



NCN: [2022] UKFTT 498 (GRC)

Case Reference: WA/2021/0013

First-tier Tribunal
General Regulatory Chamber
Welfare of Animals

Heard by CVP

Heard on: 15 March 2022
Decision given on: 6 May 2022

Before

TRIBUNAL JUDGE FORD

Between

AMY HATCHER

Appellant

and

CRAWLEY BOROUGH COUNCIL

Respondent(s)

Representation:

For the Appellant: Mr N Levisieur Counsel

For the Respondent: Ms S Clover Counsel

Decision: The appeal is allowed and the Appellant's license is re-instated with the modifications as set out at the end of the decision

REASONS

1. The Appellant is the holder of License number 21/10123/AWDAYC and trades under the name of Doodley Dogs. She ran a dog daycare centre from business premises in Crawley from early 2018 to October 2021 when her license was revoked.
2. The name of the Appellant is amended from Doodley Dogs to Amy Hatcher because Amy Hatcher is the license holder.
3. Amy Hatcher's sister Jane Hatcher runs a sister dog daycare business at another premises in Storrington also trading under the name of Doodley Dogs.
4. The Appellant appeals against the decision of the Respondent dated 08/10/2021 to revoke her license for the provision of daycare to dogs. The decision was made pursuant to Regulation 18 of the Animal Welfare (Licensing of Activities Involving Animals)(England) Regulations 2018. The Appellant seeks reinstatement of her license.
5. The reasons given in the decision for revoking the license under regulation 15 (a) and (d) were as follows;-

- a. breach of condition **3.2** in that the maximum of 36 dogs permitted on the premises in accordance with the licence was exceeded and the records kept of the number of dogs on the premises did not match the number of dogs actually present. This was considered to be a safety issue as the safe evacuation of all the dogs on the premises could not be ensured if the records were not reliable.

In response the Appellant whilst denying that the maximum of 36 had been breached also acknowledged that the number of dogs on the premises did exceed 36 at what she called crossover times between sessions

- b. breach of conditions **4.1, 4.2 and 5.2** the licence requires that sufficient numbers of competent individuals must be available to provide a level of care for the animals that ensures their welfare needs are met. This concern related to the competency of staff members to identify normal behaviour of species for which they are caring and recognise signs of and take appropriate measures to mitigate or prevent pain, suffering, injury, disease or abnormal behaviour.

The environment in which the dogs were being kept caused concern in that during an inspection on 22 September 2021 council officers found seven dogs within the two kennels in the isolation room, three of them without water in an area where the windows of the kennels were steamed up with condensation, the ventilation system was not working adequately the dogs were showing signs of distress. The thermometer indicated that the temperature outside was 24° and the officers considered it reasonable to assume that the temperature within would have been even higher. During that inspection and another inspection two days later council officers found (as admitted by the appellant) that the ventilation system was not working properly. On 24 September officers recorded temperature in the front arena of 26.7°C even though the temperature strip indicated 24°.

An engineer's report noted that the filters needed replacing as they were dirty and clogged with hair. No steps were being taken to ensure that the welfare of the dogs at the premises was being maintained by adjusting the occupancy levels or in bringing in alternative systems of cooling or ventilation to address this issue.

An anonymous witness who had worked at the premises reported that entirely inappropriate methods of managing dog behaviour had been regularly used on the premises, specifically, the discharging of extinguishers to break up fights and stop barking, the use of mops to manage dogs behaviour, shouting at dogs, slamming doors and banging on windows as a means of deterrence. The witness stated that the appellant permitted the above methods. The respondent concluded that over a long period of time there had been insufficient numbers of suitably qualified competent people on the premises resulting in inadequate care and repeated failures to meet the welfare needs of the dogs on the premises

In response the Appellant acknowledged the use of students as well as part time and full time staff and claimed that the ratio required was not 1:6 but 1:8. She denied that inappropriate discipline methods were used whilst also acknowledging that she and her sister had used mops to control dogs before gates were put in and that a member of staff had used a fire extinguisher to break up a fight but had been asked not to return to work after the incident. She claimed that all staff were appropriately qualified or experienced and that regular staff training sessions took place on Sundays

- c. breach of condition **6.5** which requires that constant access to fresh clean drinking water must be maintained in a suitable receptacle. This refers to 3 dogs being found in an isolation kennel on 22 September 2021 without any water in the water bowl and an insufficient number of water bowls being provided overall

In response the Appellant denied that insufficient bowls were available and claimed that water bowls were constantly replenished. One of three bowls had no water because a dog had stood in it and knocked it over

- d. breach of condition **10.1** which requires that a written emergency plan acceptable to the local authority must be in place, known and available to all the people on the premises used by the licensable activity and followed where necessary to ensure appropriate steps are taken to protect all the people and animals on the premises in the case of fire or in the case of breakdowns for central heating, ventilation and aeration or filtration systems or other emergencies. Reference is again made to the visits on 22 September 2021 and 24 September 2021 when council officers found the fire exit obstructed posing a serious risk to the safety of both dogs and humans. This was not the first time this had occurred and in addition to being contrary to condition 10.1 of the licence, was also contrary to the guidance which specifies that “entrances and fire exits must be clear of obstructions at all times”. The appellant had not submitted an emergency plan to the council for the Council’s consideration

In response the Appellant insisted that she had supplied a written emergency plan.

- e. breach of condition **7.1** that requires active and effective environmental enrichment. The business premises are a converted warehouse with no outdoor space and the respondent considered that in such a sterile environment, it is essential that appropriate methods of enrichment be provided for the dogs. A lack of enrichment had been noted on previous visits

In response the Appellant stated that although there was no outdoor play area she had supplied staff with appropriate toys and instructions for water play including dog appropriate bubbles for play. She had installed a bridge in each of the arenas and staff were constantly interacting with the dogs

- f. breach of condition **21.1 (a)** that requires that each dog must be provided with a clean comfortable and warm area where it can rest and sleep. The respondent concluded that inadequate spaces were provided for dogs to sleep or rest within the two arenas. This was also contrary to the guidance under condition 5.8

In response the Appellant said that she had agreed previously with Council officers that two raised beds, one in each arena, was sufficient for the dogs to have an area for rest

- g. the respondent was satisfied that the appellant was not **a fit and proper person** to hold a licence because when a council officer raises a concern with the Appellant she usually seeks to justify the breach or concern rather than accept responsibility or address immediate welfare concerns.

She had sought to blame staff and others including council officers rather than be accountable for the issues found at the premises. For example, she appeared to blame staff for the condition the dogs were found in on 22 September 2021 in the isolation suite. She had told customers that the council had made her bring in a pre-booking system and reduced her maximum occupancy figures rather than acknowledge that her existing booking system was not functioning reliably.

She appeared unwilling to accept that her licence had always stipulated a maximum of 36 dogs on the premises at any one time and that at all times it remained her responsibility to ensure that the condition was met irrespective of the business model she chose to operate of drop in bookings.

Two anonymous witnesses who were former members of staff stated that she had a practice of lying to customers including as to how their dogs were injured or soiled whilst on the premises and staff were instructed to lie in a similar fashion.

On 22 September 2021 and 24 September 2021 the records maintained by the appellant were found to be unreliable as the number of dogs stated in the records did not match the number of dogs on the premises.

This was considered to demonstrate either a deliberate attempt to mislead the council as to the number of dogs present or poor record-keeping. When challenged about this the appellant told council officers that she would continue to accept dogs into the premises even when the maximum number of 36 was exceeded and she appeared to disregard the limit. 2 anonymous witnesses informed the Respondent that they were told to admit dogs into the setting without regard to the maximum occupancy prescribed in the licence

In response the Appellant stated that she was a highly respected and experienced dog behaviourist and she produced testimonials from many satisfied and loyal customers who had brought their dogs to her to care for since the business started in 2018. She acknowledged that she finds it difficult to take criticism about her

care for dogs because she cares so intensely for their welfare. Her views have been sought in the drafting of the welfare guidance and she works hard to ensure that the dogs in her care are well looked after and happy. She took personal affront at the suggestion that she would not prioritise the dogs needs or would neglect their welfare in any way

6. The respondent concluded that the appellant had failed to comply with a number of the conditions of her licence and that pursuant to regulation 15 (a) there was a ground to vary, suspend or revoke her licence. Taken individually and collectively, the respondent concluded that there were significant and serious animal welfare concerns and pursuant to regulation 15 (d) there was also a ground to vary, suspend or revoke a licence because it was necessary to protect the welfare of an animal. Variation was discounted despite this being the view of the council nominated officer in July 2021 (S. Edwards) because the respondent concluded that it would not address the very serious failings “found subsequently”, which is a reference to the two further inspections that took place on 22 September and 24 September 2021 following the inspection by Ms Edwards.

7. The decision then reads,-

“I have considered the records relating to your licence and I accept that the Council’s Regulation work relating to your licence could have been more responsive, although I bear in mind that my officers have been dealing with matters within the limitations which have arisen during the pandemic. I am also aware that you have requested further feedback from the July visit by the officer Sharon Edwards, but regrettably there had not been an opportunity prior to the recent visits to provide this to you. For these reasons, I carefully considered whether to suspend your licence but discounted this option too. This is because, particularly bearing in mind my conclusion about your lack of fitness to hold a licence and my view that you are unwilling or unable to comply with the terms of the licence, I have concluded that I simply do not have confidence that you would comply with any measures set out in a suspension letter or that any written representations you might make could be relied upon to be implemented”.

8. The decision was that the license should be revoked pursuant to regulations 15(a) and 15 (d). It was acknowledged that the decision was made without the appellant first having the opportunity to make representations. This was because the decision maker concluded that the animal welfare needs and urgency of the case required this. Revocation took effect on service of the notice and the appellant was required to immediately cease canine daycare activities.

Procedural issues

9. The bundles in this case run to over 3,000 pages. When the matter was listed for a one-day hearing concern was expressed that the time allowed would be inadequate but a decision was made by the Registrar to leave the matter as listed for one day.

10. Having read the entirety of the papers in this case prior to the hearing, I identified the issues to be decided as,

a. whether the alleged breaches were established on the evidence and

b. if so, whether revocation was the appropriate outcome

Counsel for the Respondent submitted that the issue as to whether the Appellant was a fit and proper person was a separate issue on which she asked the Tribunal to make clear findings. I proposed to hear evidence from Sharon Edwards and from the appellant before reviewing the situation at that point, regarding further listing to hear the evidence of Charlene Ellis and the appellant's witnesses Jane Hatcher and Lily Rousseau.

11. Both witnesses gave evidence at some length. The Appellant's evidence was considerably more extensive than that included in her witness statement and included an acknowledgment as to the inappropriateness of her behaviour towards Ms Edwards during her inspection. At the hearing on 15 March Counsel for the local authority had said she had little in the way of cross-examination for Jane Hatcher.
12. In the days following the hearing on 15 March emails were exchanged between the parties' solicitors. It was confirmed by the respondent that it did not propose to cross-examine either of the appellant's proposed witnesses at the resumed hearing. The Appellant indicated that there would be no questions for Charlene Ellis and said that the evidence was concluded.
13. On 18 March the appellant's solicitors wrote an email stating that it appeared that the evidence had concluded.
14. The appellant having stated that it appeared that the evidence had concluded, and it being the Appellant's choice to decline to cross examine Charlene Ellis, the tribunal saw no need for a resumption of the oral hearing because there would be no further oral evidence. The Tribunal directed that written submissions be sent to the tribunal by the parties. There was no objection to this from the Appellant and there was no indication that the Appellant had changed her mind and now wished to conduct any cross examination of Charlene Ellis.
15. If the Appellant had requested that the further oral hearing proceed at this point and identified which witnesses were to give evidence, then consideration would have been given to that request. She did not do so. The Appellant has now suggested in her written submissions that it was the Tribunal's decision not to allow any further evidence to be called. This is misleading. It is for the parties to decide on the witnesses they wish to call and on which witnesses they seek to cross examine. The Appellant indicated in writing following the hearing on 15 March that the evidence was concluded and so no further cross examination was proposed.

The Regulations

16. Regulation 15(a) and 15(d) state :-

“Grounds for suspension, variation without consent or revocation of a licence

15. A local authority may, without any requirement for the licence holder's consent, decide to suspend, vary or revoke a licence at any time on being satisfied that—

(a) the licence conditions are not being complied with,

...or

(d) it is necessary to protect the welfare of an animal”.

The Evidence

17. I have considered the extensive evidence filed by the parties in several bundles together with the oral evidence that I heard on 15 March and the written submissions from the parties. There has been a lot of noise in this case (for example about breaches of data protection or staff leaving to set up competing businesses) that threatens to distract from the issues to be determined. I have endeavoured to focus only on the issues relevant to this appeal.
18. The Local authority relied on the evidence of two anonymous witnesses, one of whom has identified himself in the course of this appeal and the other remained anonymous, although the appellant believes that she knows who this individual is. I have treated the anonymous evidence with some considerable caution and attached little weight to it in making my findings. The only real significance of it to this appeal is that the anonymous reports triggered further inspections by the Respondent on 22 and 24 September. It is the results of those inspections that I take into consideration and not the anonymous reports. The Respondent reacted to the anonymous evidence in my view appropriately by arranging those further inspections. I do attach weight to the results of those two further inspections on 22 and 24 September 2021. To argue otherwise is to deny the responsibilities of the Respondent for monitoring the welfare of dogs being cared for in licensed premises in its area.
19. I first heard evidence at the hearing from Sharon Edwards. She is a senior animal health inspector with the City of London. She is one of the team of six employed by the City of London whose expertise is sold to other local authorities to assist with their ongoing cases. The team currently has contracts with 40 local authorities and has done 600 inspections in its first year. The team is dedicated to animal welfare matters. I considered her to be a professional, honest, and focused witness.
20. Miss Edwards told me that she was asked to assist the respondent council because they said they had had complaints. The council wanted a fresh look with a fresh pair of eyes. She knew there had been problems with the business run by Amy Hatcher. The council wanted to work with the licence holder to sort matters out and said they expected licence holders to cooperate.
21. During her first visit to the business premises on 20 July 2021 Ms Edwards wore a bodycam for transparency. She was met with a high level of aggression and hostility from the Appellant, who alleged in her witness statement that Miss Edwards had stated during that visit that she had come to close the business down. Miss Edwards denied this and said that was not her intention. I find that it was not her intention to do so, that she said nothing of the kind and she had not prejudged the situation. She went into the inspection with an open mind. I found her to be entirely professional in her approach throughout the inspection process.
22. In her evidence later in the hearing the appellant acknowledged that she had never heard Miss Edwards say that she had come to close the business down. The Appellant said that she had been told by a customer that the customer had overheard her saying this. That is a very different allegation. The appellant said that the sentiment reflected how she felt about the approach of the council towards the inspection. The appellant felt intimidated by the body camera worn by Miss Edwards. The Appellant shifted her position significantly on this allegation and I do not find it credible that a customer overheard Ms Edwards saying any such thing in the course of the inspection or reporting this to the Appellant or that the customer would feel it important to pass this on to the Appellant.

23. Miss Edwards gave evidence that she was informed by the appellant that there were 26 dogs on site. She said she found the appellant unhelpful when she was trying to count the number of dogs and the appellant had told her she did not know how to count. The appellant spoke over the inspection team and it was very difficult to do the counting. This behaviour could be observed on the webcam footage. She counted 17 dogs in arena one and 14 in arena two making a total of 31 dogs. This was 5 more than the dogs accounted for by the Appellant and the total was later verified by CCTV. The Appellant has never given any coherent explanation for this discrepancy. Her approach was that she was within the numbers permitted under the license, which strictly speaking it was. But it is not within the terms of her license that the records of the dogs on the premises are inaccurate and unreliable. The records did not accurately record how many dogs were on the premises and that is a serious failing given the possible ramifications should the dogs need to be evacuated.
24. It was Miss Edwards view that premises were overcrowded. Miss Edwards described the atmosphere as chaotic. She felt that the stocking density of 6 m² per dog according to the guidance was being exceeded, regardless of the number of dogs present. She said they were all shapes and sizes and did not seem to be grouped on the basis of any behavioural assessment. She ultimately recommended that the number of dogs permitted on the premises be reduced to 26.
25. She was concerned that a clean safe area for rest was not been provided to each dog in accordance with the requirements of the regulations. There were only two raised beds in each of the two arenas for rest.
26. In a previous inspection the vet had reported that the flooring was unsuitable. The appellant said it was resin with foam underlay. She felt it was suitable for dogs to sleep on. I note that the appellant had been informed very clearly by the vet on a previous inspections dating back to 2019 that the surface was not suitable for dogs to sleep on. She disagreed and she still disagrees and is not willing to accept the vet's contrary view. She felt that the arrangements in each arena were sufficient. She said that the vet referred to the flooring as being concrete when it was not .
27. The appellant said that she had bought two new beds for each arena and then shown them to Charlene Ellis. The evidence of the appellant differed from the respondent's evidence as to whether Charlene Ellis had stated two beds for each arena was sufficient or was a "good start".
28. When Ms Edwards arrived to conduct her inspection in July 2021, behavioural assessments were being conducted. She noted that the business had dogs coming in and leaving all day at different times. Miss Edwards felt that this upset the group dynamic and unsettled the dogs.
29. The business records were found not to be accurate. Miss Edwards was concerned that the number of dogs on the premises could not be readily ascertained which she viewed as a safety issue in the event the premises needed to be evacuated.
30. The booking system in place meant that there was little predictability in the system. Customers were asked to set up an account with the business and pay money on account to pay for future daycare. Vouchers were then issued to customers which they could use at any time without advance booking by simply turning up. She argued that the evidence as to whether the maximum number of 36 dogs was ever exceeded was inconsistent and incredible. She said that the maximum number was never exceeded.

31. The Appellant then acknowledged that at “crossover periods” such as lunchtime, the maximum number might be exceeded during crossover period but not for the actual sessions. Despite clear evidence that the maximum number of 36 had been exceeded at times due to the unpredictability of the voucher system and the appellant’s acknowledged approach of never turning a dog away, she still maintained at the appeal hearing that the maximum number of 36 had not been exceeded and did not acknowledge that the clear exceeding of the maximum at crossover times between sessions was a breach of the limit of 36.
32. The booking system was changed after March 2021 in a tacit acceptance of the problem and the business model required that customers book sessions in advance. This was much more realistic as it allowed the business to keep a close eye on the numbers of dogs on the premises. However as at the visits of September 2022 it appeared that sufficiently tight control was still not being maintained on the numbers on the premises.
33. Ms Edwards was concerned about the temperature in the premises during her inspection. She referred to the use of unreliable non digital thermometers. This was not the first time that the Appellant had been advised that she needed more reliable temperature monitoring.
34. She pointed out to the appellant that on all the records she had seen the temperature was filled in as 20° every day by a staff member AH. The Appellant said that she did not recognise the initials which indicated a lax approach to the recording of the temperatures.
35. Ms Edwards recorded the temperature on the day of inspection as being 26° on a post in one of the arenas used for urination, when the thermometer used by the appellant at that site was showing a lower temperature. The temperature outside was 24 degrees Celsius. Ms Edwards was concerned that the booster cooling system had not been activated when it should have been, particularly as there were braxy cephalic dogs on site with restricted breathing (bulldogs)
36. Ms Edwards said that she found the electronic and paper records being maintained by the business to be unreliable. When challenged about this the appellant said that her IT company had access to those records and she did not. I regard this response as evasive because the IT company was only recording the information that was passed on to it by Doodle dogs. The Appellant must have had access to the information.
37. Ms Edwards scanned a number of dogs randomly. The appellant could not find one of the dogs named Onyx but said that it was a new dog and the records had only just been filed. Ms Edwards was concerned that Onyx, a Staffordshire bull terrier, had been permitted to join the other dogs even though Onyx had not been assessed as suitable for daycare yet. Onyx had not been placed in a smaller unit on his own and Ms Edwards considered this a potential safety issue. When she challenged the appellant about this the appellant said that there had been an assessment in the shop and no issues were shown towards members of staff. Ms Edwards considered this assessment to be inadequate. She said that an assessment shouldn’t have been done on a day when Onyx was added to a group and she would not expect him to be mixing with 17 other dogs while being assessed. Ms Edwards formed the view that the site was mismanaged and chaotic. She formed a view that the appellant did not take professional ownership of the business and was not running it in a professional manner.
38. Following this inspection (page 8071) Ms Edwards recommended that the maximum number of dogs on the site be reduced to 26 and the star rating to 1 star. She said this was

based on her observations. She acknowledged that there was a requirement of 6 m² for each dog. But given the nature of the site (with no outdoor space), if you were to add the enrichment requirement and the requirement for a private quiet space for each dog then the maximum number of dogs allowed should be reduced. This must have come as something of a shock for the Appellant who has always argued that the maximum permitted should be 42.

39. Ms Edwards said that she did not accept that the appellant was meeting the basic needs of the dogs in her care. Ms Edwards said she felt she had no option but to reduce the rating to 1 star. She said that when the regulations were changed there was a category of one star over a 12 month period in order to enable work to be done to ensure compliance and to give the proprietor the opportunity to work with the local authority. As she had found a number of failings, she felt she had no option but to reduce the rating to 1 star.
40. In cross-examination she agreed when it was put to her that the appellant had been uncooperative. In relation to the number of beds available, she said that there were only four beds available for 31 dogs. She said most daycare businesses keep a range of bedding behind the participation/play area, but in this case there were only play areas and no choice was given to the dogs. There was nowhere for them to go and lie down and sleep or rest. She said the legislation states that all dogs should have access to a peaceful area for rest and she would expect beds to have been provided behind a petition to allow all of the dogs at the centre to have space to lie down.
41. Ms Edwards was concerned about the lack of enrichment on site. The Appellant pointed to a bucket in which toys were soaking in disinfectant and said that she would not play with the animals during an inspection and appears to have instructed staff members to avoid playing with the dogs during the inspection. The Appellant stated that she and her staff members had been playing with water and bubbles earlier in the day with the dogs and would do so again later that day. She referred to many happy customers who regularly observed their dogs playing. Ms Edwards said that she would expect to see different areas with different surfaces and heights (she did note the bridge in each arena), scent work, different environments and she did not see sufficient active enrichment. Although she did see staff members in one area holding squeegees, they were cleaning up faeces and urine and not engaging in any proactive interaction/active enrichment.
42. She found the appellant to be repeatedly argumentative during her visit and felt that she did not demonstrate that she had taken ownership of the business. The appellant repeatedly blamed others for issues identified by Ms Edwards blaming staff or council officers. She blamed the inspection for forcing her to take a member of staff off other duties then leading to the conclusion that the number of staff was insufficient.
43. When asked why the flooring that had been deemed unsuitable for sleeping on a previous veterinary inspection had not been altered, the Appellant claimed that Crawley council officers had told her it was suitable. That is not correct. I can see from a previous veterinary inspection that the flooring was considered not to be suitable for dogs to rest or to sleep on.
44. Ms Edwards observed the Appellant banging on a window to stop two dogs displaying mating behaviour. Two staff members were in the area where the dogs were and did nothing to intervene despite the non dominant male showing signs of anxiety.
45. On 20 July 2021 the appellant told Ms Edwards that there were 26 dogs on site. When counted, there were 31. Ms Edwards was concerned about the reliability of the records being

maintained, The Appellant has previously stated that some dogs were staff dogs and that was why they were not counted but it was made very clear to her that staff dogs had to be counted towards the total of 36.

46. A copy of the record of the screening procedure for Onyx was requested. It transpired that no formal assessment had taken place. The appellant stated that she had carried out an assessment on Onyx that day in the daycare room. That was Onyx's first day and the Appellant said that the record was only available electronically. She had assessed the dog as unsuitable, yet he had been placed in the day room with other dogs. I find that there had not been an adequate assessment of Onyx before admitting him onto the premises with the other dogs. He should not have been admitted without a more thorough assessment being completed.
47. The appellant was described as being extremely unhelpful and rude when Ms Edwards was attempting to count the number of dogs and she offered no assistance in the count. I accept this description of her behaviour because I have seen the bodycam footage. She refused to verify the count made. There was a discrepancy when the number was checked against the records. The appellant repeatedly made claims of miscounting but gave no assistance in the counting saying she could not count. She was then asked to verify staff names of those on duty at the time of the inspection she refused citing data protection concerns. When Ms Edwards stated that she was bound by data protection the names were only then given by the appellant. Ms Edwards acknowledged that the appellant did secure some dogs to read their chips. The Appellant stated a number of times she needed to end the inspection but then changed her mind about this and later denied knowing that she could ask for the inspection to end and take place at another time.
48. When Ms Edwards expressed concern about dogs displaying stress behaviours on the premises the appellant told her that Ms Edwards was not allowed to carry out a welfare assessment. Ms Edwards then produced authorisation that she was permitted to do this during the inspection. The appellant then stated that Ms Edwards was not allowed to reassess the licence conditions and it was explained that she could be reassessed at any time during the term of her licence and that the licence could be varied if required.
49. The appellant then informed her that she was on the board of DEFRA. She then stated that she helped to write the Guidance. Neither of these assertions was true. She stated that she was a member of the pet industry Association which is a trade association involved in the consultation with DEFRA in drafting the guidance.
50. The appellant challenged any proposed reduction in the number of dogs permitted on the licence (36). Based on the area available and the lack of suitable enrichment Ms Edwards decided that the maximum number allowed on the premises should be 26. The appellant agreed that they did not meet the 6 m² requirements but insisted that the dogs were in a suitable environment. She argued that the space requirement was not to be strictly applied where the premises were able to provide enrichment. But this does not follow as all such premises and businesses are required to provide enrichment in any event.
51. Ms Edwards was particularly concerned that the failure to control the temperature combined with the overcrowding, and the absence of reliable record keeping was placing the welfare of the animals at risk. The appellant's response to this was that she knew about her duty of care. In the course of the visit the appellant threatened to go to the press. On the issue of the temperature the appellant pointed out that the boost from the fans only runs for 45 minutes.

She was said to show no concern for the braxy cephalic breeds and any difficulties they might have been breathing in such high temperatures

52. When asked how adverse behaviours are recorded the appellant produced her laptop, asked the inspecting officer not to write down her web address and then showed her a record that linked to the computer having stated earlier that she could not access the information remotely. She said that all staff members had phones for recording and taking photos to upload onto Facebook.
53. The inspecting officer was unable to ascertain what vaccine had been given to each dog through the electronic records.
54. At the end of her inspection Miss Edwards recommended that the number of dogs on the licence be reduced to 26 with a maximum number of 13 in arena one and 9 in arena two. She recommended that the licence be varied to a one star one-year licence with a two-month unannounced visit to ensure all breaches of conditions had been rectified. She then set out in a schedule the general conditions to be met under the licence and the breaches of several conditions.
55. Ms Edwards said that she had been supplied with a copy of the previous inspection report prior to her inspection and told that there had been complaints but not the nature of them. She said that she wanted to reach her own conclusions. This was a professional approach and avoided prejudging the outcome.
56. When she gave her evidence the appellant said that Pets corner, the shop through which all of her customers had to use to access the Doodley dogs premises, hold a one third stake in the Doodley dogs business. In her evidence the appellant described the booking in system using computers in Pets corner and directly with Doodley Dogs. She was asked how the business controlled the number of dogs on their premises. She acknowledged that at times they went over the 36 by some 3 to 4 dogs because she felt she was faced with the choice of leaving the dog in unsuitable conditions waiting until the place became available or accepting them into a ventilated building.
57. She said she had acknowledged the issue by introducing a new booking system. She said “once we are near capacity the bookings are closed and we have a buffer”. However, later in her evidence it became clear that the business the maximum of 36 dogs and there was no “buffer”. But it should be acknowledged that albeit reluctantly and belatedly, the appellant did alter the business model for booking dogs in when advised that she had to introduce advance booking. But as at September 2021 further visits revealed that the Appellant was still not taking adequate control of the numbers of dogs on the premises.
58. With regard to enrichment she said that on the day of the inspection she had been playing with bubbles, balls and toys with the dogs. She said staff use splash pools twice a day when the weather is warm. She said that was when they get the squeegees out and the dogs enjoy the play. They use the bridge in each arena and there are platforms for rest. She acknowledged that there were two beds only in each arena but said they were very large, she thought 1.5 m., big enough for two great Danes.
59. When asked about the floor in the arenas she said it was not lino but was an imported resin poured on top of sponge and was “pretty soft and kind of springy”. She gave no acknowledgement of the advice from veterinary surgeons dating back to 2018 that while the

surface might be adequate for play, it was unsuitable for rest or for sleep. The same product is used but with less thickness in the isolation suite. When asked if she thought it was suitable for the animals to rest on the appellant said “I believe so yes”. This illustrates the Appellant’s persistent refusal to accept professional advice on welfare issues.

60. She acknowledged that there was space available for putting in further sleeping areas permitting the dogs to rest but said she was concerned that “they would view it as enrichment” and said that she said she had agreed with the council that raised beds were best but was open to different ideas. She had been advised following several inspections since 2018 that a separate area for rest was needed for dogs to lie down and that it needed to be a quiet calm area away from the other dogs. She has persistently failed to ensure that there are such areas available to all dogs. 2 raised beds in each arena are patently not sufficient to meet this need.
61. Asked about the toys used for play she said they use different toys to play with dogs. They are all soaked overnight in dogsafe chemicals. They use durable toys and rope for the smaller dogs. They use frisbees tuggies and bacon flavour bubbles. The toys they use are made of rubber, wall and/or fur. Owners can watch the dogs playing if they wish. But she said that she wouldn’t allow play with the dogs during a council inspection. She gave no indication of having discussed this with the inspection team.
62. When asked about her failure to engage with concerns expressed by Ms Edwards about the temperature, she said that she realised the accuracy of the digital thermometers proposed by the respondent was better but she said that as she didn’t get feedback she hadn’t done it. This was in my view an evasion of responsibility because it was made very clear to the appellant during the inspection that she needed to get more reliable digital thermometers for accurate thermometer readings and to keep more reliable temperature records as the records she was keeping were found to be unreliable. It was not the first time she was advised that she needed more reliable temperature records.
63. The appellant denied lying to Ms Edwards about being invited by the Kennel club to give her opinion to DEFRA. She said she had exaggerated but what she said was not false. What she said was demonstrably false as she personally had not been invited by DEFRA or the Kennel club to give her personal opinion in any consultation on animal welfare regulations. She contributed her view in a consultation exercise through a trade organisation.
64. The appellant said she had had no communication from the council following Miss Edwards visit although she had asked for feedback. This is correct and was acknowledged by the Respondent.
65. She agreed that dogs had been placed inappropriately in isolation areas during cleaning. The cleaning should have taken place outside of business hours.
66. While she accepted that an air conditioning filter had become clogged with dog care, she said it didn’t affect the rest of the building. She said it was discovered on the Monday and the engineer was called and it was rectified within days. It was rectified only after council staff raised concerns about the high temperatures and queried why the air conditioning system was not effectively controlling the temperature.
67. When asked if the temperature on the premises she was too high the Appellant said “the legislation does not have guidance for temperature in play areas. None of the dogs was too

hot". She made no reference to the concerns about the braxy cephalic breeds being able to cope with such high temperatures. She said the airflow was not compromised to the rest of the building. When was put to her that the temperature was digitally recorded as 26.7°, she said "I recognise that I shouldn't have said I don't need digital thermometers. Ours weren't digital so I can't confirm that that was the temperature". Given that she was shown the reading on the digital thermometers being used by Ms Edwards, this was an unreasonable refusal to acknowledge the reality of the situation during the inspection.

68. She said she had agreed the bedding arrangements with Charlene Ellis and did not accept that the bedding arrangements were inappropriate.
69. On the allegation that the numbers allowed under the licence were regularly exceeded, the appellant said that they could be exceeded during the crossover period but the maximum was not regularly exceeded and she denied the numbers could reach 50 or more. When asked about the statement including screenshots from Harry Roper, she said that she couldn't say where the screenshot had been taken or at which centre. She said that taking the screenshots involved a data breach and seemed more focused on that than on the concern about numbers. She denied being concerned about some former members of staff setting up in competition.
70. When asked about how many dogs were present during Ms Edwards inspection she said that numbers used to be taken from screenshots but that it was realised that it took some time to walk up the corridor to the next section on the premises and the results could be unreliable because the whole area needed to be counted the same time. The database couldn't be expected to match. It was suggested that the camera recording could be frozen and the dogs counted from there. In future she said she would lock the front door while an inspection happens.
71. The appellant said that the policy of not playing with the dogs during an inspection was still in place but gave no further explanation for this. I make it clear at this point that I do not have the expertise to say that this is the incorrect approach, but my concern is that the appellant did not discuss this approach with any of the inspection teams to see if it was helpful or unhelpful to the inspection.
72. He appellant acknowledged that there had been one incident of a fire extinguisher being used by a former member of staff, but she said the member of staff was asked to leave when this was observed. She denied slamming doors as a means of controlling dog behaviour and said that the doors could not be slammed. When asked about the use of mops to control dogs, she said that when there were no gates it was more difficult for her and Jane and they had used mops, but she said they never trained staff to use mops in that way. In terms of training the staff, training took place on Sundays and it carried on during Covid.
73. In relation to the inspections that took place on the 22nd and 24th of September 2021, she said there were three bowls of water available for the dogs and not two as alleged although this is open to interpretation as one of the dog bowls was apparently empty. She said that one of the dogs had stood on the bowl and knocked it over.
74. The appellant insisted that an emergency plan had been submitted to the council for its approval. She said it was submitted for the licence and for the March reinspection and a copy was kept in a cupboard on the premises.

75. Asked about the blocking of the fire exit/emergency exit, she acknowledged that during inspection two puppy beds were lying against the exit in the puppy area while they were drying. Asked about the shop cage placed against the main fire exit, she said that the exit was “not entirely blocked”. A partner company had put materials outside the area but there was still passing space for humans to get by. This demonstrated to me a cavalier approach to the safety not only of the humans but of the dogs.
76. The appellant was asked questions about her fitness to run such a business and it was put to her that rather than dealing with issues that arose she always sought to justify herself and not engage. She said, “I accept that I don’t always verbalise my compliance but I always do it and I always have done”. It was put to her that she always blamed others including council officers rather than accepting responsibility. She said that how she verbalised it was due to frustration. She had been allowed 36 dogs for 2 ½ years and then she was told it was being reduced to 26. This is an acknowledgement that she knew of Ms Edwards recommendation to reduce the number of dogs permitted from 36 to 26 even though she had not received a copy of Ms Edwards report prior to the September visits. She said that she didn’t get feedback on the July 2021 inspection. She said she was not seeking to blame staff and knew she had to take responsibility. She had learned lessons. But she said that she found the reduction from 36 to 26 dogs on the premises unfair. She said it read as if the council did not care. The thought of turning away existing customers was difficult for her. She then started referring to the changes she had introduced in the booking system to ensure that the business did not go over the permitted number of dogs. She denied instructing staff to accept dogs regardless of the number
77. When asked why she had told customers that the council had made her implement a pre-booking system, she accepted that this was a flippant remark and that she shouldn’t have said it.
78. The appellant was insistent that she had co-operated with the council recommendations at all times and that there was no way she or staff members would knowingly compromise the welfare of the dogs on the premises.
79. Asked about the incident when a young bitch was taken into the premises and then became impregnated the appellant said that at the time she was gravely ill. She said there was no evidence that there had been contact while on site but she had agreed to pay for the vet’s bill. She said no one had informed the business of her status. When it was put to her that the owner of the dog had told staff on arrival, she asked for proof of this period she said that the young dog was “let out for a wee” and was then observed to be mating. She referred to the need for more than one mating to result in pregnancy. She acknowledged that another member of staff had put another dog in with the young female. The appellant’s evidence suggested to me strongly that this young bitch was placed on her own because staff members knew she was in season that an error was then made and a staff member who did not know the situation got a dog in with her and mating took place. Mating may also have taken place when the dog was allowed out to relieve herself. The Appellant’s acknowledgment of responsibility was half hearted at best.
80. The appellant clearly believe that purchasing two raised beds for each of the front arenas was sufficient to meet the recommendations made on inspection on several occasions that the dogs needed a quiet calm restful area to which they could retire if they needed to move away from the pack. She has maintained throughout that this was agreed with council officers as a satisfactory solution to the issue, but I am not satisfied that he was. Council

officers agreed that it would be an improvement to have the raised beds rather than nothing at all. The vets expert opinion, maintained throughout several inspections, was that there needed to be a separate quiet area with suitable flooring to which the dogs could retire for quiet and rest. When it was put to the appellant that Charlene Ellis said that the raised beds were a “good start”, the appellant said that she hadn’t said that, she had said that the beds were a “marked improvement”.

81. The appellant became argumentative when it was put to her that the allocation of four stars after the March 2021 inspection was obviously an error and that she knew it was an error. She argued that the second premises run by her sister had been awarded a four star rating due to the quality of enrichment. When it was put to her that she knew the four-star rating was given in error and that she was allowed to keep it only due to the administrative error, she merely said “we held four stars for three years”.
82. The breaches recorded for that March 2021 inspection were put to her but she did not really engage with them. While she acknowledged that her communication was not always the best with council officers, she insisted that she had always worked alongside the local authority.
83. When dealing with the vets reports she said they didn’t understand the temperature system. She said that she got stressed and nervous during inspections and may have come across badly. She said she was never sure of the objective of the inspections and was not clear why over a series of inspections the rating was reduced from four stars to 2 stars.
84. Asked about the clogged filter, the appellant said that the clogging of the filter did not affect the rest of the building. She did not address the impact of the clogged filter on the dogs housed in the area affected. She said that filters were replaced every six months but for some reason that was not enough in this case. She said that now the filters are replaced quarterly because it was realised that replacing them every six months was not enough.
85. The appellant was asked why the blockage outside the emergency escape route was not cleared when it was highlighted in March 2021 and why it was still there in July and again in September 2021, the appellant accepted that the obstruction should have been moved but said the items blocking the exit did not belong to the appellant. She acknowledged that it was an error not to have just removed the items sooner.
86. When it was put to her that she had not submitted an emergency plan fit for purpose, she said the complaint made against her was that she hadn’t submitted any emergency plan. It was put to her again that she had submitted an inadequate emergency plan and she repeated that she had submitted an emergency plan. I found this response to be evasive as the requirement under the licence is to submit an emergency plan that is fit for purpose and can be approved by the Council. That was not done. It is not enough to simply have an emergency plan that is not approved as fit for purpose.
87. When asked about the training records, the appellant said that her sister does them. This was not an adequate response as she is the licence holder and should have access to the records.
88. It was put to the appellant and that she had prevailed on a customer to lie about what she had overheard Sharon Edwards saying during the July visit in 2021, alleging that Sharon Edwards had stated she had come to shut the business down when she never had said this. The appellant gave a mixed response to this, she said the customer stepped forward, she didn’t remember lying, she didn’t know what the customer had invented and she had not

exercised any influence over the customer. She then said it felt like the council was trying to shut them down. She acknowledged that she had said this to Sharon Edwards and she said Sharon Edwards had then turned it back on her. I regarded this aspect of the appellant's evidence as illustrative of her difficulty in taking a professional approach and regarding any criticism of her business as a personal attack against her rather than a licensing authority expressing concerns in carrying out its statutory functions.

89. The appellant said that the relationship between her and the council broke down early in 2021. She said she was not aware of Sharon Edwards concerns until the autumn. While I accept that a copy of Miss Edward's report of July 2021 was not supplied to the appellant until later in the autumn and this should not have been the case, I regard the appellant as being disingenuous when stating that she did not know what the concerns were arising from that inspection. The concerns were obvious at in the conversations she had with Ms Edwards at the time of the inspection in July 2021.
90. The Appellant referred to incidents of breach of data protection by members of staff in the autumn and police investigations but I saw no relevance to these proceedings.
91. The Appellant has repeatedly stated that the Council has access to all of the webcam footage for the premises but it was put to her that the council did not have access to that footage. She said this was not true and referred to an email in which she gave the webcam log in details dated 22.09.2021. The Respondent maintains that it did not have access to the footage and I prefer the Respondent's evidence in this regard as I have no doubt but that if the Respondent had access to the footage they would have viewed it as part of the inspection process.
92. Included in the appeal papers were WhatsApp exchanges purportedly between Jane and Amy Hatcher and between Council officers regarding the business. The messages suggest that the Respondent was intent on closing down the business and was not keeping an open mind during the investigations. Particularly concerning was the WhatsApp exchange purportedly between Kate Wilson, Council officer and Kareen at page 7523 onwards. This was included in a section entitled "WhatsApp manipulation". It seeks to give the impression that Council officers were conspiring to shut down the business and not being fair to the Appellant, for example stating "We'll get 'em don't worry" and the response "Cant wait". The Appellant acknowledged that these messages were fabricated by her and she said she had done this to show how easy it was to fabricate exchanges that had not really taken place, suggesting that the exchanges between her and Jane that appeared obstructive to the visits were fabricated as well. The WhatsApp messages were included in a section in the bundle that indicated the messages were not genuine.
93. This behaviour in fabricating such messages shows the unprofessional attitude of the Appellant which when combined with her paranoia creates grave concerns about her ability to maintain an honest and open relationship with the licensing authority which is essential for any license holder. The Appellant's response when challenged about the appropriateness of this behaviour was to say that it was very easy to do and she was just showing how easy. When she was asked why she had used the real identities of council officers in the fabricated exchange (names and photographs), she merely said that she had not used their phone details and did not believe that it was wrong. She said " It would be wrong for general purposes but not here".
94. The witness statement from Jane Hatcher appears to more address the situation at Storrington than at Crawley. It includes a statement that the premises normally operates a

1:8 ratio of dogs to staff for the higher standard under the regulations but there were exceptional circumstances during the inspections in October and November 2021 (reference to September 2021). She states that there was an unexpected and immediate resignation of a staff member just before the inspection and due to an unexpected incident at the other centre Jane Hatcher was not available to take the place of the staff member in question. Allegations are made against a staff member working at Pets corner who had alleged that she was instructed by the owners to hide some of the dogs during the inspection. It is alleged that her witness statement was actually written by Kareen Plympton. Records are attached that support the Respondent's account of the number of dogs sometimes exceeding 36, albeit during "crossover periods". Some of these dogs attended with volunteers. It was made clear by the vets and officers who inspected the premises that all dogs including those of volunteers must be included in the head count with the limit being 36 for the premises run by the Appellant.

Earlier inspections

95. In **May 2018** and again in **November 2018** veterinary surgeon Doctor Reynolds visited the business premises.
96. Following his visit in May 2018 he made several recommendations. In November he noted that several of his recommendations had been acted upon. But some had not. There were gates on the short internal walls attached to the entrance doors to the two arenas. The gates were of adequate design and construction and their introduction was a "huge improvement". There were also more hand sanitiser gel dispensers.
97. He had advised that every dog should wear a collar with the name of the establishment. This had been carried out and printed bands were in use. A CCTV camera had been installed in the isolation room so that a dog in either of the isolation kennels could be monitored remotely. There were temperature indicators in each arena and each room where dogs were held as advised. The ventilation and temperature control system would have been suitable for premises with a high star rating and he acknowledged that. But he still had reservations.
98. He noted some failings in the management of the establishment. There was a basic first-aid kit for human use but it had no eyewash solution. He regarded this as disappointing given that he had explained its importance at his previous visit.
99. He was shown the fenced area outside the building that is nominated in the emergency plan is the place to which to take dogs in the event of a fire or dire emergency. He noted that the fence did not reach the ground and would allow the escape of small dogs onto the street.
100. He expressly referred to the quality of the environmental enrichment in the two arenas which he described as "wanting". He said that the dogs were able to interact vigorously with each other which is beneficial, but there was no separate area accessible to a dog that did not want to play. This remained an issue 3 years later.
101. There was a curved bridge the dogs could run over, but it was not a separate area like a "raised platform". This meant there was no scope for choice on the part of each dog and the specific conditions set out in part B of the guidance notes were not being met for dogs in the arenas.

102. The owners told him that DEFRA had told them that access to an area with soft bedding was not required, because the arena surfaces were not concrete. He described this as a “misunderstanding”. He said the flooring is a high quality impervious plastic but would still be described as a “hard surface” and not appropriate for sleeping. And said that they had prepared a design but sourcing would take up to a year. The design and layout of the arenas would not, he stated, satisfy what is required for a higher standard in this regard.
103. Doctor Reynolds said that during his visit there were four puppies of various ages in the puppy room. They were accompanied by a female staff member. He was told that they were never left unattended. He noted poor supervision during his visit. One dominant male puppy was persistently attempting to mount a slightly larger but subordinate male who was clearly stressed and unable to get away. He did not see any effective or proactive intervention.
104. At the May inspection in 2018 it was agreed by the council, the owners and Dr Reynolds that supervision and the staff ratio to dogs requirement applied to each arena as well as to the premises as a whole. During the visit in November there was one staff member in each arena. The first had nine dogs and the second 11. When he let himself out of the premises the attendant in the first arena had left his dogs unattended in order to do some cleaning. The member who had been with the puppies was also in the corridor so he suspected that they too were left unattended. In this respect, the conditions agreed in May and required for a higher standard rating were not being met.
105. Dr Reynolds complemented the establishment on the record keeping in May 2018. The system was efficient, but inadequate attention to detail was exposed when three dogs were not recorded as being on the premises because they belonged to a member of staff. He said an accurate register and continuous supervision at all times, was necessary for the safety of the dogs and staff training must be improved so that it is maintained. On the basis of his visit he was not able to recommend that the licence be varied to increase the number of dogs to the 42 the owners had requested. Dr Reynolds letter setting out his concerns after the November visit are stated in his letter dated 30 November 2018 at page 77360 bundle five.
106. Another assessment took place on **7 February 2019**. The officer Karen Plympton comments following that assessment are set out at page 7739 and it is noted that “the setting previously operated without the appropriate licence in place and significant time was spent by myself as a council officer from April-November 2018 bringing it up to standard.
107. She said that the changes undertaken as per her recommendations were new CCTV covering the two isolation kennels, whiteboard and isolation area, first-aid kits and the isolation area and main internal corridor, new collar bands in place to ID dog and contact details, new gating in place to create a safe zone between main arenas as the previous use of soiled mops to field dogs away from exit points was considered unacceptable, additional signage identifying each dog area, loose dogs signage in place, additional hand sanitiser units, wet foodstuffs were no longer permitted and it was noted that owners had previously provided for human food including curry and spaghetti bolognese). Dry food only is now permitted as there are no refrigeration facilities available for dog products. The staff kitchen could not be used for that purpose. Visual thermometers were in place in each room/arena there was a centrally controlled heating and ventilation system but visual monitoring within the rooms/arena this was not possible until these thermometers were in place. Temperatures can now be adjusted and additional cooling/heating provided if individual dogs require it. Slip leads for dogs were made available in an accessible location.

108. Ms Plympton recorded that little environmental enrichment was present, it was inconsistently used and its importance was not understood or valued. It was noted that the licence holder Amy Hatcher is very experienced and has extensive knowledge and experience as a dog behaviourist. She and her sister had run a similar setting at Storrington for a number of years. It was recommended that a minimum of two members of staff be available in each arena. It was noted that the private suite/isolation kennels were being used for keeping dogs when the minimum should be 6 m² and consequently the kennels should only be used in an emergency. This remained an issue in September 2022.
109. Ms Plympton stated that the main arenas did not have an area where the dogs could appropriately rest or hide from other dogs. Simply allowing the dogs to rest on rubberised flooring was not sufficient. This is a repeat of Dr Reynolds concerns from 2018.
110. She said that the premises needed to incorporate an area in the main arenas where the dogs/bitches can rest on suitable beds and escape from the pack if they wish to do so. When this issue was raised at the inspection the owners indicated that “a suitable design was about a year away”. Ms Plympton said it needed to be implemented by 30 May 2019.
111. It was noted that there were insufficient staff to dog ratios of the time of the inspection on 30/11/18 (ratio 1:6 set by the council) but Amy Hatcher has stated that the higher standard of 1:8 will be met as part of the new licence regime. This is another example of the Appellant believing that she knows best and refusing to accept advice from Council officers.
112. Ms Plympton said that all dogs including staff dogs must be booked in and form part of the total capacity when day boarded. The final star rating given following this inspection was 4 stars. This was an error. The rating should have been two stars. The awarding of 4 stars in error was very unfortunate and it allowed the Appellant to persuade herself that all was fine when it was not and she should have known that it was not.
113. The next inspection by Charlene Ellis took place unannounced on **17 December 2020** and following that inspection a section 10 improvement notice was issued. The notice was issued because a copy of the licence was not clearly and prominently displayed, the maximum number of dogs allowed of 36 was exceeded by one dog, the dogs in the quiet room were observed to be walking around on the floor that was wet and had not been cleaned immediately, the specific feeding requirements for one individual dog had not been written down and was known only to the business owner and not recorded for staff members, in the front room there was only one bucket type bowl of water for 16 dogs and two bowls in the rear room holding a larger number of dogs. It was stated that there must be multiple water bowls so that all dogs can have access to fresh water and this had to be actioned.
114. Again, it was noted that there were no areas where individual dogs could take themselves in order to avoid seeing other dogs and humans. There was no separate resting area within the two main rooms. The matter was discussed in relation to various designs and it was agreed that a row of raised beds could align a wall in each room but it was stressed that this needed to be actioned and that it was a matter that had been raised in the previous inspection in February 2019.
115. Condition 24.1 requires that any unneutered bitches must be prevented from mating and when in season unneutered bitches must not be accepted alongside entire male dogs for day care unless there is sufficient separation in sound, sight and where possible smell.

116. Ms Ellis said she had a lengthy discussion with the Appellant due to a serious incident that resulted in a bitch being mated on the site on 17 July 2020. Her decision to visit was pushed forward by a complaint made by the dogs owner and was part of the two midterm licence inspections.
117. Ms Ellis observed very little evidence of environmental enrichment on site in terms of choice or activities.
118. The premises were described as generally well maintained and on inspection by a council's nominated vet Doctor Alistair McVicar it was stated that the standard of cleanliness was excellent. The surfaces are easy to clean and documented cleaning procedure is in place.
119. Ms Ellis noted that the outside emergency escape route viewed at the time of the full inspection on **23 March 2021** was notably obstructed with packaging and stock cages that appeared to be from the Pets corner shop. The appellant advised that a fire risk assessment was planned for 29 March 2021 and the area would be cleared.
120. Recommendations were made for the improvement of record-keeping to ensure reliability of appropriate information was being maintained. Several areas of compliance were recorded on this inspection. But the final star rating given the concerns, was two stars for a one-year period. In a subsequent email to the appellant dated 5 May 2021 in response to queries from the appellant about the star rating, K Plympton stated that "the premises is considered a high risk setting due to the number of factors, including the length of time known to Crawley Borough Council (under three years close parenthesis), relevant history and findings on the visits of 17/12/2020, 07/01/21 which was also attended by Doctor Alistair McVicar"
121. In July 2021 Ms Edwards did her inspection. The respondent did not serve a copy of Ms Edwards' inspection report and invite feedback as they should have done before they carried out the further inspections of 22 and 24 September 2021. This denied the appellant the opportunity of responding to the concerns or of putting matters straight before the further inspections took place. When those inspections took place the appellant perceived that a decision had already been made to shut the business down and the September visits were merely to gather evidence to support that decision. From her point of view, not having had the formal feedback that could reasonably be expected after Miss Edwards visit, the appellant felt that the council was being unfair.
122. The appellant acknowledged that her behaviour had been inappropriate during the July visit of Ms Edwards. She said "I was definitely not at my best and was rude. It's not how an inspection is meant to go. Some of the suggestions made were shocking as I had already agreed items with the council. We felt like we were fighting for our lives. After the inspection it felt like we had a drugs raid. But we never had any complaints about accommodating 36 dogs until then. I was definitely rude or unprofessional and I regret my behaviour".
123. In her report following her July 2021 inspection Ms Edwards made a recommendation to reduce the star rating to 1 star and the number of dogs permitted from 36 to 26. The council had received witness statements from two anonymous witnesses who worked in the premises providing accounts that confirmed ongoing concerns about the way in which the business was being run.

124. On 22/09/2021 Kareen Plympton team leader, health, safety and licensing, Charlene Ellis senior licensing officer and Paul Willis environmental health practitioner observing visited the appellant's premises unannounced following complaints received of overcrowding (60 dogs), no ventilation and wider animal welfare concerns.
125. The appellant was not on site. The individual in charge, Ms Boi, advised that there were 37 dogs in the setting in different parts of the building and she checked the electronic register to confirm this. She was unable to print the record from the system but an assistant manager from Pets corner assisted and brought the document to the inspection team. A dog had apparently not been properly booked in or out. In the smaller of the two arenas there was one member of staff with 16 dogs. Many dogs were not wearing collars. The area was very noisy with dogs barking. A strip thermometer on an artificial tree gave a temperature reading of 24°. The area felt hot with no apparent enrichment. Raised beds were noted. The arena felt overcrowded. There were eight dogs in the quiet/puppy room left without any human supervision. There was one water bowl for eight dogs. The dogs were of different breeds and there was lots of noise and barking coming from the room.
126. The team was informed that 11 dogs were being kept in the isolation kennels. These kennels do not meet the minimum space requirement per dog and the appellant had been informed of this several times previously. The area felt very warm, although the temperature reading showed 24°. On inspection several dogs were found in the kennels. The dogs were showing signs of overheating and panting/lying motionless on the floor. The glazed door to each section was steamed up and there were no temperature monitors in these areas. The dogs appeared to be stressed. I have seen photographs of the glass steamed up by condensation. The person in charge said the dogs were waiting to go home and that they were in there while cleaning was taking place. The appellant has been advised several times that this should not be occurring and dogs should not be placed in this area to allow for cleaning.
127. When the appellant attended the premises at 16.40 she argued that dogs from the same household could be included in 1 Kennel and that this was an exception to the 6 m² rule. She accepted that the arrangements in the area were not acceptable and then blamed staff for putting dogs in there for cleaning. She said there was a training class in the arena later so it needed to be cleaned.
128. In the kennel area there was no temperature monitoring and the inspection team was concerned about the high temperature in this area. The appellant refuted those concerns. She said the dogs were there until they were collected but could not advise when they were due to be collected. She was advised to move the dogs to stop them from suffering. Then the appellant's sister arrived and both became confrontational and argumentative with Council staff.
129. When asked about the temperature control, the appellant said that the ventilation system had broken the previous day but an engineer had been called on that day.
130. The appellant was counting herself as being a member of staff on site during that day although she had not arrived on site until 16.40. The inspection team was concerned that there were insufficient staff for capacity and the number of dogs was overcapacity when assessing it by 6 m². The fire exit was obstructed. There was poor control and supervision of the dogs with dogs escaping into the main corridor during the inspection and no way of containing them.
131. After the September visits when the appellant became aware that the council was intending to revoke her licence, the appellant and her sister began a campaign on social media to garner

support to stop the revocation. I was most concerned that the appellant engaged in the fabrication of social media messages suggesting unprofessionalism and aggression on the part of council officers and suggesting that they had in turn made unwarranted allegations against the appellant and her sister. This demonstrates very clearly the degree of uncontrolled paranoia and aggression shown towards council officers. I do not accept the explanation given by the appellant at the appeal hearing that she was simply wanting to demonstrate how easy it was to fabricate such exchanges and thereby undermine the anonymous reports made to the council and the evidence supplied to support those allegations.

132. In an email to Karen Plympton dated 1 October 2021 the appellant suggested that the changes they had been told they had to make to the booking system were new to them and they had not previously been made aware of them. This was patently untrue. At the same time, she was asking DEFRA for confirmation that the changes were warranted.
133. She stated that the thermometers had been changed to digital and installed on the isolation suite doors but then immediately went on to argue that this is inconsistent with the requirement that dogs need to be moved for cleaning and says that there is no additional guidance on this. She has been advised repeatedly that cleaning should take place outside of business hours are left until sufficient dogs have left for the day to allow the remaining dogs to be accommodated within the terms of the licence in one of the arenas.
134. The appellant said that while waiting for further advice from DEFRA the business has “drastically reduced our number of visitors in the late afternoon making cleaning easier anyway”. She does not explain why this had not already been done given that it was advice dating back several inspections.
135. Dealing with the use of food other than approved dried food on site, she says “as always we aim to discourage owners from bringing food along but in some cases it is vital, such as Morgan as you saw”. This is further obfuscation. The appellant was advised several times that food should be confined to dried food as wet food from customers was not safe as there was no refrigeration available on site. Obviously special diets will always need to be catered for and this was never the issue.
136. The appellant says “we continue to turn most of our customers in need away and asked that they contact you instead of being upset with us”. This is a perpetuation of the appellant’s attitude in blaming the respondent for not being allowed to take in more than the total number of dogs permitted on her licence rather than acknowledging the appropriateness of the limit placed on numbers for the animals welfare.
137. The appellant goes on to say “we do however wonder if the crossover will continue to cause a problem. As you witnessed on Friday with the traffic lights outside it causes the morning sessions to be late in the afternoon to be yearly. Though fuel issues have not helped with this with everyone being late and early period if dogs are meant to be collected at 1230 for example and the customer is stuck in a queue we don’t see what we can do with their dog safety. Perhaps you could advise on this”. The appellant goes on to request feedback from the inspection in July 2021.

Findings

138. My findings on the alleged breaches are as follows;-

- a. breach of condition **3.2** in that the maximum of 36 dogs permitted on the premises in accordance with the licence was exceeded and the records kept of the number of dogs on the premises did not match the number of dogs actually present. **Breach proven.** I find that this is established on the basis because of the numbers of dogs present and recorded on the premises during the July and September 2021 inspections. The booking system was revised to an advance booking system perfectly appropriately, but this number was still being exceeded in July and in September 2021. The maximum number should then have been reduced to 26 after Sharon Edward's report but this reduction was not implemented due to the subsequent decision to revoke, and the Appellant was entitled to continue to take 36 dogs. But the September inspections showed that she continued to take more than 36. On 24 September details for 37 dogs had been entered on the records, but 59 dogs in total were counted on site by Charlene Ellis and her team. The Appellant has reverted to blaming this on crossover periods, but she has been told repeatedly that this is no excuse and she has to ensure that the limit is not breached at any time.

I do not find the allegation proven that the Appellant or others at her behest were hiding dogs to avoid them being counted to be established.

- b. breach of conditions **4.1, 4.2 and 5.2** the licence requires that sufficient numbers of competent individuals must be available to provide a level of care for the animals that ensures their welfare needs are met. **Breach proven.** I find that this is established because:-

- i. the Respondent has produced evidence showing that during cleaning dogs were being put in an isolation area where space was inadequate rather than cleaning outside of business hours when the premises were empty or cleaning at times when the numbers on the premises were suitably low to move them into one arena. This practice continued into September 2021 and dogs were kept in conditions that were too confined, too hot and humid to facilitate cleaning
- ii. during several inspections concerns were recorded concerning inadequate supervision of dogs on the premises
- iii. I am satisfied that on 24 September 2022 ventilation was not adequate in an area of the building where dogs were being housed and where a vent was clogged with hair. There has been some recognition of this by the Appellant because she has altered the inspection period from 6 months to 4 months to ensure that this does not occur again. The temperature in that area was 26.7 degrees Celsius which is in excess of the statutory maximum.

During her visit in July 2021 Ms. Edwards demonstrated to the Appellant using digital temperature recording, that the thermometers used on site were inaccurate and the temperature was too high at that time. As at the 22 September inspections new digital thermometers were still not in place and the purchase was only actioned after this point. I find that the thermometers being used were not sufficiently accurate and that the Appellant had been advised of this in previous inspections. She knew that she needed more accurate digital thermometers. I do not accept that she did not know this until she finally received a copy of Ms Edwards report in October 2021 as she was

told by Ms Edwards during the July inspection that her own thermometers were underestimating the temperature. During an inspection in September 2021 the inspectors found the temperatures too high again.

I accept the further submission that inadequate thought was given to the particular needs of braxy cephalic dogs. They find breathing more difficult and are less able to regulate their own body temperature than other breeds. No consideration was being given to their particular needs in terms of controlling their temperature

- iv. Concern was expressed about the competency of staff members to identify normal behaviour of species for which they were caring and recognise signs of and take appropriate measures to mitigate or prevent pain, suffering, injury, disease or abnormal behaviour. I find that this is established. The evidence shows that dogs were being assessed by the Appellant by merely observing their behaviour in the Pets corner shop and seeing how they behaved with humans in that context. That is not an appropriate assessment. The Appellant believes that her skills in handling dogs is such that she can assess their nature quickly and without difficulty. But in one case she actually assessed a dog as unsuited to daycare but then did not prevent him from being released into an area where he was mixing with other dogs.

I accept on the evidence that on 22 September 2021 council officers found seven dogs within the two kennels in the isolation room, three of them without water in an area where the windows of the kennels were steamed up with condensation, the ventilation system was not working adequately, and the dogs were showing signs of distress. I have seen photos of the dogs in question with the windows of the area in which they were being kept steamed up due to condensation and high temperatures and the amount of space available to them being considerably less than 6m².

Anonymous witnesses who had worked at the premises reported that entirely inappropriate methods of managing dog behaviour that had been regularly used on the premises, specifically, the discharging of extinguishers to break up fights and stop barking, the use of mops to manage dogs' behaviour, shouting at dogs, slamming doors and banging on windows as a means of deterrence. The witness stated that the appellant permitted the above methods. The Appellant acknowledged in evidence that she and her sister had used mopheads to control behaviour before they had gates installed but denied ever telling staff to do this. I am not satisfied that they did instruct staff to do this but the fact that they were doing it themselves at one point is concerning. The Appellant acknowledged that a member of staff had inappropriately used a fire extinguisher and been let go after that which showed swift action. I agree with the respondent on the evidence recorded above that over a long period of time there had been insufficient numbers of suitably qualified competent people on the premises resulting in inadequate care and repeated failures to meet the welfare needs of the dogs on the premises.

- c. breach of condition **6.5** which requires that constant access to fresh clean drinking water must be maintained in a suitable receptacle. **Breach proven** This refers to 3

dogs being found in an isolation kennel on 22 September without any water in the water bowl and an insufficient number of water bowls being provided overall. I find this to be established over several inspections. The Appellant's response was that the bowls were replenished as soon as they were empty, and she did not follow the advice that there needed to be more bowls available for the numbers of dogs on site. Her response was inadequate to ensure that all dogs on site had access to clean fresh water at all times

- d. breach of condition **10.1** which requires that a written emergency plan acceptable to the local authority (my emphasis) must be in place, known and available to all the people on the premises used the licensable activity followed where necessary, to ensure appropriate steps are taken to protect all the people and animals on the premises in the case of fire or in the case of breakdowns for central heating, ventilation and aeration or filtration systems or other emergencies. **Breach proven**

References again made to the visits on 22 September 2021 and 24 September 2021 when council officers found the fire exit obstructed posing a serious risk to the safety of both dogs and humans. This was not the first time this had occurred and in addition to being contrary to condition 10.1 of the licence, was also contrary to the guidance which specifies that "entrances and fire exits must be clear of obstructions at all times".

The appellant had not submitted an emergency plan to the council for the Council's consideration and approval and refuses to acknowledge that the requirement goes beyond having a written plan, it must be a written plan submitted to the Council and approved by it as suitable. Even after all the previous warnings about inspectors/Council officers finding escape/fire exits blocked, the exits were again found to be blocked on 22 September 2021

- e. breach of condition **7.1** that requires active and effective environmental enrichment. **Breach proven.** The business premises are a converted warehouse with no outdoor space and the respondent considered that such a sterile environment it is essential that appropriate methods of enrichment be provided for the dogs. A lack of enrichment had been highlighted on previous visits. The Appellant says that appropriate enrichment is provided through play with toys, bubbles and water but no such play was demonstrated during any of the inspections. The Appellant merely says that she told staff not to play with the dogs during inspections but did not explain why not. I do not accept that she has instructed staff to supply adequate enrichment through play. I find that the number of suitably trained and/or experienced staff in the areas where the dogs were kept on site was often inadequate to interact with them in a stimulating or enriching way.
- f. breach of condition **21.1 (a)** that requires that each dog must be provided with a clean comfortable and warm area where it can rest and sleep. **Breach proven** The respondent concluded that inadequate spaces were provided for dogs to sleep or rest within the two arenas. This was also contrary to the guidance under condition 5.8. The Appellant has refused to acknowledge that her business is falling short on this requirement latching onto a statement she says was made to her by Charlene Ellis. She says that Charlene Ellis told her that placing two large raised beds in each arena was a suitable answer to this requirement but I do not accept that she was told that this would suffice in the longer term. It was better than nothing, but it was in my

view made very clear to the Appellant that she needed to work on having a separate quiet restful area to which dogs could retire to get some rest from the participation/play area when they needed a break. She has singularly failed to implement this

- g. the respondent was satisfied that the appellant was not **a fit and proper person** to hold a licence because when a council officer raises a concern with the Appellant, she usually seeks to justify the breach or concern rather than accept responsibility or address immediate welfare concerns. **There are major concerns about the Appellant being a fit and proper person to hold a licence but the threshold is not currently met to find that she is not a fit and proper person to run a dog daycare business.** But the Appellant's behaviour brings her very close to such a finding.

The Appellant has sought to blame staff and others including council officers rather than be accountable for the issues found at the premises. For example, she blamed staff for the condition the dogs were found in on 22 September 2021 in the isolation suite, she continued to tell customers that the council had made her bring in a pre-booking system and reduced her maximum occupancy figures rather than acknowledge that her existing booking system was not functioning reliably and safely.

She appeared unwilling to accept that her licence had always stipulated a maximum of 36 dogs on the premises at any one time and that at all times it remained her responsibility to ensure that the condition was met irrespective of the business model she chose to operate of drop in bookings. Two anonymous witnesses who were former members of staff stated that she had a practice of lying to customers including as to how their dogs were injured or soiled whilst on the premises and staff were instructed to behave in a similar fashion.

On 22 September 2021 and 24 September 2021, the records maintained by the appellant were again found to be unreliable as the number of dogs stated in the records did not match the number of dogs on the premises. This was considered to demonstrate either a deliberate attempt to mislead the council as to the number of dogs present or poor record-keeping. I find that it is persistent lax and poor record keeping. When challenged about this the appellant told council officers that she would continue to accept dogs into the premises even when the maximum number of 36 was exceeded and she appeared to disregard the limit.

- 139. The Appellant has demonstrated by her behaviour and attitude towards the Respondent and its officers and towards veterinary inspectors too, that she finds it very difficult to accept the guidance given by the Respondent as the licensing authority for her business. She picks and chooses which bits of advice she accepts. She persistently and repeatedly argues with council officers and refers matters to DEFRA. She exaggerates her own expertise and considers that she knows better on dog welfare issues than any of the Council officers or the veterinary inspectors.
- 140. She selects which recommendations she will adopt and says she will do things and does not do them. She fabricates unpleasant and inappropriate social media exchanges between council officers using their biodata. She says that this is merely to illustrate how easy it is to fabricate such exchanges in an attempt to undermine the evidence provided by an

anonymous witness, but in my view, she has done this also in an attempt to intimidate Council officers. It is not the behaviour one would expect of a legitimate business proprietor dealing with its licensing authority. The basic problem for this Appellant is that she absolutely refuses to accept that the Respondent should tell her what to do on any aspect of her business because she feels that she knows more about dog welfare than they do. Frankly, she should understand that this is irrelevant. If she wishes to run a dog daycare business, then she has to work with the licensing authority. The animosity shown by her towards Council officers has been entirely inappropriate. The Respondent is statutorily obliged to inspect and ensure that the conditions of the licence are being met and the standards to ensure that the welfare needs of the animals on the premises are being met. This is not a personal vendetta against the Appellant and she needs to realise this.

141. The Respondent acknowledged that the report of Ms Edwards should have been served on the Appellant and her response invited. The Respondent says that it did not have the opportunity to serve it, but I do not accept this. There was ample opportunity to do so. The Respondent was waiting to make its final decision due to ongoing concerns over complaints received about the Appellant's business.
142. Ms Edwards report should have been served on the Appellant and a response invited and considered before a final conclusion was reached to revoke her license.
143. Ms Edwards recommended in July that the rating be reduced to one star, that the number of dogs be reduced to 26 and that additional inspections take place during the following year. This could only work if the Appellant was willing to work with the Respondent. The Respondent concluded following further complaints and the visits of 22 and 24 September 2021 that the Appellant was not a fit and proper person to run the business and was not willing to work with it. While there is ample evidence to show that the Appellant is an aggressive, argumentative, arrogant and rude individual at times, she should have been given the opportunity to respond to Ms Edwards report before the final decision was taken to revoke her license and shut down her business.
144. The Appellant's whole attitude to the Respondent has to change and change urgently if she is to continue running a dog daycare business in the area for which the Respondent has licensing responsibility. If she does not accept that the Respondent is the licensing regulator for her business, then she should not try to continue in that business. She argues that the Respondent has not worked with her, but I find that it is she who has chosen not to work co-operatively at times with the Respondent.
145. I have considered carefully what justification the Respondent had for not accepting Ms Edwards recommendations and instead deciding to revoke the license. Justification can be found in the further complaints made by both anonymous and identified employees and by some customers and in the further breaches found during the visits to the premises on 22 and 24 September.
146. Ultimately the issue is one of welfare. It was surprising that after all that had happened and all that had been said, that on the 22 September 2021 dogs were found in the isolation suite in conditions that were obviously in breach of space, temperature and ventilation requirements. On 24 September the airflow and ventilation was no better but I do accept that an engineer was contacted and did clear the blocked vent that exacerbated the problem.

147. The Appellant has failed to address concerns identified to her repeatedly in inspections dating back over three years concerning adequate monitoring and control of temperature in all parts of the premises, using isolation areas/kennels to accommodate dogs when they are not suited to this purpose, not having a separate area for quiet rest for each dog, failing to maintain reliable records of temperature, numbers of dogs on the premises, not giving dogs access to sufficient enrichment through play/interaction, not having sufficient suitably trained and/or experienced staff on the premises and exceeding the total permitted number of dogs under the terms of the license etc.
148. While I can thoroughly understand the Respondent's valid and serious concerns about the way in which the Appellant runs her business, I find that the license should be reinstated with modification. That is because the Respondent failed to serve a copy of the inspection report of Ms Edwards on the Appellant within a reasonable time as it should have done.
149. The Respondent has failed to explain adequately why it chose not to adopt the recommendations of Ms Edwards and I find that the Council should have done so. Instead, it responded to concerns that came in after that inspection from former staff members and a number of customers without giving the Appellant an adequate opportunity to respond to those further concerns. The concerns recorded during the visits of 22 and 24 September 2021 were very similar to those recorded in Ms Edwards report. While the Appellant should have had a good idea of what those concerns were from her conversations with Ms Edwards, the fact remains that she did not have Ms Edwards report prior to the September visits, and she should have had it. This weakens the argument that she should have addressed all the failures and breaches identified by Ms Edwards by then.
150. Although there is a substantial amount of evidence suggesting the Appellant is difficult to work with, I am not satisfied that the Respondent has established that she is not a fit and proper person to run the business. Her behaviour shows that she is not far off this finding however.
151. The Appellant's failure to address concerns that have been highlighted since 2018 is concerning and was a legitimate reason for Ms Edwards to conclude that she required close supervision from the Respondent as reflected in the one-star rating recommended and the one year license and added inspections during that period.
152. The Appellant acknowledges that her reactions and behaviours are not always appropriate, but ultimately the issue is one of animal welfare. There is no room for such unprofessional behaviour as has been shown by the Appellant as a business proprietor and the Appellant and her sister might be well advised to bring in a part time manager to ensure that suitable standards are maintained, and license conditions are not breached from now on. The Appellant must seek to work better with the Respondent as the licensing authority with responsibility for ensuring animal welfare is protected in the area in which her business premises are located.
153. The decision of the Local authority is overturned and the Appellant's license is reinstated with the modifications to the license recommended by Ms Edwards in her report following her inspection of July 2021.

Signed



04/05/2022

Tribunal Judge Ford