of the guidance. In doing so, the tribunal must read the guidance fairly, as a whole and in the context within which it is set. That is precisely what happened in the instant case. The Appellant challenged the interpretation, the FtT gave its determination which, on this occasion, concurred with the Respondent’s interpretation. Given the Appellant’s refusal to accept that interpretation, the FtT found that the Respondent was entitled to refuse the renewal of the Appellant’s licence to sell animals as pets.

Written policies

32. The Appellant also submits that the local authority should prepare written policies to outline its interpretation of the Regulations and of the guidance, and

such policies should be provided to the operator before any inspection takes place. This, he submits, would provide the operator with a full opportunity to ensure he/she is operating in compliance with the guidance prior to any inspection. Without such policies, the Appellant suggests that the operator is set up to fail the inspection which must be successful in order to secure the grant of the licence.

33. On this point, the Respondent submits that there is no obligation on a Local Authority to produce its own written policies to interpret the statutory guidance. It states that the Local Authority enforces hundreds of Acts and related Regulations, therefore it is unreasonable to expect a Local Authority to produce a written policy on each piece of legislation it works with. To write policies to repeat what is contained within the guidance and licence conditions is unnecessary.
34. The Secretary of State's overarching view agrees with this position, that there is no obligation on a Local Authority to publish its own policies on the guidance or the codes, and it would be inappropriate to do so. Firstly, the Act and the LAIA Regulations make provision for the Secretary of State, not a Local Authority, to publish codes and guidance. Secondly, as the purpose of the LAIA Regulations and the related guidance is to set minimum standards and ensure nationwide consistency with those standards (see paragraph 7.8 of the Explanatory Memorandum to the LAIA Regulations), if local authorities began publishing their own codes or guidance, which have the potential to cut across the guidance published by the Secretary of State, that purpose would be undermined. In addition, there is a very specific process for the creation and implementation of a code of practice, which includes a statutory consultation process and approval by Parliament. While there is no similar consultation or Parliamentary review requirement for the creation of guidance, Local Authorities and expert stakeholder groups are already involved in the creation of, or changes to, any such guidance. He concludes that it would not be appropriate for a Local Authority to announce a departure from the Secretary of State's statutory guidance by publishing its own local authority policy. Exceptionally, it may be appropriate for local authorities to issue policy on areas where the Secretary of State's guidance gives them greater discretion and which does not deal with the substance of determining licences, for example, on the fees it will set for a licence application. But such policy should not cover how a Local Authority substantively determines applications.
35. The Appellant is correct when he states that there is no official guidance for an operator. There is no code of practice to assist an operator either. The legislation does not provide the precise circumstances in which guidance and/or codes of practice must be created – this is a matter for the discretion of the

Secretary of State. The Secretary of State explains that the decision to issue a code of practice is a ministerial one, which is generally informed by matters such as whether there is a large population of a type of animal kept by the general public, or if there is a strong need to clarify welfare requirements for a smaller population of animal. Codes may be revised if new legislation has been enacted or if new evidence about welfare needs or good practice is revealed which demands such an update.

36. I find that the current selling animals as pets statutory guidance, produced for Local Authorities who bear the responsibility for licensing, is sufficiently clear so as to provide a framework within which operators can apply for and renew licences to maintain their businesses. The guidance provides the standards that the Local Authority expects in order to grant, renew or vary a licence, therefore an operator can read what the Local Authority is looking for and can operate to those standards for a positive licencing outcome. I note that the Respondent worked with the Appellant after the inspection in an effort to help him achieve the standards set, and I would expect such co-operative assistance to be forthcoming, but the Appellant did not agree with the guidance set. If there is a dispute as to the interpretation of the guidance, as was the situation in this case, the dispute can be dealt with by a court or tribunal. Where an operator considers that the guidance is out of date or needs to be reviewed, which may of course arise given that operators are on the front line of animal welfare, that operator still cannot depart from the current guidance unless and until it has been amended by the Secretary of State for DEFRA, who bears the responsibility for creating and maintaining the codes of practice and the guidance. The operator should make representations to the Secretary of State for DEFRA to instigate a change to the guidance, but ultimately it is the decision of the Secretary of State as to whether any change will be made.

37. There is no statutory requirement that a Local Authority must issue policy to aid with the interpretation of the statutory guidance or a code of practice. Given the clarity within the guidance, there is no need to do so. If Local Authority policies were created, there is a risk that it would create an additional layer of interpretation which could differ in different Council areas. This could create confusion and counteract the purpose of the guidance/codes of practice, which is to create a clear national framework within which to operate, and ultimately to secure the welfare of animals that are being kept for sale as pets.

Conclusion

38. I am satisfied that the FtT did not make a material error of law in its decision of 12 December 2023, to dismiss the Appellant's appeal. It correctly identified and applied the relevant legislative provisions, took into account relevant factors, did

not take irrelevant matters into account and did not permit any procedural irregularity, which would impact upon the fairness of proceedings, to take place. The FtT made rational findings of fact, providing adequate reasons to explain those findings and reached a reasonable outcome decision which it was entitled to reach, on the basis of the evidence before it. The absence of Local Authority policies on the interpretation of the statutory guidance does not impact upon the lawfulness of the FtT's decision.

39. I appreciate the Appellant will be disappointed by the outcome of this appeal. He must understand that I am bound by the remit of the legislative powers conferred to me in dealing with an appeal from a decision of the FtT. I cannot interfere with its decision unless it has made a material error of law. In this case I find that there is no such error.

**L. Joanne Smith
Judge of the Upper Tribunal
Authorised for issue on
24 July 2025**