

Decision No: ICCB2023/01

IN THE MATTER

of the Keeping of Animals, Poultry
and Bees Bylaw

AND

IN THE MATTER

of an Appeal by Alisa Maree Cole

DETERMINATION ON APPEAL AGAINST BYLAW NOTICE

Chairman: Cr D Ludlow

Panel: Cr L Soper
Cr P Boyle

Staff Support: M D Morris – Manager - Governance and Legal
M Tupara – Governance Support

Appearances

Appellant: Alisa Cole - (Appellant)
Peter Hodgson - (Advocate for Appellant)

Council: Gillian Cavanagh - (Manager - Environmental Services)
Raewyn Thompson (Team Leader - Compliance)

HEARING at Invercargill on Wednesday 16 August 2023

Decision released 24 August 2023

Background

On 1 May 2023 the Interim Group Manager - Consents and Compliance issued a Notice (the Notice) under the provisions of the Invercargill City Council Bylaw 2022 - Keeping of Animals, Poultry and Bees (The Bylaw) ordering the Rooster on the property owned by the Appellant to be removed.

This notice was issued after complaints had been received by Council, the first being received on 19 January 2023, relating to the noise the rooster was making.

During the investigation that followed Council staff determined that the rooster was a nuisance in terms of the Bylaw.

The Notice was issued.

On 3 May 2023 the Appellant lodged the Appeal against the Notice.

The Appellant proposed a number of mitigation measures and began putting them into effect.

However, not hearing back from Council staff let this lapse in mid-June 2023.

Council staff advised the Appellant the mitigations had failed and a Hearing would be arranged.

The Hearing - Procedural Aspects

It is appropriate for us to record that there are a number of procedural aspects that were raised with us.

The Appellant and advocate raised a number of issues relating to the overall investigation process as well as the process relating to this Hearing.

It is outside of the scope of what we can determine to entertain these allegations - other than where they directly relate to fairness and natural justice.

We invited the Appellant to lodge these procedural concerns with Council's Manager of Governance and Legal – Michael Morris.

We also record that at the start of the Hearing Council staff withdrew from the agenda the first paragraph of page 5, and Appendix 3 being a letter to the Appellant. The reason for this is that Council could not show that this letter had been sent to the Appellant. However Council also tabled an email that had been sent relaying the similar matters in the letter.

The Hearing - Evidence

Council

Council opened its case by outlining the timeframes and time line over which Council had been dealing with complaints about the Rooster.

Council advised this started on 19 January 2023 with the first complaint about the noise caused by a rooster that was believed to be coming from the Appellant's property.

During the resulting investigation the Appellant was informed of the complaint and the investigation.

Council concluded that a nuisance was being caused in accordance with Clause 11 of the Bylaw.

This was based on the repeated nature of the rooster crowing.

The Appellant

The Appellant in her evidence, both written and orally at the hearing, set out her concerns relating to the process used by Council staff. The Appellant said there are a number of roosters in the area and she felt targeted by Council.

The Appellant also advised that a number of neighbours, as confirmed in Council's investigation, did not feel the rooster was a nuisance.

The Rooster was being kept to provide protection to her flock of chickens from stoats and cats. The Appellant is a home based childcare provider and told us of the horror she has seen when going to the coop to find that a stoat or cat had been in and attacked the chickens, killing mostly her younger chicks.

In the evidence also provided there was discussion around the noise measurements undertaken by Council staff, and also concerns that the Council officer doing the investigation often did not come back to the Appellant with information when she said she would.

We asked the Appellant about the mitigation options that she had offered and were in place in May/June. These largely involved the Rooster being placed in a box and into a shed on the property.

The Appellant then offered some additional noise mitigation measures, including the installation of polystyrene panels to parts of the shed where the Rooster is kept including the two front walls of the shed and the ceiling as well as the box itself that the Rooster goes into.

We asked the Appellant to confirm that she was prepared to do all of this and place the Rooster into his box and the shed each night and she confirmed she was.

The Replies

After the Appellant had given her evidence we asked Council staff if, having heard what the Appellant said around the additional mitigation she believed it would make a difference.

Council staff answered in the affirmative, but would like a review period for any proposed mitigations.

Following this, the Appellant was afforded the final right of reply.

She reiterated that she believes there is only one person who has complained and that the process has singled her out.

Deliberation

After the evidence had been presented, we moved into public excluded to consider the Appeal.

It is fair to say that we accept there are and were a number of procedural issues that Council staff will need to address, including around the Hearing and its papers.

However, in our view none of these issues relate to the issue of whether we allow the Appeal or not.

This Appeal is about the nuisance caused by the Rooster, and whether the mitigations proposed by the Appellant are enough to allow the Appeal.

To that extent we put to one side the process issues raised by the Appellant and her advocate. When we objectively view all the correspondence and investigation reports, it is obvious Council followed a fair and reasonable process and did keep the Appellant informed of the complaints and the work Council was doing. Council also progressed with the Appeal once it became apparent to it the proposed mitigations were not working.

We acknowledge that the Appellant felt she was not informed about this process, however we are pleased that she did abide by that agreement she had made for as long as she did and this is illustrated by the time it took for further complaint to be made regarding the Rooster noise.

Being objective, and looking at the evidence, we can understand why Council issued the Notice. We can also understand why the Council allowed time for the mitigations to work before proceeding with the hearing.

We also understand, having heard from the Appellant, why she wishes to keep the Rooster as we can appreciate the awful scene that would greet her after a stoat or cat attack on her chicks. We also need to balance that against the undoubted nuisance a rooster can cause to neighbours.

We approach our decision on the basis of what would a reasonable and objective appellant body do in these circumstances?

The additional mitigation measures offered by the Appellant seem to us to be well thought out and sensible. We also accept the Appellant at her word that she will complete this and continue to ensure the Rooster is in the box, in the shed each night.

These mitigation measures in our view should mitigate the ongoing nuisance caused by the Rooster.

We will, however impose additional monitoring of six months by Council on the Appellant, with monthly, individual meetings with both the Appellant and the complaint to monitor progress of the mitigations.

We also believe it is reasonable to impose the condition that the Rooster be in the box, in the shed, between 10pm (22:00hrs) and 8am (08:00hrs) each day to minimise as much as possible the chances of a further complaint and nuisance noise.

Should these measures not be successful, and upon a further complaint, Council will be able to commence a new Bylaw Notice process if it considers such a response required.

This is now with the Appellant. We urge her to take these steps as soon as possible.

Decision

The Appeal is allowed and the Notice is set aside.

We impose the following conditions on this:


- i) The rooster is to be kept in the noise proof box every night
- ii) The box, with the rooster inside, is to be placed into the shed
- iii) The shed is to receive, within two months of the date of this decision, the polystyrene panels on the two front walls and ceiling
- iv) The rooster shall be in the box in the shed, between 10pm (22:00hrs) and 8am (08:00hrs) every night and following day.

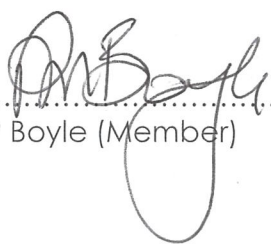
- v) There shall be separate monthly individual meetings between Council staff and the Appellant and Complainant for a period of six months.
- vi) If there are no further issues during these six months, then we shall consider this matter closed. If there are issues that are substantiated by Council then the matter can be referred back to us in a further hearing.

The Appeal is allowed, subject to the conditions set out above.

Dated at Invercargill this *24th* day of *August* 2023


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Cr D Ludlow (Chair)


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Cr L Soper (Member)


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Cr P Boyle (Member)