

IN THE MATTER

The Dog Control Act 1996

AND

IN THE MATTER

of an Appeal by Danuta Helena
Jadwiga Boniface

DETERMINATION ON APPEAL AGAINST DISQUALIFICATION FROM OWNING DOGS

Chairman: Cr D Ludlow

Panel: Cr L Soper
Cr R Bond

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

Appearances

Appellant: Danuta Boniface - (Appellant)

Council: Gillian Cavanagh - Manager - Environmental Services
Jo Cockroft -Team Leader – Animal Control

HEARING at Invercargill on Wednesday 29 September 2023

Decision released 11 October 2023

All three infringements relate to *Argos* being found wandering away from the Appellants property.

Council issued three separate infringements each time under Section 33EC (1) failing to comply with the effects of the menacing classification.

We were told that the reason for these infringements being selected were because of the classification of *Argos* as being Menacing, had this not been the case the infringements would have been under Section 52(2)(b) of the Act for failing to control *Argos*.

Council also told us that the Disqualification in Section 25 is a mandatory decision for Council to make unless it considers the disqualification is not warranted.

In this case Council pointed out that *Argos* and *Zara* are already Menacing Dogs meaning there is a higher duty on the owner to ensure they are secure and the effects of classification are followed. This is then coupled with the extensive history the Appellant has of complaints against her dogs, the report shows 112 dog related complaints against dogs registered to the Appellant of these 71 of the complaints relate to either or both *Argos* and *Zara*.

We asked of the Officers if this power to disqualify was used frequently and were told that it is very rarely used by Council and only in extreme situations.

The Appellant

The Appellant in her evidence, both written and orally at the hearing, set out the key reasons why she objects to this disqualification.

The Appellants oral evidence was presented as a monologue where she covered multiple topics and reasons – often in the same paragraph.

This in part related to a person the Appellant formerly worked with, and for a reason that escapes us, that person turned against the Appellant and has been waging a campaign, together with that person's family, against the Appellant.

Part of this campaign has been to ensure that the Appellant loses her dogs. This has been done, the Appellant tells us, because the dogs are family to the Appellant but also help her feel secure in her home.

The Appellant tabled with us a copy of her Police file relating to complaints she has made against this person and relating to other events and happenings occurring at the Appellants property. This information was released to the Appellant under the Official Information Act 1982 and Privacy Act 2020 on the day of the hearing, indeed around the time the hearing had been scheduled to start.

The Appellant did advise that she had not had the time to cross reference what the Police file had and her own records and against the hearing report Council staff had prepared and would need time to access her container to do so.

The Appellant also confirmed that she would wait for any challenge against this decision in the District Court to do so.

Council Investigation/ Principles of Justice

This is a broad heading to cover the various other issues that the Appellant raised with us.

She stated that the Council report is of a poor standard and contains information that is incorrect. For example the Appellant said she has never owned a dog called *Bella* which is one of the dogs listed in the Council report complaints history.

The Appellant also said that the conclusions the Council drew could not be made, that she had told Council other people had let the dogs out. The Appellant also said that Council staff had inspected the property so the dogs could only have got out if other people had deliberately let them out.

Deliberation

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

We have approached this with an open mind and reminded ourselves of what Section 25 states and what Section 26 – which covers the Objection – requires us to consider. We have set them out in Appendix 1 in their entirety.

Turning to the Section 26(3) factors:

Circumstances of the Offences¹

There are three infringement offences before us. Each of the three relate to different times that Argos was wandering. We do note that none of the offences relate to Zara, however that nothing turns on that as this is an ownership disqualification not related to which dog was wandering.

Because Argos is a Menacing Dog, there are a number of requirements on dog owners that they must follow² and this includes not allowing the dog to be at large in any public place (unless it is in a cage or is muzzled). Council staff also made the point that the infringements could also be issued under Section 52. Each of the offences relate to Argos being reported as wandering in different streets, the first two related to the Hardy/Wellington Street area and the third related to Chapman Street.

Each time it was as a result of a complaint that Argos was picked up by the Animal Control team.

The Appellant alleges that on each of these occasions a third party has entered her property and released the dogs. We however note that she has presented no evidence to substantiate this, there are no photographs showing cut wire or padlocks, nothing to show the unpegged pen that the Appellant told us about.

¹ Section 26(3)(a)

² Section 33E

When we considered this evidence we noted that the issue of the classification is actually outside of what we are considering. We are satisfied staff have taken every effort to find the objection that the Appellant claims to have lodged and confirm there is no record of it. Given that this hearing has been arranged for this objection we are satisfied that had a request been received it would have been set down for hearing.

That being said we do not consider that this challenge can succeed as the objection was to the infringements not the classification, the classification only leads to an offence, that had the dogs not been classified would have still resulted in an offence. The classification issue is in our view not a ground that the Appellant can succeed on.

When we look at the Council investigation for these matters and the report presented to us, it meets what we would expect to see. There is a summary of the three infringements and it sets out the background and further information that we need to consider when hearing this matter.

We do not accept the allegations made by the Appellant. Most of the allegations the Appellant made seemed to relate to the issuing of the menacing classification and that issue is outside of the scope of today.

We are satisfied that there are no issues with the Council staff report or investigation that would warrant the appeal being allowed.

There are also no grounds that the Appellant has made in natural justice, she has been accorded ample time to get ready and prepare herself for the hearing. The Appellant presented well, so we do not believe there have been any issues relating to open and natural justice as advanced by the Appellant that should result in the appeal being allowed.

That leaves the ground advanced of the other people. This is our general heading to the collection of arguments from the Appellant that she has been subjected to an ongoing campaign of hate from anti-pet neighbours and a former co-worker and her family.

no further comment on this point as it was not advanced by Council or the Appellant it is merely something we note.

Decision

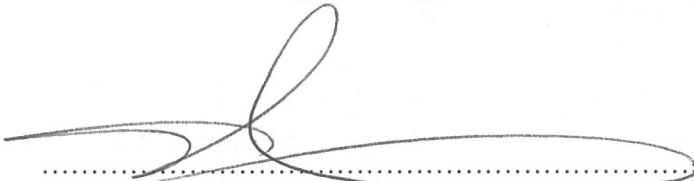
For the reasons set out above the Appellant has not satisfied that the Objection should be allowed and accordingly the Objection is dismissed.


The Disqualification is upheld in its entirety. No grounds were advanced by the Appellant as to the length of the objection so we do not interfere with the decision of Council.

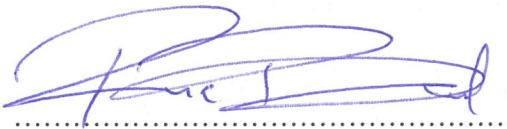
We also record that the Appellant now has the right to appeal this decision to the District Court in accordance with Section 27 of the Act. She has 14 days from the date she is given this decision to do so.

The Appeal is dismissed.

Dated at Invercargill this 5th day of October 2023


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Cr D Ludlow (Chair)


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Cr L Soper (Member)


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Cr R Bond (Member)

26 Objection to disqualification

(1)

Every person disqualified under [section 25](#)—

(a)

may object to the disqualification by lodging with the territorial authority a written objection to the disqualification; and

(b)

shall be entitled to be heard in support of the objection.

(2)

An objection under this section may be lodged at any time but no objection shall be lodged within 12 months of the hearing of any previous objection to the disqualification.

(3)

In considering any objection under this section, the territorial authority shall have regard to—

(a)

the circumstances and nature of the offence or offences in respect of which the person was disqualified; and

(b)

the competency of the person objecting in terms of responsible dog ownership; and

(c)

any steps taken by the owner to prevent further offences; and

(d)

the matters advanced in support of the objection; and

(e)

any other relevant matters.

(4)

In determining any objection, the territorial authority may uphold, bring forward the date of termination, or immediately terminate the disqualification of any person and shall give written notice of its decision, the reasons for it, and the right of appeal under [section 27](#) to the objector.