

**BEFORE THE HEARINGS COMMITTEE
OF THE PALMERSTON NORTH CITY COUNCIL
UNDER THE DOG CONTROL ACT 1996**

IN THE MATTER of an Objection to

Classification under Dog Control Act 1996

BETWEEN BRAD COUTTS
Objector

AND PALMERSTON NORTH CITY
COUNCIL (PNCC)
Local Territorial Authority

Hearings Committee: Deputy Mayor Aleisha Rutherford (Chairperson)
Councillor Lorna Johnson (Member)
Councillor Patrick Handcock (Member)

Appearances: Mr B Coutts (As the Objector)
Mrs W Maharey (Support for the Objector)
Mr A Thornton (Animal Control Officer Palmerston North City Council)
Mr H Verstegen (Palmerston North City Council)

Venue: Palmerston North City Council Chamber

Date of Hearing: 18 March 2021

DECISION OF HEARINGS COMMITTEE DATED 14 APRIL 2021

FACTS

[1] On 15 January 2021, the dog known as BLAZE, a five year old brindle female Terrier American Staffordshire Cross was classified as menacing under the provision of section 33A(2) of the Dog Control Act 1996 ("the Act").

[2] Section 33A in its entirety states:

"Territorial authority may classify dog as menacing

(1) This section applies to a dog that—

(a) has not been classified as a dangerous dog under section 31; but

(b) a territorial authority considers may pose a threat to any person, stock, poultry, domestic animal, or protected wildlife because of—

(i) any observed or reported behaviour of the dog; or

(ii) any characteristics typically associated with the dog's breed or type.

(2) A territorial authority may, for the purposes of section 33E(1)(a), classify a dog to which this section applies as a menacing dog.

(3) If a dog is classified as a menacing dog under subsection (2), the territorial authority must immediately give written notice in the prescribed form to the owner of—

(a) the classification; and

(b) the provisions of section 33E (which relates to the effect of classification as a menacing dog); and

(c) the right to object to the classification under section 33B; and

(d) if the territorial authority's policy is not to require the neutering of menacing dogs (or would not require the neutering of the dog concerned), the effect of sections 33EA and 33EB if the owner does not object to the classification and the dog is moved to the district of another territorial authority."

[3] Mr Brad Coutts is the registered owner of the dog subject to the classification and has lodged an objection to the classification via letter dated 26 January 2021.

[4] The provision for lodging an objection is contained within section 33B of the Act. Mr Coutts has complied with the statutory timeframe in lodging his objection and has been heard in support of the objection at a hearing on 18 March 2021.

EVIDENCE

[5] To provide some context to the alleged incident which led to the classification being made, it is important to canvas the various evidence that has been placed before the Hearings Committee.

The Objector

[6] Mr Coutts helpfully provided the Committee with a written statement covering the various grounds he was objecting on.

- [7] In the Statement he noted that Blaze was a well-trained dog who has never been aggressive at any time toward adults, children or other animals. Regarding previous occasions when Blaze has approached and nipped a person, Mr Coutts explained that various adults present at each of those situations accepted responsibility for the events, and it was not Blaze at fault.
- [8] With reference to the incident that was alleged to have occurred on 18 December 2020, Mr Coutts outlined his perspective of what happened in his original objection letter dated 26 January 2021. He stated Blaze was on a lead at the time and as Mr Coutts, his partner and Blaze approached the footpath, Blaze nudged a woman with her nose, who walked close by, on her backside. The incident happened on the footpath. The woman stated she had been bitten and Mr Coutts advised her she hadn't been bitten and Blaze was just saying hello. Mr Coutts noted there was nothing aggressive about Blazes behaviour toward the woman and he gave the incident no further thought.
- [9] During the hearing Mr Coutts introduced his grandmother Mrs Wendy Maharey who was going to speak on his behalf.
- [10] Mrs Maharey stated Blaze should not be penalised for this incident. She is a very friendly loveable dog and has been well socialised around adults and children from a very early age. It is unfair for her to be classified as menacing and to have the associated restrictions placed on her.
- [11] Mrs Maharey stated that it was not accurate to state in the officers evidence '... observed and reported aggressive behaviour whilst off the owner's property'. She stated Blaze has never had an incident off the property. The first incident was at Mrs Maharey's house and she took full responsibility for that because Blaze was on her property protecting her. The second incident was at Mr Coutts' house. And in the third incident Blaze was walking down the driveway when she met and nudged the woman. Mrs Maharey stated all the incidents have been on the owner's property, Blaze has never had an incident or displayed any aggressive behaviour when in public spaces.
- [12] Mrs Maharey explained that Blaze was in fact on the public footpath during the incident in question however, Blaze might understand the front of the property, including the footpath to still be her property. Mr Coutts confirmed Blaze displays different behaviour when on their property versus in public. Blaze is more protective of Mrs Maharey.
- [13] When questioned, Mr Coutts was asked about his statement that Blaze had never been aggressive with regard to the report from officers containing previous incidents. Mr Coutts stated Blaze was not acting aggressively, snarling or showing teeth. He stated that nips were not attacks. Blaze was showing protection rather than aggression.
- [14] Mr Coutts confirmed he did not see the encounter between Blaze and the woman, despite holding Blaze on a retractable lead at the time of the incident. He described the nudge as a light touch of the dogs face to the woman. When asked how he would define 'nip' Mr Coutts described it as a 'really soft bite' and stated he did not believe that happened during the incident.
- [15] Mrs Maharey raised some concerns around the matrix scoring of the Officers Report, suggesting that the scores were unfair. She stated that Mr Coutts was very caring of his dog,

not present for two previous incidents and that he hadn't been given a chance to defend himself.

The Council

- [16] Animal Management & Education Team Leader Mr Herb Verstegen spoke to the officer's evidence and made additional comments.
- [17] Mr Verstegen confirmed on three separate occasions in which Blaze has made contact with someone, the behaviour has been exactly the same. Blaze has approached the person from behind and bit the back side or the back of the leg.
- [18] He said the previous incidents were relatively minor and have been dealt with the form of warnings, two written warnings and one verbal warning. Blaze has not been classified sooner based on the severity of those incidents. Mr Verstegen explained there have been several incidents of the same nature now, and Council officers feel that it is in the public interest for the dog to be muzzled, when not confined completely to its property.
- [19] In completing the assessment of whether Blaze should be classified, the Assessment Matrix provided as evidence was used. In reviewing the results from the assessment, Mr Verstegen advised that if Blaze had *nudged* the woman rather than nipping or biting the matrix would still result in a score which recommending the classification given. It was highlighted that one section was missed in error and that in fact the score should have been higher than it was scored.
- [20] In response to the emphasis by the objector that Blaze was on a lead, Mr Verstegen stated that the mere fact that a dog is on a lead does not mean that is necessarily under control.
- [21] Mr Verstegen explained Mr Coutts was given the opportunity to give his comments on the incident on a number of occasions. He noted that in one of the previous incidences, Mr Coutts failed to respond to the council at all.
- [22] He explained this case stands out as usually when a first minor incident happens and a written warning is issued, owners tend to take notice and there are not further issues with such dogs. In this case, this is the fourth incident, so the officers consider that there is no other option but to classify the dog as menacing at this time.

Right of Reply

- [23] In exercising a brief Right of Reply, Mrs Maharey referred to the angle of questioning from the panel suggesting that Blaze being muzzled in public due to the classification would not prevent further issues around the property.

REASONS FOR DETERMINATION

- [24] The relevant statutory provision for the Committee to discharge its obligations is contained within s 33B(2) which states:

"The territorial authority considering an objection under subsection (1) may uphold or rescind the classification, and in making its determination must have regard to-

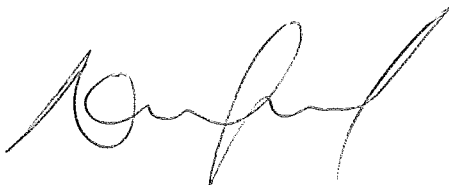
- (a) the evidence which formed the basis for the classification; and*
- (b) any steps taken by the owner to prevent any threat to the safety of persons or animals; and*
- (c) the matters relied on in support of the objection; and*
- (d) any other relevant matters.”*

- [25] The Committee has considered all the evidence placed before it in arriving at a determination on this matter.
- [26] The basis of Mr Coutts objection is that there is no evidence to show Blaze did bite the woman in the alleged incident; also citing that previous incidents have not been at the fault of the dog.
- [27] The Committee must consider the evidence in its entirety, determining what is credible and what is not, and the relevant weight that it applies to each. In this circumstance, we have had specific regard to the factors identified in s 33B(2)(a),(b) and (c).
- [28] We accept there has been a clear history of similar behaviour from Blaze. We are unable to be sure Blaze did in fact bite the woman; however, the panel accept the Assessment Matrix would still result in the same classification, irrespective of whether the bite occurred.
- [29] We have reached the conclusion that with the circumstances as outlined, and the evidence presented, we consider it appropriate for the Animal Control Officer to have classified the dog as menacing.

DETERMINATION

- [32] For the reasons outlined above, the objection is dismissed. The menacing dog classification applied to the five year old brindle female Terrier American Staffordshire Cross registered as dog 319 and known as BLAZE under s 33A(2) of the Dog Control Act 1996 is upheld.

Dated this 14th day of April 2021



Deputy Mayor Aleisha Rutherford
Chairperson



Councillor Lorna Johnson
Member



Councillor Patrick Hancock
Member