

<b>Item No.</b> 5.	<b>Classification:</b> Open	<b>Date:</b> 19 December 2019	<b>Meeting Name:</b> Licensing Sub-Committee
<b>Report title:</b>		London Local Authorities Act 1991: Sheer Nails, 209 Old Kent Road, London SE1 5NA	
<b>Ward(s) or groups affected:</b>		Newington	
<b>From:</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATION

That the licensing sub-committee considers an application made by Elizabeth Adenike Akinbo for the grant of a special treatment licence in respect of the premises known as Sheer Nails, 209 Old Kent Road, London SE1 5NA

1. Notes:
  - a) The premises are planning to provide, nail extension, manicure and pedicure treatments at Sheer Nails, 209 Old Kent Road, London SE1 5NA
  - b) The application is subject to one objection from the licensing local authority)

## BACKGROUND INFORMATION

### London Local Authorities Act 1991

2. Part II of the London Local Authorities Act 1991 states that no premises shall be used in the borough as an establishment for special treatment except under and in accordance with a special treatment licence granted under this section by the borough council.
3. The council may grant to an applicant and from time to time renew or transfer a licence on such terms and conditions and subject to such restrictions as may be specified and can relate to:
  - a) The maintenance of public order and safety.
  - b) The number of persons who may be allowed to be on the premises at any time.
  - c) The qualifications of the persons giving the special treatment.
  - d) The taking of proper precautions against fire, and the maintenance in proper order of means of escape in case of fire, means for fighting fire and means of lighting, sanitation and ventilation of the premises.
  - e) The maintenance in safe condition of means of heating the premises.
  - f) The hours of opening and closing the establishment for special treatment.

- g) The safety of any equipment used in connection with the special treatment and the way in which the treatment is given.
  - h) The cleanliness and hygiene of the premises and equipment.
  - i) The manner in which the establishment is operated and the way it is advertised.
4. The licence can remain in force for 18 months or such shorter period specified in the licence as the borough council may think fit. Southwark licenses premises to 31 July annually. The licence can continue if a renewal application is received and has not been determined by that date.
  5. Section 8 of the Act allows the council to refuse a licence under one or more stated categories, these categories are highlighted in the legal section of this report.

## **MATTERS FOR CONSIDERATION**

### **The application under consideration**

6. On 13 August 2019 Elizabeth Adenike Akinbo made an application under consideration to provide manicure and pedicure treatments at the premises. A copy of the application is attached as Appendix A. Details of qualifications supplied with the application will be made available at the hearing.

### **Objection**

7. An objection to the grant of a special treatments licence was received from the council's licensing team. The reasons given for making the objection is that:
  - There is a likelihood of nuisance being caused by reason of the conduct of management.
  - The premises are not provided with satisfactory means of lighting, sanitation and ventilation.
  - The persons concerned or intended to be concerned in the conduct or management of the premises used for special treatment could be reasonably regarded as not being fit and proper persons to hold such a licence.
8. A copy of the objection is attached as Appendix B

### **Conditions**

9. The Act allows the council to set standard conditions and conditions relating to the specific treatments. The standard conditions are listed in Appendix C
10. The specific conditions for the activities in the application relate to artificial nails, manicure and pedicure:
  - The condition of the client's nails should be examined prior to any treatment and if there is any presence or suspicion of any infection etc. they should be referred for medical treatment.

- All operatives shall be qualified to a minimum requirement of S/NVQ VRQ and BTEC, Level 2 and/or 3 standard or an acceptable equivalent which is approved by the council. Copies of qualifications shall be available for inspection at the premises.
- An assessment shall be carried out of all products used in connection with the treatment e.g. acetone, ethyl methacrylate etc under the Control of Substances Hazardous to Health Regulations 2002. Copies of safety data sheets for all products used shall be available on the premises.

### **The local area**

11. A map of the area is attached to this report as Appendix D. The premise is identified by a rectangle at the centre of the map. For purposes of scale only the circle on the map has a 100 metre radius. The following special treatment premises and addresses are also shown on the map:

- Tip Toes Nails, 221 Old Kent Road, London SE1 5LU
- Miami Health Club, 208-210 Old Kent Road, London SE1 5TY
- Diamond Nails, 191 Old Kent Road, London SE1 5NA
- Passion 4 beauty, 189 Old Kent Road, London SE1 5NA.

### **Consultation**

12. Consultations arrangements are set down for such applications under the London Local Authorities Act 1991 - Part II.

### **Resource Implications**

13. A fee of £296.00 has been paid by the applicant in respect of this application, being the statutory fee payable for restricted special treatment licence. This fee contributes toward the administration of the process and any related enforcement activities.

### **Community impact statement**

14. Each application is required by law to be considered upon its own individual merits with all relevant matters taken into account.

### **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

#### **Director of Law and Democracy**

15. The sub-committee is asked to determine the application for a special treatment licence under Part II of the London Local Authorities Act 1991.

### **Principles for making the determination**

16. The general principle is that applications for special treatment licence applications must be granted unless relevant representations are received. This is subject to the proviso that the applicant has complied with regulations in advertising and submitting the application.

## **Grounds for refusal**

17. The council may refuse to grant, renew or transfer a licence on any of the following grounds:
- a) The premises are not structurally suitable for the purpose.
  - b) There is a likelihood of nuisance being caused by reason of the conduct, management or situation of the premises or the character of the relevant locality or the use to which any premises in the vicinity are put.
  - c) The persons concerned or intended to be concerned in the conduct or management of the premises used for special treatment could be reasonably regarded as not being fit and proper persons to hold such a licence.
  - d) The persons giving the special treatment are not suitably qualified.
  - e) The premises have been or are being improperly conducted.
  - f) The premises are not provided with satisfactory means of lighting, sanitation and ventilation.
  - g) The means of heating the premises are not safe.
  - h) Proper precautions against fire on the premises are not being taken.
  - i) They are not satisfied as to the safety of equipment used in the special treatment or as to the manner in which the treatment is to be given.
  - j) They are not satisfied as to the safety of the special treatment to be given.
  - k) Satisfactory means of escape in case of fire and suitable means for fighting fire are not provided on the premises.
  - l) The applicant has, within the period of five years immediately preceding the application to the borough council, been convicted of an offence under this Part of this Act.
  - m) The applicant has failed to comply with the requirements of subsection (4) or (6) of section 7 (Applications under Part II) of this Act.

## **Conditions**

18. Power to prescribe standard terms, conditions and restrictions:
- The council may make regulations prescribing standard conditions applicable to all, or any class of, licences, that is to say terms, conditions and restrictions on or subject to which licences, or licences of that class, are in general to be granted, renewed or transferred by them.
  - Where the council have made regulations under this section, every licence granted, renewed or transferred by them shall be deemed to have been so granted, renewed or transferred subject to any standard conditions applicable to it unless they have been expressly excluded or amended.

## Reasons

19. If the sub-committee determines that it is necessary to modify the conditions, or to refuse the application for a special treatment licence application, it must give reasons for its decision.

## Appeals

20. The following parties may appeal a decision of the sub-committee:
  - An applicant for the grant, renewal or transfer of a licence whose application is refused.
  - An applicant for the grant, renewal or transfer of a licence who is aggrieved by any term, condition or restriction on or subject to which the licence is granted, renewed or transferred.
  - An applicant for the variation of the terms, conditions or restrictions on or subject to which a licence is held whose application is refused.
  - An applicant for the variation of the terms, conditions or restrictions on or subject to which a licence is held who is aggrieved by any term, condition or restriction contained in a further variation made consequent on the variation applied for.
  - The holder of a licence which is revoked under section 9 (Transmission and cancellation of licence) or section 14 (Enforcement of Part II) of this Act.
21. The parties may, at any time before the expiration of the period of 21 days beginning with the relevant date, appeal to the Magistrates' Court acting for the area in which the premises are situated, by way of complaint for an order.
22. In this section "the relevant date" means the date on which the person in question is notified in writing of the refusal of his application, the imposition of the terms, conditions or restrictions by which he is aggrieved or the revocation of his licence, as the case may be.
23. An appeal by either party against the decision of the magistrates' court under this section may be brought to the Crown Court.
24. On an appeal to the magistrates' court or to the Crown Court under this section the court may make such order as it thinks fit and it shall be the duty of the borough council to give effect to such order.
25. Where any licence is revoked under Section 14 (Enforcement of Part II) of this Act or an application for the renewal of a licence is refused, the licence shall be deemed to remain in force:
  - Until the time for bringing an appeal under this section has expired and, if such an appeal is duly brought, until the determination or abandonment of the appeal.
  - Where an appeal relating to the refusal of an application for such a renewal is successful until the licence is renewed by the council.

26. Where any licence is renewed under section 6 (Licensing under Part II) of this Act and the council specifies any term, condition or restriction which was not previously specified in relation to that licence, the licence shall be deemed to be free of it until the time for bringing an appeal under this section has expired and, if such an appeal is duly brought, until the determination or abandonment of the appeal.
27. Where the holder of a licence makes an application under section 12 (Variation of licences) of this Act and the council makes the variation applied for together with a further variation, then the licence shall continue as it was before the application:
  - Until the time for bringing an appeal under this section against any term, condition or restriction contained in the further variation has expired.
  - Where any such appeal is brought, until the determination or abandonment of the appeal.

### **Hearing procedures**

28. Subject to the licensing hearing regulations, the licensing sub-committee may determine its own procedures. Key elements of the regulations are that
  - Hearings will normally be held in public. The committee may exclude the public from all or part of a hearing where it considers that the public interest in doing so outweighs the public interest in the hearing, or that part of the hearing, taking place in public.
  - In this context a party and a person representing the party may be treated as a member of the public.
  - The committee will hold its deliberations in private accompanied by the clerk and legal officer.
29. This matter relates to the determination of an application for a special treatment licence under Part II of the London Local Authorities Act 1991 and requires the sub-committee to make its determination at the conclusion of the hearing.

### **Council's multiple roles and the role of the licensing sub-committee**

30. Members should note that the licensing sub-committee is meeting on this occasion solely to perform the role of licensing authority. The sub-committee sits in quasi-judicial capacity, and must act impartially. It must offer a fair and unbiased hearing of the application. In this case, members should disregard the council's broader policy objectives and role as statutory authority in other contexts.
31. As a quasi-judicial body the licensing sub-committee is required to consider the application on its merits. The sub-committee must take into account only relevant factors, and ignore irrelevant factors. The decision must be based on evidence, that is to say material, which tends logically to show the existence or non-existence of relevant facts, or the likelihood or unlikelihood of the occurrence of some future event, the occurrence of which would be relevant. The licensing sub-committee must give fair consideration to the contentions of all persons entitled to make representations to them.

32. The licensing sub-committee is entitled to consider events outside of the premises if they are relevant, i.e. are properly attributable to the premises being open. The proprietors do not have to be personally responsible for the incidents for the same to be relevant. However, if such events are not properly attributable to the premises being open, then the evidence is not relevant and should be excluded. Guidance is that the licensing authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public, living, working or engaged in normal activity in the area concerned.
33. Members will be aware of the council's code of conduct, which requires them to declare personal and prejudicial interests. The code applies to Members when considering licensing applications. In addition, as a quasi-judicial body, Members are required to avoid both actual bias, and the appearance of bias.

### **Strategic Director of Finance and Governance**

34. The head of community safety and enforcement has confirmed that the costs of this process are borne by the service.

### **BACKGROUND DOCUMENTS**

<b>Background Papers</b>	<b>Held At</b>	<b>Contact</b>
London Local Authorities Act 1991	Southwark Licensing, C/O Community Safety & Enforcement, 160 Tooley Street, London SE1 2QH	Mrs Kirty Read Tel: 020 7525 5748
Conditions document	Southwark Licensing, C/O Community Safety & Enforcement, 160 Tooley Street, London SE1 2QH	Mrs Kirty Read Tel: 020 7525 5748

### **APPENDICES**

<b>Name</b>	<b>Title</b>
Appendix A	Application
Appendix B	Objection
Appendix C	Standard Conditions
Appendix D	Local Area Map

## AUDIT TRAIL

<b>Lead Officer</b>	Caroline Bruce, Strategic Director of Environment and Leisure	
<b>Report Author</b>	Charlie Jerrom, Enforcement Licensing Officer	
<b>Version</b>	Final	
<b>Dated</b>	6 December 2019	
<b>Key Decision?</b>	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments sought</b>	<b>Comments included</b>
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
<b>Cabinet Member</b>	No	No
Date final report sent to Constitutional Team		6 December 2019