

IN THE MATTER of the Dog Control Act 1996

AND

IN THE MATTER of an objection by Stephanie Yearbury to a Dangerous dog Classification imposed on her dog Scout pursuant to Section 31(1) of the Dog Control Act 1996 this dog has been classified as a dangerous dog.

BEFORE THE WAIKATO DISTRICT COUNCIL REGULATORY SUB COMMITTEE

Chairperson: Cr Dynes Fulton

Member: Cr Janet Gibb

Cr Jan Sedgwick

HEARING at NGARUAWAHIA on 19 August 2019

APPEARANCES

Mr B Watene – Waikato District Council (Animal Control Team Leader)

Ms C Pidduck – Waikato District Council (Legal Counsel)

Objector

Stephanie Yearbury

Members of the public present

Andrew and Belinda James

RESERVED DECISION OF THE SUB-COMMITTEE

Having considered the information presented in writing, and in person at the hearing, the sub-committee rescind the Dangerous dog Classification imposed under section 31 (1) of the Dog Control Act 1996 on the 1st March 2019.

The effects of this decision will mean that Scout will not be classified as a Dangerous dog effective from the date of this decision.

Introduction

- [1] This decision relates to an objection by Stephanie Yearbury seeking that the classification of her dog as dangerous imposed by the Waikato District Council on the 1st March 2019 be rescinded. The dog Scout is a White / Swiss Shepherd / Female registered to Stephanie Yearbury at the address of 333E Pinnacle Hill Road, Bombay.
- [2] The Council received an objection against the Notice of Classification of Dog as a Dangerous dog from Stephanie Yearbury on the 12th March. In her objection she said that "*The 'witness' statement is clearly not a thorough account to events and is lacking in facts*".
- [3] In Ms Yearbury's letter of objection she drew attention to detail that had been provided to the Council by Mr Andrew James in his Witness Statement. She contests that Mr James from his vantage point could not have seen her dog Scout grab the dog Jack and drag him through the gate by the neck as has been alleged.
- [4] The executive summary of the hearing report noted the following paragraph.

This classification was initially applied after consideration of evidence available at the time; subsequent review by the new Team Leader of Animal Control, who has an investigative background has shed a new perspective on the current details.

Preliminary Matters

- [5] The Chair Dynes Fulton emphasises that the hearing was limited to considering only whether the decision that had been made by the Council to classify Ms Yearbury's dog Scout as a Dangerous dog was to be **upheld** or **rescinded**. There were no other matters that we could consider.
- [6] The Chair emphasises that the hearing panel had read all the material presented in the agenda. That includes the sworn Witness Statement that was provided by Mr Andrew James and all the supporting material provided. The decision would be made based on the written evidence provided and the evidence received on the day by the objector.
- [7] Ms Yearbury's written objection "*asked that the whole picture gets looked at and not just one side of the issue as it clearly has been. She expressed that they are saddened that this happened and consider ourselves responsible and conscientious dog owners*".
- [8] Neither party nor their dogs have any relevant history with the Council although the owner of the Jack Russell, Mr James have submitted a statement of an alleged

historical act of aggression by the German shepherd. However, this has not previously been reported to the Council.

Hearing procedures

[9] Mr Brett Watene the Council Animal Control Team leader was asked by the Committee to explain why he had formed the view that the Dangerous Classification of the German Shepherd called Scout should be rescinded.

[10] Mr Watene explained that he was not the Council officer that had imposed the dangerous classification but was the person that reviewed the file following receiving the objection to the classification from Ms Yearbury.

[11] Mr Watene directed the committee to his report in the hearing agenda where he found inconsistencies in the evidence. For completeness I have included the following paragraph from that report.

There appear inconsistencies in the evidence, namely the Jack Russell's injuries do not appear consistent with Mr James' version of events. The dog attack was not witnessed which would explain assumptions being made. The conclusion presented in this report is based on the evidence and following observations:

- 1. The conflicting evidence of Mr James and the medical examination of his dog.*
- 2. No penetration of the inner wall of the abdomen suggesting no violent force applied from Scout, the German Shepherd.*
- 3. The German Shepherd was securely in her property indicating the owners had taken reasonable steps prior to the incident to keep their dog and passers-by safe.*
- 4. The first act of aggression was the Jack Russell running uncontrolled to the gate.*
- 5. No recorded aggressive history with the Council for the German Shepherd.*
- 6. The good character references provided in support of the German Shepherd.*
- 7. The steps taken by the Yearbury family post incident to reassure safety.*

[12] Ms Yearbury addressed the Committee in response to a question if she had anything that she wished to add to her written letter of objection. She highlighted the additional mitigating measures that they had made. These include adding extra wires to the existing seven wire fence. Adding additional perforated steel screen to the lower section of the gate. Installing a camera at the end of the drive that notified them if any activity is detected and sent pictures and video's to their phones.

Statutory Consideration

[13] In making its determination on this objection, the Committee must have regard to the following matters, as outlined in section 31 (4) of the Dog Control Act 1996:

(4) In considering any objection under this section the territorial authority shall have regard to—

- (a) The evidence that formed the basis for the original classification: and
- (b) Any step taken by the owner to prevent any threat to the safety of persons and animals: and
- (c) The matter advanced in support of the objection: and
- (d) Any other relevant matter

The Committee are restricted to two options in considering the objection;

- Uphold the classification
- Rescind the classification.

[14] The Committee has reviewed the written evidence presented by the objector Ms Yearbury and supplied at the hearing by Mr Watene and further the advice by Ms C Pidduck. We are satisfied that there is a clear, un-disputed understanding of the incidents that led to the dangerous dog classification being imposed.

[15] There were no other matters that the Committee considered relevant that were needed in making a determination in this case.

Reasons for the Decision

[16] The Committee was satisfied that the findings of the Animal Control Officer as set out in Paragraph [11] of this document had been accurately assessed. We accept the recommendations and make our decision to rescind the dangerous dog classification imposed on Scout.

[17] The Committee acknowledges that Ms Yearbury has taken three further steps to secure their property for their dog Scout. Also the additional measures taken to restrict the possible entry to their property from other dogs.

Additional Note

The Committee noted that it would have been helpful if a copies of the agenda had have been forwarded to the objector prior to the hearing. We do not however believe by that not happening it was detrimental to the parties within the scope of this hearing. The hearing was adjourned for ten minutes to allow the objector to read the agenda document.

Mr Watene was asked by the Committee to expand on the comment in the report that *said the new team Leader of Animal Control who had an investigative background.*

Mr Watene explained that he had 28 years in the NZ Police and held the rank of Detective for 12 years.

A handwritten signature in black ink, appearing to read "D. W. Fulton", is written over a horizontal dotted line.

Cr Dynes Fulton (Chairperson)