

Item No. 6	Classification: Open	Date: 4 March 2021	Meeting Name: Licensing Sub-Committee
Report title:		London Local Authorities Act 1991: 157 Camberwell Road, London SE5 0HQ	
Ward(s) or groups affected:		Camberwell Green	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Xue Mei Phung for the grant of a renewal of their special treatment licence in respect of the premises known as 888, 157 Camberwell Road, London SE5 0HQ.
2. Notes:
 - a) This application for a Special Treatment Licence is made in accordance with Part II of the London Local Authorities Act 1991 and the Regulations made by Southwark Council under section 10(1) of the London Local Authorities Act 1991. A copy of the application is attached in Appendix A.
 - b) The premises previously provided nail treatments like nail extension, manicure and pedicure at 888, 157 Camberwell Road, London SE5 0HQ.
 - c) The application is subject to one objection from the Metropolitan Police. The objection is attached in Appendix B.

BACKGROUND INFORMATION

London Local Authorities Act 1991

3. 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.
4. 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.
5. 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 January annually, a six month extension has been given due to the global pandemic. The licence can continue if a renewal application is received and has not been determined by that date.
 6. 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

7. On 17 January 2021 Xue Mei Phung made an application to renew their special treatment licence to provide nail extensions at the premises a copy of the application is attached as Appendix A. When the premises was trading their operating hours were Monday to Saturday 10:00 to 19:30pm. Xue Mei Phung applied for these hours in her original application to transfer the special treatment licence to herself on the 8 April 2015. A copy of this application is attached as Appendix B.

Objection

8. An objection to the grant of a special treatments licence was received from the police. The reasons for the police's objections can be found in para 2- 5 of Appendix C.
9. A copy of the objection is attached as Appendix C.

History of the premises

10. On 8 April 2015 the licensing unit received an application to transfer the special treatment licence to the current licence holder Xue Mei Phung. A copy of this application is attached as Appendix B. A special treatment licence was issued on the 30 April 2015 to Xue Mei Phung to provide manicure and pedicure treatment. The licence has one operative permitted to provide manicure and pedicure treatments. A copy of this special treatment licence and their most recent special treatment licence are attached as Appendices D and E.
11. On 17 July 2019 a joint enforcement visit to the premises was made by the licensing unit, trading standards, the police night time economy team, immigration officers and GLA gang masters. During the course of the visit the premises was operating, four unlicensed Vietnamese nationals were arrested and taken into immigration custody and two Vietnamese nationals who were minors were referred to social services. It is unclear what the outcome was of this investigation or if it is still ongoing.
12. A warning letter has been sent to the licence holder from the licensing unit for the above immigration offences. A copy of this warning letter is attached as Appendix F.
13. On 17 January 2021 a further application was received from the licence holder to vary their special treatment licence to add another operative to provide manicure and pedicure treatments. This application is currently on hold pending the outcome of the licensing sub-committee hearing. A copy of this application is attached with this report as Appendix G.

Conditions

14. The Act allows the council to set standard conditions and conditions relating to the specific treatments. The standard conditions are listed in Appendix H.
15. 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.

Briefing from public health

16. Public health has provided information on the health risks from special treatment premises. A copy of this is attached as Appendix I.

The local area

17. A map of the area is attached to this report as Appendix J. 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. There are two other special treatment premises located within the 100 metre radius.

Consultation

18. Consultations arrangements are set down for such applications under s.7 of the London Local Authorities Act 1991 - Part II.

Resource implications

19. A fee of £372.00 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

20. 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 Governance

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

Principles for making the determination

22. 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

23. 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

24. 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

25. 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

26. 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.

27. 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.

28. 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.

29. An appeal by either party against the decision of the magistrates' court under this section may be brought to the Crown Court.

30. 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.
31. 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.
32. 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.
33. 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

34. 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.

35. 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

36. 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.
37. 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.
38. 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.
39. 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

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

BACKGROUND DOCUMENTS

Background papers	Held At	Contact
London Local Authorities Act 1991	Southwark Licensing, C/o Community Safety & Enforcement, 160 Tooley Street, London, SE1 2QH	Kirty Read Phone number: 020 7525 5748
Conditions document	Southwark Licensing, C/o Community Safety & Enforcement, 160 Tooley Street, London, SE1 2QH	Kirty Read Phone number: 020 7525 5748

APPENDICES

No.	Title
Appendix A	Application to Renew special treatment licence
Appendix B	Application to transfer special treatment licence
Appendix C	Police objection
Appendix D	2015 Special treatment licence
Appendix E	2019 Special treatment licence
Appendix F	Warning letter
Appendix G	Application to vary special treatment licence
Appendix H	Standard conditions
Appendix I	Briefing from public health
Appendix J	Map of local area

AUDIT TRAIL

Lead Officer	Caroline Bruce, Strategic Director of Environment and Social Regeneration		
Report Author	Justin Williams, Licensing Enforcement Officer		
Version	Final		
Dated	18 February 2021		
Key Decision?	No		
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER			
Officer Title	Comments sought	Comments included	
Director of Law and Governance	Yes	Yes	
Strategic Director of Finance and Governance	Yes	Yes	
Cabinet Member	No	No	
Date final report sent to Constitutional Team		22 February 2021	