

IN THE MATTER OF the Dog Control Act 1996

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IN THE MATTER OF an objection to a notice under Section 33A (1) (b) (i) served on Thomas Benjamin Skerton in regard to his six year old, tan coloured female Bull Mastiff dog named “Puppy”.

DECISION OF THE CHRISTCHURCH CITY COUNCIL

DATE OF HEARING: At Christchurch
On Thursday 16 June 2016 at 2.30pm
Before the Hearings Panel of the Christchurch City Council.

PANEL MEMBERS: Councillor Tim Scandrett (Chairperson)
Councillor Paul Lonsdale
Community Board Member Helen Broughton.

IN ATTENDANCE: Thomas Benjamin Skerton (Objector)
Richard Peter (Complainant)
Mark Vincent (Team Leader Animal Management Team)
Kym Parnham (Investigating Officer)
Janet Anderson (Hearings Adviser).

INTRODUCTION

The hearing was held to consider an objection received from the dog’s owner, Thomas Skerton to a notice issued by an Animal Management Officer under Section 33A(1) (b) (i) of the Dog Control Act 1996, (‘the Act’), classifying his dog “Puppy” as menacing. An objection to the classification has been lodged by the dog’s owner under Section 33B (1), and has been referred to the Council’s Hearings Panel in accordance with Section 33B (2).

BACKGROUND

On 6 November 2015 at 8.51am the Council received a complaint from Mr Richard Peter that on the previous evening at approximately 6.45pm a female tan mastiff dog had come from behind and attacked his dog while he was walking with it on Grassmere Street. Mr Peter gave this dog a kick and it ran off, last being seen on Grassmere Street heading towards the Main North Road. The attacking dog had taken a chunk out of his dog’s neck and veterinary treatment was required. Animal Management Officer Kim Parnham was assigned to investigate this incident. The Investigating Officer was aware that a dog matching the description given was registered at 45 Grassmere Street and visited the property where she spoke to a male named Victor as the registered owner was not at home. Victor denied that the dog

had escaped from the property the previous evening and told her that the dogs never escape. The Investigating Officer left her contact details with Victor and took photographs of the suspect dog. She then visited the complainant, Mr Richard Peter, who positively identified the photographs as being those of the dog in question, telling the Investigating Officer that the attacking dog was tan, a mastiff type and looked as if it had given birth pups at some point. He also gave a written statement in which he described the incident. In this statement Mr Peter said that he was walking his dog along Grassmere Street on the footpath when a tan female mastiff type dog ran up behind and grabbed his dog around the neck. Mr Peter kicked the dog and it then let go and ran across the road. Later that evening he noticed that blood was dripping from his dog's neck, so he took her to the after-hours veterinary clinic for treatment. A copy of the account totalling \$478.10 for treatment as the result of the attack on 5 November was also provided. The Investigating Officer took photographs of the injury and noted that the wound to the neck area was approximately five centimetres and required six stitches. On 7 November 2015 the Investigating Officer obtained a written statement from Natasha Peter, Mr Peter's daughter, who was a witness to the incident. Miss Peter stated that she observed a sandy coloured female mastiff dog come diagonally across the road and she yelled to her father that a dog was there. She saw the mastiff run up behind their dog, grab her round the neck and shake her. Her father had to kick the attacking dog to make it let go and it then ran back over the road. Miss Peter was shaken by the events and was scared to think what may have happened if her father had not been there. The Investigating Officer then returned to the property at 45 Grassmere Street and spoke to Mr Graham Skerton, who advised her that his son Thomas was the owner of the dog. She also inspected the property and noted that while the containment area was secure, fencing to the rest of the property was not effective to contain dogs. Later that day Thomas Skerton phoned the Investigating Officer and denied that his dog was responsible for the attack on the other dog and accused the complainant of being a previous complainant about his dogs. The Investigating Officer told him that the complainant would be prepared to visit him to discuss the attack, whereupon Mr Skerton became annoyed and requested another Investigating Officer be assigned.

On 9 November 2015, Senior Animal Management Officer Bill Kohi rang Mr Skerton and was provided with a list of names of persons who could allegedly verify that his dog was contained on the property so could not have been responsible for the attack. Ms Parnham, the original Investigating Officer followed up this information and obtained statements from these witnesses. Mrs Raewyn Skerton stated that she was home from 3.30pm until 7.30pm when she left to get dinner. She did not witness either dog leave the property during that time and Puppy was still in the compound on the couch at the time she left. Michael Williams stated that he was at the property between 6pm and 8pm, working on his boat and at no time did he see the dogs go past him. Graham Skerton, father of the objector, stated that he was also working on this boat in the driveway. All the dogs were behind the fence and Raewyn was sitting outside with them until she went to buy tea at about 7.30pm. Victor Stojanovich stated that he had been working on his car in the driveway all day for over six weeks and at all times the dogs had been behind the fence except when the owners have taken them out to the back paddock to go to the toilet. On the night in question he was working on his car until well after 7pm and dogs were both behind the fence with Raewyn.

The Investigating Officer provided a written report of the investigation and events leading up to the attack, including notes, observations, and recommended enforcement action relating to this case. She stated that she had no doubt that the dog Puppy from 45 Grassmere Street was the attacking dog based on the detailed description of the attacking dog by the complainant and witness, and the positive identification of the dog by the complainant. She recommended that the dog be classified as menacing. The Senior Animal Management Officer, Animal Management Team, considered that there was sufficient evidence to classify the six year old female, tan coloured Bull Mastiff dog named "Puppy" as menacing in accordance with section 33A(1)(b) (ii) of the Dog Control Act 1996 and accordingly signed the required documentation which was served on the dog owner, Thomas Benjamin Skerton at his address on 8 December 2015.

On 16 December 2015, Mr Skerton wrote formally objecting to the classification of his dog as menacing and this objection was received by the Council within the specified 14 day period as provided for in Section 33B(1)(a) of the Act. In his letter of objection Mr Skerton denied liability for the incident as he did not believe it was his dog involved and he requested a hearing.

The following report and assessment summarises a considerable volume of oral evidence presented to the hearing. It is not intended to be exhaustive in its scope, but rather to identify what were considered to be salient comments.

THE HEARING

Christchurch City Council Animal Control

Mark Vincent, Animal Management Team Leader, referred to the written report circulated to all parties prior to the hearing. In the report relevant extracts from the Dog Control Act 1996 were provided for the panel's information and consideration.

- Objects of the Act (Section 4)
- Obligations of Dog Owners (Section 5)
- Functions, duties and powers of territorial authorities (Section 6)
- Territorial authority may classify dog as menacing (Section 33A)
- Objection to classification of dog under section 33A (Section 33B)
- Effect of classification as menacing dog (Section 33E)
- Offence to fail to comply with Section 33E(1) or 33EB (Section 33EC)

Mr Vincent summarised the facts on which the decision to classify the dog as menacing were based and answered questions relating to identification from the Hearings Panel. In those answers he clarified that the witness, Natasha Peter did not see the photograph of the dog and that there is no forensic testing available for dog attacks. However he considered that the evidence from the objector's witnesses was to the effect that they did not see the dog leave the property and there are no other registered dogs matching the description given living in Grassmere Street.

The Complainant

Evidence of Richard Peter

Mr Peter stated that he was concerned because the dog had attacked from behind with no warning so he did not think this was "territorial". The vet had also told him that if their dog had been smaller it would not have survived. This was the main reason he had wanted to bring it to the Council's attention. At the time of the attack he noticed that the dog had teats rather than nipples so he believed the dog was either pregnant or had recently had puppies. For this reason when he kicked it away he aimed lower down her stomach. He wondered whether this may have been a reason for the attack.

The Objector

Evidence of Thomas Skerton

Mr Skerton stated that there were four or five people on his property both inside and outside the house on the evening of 5 November 2015. The two dogs were present and no one heard a commotion. He described the property as having paddocks next door where there are sheep and chickens. From time to time they have had other dogs turn up there. Puppy is fine with other dogs and with the sheep and chickens, so he does not believe she is menacing. He has seen other dogs in the area which would match the description of the dog which attacked Mr Peter's dog.

Council Hearings Panel

The Hearings Panel asked the Investigating Officer to explain what led her to suspect “Puppy” as the dog which had been involved. The Investigating Officer responded that there had been previous incidents where this dog had been aggressive with other dogs, including two incidents in the past two years and a warning letter had been sent. Mr Peter had described the dog as having recently had pups and the photos show that “Puppy” had teats, a sign that this was the case. In addition the objector’s witnesses simply stated that they did not see the dog leaving. This did not mean that they could positively say that the dog was present at the time of the attack.

Mr Peter, with permission from the Chair, added to his evidence that he did not know the dog Puppy lived at 45 Grassmere Street, he had never seen it before, and had no knowledge of the previous incidents.

The Hearings Panel asked Mr Skerton about any steps taken to ensure Puppy cannot get out. Mr Skerton responded that Puppy is either in the house or in a secure compound at the side of the house. He had considered the suggestion that a self-closing gate be installed, but there were so many people coming and going from the property that this would not be practical.

The Panel adjourned and reserved its decision.

PANEL DELIBERATIONS

The evidence which formed the basis for the classification

The description given by the complainant matched that of the dog Puppy, in particular the light colour and the indications that she had recently had puppies were distinguishing factors. The complainant also positively identified this dog from a photograph taken by the Investigating Officer. There had been a suggestion in the background papers provided to the Panel that the complainant had been involved in previous complainants about Puppy. However, Mr Peter assured the Hearings Panel that he had never seen this dog before, had not made a previous complaint and did not know where it lived. In the Panel's view this made it even less likely that Mr Peter was mistaken in his identification. The Investigating Officer also gave evidence that there were no other dogs matching the description registered in the area. The attack was serious and unprovoked. The veterinary surgeon's view as reported by Mr Peter was that a smaller dog would not have survived. There had been previous incidents of the dog Puppy leaving the property and the only evidence that it had not done so on this occasion amounted to a number of witnesses stating that they had seen Puppy behind the fence and they had not seen her leave. These witnesses were not present for the Panel to be able to probe their statements more closely.

Steps taken to prevent any threat to the safety of persons or animals

The objector had built an enclosure at the side of the house but had decided against installing a self-closing gate which would have provided a second line of defence in the event that "Puppy" left the enclosure, despite previous incidents where the dog was known by the objector to have escaped from the property. One of the statements referred to the witness Raewyn sitting with the dogs until she left to get tea. The compound appears to be a large area with seating and the times when people enter or leave the compound could provide an opportunity for the dogs to escape.

Matters relied on in support of the objection

The Objector relied mainly on the defence that it was not his dog involved in the attack on Mr Peter's dog. He also stated that this dog "Puppy" was fine with other dogs and with the chickens and sheep in the fields next door. The Hearings Panel preferred, on the balance of probabilities, to rely on the experience of the Investigating Officer, who noted the detailed description given by the complainant and his daughter, the reference to the light colour of the dog, described by Natasha as "sandy" and the prominent teats. The Investigating Officer also advised the Panel that there were no other dogs matching this description registered as living in the area. While the objector provided the names of witnesses present on the property at the time of the attack on Mr Peter's dog, the Panel did not consider their evidence conclusive. Three of the witnesses were working on vehicles and it was therefore unlikely that they would have been paying full attention at all times to the objector's dogs. As for the objector's assertion that his dog was fine with other dogs, chicken and sheep, the Panel was informed that there had been previous incidents involving Puppy resulting in a warning letter, so it was apparent that Puppy was known to have aggressive tendencies.

Other relevant matters

The Hearings Panel did not consider any other matters raised as being relevant.

DECISION

Having considered the objection to the notice and the evidence and submissions of those who had written to the Council and/or appeared before the panel, and having regard to the matters contained within the Dog Control Act 1996, it is determined that the notice served on Thomas Benjamin Skerton, as owner of a six year old tan coloured female Bull Mastiff dog named "Puppy", classifying the dog as "menacing", be **upheld**.

DATED AT CHRISTCHURCH THIS 5TH DAY OF JULY 2016



**COUNCILLOR TIM SCANDRETT
CHAIRPERSON**