

IN THE MATTER of the Dog Control Act 1996

AND

IN THE MATTER of an objection against the classification of a dog as dangerous pursuant to section 31(4) of the Dog Control Act 1996.

BETWEEN **Che Reti**

Objector

AND **Waikato District Council**

Respondent

**BEFORE THE WAIKATO DISTRICT COUNCIL REGULATORY
SUBCOMMITTEE.**

Chairperson Cr Noel Smith
Members Cr Jan Sedgwick
Cr Janet Gibb

HEARING at Ngaruawahia on 29 March 2021

APPEARANCES:

Mr C Reti, Objector
Ms T Oakes, Team Leader, Animal Control Officer, Waikato District Council
Ms A Davis, Animal Control Officer, Waikato District Council
Ms C Pidduck, Legal Counsel for Waikato District Council

DECISION

Pursuant to Section 31(4) of the Dog Control Act 1996 the Regulatory Subcommittee rescinds the classification of the dog, known as 'Remi', as a dangerous dog.

Introduction:

[1] On the 27th of December 2020 an incident was reported to Waikato District Council that a neighbour's dog had attacked a person at 191B Hoeka Road, Tamahere. The incident was alleged to have occurred the previous day. An Animal Control Officer contacted the complainant on 5 January 2021 and ascertained that the complainant did not want the Animal Control Officer to speak to the dog owner as the complainant had already done so and a resolution had been agreed. The officer elected to take the matter no further as the situation had been resolved to the complainant's satisfaction. The dog in question is a 4 year old blue Neapolitan Mastiff bitch, named Remi.

[2] On 12 January 2021 the complainant, Ms Kitrina Reid, contacted Waikato District Council and spoke to an Animal Control Officer. Ms Reid complained that the dog, Remi, was loose in the neighbour's property and Ms Reid was afraid that Remi could escape and cause her harm. Shortly afterwards an Animal Control Officer (ACO) met Ms Reid onsite at her property and noted that 'Remi' was loose on the neighbour's property. For some reason the complaint of 27 December 2020 was revived and a statement was taken from Ms Reid by the ACO. A short time later the ACO located Remi and her owner at home on their property. Remi was not seized however was later classified as 'dangerous' and an infringement issued on or about 9 February 2021 'for not containing a dog on the owners property'. Mr Reti subsequently appealed the classification of Remi as a dangerous dog.

[3] The Committee was presented with a Council agenda which contained, amongst other correspondence, a copy of the complaint, extracts of legislation, Animal Control Officer's statement, a copy of the dangerous dog classification notification to Mr Reti, his written objection and photos taken by Animal Control Officers as well as other associated documents.

[4] The only witnesses, Ms Reid was not present at the hearing, citing health reasons, to give evidence or provide the Committee with the opportunity to clarify any aspect of her witness statement.

HEARING:

Objector – Mr Reti

[5] At the commencement of the hearing the Chairperson outlined how the hearing would take place. Mr Reti confirmed he had a copy of the documents.

[6] Mr Reti began his objection by saying he believed the issue arose from a misunderstanding and he did not believe the dog was going to attack Ms Reid. He went on to explain he believed his boundary fences were secure, but that the December 26 incident occurred when a cow broke one of the fences, allowing Remi to escape. He also said the dog did not like people coming into her area and would bark an alert if someone did.

[7] He went on to say the dog was used to being around people; that he and his family had no concerns around Remi, nor when friends came to visit. He indicated there was a secure area where he may lock the dog away if needed, when there were too many people visiting.

[8] He explained that he had reached an agreement with his neighbour after the December incident whereby Ms Reid, offered to supply timber for fencing off his property, to a value of \$5,000. On the arrival of the timber, he and his son erected the 1.8m high fence over a period of about two weeks in late February/early March. When questioned about the value of his time spent in erecting the fence, he agreed it might be around \$10,000 if it included the price of the timber.

[9] He said the fence created a secure internal fence within his property, with additional boundary fencing of timber and three wires, and hedging between his property and that of Ms Reid.

[10] He had also disposed of the cow at Ms Reid's request and was subsequently confident that the inner boundary fence would be sufficient to retain Remi on his property, with a further external boundary fence to enable any grazing, and further security.

[11] He reiterated several times that he and Ms Reid got on well as neighbours and he believed there was no animosity between them.

[12] The committee was shown a video clip provided by Ms Reid. It showed Ms Reid running to the right of the screen, with Remi moving behind her at an approximate distance of about 3-4 metres. Ms Reid, on becoming aware of Remi's presence behind her, screamed and Remi barked then retreated through the hedge to the Reti property.

[13] Mr Reti said he had not previously seen the video clip, but acknowledged it was his dog and noted she was back, in distance, from Ms Reid and in his opinion not about to attack.

[14] Turning to the incident on January 12 he said he was away and his mother had come to feed Remi daily whilst the family were on holiday. Mr Reti produced a letter from his mother, which confirmed she was looking after Remi.

[15] Anticipating their return that day, she had left Remi out of her run in the belief the property was secure. Mr Reti stated he was home when the Animal Control Officer arrived in response to a call from Ms Reid who said the dog was loose on the property and she feared for her safety.

COMPLAINANTS EVIDENCE

[16] In a written statement by Ms Reid on January 12 2021, Ms Reid said she was at home with her husband and child on at 7.15pm, 26 December 2020 when she heard Remi barking. She decided to check as she knew her neighbour was away. She said about six months previously Mr Reti had asked her to check when Remi was barking as they may be being robbed. She could not see anyone so turned to come home up her adjoining driveway, walking on her gravel driveway, not near Mr Reti's boundary fence. She viewed the dog through the hedge heading towards the boundary fence, barking at her. She said she heard the barking pitch changing, looked around and saw Remi behind her. In her statement she said she ran and screamed, then jumped over her pool fencing causing injuries to herself (photos supplied).

[17] She stated she called Mr Reti and asked them to come home to secure Remi and within 60 minutes noted someone was at the property. She reported the incident on 27 December 2020 to Waikato District Council's Animal Control via the after-hours number.

[18] Ms Reid's statement said she had since spoken to the owners and they assured her they would fix the fence. Ms Reid stated she feels panic when she hears the dog barking and does not feel safe outside.

[19] The committee was unable to question Ms Reid on her statement and advised Animal Control officers that this was less than desirable and asked that more effort be made to have all parties available at future hearings, even if by zoom or phone if needed.

Animal Control Team Leader – Tracey Oakes

[20] Ms Oakes opened her comments by stating an opinion that this was a very dangerous situation with a large dog and that she was gravely concerned at the dog's rushing behaviour. Ms Oakes commented that to enhance public safety she imposed the dangerous dog classification as she had concern about Remi attending social events and being amongst the public. She also commented that a dog's behaviour can be very different when the owner is absent and in her opinion a classification as a dangerous dog was the best course of action. She stated that in terms of dogs, 'aggression' is the action of attacking without provocation'.

Legal Counsel -Christine Pidduck

[21] Ms Pidduck responded to questions from the Committee on the term rushing. She said a plain language determination of the term aggressive was self-explanatory, but that the 'rushing movement of an animal in a way that suggests threat or criminal harm' was an appropriate meaning for 'rushing'.

[22] The committee questioned why the 26 December case had been reviewed by another Animal Control Officer and then closed, could subsequently be re-opened two weeks later, apparently triggered by the complainant's call to say she believed the dog was loose on its property. Ms Pidduck said that in this instance natural justice should prevail. She also noted that only one offence was needed for classification as dangerous.

Animal Control Officer – Amanda Davis

[23] Ms Davis's brief of evidence, having been pre-circulated, was taken as read and she was asked to speak to it. She then answered questions from the Committee. Ms Davis told the Committee that her main concern was that the dog was able to leave the property. In her reply she said she believed if Ms Reid had not screamed she believed the dog would have attacked. In response to a question from the Committee, she agreed that running and screaming when a person believed they may be the subject of a dog attack was not what Animal Control taught as good practice.

[24] The committee asked why the video clip did not have the preceding 30 seconds which would have set a more helpful scene. Ms Davis said that was all that was provided by Ms Reid.

[25] When asked why Ms Davis did not uplift the dog which was loose on its property, she said they would have, had it left the property, but it did not.

RIGHT OF REPLY – Mr Reti

[26] Mr Reti said he had little more to add in his right of reply, except to restate his assertion that Remi was safe around people (and particularly with large numbers of children); that she had been to day care with no issues and was taken out several times a year on family trips to the beach and social events. He said he had made every effort to fence the property within his own boundaries and had a safe area for Remi when she was alone. He had also got rid of a cow which had previously broken a boundary fence made of wood and wire. He said he and the neighbour were on cordial relations and he wanted to be a good neighbour, demonstrated by his actions. He also stated that the classification as dangerous was made prior to the ACO being told Remi attended several social events with his family.

[27] The committee questioned Mr Reti as to whether Remi had been spayed. He said not to his knowledge, nor had she come into season nor had puppies, since he had had her from a puppy of several weeks old.

LEGISLATION: S31(1)(b) Dog Control Act 1996

[28] *“Territorial Authority must classify a dog as a dangerous dog if -
The territorial authority has, on the basis of sworn evidence attesting to aggressive behaviour
“by the dog on 1 or more occasions, reasonable grounds to believe that the dog constitutes a
threat to the safety of any person,*

[29] On 21 January 2021, Amanda Davis, Animal Control Officer, Waikato District Council undertook a classification exercise with respect of Remi. Ms Davis then discussed the classification done by Ms Davis and Ms Oakes, Animal Control Team Leader then countersigned the classification. As a result Ms Oakes issued a notice, on 9 February 2021, under s31(1) of the Dog Control Act 1996 classifying Remi as a dangerous dog. Notice of the classification was sent to Mr Reti and he responded by objecting to the classification.

[30] The Committee notes at page 44 of the Agenda an infringement notice for not keeping a dog contained to owners property issued to Mr Reti.

REASONS FOR DECISION:

[31] The Committee accepts that the dog Remi, should not have been able to enter on to Ms Reid’s property. It is not certain from the video clip, how Remi was moving towards Ms Reid. The committee noted Remi retreated at the same time as Ms Reid screamed and was not intent on continuing a pursuit. The video clip in itself did not show the incident to any definitive extent. Had the previous 30 seconds to a minute of recording been made available to the Committee then the situation would have been much clearer.

[32] The Committee was once again unable to seek clarity from the only witness to the events of 26 December 2020. In the circumstances the Committee must deal with the evidence put before it in a dispassionate manner. Without the ability to gain clarity around the events of 26 December 2020 there is no evidence before the Committee that an attack occurred or was about to occur. Ms Reid's response upon seeing the dog was understandable.

[33] Remi, although Ms Reid believed to the contrary, was secure in her property on 12 January as Mr Reti had repaired the fence following the incident of 26 December 2020. Had Ms Reid been aware that the fence was secure she would likely not have called the Animal Control Team. That being the case the matter that Mr Reti believed resolved on 26 December 2020 would not have been resurrected by Ms Davis.

[34] The Committee, noting Ms Pidduck's comments during the hearing, is of the opinion the resurrection of the complaint of 26 December 2020, after it had been completed, is a breach of natural justice. That is to say Mr Reti had good cause to believe the matter was complete. Mr Reti provided a timely solution to the issue which the neighbour supported, in ensuring his already externally fenced property now has full internal fencing of 1.8m palings to secure his dog Remi.

[35] The role of the Committee is to review the classification and determine whether the classification should be upheld or dismissed. The Committee finds no grounds to uphold the classification.

DECISION:

[36] By unanimous decision and pursuant to Section 31(4) of the Dog Control Act 1996 the Regulatory Subcommittee rescinds the classification of the dog, known as 'Remi', as a dangerous dog.

A handwritten signature in black ink, appearing to read 'Noel Smith', is written over a light grey rectangular background.

Noel Smith
Chairperson
Regulatory Subcommittee
Waikato District Council
06 April 2021